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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 10-107

#### 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 September 2008.]**

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

a. The rule preface should include a statement of the date by which public comments regarding the rule must be sent to the department.

b. In s. ATCP 20.01 (2), the definition of the term “agricultural seed” should be the same as found in s. 94.38 (2), Stats.

c. The definition of “genuine grower declaration” contains substantive material, which should be placed in other portions of the rule. If a definition is needed, it should say only “...means the statement required under s. ATCP \_\_\_\_\_.”

d. In the definition of “hybrid,” the second sentence is explanatory, and so should be placed in a note; the third sentence is substantive, and so should be placed in other portions of the rule.

e. In s. ATCP 20.01 (15), the phrase “but is not limited to” is unnecessary and should be deleted.

f. Since the definition of “prohibited noxious weed seeds” depends fundamentally on a prohibition (see comment 4. a.), the second and third sentences are only descriptive, and so should be placed in a note. The same is *not* true of the definition of “restricted noxious weed seeds,” as that definition depends on whether the seeds are of a species that is objectionable but controllable. However, apart from the species included by enumeration, what constitutes

“objectionable,” “can be controlled,” and “good cultural practices”? Finally, if the structure of s. ATCP 20.01 (26) is retained, all of the following should be done:

- (1) The first sentence of the subsection should be numbered as par. (a) and the remaining paragraphs and internal cross-references should be renumbered accordingly.
- (2) Each use of the term “prohibited noxious weed seeds” and the term “restricted noxious weed seeds” should be shown within quotation marks.

g. In s. ATCP 20.01 (27), the phrase “of the above” should be replaced by the phrase “of the seeds or plants described in this subsection.”

h. In s. ATCP 20.01 (29), the parenthetical notations should be replaced by commas. The entire rule should be reviewed for the unnecessary use of parentheses.

i. In s. ATCP 20.01 (39), the first occurrence of the word “Seeds” should be shown in lowercase.

j. Section ATCP 20.08 (1) should be rewritten something like the following: “The germination standards for vegetable and herb seeds are as specified in the following table. The germination standard for vegetable and herb seeds not specified in the following table is 50%.” Similar wording should be used for sub. (2), in which case the third sentence of that subsection is not needed. The text preceding the table in sub. (2) should be numbered par. (a), and the text following the table should be numbered par. (b).

k. The tables in s. ATCP 20.08 should not include any underscoring.

l. In s. ATCP 20.09 (1) (intro.), the word “must” should be replaced by the word “shall.” The entire rule should be reviewed for the inappropriate use of the word “must.”

m. In s. ATCP 20.11 (intro.), the word “State” should be replaced by the word “state.” The entire rule should be reviewed for the appropriate use of this word. Also, the word “it” should be inserted after the word “upon” and after the first occurrence of the word “to.”

n. Section ATCP 20.11 (2) (intro.) is drafted incorrectly. If subs. (3), (9), or (10) create exceptions to this subsection (as is the case with sub. (9)), the introduction should begin with the phrase such as, “Except as provided in sub. (9),...” If those subsections create requirements that are in addition to those of this subsection (as appears to be the case with subs. (3) and (10)), there is no need to reference them here and so the introduction should be silent, although the department could use a note to point this out. In general, introductory material should include a phrase such as “all of the following” or “any of the following” in order to clearly indicate to the reader whether all, or at least one, of the conditions in the following subunits must be met.

o. Numerous subunits of s. ATCP 20.11 do not follow grammatically from the introductory material. See, for example, s. ATCP 20.11 (2) (h), (3) (b) 1. and 2., (f) and (g), and (11) (a) and (b) (intro.). There are additional, similar errors in subsequent sections.

p. In s. ATCP 20.11 (3) (intro.) and (10) (intro.), the phrase “the label shall contain” should be omitted, as this is accomplished by s. ATCP 20.11 (intro.) The department should also consider whether s. ATCP 20.11 (12) (intro.), (13) (intro.), and (14) (intro.), in fact, follow grammatically from s. ATCP 20.11 (intro.).

q. The repeated statements in s. ATCP 20.11 that certain required information is in addition to all other information required under this section or subsection are superfluous and should be omitted. If the department feels there is any ambiguity, it can use notes to clarify the requirements; the requirements, however, speak for themselves and do not need repeating in the rule text.

r. In s. ATCP 20.11 (2) (i), the use of the slashed alternative should be avoided. In sub. (2) (i) 3., the quotation marks are unnecessary and should be deleted. [See also sub. (3) (h) 2.]

s. In s. ATCP 20.11 (4), the introduction should be renumbered as par. (a); pars. (a) to (d) should be renumbered as subds. 1. to 4.; and par. (e) should be renumbered as par. (b).

t. The second sentence of s. ATCP 20.11 (3) (d) appears to be in the wrong section of ch. ATCP 20, as it relates to how seed is packaged and s. ATCP 20.11 relates to how seed is labeled. The same appears to be true of the second sentence of s. ATCP 20.11 (3) (e), (6) (e), and (14).

u. In s. ATCP 20.12, the introduction should be renumbered as sub. (1); the phrase “giving the following information” should be replaced by a cross-reference to the remaining subsections; and the remaining subsections should be renumbered accordingly.

v. Section ATCP 20.12 (3) (c) (intro.) should be created, stating: “One of the following:” and the three parts of that paragraph, separated by semicolons, should be separated into subds. 1., 2., and 3.

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

a. The definition of “prohibited noxious weed seeds” should be expanded to include a citation to the prohibition that is the fundamental basis of the definition. Also, since the definition depends on that prohibition, the second and third sentences are only descriptive, and so should be placed in a note.

b. The definition of “tetrazolium test” should be based on a reference to the standard, published methods for this test. As written, any test of germination that is chemical and rapid meets the definition. However, is this definition needed, in light of s. ATCP 20.02?

c. In s. ATCP 20.11 (4) (e), the notation “subs.” should be replaced by the notation “sub.”

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

a. In the definition of “flower seeds,” the use of both “native” and “indigenous” is redundant.

b. The distinction between the terms “label” and “labeling,” both defined as nouns, seems unduly tortured. It appears that a label is what that term is commonly known as and labeling is any label that contains certain specified information. The rule mostly uses the latter word in a form such as “the labeling of seed shall...”, although it is also used as a pronoun (“labeling information” and “labeling requirements”). Also, existing s. ATCP 20.05, which this rule-making order does not affect, uses the word “label” in a manner that seems more consistent with the new definition of “labeling.” Might it be clearer to dispense with these two definitions and define a different term, such as “required labeling information,” instead?

c. Section ATCP 20.01 (23) should be revised to define only one word. “Mixture” and “mix” (nouns) are synonyms, so it would appear appropriate to choose one of these to define and use throughout the rule; the meaning of “mixed” (a pronoun) would then be clear from that definition. Also, is it the department’s intention to limit these terms to native species?

d. It appears that the definition of “mulch” is not necessary, as it adds nothing to the common meaning of the word.

e. In s. ATCP 20.01 (27), it appears that the word “of” should be inserted before the phrase “any variety.”

f. In the definition of “restricted noxious weed seeds,” the phrase “those weed seeds which” should be replaced with “the seeds of those species that.”

g. In the definition of “origin,” the words “it is” should be deleted.

h. The term “preinoculated seed” is confusing. In common usage, an inoculated seed is a seed to which an inoculum has been applied; “preinoculated seed,” then, suggests a seed prior to application of the inoculum. Presumably, the intent here is to indicate a seed that is inoculated prior to planting. However, unless seeds are, in some cases, inoculated after planting and this distinction is significant, unnecessary confusion could be avoided by using the term “inoculated” instead of “preinoculated.” (Note that an unabridged edition of Webster’s dictionary does not include an entry for “preinoculated.”)

i. The definition of “pure live seed” is unclear, and points out a lack of clarity in certain other terms. Based on discussion with the Department of Agriculture, Trade and Consumer Protection staff, it appears that pure live seed is a number calculated by multiplying one percentage by the sum of two other percentages and dividing by 100. However, the rule does not define all the terms involved, nor does it make clear that some of the terms involved are percentages; it also does not make clear that the terms all refer to a particular lot. The formula would appear to be: the sum of the germination rate of a lot and the percent hard or dormant seed in the lot multiplied by the percent of the lot that is the labeled seed type, divided by 100.

j. In s. ATCP 20.11 (7) (a) 2., the expression “, or;” should be replaced by the expression “; or.”

k. In s. ATCP 20.11 (11) (b) 3., and in other, similar provisions, a comma should be inserted before “which.”

l. To avoid an unduly long sentence, the first sentence of s. ATCP 20.12 (intro.) could be split in two, with a period following “the following information,” and a second sentence beginning with “Labels on the container shall not modify or deny any of the required information, except that...” A similar change could be made in s. ATCP 20.11 (intro.), although that sentence is not so long as to necessitate this change.

m. In s. ATCP 20.12 (4) (e), the correct citation is “sub. (2) (a), (b), (c), and (d).”

n. In s. ATCP 20.13 (1) (d), it appears that a quotation mark should be inserted before the word “Wonder.”

o. In s. ATCP 20.14 (1), there should be no comma following “exposing.” Also, what is the difference between offering for sale and exposing for sale? Are both terms necessary?