



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 22-080

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 introductory clause of the proposed rule, within each type of treatment, the “ATCP” source designation need not be repeated after the first appearance, and subunits within the same administrative code section may be consolidated without repeating the section number. For example, the enumeration of repealed provisions may be depicted as follows: “*to repeal* ATCP 21.01 (15), 21.13 (3), and 29.11 (1) (d), (2) (a), (b), and (c), (3) (a), (b), and (c), (3m), and (6) (b);”.

b. In the rule summary, in the fifth paragraph of the plain language analysis, change “Specifically, ATCP subsections” to “Specifically, s. ATCP”.

c. In the rule summary, an entry should be inserted to identify the effect on small business, rather than referring only to the regulatory flexibility analysis. [s. 1.01 (2) (a) 11., Manual.]

d. In SECTION 6 of the proposed rule, change the treatment clause to the following: “ATCP 21.10 (3) (a) to (d) are amended to read:”. The text of s. ATCP 21.10 (3) (intro.) should not be depicted because the proposed rule does not amend it.

e. In SECTION 7 of the proposed rule, instead of amending s. ATCP 21.13 (2) (c), the proposed rule should do each of the following:

(1) Repeal s. ATCP 21.13 (2) (c) 1. and 1. (Note). [s. 1.04 (3) (a), Manual.]

(a) Do not renumber s. ATCP 21.13 (2) (c) 2. and 3. as s. ATCP 21.13 (2) (c) 1. and 2. Existing material generally should not be renumbered to fill a “gap” in numbering resulting from a repeal. [s. 1.04 (3) (c), Manual.]

(b) The text of s. ATCP 21.13 (2) (c) (intro.), 2., and 3. are not amended and should not be depicted.

(2) Amend s. ATCP 21.13 (2) (c) 2. (Note). The text should be shown to strike-through the single word “al, “Morphometric” and insert “al, “Morphometric” with

underscoring, rather than simply inserting an underscored space after “al.”. [See s. 1.04 (4) (b) and Examples, Manual.]

f. SECTION 9 of the proposed rule combines multiple, different treatments. It attempts to amend s. ATCP 29.10 (3) (c) (intro.), repeal the designation for subd. 1., amend text currently in subd. 1., and repeal subd. 2. by striking through the designation and its entire text. To achieve these ends, the proposed rule should accordingly consolidate, renumber, and amend s. ATCP 29.10 (3) (c) (intro.) and 1., using the example in s. 1.04 (7) of the Manual as a guide. A new, separate SECTION of the proposed rule should then repeal s. ATCP 29.10 (3) (c) 2.

g. In SECTION 11 of the proposed rule, instead of amending s. ATCP 29.11 (2), the treatment should be to renumber and amend s. ATCP 29.11 (2) (intro.) as s. ATCP 29.11 (2). [s. 1.04 (6) (b), Manual.] Also, the underscored material, “\$500.”, should appear after the stricken phrase “as follows:”. [s. 1.04 (4) (a) 2., Manual.]

h. In SECTION 13 of the proposed rule, instead of amending s. ATCP 29.11 (3), the treatment should be to renumber and amend s. ATCP 29.11 (3) (intro.) as s. ATCP 29.11 (3). Also, the underscored material, “\$30.”, should appear after the stricken phrase “as follows:”.

i. In SECTION 18 of the proposed rule, the underscored material, “of \$30”, should appear after the stricken material.

j. In SECTIONS 19, 22, 27, 28, 30, and 31 of the proposed rule, the changes in dollar amounts should be shown by striking the entire existing amount, including the dollar sign, and inserting the new amount. For example, the change from \$22.40 to \$20 should be shown by striking “\$22.40” and inserting “\$20”, rather than striking “22.40” and inserting “20”. [See s. 1.04 (4) (b) and Examples, Manual.]

k. In SECTION 20 of the proposed rule, the treatment should be to repeal and recreate s. ATCP 29.20 (6) (b), instead of amending the provision, as the material is affected in its entirety. [s. 1.04 (5), Manual.] Also, revise the abbreviation “sub.” to “par.”, and remove the period after “(c)”.

l. In SECTION 22 of the proposed rule, the repeal of the note accompanying s. ATCP 29.25 (5) (a) 1. should be identified in the treatment clause. Also, as it is repealed, it should be placed in a separate rule SECTION from the amendment to s. ATCP 29.25 (5) (a) 2., and the text of the repealed material should not be depicted. [s. 1.12 (2) (a), Manual.] The text of s. ATCP 29.25 (5) (a) (intro.) and 1. are not amended and should not be depicted.

m. In SECTION 24 of the proposed rule, underscored material should appear after the stricken material rather than interspersed with it. [s. 1.04 (4) (a) 2., Manual.] For example, the change from “he or she has” to “they have” should be depicted as “~~he or she has~~ they have” rather than as “~~he or she~~they have”.

n. In SECTION 29 of the proposed rule, change the treatment clause to the following: “ATCP 35.22 (2) (a) (intro.) is amended to read:”. The text of s. ATCP 35.22 (2) (a) 1. to 3. should not be depicted because the proposed rule does not amend them.

o. The introductory clause in the caption for the proposed rule should be updated to reflect any changes made in response to these comments.

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

The department could cite Clearinghouse Rule 22-022 as a related rule.

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

a. The relating clause in the caption for the proposed rule could be changed to correct a grammatical error. For instance, it could be changed to either “relating to the removal of obsolete language and the resolution of statutory conflicts” or “relating to removing obsolete language and resolving statutory conflicts.”.

b. In the rule summary, the plain language analysis should be changed to correct typographical errors in the following sentences:

(1) “This proposed rule resolves obsolete language and the conflicts with Wisconsin statutes.”

(2) “The department identified portions of s. ATCP 21.13 are reportable as obsolete.”

(a) Note, this sentence appears also in the summary of factual data and analytical methodologies.

c. In SECTION 3 of the proposed rule, remove the comma after “21.10” in the treatment clause. Make a corresponding change to the introductory clause of the proposed rule.

d. In SECTIONS 4 and 5 of the proposed rule, change “is” to “are” in each treatment clause.

e. In SECTION 26 of the proposed rule:

(1) Underscore the phrase “for costs” following “\$400,000”.

(2) Insert a comma in the dollar amount “\$3000”.

(3) Insert a comma after the second appearance of “July 1”.

f. SECTIONS 27, 28, 30, and 31 of the proposed rule amend s. ATCP 35.22 (1) (b) and (c) and (2) (c) and (d). Those provisions of the administrative code, along with s. ATCP 35.22 (5) (which is not amended by the proposed rule), address reimbursement for eligible corrective action costs on the basis of whether costs were incurred prior to January 1, 2004. For clarity, the department could consider explaining the reasoning for retaining references to January 1, 2004, in the administrative code, as the use of that date may raise some questions.

For example, is January 1, 2004, still an operative date under current law as it once was? 2003 Wisconsin Act 33 changed the reimbursement rate from 80 percent to 75 percent, but applied the reduced rate only to costs incurred on or after January 1, 2004. [See Act 33, SECS. 1755, 9304, and 9404.] The department in Clearinghouse Rule 03-199 accordingly amended ch. ATCP 35 to account for those different reimbursement rates, as reflected in s. ATCP 35.22 (1) (b) and (c), (2) (c) and (d), and (5) in the current administrative code. 2017 Wisconsin Act 59, however, provided for reimbursement of corrective action costs on the basis of whether costs were incurred before July 1, 2017, or on or after that date. [See Act 59, SECS. 1302 and 1303.] Under the current text of the statutes, it appears that July 1, 2017, is now the only operative date for purposes of calculating reimbursement amounts.

Additionally, even if January 1, 2004, is still an operative date under current law, is it nevertheless moot? In other words, can reimbursement for corrective action costs incurred prior

to that date still be claimed? Section 94.73 (3) (a), Stats., requires that an application be submitted within three years after corrective action costs were incurred, which means that the time for submitting pre-2004 corrective action cost reimbursement has passed.

If the pre-2004 reimbursement rate must still be considered due to the lifetime nature of the total available reimbursement, the department could utilize the rule summary's plain language analysis to explain the history of the reimbursement rates and the reasons for retaining the pre-2004 reimbursement rate in the proposed calculation.