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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 11-048

#### 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. The agency should review the introductory clause to ensure that the enumeration of the rule provisions treated by the rule-making order is consistent with changes made to the rule as a result of the adoption of any comments in this report. [s. 1.02 (1), Manual.] In addition, it appears that “10.53 (1) and (2) (d) 4.” at the end of the last line on page 1 should be removed; this is a duplicate reference to these provisions.

b. The rule summary should contain all of the headings described in s. 1.02 (2) (a), Manual. If there is no information under a particular heading, the heading should be included and the text should state that there is no information.

c. In the statutory authority section of the rule summary, the agency should list the statutes that grant rule-making authority to the agency. Any statutes that are relevant, but do not grant rule-making authority, should be included in the statutes interpreted section or the related statutes or rules section.

d. When two or more subsections, paragraphs, subdivisions, or subdivision paragraphs of the same rule section are affected by the same treatment, they may be included in the same SECTION of the rule-making order even though there are unaffected subunits intervening. [s. 1.04 (2) (a) 4., Manual.] In some instances, the rule groups subunits of the same rule section that are affected by the same treatment into the same SECTION. However, in other instances, the rule does not group subunits of the same rule section that are affected by the same treatment into the

same SECTION. For example, see SECTIONS 4 to 6. The agency should adopt one approach relating to the grouping of subunits and use that approach consistently in the rule.

e. Throughout the rule, some SECTIONS renumber several provisions and, then, amend one of those renumbered provisions. For example, see SECTION 57. When two or more subunits of the same rule section are affected by different treatments, each is treated separately in separate SECTIONS of the rule-making order. [s. 1.04 (2) (b), Manual.]

f. If an introduction in a rule section or subunit is amended and the remaining text of the section or subunit is not amended, the treatment clause of the SECTION and in the introductory clause should include “(intro.)” after the section or subunit. [s. 1.03 (3), Manual.] For example, see the reference to s. ATCP 10.30 (8) and (9) in SECTION 46.

g. Throughout the rule, several provisions are renumbered. It is generally best to avoid renumbering existing rule sections or subunits to insert new rule sections (or smaller subunits) into existing rule provisions, to eliminate a gap in numbering, or to otherwise reuse a previously existing number that is eliminated by repeal. Section 1.03 (5), Manual, describes the circumstances under which renumbering may be appropriate. The agency should consider whether renumbering is necessary in the rule, including in SECTIONS 68 to 70 and 76 to 77.

h. Throughout the rule, several notes appear to contain substantive requirements. For example, see SECTION 82 of the rule. The agency should not include substantive requirements in notes. [s. 1.09 (1), Manual.]

i. In SECTION 3, “~~s.~~ ss.” should replace “ss.” [s. 1.06 (2), Manual.]

j. In SECTION 46, “import” in s. ATCP 10.30 (2) (b) 4. should be underlined. [s. 1.06 (1), Manual.]

k. In SECTION 46, the title of s. ATCP 10.30 (9) should be shown. [s. 1.05 (3) (c), Manual.]

l. In SECTION 61, the period at the end of the paragraph should not be underlined. [s. 1.06 (4), Manual.]

m. The SECTION located between SECTIONS 68 and 69 should be numbered SECTION 68m.

n. In SECTION 86, the rule proposes to repeal and recreate current s. ATCP 10.53 (10) (b). As proposed, s. ATCP 10.53 (10) (b) would not include the current rule’s requirement that a person notify the department whenever that person adds to a herd a farm-raised deer originating from a herd that has been enrolled in the chronic wasting disease herd status program for a shorter period than the receiving herd. The proposed rule does, however, maintain the provision stating that the status date of a herd may be lowered based on addition of a deer from a herd that has been enrolled in the program for a shorter period of time than the receiving herd. How will the department obtain notice that a deer has been added to a herd from a herd with a lower status?

o. In SECTION 98, “this” in s. ATCP 10.60 (11) should be underlined. [s. 1.06 (1), Manual.]

p. In SECTION 104, “ATCP 10.61 (2) (g), (h) and (note), and (i) and (note)” should replace “ATCP 10.61 (2) (g) to (i) and (note)” in the treatment clause.

q. In SECTION 107, the requirement in s. ATCP 10.61 (5m) (a) that fish farms be medically separated if one or more of the farms is a type 3 fish farm is a mandatory action and therefore should be set forth as a requirement. For example, the last sentence in s. ATCP 10.61 (5m) (a) could be replaced with the following: “The fish farms shall be medically separated if at least one of the fish farms is a type 3 fish farm”.

r. To avoid confusion over the renumbering of s. ATCP 10.61 (5m) (b) in SECTION 106 and the inclusion of a new par. (b) in SECTION 107, the following changes are suggested:

(1) In what is currently SECTION 106, do not renumber pars. (b) and (c) as (c) and (d), but simply amend par. (c). Then, move this language to SECTION 107, with the following treatment clause: “SECTION 107. ATCP 10.61 (5m) (c) is amended to read:”.

(2) In what is currently SECTION 107, eliminate the letter “(b)” and move up the phrase ending with the colon to the previous line, to follow the underscored sentence. Because par. (c) is no longer being renumbered, it is unnecessary to set forth subs. 1. to 3., as there are no other changes to those provisions. Move this language to SECTION 106, with the following treatment clause: “SECTION 106. ATCP 10.61 (5m) (a) (intro.) is amended to read:”.

s. The material in SECTION 117 should be placed before the material in SECTION 116. [s. 1.04 (1), Manual.]

t. In SECTIONS 119, 130, and 131, ss. ATCP 10.62 (2) (e), 10.63 (1) (b), and 10.64 (1) should indicate how the reader may determine which fish species have been determined by the federal bureau to be susceptible to viral hemorrhagic septicemia. Also, in SECTIONS 119 and 136, what is “the federal bureau”? The term should either be defined or explained in a note.

u. In SECTION 128, in the treatment clause, the section affected should be referred to as it is currently numbered.

v. In SECTION 136, s. ATCP 10.65 (4) (f) should indicate how the reader may determine which egg disinfection methods have been approved by the federal bureau.

w. The provision created in SECTION 156 should be numbered (24m). Likewise, the provisions created in SECTION 161 and 164 should be numbered (9m), and the provision created in SECTION 165 should be numbered (8m). [s. 1.03 (5) (b), Manual.]

x. In SECTION 172, the titles of s. ATCP 12.06 (2) and (3) should be shown. [s. 1.05 (3) (c), Manual.]

y. In SECTION 180, “(4) (a) and (note), (b), and (c) and (note)” should replace “(4) and (note)” in the treatment clause.

z. In SECTION 180, “shall” should be changed to “may” in s. ATCP 15.04 (3) (c) and (4) (c).

aa. In SECTION 182, the underlined period at the end of the subsection should be removed. [s. 1.06 (4), Manual.]

bb. In SECTION 184, “2” should replace “two”. [s. 1.01 (5), Manual.]

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

a. Throughout the rule summary, “ATCP 10” and “ATCP 12” should be preceded by “ch.”. [s. 1.07 (2), Manual.]

b. In SECTION 14, “ss. ATCP 10.80 and 16.16” should replace “s. ATCP 10.80 and s. ATCP 16.16”. [s. 1.07 (2), Manual.]

c. In SECTION 63, “sub. (1)” should replace “s. ATCP 10.46 (1)”. [s. 1.07 (2), Manual.]

d. In SECTION 97, it appears that “s. 281.01 (18), Stats.” should replace “s. 281.18, Stats.”.

e. In SECTION 161, “ch. 95” should replace “chapter 95”. [s. 1.07 (2), Manual.]

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

a. Throughout the rule, several notes amend the U.S. Department of Agriculture website address. In some instances, the colon preceding the website address is missing. For example, see SECTIONS 43 and 44.

b. In SECTION 4, “and” should be inserted before “(67)” and the comma following “(note)” should be removed in the treatment clause.

c. In SECTION 11, “~~ch. ATCP~~” should be inserted before “16” in the note to reflect the existing text.

d. In SECTION 14, it appears that in the note following s. ATCP 10.06 (7) (c), after the first instance of “dogs,” the phrase “imported into the state” should be inserted.

e. In SECTION 27, the rule provides that the department *may* prorate the fee for certifications less than two years. To provide more certainty regarding the proration of the fee, the agency should either replace “may” with “shall” or describe the circumstances under which the agency will prorate the fee.

f. In SECTION 31, the comma following “ATCP 10.20 (1) (b)” in the treatment clause should be removed.

g. In SECTION 46, should the term “micro pig”, used in s. ATCP 10.30 (3) (b) 6., and elsewhere in the rule, be defined?

h. In SECTION 60, s. ATCP 10.46 (10) (a) 7., may be more clear if rephrased as follows: “If the farm-raised deer escaped the herd, the date of the escape, and, if the deer returned, the date of its return.”

i. The analysis should explain why the rule (in SECTION 63) repeals the department’s authority to issue a permit to operate a tuberculosis isolation and testing facility on a registered farm-raised deer premises.

j. In SECTION 83, a period should be inserted at the end of s. ATCP 10.53 (5) (a) 3.

k. In SECTION 83, in the note following s. ATCP 10.53 (5) (a) 5. b, “can” should be changed to “may”.

l. In SECTION 83, in s. ATCP 10.53 (5) (b) (intro.), “A report that shall indicate” should be changed to “A report that indicates.” In addition, the rule should clarify whether the requirements that apply to a deer that “left the herd” also apply to a deer that escaped or died. The wording of s. ATCP 10.53 (5) (b) (intro.) creates the impression that escaping, dying or leaving the herd are completely separate types of events.

m. In SECTION 83, in s. ATCP 10.53 (5) (b) 6., why is a copy of the laboratory report required only if the test was not performed at the Wisconsin veterinary diagnostic laboratory?

n. In SECTION 94, it appears that “live fish” should be inserted following “rears” to make the sentence clearer.

o. In SECTION 97, “includes” should replace “include”.

p. In SECTION 98, the agency should consider rewriting the definition of “wild source” to incorporate the contents of the note into the definition, rather than creating the note.

q. In SECTION 104, s. ATCP 10.61 (2) (g) 2., “may” should be changed to “are”.

r. In SECTION 107, s. ATCP 10.61 (5m) (b) (intro.) would be easier to understand if the phrase “considered to be” were inserted after “are”.

s. In SECTION 113, the period following “ATCP 10.61 (11) (b)” in the treatment clause should be removed.

t. In SECTION 114, s. ATCP 10.61 (11) (c) should clearly specify the circumstances under which fish or fish eggs that are being transported are not required to be accompanied by the documents listed in s. ATCP 10.61 (11) (b).

u. In SECTION 121, the comma following “(f)” in the treatment clause should be removed.

v. In SECTION 152, “state statute” should replace “state law” to clarify that the waiver may not conflict with state statute but may conflict with department rules.

w. In SECTION 158, the period following “ATCP 12.02 (1m)” should be removed.

x. SECTION 159 proposes to eliminate the requirement that animal market premises be disinfected between public sales. The analysis explains that disinfection is required, however, when a suspect or reactor animal is known to be present. Where is this requirement set forth in the rule?

y. In SECTION 168, a comma should be inserted after “wide” in s. ATCP 12.045 (6) (b) (intro.).

z. In SECTION 177, a comma should be inserted after “*Appendix A or B*”.

aa. In SECTION 180, in s. ATCP 15.04 (2) (e), “For a person who applies for the renewal of a certification after that certification has expired” should replace “A person who applies for the renewal of a certification after that certification has expired shall pay”.

bb. In SECTION 180, the comma after “biennium” should be removed in s. ATCP 15.04 (3) (c) (note) and (4) (c) (note).

cc. In SECTION 180, s. ATCP 15.04 (4) (a), “at least 2 years” should be changed to “2 years or longer”.

dd. In SECTION 184, a period should be inserted at the end of s. ATCP 15.08 (6) (c) 1.

ee. In SECTION 184, s. ATCP 15.08 (6) (c) 2. should specify that the applicant must pass the examination.