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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Scott Grosz**  
*Clearinghouse Director*

**Anne Sappenfield**  
*Legislative Council Director*

**Margit Kelley**  
*Clearinghouse Assistant Director*

**Jessica Karls-Ruplinger**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE RULE 19-076

#### 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 December 2014.]**

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

a. The rule summary’s listing of the deadline to submit comments should identify how a reader would determine the dates of the public hearings to which the comment deadline is tied, and how a reader would know which hearing date is “last” and that no further hearings are to be scheduled.

b. Throughout the proposed rule, when a single word or number is amended, the existing word or number should be stricken in its entirety and the new word or number should be shown immediately after the strike-through, with underscoring. Review and correct, for example, the amendment in s. ATPC 77.06 (1) (a), among others. [s. 1.06 (2), Manual.]

c. In s. ATPC 77.02 (1) and other provisions of the proposed rule, the agency could consider amending the affected provision, rather than fully repealing and recreating it. A drawback of repealing and recreating a provision is that only the new text is shown and not the changes to the existing text. This can make it more difficult to trace the changes made to the rule over time and can cause confusion about which version applies when referencing the provision. [s. 1.065, Manual.]

d. Also in s. ATPC 77.02 (1), each of the subunits should end in a period. [s. 1.03 (4), Manual.]

e. In s. ATPC 77.02 (3) (e), (g), (n), and (q) to (s), a period should be inserted at the end of each subunit. [s. 1.03 (4), Manual.]

f. Consider using the opportunity of the proposed rule to additionally insert periods at the end of each paragraph in s. ATCP 77.02 (3), in order to conform the rule to current style conventions. [s. 1.03 (4), Manual.]

g. In the treatment clause for SECTION 8 of the proposed rule, the word “through” should be revised to the word “to”. The same comment also applies to SECTION 12 of the proposed rule. [s. 1.01 (9) (d), Manual.]

h. Also in SECTION 8, the designation for par. “(q)” should not be re-used, as that is already an existing designation in the current rule. Reuse of numbers can cause confusion, and is not necessary to eliminate a gap. Consider using a different designation for that paragraph, such as “(qm)”, or beginning the sequence for the new inserted provisions with the designation “(r)”. [s. 1.03 (5) (a) and (b), Manual.]

i. In SECTION 9 of the proposed rule, the treatment clause should be revised to state that “ATCP 77.02 (3) (q) is renumbered ATCP 77.02 (3) (t)”. The listing for the type of treatment should also be corrected in the rule caption’s listing of affected provisions. Also, when a provision is renumbered, if there are no other amendments to the provision, the text of the rule should not be shown, and should be removed. [s. 1.067, Manual.]

j. The treatment of s. ATCP 77.02 (3) (q) in SECTION 9 of the proposed rule should be re-arranged to appear before the higher-numbered paragraphs that are created in SECTION 8. The SECTIONS of a proposed rule should be arranged sequentially, based on the provisions being treated. [s. 1.04 (1) (a), Manual.]

k. In the treatment clause for SECTION 11 of the proposed rule, the designation “(1) (e) 3.” should be inserted between “ATCP 77.04” and the word “(Note)”. The citation should also be corrected in the rule caption’s listing of affected provisions.

l. In ss. ATCP 77.10 (2) (b) and 77.14 (1) (b) and (c), the final period of each provision should not be underscored. [s. 1.06 (4), Manual.]

m. In s. ATCP 77.14 (1) (b), the citation to “77.03” should be revised to include the source designation “s. ATCP”, before the number.

n. In the treatment clause for SECTION 17 of the proposed rule, the format to identify subd. 3. in the citation to s. ATCP “77.20 (2) (c) (3)” should be revised to “77.20 (2) (c) 3.”, without parentheses around the subdivision number. [s. 1.03 (1) (Example), Manual.] The citation should also be corrected in the rule caption’s listing of affected provisions.

o. In s. ATCP 77.22 (2) (a), rather than repealing and recreating the provision, consider repealing the paragraph and creating two new pars. (c) and (d) for the two new alternatives that are included in the new sentence. The created material is a completely different provision, and is not just a reworking of the existing content. Also, the paragraphs in the current text of the rule are already structured as alternatives, and it would be more appropriate to separate the two alternatives in the proposed text to follow par. (b) as two separate, additional alternatives. [ss. 1.03 (3) and 1.067, Manual.]

p. In s. ATCP 77.22 (3) (c), the inserted phrase “accuracy based on” should be revised to be shown after the strike-through of the phrase “ability to perform”. Stricken material should precede new underscored material. [s. 1.06 (1) (a), Manual.]

q. In SECTION 21 of the proposed rule, only the text of the affected subunits of s. ATCP 77.23 (3) should be shown. The current text of any subunits that are not amended should not be shown, and should be removed. [s. 1.04 (1) (b) 2., Manual.] The treatment clause for the SECTION, and the rule caption’s listing of affected provisions, should likewise be revised to identify only the specifically affected subunits of s. ATCP 77.23 (3). For example, the treatment clause could state that “ATCP 77.23 (3) (a), (b) (intro.), and (c) to (f) are amended to read:”.

r. SECTION 23 of the proposed rule should be divided into three separate treatment SECTIONS, as follows:

- (1) To amend s. ATCP 77.24 (5) (c) (intro.). Also, the final period should be shown with a strike-through, and an underscored colon should be inserted.
- (2) To renumber s. ATCP 77.24 (5) (c) 4. and 5. to ATCP 77.24 (5) (c) 6. and 7. No text is shown.
- (3) To create s. ATCP 77.24 (5) (c) 4m. and 5m.

s. In s. ATCP 77.24 (5) (c) (intro.), a 1995 edition of FDA material that was incorporated by reference is updated to the 2017 edition. Materials may, in certain circumstances, be incorporated or updated with the consent of the Attorney General. The rule summary should be revised to include a comment on compliance with that requirement. [s. 227.21 (2) (a), Stats.; s. 2.08 (4), Manual.]

t. In SECTION 24 of the proposed rule, only the text of the affected subunits of s. ATCP 77.34 (5) (a) should be shown. The current text of any subunits that are not amended should not be shown, and should be removed. [s. 1.04 (1) (b) 2., Manual.] The treatment clause for the SECTION, and the rule caption’s listing of affected provisions, should likewise be revised to identify only the specifically affected subunits of s. ATCP 77.34 (5) (a). For example, the treatment clause could state that “ATCP 77.34 (5) (a) (intro.) and 1. to 3. are amended to read:”.

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

a. In s. ATCP 77.20 (2) (c) 3., the reference to the “current on-line edition” of a manual does not sufficiently identify what is needed to comply with this responsibility. [s. 1.01 (9) (b), Manual.] Is this intended to mean that the operator must have the most recent edition with all updates issued as of the date the operator performs a microbiological test? Also, how would an operator “keep” an online resource? Should the operator instead be required to “have access” on site to the online manual with all updates issued as of the testing date?

b. In s. ATCP 77.22 (3) (c), the insertion of the phrase “electronic bacteria counts” should be revised to include an underscored comma at the end of the phrase.

c. Section ATCP 77.22 (7) should be redrafted for clarity. The language in each of the subunits following the colon in s. ATCP 77.22 (7) (intro.) should form a complete sentence when read with the introduction. [s. 1.03 (3), Manual.]