



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 02-141

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 September 1998.]

2. Form, Style and Placement in Administrative Code

a. The analysis should not include s. 98.18 (3), Stats., in the list of statutes granting authority for the promulgation of this rule.

b. Where does the note created by SECTION 2 of the rule go--after the title of ch. ATCP 92? After the table of contents? After the existing note? Also, is the existing note still pertinent, or should it be repealed?

c. Note that, while the definition of “commodity” in s. ATCP 92.01 (1) is the same as that in s. ATCP 90.01 (4), it is different from that in s. ATCP 91.01 (1). Should all three definitions be made consistent? Also, note that the phrase “but is not limited to” is superfluous (it is implied by the word “includes”) and so should be omitted from the definitions in ss. ATCP 90.01 (4) and 92.01 (1).

d. The Legislative Reference Bureau has recently changed the rule for capitalization in bill drafting. This new rule should be applied to rule drafting, as well. New text should observe the new rule and existing text should be corrected to comply with the new rule as the sections containing it are amended for other reasons. The new rule is as follows:

2.03 Capitalization. (1) GENERAL. Avoid using capitals except for proper names. For proper names, capitalize according to standard rules of English usage with one major exception: in statutes and in nonstatutory provisions do not capitalize state or

federal departments or agencies other than the University of Wisconsin System. In an analysis or relating clause, capitalize state and federal departments and agencies, but do not capitalize “department” when used alone (for example, “The bill also requires the department to . . .”) [s. 2.03 (1), Wisconsin Bill Drafting Manual, 2003-2004.]

Applying the new rule on capitalization to s. ATCP 92.02 (2), it appears that “office of weights and measures” and “national institute of standards and technology” should remain in lower case, since they are federal agencies, while “National Conference on Weights and Measures” should be capitalized, since that is a private organization.

e. The reorganization of ch. ATCP 92 into subchapters accomplished by the rule appears entirely adequate. However, the department may want to consider two additional changes. First, if subch. III started with s. ATCP 92.20, subch. IV started with s. ATCP 92.30, and subch. V started with s. ATCP 92.40, room would be left for the future insertion of additional sections in the preceding subchapters. Second, it may aid clarity to break the material in subch. IV into multiple sections. In particular, the new s. ATCP 92.18 (1) and the current s. ATCP 92.03 (3) could stand as separate sections; the remaining subsections could be made individual sections or grouped with other subsections, as appropriate. The single section of subch. V could be broken into four sections, as well, although the need for this seems less compelling.

f. Since s. ATCP 92.03 is being renumbered entirely, there seems no reason to use the subsection number “1m.” SECTION 12 of the rule should renumber s. ATCP 92.03 (title) and (1) to (8) as s. ATCP 92.18 (title) and (2) to (9). [See SECTION 17 which purports to create s. ATCP 92.18 (1) and (1m), but contains no text for the latter subsection.]

g. The note following s. ATCP 92.06 (3) should include an address where the incorporated documents can be obtained. This comment also applies to s. ATCP 92.13 (1) (b).

h. Section ATCP 92.08 (1) should be rewritten in the active voice: “A municipality shall hire inspectors”

i. The phrase “but is not limited to” should be omitted from ss. ATCP 92.11 (4) and 92.12 (7).

j. The parenthetical material in s. ATCP 92.15 (1) (e) is not substantive, and so should be placed in a note.

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

Section ATCP 92.10 (1) refers to a form. If the form is new or revised, the requirements of s. 227.14 (3), Stats., should be met.

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

a. A number of provisions of the rule add little to the requirements specifically contained in the statutes. For example, s. ATCP 92.08 (1) simply restates a requirement of the statutes. Section ATCP 92.10 does much the same--could this section be more specific as to the

nature of the records that must be kept and reported? Compare this to the much more detailed requirements of s. ATCP 92.15.

b. In s. ATCP 92.09 (2), should a reference to a commodity be added? [See s. 98.05 (2), Stats.]

c. In s. ATCP 92.11 (3) (intro.), the word “all” should be inserted after the word “include.” [See also sub. (3) (b) (intro.).]

d. In s. ATCP 92.15 (2) and elsewhere in the rule, what is meant by “true copy”? Does this mean that the person submitting the copies of the report must attest in some manner that the copy is true? If so, in what manner--by certification? notarization? sworn statement? (Note that most, but not all uses of the term “true copy” in the statutes and Administrative Code use it in this sense, requiring that some standard be met to establish that something is a “true copy.”)