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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Scott Grosz**  
*Clearinghouse Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Margit Kelley**  
*Clearinghouse Assistant Director*

**Jessica Karls-Ruplinger**  
*Legislative Council Deputy Director*

### **CLEARINGHOUSE RULE 16-082**

#### **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. In the rule analysis, a section heading and entry should be inserted for a description of the analysis and supporting documents used to determine the effect on small business. [s. 1.02 (2) (a) 9., Manual.]
- b. In s. ATCP 74.01 (3) and (4), the order of the definitions should be switched to be arranged alphabetically. [s. 1.01 (7) (a), Manual.]
- c. In s. ATCP 74.01 (12), the acronyms in the parentheticals should be removed and separately defined or reviewed for their necessity. [s. 1.01 (6) and (8), Manual.]
- d. In s. ATCP 74.01 (15), consider dividing the provision into two provisions to address both the descriptive and substantive elements. For example, one provision could define that a “sanitarian” is an inspector who meets the requirements given in the other provision. The other provision, perhaps under the “Staffing” section or a separate “Sanitarian Requirements” section, could specify who determines whether a sanitarian is qualified to conduct inspections as an agent of the department and what criteria are used to determine whether the person is qualified.
- e. In s. ATCP 74.01 (15) (b), “, or” should be changed to a period. [s. 1.03 (4), Manual.]
- f. In s. ATCP 74.10 (1), the format for the citations should be changed to the following: “s. 97.30, Stats., subchs. III and IV of ch. 97, Stats., and chs. ATCP 72, 73, 75 and Appendices 76, 78, and 79, Wis. Adm. Code.”. This issue also occurs in s. ATCP 74.16 (1). [s. 1.07 (2), Manual.]

g. In s. ATCP 74.10 (6) (intro.), the phrase “for all of the following purposes” should be added before the colon. [s. 1.03 (3), Manual.]

h. In s. ATCP 74.16 (4), “ten” and the parentheses around “10” should be deleted. [s. 1.01 (5), Manual.]

i. In s. ATCP 74.18 (1), the notation “s.” should be added before “ATCP 74.01 (6)”. In sub. (2) (b), “shall not” should be changed to “may not”. [s. 1.01 (2), Manual.]

j. In s. ATCP 74.20 (1), in the first sentence, “three” and the parentheses around “(3)” should be deleted. In the last sentence of sub. (1), “three” should be changed to “3”.

k. In s. ATCP 74.22 (1) (intro.), “, Stats.” should be added after “s. 97.30” and “Subchs.” should be changed to “subchs.”. In sub. (1) (b) (intro.), the comma should be deleted. In sub. (1) (c), “are” should be changed to “is”. In sub. (3), the exception that is described in the introductory material should be separated into a paragraph in order to have at least two subunits. In sub. (7), “shall not” should be changed to “may not”.

l. In s. ATCP 77.24, “s.” should be added before “93.06 (7)”.

m. In s. ATCP 77.26 (1), “(90)” should be deleted. In addition, “reason(s)” should be changed to “reason or reasons”. These issues also occur in sub. (2). In sub. (2), “Subch.” should be changed to “subch.”

n. Consider whether inserting an initial applicability clause for all or parts of the rule is needed. Certain parts of the rule, such as the provision for license denials, involve a series of events and a process. If the proposed rule revises rights and obligations, it would be useful to specify at what point in the series of events the rule takes effect. [s. 1.02 (3m), Manual.]

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

In s. ATCP 74.04 (1) (d), it is unclear what the notation “pursuant to sub. (4) (c)” is referring to.

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

a. In the related statutes and rules section of the rule analysis, “retail food establishment” should be changed to “retail food establishments”. In the plain language analysis section of the rule analysis, in the second paragraph, “regarding inspection” should be changed to “regarding inspections”. In the data and analytical methodologies section of the rule analysis, “Enquiries” should be changed to “Inquiries”.

b. In s. ATCP 74.01 (1), “Agent” means a “local health department of a village, city, county, or portions of counties, or consortium of counties...”. The term “local health department” is used in s. 97.41 (1) (b), Stats., and is defined in s. 250.01 (4), Stats. The definition of local health department in the rule does not include all of the entities included in the statutory definition of local health department. Does the list of entities in the rule include all potential types of local health departments that could be agents for purposes of the rule?

c. In s. ATCP 74.01, consider adding a definition for the word “license” to mean a license to operate an establishment. The term “license” is used a number of times throughout the rule

without specifying what type of license. See, for example, the use of the term in s. ATCP 74.04 (1) (a).

d. In s. ATCP 74.01 (5), consider clarifying what a “food vending operation” is. In sub. (6), “Year” should be changed to the lowercase. In sub. (7), “defined” should be changed to “given”. In sub. (10), “as defined in sub. (5)” should be added after “establishment”. In sub. (12), quotation marks should be added after “sanitarian” and added before “RS”. Also, the first comma should be deleted. In sub. (15) (a) (intro.), “Is” should be added before “RS-eligible”. Also, the hyphen between “45” and “quarter hour” should be deleted. In sub. (17), it appears “Exercise” should be changed to the lowercase.

e. In s. ATCP 74.02 (2), the commas should be deleted.

f. In s. ATCP 74.04 (1) (e), should a village ordinance be included in this list? In sub. (1) (h), the comma after “inspected” should be deleted. In sub. (1) (k), “the” should be inserted before “agent”.

g. In s. ATCP 74.06 (4), the notation “s.” should be changed to “ss.”. In sub. (5), the first notation “s.” should be changed to “ss.”, and the comma after “97.30” should be deleted. In sub. (6), “(2)” should be added between “s. 97.615” and “(h)”.

h. In s. ATCP 74.08 (2), it appears that “shall become” should be changed to “will become”. Also, it is unclear when the five-year period for a sanitarian to become a registered sanitarian begins. In addition, “five” should be deleted and the parentheses around “5” should also be deleted. In addition, it appears that “existing” should be deleted and replaced with reference to a specific date. [See s. 1.01 (9), Manual.] In sub. (8), “rule making” should be changed to “rulemaking”. In sub. (9), “shall not” should be changed to “may not”. In addition, the commas between “organization” and “with”, between “relationship” and “with”, and between “facility” and “could” should be deleted. In sub. (10), the comma between “issues” and “involving” should be deleted. In sub. (11), it appears that “will” should be changed to “shall”.

i. In s. ATCP 74.10 (3), is the department’s intent to require one routine inspection of every establishment owned or operated by a single license holder each fiscal year? If so, the rule should be reworded to clarify this intent.

j. In s. ATCP 74.12 (2), it appears that the first instance of “or” should be changed to “of”.

k. In s. ATCP 74.16 (11), the hyphen between “license-holder” should be deleted. Also, “must” should be changed to “is required to”.