



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE RULE 21-096

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

2. Form, Style and Placement in Administrative Code

a. In the analysis prepared by the department for the proposed rule, the department should insert a deadline to submit comments. [s. 1.01 (2) (a) 14., Manual.]

b. In SECTION 1 of the proposed rule:

(1) The SECTION should be divided into three SECTIONS: first, to amend s. ATCP 94.100 (8) (b); second, to create s. ATCP 94.100 (8) (b) (Note), which should be shown without underscoring; and third, to amend s. ATCP 94.100 (8) (c) and (d) (title) and (Note 1).

(2) The treatment clauses and listing of affected provisions in the rule caption should be updated to reflect these changes, including the creation of sub. (8) (b) (Note), and the amendment of sub. (8) (d) (Note 1), which had not been identified.

(3) In sub. (8) (d), only the title should be shown, and the text of the provision should be removed. Also, the amendment should show the stricken-through text before the inserted text. Thus, “Immediate Shutdown shutdown” should be changed to “~~Shutdown~~ Immediate shutdown”. [ss. 1.04 (4) (a) 2. and 1.10 (2) (c) 3., Manual.]

c. In SECTION 5 of the proposed rule, the phrase “all of the following” should precede the colon. [s. 1.11 (2), Manual.]

d. In SECTION 8 of the proposed rule, the department should consider the following comments relating to definitions:

(1) In s. ATCP 94.120 (1) (a), avoid the use of the “and/or” technique. [s. 1.08 (1) (d), Manual.]

(2) In s. ATCP 94.120 (1) (a) to (d), each subunit should end with a period. [s. 1.11 (3), Manual.]

- (3) In s. ATCP 94.120 (2), the phrase “any of the following” should precede the colon and each subunit should end with a period. [s. 1.11 (2) and (3), Manual.]
- (4) In s. ATCP 94.120 (2) (c), should “5 percent” be changed in each instance to “5 percent by volume of”?
- (5) In s. ATCP 94.120 (7), it appears that the designations “B100” and “B99” may be used interchangeably. In other words, a fuel that is 99 percent biodiesel may be designated B100, and a fuel that is 100 percent biodiesel may be designated B99. Is that the intent?
- (6) In s. ATCP 94.120 (14), adding “ethanol” after “ten percent” would aid clarity.
- (7) In s. ATCP 94.120 (15):
 - (a) The phrase “means a term that refers to” could be shortened to “means”.
 - (b) Should “83 percent ethanol” be changed to “83 percent ethanol by volume”?
 - (c) The sentence “It can be used in flexible fuel vehicles.” could be viewed as a substantive provision authorizing the use of E85 in a flexible fuel vehicle. Substantive provisions should not be incorporated as part of a definition. [s. 1.07 (1) (d), Manual.] If suitability for use in flexible fuel vehicles is a defining attribute of E85, the sentence could be changed to “, that can be used in flexible fuel vehicles.”.
- (8) In s. ATCP 94.120 (21):
 - (a) In the first sentence, the phrase “a substantial amount more than one percent” lacks clarity.
 - (b) In the second sentence, should “gasoline-alcohol blends” be changed to “gasoline-oxygenate blends”, which is the defined term? If not, “gasoline-alcohol blends” should be defined.
- e. SECTION 12 of the proposed rule should appear after SECTION 10. The current designation determines the sequence of treatment in the proposed rule, rather than the renumbered designation. [s. 1.04 (6) (c), Manual.]
- f. In SECTION 13 of the proposed rule, “Government Printing Office” should be changed to “Government Publishing Office”.
- g. In SECTION 16 of the proposed rule, insert the stricken phrase “~~of ASTM D4814~~” after “requirements” if the intent is to strike those words from current s. ATCP 94.210 (1) (c) 1.
- h. In SECTION 18 of the proposed rule, s. ATCP 94.210 (1) (f) should be identified in the treatment clause as a provision that is amended.
- i. In SECTION 25 of the proposed rule, the treatment clause should end with “to read:”.
- j. In SECTION 27 of the proposed rule, the amendment should show the stricken-through text before the inserted text. Thus, “~~Biodiesel blended Biodiesel motor fuels blends~~” should be changed to “~~Bio diesel blended motor fuels~~ Biodiesel blends”. [s. 1.04 (4) (a) 2., Manual.]
- k. In SECTION 31 of the proposed rule, the title of s. ATCP 94.260 refers to racing gasoline, but the rule text does not confine itself to that type of gasoline in all instances.

l. In SECTION 37 of the proposed rule, the period in the text of the current title that is shown with a strike-through should be removed. It is properly shown without a strike-through or underscoring after the inserted title text.

m. In SECTION 38 of the proposed rule, each subunit of s. ATCP 94.300 (1) (c) 2. should end with a period. [s. 1.11 (3), Manual.]

n. In SECTION 39 of the proposed rule, the treatment clause should be revised to identify that the SECTION amends s. ATCP 94.300 (2) (a) (intro.) and 2. The listing of affected provisions in the rule caption should also be updated to reflect this correction. In addition, the text of subds. 1. and 3., which appear to be unamended, should be removed. [s. 1.03 (2) (a) 2., Manual.]

o. In SECTION 49 of the proposed rule, the citation format for “ch. ATCP 93.605” should be changed to “s. ATCP 93.605”, using the designation “s.” rather than “ch.”. Also, the title for s. ATCP 94.320 should be shown in section title format, with bold font. [s. 1.10 (2) (b) 2., Manual.]

p. In SECTION 50 of the proposed rule, the amendment should show the stricken-through text before the inserted text. Thus, “Department records. ~~Records.~~” should be changed to “~~Records~~ Department records.”. [s. 1.04 (4) (a) 2., Manual.] The section title should also be shown in bold font.

q. SECTION 51 of the proposed rule renumbers s. ATCP 93.330 (1) (a) as s. ATCP 94.330 (1). However, the current administrative code already contains language in s. ATCP 94.330 (1) (intro.). The proposed rule should clarify the disposition of that language. Also, the underscored word “date” should be moved to follow the stricken word “time”.

r. In SECTION 63 of the proposed rule:

(1) In the amended text, the designation for sub. (3) should be shown without underscoring and the current designation for sub. (1) should be removed. When a provision is renumbered and amended, the amended text is shown with the new number. [s. 1.04 (6) (b), Manual.]

(2) The underscored phrase “, the cost of” should be moved to follow the stricken word “and”.

s. In SECTION 65 of the proposed rule, the phrase “all of” should be inserted in s. ATCP 94.410 (1) (intro.).

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

In SECTIONS 21 and 31 of the proposed rule, it is not necessary to cross-reference a term defined in s. ATCP 94.120, as the defined terms apply throughout the chapter. Thus, the phrase “Any fuel product designated by name or reference or defined as ‘E15’ in s. ATCP 94.120 (14)...” could be shortened to “Any fuel product designated by name or reference as ‘E15’...”. A similar change could be made regarding references to E85 defined in s. ATCP 94.120 (15).

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

a. In the rule summary’s plain language analysis, under the heading “E15 and E85”, the word “dispending” should be changed to “dispensing”.

b. In SECTION 3 of the proposed rule:

- (1) The department should clarify how the shutdown authority for a continuing code violation in s. ATCP 94.100 (8) (f) relates to the immediate shutdown authorities in s. ATCP 94.100 (8) (a) to (e). For example, does an inspector follow the 15-day compliance procedure in s. ATCP 94.100 (8) (f) upon discovery of any violation of s. ATCP 94.100 (8) (a) to (e)? Or is the procedure in s. ATCP 94.100 (8) (f) reserved for all violations other than those identified in s. ATCP 94.100 (8) (a) to (e)?
- (2) Section ATCP 94.100 (8) (g) could be interpreted as requiring that an appeal be filed in every instance. It could be revised for clarity to either “Any appeal to a shutdown order must be filed pursuant to s. ATCP 93.190.” or “Appeals to a shutdown order may be filed only pursuant to s. ATCP 93.190.”.

c. In SECTION 4 of the proposed rule, the meaning of “complaint-driven requests” in s. ATCP 94.110 (2) is not clear. Does this refer to an inspection that is performed as a result of the filing of a complaint? If so, would the phrase “complaint-driven inspections” be clearer?

d. In SECTION 6 of the proposed rule, s. ATCP 94.110 (3) (b) requires that the department respond within 30 days of receipt of a petition for a variance. Should the rule specify any standards for the department to use in evaluating a petition? Should the rule specify the acceptable responses to a petition (e.g., deny, grant, grant with conditions, etc.)?

e. In SECTION 10 of the proposed rule, the use of both “excluding” and “including” in s. ATCP 94.200 (2) (a) could lead to confusion regarding whether specifications for natural gas, liquid natural gas, liquid propane, and hydrogen are adopted by reference or not. If those items are listed merely as examples of lubricants and compressed gases that are excluded, changing “gases; including” to “gases, such as” would be clearer.

f. In SECTIONS 20 and 21 of the proposed rule:

- (1) The phrase “with the following permissible exception that” is unclear. Could it be shortened in each instance to “with the exception that”?
- (2) Sections ATCP 94.210 (3) and 94.215 (2) are identical other than the titles. Is this intentional?

g. In SECTION 27 of the proposed rule, the phrase “greater than 5 to 20 percent” could be clarified to something like “greater than 5 but not greater than 20 percent”.