



State of Wisconsin
Jim Doyle, Governor

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

DATE: January 7, 2009

TO: The Honorable Russ Decker
President, Wisconsin State Senate
Room 211 South, State Capitol
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The Honorable Mike Sheridan
Speaker, Wisconsin State Assembly
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FROM: Rodney J. Nilsestuen, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: Minor and Technical Rule Changes
(Clearinghouse Rule #08-075)

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.

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. This rule makes non-substantive and minor substantive changes to a number of current DATCP rules.

Rule Contents

This rule does all of the following:

Electronic Processing of License Applications; Cost Recovery

- Authorizes DATCP to assess a \$3 fee for electronic licensing transactions (in addition to other license fees), to cover DATCP’s electronic licensing costs. Electronic processing, if offered, is offered as a voluntary option for license applicants.

Agriculture generates \$51.5 billion for Wisconsin

Agricultural Chemical Cleanup Program; Surcharge Adjustment

- Reduces current agricultural chemical cleanup program surcharges paid by pesticide and fertilizer license holders, consistent with 2007 Wisconsin Act 20 (biennial budget act). DATCP has already implemented the reduced statutory surcharges (this rule merely conforms current rules to the new statutory amounts).

Atrazine Use Regulations

- Revises the format of current maps showing some of the land areas where application of atrazine pesticides is currently prohibited by rule (this rule does not change the actual prohibition areas).
- Restores a provision inadvertently deleted from the atrazine rule in a prior rulemaking proceeding, when the rule was modified for other reasons. The restored provision allows farmers (outside prohibition areas) to apply an additional 0.5 lbs. of atrazine per acre on medium- or fine-textured soils (up to 1.5 lbs. per acre rather than 1.0 lb. per acre) if no atrazine was applied in the preceding year. The restored provision is consistent with the way that DATCP has always administered the atrazine rule, so there will be no change in actual use practices.

Pesticide Manufacturers and Labelers Fees

- Clarifies a current rule prohibiting refunds of pesticide license fees does not prohibit certain reimbursements that are authorized by statute and paid as credits against the next year's license fees.

Land and Water Conservation Program

- Updates technical standards incorporated by reference in current land and water conservation rules (ATCP 50). This rule does not substantially alter current standards or requirements.
- Gives DATCP more latitude to extend land and water conservation funding for county cost-share contracts with landowners that were signed, but not completed, during the preceding year (extends signing deadline from December 1 to December 31).
- Extends the current mid-year deadline for counties to file cost-share reimbursement requests with DATCP (from June 1 to July 1).
- Updates current standards for the certification of agricultural engineering practitioners under the land and water conservation program, consistent with current standards published by the United States Department of Agriculture, Natural Resource Conservation Service ("NRCS").

- Updates current standards used by certified soil testing laboratories under the land and water conservation program, consistent with updated standards published by the university of Wisconsin-extension and university of Wisconsin-Madison.

Meat Inspection

- Corrects erroneous cross-references to federal meat inspection regulations in state meat inspection rules.

Bio-Diesel Plants

- Clarifies that a bio-diesel plant is not required to hold a grease processor license, provided that the plant does not produce grease or other products for human or animal consumption.

Dairy Inspection

- Changes, from 7 days to 14 days, the time period within which dairy plants must report high somatic cell counts in goat milk and take follow-up samples related to high bacterial counts.

Weights and Measures

- Updates technical standards incorporated by reference in current packaging and labeling and weights and measures rules (ATCP 90 & 92), including the latest standards published by the National Institute of Standards and Technology.

Car Rental Notices

- Incorporates statutory provisions requiring car rental companies to notify prospective renters if the rental company may charge the renter's credit card for forfeitures and other costs incurred but not paid by the renter for nonmoving traffic violations (parking tickets).

Fair Premium Aids

- Authorizes DATCP to pay county and district fair premium aids based on total county and district fair premiums paid (current rule requires payment based on total premiums less entry fees).

Other Technical Changes

- Modifies current *notes* to reflect the fact that rules and related documents are now filed with the legislative reference bureau, not the revisor of statutes or secretary of state (the revisor of statutes office was eliminated by 2007 Wis. Act 20).

- Corrects minor errors in current rules.
- Makes minor organizational, drafting and terminology changes.

Public Hearings

DATCP held one public hearing on this rule, on August 26, 2008 in Madison, and accepted written comments until September 6, 2008. Two people attended the hearing, with one person supporting and one person opposing a proposed rule provision related to mobile home parks. Five people submitted written comments.

Changes from Hearing Draft

Following the public hearing, DATCP made the following changes to the draft rule:

- Updated technical standards incorporated by reference into ATCP 50 (changes since the hearing draft).
- Updated weights and measures standards, published by NIST, to include the 2009 edition of NIST Handbooks 44 and 130.
- Clarified that a bio-diesel plant is not required to hold a grease processor license, provided that the plant does not produce grease or other products for human or animal consumption.
- Clarified that a current rule prohibiting refunds of pesticide license fees does not prohibit certain reimbursements that are authorized by statute and paid as credits against the next year's license fees.
- Withdrew a proposed rule amendment related to mobile home parks, because of the controversy surrounding the proposed rule amendment. DATCP was unable to resolve the controversy, despite considerable effort, and ultimately concluded that the controversial rule amendment was not suitable for inclusion in a non-controversial technical rule package.
- Made minor editorial changes suggested by the Legislative Council Rules Clearinghouse.
- Made other non-substantive edits.

Response to Rules Clearinghouse Comments

DATCP modified the final draft rule to address all of the comments from the Legislative Council Rules Clearinghouse.

Fiscal Impact

This rule will have no significant fiscal impact on the department or local units of government.

- This rule will allow the department to charge license applicants an additional \$3 for electronic processing of licenses, if applicants choose that option. However, that option is not currently available except on a few simple licenses.

- This rule adjusts current agricultural chemical cleanup program surcharges paid by fertilizer and pesticide license holders to conform to the new (lower) amounts specified by statute. However, DATCP has already implemented the new amounts, so this rule will not change the surcharge amounts currently being paid.
- This rule will not have a substantial impact on DATCP administrative or operating costs.

Business Impact

This rule will not have any significant impact on small business or other business. This rule makes minor and technical “housekeeping” changes that will not have a significant impact on business standards, costs or operations.

Environmental Impact

This “housekeeping” rule will have no significant environmental impact.

Federal and Surrounding State Programs

Federal Programs

Some of the rules affected by this rule are based on federal regulations or standards including:

- Soil and water conservation standards published by NRCS.
- Regulations under the federal meat inspection program. State standards must be at least “equal to” the federal standards.
- Dairy standards under the Interstate Pasteurized Milk Ordinance (PMO)
- Weights and measures standards issued by the national institute of standards and technology.

This rule is consistent with relevant federal regulations and standards.

Surrounding States

Surrounding states have programs similar to some of the programs affected by this rule, including cooperative state-federal programs related to soil and water conservation, meat inspection, dairy regulation, and weights and measures regulation. Current Wisconsin programs in these areas are substantially equivalent to programs in surrounding states. This rule does not have a significant impact on programs in this state or other states, or create any significant disparity between this state and other states.