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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 99-087

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 September 1998.]

2. Form, Style and Placement in Administrative Code

- a. In s. ATCP 34.02 (6) and (9), the phrase “state of” is unnecessary and should be deleted.
- b. Section ATCP 34.03 (3) is a list of prohibited uses of a grant. However, par. (h) includes substantive requirements. These requirements should be placed in a separate section relating to program requirements.
- c. Similarly, s. ATCP 34.04 (3) is a list of required contents of grant applications, although several paragraphs in that subsection also create substantive requirements. The second and third sentences of par. (d) relate to the department review of grant applications and so should be placed with the material in s. ATCP 34.05. The substantive requirements of pars. (f) and (j) should be placed with other specific program requirements. The second and third sentences of par. (L) appear to relate more closely to the material in s. ATCP 34.03 (5).
- d. Section ATCP 34.07 (1) should begin with the phrase “The county requires each very small quantity generator to pre-register.”
- e. Section ATCP 34.07 (4) should be numbered s. ATCP 34.07 (3). The cross-reference in s. ATCP 34.09 (1) (g) should be changed accordingly.

f. In s. ATCP 34.08 (2) (b) 1., the word “very” should precede the phrase “small quantity.” Also, subds. 3. to 9. should be renumbered as subds. 2. to 8.

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

Section 144.61, Stats., referred to in s. ATCP 34.02 (11), was renumbered s. 291.01, Stats., by 1995 Wisconsin Act 227. This cross-reference should be corrected. Also, the rule restores a cross-reference in s. ATCP 34.08 (1) to the pre-Act 227 numbering; this change should be omitted.

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

a. Section 93.55, Stats., authorizes the Department of Agriculture, Trade and Consumer Protection (DATCP) to make grants to counties for chemical and container collection programs. It defines the term “chemical” as a chemical, including a pesticide, that is used for agricultural purposes. The statute requires that a county program, in cooperation with the DATCP ensure that a farmer who participates in the program is not liable for the chemicals or chemical containers collected under the program. The statute does not make any other distinctions in the classes of persons who may participate in the programs or limit the types of chemicals that they may dispose of.

The rule limits the programs to collecting waste chemicals from agricultural producers and agricultural pesticides and containers from very small quantity generators that are nonagricultural producers. Nonagricultural producers that are not very small quantity generators are excluded from the program entirely. Very small quantity generators who participate are required to preregister with the program and identify themselves in writing, a requirement that does not apply to agricultural producers. In addition, the rule limits the fees that may be imposed upon agricultural producers but does not limit fees imposed upon very small quantity generators. What is the department’s rational basis for these very significant differences in the treatment of agricultural producers and nonagricultural producers that are very small quantity generators?

b. Section ATCP 34.03 (4) (a) provides in part that a division administrator may approve a higher percentage rate for reimbursement when special disposal problems warrant the higher rate. Presumably, the department will develop standards or guidelines to determine when a higher reimbursement rate is warranted. These standards or guidelines should be placed in the Wisconsin Administrative Code.

c. A period should be added at the end of the first sentence of s. ATCP 34.04 (2).

d. Section ATCP 34.04 (3) (m) should begin with the phrase “The names of the.”

e. Section ATCP 34.05 lists criteria that the department shall follow in evaluating grant applications but says nothing about how the decision to approve or deny a grant application is made or how the funding level is to be set. Some more guidance in this area would appear appropriate.

f. In s. ATCP 34.08 (2) (b) 4., the use of the words “collecting” and “packing” in connection with the preposition “to” is grammatically incorrect.

g. Section ATCP 34.08 (2) (b) 7. refers to “banned and target chemicals.” These terms should be defined.