

Wisconsin Department of Agriculture, Trade and Consumer Protection

Business Impact Analysis¹

Rule Subject: Dog Sellers Licensure
Adm. Code Reference: ATCP 16
Rules Clearinghouse #: 10-100
DATCP Docket #: 09-R-19

Rule Summary

This rule implements WI Act 90, which requires DATCP to license and set standards for persons selling 25 or more dogs from more than three litters. Among other things, this rule:

- Spells out the licensing procedure, expiration date and the information that must be included, and actions that must be taken.
- Establishes record keeping requirements for licensees.
- Defines certificate of veterinary inspection (CVI) procedure, expiration date and all the information that must be included on the CVI in order for it to be valid for the sale of dogs.
- Establishes health requirements for selling dogs in Wisconsin.
- Defines basic standards of care and facility standards, as set forth in Act 90, that licensees must adhere to including but not limited to:
 - Food and water
 - Animal health
 - Facility standards: lighting, ventilation, cleanliness
 - Enclosure standards: size, material and cleanliness
 - Behavior and socialization
 - Transportation enclosure standards
- Implements the requirement for temporary dog markets to register with the department and keep records.

¹ This analysis includes, but is not limited to, a small business analysis (“regulatory flexibility analysis”) under ss. 227.114 and 227.19(3)(e), Stats.

Business Impact

This rule implements WI Act 90 which requires DATCP to license and establish standards of care, movement requirement and record keeping requirements for those that qualify for licensure. This rule will affect the following types of businesses, many of which meet the definition of a small business:

- Dog Breeders selling more the 25 dogs annually from more than 3 litters
- Dog breeding facilities that sell more the 25 dogs, from more than 3 litters.
- Dog Dealers, in state and out of state, that sell or trade 25 or more dogs.
- Animal shelters that shelter 25 or more dogs
- Animal Control Facilities sheltering more than 25 dogs.

This rule will benefit the dog selling industry by establishing standards of care that all regulated entities must abide by, thus providing a level playing field. This rule will also benefit dog buyers by requiring the dogs they purchase or adopt to be accompanied by a certificate of veterinary inspection which shows they have been examined by a veterinarian and appeared free of infectious or contagious diseases at the time of examination. The requirements set forth in this rule also provide some level of assurance to the consumer, that the dog they are buying has been treated reasonably well and should not have social or behavioral issues as a result of its prior care.

However, this rule will add costs or limit operations for many dog sellers, as described below.

This rule implements the statutory requirement that all dogs sold must be accompanied by a certificate of veterinary inspection (CVI). This requires that a dog sold from a licensed facility must be examined by a veterinarian who shall complete the CVI. The CVI expires after 30 days. This is the duration of the CVI in all its uses for the health certification of other animals being moved or sold. The CVI serves as a record to the purchaser that the dog has been examined by a veterinarian and details the vaccination history of the dog.

The CVI itself is only \$0.60, but there is a cost associated with the veterinarian examination. There is a wide range to the cost of the examination based on veterinarian relationships and timing of acquiring the CVI. This requirement will have the most impact on smaller breeders that sell directly to the public. The sale dates are often unknown. Given the limited duration of the CVI, if a dog does not sell within the anticipated time frame, the seller may have to have the certificate reissued.

This rule also defines facility requirements and standards of care for licensed entities as set forth in Act 90. Currently the only commercial breeders that are complying with any consistent standard are the United States Department of Agriculture - Animal Care (USDA-AC) licensed facilities, of which there are only 49 in Wisconsin. For the remainder of facilities in WI there are no standards, so the impact on these individuals will vary widely, based on their current practices and facilities. Some may incur

significant costs in order to upgrade their facilities in order to meet the standards established.

Facilities that do not have proper air exchanges, adequate lighting, have non cleanable porous surfaces or surfaces that do not prevent injury to the dogs will have to invest in significant upgrades to their facilities to become licensed. This will not impact the majority of breeders in the state.

This rule establishes minimum sizes for enclosures the dogs are kept in. The rule allows for two different sizes of primary enclosures and a temporary enclosure.

The rule allows for dogs to be kept in a temporary enclosure that is only large enough for the dogs to stand stretch and turn around in. Dogs may only be kept in an enclosure this size for a maximum duration of 12 hours a day. This will allow for home breeder and rescues and fosters to keep dogs in these enclosures while they are at work or away from the house.

The rule also establishes requirements for larger primary enclosures where the animals are kept in the enclosures for over 12 hours and may be removed for cleaning and exercise as necessary. Both options are larger than those required by USDA Animal Care animal welfare act. A USDA Animal Care compliant breeder would at a minimum need to approximately double the average size of a primary enclosure for a singly housed dog. For multiple dogs in a single enclosure an USDA – AC compliant breeder would need to increase the enclosure size by a lesser extent because the USDA guidelines require 100% of the required size for each dog in the enclosure. The proposed rule requires only 75% of the primary enclosure size be added for each additional dog. So, for an enclosure housing four dogs, an USDA-AC compliant facility would need to increase their enclosure sizes by an average of 63%.

Dogs kept in the larger primary enclosures may be required to be removed from these enclosures, if the enclosure does not allow for the animal to attain the necessary exercise required under this rule. This provision might require for additional staff to be added or number of dogs to be reduced in larger facilities to provide the animals with the opportunity for exercise. The exact impact would be dependent on current facility conditions and number of dogs on the premises.

Facilities in the state may incur significant cost to keep the current number of dogs and comply with this size requirement or exercise requirements. These facilities may need to complete renovations of the facilities and hire additional staff to comply with the enclosure size and exercise requirements. Many smaller breeders do not have facilities that will require such extensive remodeling as they have exercise areas that can accommodate their dogs, and/or the primary enclosures they are currently using already comply with the established size requirements. Given that there are currently no standards set for a vast majority of facilities it is impossible to estimate what the impact will be on the average facility in WI.

Accommodation for Small Business

Overall, this rule improves conditions for dogs utilized by the commercial dog breeding industry as a whole and requires all breeders to operate based on standards and reasonable criteria to maintain the health and quality of dogs being sold in Wisconsin. This rule may have some adverse effects on some small businesses (especially larger scale dog breeders) as there are currently no state established standards of care. However it is necessary that these reasonable standards be established in order to ensure that dogs being produced and sold to consumers are in good health and quality. It is also necessary to ensure that the dogs utilized to produce dogs for sale are kept in a manner that ensures humane treatment and that they have a reasonable quality of life.

The department has taken the following steps to accommodate the needs of small businesses.

The duration of an official certificate of veterinary inspection is set by the code of federal regulations governing accreditation for veterinarians. Veterinarians would be unable to complete a CVI with a longer duration than 30 days. The CVI requirement will not require that the buyer be listed on the CVI, as is required in other sales of animals that need CVI's, making it easier to obtain a CVI at a convenient time prior to having a buyer. The department is also allowing for a single CVI to be used for 30 days, even if the animal is sold and then resold within the 30 days of validity.

The department recognizes that in the absence of standards other than the USDA- AC, that many businesses may have to make significant changes to their facility to comply with the standards of care requirements required by statute and set forth in this rule, primarily the size of the primary enclosures and the exercise requirements. In order to accommodate this in a manner that will allow breeders to make the changes over time and spread out the costs, the rule allows licensed entities apply for a variance and for the department to issue a conditional license that may allow a facility to operate while making the necessary changes. All new establishments or additions or renovations to existing facilities must be completed in compliance with the standards set forth in this rule. This rule also provides the option for regulated entities to use smaller primary enclosures, but limits the time in that the dogs may be in the enclosure and requires more time out of the enclosure. This option allows for facilities to opt to build an exercise yard rather than increase the size of all primary enclosures used.

Although this rule may have adverse effects on some small businesses, those effects are outweighed by the need to provide for a humane and healthy environment for dogs used and sold from a commercial dog breeding environment.

Conclusion

Facilities that are currently built to be in compliance with USDA - AC standards, or less, will incur a substantial fiscal impact to increase the size of their enclosures. This may mean remodeling of the facility or a reduction in the number of dogs in the facility.

However, the size of the proposed primary enclosures is not the most generous of the programs regulating dog sellers. Other states such as Pennsylvania and Missouri both have existing programs and recently increased the sizes of the primary enclosures in their rules to sizes greater than the standard set by this proposed rule.

Overall, the standards set forth in this rule are necessary to establish acceptable standards for all regulated breeders that are breeding dogs and selling them to the public. This rule will serve to ensure the dogs used for breeding and sold to the public from licensed facilities are all raised and born into an acceptable standard of care that will provide a reasonable assurance to the public that the dog they are taking home is healthy and socially and behaviorally sound.

Dated this _____ day of _____, 2010.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Robert G. Ehlenfeldt, DVM, Administrator,
Division of Animal Health