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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 07-006

#### 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 January 2005.]**

#### **1. Statutory Authority**

The exceptions in s. ATPC 60.235 to the prohibition on selling or distributing unpasteurized milk are not the same as the exceptions in s. 97.24 (2) (d), Stats. The department’s analysis states that the proposed rule is “consistent with administrative law judge decisions.” The analysis should be more detailed on this point, including discussing whether those decisions have been appealed to a court.

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

- a. In s. ATPC 60.08 (7) (a) 7. and 8., “shall be” should be replaced with “are.”
- b. In s. ATPC 60.11 (2m) (intro.), a period should be inserted after the numeral immediately before the colon.
- c. In s. ATPC 60.19 (10) (b), “Tetracyclines\*” should be replaced by “~~Tetraeycline\*~~ Tetracyclines\*”.
- d. The treatment clause of SECTION 44 should refer to s. ATPC 60.20 (6) (intro.), (b), and (c), rather than s. ATPC 60.20 (6), (6) (b) and (6) (c). Similarly, the treatment clause of SECTION 71 should refer to ATPC 77.20 (2) (b) 2. and (c) 2. and 3. and the treatment clause of SECTION 91 should refer to s. ATPC 80.08 (8m) (a) (intro.) and 1. and (b) 4. and 8.
- e. When two or more subsections, paragraphs, or subdivisions of the same section, subsection, or paragraph, respectively, are treated in the same rule SECTION, the number of the

higher level unit of which they are a part is not repeated at the beginning of each unit. SECTIONS 44, 71, 91, 136, 157, and likely others do not follow this rule correctly. For example, SECTION 71 should read:

**SECTION 71.** ATCP 77.20 (2) (b) 2. and (c) 2. and 3. are amended to read:

ATCP 77.20 (2) (b) 2. (text)

(c) 2. (text)

3. (text)

f. In s. ATCP 60.20 (3), the period following “(ESCC)” should be omitted and the period following “(OSCC)” should not be stricken.

g. The subdivisions of s. ATCP 60.235 should be numbered as subs. (1) to (4) rather than pars. (a) to (d).

h. Since ch. ATCP 60 does not include a definition of “division,” the full name of the division of food safety should be written out in s. ATCP 60.275 (4). Using a full-term the first time it occurs in a paragraph and using an abbreviated form thereafter does not constitute a sufficient definition of the term. Since this error occurs throughout ch. ATCP 60. the preferred solution would be to create a definition of the “division” (rather than “food safety division”) and use “division” throughout the chapter.

i. Similarly, rule text such as “direct microscopic somatic cell count (DMSCC),” used in ss. ATCP 60.20 (3) and 80.32 (5), is not a sufficient means to define an acronym.

j. In s. ATCP 77.24 (5) (e), the words “report the correct result” should be underscored.

k. The most current version of the Legislative Reference Bureau drafting manual requires a comma after the next-to-last item in a series, e.g., after “19<sup>th</sup>” in s. ATCP 77.30 (2) (c) and after “electronic mail” in s. ATCP 80.52 (6) (a). As another example, in s. ATCP 60.10 (6) (a) and (7), a comma should be inserted following the word “parlor.”

l. The amendment of s. ATCP 80.08 (8) (d) (intro.) makes a cumbersome introduction more so. The drafting of s. ATCP 80.08 (8) (g) (intro.) offers a better model.

m. The existing definitions in s. ATCP 80.40 are more correct than the definitions as amended by the rule, in that they say what the terms mean. The sections cited in the amended version establish requirements as to how those methods are used. The definitions should be amended only to say that, for example, “‘HHST’ or ‘high temperature short time’ means ....”

n. In s. ATCP 80.54 (2), the second sentence should be underscored.

o. SECTION 148 of the rule amends s. ATCP 82.01 (5), it does not repeal and recreate it, as the treatment clause states.

p. SECTION 157 makes no change to s. ATCP 82.10 (2) (a), so that paragraph should not be shown in the text of the rule.

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

References to the Wisconsin Statutes should include the notation "Stats." For example, the references in s. ATCP 82.12 (1) (c) should be "s. 98.146 or 97.17, Stats."

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

a. The scope of s. ATCP 60.08 (7) is not entirely clear. Paragraph (a) appears to say that water recovered from a heat exchanger may be used for any purpose in a milking operation if the specified conditions are met, while par. (b) discusses a more limited set of uses. Either par. (a) should begin with the statement: "Except as provided in par. (b)," or it should be made clear that only the uses in par. (b) are allowed and the conditions in pars. (a) and (b) apply to those uses. The note following par. (b) does not answer this question.

b. Under s. ATCP 60.11 (3), milk must be cooled at least to 45 degrees F. Under s. ATCP 60.11 (2m) (a) and (b), a temperature recording device must be able to record temperatures as low as 5 degrees F. below normal storage temperature (at least as low as 40 degrees F.) and as high as 180 degrees F. This is a range of at least 140 degrees F., almost three times the 50 degree F. range referred to in s. ATCP 60.11 (2m) (a). Is the 50 degree F. range correct?

c. There is an extra occurrence of the word "the" in the third sentence of s. ATCP 60.16.

d. The provisions regarding conditions on a license under s. ATCP 69.02 (3) (e) are not entirely clear. To remove the conditional status of such a license, is the licensee required to comply with s. ATCP 69.02 (7) (a) and (b)? If so, that should be stated as a requirement. Also, allowing the department to suspend the license at any time for failure to comply with either of those paragraphs appears to require the licensee to complete those requirements immediately upon receiving the conditional license or face summary suspension of the license, an unreasonable requirement and one the department presumably does not intend.

e. The relationship between s. ATCP 77.03 (1) (b) and (2) (c) is not entirely clear. The department may want to especially review the wording of sub. (2) (c).

f. The subject of s. ATCP 77.03 (1) (a) changes in mid-sentence from "person" to "laboratory operator." The rule should use one or the other - and they appear to be equally appropriate - throughout the sentence.

g. The use of "pathogenic or harmful" in s. ATCP 80.16 (3) (b) seems redundant, since pathogenic is a subset of harmful.

h. Sections ATCP 80.24 (3) (b) and (3m) (b) establish a coliform standard of not more than 10 per ml. or per gram. As the density of dairy products varies, one ml. of product may be

more or less than one gram, so should the rule either base the standard on one or the other measure or specify that it is based on whichever measure is less product?

i. In s. ATCP 80.52 (6) (d) 4., the word “under” should be inserted after “certified.”

j. In s. ATCP 80.54 (1) (o) 1., the word “the” should be inserted before “shipment.” In sub. (1) (o) (intro.), “plant” should replace “plants” at the end of the first sentence.

k. Under s. ATCP 80.62 (3) (a) and (b), are four samples in two consecutive months allowed, that is, on the 1<sup>st</sup> and 21<sup>st</sup> of one month and the 10<sup>th</sup> and 30<sup>th</sup> of the following month? If not, the language should say “if it collects those two samples at least 20 days apart and collects the other two samples in two other months.”

l. The standard of “readily legible ... at a distance of 50 feet” in s. ATCP 82.02 (7) (e) is subjective. Can this be replaced with an objective standard, such as a specified size of letters and numerals?

m. In the first sentence of s. ATCP 82.08 (2) (a), the word “a” should be inserted before “fully.”

n. Section ATCP 82.12 (3) (b), as amended by this rule, is not entirely clear. It would help to break the amended sentence into two, to read: “The dipper shall be cleaned, sanitized, and then dipped .... The milk hauler shall sanitize the dipper in a solution that is not less than 100 ppm nor more than 200 ppm chlorine or an equivalent sanitizing solution and shall comply with the labeling directions of the sanitizing solution.”