

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 95-017

### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]**

### 2. Form, Style and Placement in Administrative Code

a. In s. ATPC 29.01, the order of subs. (2m) and (2n) should be reversed in order to preserve the alphabetical structure of the section.

b. The definition of “crop advisor” in s. ATPC 29.01 (16m) and the use of that term in s. ATPC 29.155 (2) (a) 3. should be coordinated. The definition of “hand labor” in s. ATPC 29.155 (2) (a) 3. excludes any activity as a crop advisor, so the second sentence in s. ATPC 29.01 (16m) is unnecessary.

c. The definition of “handler employer” in s. ATPC 29.01 (24p) is unnecessary. Wherever that term is used in the rule, the phrase “a person who employs a handler” can be substituted.

d. In s. ATPC 29.15 (7) (a) 2., the first sentence of the Note provides that par. (a) applies to all persons applying “dual notice” agricultural pesticides and is not limited only to agricultural employers. If this is a federal requirement, a citation to the federal provision should be included. If sub. (7) (a) is intended to apply to all persons applying these pesticides, the requirement should be stated explicitly in the text of the rule.

e. In s. ATPC 29.15 (7) (b), both occurrences of the notation “sub.” should be replaced by the notation “par.”

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

a. The definition of “handler” in s. ATCP 29.01 (24m) raises several questions:

- (1) Does the regulation of these activities apply only to a person engaged in the activities at an agricultural establishment? As drafted, the rule appears to apply to pesticide mixing or loading activities by an employee of a pesticide manufacturer, an employee working at a hazardous waste facility to treat pesticides or a mechanic who repairs pesticide application equipment at a dealer’s repair shop.
- (2) What is a “flagger” in s. ATCP 29.01 (24m) (d)?
- (3) The activities in s. ATCP 29.01 (24m) (g) and (h) are restricted to several very specific activities (operating ventilation equipment, removing tarpaulins, etc.). If a person enters a greenhouse or an outdoor area treated with a soil fumigant for any other purpose, is that activity not subject to the rule?
- (4) The restrictions on entering a greenhouse in s. ATCP 29.01 (24m) (g) apply during inhalation exposure level restrictions. Should a similar condition be added to the entry of outdoor areas treated with soil fumigant in s. ATCP 29.01 (2m) (h)?
- (5) The provision regarding crop advisors in s. ATCP 29.01 (24m) (i) applies to persons “at an agricultural pesticide application site.” Could this be clarified by substituting “and entering” for “at”?

b. The use of the phrase “jointly and severally” in s. ATCP 29.15 (7) (e) is unusual, and is likely to be difficult for members of the general public to understand. The need for an explanatory note shows that the department recognizes this difficulty. A better approach would be to substitute “are each legally responsible” for “are jointly and severally responsible,” and to add the requirements stated in the note as a substantive provision of the rule.

c. Could s. ATCP 29.155 (2) (a) 1. be clarified by adding “from damage to agricultural plants” after “substantial economic loss”?

d. Should s. ATCP 29.155 (2) (b) 1. refer to early entry necessary to “prevent or mitigate” the effects of that agricultural emergency? The definition of “agricultural emergency” in s. ATCP 29.155 (2) (a) 1. refers to preventing or mitigating economic loss.

e. It appears that s. ATCP 29.155 (4) (b) (intro.) could more accurately refer to par. (a) by referring to a person who trains agricultural workers “to meet the requirements of” par. (a). [See also sub. (3) (b) (intro.).]