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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 95-060

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 October 1994.]

1. Statutory Authority

The creation of s. ATCP 11.16 (2) (L) by SECTION 54 is disingenuous. Section 95.49, Stats., forbids the intrastate movement of cattle or bison born after a certain date unless accompanied by a negative brucellosis report. The statute contains a number of exceptions; none of them are related to the brucellosis-free status of the state. The creation of this additional exception in s. ATCP 11.16 will give the impression that cattle currently can be freely moved in Wisconsin without a brucellosis test (since Wisconsin is currently classed brucellosis-free); however, that is contrary to the statute. Unless and until the statute is altered by legislation (e.g., 1995 Assembly Bill 22), this provision arguably should not be created, since it is misleading. However, if this exception is retained in the rule, then the Note to s. ATCP 11.16 (already affected by SECTION 55 of the rule-making order) should be made much more explicit and direct, in order to warn readers of the true status of the law.

2. Form, Style and Placement in Administrative Code

a. The use of parentheses should be avoided throughout the rule. [See s. 1.01 (6), Manual.] Parenthetical material should be worked into the text of the rule, placed in a note or deleted. For example, on page 21, line 2, the paragraph could be rewritten: “(d) Eastern, western or Venezuelan equine encephalomyelitis.”

b. At two locations--page 30, line 11, and page 31, line 24--subsection titles were amended without the insertion of “(title)” before the amended title.

c. The treatment clause of SECTION 44--page 56, line 1--should be changed from “amended” to “repealed and recreated.”

d. The stricken material at page 59, lines 18 and 19, should be deleted from the rule, since this text does not exist in the current rule.

e. At page 62, line 21, “the” should not be stricken and reinserted; rather, only “ruminant” and “animal” require the application of strikes and underscores.

f. At page 62, line 22, “or certificate” should not be underscored; these words already appear in the current rule.

g. The text of s. ATCP 12.03 (13), proposed to be amended on page 68 by SECTION 69 of the rule-making order, bears no resemblance to the text shown in the current rule.

h. At page 69, line 3, the underscore should stop short of the period, which already exists in the current rule.

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

The analysis of the rule-making order, when reciting statutes interpreted, fails to include citations to ss. 95.30, 95.31, 95.43 and 95.49, Stats. These sections appear to be appropriate additions.

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

a. It is not clear why an axillary tuberculosis test is included in the definition of “tuberculosis test,” which commences at page 20, line 5. Chapter ATCP 10 does not otherwise refer to axillary tuberculosis tests.

b. At page 21, line 10, the words “in writing or by telefax” should be moved to sub. (3) of s. ATCP 10.02, which generally deals with the form and mode of reporting animal diseases to the department.

c. Should instructions on interpreting bovine comparative cervical tuberculin tests to set forth what constitutes a “suspect” be included at page 26, line 18? [By comparison, see page 25, lines 14 to 16, which gives clear directions on interpreting a caudal fold tuberculin test.]

d. Section ATCP 10.15 (2) (d), commencing at page 26, line 20, states that, if an animal is a suspect on two successive tests, the animal shall be classified as a tuberculosis reactor “unless the department determines that the animal should not yet be classified as a reactor.” The rule would be less open to arbitrary interpretation if the factors that will guide the department’s determination were set forth. [This comment also applies at page 37, lines 16 and 17.]

e. At page 27, line 17, “It” should replace “The suspect animal” to be consistent with the syntax of the foregoing material.

f. The rule's regulation of slaughter of tuberculosis reactors, set out at page 29, lines 10 to 16 and page 41, lines 16 to 22, provides that if a slaughtered animal may be used for food, it must be slaughtered at a "meat establishment" licensed either by the department or the U.S. Department of Agriculture. Since: (1) a "meat establishment" licensed by the department under s. 97.42, Stats., is not necessarily an establishment where animals are slaughtered; and (2) a "slaughtering establishment" is already defined in an adequate fashion by s. ATCP 10.01 (62), it is suggested that the defined term be used.

g. SECTION 20's amendment of s. ATCP 10.16 (1), commencing at page 29, line 17, and relating to when indemnities for bovine tuberculosis will not be paid, proposes to deny indemnification if a reactor is not slaughtered within the time period "specified" under s. ATCP 10.151 (3). Strictly speaking, the cited section does not "specify" a period for slaughter; it requires slaughter within 15 days after an animal is classified as a reactor, but allows the department, for good cause, to extend the slaughter deadline by up to 15 additional days. It is suggested that "established" replace "specified" to characterize more accurately the time period within which slaughter must be accomplished in order to be eligible for receipt of an indemnity payment.

h. Section ATCP 10.19, relating to anaplasmosis control and revised by the rule-making order, appears to abandon the current rule's approach of quarantining entire herds if infection is suspected. The proposed rule appears to adopt an approach of quarantining individual animals for purposes of either: (1) segregation and treatment or slaughter; or (2) additional testing. However, s. ATCP 10.19 (3), at page 33, line 18, continues to refer to "a quarantined herd." To avoid confusion, it is suggested that the first clause of sub. (3) be reworded as follows: "If quarantined bovine animals are found negative...."

i. Section ATCP 10.66 (15) (b) is not clear regarding whether a departmental order condemning and ordering the destruction of cervidae in a known infected herd will encompass all animals or just those animals classified as reactors. If whole-herd destruction in all cases is not intended, that would be apparent if "specific" were inserted prior to "cervidae" at page 43, line 22.

j. Section ATCP 10.66 (15) (d) refers to a "suspect" in a known infected herd at page 44, line 9. However, pursuant to s. ATCP 10.66 (4) (d), all cervidae from known infected herds shall be classified as either "negative" or "reactor." "Suspects" are not contemplated to exist in known infected herds. Also, on line 12, the second "the" should be deleted.

k. Section ATCP 11.02 (6) appears to assume that animals imported from other states on consignment to a livestock dealer or market operator will always be sold to Wisconsin purchasers. Unless the department is confident that such a result is uniformly obtainable, the words "to a purchaser in this state" at page 57, lines 4 and 5, should be deleted.

l. There is an errant "2" in the middle of "person" at page 69, line 2.