

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 96-002

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

Section 92.18 (1) requires the department to establish a program of training and certification for plan reviewers **by rule**. Section ATCP 50.100 (10) refers to “guidelines” that may be published by the department for the certification of agricultural engineering practitioners. The meaning of the subsection is not clear. If this subsection merely means that the department may subsequently promulgate rules for the certification of agricultural engineering practitioners, it is superfluous. If this subsection means that the department intends to publish guidelines without promulgating them as an administrative rule, the department should consider whether it is clear that these guidelines would not be a “rule,” as defined in s. 227.01 (13), Stats. Also see s. 227.10 (1), Stats.

A similar concern applies to ss. ATCP 50.50 (11) (f) and 50.52 (2) (f). Will the “other cost containment procedures” in s. ATCP 50.50 (11) (f) and the “other conditions” in s. ATCP 50.52 (2) (f) be promulgated as rules?

2. Form, Style and Placement in Administrative Code

a. The numbering system in the rule is incorrect. The administrative rules, like the statutes, use the decimal system for section numbering. The rule does not use the decimal system, but rather uses a whole number after the decimal point. Therefore, ss. ATCP 50.100 to 50.124 should be renumbered. It is suggested that ss. ATCP 50.100, 50.102 and 50.104 become ss. ATCP 50.95, 50.952 and 50.954, respectively. Sections ATCP 50.110, 50.112 and 50.114

could become ss. ATCP 50.96, 50.962 and 50.964, respectively. Sections ATCP 50.120 and 50.124 could become ss. ATCP 50.97 and 50.974, respectively. These changes will also necessitate changing cross-references to the old section numbers.

b. In several places in the rule, a subdivision number in a cross-reference should be followed by a period. For example, in s. ATCP 50.38 (3), on line 22, “(4) (g) 5.” should replace “(4) (g) 5”.

c. The acronym “NRCS” is used in s. ATCP 50.62 (4) (f) 4. and several other places in the rule, but this term is not defined. It should be defined in s. ATCP 50.01.

d. In several sections, the applicability of a definition is not stated. For example, s. ATCP 50.66 (1) should begin “In this section, “access road or cattle crossing” means....” This error was made in a number of subsequent sections. However, see s. ATCP 50.64 (1) for an example of how the applicability was stated correctly.

e. The paragraphs in s. ATCP 50.81 (1) should be reordered so that the defined terms are in alphabetical order.

f. Throughout s. ATCP 50.85, both “streambank” and “stream bank” are used. It is suggested that only “stream bank” be used, since this is the term used in the statutes. [See s. 23.094, Stats.]

g. In s. ATCP 50.100 (9) (b), “Wis. Adm. Code” should be deleted.

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

Should the cross-reference in s. ATCP 50.100 (8) (d) be to s. 227.42, Stats.?

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

a. Section ATCP 50.40 (2) (e) could be clarified by indicating in the first sentence who are the parties to the cost-share contract.

b. It appears that the Note after s. ATCP 50.85 (2) (b) could be clarified by eliminating “overhangs for.”