

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 96-149

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 93.12 (2), Stats., as affected by 1995 Wisconsin Act 27, provides that any laboratory established and operated to perform examinations of milk, water and food products for the purpose of protecting the health of the public shall apply to the department for an evaluation of the examination and appropriate certification. Section ATCP 77.02 (2) provides four exemptions to the certification requirement under sub. (1). The first exception possibly can be justified by federal preemption and the third and fourth exemptions can be justified by arguing that the laboratories in these exemptions are not operating for the purpose of “protecting the health of the public.” What statutory authority exists for exempting a public health laboratory operated by a county or municipality from the certification requirement under s. 93.12 (2), Stats., and s. ATCP 77.02 (1)?

2. Form, Style and Placement in Administrative Code

In s. ATCP 77.02 (1) (a) 36., the notation “, Wis. Adm. Code” is not necessary and should be deleted.

3. Conflict With or Duplication of Existing Rules

Chapter ATCP 77 requires laboratories performing certain tests on milk, water or food to be certified by the department. However, s. HSS 165.04 also requires those laboratories to be certified by the Department of Health and Family Services (DHFS) (formerly, the Department of

Health and Social Services). Since 1995 Wisconsin Act 27 transferred the responsibility for the certification of laboratories that do testing of milk, water or food products from the DHFS to the department, it appears that the rule ought to amend those parts of ch. HSS 165 which also require certification of those same laboratories by the DHFS.

In addition, the rule repeals s. HSS 165.21, which relates to fees paid to the DHFS for certification of laboratories. Since ch. ATCP 77 does not apply to all laboratories required to be certified under ch. HSS 165, e.g., blood banks, is it appropriate to eliminate the fees for certification of those laboratories not certified by the department? Again, it is recommended that ch. HSS 165 be amended to make it clear that none of its provisions relating to certification and fees apply to laboratories covered under ch. ATCP 77.

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

Section ATCP 77.03 indicates that application for certification must be made on a form provided by the department. The requirements of s. 227.14 (3), Stats., should be met.

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

a. In s. ATCP 77.02 (1) (intro.), the word “regulations,” should be inserted before the word “rules,” in order to clearly refer to the rule-making actions of federal agencies. Also, the word “currently” appears to be unnecessary and should be deleted.

b. Section ATCP 77.03 (4) prohibits falsification of certification information. Are there penalties associated with such misrepresentation? May a certification application containing false information be denied? If so, that fact should be identified in the rule.

7. Compliance With Permit Action Deadline Requirements

Section 227.116, Stats., requires that each rule that includes a requirement for a business to obtain a permit shall include the number of business days, calculated beginning on the day a permit application is received, within which the agency will review and make a determination on the permit application. [See s. 1.10, Manual.] The rule does not appear to comply with this requirement. Section HSS 165.04 (7) provides an action deadline for certification under that chapter. Is it the rule’s intent to comply with that deadline? In any event, the rule should be modified to comply with s. 227.116, Stats., either by creating a deadline in ch. ATCP 77 or by referring to the deadline in ch. HSS 165.