



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary Randy Romanski

Report From Agency

DATE: May 23, 2023

TO: The Honorable Chris Kapenga
President, Wisconsin State Senate
Room 220 South, State Capitol
PO Box 7882
Madison, WI 53707-7882

The Honorable Robin Vos
Speaker, Wisconsin State Assembly
Room 217 West, State Capitol
PO Box 8953
Madison, WI 53708-8953

FROM: Randy Romanski, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: Clearinghouse Rule
Final Draft Rule regarding ATCP 57 relating to Inedible Animal By-Products

Proposed Rule

The proposed rule is attached.

Reference to Applicable Forms

There are no applicable forms.

Fiscal Estimate and EIA

The fiscal estimate and EIA are attached.

Detailed Statement Explaining the Basis and purpose of the Proposed Rule, Including How the Proposed Rule Advances Relevant Statutory Goals or Purposes

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A revision of ch. ATCP 57 is necessary, due to changes in business practices, and updates to the Code of Federal Regulations (CFR) which include the implementation of definitions from the United States Food and Drug Administration (FDA) Food Safety Modernization Act (FSMA), related to the production of animal feed.

The proposed rule harmonizes definitions with relevant federal regulations. Establishments in Wisconsin are governed by the state for their business activities, but also have oversight by United States Department of Agriculture (USDA) and the FDA, who oversee interstate and international distribution. The updated definitions create a smooth integration with relevant federal regulations.

The proposed rule addresses current and emerging business models. Truck transfer stations, which are used by animal food processors and renderers to be more efficient and cost effective, have been added to align with s. 95.72 (8), Stats. Building requirements have been clarified to match statute. This allows registration and reciprocity by agreement with contiguous states which allows more efficient and effective business planning.

The exemption for an operator of a grease processing plant that is solely engaged in the production of bio-diesel or other biofuels has been removed.

Carcass dealer registration has been removed from the rule. There have not been any registrations of carcass dealers for over thirty years, and it is not a current business practice.

Marking of vehicles has been clarified and requires the vehicle to be identified as “Inedible – Not Intended for Human Food”. This is to clearly separate and address inedible products from human food. The vehicles have a single use purpose limited to inedible products only.

Significant input from industry suggested that a variety of waterproof tarpaulin or other cleanable coverings could meet sanitary transport requirements for truck boxes or trailers that are leak proof, even if not fully enclosed. The rule has been modified to address the need to prevent leakage, but to allow industry to innovate to meet requirements without being overly prescriptive.

The proposed rule addresses two additional denaturants that industry has requested due to evolving technology and application of denaturants. They are liquid charcoal and a black dye; both will impart the color needed to assure the product cannot be diverted into the human food chain.

Summary of Public Comments and the Department’s Responses, Explanation of Modifications to Proposed Rules Prompted by Public Comments

The Department held three public hearings around the State. Following the public hearings, the hearing record remained open until March 31, 2023.

Date and Time	Location
Monday, March 15, 2021 12:00 p.m. to 4:30 p.m.	Virtual (use this link to join the hearing by computer or mobile app. To join by phone, call (608) 571-2209 and use ID number 586 869 587).
Friday, March 10, 2023 10:00 a.m. to 12:00 p.m.	Prairie Oaks State Office Building, Room 106 2811 Agricultural Drive, Madison, WI 53708 Virtual (use this link to join the hearing by computer or mobile app. Meeting ID: 255 973 597 905 Passcode: jY8jUj)
Friday, March 24, 2023 10:00 a.m. to 12:00 p.m.	Wausau Entrepreneurial and Education Center, Large Conference Room 100 N 72 nd Avenue, Wausau, WI 54401

Virtual (use this link to join the hearing by computer or mobile app. Meeting ID: 255 973 597 905 Passcode: jY8jUj)
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List of Public Hearing Attendees and Commenters

The following is a complete list of people who attended the public hearings or submitted comments on the proposed rule during the public comment period, their position taken, and whether they provided written or oral comments.

Commenter #	Name and Address	Position Taken (Support or Opposed)	Method of Commenting (Oral or Written)
1.	Christopher Stokes Sanimax 2099 Badgerland Dr Green Bay, WI 54303	No Position	NA
2.	Bob Zimbal Zimbal Minkery 6437 Abraham Crt Sheboygan Falls, WI 53085	No Position	NA
3.	Jason Bratley Darling Ingredients W694 Whiteridge Rd Berlin, WI 54923	No Position	NA
4.	Scott Krueger Darling Ingredients W694 Whiteridge Rd Berlin, WI 54923	No Position	NA
5.	Guy Murphy Darling Ingredients 1423 Beaver Channel Pkwy Clinton, IA 52732	No Position	NA
6.	C. Ross Hamilton Darling Ingredients 5601 N MacArthur Blvd Irving, TX 75038	Support	Written
7.	Derek Sokolowski United Grease N2797 STH 26 Clyman, WI 53016	No Position	NA
8.	Shawn Merrick Barr Enterprises, Inc. W7276 Chickadee Rd Greenwood, WI 54437	No Position	NA
9.	Adam Dirkman	No Position	NA

10.	Tracy Wiebensohn Sandy Bay Mink Ranch, LLC. 2228 Cherney Rd Mishicot, WI 54228	No Position	NA
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Response to Legislative Council Staff Recommendations

The Department modified the rule draft to address all Clearinghouse comments, except for the following areas:

Clearinghouse Comment	Department Response
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. ATCP 57.01 (11), rather than being incorporated into s. ATCP 57.01 (11) itself. A sample formatting approach is presented in s. 1.07 (3) (c), Manual.	The department did not update. The language is consistent with Wis. Stats. s. 95.72 (1) (c) 1.
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).	The department did not update. Submitted by the department correctly.
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?	The department did not update. It is fully described in Wisconsin Administrative Code s. 57.12.
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.	The department did not update. Chapter ATCP 42 is titled Commercial Feed.
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.	The department updated the “g” to lower case. The department did not remove the definitions.
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.	The department did not update. Both must remain for clarity of initial licensing and renewals.

Report from the SBRRB and Final Regulatory Flexibility Analysis

The Small Business Regulatory Review Board did not issue a report on this rule. The Final Regulatory Flexibility Analysis is attached.