



State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

DATE: July 18~~5~~, 2006

TO: The Honorable Alan J. Lasee
President, Wisconsin State Senate
Room 220, South, State Capitol
PO Box 7882
Madison WI 53707-7882

The Honorable John Gard
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
PO Box 8952
Madison WI 53708-8952

FROM: Rodney J. Nilsestuen, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: ~~Fertilizer and Pesticide Bulk Storage~~ Technical Rule Changes
(*Clearinghouse Rule #056-108028*)

The Department of Agriculture, Trade and Consumer Protection is transmitting this rule for legislative committee review, as provided in s. 227.19(2) and (3), Stats. The department will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19(2), Stats.

SUMMARY:

Background

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers almost 90 rule chapters, covering a wide variety of different subjects. From time to time, DATCP does routine "housekeeping" amendments to update and correct current rules. At the June 28, 2006 Board meeting, the department will ask the Board to approve a final draft "housekeeping" rule. This rule makes non-substantive and minor substantive changes to a number of current rule chapters.

Rule Content

Agriculture generates \$51.5 billion for Wisconsin

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Small Business Enforcement Discretion

Under s. 895.59, Stats. (created by 2003 Wisconsin Act 145), state agencies are required to adopt rules describing the discretion they may exercise when enforcing regulations against small businesses. This rule describes the discretion that DATCP may exercise when enforcing regulations against small businesses. DATCP already exercises enforcement discretion, as described in this rule.

Technical Changes to Current Rules

This rule makes the following minor technical changes to rules administered by DATCP:

- Conforms fertilizer tonnage fee (agricultural chemical cleanup surcharge) to the current statute. The department is already charging the (lower) statutory fee, not the obsolete (higher) fee that appears in the current rule (ATCP 40).
- Updates technical standards that are incorporated by reference in current commercial feed rules (ATCP 42). The updates refer to the latest edition (2006) of the official publication of the Association of American Feed Control Officials.
- Updates current standards for the professional certification of agricultural engineering practitioners. DATCP coordinated these revisions with the United States Department of Agriculture (NRCS) and county land conservation departments, including practitioners who serve federal, state and county conservation programs.
- Clarifies DATCP's meat holding order and condemnation authority (ATCP 55).
- Eliminates an inconsistency between rules related to the legal "shelf life" of smoked fish (one rule says 17 days, the other says 21 days). This rule makes the standard 21 days.
- Changes current dairy plant rules (ATCP 80) to make them consistent with current federal standards. This includes minor technical changes related to pasteurization standards, thermometers and temperature readings, as well as updates to technical standards incorporated by reference (ATCP 80 Appendix). The updates refer to the latest editions of the 3-A Sanitary Standards and Accepted Practices published by the 3-A Sanitary Standards, Inc.
- Updates technical standards that are incorporated by reference in current weights and measures rules (ATCP 92). The updates refer to the latest editions (2006) of current weights and measures handbooks published by the National Institute of Standards and Technology.

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- Clarifies that local weights and measures inspectors must be civil service employees (conforms rule to current statute).
- Eliminates minor obsolete accounting provisions in ATCP 105 related to the calculation of cigarette “cost” for purposes of the Unfair Sales Act (“minimum markup law”).
- Clarifies the relationship between the home improvement code (ATCP 110) and the basement waterproofing code (ATCP 111), both of which apply to basement waterproofing services.
- Conforms car rental notice requirements (ATCP 118) to current statute.
- Clarifies prohibition against misleading charity claims in coupon book schemes (ATCP 131).
- Repeals current rules related to dairy cattle grades (ATCP 158), because the rules are obsolete and no longer used.
- Corrects typographical errors and cross-references, eliminates obsolete provisions, conforms rules to current statutes, creates clarifying notes, and makes other non-substantive drafting and organizational changes to current rules.

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Fiscal Estimate

DATCP already exercises small business enforcement discretion, as described in this rule, so the effect will be minimal. Fines and forfeitures are paid to the state school fund, not DATCP. Other provisions of this rule will have no fiscal effect on DATCP or local units of government. A fiscal estimate is attached.

Public Hearings

DATCP held one public hearing on this rule on April 13, 2006 in Madison, WI. No one appeared at this hearing and no written comments were received.

Changes from Hearing Draft

DATCP made the following changes to this rule:

- Technical changes and clarifications, including editorial changes suggested by the Legislative Council Rules Clearinghouse.
- Amended ch. ATCP 118 relating to notice requirements for car rentals and notice of rental liability to conform to current statute.
- Deleted the creation of ATCP 97.04(4)(c) and (note) relating to license requirements for public warehouse keepers.

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Response to Rules Clearinghouse

The Legislative Council Rules Clearinghouse made several minor editorial comments on the proposed rule. DATCP incorporated all Clearinghouse suggestions in the final draft rule.

Business Impact

DATCP already exercises small business enforcement discretion, as described in this rule. The current exercise of discretion prevents unnecessary costs to small businesses. The codification of DATCP's current enforcement policy will not change that policy, or have a major additional impact on business. The other provisions of this rule will have no significant effect on business. A business impact analysis is attached.

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