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CLEARINGHOUSE RULE 99-079

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. Section HSS 165.01 (1) should be further amended to correct the statutory reference to s. 252.22, Stats. This section of the statutes no longer exists. Also, the phrase “department of health and social services” should be replaced by the defined term “department.” The name of the department has been changed to the Department of Health and Family Services.

b. Section HSS 165.02 (12) (intro.) and (a) should be consolidated into one subsection, since sub. (12) (b) is repealed.

c. In s. ATCP 77.01 (13), the second sentence should be rewritten to read: “Person’ includes a county, a municipality, the state and an agency of the state.”

d. In s. ATCP 77.01 (15), the notation “s.” should precede the reference to “NR 108.02 (12).”

e. In s. ATCP 77.04 (1) (e) 3., the second occurrence of the notation “ATCP” should be deleted.

f. In s. ATCP 77.14 (3), the notation “s.” should be replaced by the notation “ss.” Also, in the note following this section, the second occurrence of the notation “s.” should be deleted.

g. In the effective date provision, it is not necessary to provide an exception for s. ATCP 77.34 (5). The entire rule may take effect on the first day of the month following publication in the Wisconsin Administrative Register and s. ATCP 77.34 (5) will become applicable, by its own terms, on July 1, 1999. [Considering that Clearinghouse Rule 99-079 cannot be promulgated prior to July 1, 1999, the department may wish to consider altering the date specified in s. ATCP 77.34 (5).]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. ATCP 77.02 (1) (intro.), should “any” be changed to “all”?

b. Should the title to s. ATCP 77.03 refer to the certification of a laboratory operator rather than a laboratory? It appears that the laboratory operator, rather than the laboratory, receives certification under that section. The entire rule should be reviewed for the question of whether it is the operator who, or the laboratory that, is certified.

c. Section ATCP 77.03 (1) refers to public health standards required under federal or state law. However, s. ATCP 77.01 (14) defines the term “public health standard” to include a local “statute, rule or ordinance.” Are local regulations intentionally excluded from the provisions contained in s. ATCP 77.03 (1)?

d. In the note following s. ATCP 77.04, the word “from” should be inserted after the word “forms.”

e. In s. ATCP 77.04 (1) (e) 3., the third occurrence of the word “proficiency” is misspelled.

f. In s. ATCP 77.16 (3), should “operator” be changed to “person”?

g. In s. ATCP 77.20 (2) (c) 1., how is an operator to determine whether an “authoritative reference manual” exists which applies to the type of food testing for which the laboratory is certified? How are these unnamed manuals to be incorporated by reference under s. 227.21, Stats.? (A reference to incorporation is included in the analysis.)

h. Section ATCP 77.22 (7) should specify the length of time for which an analyst who fails a proficiency evaluation may remain provisionally certified. In addition, the rule should set forth a time limit within which a provisionally certified analyst must perform a proficiency evaluation.

i. The note following s. ATCP 77.24 (3) is unclear. Will the department approve only those evaluators who are approved by the Federal Drug Administration? If so, that should be clearly stated in the text of the rule. If not, the standards which apply for the approval of an evaluator should be set forth in the text of the rule.

j. In s. ATCP 77.24 (4), what are the standards and procedures for department approval of a standard evaluation procedure?

k. In s. ATCP 77.30 (2) (c), it appears that “Standards” should be changed to “Standard.”

l. Section ATCP 77.32 should specify the documentation that a laboratory operator must provide as proof that analysts are properly trained to perform tests.

m. In s. ATCP 77.34 (2), the rule requires the evaluator to “rate” the operator’s proficiency. The rule should set forth the rating system that is to be used in order to assure consistency in evaluations.

n. In s. ATCP 77.34 (3), “be the evaluator in a” should be changed to “conduct the.”

o. In s. ATCP 77.34 (5) (a) 3., should “negative” be changed to “positive”?

p. Section ATCP 77.34 (5) (b) should state when the operator must report the test results to the evaluator. In addition, it appears that the second sentence of that paragraph should require the evaluator to report the test results to the department within 40 days after the operator mails the samples to the evaluator, rather than vice versa.

q. Section ATCP 77.32 (7) (b) should set forth a time limit by which a provisionally certified operator must perform two consecutive proficiency evaluations in order to regain full certification.

r. In s. ATCP 77.34 (7) (c), it appears that the word “the” in the first sentence should be deleted.