



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 21-109

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

1. Statutory Authority

In s. ATCP 78.17 (1), does the agency intend to create an exception to requirements imposed by the Department of Safety and Professional Services (DSPS), or does the provision only impose more stringent requirements than those imposed by DSPS? If the provision allows for requirements less restrictive in nature, the agency should revise its explanation of statutory authority to more clearly describe its authority to do so.

2. Form, Style and Placement in Administrative Code

a. The proposed rule should be reviewed in its entirety for appropriate use of introductory material, as described in s. 1.11 of the Manual. Common errors throughout the rule include inappropriate use of semicolons and “and” or “or” versus colons, periods and “any of the following” or “all of the following”; unnecessary subdivision; and lack of complete sentences when subdivided material is read with its preceding introduction. Examples of provisions in need of revision include ss. ATCP 78.02 (3) (d), (4), and (6), 78.03 (14), 78.12 (2) (b), (5), and (6), 78.13 (2), 78.14 (1) (c) and (g), 78.145 (1) (a) 6. and (c), 78.17 (2) (b) and (8) (e), 78.18 (1), (3), and (5), 78.19 (1) (d), (e), and (i), (2) (b) 5., (4) (a), (d), and (f) and (5), 78.20, 78.22, 78.24, and 78.24.

b. In s. ATCP 78.04 (1) (intro.), “one” is unnecessary.

c. In s. ATCP 78.03 (11) (intro.), several sentences are substantive in nature and should be moved from the definitions section of the proposed rule. [s. 1.07 (1) (d), Manual.]

d. In s. ATCP 78.03 (21), “(a)-(b)” should be written “(a) to (b)”.

e. The proposed rule should be reviewed in its entirety and revised to avoid use of slashed alternatives, as described in s. 1.08 (1) (d) of the Manual. Section ATCP 78.03 (39) is an example of a provision in need of revision.

f. Throughout the proposed rule, when the agency provides examples, it should use the style described in s. 1.12 (1) of the Manual. Examples of provisions in need of revision include ss. ATCP 78.03 (41) and (44) and 78.17 (2) (b) 1. b.

g. The last sentence of s. ATCP 78.03 (62) should be revised for singular-plural agreement, and may be more appropriately indicated as an example, as described above.

h. What is the purpose of the second sentence in s. ATCP 78.03 (70)? See, also, the comment relating to use of the phrase “typically”, below.

i. In s. ATCP 78.03 (77), the last sentence of the provision appears substantive in nature and should be moved from the definitions section of the proposed rule. [s. 1.07 (1) (d), Manual.] Also, the colon in the definition should be replaced by quotation marks.

j. Sections ATCP 78.035 and 78.036 appear to be indicated using unnecessary subdivision in comparison to the rest of the proposed rule. Could these provisions be written as ss. ATCP 78.04 and 78.05, with subsequent sections written as ss. ATCP 78.06, 78.07, etc.? The proposed rule should be reviewed for other instances of similar numbering, such as ss. ATCP 78.105, 78.106, 78.107, 78.115 and 78.145.

k. In s. ATCP 78.05 (1) (b), the cross-reference to “subd. (1) (a) 3.” may be written as “par. (a) 3.”.

l. Should the material currently written as s. ATCP 78.05 (1) (b) 8. be placed prior to par. (b), as s. ATCP 78.05 (1) (a) 8.?

m. In s. ATCP 78.05 (5) (c), the cross-reference to s. ATCP 78.06 (2) (e) appears intended to refer to sub. (3) (e).

n. Two provisions of the proposed rule are labeled as s. ATCP 78.07 (2) (b). The latter should be indicated as par. (c).

o. Should s. ATCP 78.145 (1) (c) be qualified as an exception from the requirements in par. (a)?

p. In s. ATCP 78.145 (2) (c), should the cross-reference be to “sub. (1) (e) 2. and 5.”? There is no par. (e) in sub. (2) of s. ATCP 78.145.

q. Section ATCP 78.17 (9) appears unnecessarily complex. Could it be simplified to say, “The use of unvented furnaces and space heaters fueled by natural gas, kerosene, alcohol or other fuel is prohibited.”?

r. In s. ATCP 78.18 (3) (c), if some subdivisions use titles, titles should be used for all subdivisions.

s. In s. ATCP 78.19 (1) (b), the use of introductory material and subs. 1 and 2. should either be indicated as paragraphs or subdivisions, but not both, or revised such that the subdivisions form complete sentences when read in conjunction with the introductory material.

t. The notes following s. ATCP 78.19 (1) (d) 1. d. appear substantive in nature and their contents should be placed in the rule text.

u. In s. ATCP 78.19 (2) (a), “par. (b) 1. – 5.” should be written “par. (b) 1. to 5.”. References to “subd. (2) (b) 4.” in s. ATCP 78.19 (2) (b) 1. should be written “subd. 4.”.

v. Is s. ATCP 78.23 (1) (b) intended to be subject to the same introductory material present in par. (a), which states, “If the camp includes a petting zoo...?”

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

a. The citations of statutory authority in s. ATCP 78.01 should be reconciled with the citations listed in the analysis of the proposed rule.

b. The statutory references in ss. ATCP 78.03 (40) and 78.19 (4) (e) should end with “, Stats.”.

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

a. The proposed rule should be revised in its entirety to avoid use of phrases similar to “including, but not limited to”. Use of the phrase “but not limited to” is redundant and has the same meaning as “includes”. [s. 1.07 (3) (b) 2., Manual.]

b. In s. ATCP 78.03 (1), use of the terms “means” and “typically” are inconsistent, as “means” limits the scope of the definition but “typically” expands it. [s. 1.07 (3) (a), Manual.]

c. The proposed rule should be reviewed in its entirety and revised to remove use of parenthetical clauses that are not acronyms. Rather than using both the initial and parenthetical term, the agency should choose one term and use it consistently throughout the proposed rule. For clauses that contain acronyms, once the acronym is identified, it should be used consistently throughout the proposed rule. Examples of provisions in need of revision include ss. ATCP 78.03 (3), 78.06 Table A, 78.07 (1) (b) 1. d., 78.145 (1), 78.18 (5) (c) 3. b., 78.19 (1) (d) 4., (2) (b) 4. and (4) (c) and 78.24 (4) (b) and (c).

d. The proposed rule should be reviewed in its entirety and revised to avoid use of duplicate terms. For example, s. ATCP 78.03 (7) states that an “attendant” may also be referred to as a “lookout” and s. ATCP 78.03 (10) defines “boat” and “vessel” to have the same meaning. Rather than using both terms, the agency should choose one term and use it consistently throughout the proposed rule. Similarly, once a term is defined in s. ATCP 78.03, use only the defined term in the rule text, rather than elements of that term’s definition, and once a term is assigned an acronym, that acronym should be used consistently throughout the proposed rule. Additional examples of provisions in need of revision include ss. ATCP 78.03 (61) and (78), 78.06 Table A, 78.107, and 78.18 (3) (a) 4.

e. In s. ATCP 78.03 (8), the definition of “bed” should be revised, as it is confusing and unnecessarily complex.

f. In s. ATCP 78.03 (10), does the term “fishing raft” also need to be defined?

g. Section ATCP 78.03 (16) uses the phrase “alternative disposal method” but does not describe a primary disposal method. Additionally, the provision does not actually define the term “cathole” beyond vague reference to the burial of human solid waste.

h. In s. ATCP 78.03 (18), (55), and (56), use of “code” is vague. Should it be replaced by “chapter”?

i. The proposed rule should be reviewed in its entirety and revised to avoid use of subjective terms such as “usually”, “easily”, “readily”, “normal”, “typically”, “adequate”, “good repair”, “reasonable”, “immediate vicinity”, and “appropriate”. These terms are vague and reduce

the clarity of the proposed rule. Examples of provisions in need of revision include ss. ATCP 78.03 (1), (18), (22), and (50), 78.14 (1) (d) and (g) 2., 78.145, 78.15 (4), 78.17, 78.18 (3) (c) 10. and 14. and (d) 1., and 78.24 (1).

- j. Section ATCP 78.03 (24) should be revised to form a complete sentence.
- k. Section ATCP 78.03 (36) should be revised for clarity. In particular, the second sentence could be integrated with the first, and the third sentence should be revised, as it currently reads "...activity...does not include...[an] establishment...", which is not in agreement.
- l. Use of the phrase "may even be" in s. ATCP 78.03 (63) should be revised to "may be".
- m. In s. ATCP 78.03 (64), "quickly" should either be defined or removed.
- n. In s. ATCP 78.03 (68), use of the term "effective" implies a standard but does not define it.
- o. As s. ATCP 78.03 (69) is written, it implies a distinction between activities that take place under supervision and direction of a trained adult, and those that do not. Is that the agency's intent?
- p. In s. ATCP 78.03 (72), inclusion of the clause "- the practice of supervision" is vague and should be clarified or removed.
- q. In s. ATCP 78.03 (75), it is unnecessary to capitalize "Adult". Also, what distinction does the agency intend to draw between "individual" and "camp personnel" as implied by the current structure of the provision?
- r. In s. ATCP 78.03 (83), does the agency intend to exclude domed structures constructed of materials other than wood?
- s. Should s. ATCP 78.04 (2) (a) 3. be followed by examples of material that might be required under the provision?
- t. Section ATCP 78.04 (2) (b) 1. should be revised to clarify the party that is responsible for plan or application completion.
- u. In s. ATCP 78.04 (2) (b) 2., is the 30-day deadline applicable only to plans completed following inclusion of additional information under par. (b) 1.? If so, what is the deadline for plans that are complete upon original submission under par. (a)?
- v. Section ATCP 78.05 (1) (a) 1. should end with a period.
- w. Section ATCP 78.05 (1) (a) 3. should be divided into two provisions, one relating to familial transfer, the other to business reorganization.
- x. In s. ATCP 78.05 (4), what is the deadline for the payment? The phrase "...filed with, or received by..." could be clarified to be one or the other, or otherwise clarified, if the intent is to recognize a "mailbox rule".
- y. In s. ATCP 78.05 (5) (a), use of "may not" should be clarified in relation to "shall refuse" as the latter term is used in sub. (5) (b). Generally, "may not" is used to express a prohibition. [s. 1.08 (1) (b), Manual.]
- z. The usefulness of s. 78.05 (6) (b) may be questionable, as it appears duplicative of material in s. 78.06 (4).

aa. What are examples of activities that might be conducted pursuant to s. ATCP 78.06 (3) (g)?

bb. In s. ATCP 78.07 (1) (b) 3., when would an amount differ from an amount listed in the tables?

cc. In s. ATCP 78.106 (4) (a), should the agency define all required information rather than including a vague reference to possible requirement of “other information”?

dd. In s. ATCP 78.106 (4) (b), the agency should clarify the deadline for correction of core, priority, and priority foundation items. In particular, it does not appear that a deadline exists for correction of a priority item, as s. ATCP 78.106 (4) (b) 4. a. only specifies “additional time”, in contrast to 10-day and 90-day deadlines for correction of priority foundation and core items, respectively.

ee. In s. ATCP 78.106 (5), what is an “exit interview”?

ff. How is s. ATCP 78.107 intended to operate? Use of “shall” versus “may” should be reviewed to clarify when inspection may be waived and what discretion the agency has to waive inspection when listed criteria is satisfied. Also, this section is unnecessarily subdivided, as there is no s. ATCP 78.107 (2), nor is there a s. ATCP 78.107 (1) (b).

gg. In s. ATCP 78.115 (1) (a), what is the standard that defines whether a site is “subject to flooding”? Is it related to location in a flood plain, as implied by the note in this section? If so, the content of the note should be clarified and included in the numbered text of the proposed rule.

hh. Section ATCP 78.145 lists recreational vehicles alongside other “permanent” structures, but that use of the term is in conflict with the agency’s definition of a recreational vehicle in s. ATCP 78.03 (62).

ii. Are subs. 3. and 4. of s. ATCP 78.145 (1) (a) consistent with one another? Section ATCP 78.145 (1) (a) 5. should refer to “subs. 3. and 4.” rather than “par. (a) 3 and 4.”.

jj. Section ATCP 78.145 (2) (e) 6. is both grammatically incorrect and similar in content to the defined term “bed”.

kk. Section ATCP 78.15 refers to insects in par. (a), and insects and rodents in par. (e). These animals are both included in the defined term, “pest”.

ll. Section ATCP 78.15 (2) (c) and (d) use the phrase “containers that accumulate”. Does the agency mean to refer directly to the accumulation of garbage and refuse?

mm. In s. ATCP 78.17 (3), what is a “commercial building” in the context of a camp? Additionally, further subdivision of sub. (3) should be revised to include paragraphs.

nn. Section ATCP 78.17 (6) (a) 2. should define a standard for “effective measures to minimize the presence of pests”.

oo. Section ATCP 78.17 (8) (c) should be reviewed. Does the agency intend for fire extinguisher maintenance to be optional through the use of the clause “where provided”? Additionally, the note following this provision states that consultation with a local fire official is permissive, while par. (b) indicates that it is mandatory.

pp. What inference does the agency intend to be drawn from the content of s. ATCP 78.18 (3) (a) 6.?

qq. In s. ATCP 78.18 (3) (c) 14., does the agency intend to imply that some holes or rips in netting do not cause entrapment? What is the standard for holes or rips that require attention and those that do not?

rr. Should the staff ratio reference in s. ATCP 78.24 (3) also refer to s. ATCP 78.19?