

Wisconsin Department of Agriculture, Trade and Consumer Protection

Final Regulatory Flexibility Analysis

Rule Subject: Leaf Tobacco Buying and Selling
Adm. Code Reference: ATCP 104
Rules Clearinghouse #: 14-039
DATCP Docket #: 14-R-01

Rule Summary

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

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.
- 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.

Small Business Affected

The existing rule regulates certain transactions between tobacco growers and tobacco manufacturing or brokerage firms. Tobacco growers are likely to be small businesses. However, the existing rule is limited to regulating cash-market transactions for tobacco leaves (which would occur after the crop is harvested). Wisconsin grown tobacco is no longer traded with this type of transaction. Instead, Wisconsin tobacco growers generally grow and sell on contracts that are negotiated before the growing season begins. Therefore, the existing rule is obsolete and has no effect on small business.

This proposed rule would simply delete an outdated and obsolete chapter from the administrative code.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

Reporting, Bookkeeping and other Procedures

The proposed rule does not require any additional reporting, bookkeeping or other procedures.

Professional Skills Required

The proposed rule does not require and additional professional skills.

Accommodation for Small Business

This proposed rule would simply delete an outdated and obsolete chapter of the administrative code, and does not have any effect on small business. Therefore, no accommodation is necessary.

Conclusion

This rule does not have any impact on businesses, including “small businesses.” It is not subject to the delayed “small business” effective date provided in s. 227.22(2)(e), Stats.

Dated this _____ day of _____, 20__.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Sandy Chalmers, Administrator
Division of Trade and Consumer Protection