



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 17-073

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 December 2014.]

2. Form, Style and Placement in Administrative Code

a. The department should review the parts of the rule that state that certain requirements will go into effect after the effective date of the rule. [See, e.g., s. ATCP 70.06 (8) (c) and (10) (b).] When the rule is printed, it should include a reference to a specific date. If the department wishes to permit the Legislative Reference Bureau (LRB) to substitute the actual effective date, the following language should be used: “the effective date of section ... [LRB inserts date].” [s. 1.01 (9) (b), Manual.] Alternatively, the department could choose a different specific date, or add an initial applicability clause at the end of the rule. The initial applicability clause could state that these parts of the new rule apply to events occurring on or after a certain date. [s. 1.03 (3m), Manual.]

b. In s. ATCP 70.06 (6) (b) 5., the comma should not be indicated with underscored text.

c. The words “current” and “currently” should be removed from proposed s. ATCP 70.08 (3), (5) (d), and (8) (d), because those words will be meaningless once the rule is printed. [s. 1.01 (9) (b), Manual.]

d. It is unclear whether proposed s. ATCP 70.04 is necessary, since it does not appear to add any new licensing requirements. Instead, it simply restates that food processing plants must comply with ch. ATCP 70 and applicable federal law. The department should also consider combining the two subsections, which seem to apply the same requirements regardless of whether the facility is qualified or not.

e. The department should review the construction and maintenance standards for seasonal businesses in proposed s. ATCP 70.08 (3). First, it is unclear as to which food processing plants this section is intended to apply. Does it apply only to “strictly seasonal businesses”, and how is a strictly seasonal business different from a “seasonal business” as that term is used later in the rule? These terms could be defined. Second, it is not clear why the rule lists specific licensing requirements that will apply to these businesses. Is the intention to apply all of the requirements associated with licensure, or only some? Finally, as a matter of drafting style, the acronym “e.g.” should not be used, and the phrase “including, but not limited to” should be replaced by the word “including”. [s. 1.01 (9) (f), Manual.]

f. The current rule includes notes that state that copies of certain federal administrative code chapters are on file with the department and the LRB. It does not appear that similar notes were added for the new references to federal law. The department should either remove all of these notes or include them consistently throughout the chapter. [See, e.g., ss. ATCP 70.24 (7) and 70.28 (3).]

g. The department should review the citations and cross-references generally throughout the rule for accuracy, including the following examples:

- (1) SECTION 1 states ch. ATCP 74 is repealed and recreated, rather than ch. ATCP 70.
- (2) Proposed ss. ATCP 70.06 (11) (f) 1., 70.16, and 74.16 (2) each appear to reference portions of the administrative code that do not exist.
- (3) The department should review the reference in the note to proposed s. ATCP 70.36.
- (4) The note under proposed s. ATCP 70.06 (4) should be removed, since the subsections it references do not exist.
- (5) The reference to “parts (a) through (d) of this subsection” should be changed to “pars. (a) to (d)”.
- (6) Does the reference to s. ATCP 74.16 (2) in proposed s. ATCP 70.16 (1) actually refer to s. ATCP 70.16 (2)? If so, the reference should be to “sub. (2)”.
- (7) The reference to “sub. 1-4 above” in proposed s. ATCP 70.20 (3) (a) 8. should be changed to “subds. 1 to 4.”. [s. 1.01 (9) (d), Manual.]

h. The department could consider replacing the word “unhealthful” in proposed s. ATCP 70.08 (1) with a different or more definite term.

i. Is the prohibition against handling food under proposed s. ATCP 70.10 (4) (a) different than the prohibition in sub. (5)? Could sub. (5) be removed or incorporated into sub. (4)?

j. The department could revise proposed s. ATCP 70.16 (1) (b) to state that the department will issue a letter only if the alternate cleaning and sanitizing procedure is approved, rather than “upon review”. This would more clearly state the department’s discretion to deny the request.

k. The rule clarifies the operators’ responsibilities, but it seems unclear how the operators’ duties will be enforced. Could the department’s recourse against an operator for violations of these rules be clarified?

l. The proposed rule requires department approval for use of reclaimed water as operations water but does not appear to require department approval for use of reclaimed water as ingredient water. Is this the department's intention? [s. ATCP 70.20 (3) (a) and (b).]

m. The department should review proposed s. ATCP 70.20 (2) (a) for correct drafting style. Numbers should be expressed using Arabic numerals, and parentheses should be avoided. [s. 1.01 (5) and (6), Manual.] Arabic numbers should also be used in the other references to the same five-year period throughout the rule.

n. The department should review the rule generally to ensure that titles and internal and external references follow the formatting requirements in ss. 1.05 (2) and 1.07 (2), Manual. For example, s. ATCP 70.08 (3) should be titled.

o. The department could consider modifying the rule in response to the recent court decision, which enjoined enforcement of certain food licensing requirements against low-volume home bakers. [*Kivirist v. DATCP*, Lafayette Co. Case No. 16-CV-06.] The rules could be revised to clarify how the department plans to implement the decision. Alternatively, the department could wait until the parties' rights to appeal the decision have expired.

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

- a. In s. ATCP 70.16 (2) (g), the period should be removed following "(g)".
- b. Section ATCP 70.20 (1) (c) should end with a period.