



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

Jessica Karls-Ruplinger
Legislative Council Deputy Director

CLEARINGHOUSE RULE 16-039

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 December 2014.]

1. Statutory Authority

a. A thorough legal analysis should be completed to ensure that the department’s authority extends to the distribution of seeds for non-commercial purposes. The order cites s. 94.45 (6), Stats., as a source of specific statutory authority for the rule change. It seems likely that a court would interpret the scope of the rule promulgation authority authorized under that subsection in the context of corresponding prohibitions and definitions in ss. 94.38 through 94.46, Stats. Assuming that is the case, is it clear that those statutes are intended to cover distributions that are not made for the purpose of an eventual sale? “Distribution” is not defined in the relevant statutory sections. However, in various statutory provisions, the term appears to be used in the context of distribution to sellers. For example, s. 94.385 (1), Stats., provides that: “[n]o person may sell, distribute, or offer or expose for sale in this state a container of agricultural seed or vegetable seed for seeding or sprouting purposes unless the container bears or has attached to it in a conspicuous place a label containing the information required by the department by rule.” Likewise, the department’s authority to enforce the seed act by taking samples, set forth in s. 94.45 (1) (a), Stats., appears to be limited to places in which seed is “stored, transported, sold, or exposed for sale”. In those provisions, it is not immediately clear whether the phrase “for sale” modifies only “expose” or also other terms, including “distribute”. Other, related provisions appear to contemplate an application only to seeds intended to be sold. For example, the term “agricultural seed” is defined under s. 94.38 (2), Stats., to include specified types of seeds “sold within this state”.

b. Because the phrase “distributed for sowing purposes”, as it appears in s. ATPC 20.04 (6) (a) (intro.), is not defined or otherwise directly limited in the proposed rule, it appears that it is

possible that several requirements enumerated in s. ATCP 20.04 (6) could be interpreted to apply to very informal seed sharing, for example, to sharing by a gardener who shares a few flower seeds with a friend or neighbor. Similar comments apply to the term “non-commercial seed sharing”, which is defined relatively broadly in the proposed rule, and to the undefined term “distribution”, as it is used in several other provisions of the rule. Does such an application (i.e., to relatively informal seed sharing) match the department’s intent? If so, consider whether that scope is authorized under ss. 94.38 through 94.45, Stats. [See related comments above.] If not, consider modifying the rule to specify a more limited scope.

2. Form, Style and Placement in Administrative Code

a. In the introductory clause, “(c)” should be replaced with “(a)” following “20.06 (2)”. Also, for consistency, the introductory clause should be modified to include the same format for “to amend” and “to create”. In addition, the phrase “and to create” should be preceded with a semicolon. [See s. 1.02 (1), Manual.]

b. In the summary of the proposed rule, the department should use the headings prescribed in s. 1.02 (2), Manual, and should include the deadline for submission of comments on the proposed rule. Additionally, it would be helpful if the sections regarding federal statutes and the statutes in adjacent states were modified to address whether the relevant federal and state statutes apply to non-commercial distribution.

c. The department should review the proposed rule to ensure that added text is underscored in amended provisions throughout the rule. For example, “(6)” should be underscored in s. ATCP 20.04 (1) (intro.) and “distribution or” should be underscored in s. ATCP 20.06 (2) (b).

d. It appears that the definition of “non-commercial seed sharing” appears in only one other instance in the rule text (other than a title). If that is the case, consider whether the definition is unnecessary. Alternatively, consider incorporating that defined phrase elsewhere in the rule, for example in s. ATCP 20.04 (6) (a) (intro.).

e. Section ATCP 20.04 (b) should be substantially revised to ensure that all requirements are listed in a clear manner. For example, the second sentences in s. ATCP 20.04 (6) (a) 1. and 2. appear to be independent requirements; if so, they should be listed separately. Likewise, s. ATCP 20.04 (6) (a) 4., 5. and 6. do not appear to be information to be contained on a label, as suggested by the introductory language; instead, it appears that those provisions include requirements that should be listed separately from the requirements regarding the contents of labels.

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

a. In s. ATCP 20.04 (6) (a) (intro.), the phrase “agricultural, vegetable, and flower seed” should be amended to read “agricultural, vegetable, or flower seed”. In s. ATCP 20.04 (6) (a) 6., punctuation such as a period or semicolon should be placed between “required” and “however”.

b. In the enumeration of provisions treated by the proposed rule and the treatment clause for SECTION 6, references to s. ATCP 20.06 (2) (a) 1. should include a period after “1”.

c. To ensure clarity and consistency, consider using either “distribution or sale” or “sale or distribution” throughout the rule, rather than a mix of those two phrases.