

Wisconsin Department of Agriculture, Trade and Consumer Protection

Initial Regulatory Flexibility Analysis

Rule Subject: Dog sellers program

Adm. Code Reference: ATCP 16

Rules Clearinghouse #: Not yet assigned

DATCP Docket #: 17-R-03

Rule Summary

This rule specifies requirements for persons to become licensed under the Wisconsin dog sellers and dog facility operators program. Among other things, this rule does all of the following:

General rule changes

- Updates statutory cross references.
- Adds statutory language to the rule or modifies the rule to reflect statutory language.
- Makes other minor modifications to the rule.

Definitions

- Adds a definition of “dog” to clarify that the rule applies to domestic dogs and not dog hybrids.
- Modifies the definition of “dog dealer” to specifically include persons selling, or offering to sell, at least 25 dogs in a license year. This change makes the rule definition of “dog dealer” consistent with the statutory definition of “dog dealer”.
- Modifies the definition of “home custody provider” to apply only to an animal control facility or animal shelter.

License requirements

- Adds a note clarifying that because a license is not transferable between locations, a licensed entity that moves to a new location must apply for a new license prior to operating at the new location.

Record keeping requirements

- Clarifies that vaccination records must include the name of the vaccine manufacturer, the vaccine serial number and lot number, the date on which the vaccine was administered, and the name of the person who administered the vaccine. Currently this information must be provided on a certificate of veterinary inspection. Therefore, this information should also be maintained in the dog seller’s records.

Dog sale requirements

- Clarifies that when a dog is sold, the following information must be provided to the purchaser:
 - A valid certificate of veterinary inspection.
 - All vaccination records.

Certificate of veterinary inspection (CVI)

Whenever a person, who is required to be licensed as a dog seller or dog facility operator, sells a dog in this state, the dog must be accompanied by the dog’s vaccination records and CVI. The

proposed rule makes the following modifications to the CVI requirement:

- Clarifies that a CVI must be on a form provided or approved by the Department. The current rule implies that only a CVI provided by the Department may be used. This clarification is consistent with CVI requirements specified under Wis. Admin. Code ch. ATCP 10.
- Clarifies that the veterinarian completing the CVI must list only those vaccinations administered by that veterinarian (or another veterinarian) if those vaccinations are properly documented. Currently, the rule implies that the dog's entire vaccination record must be included on the CVI, regardless of who administered the vaccination, including the dog seller. Any vaccinations administered by the dog seller must be maintained in his or her record for that dog and may not be included on a CVI.
- Clarifies that all dogs imported to Wisconsin must have CVIs. The current rule implies that if a CVI accompanied a dog imported to this state, certain information from that CVI must be added to the CVI of a dog being sold.
- Clarifies when a CVI may be re-used. The current rule is confusing because the rule requires the name of the new seller to be updated on the CVI before it can be re-used. However, a CVI cannot be updated by anyone other than the veterinarian who originally completed it. This rule modification clarifies that in spite of the requirement that the name and address of the dog seller be on a CVI, the CVI may be re-used if it is valid in all other respects.

Age at which dogs may be sold

- Requires that a puppy be at least 7 weeks of age before it can be physically transferred to a buyer. The current rule conflicts with the language of the statute by allowing transfer of puppies under 7 weeks of age to occur if certain requirements were met. The proposed rule no longer allows that to occur. The proposed rule is now congruent with the state statute.

General dog care requirements

- The current rule requires that water containers, food containers, and the like be cleaned and sanitized as often as necessary but does not specify a minimum timeframe. This proposed rule retains the requirement these items must be cleaned and sanitized as often as necessary, but new language adds the additional requirement that these items be cleaned and sanitized at least once a week, at a minimum.
- Clarifies that each dog must be groomed as necessary to maintain the dog's health, comfort, and welfare. This language is consistent with terminology used throughout the rule.
- Reorganizes the rule to clarify that certain provisions apply to dogs regardless of whether those dogs are kept indoors or outdoors, including:
 - Whelping, nursery, and temporary dog enclosures are currently specified under the "Dogs kept indoors" section of the rule. While the rule specifies the requirements for these indoor enclosures, it is unclear whether these rules apply to outdoor enclosures as well. The rule clarifies the following:
 1. Whelping enclosures must be indoors unless a variance is granted from the Department. Other enclosure requirements remain the same as the current rule.
 2. Nursery enclosures must be indoors unless outdoor temperatures are adequate so as to not adversely affect the health of the puppies. The rule provides direction for maintaining adequate shade in the nursery during sunlight hours to prevent heat stress

and avoid inclement weather. Other enclosure requirements remain the same as the current rule.

3. Temporary enclosures for one dog must be indoors unless meeting the same exception criteria as nursery enclosures. Other enclosure requirements remain the same as the current rule.

- Current requirements for run and exercise areas are specified under both the “Dogs kept indoors” and the “Dogs kept outdoors” sections of the rule. These requirements apply to both environments. The requirements for runs and exercise areas have been moved to “general dog care requirements” but remain the same as the current rule.
- Clarifies that primary enclosures must be structurally sound and maintained in good repair to protect the dog from injury. This reflects statutory language.
- Re-sequences the current primary enclosure measurement requirements that overlap in the current rule.

Dogs kept indoors

- Requires that an indoor facility be heated at a minimum of 50 degrees Fahrenheit.

Dogs kept outdoors

- Adds outdoor shelter requirements to protect dogs kept outdoors.

Cleaning and sanitation

- Harmonizes the cleaning and sanitation requirements for dogs kept indoors and outdoors. Current cleaning and sanitation requirements vary slightly for dogs kept indoors versus outdoors. These provisions have been modified to improve consistency.

Prohibited conduct

- Clarifies the current requirement that a licensed dog seller may not convey custody or control of a dog to another person who is required to be licensed as a dog seller but has failed to obtain a license.

Small Businesses Affected

This rule is expected to have a generally positive impact on dog sellers and dog facility operators, as the rule will clarify several provisions that are ambiguous or arguably contradictory as currently phrased. As noted above, some of the proposed modifications arose via recommendations received from the Dog Sellers Advisory Committee that met on May 12, 2012, one year after the original rule was initially promulgated. Comprised of stakeholders and representatives of groups to be licensed under this rule, the advisory committee provided guidance to the Department in connection with the initial drafting of the rule.

The Department licenses 178 dog shelters and 246 dog sellers in Wisconsin, as well as 10 dog sellers based outside Wisconsin. It is unknown how many of these licensees have indoor and/or outdoor facilities. The proposed rule articulates certain standards for such facilities. However, the impact on the industry is anticipated to be minimal because the language of the current rule already requires the industry to ensure, in general, the health, comfort, and welfare of dogs. The proposed rule merely fleshes out the requisite contours of such health, comfort, and welfare. For example, the proposed rule requires that dogs kept indoors and outdoors must be regularly cleaned and their quarters regularly sanitized. The proposed rule also requires the utilization of

windbreaks against cold temperatures for dogs kept outdoors and requires dog shelters to be moisture proof, windproof, and insulated. These requirements are little more than common-sense dictates that are now spelled out in the rule, for the sake of clarity. Assuming that industry participants are already guided by common sense and by a generalized concern for health and welfare, compliance costs are expected to be minimal.

Another example is the requirement in the proposed rule that indoor facilities be kept at a minimum temperature of 50 degrees Fahrenheit. The Department's selection of this standard was designed to mirror the temperature set by USDA and by other states. Fifty degrees is a temperature at which water will not freeze, and it is a minimum temperature needed for cleaning to be effective. When consulted, stakeholders agreed that this minimum temperature standard is a reasonable one. Most dog sellers and proprietors of dog shelters believed that facilities within the state were already maintained, or should have been maintained, at 50 degrees or greater, even absent the standard specified in this proposed rule. Indeed, depending upon the type of dog kept in the facility (e.g. Chihuahuas), the minimum temperature would have needed to be well above 50 degrees.

Accordingly, financial outlays relating to this provision are expected to be minimal. Since industry participants are already required to ensure dogs' health, comfort, and welfare under the current rule – and thus, should already have been maintaining an appropriate temperature level above 50 degrees for the safety of the animals – it is to be anticipated that all or most businesses are already in compliance and thus would incur no additional energy costs. As to any potential structure that is not currently in compliance, the cost to heat the structure would vary widely depending on the building's construction and insulation, the number and size of dogs kept in the building, the size of the building, the temperature outside of the building, and the type of heating (gas, electricity, or wood). Department staff contacted Madison Gas and Electric (MG&E) to determine whether a more specific cost could be calculated. MG&E staff opined that given the potential variances concerning the building type, insulation ("R value"), and heating source, the heating costs are necessarily indeterminate and incalculable.

On March 5, 2018, the Department met with an advisory group of licensed dog sellers. The committee members represented entities selling more than 50 dogs per year, entities selling fewer than 50 dogs per year, dog shelters, dog dealers, and dog breeders. The Department's Animal Health Division asked the committee of stakeholders to provide feedback as to whether the proposed rule provisions would be onerous or burdensome in any way. The Department also wished to learn about what potential financial costs might result from the proposed rule changes.

Results from this meeting with stakeholders were both positive and encouraging. All participants agreed that the proposed changes added useful clarifications to the existing rule. The stakeholders indicated that the proposed rule changes would not be burdensome. No stakeholder foresaw any significant costs associated with the implementation of the proposed rule.

As a final note, the advisory committee members also strongly encouraged the Department to incorporate statutory requirements into the rule as most dog sellers refer to the rule only when seeking program requirements.

Reporting, Bookkeeping and other Procedures

The current rule requires that health records be kept. These records include vaccinations, observation and treatment records and whether the health care was administered by the license holder or by a veterinarian. The proposed rule clarifies that vaccination records must include the

name of the vaccine manufacturer, vaccine serial number and lot number, and the date on which the vaccine was administered. This vaccination information is required because:

- Pursuant to Wis. Stat. § 173.41 (8) (a) 2., a copy of all vaccination records for the dog is required to be provided to the purchaser. This information includes the date it was administered and the name of the person who administered it.
- The specific vaccination information in the proposed rule (vaccine manufacturer, serial number and lot number, and date of administration) is currently required to be provided on the CVI of any dog sold. The CVI only reflects the vaccinations provided by the veterinarian who issues the CVI. For consistency and completeness, the same vaccination information required on the CVI should be kept in the dog's record, including any vaccinations administered by the dog seller.

The fiscal costs relating to these bookkeeping requirements are expected to be minimal and are required for the welfare of the purchaser.

Professional Skills Required

The proposed rule does not specify any professional skills required for small businesses.

Accommodation for Small Business

Many of the businesses affected by this rule are small businesses. The requirements in the proposed rule are necessary for the health, comfort, and welfare of the dogs and puppies being kept and for the protection of consumers purchasing those dogs and puppies. For that reason, this proposed rule does not make special exceptions for small businesses because the rule's requirements apply equally to all businesses, large or small.

Conclusion

This rule will generally benefit affected businesses, including small businesses. This rule will not have a significant adverse effect on small business nor will it be subject to the delayed "small business" effective date provided in Wis. Stat. § 227.22 (2) (e).