



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: January 5, 2015

TO: The Honorable Mary Lazich
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 211, West, State Capitol
PO Box 8952
Madison, WI 53708-895

FROM: Ben Brancel, Secretary
Department of Agriculture, Trade and Consumer Protection

**SUBJECT: Leaf Tobacco, Buying and Selling, ch. ATCP 104; Final Draft Rule
(Clearinghouse Rule #14-039)**

Introduction

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) is transmitting this rule for legislative committee review, as provided in s. 227.19 (2) and (3), Stats. DATCP will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19 (2), Stats. This rule repeals Ch. ATCP 104, Adm. Code., which regulates cash-market transactions between tobacco growers and tobacco buyers.

Background

The existing ch. ATCP 104, Wis. Adm. Code, prohibits leaf tobacco buyers from engaging in certain practices:

- Attempting to induce another tobacco buyer to engage in specific activities that would artificially manipulate the market price for tobacco.
- Refusing to negotiate with any grower for the purchase of tobacco because such tobacco was previously graded or submitted for grade.

Agriculture generates \$88 billion for Wisconsin

2811 Agriculture Drive • PO Box 8911 • Madison, WI 53708-8911 • Wisconsin.gov

An equal opportunity employer

- Falsely representing in negotiations with a grower that any particular lot or crop of tobacco was purchased at less than the price actually paid, or that another tobacco buyer has or will cease buying tobacco.
- Purchasing tobacco under any contract which does not include a specific time within which delivery and payment are to be made.
- Giving or offering to give any grower any secret or separately stated bonus, commission, payment or other consideration.

The existing rule also prohibits tobacco growers or sellers from soliciting or receiving any secret or separately stated bonus, commission, payment or other consideration.

This rule was originally promulgated as Department of Agriculture General Order #138 in 1952. At that time, tobacco farming was a prominent business in Wisconsin, and much of the crop was sold in cash markets at the conclusion of the growing season. This rule was necessary to ensure fair transactions between growers and buyers.

Today, the crop is generally produced and sold under contract (as opposed to a cash market at the end of the season). This means that ch. ATCP 104, Wis. Adm. Code, as it is currently written, is irrelevant to the current industry.

Rule Content

This rule would repeal chapter ATCP 104, Leaf Tobacco, Buying and Selling, in its entirety.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations

There are no known federal statutes or regulations (existing or proposed) that are comparable to ch. ATCP 104, Wis. Adm. Code.

Comparison with Rules in Adjacent States

There are no known rules in adjacent states that are comparable to ch. ATCP 104, Wis. Adm. Code.

Summary of Factual Data and Analytical Methodologies

This proposed rule simply deletes an unused chapter from the administrative code. It does not rely on factual or analytical data other than anecdotal information that growing under contract has replaced cash markets.

Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis

Since repealing the rule has no effect on business (see above), no analysis is required under this section.

Effect on Small Business

This proposed rule would simply delete an outdated and obsolete chapter of the administrative code. DATCP does not anticipate any effect on small business.

Small Business Regulatory Review Report

The Small Business Regulatory Review Board did not issue a report on this rule.

Hearings

DATCP held one public hearing on this rule on July 9, 2014 in Madison. There were no attendees at the hearing. DATCP did not receive any written comments.

Changes from Hearing Draft

There are no substantive policy changes from the hearing draft. DATCP did incorporate the technical corrections suggested by the Rules Clearinghouse.