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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 12-037

#### 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 November 2011.]**

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

a. In the introductory clause, “ch. ATPC 70, Subchapter IV (title)” should be replaced with “subch. IV of ch. ATPC 70 (title)”. [s. 1.07 (2), Manual.]

b. If the agency has not done so, it should review the following requirements that apply to proposed rules that affect small business and determine which, if any, are applicable to the proposed rule:

(1) Section 227.114, Stats., requires an agency to take certain action if a proposed rule *may have an effect* on small business. If the proposed rule may have an effect on small business, the agency should insert the phrase “and affecting small business” at the end of the relating clause and explain in the analysis the effect on small business and the analysis and supporting documents used to determine the effect on small business under s. 227.114, Stats. The agency should also comply with any other requirements in s. 227.114, Stats. [s. 1.02 (1) (c) and (2) (a) 9. and 10., Manual.]

(2) If the proposed rule *will have an effect* on small business, the agency must prepare an initial regulatory flexibility analysis. [s. 1.02 (6), Manual, and s. 227.17 (3) (f), Stats.]

(3) If the proposed rule *may have an economic impact* on small business, the agency must submit the proposed rule to the Small Business Regulatory Review Board on the

same day that the rule is submitted to the Rules Clearinghouse. [s. 1.02 (6), Manual, and s. 227.14 (2g), Stats.]

c. SECTIONS 1 and 2 add requirements that relate to all food processors, not just shellfish shippers and processors. The relating clause to the proposed rule and the rule analysis should be modified to clarify this, to put other food processors on notice that they are affected by these rule provisions.

d. In SECTION 3, “of ch. ATPC 70” should be inserted after “Subchapter IV” in the treatment clause. [s. 1.07 (2), Manual.]

e. Throughout SECTION 4, the agency should use the word “shall” to denote a mandatory or absolute duty or directive, rather than the word “will” or “must”. [s. 1.01 (2), Manual.] For example, in s. ATPC 70.21 (4) (a), the word “will” should be replaced with “shall”.

f. Throughout SECTION 4, the agency should avoid using a negative subject with an affirmative “shall”. The correct way to express a prohibition is either “No person may...” or “A person may not...”. [s. 1.01 (2), Manual.] For example, in s. ATPC 70.21 (2) (b) and (c), the phrase “No licensee shall” should be replaced with “No licensee may”.

g. Throughout SECTION 4, the agency should review the use of subdivisions and subdivision paragraphs. The extensive use of subdivisions and subdivision paragraphs makes the proposed rule difficult to read. The agency might consider dividing the contents of s. ATPC 70.21 into multiple sections and, perhaps, creating a new subchapter for those sections.

h. Throughout SECTION 4, the agency should follow s. 1.03 (3) and (4), Manual, for introductory material and the subunits following introductory material. The agency should consider using words such as “all of the following” or “any of the following” in the introductory material. In addition, the subunits should end with a period, rather than a comma or semicolon or the word “and” or “or” (except for introductory material which ends in a colon). The use of periods facilitates future insertion or deletion of subunits. [s. 1.03 (3) and (4), Manual.] For example, in s. ATPC 70.21 (6) (d) 2. (intro.), “all of” should be inserted before “the following conditions” and subd. 2. a. to e. should end with periods.

i. Throughout SECTION 4, numbers should be expressed using Arabic numerals, except that numbers at the beginning of a sentence are spelled out and the number “one” is spelled out. [s. 1.01 (5), Manual.] For example, in s. ATPC 70.21 (6) (d) 1. (intro.) and 2. (intro.), “four” should be replaced with “4”.

j. The title for s. ATPC 70.21 should be written with an initial capital letter; not all words in the title should be capitalized. [s. 1.05 (2) (b), Manual.]

k. The acronym “FDA” is used in s. ATPC 70.21 (1) (a); it should be defined in the definitions section. [s. 1.01 (8), Manual.] Also, in s. ATPC 70.21 (1) (a), “number” should not be capitalized. [s. 1.01 (4), Manual.]

l. In s. ATPC 70.21 (1) (h), “ch.” should not be capitalized. [s. 1.07 (2), Manual.]

m. In s. ATCP 70.21 (1) (j), it appears that “repack shell-stock” should be the phrase defined in the paragraph, rather than “repacking shell-stock”. The phrase “repack shell-stock”, and not “repacking shell-stock”, is used in s. ATCP 70.21. [s. 1.01 (7), Manual.]

n. In s. ATCP 70.21 (1) (n), the second sentence in the paragraph is a substantive provision that should not be incorporated as part of the definition but should be placed elsewhere in the proposed rule. [s. 1.01 (7) (b), Manual.]

o. In s. ATCP 70.21, the subsection numbered (4) is repeated. The agency should renumber the second sub. (4) (entitled “Equipment”) as sub. (5), and renumber the subsequent sections accordingly. [s. 1.03, Manual.]

p. The acronym “HAACP” is used in s. ATCP 70.21 (4); it should be defined in the definitions section. [s. 1.01 (8), Manual.]

q. Section ATCP 70.21 (6) (d) 1. b. should be rewritten as a complete sentence that incorporates the contents of subd. 1. b. i. and ii. Subdivision paragraphs may not be further divided. [s. 1.03 (2) (f), Manual.]

r. In s. ATCP 70.21 (7) (b) 3. c., the agency should not refer to a singular and plural form of a word by using “(s)”. Instead, the singular form of the word should be used. [s. 1.01 (6) and (9) (e), Manual.]

s. In s. ATCP 70.21 (11) (e) 2., “sell” and “best” should not be capitalized. Also, in s. ATCP 70.21 (11) (f) 2. (intro.), “date” should not be capitalized. [s. 1.01 (4), Manual.]

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

a. In s. ATCP 70.21 (4) (a), “Part” should be inserted after “CFR”.

b. In s. ATCP 70.21 (4) (b), “the heat shock process, as defined in s. 70.21 (1) (c), Stats.” should be replaced with “heat shock”. Because “heat shock” is defined for purposes of s. ATCP 70.21 (see s. ATCP 70.21 (1) (c)), it is not necessary to reference any statute or administrative code provision that defines the word, as long as “heat shock” is intended to have the meaning provided in s. ATCP 70.21 (1) (c).

c. In s. ATCP 70.21 (10) (d), “paragraph (7) (b) 3.” should be replaced with “sub. (7) (b) 3.”. [s. 1.07 (2), Manual.]

d. In s. ATCP 70.21 (11) (b) (intro.), “rule” should be replaced with “subsection”. Similarly, in s. ATCP 70.21 (11) (c), “these labeling requirements” should be replaced with “the labeling requirements in this subsection”.

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

a. In the fiscal impact in the rule analysis, the comma after the second use of “DATCP” should be replaced with a period.

b. In s. ATCP 70.21 (4) (a), “their” should be replaced with “its”.

- c. In s. ATCP 70.21 (6) (a) 2., the semicolon should be removed.
- d. In s. ATCP 70.21 (6) (c) 1., the phrase “except for bulk shipments” should be moved to the beginning of the sentence.
- e. In s. ATCP 70.21 (6) (d) 2. a., “or below” should be removed.
- f. In s. ATCP 70.21 (6) (d) 2. b., should “time-temperature” be replaced with “time and temperature”?
- g. In s. ATCP 70.21 (8) (c) 1., who is the “administrator” referenced in the provision? The agency might consider defining “administrator” in the proposed rule.
- h. In s. ATCP 70.21 (8) (c) 3. d., the semicolon at the end of the provision should be replaced with a period.
- i. In s. ATCP 70.21 (8) (c) 3. g., a colon should be inserted after the word “tag”, and, in s. ATCP 70.21 (8) (c) 3. h., the semicolon should be replaced with a colon. Also, is it intended that the consumer advisory statement in s. ATCP 70.21 (8) (c) 3. h. be italicized? If so, this should be stated.
- j. In s. ATCP 70.21 (9) (d) 2., “Number” should be replaced with “The number”.
- k. In s. ATCP 70.21 (11) (a), a period should be inserted at the end of the provision.
- l. In s. ATCP 70.21 (11) (f) 2. a., the provision should be clarified, perhaps by inserting commas.
- m. Section ATCP 70.21 (11) (h) seems redundant with s. ATCP 70.21 (11) (d).
- n. In s. ATCP 70.21 (11) (i), the phrase “sell by date” should be in quotation marks to be consistent with s. ATCP 70.21 (11) (e) 2.
- o. In s. ATCP 70.21 (13) (a) 1., “chill shucked meats” should be replaced with “shucked meats shall be chilled” to emphasize the mandatory nature of this provision. Similarly, in s. ATCP 70.21 (13) (a) 7., the provision should be replaced with the following: “Dip buckets may not be used for hand or knife rinsing or sanitizing.” A similar comment applies to s. ATCP 70.21 (13) (a) 3., 4., and 8., as well as some of the subdivisions in s. ATCP 70.21 (13) (b) and (c).
- p. In s. ATCP 70.21 (13) (a) 2., “their” should be replaced with “his or her”.
- q. In s. ATCP 70.21 (13) (a) 9. b., the agency should clarify which “requirements” are applicable in that provision.
- r. In s. ATCP 70.21 (13) (b) 6., the text “frozen solid within twelve hours following the initiation of freezing” is confusing. The agency should consider rewording the provision to make it more understandable. See also comment 2. i. regarding the use of Arabic numerals.