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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 96-151

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.]

1. Statutory Authority

a. Section 103.97 (1), Stats., generally provides that any person who violates ss. 103.90 to 103.97, Stats., or fails or refuses to obey any lawful order of the department shall forfeit not less than \$10 nor more than \$100 for each violation, failure or refusal. Each day of continued violation constitutes a separate offense. In spite of this statutory mandate, the department creates a system of administrative penalty fees in s. DWD 301.13. What statutory authority exists for the elaborate penalty system created in this section of the Administrative Code?

b. Section DWD 301.13 (5) provides for department review of an assessed penalty fee if a camp operator, employer or an employe requests an administrative review. Subsection (5) (b) provides in part that the administrative review is not a contested case proceeding. Presumably, the department intends that the initial assessment of a penalty fee also is not a contested case proceeding. What statutory authority exists for this treatment given the definition of the term “contested case” in s. 227.01 (3) (b), which defines a “class II proceeding” to be a proceeding in which an agency determines whether to impose a sanction or penalty against a party.

2. Form, Style and Placement in Administrative Code

a. The analysis to the rule should include a list of those statutes that authorize the rule promulgation and a list of the statutes interpreted by the rule.

b. In the treatment clauses of SECTIONS 2 through 5 and SECTION 9, the clause “, as renumbered,” should be inserted after the rule provision or provisions to be amended. For example, “SECTION 5. DWD 301.06 (5) and (12) (b), as renumbered, are amended to read:”.

c. In s. DWD 301.05 (8) (c), in the second sentence, substitute “pursuant” for “by reference.” Also, the phrase “(29 CFR Part 500)” should be replaced by the phrase “under 29 CFR Part 500.”

d. The treatment clause in SECTION 6 should read: “DWD 301.07 (1) is renumbered 301.07 (1) (a) and amended to read:”.

e. In s. DWD 301.07 (1) (a), in the first sentence, insert a comma after “\$100.00.” In the third sentence, insert a comma after “\$150.00.” In the eighth sentence, delete “and subsequent inspections” and substitute “inspection and each subsequent inspection.”

f. In s. DWD 301.07 (1) (b), in the second sentence, delete “or not.” In par. (e), substitute “is” for “would be.”

g. In s. DWD 301.08 (7), delete the material through “power” and substitute: “In cases affecting migrant workers, the statutes and rules authorizing the department.”

h. In the first sentence of s. DWD 301.13 (1), substitute “statutes” for “statute.” In the third sentence, substitute “enables” for “will enable.” In sub. (3), in the first sentence, after “(S)” insert “and.” In the second sentence, substitute “imposed” for “proposed” and substitute “shall” for “must.” In the fourth sentence, after “shall,” substitute “not exceed” for “normally range from no penalty to.” In sub. (6), substitute “is” for “would amount to,” and “imposed” for “proposed.”

i. In s. DWD 301.13, the second sub. (6) should be renumbered as sub. (8). Also, in the table headings in this subsection, the letters “A” and “B” should be presented in lowercase.

j. Following Table DWD 303.13 (6) (B), on page 9, the subsection relating to administrative review should be sub. (9), not sub. (5). In the second sentence of that subsection, substitute “shall” for “must.” Also, in the last sentence of par. (a), the phrase “in its discretion” is unnecessary and should be deleted.

3. Conflict With or Duplication of Existing Rules

In s. DWD 301.07 (1) (d), partial inspections appear to be authorized. However, the last sentence of s. DWD 301.07 (1) (a), as renumbered and amended, states that: “The department shall not conduct partial inspections.” These provisions are in conflict and should be harmonized.

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

Section DWD 301.13 (3) provides in part that the penalty for an M violation ranges from no penalty to \$300. The use of the word “penalty” and the phrase “no penalty” is not consistent. Perhaps the phrase “no penalty” should be substituted by the notation “\$50,” since a penalty under Table DWD 301.13 (6) (b) will not be assessed under \$50. The last sentence does not appear to be necessary, but if retained, the rules should contain a definition of “exceptional cases,” as well as some rationale as to why these exceptional cases should not be treated as “S”

violations. In sub. (7), the phrase “a short period of time” is too vague. It would be preferable to substitute a specific time period, such as “48 hours” or “five days.”