



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 17-074

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

Section 97.30 (3) (a), Stats., specifies that the amount of a retail food establishment license fee must be “based on” gross receipts from food sales. However, it does not appear that the fee structure provided in s. ATCP 75.08 utilizes gross receipts in the calculation. Consider incorporating the amount of gross receipts into the license fee calculation.

2. Form, Style and Placement in Administrative Code

a. In the introductory clause for the proposed rule, the designation “ch.” should be inserted before both references to “ATCP 75”.

b. In the rule summary, a heading and entry should be inserted for the analysis and supporting documents used to determine the effect on small business. [s. 1.02 (2) (a) 9., Manual.]

c. Throughout the proposed rule, review the style used in each reference to the appendix and revise the style into a consistent format. In some instances, a section or paragraph symbol is used, some instances refer to “ch.” or “s.” or no designation is given, and some place the identified section number before or after the reference to the appendix.

d. In a number of provisions of the proposed rule, a statement should be inserted in the introductory unit to explain the interaction among the subunits that follow, with a phrase such as “all of the following” or “any of the following”. The subunits that follow should be reviewed and revised as appropriate to form a complete grammatical sentence when read with the introduction. Each subunit should also end in a period, rather than a semicolon. Review, for example, ss. ATCP

75.01 (3), 75.06 (1), (3), (4), (5m) (a), (10), 75.20 (2) (b), (3), (3) (b), (3) (b) 4., 75.34 (1) (a), 75.38 (2), 75.48 (1), 75.52 (1), and 75.54 (1). [s. 1.03 (3) and (4), Manual.]

e. In s. ATCP 75.01 (1), the phrase “of agriculture, trade and consumer protection” could be deleted, as the word “department” is a defined term in the proposed rule.

f. In s. ATCP 75.02 (2), the designation “sub.” should be inserted before the reference to “(1)”.

g. In s. ATCP 75.04, the introductory phrase “In this chapter:” should be inserted. [s. 1.01 (7) (a), Manual.]

h. In s. ATCP 75.04 (10), the parenthetical list of examples should be moved to a note. [ss. 1.01 (6) and 1.09 (1), Manual.]

i. In s. ATCP 75.04 (15), the term “extensive remodeling” should be revised to the term “extensively remodeled”, which is the term used in the chapter. Alternatively, the defined term and each use of the term could be revised to the term “substantially remodeled”, as used in the appendix.

j. In s. ATCP 75.04 (31) (intro.), the parentheticals should be removed. [s. 1.01 (6), Manual.] It appears that the phrase within the parentheses, “retail food establishment – serving meals”, could and perhaps should be removed. The term “restaurant” is used only once within the chapter, and that is within the definition for the term “retail food establishment – serving meals”.

k. In s. ATCP 75.04 (33) (a), (b), (e), and (f), the definitions for the terms should be moved into separate subsections, in proper alphabetical placement, for the purpose of defining the terms. References to the defined terms should then be used to create the list of types of retail food establishments.

l. In s. ATCP 75.04 (33) (c) to (f), each reference to a different subsection within the same section should be preceded by the designation “sub.”. In pars. (c) and (d), both instances of the phrase “, of this section” should be removed. [s. 1.07 (2) (Table), Manual.]

m. In s. ATCP 75.04, the order of the terms defined in subs. (35) and (36) should be reversed, in order to be arranged alphabetically. [s. 1.01 (7) (a), Manual.]

n. In s. ATCP 75.04 (38) and (39), the defined terms should reference only the statute. If the text after both instances of the word “namely” copy the statute verbatim, then the statutory definition can be repeated in a note. [s. 1.09 (1), Manual.] If the material does not copy the statute verbatim, the definition should explain in what manner it is modifying the statutorily defined term.

o. Section ATCP 75.06 is lengthy and includes items beyond the logistics of obtaining a retail food establishment license. Consider, for example, moving the following subsections into separate provisions: sub. (4) License holder responsibilities; and sub. (5m) Exemptions from food processing plant licenses for retail food establishments. Could subs. (8) and (9) also be treated separately, for a mobile retail food establishment base and for a plan review, respectively?

p. In s. ATCP 75.06 (2) (a) 1. and 2., the abbreviation “, Stats.” should be inserted after each statute citation.

q. In s. ATCP 75.06 (5) (d), the abbreviation “ss.” should be revised to “chs.”.

r. In s. ATCP 75.06 (5m) (a) (intro.), the underscoring should be removed, as the treatment is to repeal and recreate. [s. 1.065, Manual.]

s. In s. ATCP 75.06 (5m) (b), the designation “sub.” should be revised to “par.” and the designation “s.” should be revised to “ch.” [s. 1.03 (1) (Example), Manual.]

t. In s. ATCP 75.06 (6), a title should be inserted for par. (c) (intro.), to be consistent with the title format used for pars. (a) and (b). [s. 1.05 (1), Manual.]

u. In s. ATCP 75.06 (10) (intro.), the designation “pars.” should be inserted before the reference to “(a) and (b)”, and the phrase “, of this section,” should be removed.

v. In s. ATCP 75.08 (3) (b), the abbreviation “subp.” should be revised to “subd.”.

w. In s. ATCP 75.10 (3) (intro.) and (4) (intro.), the abbreviation “Stats.” should be inserted after each statute citation.

x. In s. ATCP 75.10 (3) (b), after the first sentence, a new sentence should be inserted to specify that “Upon completion of the analysis or examination, either of the following apply:”. The next sentence that begins with “If the department upon completed ...”, should be moved into a new subd. 1., and par. (c) should be adjusted to numbering as subd. 2. Paragraph (d) should then be adjusted to numbering as par. (c).

y. In s. ATCP 75.18, the numbering and title for sub. (1) should be removed, as there are no other subsections in that section. Also, consider revising the title of the section to be more descriptive, such as “Inspector qualification requirements”.

z. In s. ATCP 75.32 (1), the parenthetical acronyms should be removed, as those terms are not used elsewhere in the chapter. Also, the foundation and association names should be capitalized, as they are proper names. [s. 1.01 (4), Manual.]

aa. In s. ATCP 75.44, the second title should be removed.

bb. In s. ATCP 75.46, the parenthetical list of examples should be moved to a note. [ss. 1.01 (6) and 1.09 (1), Manual.]

cc. In s. ATCP 75.48, a title should be inserted for sub. (1), to be consistent with the title format used for subs. (2) and (3).

dd. In s. ATCP 75.48 (2), the numbering for par. (a) should be removed, as there are no other paragraphs in that subsection. The subunits within the provision should be renumbered upwards, accordingly.

ee. In ss. ATCP 75.48 (3) and 75.50 (2), the slashed alternative should be revised to the word “and” or “or”, as applicable. [s. 1.01 (9) (a), Manual.]

ff. In s. ATCP 75.50, an introduction should be inserted to specify that the listed items apply to a micro market. For example, “All of the following apply to a micro market:”.

gg. In s. ATCP 75.52 (1), the subject of par. (c) appears to be conceptually different from the material in pars. (a) and (b). Consider moving that material to its own subsection.

hh. In s. ATCP 75.54, the numbering for sub. (1) should be removed, as there are no other subsections in that section. The subunits within the provision should be renumbered upwards, accordingly. Also, in par. (a), the number of days should be expressed as “14”, and “fourteen (14)” should be removed. [ss. 1.01 (5) and 1.03 (1), Manual.]

ii. In s. ATCP 75.56, the numbering for sub. (1) should be removed, as there are no other subsections in that section. The subunits within the provision should be renumbered upwards, accordingly. Also, in the introductory material, the phrase “, but is not limited to” should be removed; instead, if desired, a subunit could be added to the end of the list to specify “Any other reasonable actions to maintain a clean, sanitary, and unadulterated condition.”. [s. 1.01 (9) (f), Manual.]

jj. In ch. ATCP 75 Appendix, in the definition of “food establishment”, insert the abbreviation “, Stats.” after the statute citation.

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

a. In s. ATCP 75.01 (2), the reference to s. 227.14 “(s)”, Stats., should be corrected to “(1s)”.

b. In s. ATCP 75.04 (28), the designation “s.” should be revised to “ch.”, and the specific provision should be identified.

c. In s. ATCP 75.04 (34), the reference to s. ATCP 75.05 (5m) should be corrected. That provision does not exist.

d. In s. ATCP 75.06 (2) (a) 2., the references to par. (a) are awkward, because the subdivision is itself within that paragraph. Consider renumbering the subunits within sub. (2), to provide the general license term in par. (a), with a clause to specify “except as provided in par. (b)”. Paragraph (b) can then provide the exceptions that are currently in par. (a) 1. and 2., and the current par. (b) can be renumbered as par. (c).

e. In s. ATCP 75.06 (6) (b), it appears that both instances of the reference to s. ATCP “75.06” Table B should be corrected to s. ATCP “75.08” Table B. The same comment applies to the references in sub. (10) (intro.) and s. ATCP 75.10 (1) (b).

f. In s. ATCP 75.06 (6) (c) 3., it appears that the reference to s. ATCP “75.06” should be corrected to “75.08”.

g. In s. ATCP 75.06 (8) (g), should the reference to “par. (a)” be revised to refer to all of the conditions under “this subsection”?

h. In s. ATCP 75.06 (11), should the first reference to “under the paragraph” be revised to “under this section”? Also, should the reference to “this subchapter” be revised to “this chapter and the Appendix”?

i. In ss. ATCP 75.06 (11) and (12) and 75.10 (2) (c), should a reference to s. ATCP 75.16 be added in addition to each reference to s. ATCP 75.14?

j. In s. ATCP 75.06 (12), it appears that both references to s. ATCP “75.06” should be corrected to “75.08”.

k. In s. ATCP 75.08, each reference to Table A or Table B that is inaccurately identified as being in “s. ATCP 75.06” should be revised to simply “Table A in this section” or “Table B in this section”.

l. In s. ATCP 75.08 (3) (a) and (b) 1., it appears that each reference to s. ATCP “75.05” should be corrected to “75.06”.

m. In s. ATCP 75.10 (3) (b), the phrase “any such holding order so issued and delivered” should be revised to “a holding order issued and delivered under par. (a)”.

n. In s. ATCP 75.10 (3) (d), should both references to “section” be revised to “subsection”?

o. In s. ATCP 75.20 (1) (a) 2., it appears that the reference to s. ATCP “75.05” should be corrected to “75.06”. Also, is the specific reference to sub. (4) accurate? That provision does not explicitly address access.

p. In s. ATCP 75.20 (1) (b), should the reference to “s. ATCP 75.10 (1)” be corrected to “par. (a)”? It is unclear to what the “notice as specified under s. ATCP 75.10 (1)” refers.

q. In s. ATCP 75.32 (2), it appears that the reference to s. ATCP “75.05” should be corrected to “75.06”.

r. In s. ATCP 75.44, the reference to s. ATCP “75.01” (23) should be corrected to “75.04”.

s. In ch. ATCP 75 Appendix, it appears that in the definition for the word “packaged”, the citation to s. 97.01 (12), Stats., should be corrected to s. 97.29 (1) (h), Stats.

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

a. In s. ATCP 75.04 (31) (a), should the word “lunches” be revised to “snack items”? Also, should the word “only”, or a similar designation, be used to indicate that a tavern is excluded only if it does not serve other food?

b. In s. ATCP 75.04 (25), the proposed rule defines the term “mobile restaurant”. However, this term is not used in the proposed rule. Rather, both the terms “mobile retail food establishment” and “mobile food establishment” are used at various points. Determine which phrase should be used, and use the term consistently.

c. In s. ATCP 75.04 (33) (b), a period should be inserted at the end of the sentence.

d. In s. ATCP 75.04 (37), it appears that the phrase “of payment” should be inserted after the phrase “or by other means”.

e. In s. ATCP 75.06 (2) (a) (intro.), the word “licensed” should be revised to “license”.

f. In s. ATCP 75.06 (5) (b) 3., the comma after the word “location” should be removed.

g. In s. ATCP 75.06 (5) (d), the terms “vending machine commissary”, “micro-market commissary”, “vending machine warehouse”, and “micro-market warehouse” are used, but the terms are not defined in the proposed rule. Consider inserting definitions for those terms.

h. In s. ATCP 75.06 (5) (f), the phrase “for no more than 12 days in any license year” is used. However, that phrase is given as the definition for the term “occasionally”, in s. ATCP 75.04 (27). For consistency, the defined term should be used.

i. In s. ATCP 75.06 (5m) (a) 3., the word “a” should be inserted before “mobile”.

j. In s. ATCP 75.06 (6) (c) 1., what is the timeline within which a pre-licensing inspection must be made? A timeline for a pre-licensing inspection is also not specified in sub. (10).

k. In s. ATCP 75.06 (7) (b), what are the bases for denial of an application? Do the bases include the items specified under sub. (6) (c)? Are there any other reasons that could be the basis of a denial?

l. In s. ATCP 75.06 (9), what is the timeline for when the layout plans must be submitted? Prior to remodeling?

m. In s. ATCP 75.06 (11), should the phrase “or its agent” be inserted after the phrase “as approved by the department”?

n. In s. ATCP 75.08 (3) (h), the word “in” should be inserted after “required”.

o. In s. ATCP 75.10 (3) (a), consider specifying how a hold order may be delivered. This could be similar to the delivery of an inspection report as provided in s. ATCP 75.20 (4) and (5).

p. In s. ATCP 75.20 (1) (b), the phrase “in law” should be removed, a comma should be inserted after “s. 66.0119”, and the abbreviation “stats.” should be capitalized.

q. In s. ATCP 75.20 (2) (b) 2., how is the “risk” level determined? Is it the same as the “complexity” in s. ATCP 75.08 Table A?

r. In s. ATCP 75.20 (4), remove the word “thereafter”, and, at the end of the sentence, insert the phrase “after completing the inspection”. [s. 1.01 (9) (c), Manual.]

s. In s. ATCP 75.30 (1), revise the word “must” to “shall”.

t. In s. ATCP 75.30 (2), most of the listed exceptions are already included in the exceptions listed in the definition for “vending machine” in s. ATCP 75.04 (37). The items that are already excluded from the defined term should be removed from this provision. Also, consider whether the “pastry items” that are listed in s. ATCP 75.30 (2) should instead be added to the list of exceptions for the defined term.

u. In s. ATCP 75.32 (2), each instance of the phrase “authorized employee” should be revised to “authorized representative”, in order to be consistent with the use of that term elsewhere in the proposed rule.

v. In s. ATCP 75.40 (1), the word “vending” should be inserted before “machine”.

w. In s. ATCP 75.42, the phrase “single-service containers” is used, but not defined. Is this the same as “single-use containers”?

x. In s. ATCP 75.48 (3), who is the “regulatory authority”? Is this “the department or its agent”, as used elsewhere in the proposed rule?

y. In s. ATCP 75.52 (1) (intro.), consider inserting the phrase “that offers refrigerated or frozen foods” after “micro market”, if a micro market is permitted to not offer refrigerated or frozen foods.

z. In s. ATCP 75.52 (2), consider rephrasing the first sentence for more clarity. Does “by individual serving only” refer to the container and serving size? Also, the second sentence uses the word “properly”; is there a standard that could be cited, or more information given on how that determination is made?