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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 96−071

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. Section ATCP 10.15 (4) requires animal handling facilities for bovine animal inspections. However, no definition or standards are provided for bovine animal handling facilities like the ones included for cervidae animal handling facilities in s. ATCP 10.651 (3). Are bovine animal handling facilities subject to similar specifications? If so, those specifications should be included in the rule or otherwise identified with an appropriate cross-reference.

b. In s. ATCP 10.652 (7) (intro.), the introductory phrase preceding the colon should conclude with "any of the following:".

c. In s. ATCP 10.652 (8) (b) (intro.), and other locations in the rule, the introductory phrase "shall do both of the following" precedes a list of certain conditions. To facilitate future insertions to the rule of other conditions without having to amend the introductory material, the word "both" should be replaced by the word "all."

d. In s. ATCP 11.10 (3) (a), the material at the end of the first sentence after the word "destruction" does not appear in the current code. Accordingly, if the material is intended as an addition to the current rule, it should be underscored. If not, it appears the material should be deleted.

e. The relating clause of the rule appears to be too broad to give the reader an adequate idea of what the rule relates to. At a minimum, it would seem that the relating clause ought to contain a reference to "farm-raised deer."

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

a. The last sentence of s. ATCP 10.651 (2) (b) appears to try to limit the department's liability for injury or death to a cervid. However, s. 95.25 (4m), Stats., as created by 1995 Wisconsin Act 79, seems to contain an exception to the department's liability limitation for acts of negligence committed by department staff. It seems that the last sentence of s. ATCP 10.651 (2) (b) should begin with a phrase similar to the following: "Subject to s. 95.25 (4m), Stats...."

b. In s. ATCP 11.56 (2) (bm), the notation "s." should be interested after the word "under."

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

a. In s. ATCP 10.151 (3) (a) 2., the word "inches" should be inserted between "2" and the word "nor." The entire rule should be reviewed for this usage.

b. The word "will" in the second sentence of s. ATCP 10.651 (2) (b) should be replaced by the word "may." In the alternative, the sentence can be rewritten as follows: "No department staff may tranquilize the cervidae."

c. Section ATCP 10.652 (3) (a), and other provisions in the rule, use the term "trace-back." The clarity of the rule would be enhanced if the term "traceback" were defined so that readers and users of the rule would know what a "traceback" involves.

d. The word "But" in the third sentence of s. ATCP 10.652 (3) (b) should be deleted and the word "if" should be capitalized.

e. The Note to s. ATCP 10.652 (4) should be rewritten in substantially the following form: "A registration form may be obtained by writing to the following address:...."

f. Section ATCP 10.652 (7) (e) provides that the department may deny, suspend or revoke a farm-raised deer registration for, among other things, paying a registration fee with a "worthless check." However, the rule does not define a "worthless check" or paying with such a check. Is the rule designed to cover all checks issued for which there are insufficient funds in the account to pay on the check, regardless of intent, or just those checks issued with the knowledge that the check will not be paid? In other words, is there an intent element necessary to meet the conditions of par. (e), as there appear to be with many, if not all, of the other grounds for denial, suspension or revocation? Is it possible to clarify par. (e) with a reference to the various statutory treatments of worthless check issuance, e.g., s. 403.806, Stats., or s. 943.24, Stats.?

g. Section ATCP 10.652 (8), and other provisions of the rule, refer to a "keeper." It appears that "keeper" is used interchangeably with the phrase "person who keeps farm-raised deer." The rule should use consistent terminology. If the word "keeper" is to be used in the rule, then it should be properly defined.

h. In s. ATCP 12.05 (5), the rule alternates between the use of the phrase "livestock market operator" and "market operator." [See also s. ATCP 11.545 (1) (d).] The rule should use consistent terminology.