



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 13-003

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

What is the department’s intent regarding the items listed in s. ATCP 49.23 (2) (a) to (e)? Does the department intend that a governmental, institutional, religious or nonprofit use must contain one of the listed items in order to qualify as a conditional use? If so, what is the department’s rationale and authority for the limitations? For example, why would a community center be included, but not a church? If the department intends to merely provide examples, the list should be provided as an example following the rule text. Also, “governmental use” is defined in s. ATCP 49.01 (11) in a more expansive manner, and should be reconciled with the list enumerated in s. ATCP 49.23 (2) (a) to (e). Note that use of “includes” in a definition expands the scope of the term to include reasonably related items. [s. 1.01 (7) (c), Manual.]

2. Form, Style and Placement in Administrative Code

a. Section ATCP 49.01 (1) (e) is superfluous and should be omitted. The same applies to similar provisions in subsequent definitions.

b. Section ATCP 49.01 (2) (intro.) should end with “any of the following:”.

c. In s. ATCP 49.01, the department should include a definition of “department” as used in the chapter.

d. Section ATCP 49.01 (16) should be rewritten something like the following:

(16) "Utility use" includes facilities for the generation of electricity from sunlight, wind, coal, or natural gas.

e. Section ATCP 49.14 (1) (intro.) does not follow grammatically from s. ATCP 49.14 (intro.); that is, one cannot read the former as a continuation of the latter. [s. 1.03 (3), Manual.] The same is true of the other subsections of s. ATCP 49.14. Since correcting this could require some contortions of the language starting each subsection, and since s. ATCP 49.14 (intro.) does not appear to be needed, it may be simplest to omit s. ATCP 49.14 (intro.). Alternatively, s. ATCP 49.14 (intro.) could be revised to end with "...shall submit an application to the department as provided in this section." The same comment applies to s. ATCP 49.26 (intro.).

f. A note to a rule is not part of the rule, and does not have the force of law. Notes are used to explain rules. [s. 1.09 (1), Manual.] The note following s. ATCP 49.14 (1) (b) appears to do more than explain, establishing separate requirements for applications for approval of a complete plan or a plan amendment. The department should consider moving this material into the body of the rule. The department should review other notes in the rule, as well, with this in mind.

g. It appears that s. ATCP 49.23 (intro.) should begin with the phrase: "In addition to the uses listed in s. 91.46, Stats.,".

h. Section ATCP 49.26 (3) (intro.) should end with the phrase "do all of the following".

i. In s. ATCP 49.29, the notation "under sub. (1)" should be inserted in two places: in sub. (2) (intro.), following "certification;" and in sub. (3), following "notice."

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

While the department defines the term "forest management" in s. ATCP 49.01 (10), the term does not appear anywhere else in ch. ATCP 49. Does the department include the definition in order to clarify the meaning of the term as it appears in s. 91.01 (2) (a) 7., Stats.? If so, the department may wish to clarify its intent. [See s. 1.01 (7) (a) and (b), Manual.] Additionally, the term "forest management," as defined in s. ATCP 49.01 (10) and (Note), refers to programs such as the managed forest land (MFL) program. In terms of its relationship to agriculture, the MFL program excludes agricultural uses for lands enrolled in the program. [See ss. 77.82 (1) (b) 1. and 2., and 77.875, Stats., and s. NR 46.15 (14) and (Note), Wis. Adm. Code.] Similarly, s. 70.32, Stats., separately defines "productive forest land", "agricultural forest land", and "agricultural use" for purposes of property taxation. The department should consider additional material, either in the rule text or as a note, to reconcile or recognize the effects of various statutory references relating to forest management and agricultural use.

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

a. In s. ATCP 49.01 (1) (a) 1., the comma should be omitted and the word “which” should be replaced with “that.” Alternatively, “; which are” could be omitted entirely, as in the following provisions.

b. In s. ATCP 49.01 (1) (a) 11., “agricultural use” should not be in quotes.

c. In s. ATCP 49.01 (7) (d), “horticulture” should be replaced with “plants raised”. (Horticulture is not a crop.)

d. Section ATCP 49.01 (9) should specify what constitutes “high voltage.”

a. In s. ATCP 49.24 (2), “as restrictive or more restrictive as” should be replaced with “as restrictive as or more restrictive than”.