



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE RULE 22-003

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

2. Form, Style and Placement in Administrative Code

a. In the introductory clause of the proposed rule, the enumeration of provisions treated should be listed in the order specified in s. 1.01 (1) (b), Manual.

b. SECTION 1, in part, defines “adulterated” as “any animal remains...”. However, the term “adulterated” is not used within the proposed rulemaking order, nor is it used within ch. ATPC 57, as currently promulgated. As such, it appears that the definition could be omitted. If there is a need to retain the definition, the text could be modified to define an adulterated item (e.g., “adulterated remains”), rather than simply defining “adulterated”. As currently proposed, the adjective “adulterated” is defined as a noun (“any animal remains...”).

c. Within SECTION 1, the definition of “dead animal” could be reformatted to promote clarity. Specifically, the description of items that “dead animal” does not include could be included as a subdivision to s. ATPC 57.01 (11), rather than being incorporated into s. ATPC 57.01 (11) itself. A sample formatting approach is presented in s. 1.07 (3) (c), Manual.

d. Within SECTION 1, the definition of “food” contains an underscored hyperlink to the statutes. The underscoring and hyperlink should be omitted to avoid confusion, as underscoring is used to denote material to be inserted into a rule. The same consideration should be made with respect to SECTION 10.

e. SECTIONS 2, 4, 6, and 7 propose to renumber subsections of ATPC 57.10 to accommodate the insertion of new material. It is generally best to avoid renumbering as it impairs the ability to trace a provision’s history and may result in ambiguity or error. [See s. 1.10 (3), Manual.] The preferred approach would be to insert the language proposed in SECTION 3 as s. ATPC 57.10 (1m). [See s. 1.10 (3) (c), Manual.] Another alternative approach would be to include the information in proposed s. ATPC 57.10 (2) (i.e., activities that are not considered rendering) within the definition of “rendering” created in SECTION 1. Use of one of these approaches eliminates the need to address other issues that result from the proposed renumbering. Notably, the proposed approach results in incorrect cross-references within s. ATPC 57.10 (2) (j), (3) (Note), (4), and (5). The treatment in

SECTION 4 is also improper because SECTION 5 affects an intervening subunit with a different treatment. [See s. 1.03 (2) (c) 2., Manual.]

f. The treatment in SECTION 5 is mischaracterized. The note that SECTION 5 proposes to amend should be characterized as s. ATCP 57.10 (2) (j) (Note).

g. Within SECTION 6, the renumbering of paragraphs is generally unnecessary. Although it appears that the renumbering is proposed to correct the omission of s. ATCP 57.10 (7) (b) that occurred when ch. ATCP 57 was repealed and recreated through Clearinghouse Rule 17-116, renumbering can contribute to confusion and should be avoided when possible. [See s. 1.10 (3), Manual.]

h. Within SECTION 10, the text that is being added to s. ATCP 57.12 (1) (b) (Note) should be underscored and the text that is being removed should be included and stricken through. Additionally, as noted previously, hyperlinks should be omitted from the proposed rulemaking order to avoid the confusion that results from their underscoring.

i. SECTIONS 11 and 13 propose to renumber subsections of s. ATCP 57.12 to accommodate the insertion of new material. As mentioned previously, it is generally best to avoid renumbering in these situations. [See s. 1.10 (3), Manual.] The preferred approach would be to include the information in proposed s. ATCP 57.12 (2) as s. ATCP 57.12 (1m). Alternatively, the information in proposed s. ATCP 57.12 (2) (i.e., activities that are not considered animal food processing) could be included within the definition of “animal food processing” created in SECTION 1. Use of one of the approaches described above will eliminate the need to address other issues with the proposed approach, including the errors it creates with existing cross-references and the improper consolidation of treatments due to intervening subunits that are subject to different treatments.

j. Various treatments to ss. ATCP 57.12 and 57.14 are mischaracterized within the proposed rulemaking order. It appears that the treatment clauses currently reference provisions after proposed renumbering, rather than referencing the provisions as they are currently organized in the code. In particular, the following issues should be corrected:

- (1) The treatment in SECTION 14 should be characterized as an amendment to s. ATCP 57.12 (2) (j) (Note), rather than an amendment to s. ATCP 57.12 (3) (j) (Note).
- (2) SECTION 15 purports to amend s. ATCP 57.12 (8) (a). The treatment should instead note an amendment to s. ATCP 57.12 (7) (a).
- (3) Given the renumbering approach proposed in SECTION 13, it is unclear which provisions SECTION 16 intends to repeal. The treatment in SECTION 16 should be reviewed to verify that it references the correct provisions in the current code.
- (4) The treatment in SECTION 19 should be characterized as a renumbering of and an amendment to s. ATCP 57.14 (2) (g) (Note), rather than s. ATCP 57.14 (3) (g) (Note). Additionally, the introductory clause does not properly reflect this proposed treatment.
- (5) The treatment in SECTION 22 should be characterized as an amendment to s. ATCP 57.14 (7) (a), rather than an amendment to s. ATCP 57.14 (8) (a).
- (6) It appears that the treatment in SECTION 23 should be characterized as a repeal of s. ATCP 57.14 (7) (f), rather than a repeal of s. ATCP 57.14 (8) (f).

k. SECTIONS 17 and 21 propose to renumber subsections of s. ATCP 57.14 to accommodate the insertion of new material. As mentioned previously, it is generally best to avoid renumbering in these situations. The preferred approach would be to modify the treatment in SECTION 18 to create s. ATCP 57.14 (1m), rather than s. ATCP 57.14 (2). Alternatively, the language in proposed s. ATCP 57.14 (2) could be incorporated in the definition of “grease processing” created in SECTION 1. Use of an alternative approach will mitigate other issues created by the proposed renumbering, including errors with existing cross-references and the improper consolidation of treatments due to intervening subunits that are subject to different treatments.

l. For treatments that propose to renumber and amend a particular provision, the renumbering and amendment should be listed in the treatment clause and the amended text should be shown with the new number. The former number should not be stricken through nor shown. [See s. 1.04 (6) (b), Manual.] The treatments in SECTIONS 6 and 19 should be modified to correct this issue.

m. SECTION 24 incorrectly reproduces the text of s. ATCP 57.16 (2) (i) (Note). The note currently referenced does not contain language relating to a grease processor license. This treatment should be reviewed and modified to ensure that it captures the agency’s intent.

n. SECTION 31 proposes to renumber s. ATCP 57.22 (3) (h) for the purposes of inserting two new paragraphs. However, the preferred approach would be to omit the proposed renumbering and instead insert s. ATCP 57.22 (3) (gg) and (gr).

o. Throughout the rulemaking order, references to notes should use parentheses (e.g., (Note)). This formatting approach should be used in the treatment clauses, as well as in the introductory clause that enumerates the treatments within the proposed rulemaking order.

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

a. Within the definition of “food” in SECTION 1, the proposed note refers to “[f]ood, as defined in sub. (13)”. This cross-reference should be amended to refer to sub. (17), as sub. (13) no longer defines “food” under the proposed rulemaking order.

b. Within the new note created in SECTION 9, it appears the cross-reference to s. ATCP 57.20 (1) (b) 5. and 6. should only be a cross-reference to s. ATCP 57.20 (1) (b) 6.

c. SECTIONS 12 and 18 include mention of food processing pursuant to a license under s. ATCP 70.03. However, this cross-reference appears to be invalid (s. ATCP 70.03 was eliminated in a previous repeal and recreation of ch. ATCP 70). These cross-references should be modified to reference the correct provisions in the current code.

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

a. SECTION 1, in part, defines “animal food processing” as “...collecting... of dead animals for processing into animal food...” and “animal food processing plant” as “a place at which animal food processing occurs”. By these definitions, it appears that a location from which animal carcasses are collected (e.g., a farm) could constitute an animal food processing plant. Could the definition of “animal food processing plant” be modified to better clarify its scope?

b. Within SECTION 1, proposed s. ATCP 57.01 (8) (a) (Note) reads, in part, “[t]he term “carcass: as used in this chapter...”. The colon after “carcass” should be replaced with a quotation mark. Additionally, the hyphen within proposed s. ATCP 57.01 (8) (b) could be omitted for

consistency with other presentations of the term “fully rendered product” throughout the rulemaking order.

c. Within the definition of “collector” in SECTION 1, the word “only” could be omitted. The latter part of the definition already provides that a person who engages in other animal processing activities besides collecting does not constitute a collector.

d. The definition of “facilities” in SECTION 1 could be modified to reference a “truck transfer station” rather than simply a “transfer station”. given that “truck transfer station” is the defined term.

e. Within the definition of “feed” in SECTION 1, additional text could be added to s. ATCP 57.01 (16) (Note) to explain why the reader may wish to consult with ch. ATCP 42.

f. Within the definition of “grease processing” in SECTION 1, the text “any of the following:” could be omitted. The use of “or” in the list provides that grease processing does not necessarily constitute all of the enumerated activities collectively.

g. Within the definition of “grease processor” in SECTION 1, it appears that the final “or” should be omitted.

h. The definition of “person” in SECTION 1 could be omitted as the term “person” is generally self-defining. [See s. 1.07 (1) (e), Manual.]

i. Within SECTION 1, the definitions of “brown grease” and “yellow grease” may be omitted as the terms do not appear in the proposed rulemaking order, nor do they appear in ch. ATCP 57, as currently promulgated. If the definition of yellow grease is retained, the “g” in “grease” should be lower case.

j. Within s. ATCP 57.12 (2) (c), in SECTION 12, the words “operations” and “conducted” could be omitted to promote parallelism between the paragraphs. This change would also provide for wording similar to that used in SECTION 18.

k. In SECTION 20, the word “fee” should be inserted after “inspection” in “[a] pre-license inspection of \$25 for each...”.

l. In s. ATCP 57.18 (1), within SECTION 27, the words “truck transfer station” should not be in quotation marks. Additionally, the meaning of the term “contiguous state” in s. ATCP 57.18 (1) (Note) is somewhat unclear. The note could be clarified to better indicate whether reciprocity agreements may only be made with neighboring states or if reciprocity agreements may be entered into with any other state in the lower 48 states.

m. In SECTION 27, s. ATCP 57.18 (2) (b) and (c) are largely duplicative of each other. These provisions should be reviewed and consolidated for clarity.

n. Various provisions in the proposed rulemaking order relate to requirements that something be “designed, constructed, equipped and maintained for safe, sanitary, orderly operation, and for easy cleaning”. However, the wording varies slightly among these provisions, the some including an “and” between “sanitary” and “orderly”. The language of these provisions could be reviewed and modified to promote consistency.