



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 12-013

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 November 2011.]

1. Statutory Authority

The proposed rule provides brewer’s permits for production brewers and recipe-brewers and defines “brewer” to include a recipe-brewer. Under the proposed rule, a “recipe-brewer” is a person who contracts with an agent to directly manufacture fermented malt beverages for sale or transportation by that person. The agency should explain why the proposed rule applies brewer’s permit requirements to recipe-brewers.

2. Form, Style and Placement in Administrative Code

a. In the introductory clause, “(intro.)” should be inserted after “(1)” in the list of sections that are amended. In addition, in the treatment clause in SECTION 1, “(intro.)” should be inserted after “(1)”.

b. The effective date section should be set forth as SECTION 6. [s. 1.02 (4) (d), Manual.]

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

a. In the statutes interpreted section of the rule summary, s. 125.29 Stats., should also be cited because the proposed rule appears to interpret that statutory section.

b. In the statutory authority section of the rule summary, the agency might consider also citing s. 227.11 (2) (a), Stats. Section 227.11 (2) (a), Stats., provides that each agency may

promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation. [s. 1.02 (2m), Manual.]

c. The agency should explain why various statutes are cited in s. Tax 7.23 (1) (intro.). It appears that some of the definitions in s. Tax 7.23 (1), as modified by the proposed rule, are not defined or used in the cited statutes. The agency should consider deleting the statutes and, if appropriate, referencing them in a note that follows the requirements in s. 1.09, Manual.

d. In s. Tax 7.23 (5) (e), “sub. (a)” should be replaced with “par. (a)”.

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

a. In s. Tax 7.23 (1) (a), the text of the paragraph should be replaced with: “Brewer” has the meaning given in ss. 125.02 (2) and 139.01 (2), Stats., and includes any person who manufactures fermented malt beverages for sale or transportation using an agent to directly manufacture fermented malt beverages.” [s. 1.01 (7) (d), Manual.] Note that the revised text replaces “125.92 (2)” with “125.02 (2)” because the latter appears to be the correct reference. Is the text following “includes” intended to refer to a recipe-brewer? If so, the text following “includes” could be replaced with “a recipe-brewer”.

b. In s. Tax 7.23 (1) (c), “holders” should be replaced with “a holder”.

c. In s. Tax 7.23 (2) (title), it appears that an apostrophe should be inserted before the “s” in “Brewers”.

d. In s. Tax 7.23 (4) (b), “federal” should be inserted before “Alcohol”. In addition, “Alcohol and Tobacco Tax and Trade Bureau” should not be capitalized. [s. 1.01 (4), Manual.]

e. In s. Tax 7.23 (4) (c) 1. b., “that” should be inserted before “the production”.

f. In s. Tax 7.23 (4) (c) 2., “the department with” should be inserted after “provide”.

g. In s. Tax 7.23 (4) (e) 2., “must” should be replaced with “shall”. [s. 1.01 (2), Manual.]

h. In s. Tax 7.23 (4) (f), “whom must” should be replaced with “that is required to”.

i. In s. Tax 7.23 (5) (b) (intro.), “determines the waiver fair and equitable” should be replaced with “determines that the waiver is fair and equitable”. In addition, “permittee” should be replaced with “permittee” in that paragraph.

j. In s. Tax 7.23 (5) (b) 2., the term “Clearly” is vague and should be deleted.

k. In s. Tax 7.23 (5) (f), “determine that” should be replaced with “determine whether”.