



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 14-051

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]

2. Form, Style and Placement in Administrative Code

a. The relating clause refers generally to the chapter of the Administrative Code it affects, but does not state the subject matter of the proposed order, which relates to the composition of the cherry marketing board. [s. 1.02 (1) (a), Manual.]

b. The list of statutes interpreted should not be included under the heading “Statutory Authority”. The department should list statutes interpreted under its own heading. [s. 1.02 (2) (a) 1., Manual.] The department should also include the heading “Explanation of Agency Authority” prior to the agency’s explanation of its authority.

c. The department appears to have subdivided the portion of the rule analysis under the heading “Plain Language Analysis” into two sections, “background” and “rule content”. This is unnecessary.

d. This rule-making eliminates cherry marketing board districts, but the text of the proposed rule does not repeal all references to these districts in ch. ATCP 141. The rule does not repeal the definition of “district” in s. ATCP 141.01 (5), nor does it repeal a reference to districts within s. ATCP 141.04 (2) (d). The department should consider whether these references should also be removed, and amend the relating clause to reflect any changes it makes to these sections.

e. Because this rule-making repeals par. (b) of s. ATCP 141.04 (1), it is unnecessary to divide s. ATCP 141.04 (1) into two paragraphs. Therefore, the department should renumber s. ATCP 141.04 (1) (a) to s. ATCP 141.04 (1).

f. In SECTION 2 of the text of the proposed rule, the department has incorrectly copied the text of s. ATCP 141.04 (1) (a) in several places:

- There should be a comma after “~~large~~” in the first sentence (which the rule-making should delete by adding it to the stricken text).
- The second sentence of the paragraph has been incorrectly reproduced. In existing s. ATCP 141.04 (1) (a), that sentence reads: “Board members shall be affected producers in the district they are elected to represent.”. The department has omitted all of the text after “be” and instead inserted “elected producers”.
- The abbreviation for section (s.) should be inserted between “in and 96.10”.
- In the sentence beginning, “If no nominations are made ...”, the department has omitted the “r” from the word “producers”.
- The comma the department has included between “secretary” and “marketing board” in the last sentence of this paragraph does not exist in the current text of s. ATCP 141.04 (1) (a).

3. Conflict With or Duplication of Existing Rules

This rule-making proposes to amend s. ATCP 141.04 (2) (a) to establish a structure to stagger the terms of the board members. Initially, two seats will be for three years, two for two years, and one for one year. After those initial terms, each term will be for three years, so that each year at least one seat is up for election. The structure the department proposes largely mimics the structure that was adopted in the existing version of ch. ATCP 141. However, since the terms of cherry marketing board are already staggered, why, as the proposed rule is drafted, is it necessary to reestablish a staggering system? Further, implementing s. 141.04 (2) (a) as the rule proposes would require five seats to be up for election at one time. The terms are already staggered, though, so in any given year, only two or three seats will be up for election. Thus, the provisions providing an initial term for the board members receiving the fourth and fifth highest number of votes could not be implemented. It appears that the department intends to fully reconstitute the board membership upon promulgation of the proposed rule, although this action is not clear from the language of the proposed rule. The department should consider adding language to specify that, as of a date certain, the board is reconstituted, with the membership determined according to the staggered process prescribed by the language of the proposed rule. Relatedly, the reference in s. ATCP 141.04 (2) to “this amendment” should be replaced by a date inserted by the Legislative Reference Bureau. [s. 1.01 (9) (b), Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

a. As a “statute interpreted”, the department lists ch. 96, Stats. The department should specify which statutes within that chapter this rule-making interprets. It would appear the rule-making interprets s. 96.10 (1), Stats.; however, the department has not specifically identified that statute.

b. Within the section describing federal programs, the department refers to “assessments for the benefit of cranberry growers”. This appears to be an error.

c. Under the heading “Surrounding State Programs”, the department indicates the existence of a marketing order in Michigan but does not provide any further explanation. Section 227.14 (a) 4., Stats., requires “A *comparison* with similar rules in Illinois, Iowa, Michigan, and Minnesota”. (Emphasis added.)

d. Under the heading “Effect on Small Business”, the department states that the rule “will have no *negative* economic impact on small businesses”. (Emphasis added.) The next sentence appears to imply that the rule will have a positive economic effect on small businesses. If it is the case that this rule will have an impact on small businesses, the phrase “and affecting small businesses” should be included at the end of the relating clause. [s. 1.02 (1) (c), Manual.]

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

a. In the sentence that concludes the plain language analysis section, the phrase “with all members elected at large” should be deleted. Since this rule-making eliminates districts and district-based election, it is unnecessary to say that all members shall be elected at large.

b. In SECTION 5 of the text of the proposed rule, the colon after “EFFECTIVE DATE” should be a period. [See s. 1.02 (4), Manual.]

c. The department should use font sizes consistently. [See, SECTION 1. and SECTION 2. of the proposed rule text.]