



State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Randy Romanski, Secretary

DATE: December 17, 2010

TO: The Honorable Fred Risser
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The Honorable Mike Sheridan
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FROM: Randy Romanski, Secretary
Department of Agriculture, Trade and Consumer Protection

**SUBJECT: Dog Sellers and Dog Facilities; Final Draft Rule
(Clearinghouse Rule #10-100)**

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 implements s. 173.41, Stats., created by 2009 Wis. Act 90. Act 90 requires DATCP to license and regulate persons who do any of the following:

- *Operate an “animal control facility.”* Under this rule, an “animal control facility” means a facility in this state, for the care of animals, which is operated under a contract with a county, town or municipality under s. 173.15(1), Stats.
- *Operate an “animal shelter.”* Under this rule, an “animal shelter” means a facility in this state that is operated for the purpose of providing for and promoting the welfare, protection, and humane treatment of animals, that is used to shelter at least 25 dogs in a license year, and that is operated by a humane society, animal welfare society, animal rescue group, or other nonprofit group.
- *Operate as a “dog breeder.”* Under this rule, a “dog breeder” means a person who in any license year sells at least 25 dogs, from more than 3 litters, which that person has bred and raised in this state.

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- *Operate a “dog breeding facility.”* Under this rule, a “dog breeding facility” means a place in this state where dogs are bred and raised and from which at least 25 dogs from more than 3 litters are sold in a license year.
- *Operate as a “dog dealer.”* Under this rule, a “dog dealer” means any of the following persons, other than an “out-of-state dog dealer:”
 - A person who in any license year sells in this state at least 25 dogs that the person owns but has not bred and raised.
 - A person, other than an auctioneer or auction company registered under ch. 480, Stats., who in any license year brokers or arranges the sale in this state of at least 25 dogs that are under that person’s custody or control (but that the person does not own and has not bred or raised).
 - An auctioneer or auction company registered under ch. 480, Stats., which operates one or more auctions in this state in which a combined total of 50 or more dogs are sold or offered for sale in any license year.
- *Operate in this state as an “out-of-state dog dealer.”* Under this rule, an “out-of-state dog dealer” means a non-resident person who in any license year imports at least 25 dogs for sale in this state, regardless of whether the dogs were bred or raised by that person.

This rule spells out standards required of license holders, including standards related to the care, transportation and sale of dogs. This memo describes some key features of the final draft rule. A more detailed summary is found in the plain language analysis that accompanies the rule.

License Required

Under this rule, a person who does any of the following must hold an annual license from DATCP, unless the person qualifies for a license exemption (see below):

- Operates an “animal control facility.”
- Operates an “animal shelter.”
- Operates as a “dog breeder.”
- Operates a “dog breeding facility.”
- Operates as a “dog dealer.”
- Operates in this state as an “out-of-state dog dealer.”

An annual license expires on September 30. A license is not transferable between persons or facilities.

Persons Exempt from Licensing

The following persons are exempt from licensing under this rule, to the extent that they are engaged only in the following activities:

- *Veterinarian.* A veterinarian who only keeps dogs for the purpose of providing care or treatment in the normal course of veterinary practice, within the scope of the veterinarian's license under ch. 453, Stats.
- *Person conducting one-time sale of his or her dogs.* A person who sells his or her dogs at a one-time liquidation sale that meets certain requirements under this rule.
- *Operator of temporary dog market.* The operator of a temporary dog market that meets certain requirements under this rule.

Licensed Activities and Facilities

Some persons may be engaged in more than one activity for which a license is required, or may operate more than one dog facility for which a license is required. Under this rule, such a person may obtain a single license document that covers all of those activities and facilities. However, the license document must identify each type of licensed activity and the location at which the license holder keeps dogs pursuant to the license. License fees are based on the number of dogs sold by the license holder (except that there is a flat fee for an "animal control facility" or "animal shelter").

Applying for a License

A person must apply for a license on a form provided by DATCP. The license application must include, among other things:

- The address of each location at which the applicant may keep dogs pursuant to the license.
- A statement indicating whether, in connection with the applicant's licensed operation, the applicant may consign any dogs to any individual for custody at that individual's home (the application need *not* include the individual's home address).
- An identification of each activity for which the applicant seeks a license.
- The total number of dogs that the applicant sold during the preceding license year or, if the applicant did not sell any dogs during the preceding license year, the total number of dogs that the applicant expects to sell during the license year for which application is made.
- All license fees and surcharges required under this rule (see below).

License Fees and Surcharges

An annual license application must include the following nonrefundable fees and surcharges, as applicable:

- A license fee of \$125 for each “animal control facility” or “animal shelter.”
- The following license fee based on the number of dogs that the applicant sold during the preceding license year from any location other than from an “animal control facility” or “animal shelter,” except that this fee does not apply to an “out-of-state dog dealer.”
 - \$250 if the number is at least 25 but less than 50.
 - \$500 if the number is at least 50 but less than 100.
 - \$750 if the number is at least 100 but less than 250.
 - \$1,000 if the number is at least 250.
- A fee that is 150 percent of the above fee if the applicant is an “out-of-state dog dealer.”
- A late renewal surcharge equal to 20% of all license fees required above if the applicant seeks to renew a license after that license has expired.
- A surcharge equal to the total of all license fees required above if DATCP finds that the applicant operated without a license in the prior license year, or falsified the prior year’s license application to avoid fee payments.
- Any unpaid reinspection fee properly charged under this rule.

Inspecting Licensed Operations

DATCP may at any time, during reasonable hours, inspect any licensed location at which a person engages in any activity for which a license is required under this rule. If necessary to verify a license holder’s compliance with this rule, DATCP may inspect during reasonable hours any location at which another person keeps dogs for the license holder.

Before DATCP licenses an applicant to keep dogs at a location not previously licensed, DATCP must inspect that location. DATCP must also inspect each licensed location at least once in every 2 license years.

Records Kept by License Holders

A license holder must keep all of the following records under this rule:

- *Location records.* The address of every location at which the license holder keeps dogs pursuant to the license, and the name of the individual who is responsible for administering that location. If the license holder consigns a dog to an individual for home custody, the license holder must record the name and address of that individual.
- *Dog records.* Records related to each dog that is under the license holder's custody or control at any time during the license year, including any dog that the license holder consigns to an individual for home custody. Records include dog identification, dog source and placement, and dog health records.

Dog Sales; Certificate of Veterinary Inspection

Under this rule, whenever a license holder sells a dog in this state, the dog must be accompanied by a certificate of veterinary inspection. The certificate must be prepared and signed by a Wisconsin certified veterinarian, except that a certificate accompanying a dog imported into this state may be issued by a veterinarian who is accredited by USDA and the state of origin. The certificate must comply with standards under this rule.

Age at which Dogs May be Sold

This rule prohibits a license holder from selling a dog that is less than 7 weeks old (there are some exceptions).

Dog Care; General

Under this rule, a license holder keeping dogs must comply with certain standards of care, including standards related to:

- Food and water.
- Animal health and veterinary care.
- Housing and transportation.
- Exercise.
- Dog grouping and separation.
- Dog behavior and socialization.

Dogs Kept Indoors

This rule spells out minimum standards for indoor facilities at which dogs are kept by a license holder, including standards related to:

- Primary enclosures for more than one dog.
- Primary enclosures for one dog.
- Whelping enclosures.

- Nursery enclosures.
- Temporary enclosures for one dog.
- Floors and interior surfaces of primary enclosures.
- Stacking primary enclosures.
- Lighting, temperature and ventilation.
- Cleaning and sanitization.

Dogs Kept Outdoors

This rule spells out minimum standards for outdoor facilities at which dogs are kept by a license holder, including standards related to:

- Dogs that may be kept outdoors.
- Minimum area of outdoor primary enclosure.
- Construction of primary enclosure.
- Shelter, shade and windbreaks.
- Dog shelter standards.
- Outdoor tethering.
- Access to run or exercise area.
- Outdoor facility maintenance.

Transporting Dogs

This rule spells out minimum standards that license holders must follow when transporting dogs, including standards related to:

- Portable enclosures.
- Care of dogs during transport.
- Transport vehicles.

Prohibited Conduct

Under this rule, no license holder may:

- Interfere with a DATCP inspection under this rule, or assault an inspector.
- Refuse or fail, without just cause, to produce relevant evidence or records requested by DATCP.
- Misrepresent a dog's breed or pedigree, or move a diseased dog in violation of current law.
- Knowingly accept dogs from a person who is not properly licensed to supply those dogs (unless the person accepts the dogs to protect them, and promptly reports the acceptance to DATCP).

Variances

In response to a written request, DATCP may grant a written variance from an animal care standard under this rule if DATCP finds that the variance is reasonable and necessary under the circumstances and will not compromise the purpose served by the standard.

Public Hearings

DATCP held 5 public hearings on this rule. Hearings were held on the following dates at the following locations:

- September 20, 2010 - Madison
- September 23, 2010 - Appleton
- September 27, 2010 - Eau Claire
- September 28, 2010 - Wausau
- September 30, 2010 - Milwaukee

Written comments were accepted until October 8, 2010. The hearings were well attended: 113 people testified or registered. DATCP also received 979 written comments. A majority of the comments were in support of the rule with some amendment. The majority of the amendments requested would make the rule more restrictive on breeders. Overall comments on the rule broke out as follows (a summary of hearing comments is attached to this memo as *Appendix A.*):

	Total Submitted	Opposed	Support	Support w/ Amendment	Information
Written	979	44	58	867	10
Hearing	113	26	77	8	2
Total	1092	70	135	875	12
Percentage		6%	12%	80%	1%

A detailed listing of comments by the public are attached in *Appendix B.*

Changes from Hearing Draft

Following public hearings, DATCP made a substantial number of changes to the hearing draft rule in response to hearing comments. Changes included the following:

- Removed license exempt for research facilities. Under the final draft, research facilities will need to comply with all standards except enclosure size and exercise requirements. New or remodeled facilities must comply with enclosure standards.

- Reduced the number of licenses required. For example, an animal shelter that also acts as an animal control facility needs only one license for that facility.
- Clarified that persons keeping dogs in their homes for license holders are not required to be licensed. The final draft also eliminates confusing contract requirements related to these home custody providers. Under the final draft, the license holder must simply keep records of home custody providers, and is responsible for ensuring that they comply with care standards under this rule. DATCP may inspect, as necessary, to ensure compliance.
- Clarified or removed language that was vague or overly broad:
 - Removed the language “cause trauma, physical harm or unnecessary discomfort.” Dogs must simply be handled in a humane manner that does not cause physical harm or unnecessary injury.
 - Removed the requirement for daily visual enrichment, because the requirement is difficult to define and is adequately addressed by other requirements.
 - Removed requirement that certain employee activities be conducted under supervisor’s “direct supervision.” Under the final draft, those activities may be done according to the supervisor’s instructions.
- Allowed for the use of materials other than vinyl to coat wire.
- Clarified that dogs must have clean, dry and breed-appropriate bedding, or must have a solid resting place that is appropriate for the dog’s breed, age, health and physical condition, except when alternative special arrangements are necessary for a dog’s health and safety.
- Clarified that stainless steel gapped flooring is acceptable, provided that gaps are small enough that no part of the dog may pass through.
- Increased the required minimum size of the single dog enclosure but kept the exercise requirement the same.
- Strengthened standards related to stacking of enclosures.
- Clarified outdoor enclosure requirements for dog shelter and shade.
- Allowed temporary tethering at animal control facilities and animal shelters.
- Clarified transportation standards:

- Dogs do not need to be removed at intervals if the vehicle is equipped to meet the bodily needs of all dogs being transported.
 - Removed the subjective requirement that dogs be removed from transport vehicle “promptly” upon arrival at destination, and substituted requirement that dogs must be removed in a timely fashion in order to meet dog’s bodily needs.
 - Clarified that minimum transport enclosure size does not apply to dogs transported for a distance of less than 5 miles as part of a field trial.
- Made a number of organizational and technical drafting changes, including changes suggested by the Legislative Council Rules Clearinghouse.

Response to Rules Clearinghouse Comments

The Legislative Council Rules Clearinghouse made a number of technical comments on the hearing draft rule. DATCP modified the final draft rule to address all of the comments except the following:

Comment 5.i: If we remove the language as suggest then a veterinarian can diagnose but cannot prevent, control or treat. If the licensee wants a second opinion, they may obtain one as they are the owner of the dog. If they received a second opinion, and follow those recommendation then DATCP would interpret that as following the veterinarians’ recommendations. Whether the veterinarian is following standards of care would fall outside the jurisdiction of DATCP and would fall to Dept of Regulation and Licensing.

Fiscal Impact

This rule will not have a significant state or local fiscal impact. Section 173.41(14), Stats. (created by 2009 Wis. Act 90) requires DATCP to license and inspect “animal control facilities,” “animal shelters,” “dog breeders,” “dog breeding facilities,” “dog dealers” and “out of state dog breeders” that do business in this state. DATCP must inspect licensed facilities prior to licensing, and at least once every 2 years. Act 90 provided staff and funding for this licensing and inspection activity.

This rule will not create additional staffing requirements or program costs, beyond those entailed by Act 90 itself, nor will it change license fee revenues. Act 90 authorized DATCP to change initial statutory license fees by rule. However, this rule does not make any significant changes to the statutory fees.

Under Act 90 and this rule, whenever a license holder sells a dog in this state, the dog must be accompanied by a certificate of veterinary inspection (health certificate). The certificate must be issued by a Wisconsin certified veterinarian, on an official form provided by DATCP. Certified veterinarians may purchase the forms from DATCP at a cost of \$0.60 each (the same as for

certificates used under other animal health programs). DATCP estimates that certificate sales will generate \$44,000 in program revenue each year. Act 90 contemplates that these revenues will be used to help fund this program.

A complete *Fiscal Estimate* is attached.

Business Impact

This rule will affect persons who operate “animal control facilities,” “animal shelters” or “dog breeding facilities” in this state. It will also affect persons who operate as “dog breeders,” “dog dealers” or “out-of-state dog dealers” in this state. Under 2009 Wis. Act 90, those persons must be annually licensed and must pay annual license fees as provided in this rule (see above). This rule does not, by itself, increase license requirements or fees (beyond the licensing requirements and fees already created by Act 90).

This rule spells out licensing standards for persons who are required to be licensed under this rule, including standards for the care, transportation and sale of dogs. Many of the persons who are subject to licensing under this rule are already meeting the standards under this rule, but others will incur costs to bring their facilities and practices into compliance with this rule.

Under Act 90 and this rule, whenever a license holder sells a dog in this state, the dog must be accompanied by a certificate of veterinary inspection (health certificate). The certificate must be issued by a Wisconsin certified veterinarian, on an official form provided by DATCP. The certificate forms cost only \$0.60 each (an estimated \$44,000 for sellers statewide), but there will be a significant cost for veterinarian services. This could have a significant financial impact on license holders, especially small dog breeders. However, this rule does not add any costs beyond those imposed by Act 90 itself.

The facility requirements in this rule are, for the most part, rudimentary. However, some license holders may need to make significant facility upgrades in order to comply with the standards in this rule and ensure a humane level of care.

This rule requires license holders to keep inventory, identification and health records related to dogs that they keep or sell. Many of the persons affected by this rule already keep such records, but others do not. This rule may impose additional recordkeeping costs on those who do not. Many of the recordkeeping requirements in this rule are also contained (in more general form) in Act 90, so this rule does not add significantly to the costs already imposed by Act 90.

This rule may require some dog sellers to hire additional staff, or hire professional services (especially veterinarian services) to comply with this rule and provide a humane level of care to dogs under their custody or control.

This rule will benefit the dog care and sales industry by establishing basic standards of humane care and fair competition. This rule will also benefit dog buyers by providing greater assurance that dogs are healthy and well-adjusted, and have been humanely treated.

Many of the persons affected by this rule are “small businesses.” This rule, like Act 90, exempts animal shelters that keep no more than 25 dogs per year. It also exempts dog breeders and dog dealers who sell no more than 25 dogs a year from no more than 3 litters. But neither Act 90 nor this rule make other significant exemptions for “small business,” because many of the most serious animal health and humane problems addressed by Act 90 are found in “small business” settings.

The standards in this rule give affected businesses some flexibility and choices, consistent with the basic requirement of humane care. DATCP may issue licenses on a conditional basis, giving some license holders additional time to bring their operations into full compliance. DATCP may also grant variances for good cause, if the variance does not undermine the purpose of the standard from which the variance is granted.

A complete *Business Impact Analysis* is attached.

Federal and Surrounding State Programs

Federal Programs

Currently, USDA licenses and inspects approximately 49 kennels in Wisconsin that are selling puppies wholesale. USDA establishes minimum facility standards for those licensed facilities.

Surrounding State Programs

- *Minnesota* has no comparable licensing program for dog sellers or dog facilities. Proposed legislation failed in the last session, but will likely be reintroduced in the next session.
- *Illinois* licenses and regulates persons that have custody of more than 5 female dogs who breed dogs for sale. Illinois also licenses and regulates pet shops, dog dealers, kennel operators and catteries. Regulations establish minimum standards of care, record keeping requirements, and requirements for dog movement.
- *Michigan* has no comparable licensing program for dog sellers or dog facilities.
- *Iowa* licenses and regulates person that have custody of more than 3 breeding male or female dogs, including boarding kennels, breeders and dealers. Regulations establish minimum standards of care, record keeping requirements, and requirements for dog movement.

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Data and Analytical Methodologies

DATCP consulted with an advisory committee comprised of veterinarians and persons that will be licensed and regulated under this rule. DATCP representatives also attended USDA presentations related to humane dog care standards.