

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 98-014

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 ATCP 35.03 (5) should be modified to exclude reference to the requirements of s. 281.48, Stats., in order to comply with s. 94.73 (2) (d), Stats. The same comment applies to s. ATCP 35.10 (6).

b. Section ATCP 35.08 (5) (b) provides that certain deductions may not be made from reimbursement claims unless the deductions are approved by a motion adopted by the Agricultural Chemical Cleanup Council. Generally, councils have only advisory authority. [ss. 15.01 (4) and 15.09 (5), Stats.] The rule seems to give the council additional authority that is not advisory.

2. Form, Style and Placement in Administrative Code

Note: Because of the parallel nature of the drafting in chs. ATCP 32 and 33, many of the following comments are written specifically in reference to ch. ATCP 32 but apply as well to ch. ATCP 33.

a. In the treatment clause for SECTION 5, “(5)” should replace “(6)”, since sub. (5) is being repealed and recreated also.

b. The phrase “the fertilizer load-in or load-out conveyor,” used in s. ATCP 32.03 (2) (c), is jargon. This phrase and the words “if any” should be replaced by the phrase “any conveyor used to load or unload fertilizer.”

c. In s. ATCP 32.04 (1) (a) to (c), the word “under” should be replaced by the words “that complies with.” Compare the parallel language in s. ATCP 32.04 (4) (a).

d. The term “hydrostatic head,” used in s. ATCP 32.04 (3), is jargon. It should be replaced by a more readily understood phrase or should be defined. The same applies to the use of the terms “lifts” in s. ATCP 32.04 (6) (a) and “nurse tank” in s. ATCP 33.01 (12).

e. On page 22, line 16, “(4)” should be deleted.

f. In s. ATCP 32.04 (6) (a), the word “consists” should be replaced by the words “shall consist.”

g. In s. ATCP 32.04 (6) (b) (intro.), the words “under this paragraph” should be inserted after the stricken language in the second-to-last sentence.

h. In s. ATCP 32.04 (9) (b), the phrase “under sub. (1) (a)” should be inserted after the word “container.”

i. The rule contains a number of provisions which include record location requirements that are repetitive of the material contained in s. ATCP 32.08. For example, see s. ATCP 32.04 (9) (b) 4., 5. and 6. The rule should either omit these duplicative provisions or omit s. ATCP 32.08.

j. In s. ATCP 32.05, the word “section” should be inserted after the word “This” in the second sentence.

k. The renumbering accomplished by SECTIONS 18 and 19 is flawed. SECTION 19 renumbers eight subsections into a series that includes nine subsections. Note that rather than renumbering the subsections, gaps can be left in a sequence and insertions can be made using letters in addition to the numbers of the subsection. [See s. 1.03 (7), Manual.]

l. The notation “ATCP” should be added to the cross-references contained in s. ATCP 33.03 (4) (a).

m. The second sentence of s. ATCP 33.04 (5) (a) 2. should be rewritten as follows: “A liner may not use bentonite or other clay material to provide a hydraulic barrier.”

n. In s. ATCP 33.10 (2) (Note), “s.” should be replaced by “ss.”

o. SECTIONS 40 to 42 are drafted as though they are modifying s. ATCP 35.05; in reality they are modifying s. ATCP 35.04. This needs to be corrected.

p. The subunits of s. ATCP 35.05 (6) should be numbered pars. (a), (b) and (c), rather than subs. 1., 2. and 3.

q. In the treatment of s. ATCP 35.05 (6), the rule attempts to show a current cross-reference and anticipate a future amendment to that cross-reference. The correct form for doing this is as follows. In one SECTION, the rule should create s. ATCP 35.05 (6) with

cross-references reflecting the current numbering of the rule. An immediately following section should amend the cross-references to show what the future cross-references will be. An effective date clause at the end of the rule would then state that the rule-making order “shall take effect on the first day of the month following publication in the *Wisconsin Administrative Register*, as provided under s. 227.22 (2) (intro.), Stats., except that the amendment of s. ATCP 35.05 (6) (a) shall take effect on the effective date of Clearinghouse Rule 97-125” (the rule-making order which changes the cross-references).

r. In s. ATCP 35.10 (6), “~~and 147~~” should follow the stricken material.

s. Section ATCP 35.20 (1) should be modified to refer simply to “the maximum amount specified under s. ATCP 35.22.” If the department chooses to retain the current structure of the subsection, the second occurrence of the words “under this chapter” should be omitted.

t. Section ATCP 35.22 (3) and (4) do not relate to the amount of reimbursements, which is the subject of that section. They should be placed elsewhere in this chapter, with other provisions on more closely related subjects. For example, the provisions relating to preapproval requirements might more aptly be placed along with provisions related to eligible expenses or the application process.

u. In the treatment clause for SECTION 71, “ATCP 35.28 (3)” should precede “(c).”

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

In s. ATCP 33.10 (1) (e) and (g), cross-references should be provided identifying the requirement that pesticide product manufacturers identify package contents, the provisions relating to repackaging agreements, and the requirement for toxicity signal wording.

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

a. In s. ATCP 32.02 (8) (b), the last words of the paragraph, “at least weekly,” are confusing. Does this refer to an operator who transfers materials into or out of the storage container at least once a week or at intervals of at least one week? This should be written more explicitly.

b. It seems that the definition of “person” in s. ATCP 33.01 (14) includes a local unit of government. Is this intended?

c. In the Note following s. ATCP 33.09 (5), should “should” be changed to “is required to”?

d. The term “nonhousehold pesticide” in s. ATCP 35.01 (22r) seems to be a slightly illogical choice of terms since the definition is pesticides that are not either a household pesticide or an industrial pesticide. Could a term be found that more closely resembles the definition?

e. In s. ATCP 35.06 (1) (k), the word “in” should be inserted after the first occurrence of the word “item.”

f. In s. ATCP 35.08 (5) (b), does a preliminary opinion under sub. (1) protect the applicant from a deduction? This should be clarified.

g. How long must records described under s. ATCP 35.16 (2) (d) be retained?