



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 09-009

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 end of the rule preface should include a deadline for the submission of comments to the rule.
- b. In s. ATCP 70.02 (19m), a citation to the U.S. Code should be included.
- c. In the treatment of s. ATCP 70.02 (20), “14th” should be replaced with “~~fourteenth~~.”
- d. To facilitate further additions to s. ATCP 70.02, possibly avoiding a future renumbering problem similar to the one SECTIONS 6 and 7 of the rule are addressing, s. ATCP 70.02 (22m) should be renumbered s. ATCP 70.02 (22c), and the new definition of “ready-to-eat food” should be numbered s. ATCP 70.02 (22g). For the same reason, ss. ATCP 70.261 and 70.262 should be numbered ss. ATCP 70.263 and 70.267.
- e. Section ATCP 70.04 (9) (b) 4. should be numbered as a separate paragraph from the preceding subdivisions, as it addresses how the equipment is used, while the rest of the rule paragraph addresses the equipment’s design.
- f. Similarly, s. ATCP 70.05 (1m) (c) 6. should be a separate paragraph, phrased in the active voice, as follows: “The operator of a food processing plant shall review the training program under par. (c) at least annually.”
- g. SECTION 14 of the rule creates s. ATCP 70.05 (1m), but then incorrectly numbers it s. ATCP 70.05 (1). The latter should be corrected.

h. In order to present the administrative procedure being created in s. ATCP 70.06 (7m) in chronological order, what is drafted as par. (e) should be the first paragraph of that subsection.

i. Section ATCP 70.07 (5) (intro.) should be rewritten as follows: “If there is any possibility that re-circulated water may come into contact with any food product or food contact surface, the re-circulated water may be used in a cooler or heat exchanger only if all of the following apply:”. Each of the following subdivisions should begin with the words “The water is.”

j. In s. ATCP 70.10 (5) (e), the phrase “; or protein from a major food allergen,” should be omitted, as it is included in the definition of “major food allergen.”

k. Section ATCP 70.11 (4) provides that the department may approve other sanitizers and sanitizing methods that it finds to be safe and effective for the purpose used. As these methods are approved, they should be placed in the Administrative Code. [See also s. ATCP 70.19 (4) (b).]

l. SECTION 25 should indicate whether the new s. ATCP 70.117 goes before or after the title to subch. III.

m. It appears that the material in s. ATCP 70.117 (Note) could be incorporated into s. ATCP 70.117 by listing in one subsection required elements of a plan, and authorizing in another subsection an operator to deviate from the plan if necessary, for example, in response to circumstances not fully anticipated in the plan.

n. The following comments relate to the creation of s. ATCP 70.18:

(1) What are numbered pars. (a) and (b) should be numbered subs. (1) and (2).

(2) Section ATCP 70.18 (Note) should be created as part of SECTION 28 of the rule and the current treatment clause of SECTION 29 should be omitted.

(3) If the note is in reference to the entire section, as the treatment clause of SECTION 29 states, it should be placed after the entire section, i.e., after s. ATCP 70.18 (2) (b) (which is incorrectly numbered (b) 2., in the rule). If, on the other hand, it is intended to be in reference to sub. (1), it is in the correct location.

o. The treatment of s. ATCP 70.225 should precede the treatment of s. ATCP 70.23.

p. There is no need to renumber s. ATCP 70.26 (5), if the new subsection is numbered (4m).

q. Section ATCP 70.261 (3) (intro.) should conclude with the phrase “all of the following apply.” Similarly, in sub. (4) (e), the phrase “The following” should be replaced by the phrase “All of the following.”

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

- a. In the analysis, the list of statutes providing authority for the proposed rules should include a reference to s. 227.11 (2), Stats.
- b. In s. ATCP 70.07 (3) (a) 5. and (b) 3., a cross-reference to the chemical oxygen demand or permanganate-consumed test should be provided.
- c. In s. ATCP 70.07 (6), the notation “ch.” should be inserted before the notation “NR.”

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

- a. In the rule preface discussion of fish processing, the acronym “HACCP” should be spelled out at this point rather than in the rule preface discussion of business impact. Also, the article “a” preceding the acronym should be replaced by the article “an.” The entire rule should be reviewed for the correct use of the article “an” preceding the acronym “HACCP.” Finally, in the third bulletpoint of the discussion of fish processing in the rule preface, the word “smoke” should be replaced by the word “smoked.”
- b. In s. ATCP 70.02 (19m), the definition of “major food allergen” includes an exception for “food that is exempt....” This should indicate from what, and by whom, the food is exempt.
- c. In s. ATCP 70.06 (6) (c), under what conditions would more frequent inspections be necessary?
- d. In s. ATCP 70.06 (7m) (d) 1., what must the plant operator control and monitor?
- e. In s. ATCP 70.07 (3) (a) (intro.), the term, “[w]ater reclaimed...from a compressor cooling water” appears to be incorrect. Should this be “...from the condensation of compressor cooling water,” or perhaps “...from a cooling compressor”?
- f. In s. ATCP 70.07 (3) (a) 6. and (b) 4., how does one organoleptically test a sample – by smelling and visually examining the sample? It seems this could be stated more directly; otherwise, the rule should provide a reference to organoleptic testing procedures.
- g. Section ATCP 70.07 (6) (c) 3. prohibits transporting potable liquids in a container that is also used to transport non-food items. It provides examples of non-food items, all of which are toxic or hazardous in nature, giving the impression that the prohibition is limited to such materials. However, the prohibition would apply as well to a container used to transport, for example, clean sand, which is neither toxic nor hazardous, would it not? The examples seem to obscure this, and so the prohibition may be clearer if the examples are omitted.
- h. In s. ATCP 70.117 (Note), it appears that “variations” should be replaced with “deviations.” Also, it appears that the word “on” should be inserted before the phrase “unexpected circumstances.”
- i. Section ATCP 70.20 (5) (b) states that no person may misrepresent the identity of any roe product by adding a color additive to that product. May a person add color to roe for any

other reason? If not, it would appear that tying this prohibition to the intent of misrepresenting the product's identity creates an unnecessarily difficult enforcement situation for the department. Would the department's intent be accomplished by simply prohibiting the addition of color additives to roe products?

j. In s. ATCP 70.261 (2), the second occurrence of "operator" should be omitted.

k. In the introductory paragraph to ch. ATCP 70 Appendix A, the first occurrence of the word "plans" should be omitted.