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Details: Emergency Rule extension requests by Department of Agriculture, Trade and Consumer Protection.

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules ...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**




State of Wisconsin
Jim Doyle, Governor

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

DATE: September 9, 2009

TO: State Legislators

FROM:  Rodney J. Nilsestuen
Secretary

SUBJECT: **Emergency Rule –QUARANTINES OF BROWN COUNTY AND KENOSHA COUNTY FOR EMERALD ASH BORER**

Pursuant to s. 227.24(3), Stats., the Department of Agriculture, Trade and Consumer Protection (DATCP) is forwarding a copy of an emergency rule relating to quarantines of Milwaukee County, Racine County, and Waukesha County for emerald ash borer. The emergency rule is needed to mitigate the spread of emerald ash borer out of Milwaukee County, Racine County and Waukesha County.

Background

The United States Department of Agriculture-Animal and Plant Health Inspection Services (APHIS) positively identified emerald ash borer in Milwaukee County, near the borders of Racine County and Waukesha County, on August 28, 2009. This emergency rule creates DATCP quarantines for Milwaukee County, Racine County and Waukesha County. Federal quarantines will be enacted approximately two to six weeks after a formal submission by the state plant regulatory official. Emerald ash borer is carried by untreated ash wood products. A two to six week delay until enactment of the federal quarantine leaves too much time for businesses or individuals to move potentially emerald ash borer infested material out of the county to areas of Wisconsin or other states that are not infested with emerald ash borer.

Emerald ash borer is an injurious exotic pest that now endangers Wisconsin's 750 million ash trees and ash tree resources. This insect has the potential to destroy entire stands of ash, and any incursion of emerald ash borer can result in substantial losses to forest ecosystems and urban trees, as well as the state's thriving tourism and timber industries. Efforts are currently underway in other states to eradicate emerald ash borer. Those efforts have proven to be costly, time-consuming, and not completely effective. In Michigan, emerald ash borer has caused an estimated \$11.6 million in landscape industry and wood lot losses and approximately \$2 million in lost nursery stock sales annually. The United States Department of Agriculture predicts the national urban impact from this pest could exceed \$370 billion.

DATCP has plant inspection and pest control authority under s. 94.01, Stats., to adopt rules establishing quarantines or other restrictions on the importation into or movement of plants or other materials within this state, if these measures are necessary to prevent or control the spread of injurious plant pests. A quarantine order may prohibit the movement of any pest, or any plant, pest host or pest-harboring material, which may transmit or harbor a pest.

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Contents of this Emergency Rule

The proposed rule will do the following:

- Create quarantines of emerald ash borer for Milwaukee County, Racine County and Waukesha County that prohibit the movement of all hardwood species of firewood, nursery stock, green lumber, and other material living, dead, cut or fallen, including logs, stumps, roots, branches and composted and uncomposted chips of the genus *Fraxinus* (Ash wood), out of the county.
- Provide an exemption for items that have been inspected and certified by a pest control official and are accompanied by a written certificate issued by the pest control official (some products, like nursery stock, cannot be given an exemption).
- Provide an exemption for businesses that enter into a state or federal compliance agreement. The compliance agreement spells out what a company can and cannot do with regulated articles.

Hearing on Emergency Rule

The rule will take effect immediately, upon publication in the official state newspaper. DATCP will schedule a hearing on the emergency rule within 45 days of the date of publication.

Questions or comments related to this emergency rule may be directed to:

Brian Kuhn or Bob Dahl
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-4590 or (608) 224-4573
E-Mail: Brian.Kuhn@wisconsin.gov or Robert.Dahl@wisconsin.gov

**WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION**

EMERGENCY RULE

The state of Wisconsin department of agriculture, trade and consumer protection hereby adopts the following emergency rule *to amend* s. ATCP 21.17 (1) (b) and *to create* s. ATCP 21.17 (1) (c), *relating to* the quarantines of Milwaukee County, Racine County and Waukesha County for emerald ash borer.

**Analysis Prepared by the Department
of Agriculture, Trade and Consumer Protection**

This emergency rule creates quarantines for Milwaukee County, Racine County and Waukesha County for the emerald ash borer. Under this rule, the Department of Agriculture, Trade and Consumer Protection ("DATCP") quarantines Milwaukee County, Racine County and Waukesha County to mitigate the movement of emerald ash borer to other areas of Wisconsin and other states.

DATCP is adopting this temporary emergency rule pending the adoption of federal quarantines for Milwaukee County, Racine County and Waukesha County. This emergency rule will take effect immediately upon publication in the official state newspaper, and will remain in effect for 150 days. The Legislature's Joint Committee for Review of Administrative Rules may extend the emergency rule for up to 120 additional days.

Statutes Interpreted

Statutes Interpreted: ss. 93.07(12) and 94.01, Stats.

Statutory Authority

Statutory Authority: ss. 93.07(1), 93.07(12), 94.01 and 227.24, Stats.

Explanation of Statutory Authority

The Wisconsin Department of Agriculture, Trade and Consumer Protection ("DATCP") has broad general authority, under s. 93.07 (1), Stats., to adopt regulations to enforce laws under its jurisdiction. DATCP also has broad general authority, under ss. 93.07 (12) and 94.01, Stats., to

adopt regulations to prevent and control plant pest infestations. Emerald ash borer quarantines created by this rule are part of an overall state strategy to prevent and control plant pest infestations, including emerald ash borer infestations. DATCP is adopting this temporary emergency rule, under authority of s. 227.24, Stats., pending the adoption of federal regulations on the same subject.

Background

The United States Department of Agriculture-Animal and Plant Health Inspection Services (APHIS) positively identified emerald ash borer in Milwaukee County, near the borders of Racine County and Waukesha County on August 28, 2000. This emergency rule creates DATCP quarantines for Milwaukee County, Racine County and Waukesha County. A federal quarantine will be enacted approximately two to six weeks after a formal submission by the state plant regulatory official. Emerald ash borer is carried by untreated ash wood products. A two to six week delay until enactment of the federal quarantine leaves too much time for businesses or individuals to move potentially emerald ash borer infested material out of the county to areas of Wisconsin or other states that are not infested with emerald ash borer.

Emerald ash borer is an injurious exotic pest that now endangers Wisconsin's 750 million ash trees and ash tree resources. This insect has the potential to destroy entire stands of ash, and any incursion of emerald ash borer can result in substantial losses to forest ecosystems and urban trees, as well as the state's thriving tourism and timber industries. Efforts are currently underway in other states to eradicate emerald ash borer. Those efforts have proven to be costly, time-consuming, and not completely effective. In Michigan, emerald ash borer has caused an estimated \$11.6 million in landscape industry and wood lot losses and approximately \$2 million in lost nursery stock sales annually. The United States Department of Agriculture predicts the national urban impact from this pest could exceed \$370 billion.

DATCP has plant inspection and pest control authority under s. 94.01, Stats., to adopt rules establishing quarantines or other restrictions on the importation into or movement of plants or other materials within this state, if these measures are necessary to prevent or control the spread of injurious plant pests. A quarantine order may prohibit the movement of any pest, or any plant, pest host or pest-harboring material, which may transmit or harbor a pest.

Emergency Rule Content

Under this emergency rule, movement of all hardwood (non-coniferous) firewood of any type plus movement of any ash wood out of Milwaukee County, Racine County and Waukesha County is prohibited with certain exceptions. The emergency rule will do the following:

- Create quarantines of emerald ash borer for Milwaukee County, Racine County and Waukesha County that prohibit the movement of all hardwood species of firewood, nursery stock, green lumber, and other material living, dead, cut or fallen, including logs, stumps, roots, branches and composted and uncomposted chips of the genus *Fraxinus* (Ash wood), out of the county.

- Provide an exemption for items that have been inspected and certified by a pest control official and are accompanied by a written certificate issued by the pest control official (some products, such as nursery stock, cannot be given an exemption).
- Provide an exemption for businesses that enter into a state or federal compliance agreement. The compliance agreement spells out what a company can and cannot do with regulated articles.

Fiscal Impact

DATCP will have additional workload related to enforcing the quarantines but it will be able to absorb the projected workload and costs within DATCP's current budget and with current staff. The presence of emerald ash borer may produce additional workload for local governments in Milwaukee County, Racine County and Waukesha County, but the quarantines will not themselves produce any local fiscal impact.

Business Impact

This emergency rule may have an impact on persons or companies that deal in any hardwood firewood or ash materials in Milwaukee County, Racine County or Kenosha County. The affected businesses are all small businesses. This emergency rule restricts the sale or distribution of ash products plus any hardwood firewood from Milwaukee County, Racine County and Waukesha County to locations outside of Milwaukee County, Racine County and Waukesha County.

The business impact of this emergency rule depends on the number of nurseries that sell/distribute ash nursery stock outside the county, firewood producers/dealers that sell/distribute outside the county, saw mills that move untreated ash stock outside the county, and green wood waste that is moved outside the county.

Milwaukee County, Racine County and Waukesha County have a combined total of 84 licensed nursery growers that could possibly be growing ash nursery stock. Those growers will not be able to sell ash nursery stock outside of the county during the quarantine. There are also a total of 50 known firewood dealers in Milwaukee County, Racine County and Waukesha County. Additional firewood dealers are being identified weekly. Firewood dealers would need to be certified under s. ATCP 21.20 to sell firewood outside of the county. To obtain certification a firewood dealer will have to pay an annual certification fee to DATCP of \$50 and treat the firewood in a manner that insures it is free of emerald ash borer. There are 3 mills (non-vener) in Milwaukee County, Racine County and Waukesha County and an unknown number of wood processing facilities that deal with ash. To sell ash wood products outside of their counties they will have to enter into a compliance agreement with DATCP or APHIS that authorizes movement of ash products outside of their county only when there is assurance that the movement will not spread emerald ash borer to other locations.

Environmental Impact

This emergency rule will not have a significant impact on the environment.

Federal and Surrounding State Programs

Federal Programs

Under the federal Plant Protection Act, APHIS has responsibility for excluding, eradicating and controlling serious plant pests, including emerald ash borer. APHIS has instituted statewide quarantines on the movement of all ash wood for Illinois, Indiana and Ohio, in addition to the Lower Peninsula of Michigan. APHIS has also instituted quarantines for Ozaukee, Washington, Sheboygan, Fond du Lac, Vernon and Crawford Counties in Wisconsin. The quarantines include restrictions on the movement of any hardwood (non-coniferous) firewood.

Surrounding State Programs

Surrounding states where emerald ash borer has been identified (Illinois, Indiana, Ohio, Minnesota and Michigan) have state and federal quarantines that prohibit the movement of regulated articles out of quarantined areas. A regulated article can only move out of quarantined areas after it is certified by USDA or state officials.

DATCP Contact

Questions and comments related to this rule may be directed to:

Brian Kuhn or Bob Dahl
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone: (608) 224-4590 or (608) 224-4573
E-Mail: Brian.Kuhn@wisconsin.gov or Robert.Dahl@wisconsin.gov

FINDING OF EMERGENCY

(1) On August 28, 2009, APHIS identified emerald ash borer in Milwaukee County, near the borders of Racine County and Waukesha County. Emerald ash borer is an exotic pest that poses a dire risk to the ash forest. When APHIS declares quarantine, DATCP has regulatory authority for import controls and quarantine for emerald ash borer under ATCP 21.17. It is anticipated that APHIS will declare quarantines for Milwaukee County, Racine County and Waukesha County but that it will take up to six weeks for APHIS to act. A six week delay until enactment

of the federal quarantines leaves too much time for businesses or individuals to move potentially emerald ash borer infested material out of the county to areas of Wisconsin or other states that are not infested with emerald ash borer.

(2) DATCP is adopting this rule as a temporary emergency rule, pending completion of federal quarantine regulations. DATCP does not anticipate completing a permanent rule.

EMERGENCY RULE

SECTION 1. ATCP 21.17 (1) (b) is amended to read:

ATCP 21.17 (1) (b) Move any regulated item under sub. (2) Out of an emerald ash borer regulated area that is identified in 7 CFR 301.53-3 and located in this state or out of an emerald ash borer regulated area identified in (c).

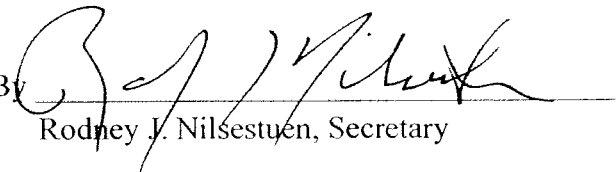
SECTION 2. ATCP 21.17 (1) (c) is created to read:

ATCP 21.17 (1) (c) Milwaukee County, Racine County and Waukesha County are designated emerald ash borer regulated areas.

SECTION 3. EFFECTIVE DATE: This emergency rule takes effect upon publication, and remains in effect for 150 days. The department may seek to extend this emergency rule as provided in s. 227.24, Stats.

Dated this 6 day of September 2009.

STATE OF WISCONSIN DEPARTMENT
OF AGRICULTURE TRADE AND
CONSUMER PROTECTION

By 
Rodney J. Nilsestuen, Secretary

FISCAL ESTIMATE DOA-2048 (R 10/94) <input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED	LRB or Bill No. / Adm. Rule No. ATCP 21
SUPPLEMENTAL	Amendment No. (If Applicable)

Subject:
Emergency Rule for Quarantines of Milwaukee County, Racine County and Waukesha County for Emerald Ash Borer

Fiscal Effect State: <input checked="" type="checkbox"/> No State Fiscal Effect Check below only if bill makes a direct appropriation or affects a sum sufficient appropriation. <input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation	<input type="checkbox"/> Increase Costs – May be possible to absorb within agency's budget? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
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Local : <input checked="" type="checkbox"/> No local government costs 1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Gov. Unit Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Counties <input type="checkbox"/> Cities <input type="checkbox"/> Other: <u>County Drainage</u> Boards <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
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Fund Source Affected: <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	Affected Ch. 20 Appropriations:
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Assumptions Used in Arriving at Fiscal Estimate

The United States Department of Agriculture-Animal and Plant Health Inspection Services (APHIS) positively identified emerald ash borer in Milwaukee County on August 28, 2009. The location of the infested trees is within close proximity to both Racine County and Waukesha County. This emergency rule creates DATCP quarantines for Milwaukee County, Racine County and Waukesha County. A federal quarantine will be enacted approximately two to six weeks after a formal submission by the state plant regulatory official. Emerald ash borer is carried by untreated ash wood products. A two to six week delay until enactment of the federal quarantines leaves too much time for businesses or individuals to move potentially emerald ash borer infested material out of the counties to areas of Wisconsin or other states that are not infested with emerald ash borer.

Emerald ash borer is an injurious exotic pest that now endangers Wisconsin's 750 million ash trees and ash tree resources. This insect has the potential to destroy entire stands of ash, and any incursion of emerald ash borer can result in substantial losses to forest ecosystems and urban trees, as well as the state's thriving tourism and timber industries. Efforts are currently underway in other states to eradicate emerald ash borer. Those efforts have proven to be costly, time-consuming, and not completely effective. In Michigan, emerald ash borer has caused an estimated \$11.6 million in landscape industry and wood lot losses and approximately \$2 million in lost nursery stock sales annually. The United States Department of Agriculture predicts the national urban impact from this pest could exceed \$370 billion.


DATCP has plant inspection and pest control authority under s. 94.01, Stats., to adopt rules establishing quarantines or other restrictions on the importation into or movement of plants or other materials within this state, if these measures are necessary to prevent or control the spread of injurious plant pests. A quarantine order may prohibit the movement of any pest, or any plant, pest host or pest-harboring material, which may transmit or harbor a pest. The proposed rule will do the following:

- Create quarantines of emerald ash borer for Milwaukee County, Racine County and Waukesha County that prohibit the movement of all hardwood species of firewood, nursery stock, green lumber, and other material living, dead, cut or fallen, including logs, stumps, roots, branches and composted and uncomposted chips of the genus *Fraxinus* (Ash wood), out of the county.
- Provide an exemption for items that have been inspected and certified by a pest control official and are accompanied by a written certificate issued by the pest control official.
- Provide an exemption for businesses that enter into a state or federal compliance agreement. The compliance agreement spells out what a company can and cannot do with regulated articles.

This rule will be administered by DATCP. DATCP will have additional workload related to enforcing the quarantine but it will be able to absorb the projected workload and costs within DATCP's current budget and with current staff. The presence of the emerald ash borer may produce additional workload for local governments in Milwaukee County, Racine County and Waukesha County, but the quarantines will not themselves produce any local fiscal impact.

Long - Range Fiscal Implications

If multiple infestations are found in this state, DATCP may experience substantial costs and personnel demands for providing regulatory oversight and working with affected industries. Costs may vary, depending on the nature and scope of the infestations, and cannot be accurately predicted at this time.

Agency/prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
DATCP Jennifer Heaton-Amrhein 608-224-4512	 224-4353	9/08/2009

FISCAL ESTIMATE WORKSHEET

2009 SESSION

Detailed Estimate of Annual Fiscal Effect DOA-2047 (R10/94) ORIGINAL UPDATED CORRECTED SUPPLEMENTAL

LRB or Bill No/Adm. Rule No. ATCP 21	Amendment No.
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SUBJECT
Emergency Rule

I. One-time Cost or Impacts for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Cost: **Annualized Fiscal Impact on State funds from:**


A. State Costs by Category	Increased Costs	Decreased Costs
1. State Operations - Salaries and Fringes	\$-0	\$ - 0
2. (FTE Position Changes)	(FTE)	(- FTE)
3. State Operations - Other Costs		
4. Local Assistance		- 0
5. Aids to Individuals or Organizations	0	- 0
TOTAL State Costs by Category	\$-0	\$ - 0

B. State Costs by Source of Funds	Increased Costs	Decreased Costs
1. GPR	\$	\$ - 0
2. FED	0	- 0
3. PRO/PRS	0	- 0
4. SEG/SEG-S	\$-0	- 0

III. State Revenues - <small>Complete this section only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fees)</small>	Increased Revenue	Decreased Revenue
• GPR Taxes	\$ 0	\$ - 0
• GPR Earned	0	- 0
• FED	0	- 0
• PRO/PRS	0	- 0
• SEG/SEG-S	0	- 0
TOTAL State Revenues	\$ 0	\$ - 0

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ <u>0</u>	\$ <u>0</u>
NET CHANGE IN REVENUES	\$ <u>0</u>	\$ <u>0</u>

Agency Prepared by: (Name & Phone No.) DATCP Jennifer Heaton-Amrhein, 608-224-4512	Authorized Signature/Telephone No.  224-4353	Date 9/08/2009
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Wisconsin Department of Agriculture, Trade and Consumer Protection

Business Impact Analysis¹

<i>Rule Subject:</i>	Plant Pest Import Controls and Quarantines
<i>Adm. Code Reference:</i>	ATCP 21
<i>Rules Clearinghouse #:</i>	Not yet assigned
<i>DATCP Docket #:</i>	

Rule Description

This emergency rule creates quarantines for Milwaukee County, Racine County and Waukesha County for emerald ash borer. Under this rule, the Department of Agriculture, Trade and Consumer Protection ("DATCP") quarantines Milwaukee County, Racine County and Waukesha County to mitigate the movement of emerald ash borer to other areas of Wisconsin and other states.

DATCP is adopting this temporary emergency rule pending the adoption of a federal regulation to quarantine Milwaukee County, Racine County and Waukesha County. The emergency rule will take effect immediately upon publication in the official state newspaper, and will remain in effect for 150 days. The Legislature's Joint Committee for Review of Administrative Rules may extend the emergency rule for up to 120 additional days.

The United States Department of Agriculture-Animal and Plant Health Inspection Services (APHIS) positively identified emerald ash borer in Milwaukee County near the border of Racine County and Waukesha County on August 28, 2009. This emergency rule creates DATCP quarantines for Milwaukee County, Racine County and Waukesha County. Federal quarantines will be enacted approximately two to six weeks after a formal submission by the state plant regulatory official. Emerald ash borer is carried by untreated ash wood products. A two to six week delay until enactment of the federal quarantine leaves too much time for businesses or individuals to move potentially emerald ash borer infested material out of the county to areas of Wisconsin or other states that are not infested with emerald ash borer.

Key Rule Provisions

This rule includes the following key provisions:

- Creates quarantines of emerald ash borer for Milwaukee County, Racine County and Waukesha County that prohibit the movement of all hardwood species of firewood, nursery stock, green lumber, and other material living, dead, cut or fallen, including

¹ This analysis includes, but is not limited to, a small business analysis ("regulatory flexibility analysis") under s. 227.114, Stats..

logs, stumps, roots, branches and composted and uncomposted chips of the genus *Fraxinus* (Ash wood), out of the county.

- Provides an exemption for items that have been inspected and certified by a pest control official and are accompanied by a written certificate issued by the pest control official (some products, such as nursery stocks, cannot be given an exemption).
- Provides an exemption for businesses that enter into a state or federal compliance agreement. The compliance agreement spells out what a company can and cannot do with regulated articles.

Business Impact

This emergency rule may have an impact on persons or companies that deal in any hardwood firewood or ash materials in Milwaukee County, Racine County or Waukesha County. The affected businesses are all small businesses. This emergency rule restricts the sale or distribution of ash products plus any hardwood firewood from Milwaukee County, Racine County and Waukesha County to locations outside of Milwaukee County, Racine County and Waukesha County.

The business impact of this emergency rule depends on the number of nurseries that sell/distribute ash nursery stock outside the county, firewood producers/dealers that sell/distribute outside the county, saw mills that move untreated ash stock outside the county, and green wood waste that is moved outside the county.

Milwaukee County, Racine County and Waukesha County have a combined total of 84 licensed nursery growers that could possibly be growing ash nursery stock. Those growers will not be able to sell ash nursery stock outside of the county during the quarantine. There are also a total of 50 known firewood dealers in Milwaukee County, Racine County and Waukesha County. Additional firewood dealers are being identified weekly. Firewood dealers would need to be certified under s. ATCP 21.20 to sell firewood outside of the county. To obtain certification a firewood dealer will have to pay an annual certification fee to DATCP of \$50 and treat the firewood in a manner that insures it is free of emerald ash borer. There are 3 mills (non-veneer) in Milwaukee County, Racine County and Waukesha County and an unknown number of wood processing facilities that deal with ash. To sell ash wood products outside of their counties they will have to enter into a compliance agreement with DATCP or APHIS that authorizes movement of ash products outside of their county only when there is assurance that the movement will not spread emerald ash borer to other locations.

Accommodation for Small Business

DATCP recognizes that every small business is different. DATCP will work with individual businesses to meet the requirements of the quarantine while accommodating the unique character of the individual business. Therefore, each compliance agreement will be designed to satisfy the regulations with minimal negative effects to the business.

Conclusion

This rule will help affected businesses in Milwaukee County, Racine County and Waukesha County to move ash wood and material without moving emerald ash borer from their counties to areas free from emerald ash borer. This will in turn help to protect the resources on which they depend. This rule may impose some additional costs on some businesses, including small businesses, depending on the nature of their ash wood business. The department works closely with each affected business to minimize any costs and these costs are outweighed by the protection of Wisconsin's ash resource.

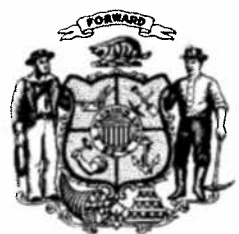
Dated this 8th day of September, 2009

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Brian D. K. /s/ K.F.P.
Kathy F. Pielsticker, Administrator
Division of Agricultural Resource Management



WISCONSIN STATE LEGISLATURE





State of Wisconsin
Jim Doyle, Governor

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

June 15, 2010

The Honorable Josh Zepnick, Co-Chair
Joint Committee for
the Review of Administrative Rules
219 North State Capitol
P.O. Box 8953
Madison, WI 53708-8953

The Honorable Jim Holperin, Co-Chair
Joint Committee for
the Review of Administrative Rules
409 South State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Dear Representative Zepnick and Senator Holperin:

Re: **Emergency Rule Extension – Somatic Cell Count Standards for Dairy Goat Milk**

The Department of Agriculture, Trade and Consumer Protection (DATCP) asks the Joint Committee for the Review of Administrative Rules (JCRAR) to extend the above emergency rule, which is scheduled to expire on July 3, 2010. Pursuant to s. 227.24(2), Stats., DATCP asks JCRAR to extend the emergency rule until October 31, 2010, or until the corresponding “permanent rule” takes effect, whichever occurs first.

This emergency rule relaxes Wisconsin’s standard for somatic cells in Grade A and Grade B goat milk, from 1,000,000 somatic cells per ml to 1,500,000 per ml, to conform to the new national standard. This emergency rule also eliminates the current “immediate response” requirement, under which a dairy plant operator must immediately reject goat milk shipments from producer whenever a somatic cell count on any shipment from that producer exceeds 1,500,000 per ml.

We are enclosing copies of the emergency rule, fiscal estimate and hearing notice. The emergency rule includes a *Finding of Emergency* that explains the need for this rule. DATCP has started “permanent” rulemaking proceedings, but will not be able to complete those proceedings before the emergency rule expires. DATCP is therefore asking JCRAR to extend the emergency rule so that the relaxed somatic cell standards for dairy goat milk will remain in effect until the permanent rule is published.

DATCP held a public hearing on the emergency rule and proposed “permanent” rule on June 15, 2010. There was no opposition to either rule. The DATCP Board is scheduled to approve the final draft “permanent” rule at its next meeting on July 7, 2010. DATCP must then submit the final draft “permanent” rule for legislative committee review. Considering the time normally required for legislative committee review and final publication in the Wisconsin Administrative Register, it is unlikely that the “permanent” rule will take effect prior to October 1 or November 1.


Agriculture generates \$51.5 billion for Wisconsin

Honorable Josh Zepnick
Honorable Jim Holperin
June 15, 2010
Page 2 of 2

Under s. 227.24(2), Stats., JCRAR may extend the effective period of the emergency rule until the "permanent" rule is in effect or until October 31, 2010, whichever is earlier. DATCP hereby requests JCRAR to do so.

DATCP will have staff available to answer questions at the JCRAR meeting on this matter.

Sincerely,


Rodney J. Nilsestuen
Secretary

Enclosures

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

EMERGENCY RULE

1 The Wisconsin department of agriculture, trade and consumer protection hereby adopts the
2 following emergency rule *to amend* ATCP 60.15(4) and 60.20(3) and (6) (intro.), (b) and (c);
3 *relating to* somatic cell standards for dairy goat milk.

Analysis Prepared by the Department
of Agriculture, Trade and Consumer Protection

This emergency rule relaxes Wisconsin's current standard for somatic cells in goat milk to conform to a new, less stringent, national standard. The Department of Agriculture, Trade and Consumer Protection (DATCP) is adopting this temporary emergency rule pending the adoption of a more "permanent" rule on the same subject.

This emergency rule will take effect immediately upon publication in the official state newspaper, and will remain in effect for 150 days. The Legislature's Joint Committee for Review of Administrative Rules may extend this emergency rule for up to 120 additional days.

Statutes Interpreted

Statutes Interpreted: ss. 97.22 and 97.24, Stats.

Statutory Authority

Statutory Authority: ss. 93.07(1), 97.22(8), 97.24(3) and 227.24, Stats.

Explanation of Statutory Authority

DATCP has broad general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction. DATCP also has authority, under ss. 97.22(8) and 97.24(3), Stats., to adopt regulations governing the operation of dairy farms and the production of milk and fluid milk products.

DATCP is authorized to adopt temporary emergency rules under s. 227.24, Stats., if emergency rules are necessary to protect the public health, safety or welfare pending the adoption of "permanent" rules. This emergency rule protects the public welfare by maintaining the competitiveness of Wisconsin goat milk producers, relative to producers in other states, pending

the adoption of "permanent" rules to conform Wisconsin goat milk standards to new (less stringent) national standards.

Related Statutes and Rules

Dairy plant operators are required to test goat milk received from producers, to ensure that goat milk meets somatic cell and other standards. Milk must be tested in certified laboratories, and test results must be reported to DATCP. Serious or continued violations of milk quality standards may result in state enforcement action, including the suspension of a milk producer's grade A dairy farm permit. In some serious cases, dairy plant operators must take immediate action to reject milk shipments from the affected dairy farms until violations are eliminated. However, not all violations require such an "immediate response." See, generally, chs. ATCP 60 and 80, Wis. Adm. Code.

Wisconsin rules for grade A milk and fluid milk products (including goat milk and fluid goat milk products) must be in reasonable accord with the interstate pasteurized milk ordinance (PMO). See s. 97.24, Stats. The PMO is adopted by the National Conference on Interstate Milk Shipments (NCIMS) with the approval of the United States Food and Drug Administration (FDA), and is administered by FDA. Wisconsin rules must be at least as stringent as the PMO in order for Wisconsin to ship milk and fluid milk products in interstate commerce.

Plain Language Analysis

Recently, NCIMS and FDA relaxed the PMO standard for somatic cells in Grade A goat milk, from 1,000,000 somatic cells per ml to 1,500,000 per ml. The United States Department of Agriculture is making an equivalent change in its somatic cell standard for Grade B goat milk (Grade B milk may not be sold as fluid milk, but may be used to manufacture non-fluid dairy products such as cheese).

This emergency rule relaxes Wisconsin's standard for somatic cells in Grade A and Grade B goat milk, from 1,000,000 somatic cells per ml to 1,500,000 per ml, to conform to the new national standard. This emergency rule also eliminates the current "immediate response" requirement, under which a dairy plant operator must immediately reject goat milk shipments from producer whenever a somatic cell count on any shipment from that producer exceeds 1,500,000 per ml.

Fiscal Impact

This rule will have no fiscal impact on the state of Wisconsin or on local units of government. A complete *fiscal estimate* is attached.

Business Impact

This emergency rule will benefit the Wisconsin dairy goat industry, by relaxing the current somatic cell standard for dairy goat milk to conform to the newly relaxed national standard. This rule will maintain parity with other states, and will relieve goat milk producers and dairy plant operators of certain problems associated with the current somatic cell standard. A complete *business impact analysis* is attached.

Federal and Surrounding State Programs

Federal Programs

There is no federal law that compels this rule change. However this rule is consistent with recent changes in national standards (see above).

Surrounding State Programs

All surrounding states with dairy goat herds are likely to adopt the standard contained in this rule.

Data and Analytical Methodologies

Somatic cell test methods for goat milk are currently prescribed by s. ATCP 60.22(3), Wis. Adm. Code. This rule does not change current test methods.

DATCP Contact

Questions and comments related to this rule may be directed to:

Tom Leitzke
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-4411
E-Mail: tom.leitzke@wisconsin.gov

FINDING OF EMERGENCY

1
2 (1) Recently, the National Conference of Interstate Milk Shippers voted to relax the
3 standard for somatic cells in grade A goat milk, from 1,000,000 somatic cells per ml to
4 1,500,000 per ml. The United States Food and Drug Administration accepted this change and
5 will include it in the next edition of the Interstate Pasteurized Milk Ordinance. The United States
6 Department of Agriculture is adopting the same standard for grade B goat milk, as part of its
7 standards for "Milk for Manufacturing Purposes and its Production and Processing."

8 (2) Wisconsin rules currently establish a limit of 1,000, 000 somatic cells per ml in goat
9 milk, which is more stringent than the new national standard of 1,500,000 per ml. The more

1 stringent Wisconsin standard, if not modified to conform to the new national standard, will put
2 Wisconsin dairy goat milk producers at a significant financial, operational, and competitive
3 disadvantage compared to producers in other states.

4 (3) This emergency rule modifies Wisconsin's current standard, and makes it consistent
5 with the new national standard. The department of agriculture, trade and consumer protection
6 (DATCP) is adopting this rule as a temporary emergency rule, pending rulemaking proceedings
7 to modify the standard on a more "permanent" basis. "Permanent" rulemaking proceedings
8 normally require over a year to complete. This emergency rule is needed to mitigate a potential
9 hardship to Wisconsin producers of dairy goat milk, pending the adoption of "permanent" rules.

10 EMERGENCY RULE

11 SECTION 1. ATCP 60.15(4) is amended to read:

12 ATCP 60.15(4) SOMATIC CELL COUNT. The somatic cell count of cow or sheep milk, as
13 determined by a direct microscopic somatic cell count or and electronic somatic cell count under
14 this subchapter, shall not exceed 750,000 cells per mil. The somatic cell count of goat milk, as
15 determined by the Pyronin Y Methyl green stain test, shall not exceed ~~1,000,000~~ 1,500,000 cells
16 per ml. Except as provided under s. ATCP 60.20(6), a dairy plant is not required to reject milk
17 shipments in response to a violation of this subsection unless the department suspends or revokes
18 the milk producer's license or grade A permit, or issues an order affecting the milk shipments
19 under s. ATCP 60.30.

20 SECTION 2. ATCP 60.20(3) and (6)(intro.), (b) and (c) are amended to read:

21 ATCP 60.20(3) TEST METHODS. A somatic cell count under the section shall be a direct
22 microscopic somatic cell count or an electronic somatic cell count. If the somatic cell count on
23 goat milk exceeds ~~1,000,000~~ 1,500,000, the somatic cell count shall be confirmed using the

1 Pyronin Y Methyl green stain test, unless that test was used to obtain the initial count.

2 (6)(intro.) IMMEDIATE RESPONSE LEVEL; REPORTING AND FOLLOW-UP. If a somatic cell
3 count under this section or s. ATCP 80.26 exceeds 1,000,000 somatic cells per ml. for cow or
4 sheep milk, ~~or 1,500,000 for goat milk~~, the dairy plant operator shall do all the following:

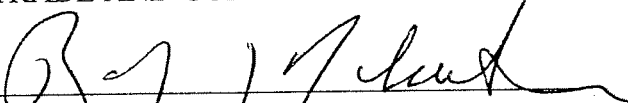
5 (6)(b) Perform a confirmatory somatic cell count on at least one more sample of milk
6 collected from the milk producer's dairy farm. The operator shall collect the confirmatory
7 sample within 14 days after the date on which the operator collected the original sample. The
8 operator shall report the confirmatory somatic cell count to the department and the milk
9 producer within 3 business days after the operator obtains the confirmatory count. ~~A dairy plant
10 operator shall use the Pyronin Y Methyl green stain test when performing a confirmatory somatic
11 cell count on goat milk.~~

12 (6)(c) Reject milk shipments from the dairy farm if the confirmatory somatic cell count
13 under par. (b) still exceeds 1,000,000 somatic cells per ml. ~~for cow or sheep milk, or 1,500,000
14 for goat milk.~~ The milk producer may not ship cow or sheep milk from the dairy farm to any
15 dairy plant until a dairy plant operator conducts another somatic cell count and finds that the
16 count no longer exceeds this number.

17 **SECTION 2. EFFECTIVE DATE:** This emergency rule takes effect upon publication, and
18 remains in effect for 150 days. The department may seek to extend this emergency rule as
19 provided in s. 227.24, Stats.

Dated this 27 day of January, 2010.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 
Rodney J. Nilsestuen, Secretary

Wisconsin Department of Agriculture, Trade and Consumer Protection

Business Impact Analysis¹

Rule Subject: Somatic Cell Limits in Dairy Goat Milk
Adm. Code Reference: ATCP 60
Rules Clearinghouse #: Not yet assigned
DATCP Docket #: 09-R-15

Rule Summary

This emergency rule changes the limit for somatic cell counts in dairy goat milk from 1,000,000 somatic cells per ml to 1,500,000 per ml to align with the national standard. As the new limit for somatic cells in dairy goat milk is equivalent to the current "immediate response level" for goat milk found in ATCP 60.20(6), this emergency rule removes this provision from the rule.

Business Impact

This emergency rule will not have a significant impact on Wisconsin dairy plant operators or dairy goat milk producers. The emergency rule makes no changes to current routine milk quality testing or reporting requirements. The emergency rule eliminates the "immediate response level" for dairy goat milk and may reduce resampling of those goat milk farms that exceed the current "immediate response level."

Accommodation for Small Business

Overall, this rule should have no adverse impact on small business. This rule relaxes the somatic cell limits in dairy goat milk. Most, if not all, dairy goat milk producers in Wisconsin are small businesses.

Conclusion

Overall, this rule will benefit Wisconsin's growing dairy goat industry by leveling the playing field between Wisconsin and other goat milk producing states.

¹ This analysis includes, but is not limited to, a small business analysis ("regulatory flexibility analysis") under ss. 227.114 and 227.19(3)(e), Stats.

Dated this 25th day of November, 2009

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Steven C. Ingham
Steven C. Ingham, Administrator,
Division of Food Safety

FISCAL ESTIMATE

DOA-2048 N(R10/98)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB No. and Bill/Adm. Rule No.

Amendment No. If Applicable

Subject

Somatic Cell Limits in Dairy Goat Milk

Fiscal Effect:State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum certain appropriation

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

 Increase Costs - May be possible to Absorb Within Agency's Budget. Yes No Decrease CostsLocal: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

- Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations**Assumptions Used in Arriving at Fiscal Estimate**

There is no state fiscal impact as a result of this emergency rule as somatic cell counts in goat milk are currently reported monthly to the department. This emergency rule makes no changes to current milk quality testing or reporting requirements.

Long-Range Fiscal Implications

None

Agency/Prepared by: (Name & Phone No.)

Dept of Agriculture, Trade & Consumer Protection

Michelle Wachter 608-224-4703

Authorized Signature/Telephone No.



William Walker 608-224-4353

Date

12-1-09

State of Wisconsin
Department of Agriculture, Trade, and Consumer Protection

HEARING NOTICE

Goat Milk Somatic Cell Standards

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on rules relating to goat milk somatic cell standards. DATCP adopted a temporary emergency rule effective February 5, 2010 and is also proposing a "permanent" rule. The hearing will cover the "emergency" rule as well as the proposed "permanent" rule.

DATCP will hold the public hearing at the time and location shown below. DATCP invites the public to attend the hearing and comment on the rules. Following the hearing, the hearing record will remain open until Friday, June 25, 2010 for additional written comments. Comments may be sent to the Division of Food Safety at the address below, by email to debbie.mazanec@wi.gov or online at <http://AdminRules.Wisconsin.gov/>.

You may obtain free copies of the temporary "emergency" rule and proposed "permanent" rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You may also obtain copies by calling (608) 224-4712 or e-mailing debbie.mazanec@wi.gov. Copies will also be available at the hearing. To view the proposed rule online, go to: <http://AdminRules.Wisconsin.gov/>

To provide comments or concerns relating to small business, you may also contact DATCP's small business regulatory coordinator Keeley Moll at the address above, or by emailing to Keeley.Moll@wi.gov or by telephone at (608) 224-5039.

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by May 7, 2010, by writing to Deb Mazanec, Division of Food Safety, P.O. Box 8911, Madison, WI 53708-8911; e-mailing to debbie.mazanec@wi.gov or by phone at (608) 224-4712. Alternatively, you may contact the DATCP TDD at (608) 224-5058. Handicap access is available at the hearings.

Hearing Date and Location:

June 15, 2010
10:00 a.m. – 12:00 p.m.
WI Department of Agriculture, Trade & Consumer Protection
2811 Agriculture Drive – Conference Room 172, 1st Floor
Madison, WI 53718

**Analysis Prepared by the Department
of Agriculture, Trade and Consumer Protection**

This rule relaxes Wisconsin's current standard for somatic cells in goat milk to conform to a new, less stringent, national standard. The Department of Agriculture, Trade and Consumer Protection (DATCP) adopted a temporary emergency rule on February 5, 2010, and gave notice that it would adopt a "permanent" rule on the same subject. This "permanent" rule is identical to the temporary emergency rule adopted by DATCP.

Statutes Interpreted

Statutes Interpreted: ss. 97.22 and 97.24, Stats.

Statutory Authority

Statutory Authority: ss. 93.07(1), 97.22(8), 97.24(3) and 227.24, Stats.

Explanation of Statutory Authority

DATCP has broad general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction. DATCP also has authority, under ss. 97.22(8) and 97.24(3), Stats., to adopt regulations governing the operation of dairy farms and the production of milk and fluid milk products.

This rule will maintain the competitiveness of Wisconsin goat milk producers, relative to producers in other states, by conforming Wisconsin goat milk standards to new (less stringent) national standards.

Related Statutes and Rules

Dairy plant operators are required to test goat milk received from producers, to ensure that goat milk meets somatic cell and other standards. Milk must be tested in certified laboratories, and test results must be reported to DATCP. Serious or continued violations of milk quality standards may result in state enforcement action, including the suspension of a milk producer's grade A dairy farm permit. In some serious cases, dairy plant operators must take immediate action to reject milk shipments from the affected dairy farms until violations are eliminated. However, not all violations require such an "immediate response." See, generally, chs. ATCP 60 and 80, Wis. Adm. Code.

Wisconsin rules for grade A milk and fluid milk products (including goat milk and fluid goat milk products) must be in reasonable accord with the interstate pasteurized milk ordinance (PMO). See s. 97.24, Stats. The PMO is adopted by the National Conference on Interstate Milk Shipments (NCIMS) with the approval of the United States Food and Drug Administration

(FDA), and is administered by FDA. Wisconsin rules must be at least as stringent as the PMO in order for Wisconsin to ship milk and fluid milk products in interstate commerce.

Plain Language Analysis

Recently, NCIMS and FDA relaxed the PMO standard for somatic cells in Grade A goat milk, from 1,000,000 somatic cells per ml to 1,500,000 per ml. The United States Department of Agriculture is making an equivalent change in its somatic cell standard for Grade B goat milk (Grade B milk may not be sold as fluid milk, but may be used to manufacture non-fluid dairy products such as cheese).

This permanent rule relaxes Wisconsin's standard for somatic cells in Grade A and Grade B goat milk, from 1,000,000 somatic cells per ml to 1,500,000 per ml, to conform to the new national standard. This rule also eliminates the current "immediate response" requirement, under which a dairy plant operator must immediately reject goat milk shipments from producer whenever a somatic cell count on any shipment from that producer exceeds 1,500,000 per ml.

Fiscal Impact

This rule will have no fiscal impact on the state of Wisconsin or on local units of government.

Business Impact

This rule will benefit the Wisconsin dairy goat industry, by relaxing the current somatic cell standard for dairy goat milk to conform to the newly relaxed national standard. This rule will maintain parity with other states, and will relieve goat milk producers and dairy plant operators of certain problems associated with the current somatic cell standard.

Federal and Surrounding State Programs

Federal Programs

There is no federal law that compels this rule change. However this rule is consistent with recent changes in national standards (see above).

Surrounding State Programs

All surrounding states with dairy goat herds are likely to adopt the standard contained in this rule.

Data and Analytical Methodologies

Somatic cell test methods for goat milk are currently prescribed by s. ATCP 60.22(3), Wis. Adm. Code. This rule does not change current test methods.

DATCP Contact

Questions and comments related to this rule may be directed to:

Tom Leitzke

Department of Agriculture, Trade and Consumer Protection

P.O. Box 8911

Madison, WI 53708-8911


Telephone (608) 224-4711

E-Mail: tom.leitzke@wi.gov

Dated this 6th day of May, 2010

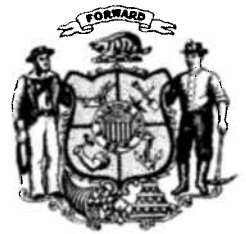
STATE OF WISCONSIN,
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 


Rodney J. Nilsestuen, Secretary



WISCONSIN STATE LEGISLATURE





State of Wisconsin
Jim Doyle, Governor

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

August 6, 2010

The Honorable Josh Zepnick, Co-Chair
Joint Committee for
the Review of Administrative Rules
219 North State Capitol
P.O. Box 8953
Madison, WI 53708-8953

The Honorable Jim Holperin, Co-Chair
Joint Committee for
the Review of Administrative Rules
409 South State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Dear Representative Zepnick and Senator Holperin:

Re: **Emergency Rule Extension – Food Processing Plant License Exemptions for Certain Home-canners and Maple Sap Processors**

The Department of Agriculture, Trade and Consumer Protection (DATCP) asks the Joint Committee for the Review of Administrative Rules (JCRAR) to extend the above emergency rule. DATCP adopted the emergency rule in April, 2010, and it is scheduled to expire on September 18, 2010. Pursuant to s. 227.24(2), Stats., DATCP asks JCRAR to extend the emergency rule until November 17, 2010.

This emergency rule exempts the following persons from having to obtain a food processor license under s. 97.29, Stats., subject to certain conditions:

- An individual who home-cans acidic, acidified or fermented vegetable or fruit products for retail sale at a community or social event, farmers' market or farm roadside stand, and receives no more than \$5,000 from those sales in any license year. This exemption implements the statutory exemption created by 2009 Wis. Act 101.
- A person who processes maple sap for sale only to other processors for further processing, and who receives no more than \$5,000 from those sales in any license year.

We are enclosing copies of the emergency rule, fiscal estimate, business impact analysis, and hearing notice. The emergency rule includes a *Finding of Emergency* that explains the need for this rule. DATCP has started a "permanent" rulemaking proceeding but will not be able to complete that proceeding before the emergency rule expires.

Agriculture generates \$51.5 billion for Wisconsin

Honorable Josh Zepnick
Honorable Jim Holperin
August 6, 2010
Page 2 of 2

DATCP held a public hearing on the emergency rule on May 25, 2010. The DATCP Board is scheduled to approve a hearing draft "permanent" rule on September 8, 2010. DATCP must then hold public hearings on the "permanent" rule. Section 227.19(2), Stats., prevents DATCP from submitting the proposed "permanent" rule for legislative committee review until January 2011.

Under s. 227.42(2), Stats., JCRAR is authorized to extend the emergency rule until the "permanent rule" takes effect or until November 17, 2010, whichever is earlier. Since DATCP will not be able to adopt the "permanent" rule until next year, DATCP is asking JCRAR to extend the emergency rule until November 17, 2010. That will allow the emergency rule to remain in effect for the duration of the open-air "farmers' market" season. DATCP hopes to adopt the "permanent" rule prior to the next annual licensing cycle (beginning April 1, 2011), and prior to the next "farmers market" and maple syrup processing seasons.

DATCP will have staff available to answer questions at the JCRAR meeting on this matter.

Sincerely,



Randy Romanski
Deputy Secretary

Enclosures

STATE OF WISCONSIN)
) SS
DEPARTMENT OF AGRICULTURE)
TRADE AND CONSUMER PROTECTION)

TO THE PEOPLE OF THE STATE OF WISCONSIN:

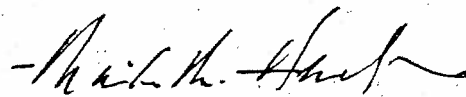
I, Rodney J. Nilsestuen, Secretary of the Wisconsin Department of Agriculture, Trade and Consumer Protection and custodian of its official records, certify all the following:


(1) The department adopted the attached emergency rule on April 14, 2010. The emergency rule relates to food processing plant licensing exemption for certain home-canners and maple sap processors.

(2) The emergency rule takes effect upon publication in the official state newspaper.

(3) I have compared the attached copy of the emergency rule with the original kept by the department. The attached copy is a complete and accurate copy of the original.

Signed and sealed this 14 day of April, 2010, at the department offices in Madison, Wisconsin.



 Rodney J. Nilsestuen, Secretary



WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

EMERGENCY RULE

1 The Wisconsin department of agriculture, trade and consumer protection hereby adopts the
2 following emergency rule *to create* ATCP 70.03(7)(e) and (f) and (notes); *relating to* food
3 processing plant license exemptions for certain home-canners and maple sap processors.

Analysis Prepared by the Department
of Agriculture, Trade and Consumer Protection

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers state food processing plant license requirements under s. 97.29, Stats. This temporary emergency rule exempts the following persons from licensing under s. 97.29, Stats., subject to certain conditions:

- An individual who home-cans acidic, acidified or fermented vegetable or fruit products for retail sale at a community or social event, farmers' market or farm roadside stand, and receives no more than \$5,000 from those sales in any license year. This exemption implements the statutory exemption created by 2009 Wis. Act 101.
- A person who processes maple sap to create maple syrup or concentrated maple sap that the person sells only to other processors for further processing, and who receives no more than \$5,000 from those sales in any license year.

DATCP is adopting this temporary emergency rule pending the adoption of a "permanent" rule to cover the same matters.

- This emergency rule is needed to implement 2009 Act 101, to provide clear guidance to home canners who wish to sell their products to the public, and to protect the public against potentially serious food safety risks.
- This emergency rule is also needed to relieve certain maple sap processors from unnecessary cost and compliance burdens, while ensuring adequate food safety protection.
- A temporary emergency rule is needed now because a "permanent" rule cannot be completed in time for this year's farmers market and maple syrup production seasons.

- This emergency rule will take effect immediately upon publication in the official state newspaper, and will remain in effect for 150 days. The Legislature's Joint Committee for Review of Administrative Rules may extend this emergency rule for up to 120 additional days.

Statutes Interpreted

Statutes Interpreted: ss. 97.09(4), 97.29 and 227.24, Stats.

Statutory Authority

Statutory Authority: ss. 93.07(1), 97.09(4), 97.29(1)(g)8. and (5), and 227.24, Stats.

Explanation of Statutory Authority

- DATCP has broad general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction.
- Under s. 97.09(4), Stats., DATCP may establish and enforce standards governing the production, processing, packaging labeling, transportation, storage, handling, display, sale, including retail sale, and distribution of foods that are needed to protect the public from the sale of adulterated or misbranded foods.
- Under s. 97.29(1)(g)8. and (5), Stats., DATCP may spell out food processing plant license requirements and exemptions.
- DATCP is authorized to adopt temporary emergency rules under s. 227.24, Stats., if emergency rules are needed to protect the public health, safety or welfare pending the adoption of "permanent" rules on the same subject.

Related Statutes and Rules

DATCP administers Wisconsin's food safety and labeling laws under ch. 97, Stats., including food processing plant license requirements under s. 97.29, Stats. (as modified by 2009 Wis. Act 101). DATCP has adopted food processing plant licensing rules under ch. ATCP 70, Wis. Adm. Code.

A person who processes food for sale or distribution is generally required to hold a state food processing plant license under s. 97.29, Stats. (there are certain exemptions). Persons who are engaged in dairy or meat processing, or who operate retail food establishments, must be licensed under other statutes. Local food license and zoning regulations may apply in some cases.

2009 Wis. Act 101 exempted, from state licensing under s. 97.29, Stats., persons who home-can acidic, acidified or fermented vegetable or fruit products for retail sale at a community or social events or farmers' markets, provided that the person receives no more than \$5,000 from those sales during the license year. Act 101 does not exempt those persons from other state license requirements that may apply, nor does it exempt them from local licensing or zoning ordinances that may apply.

Plain Language Analysis

Home Canning for Retail Sale

Under this emergency rule, a person who home-cans acidic, acidified or fermented vegetable or fruit products for retail sale at a community or social event, farmers' market or farm roadside stand is exempt from a food processing plant license under s. 97.29, Stats, if all of the following apply:

- The person is an individual, not a legal entity such as a corporation.
- The individual receives no more than \$5,000 during the license year from those sales. If 2 or more individuals home-can acidic, acidified or fermented vegetable or fruit products at the same home address, none of those individuals qualifies for the license exemption unless their combined gross receipts from the sale of those products totals no more than \$5,000.
- The canned products have an equilibrium pH value of 4.6 or lower. The individual must test the first batch of canned product produced according to each separate recipe used by the individual in each license year, to verify that canned products produced according to that recipe meet this pH requirement. The individual must keep, for at least 2 years, a record of each pH test.
- The individual registers annually with DATCP. There is no cost to register, and the registrant is not required to obtain a registration certificate from DATCP.
- The individual completes a home-canning safety course, or follows a written recipe (including ingredients and canning procedures) that reliably ensures the safety of each home-canned product.
- The individual discloses to potential buyers, by means of a sign or placard, that the canned products "are homemade in a kitchen that has not been subject to state inspection."
- Each canned product is properly labeled to include all of the following:
 - The name and address of the individual who canned the product.
 - The date on which the product was canned.
 - The following statement: "This product was made in a home not subject to state licensing or inspection."

- A list of ingredients in descending order of prominence (major ingredients must be of vegetable or fruit origin). The list must include the common name of any ingredient that originates from milk, eggs, fish, crustacean shellfish, tree nuts, wheat, peanuts or soybeans.
- The individual keeps a complete written record of every batch of canned product.
 - The batch record must include the name of the product, the product recipe (including procedures and ingredients), the amount of the product batch canned and sold, the canning and sale dates, the sale location, gross sales receipts, the results of any pH test conducted on the product, and the disposition of any product not sold.
 - The individual must keep the record for at least 2 years after the individual sells or otherwise disposes of the product, and must make that record available to DATCP for inspection and copying upon request.

Maple Sap Processed for Sale to Other Processors

Under this rule, a person who processes maple sap to produce maple syrup or concentrated maple sap for sale to another processor for further processing is exempt from licensing under s. 97.29, Stats., if all of the following apply:

- The person receives less than \$5,000 from those sales in a license year.
- The person registers annually with DATCP. There is no cost to register, and the registrant is not required to obtain a registration certificate from DATCP.
- The person keeps a written record of each sale, retains that record for at least 2 years, and makes the record available to DATCP for inspection and copying upon request. The record must include the name and address of the purchaser, the date of sale, the amount of maple syrup or concentrated maple sap sold, and the sale price.

Fiscal Impact

This rule will not have a significant fiscal impact on the state of Wisconsin or on local governments. A complete *fiscal estimate* is attached.

Business Impact

This emergency rule implements 2009 Wis. Act 101, which removes license requirements for certain home-canners who wish to sell their products to the public at community or social events, farmers' markets and farm roadside stands. The food safety standards in this rule will help protect the public from serious food safety hazards (including botulism) that may be associated with improperly home-canned products. The prevention of food safety problems promotes public confidence, and benefits the entire food industry including home-canners.

This emergency rule may encourage some home-canning hobbyists to sell their home-canned products at community or social events, at farmers' markets, or at their own farm roadside stands. That may have an adverse competitive impact on licensed canners who currently supply those sales outlets, although the adverse effect is likely to be minimal. Larger food canning businesses that supply canned food for the mass consumer market will not be significantly affected by this emergency rule.

This rule also exempts certain small maple sap processors from licensing under s, 97.29. The exemption will relieve those processors from unnecessary licensing costs and compliance burdens, while ensuring adequate food safety protection.

A complete *business impact analysis* is attached.

Environmental Impact

This rule will not have any significant environmental impact.

Federal and Surrounding State Programs

Federal Programs

There is no federal law that addresses these issues, or compels DATCP to adopt this emergency rule.

Surrounding State Programs

Minnesota exempts a person from licensing as a food processor if the person produces less than \$5,000 of non-potentially hazardous food or less than \$5,000 of home-canned acidified food. Home-canned acidified foods may only be sold at community or social events or farmers' markets in Minnesota. A point-of-sale placard and the product label must disclose that the product was produced in an unlicensed and uninspected home setting. The product label must also disclose the name and address of the processor and the date the goods were processed. Wisconsin's new law (2009 Act 101) was influenced by Minnesota's law.

Illinois and Michigan have no laws related to home-processed foods. All food processed for sale to the public in Illinois and Michigan must be processed in a licensed facility.

In Iowa, individuals may annually process up to \$20,000 in potentially-hazardous baked goods (including soft pies and bakery products with a custard or cream filling) at a licensed "home food establishment" for sale on the premises (the bakery goods may be consumed elsewhere). Individuals may sell non-potentially hazardous home-baked goods at a farmers' market, without a license. Canning and processing of low acid or acidified foods must be done in a licensed commercial establishment.

Data and Analytical Methodologies

This emergency rule is not based on any specialized data or analytical methodologies. Portions of this rule (such as pH requirements for home-canned food sold to the public) are based on well-established food science and public health principles.

DATCP Contact

Questions and comments related to this rule may be directed to:

Tom Leitzke
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-4411
E-Mail: tom.leitzke@wisconsin.gov

FINDING OF EMERGENCY

- 1 (1) The department of agriculture, trade and consumer protection (DATCP) administers
2 state food processing plant license requirements under s. 97.29, Stats.
- 3 (2) Recent legislation (2009 Act 101, enacted on February 4, 2010) created a limited
4 exemption from food processing plant license requirements under s. 97.29, Stats., for persons
5 who home-can limited quantities of acidic, acidified or fermented vegetable and fruit products
6 for retail sale at community and social events or at farmers' markets.
- 7 (3) Home-canned food products, if not properly canned, may pose a risk of serious food
8 safety hazards such as botulism.
- 9 (4) DATCP has received many requests for clarification of the new license exemption
10 under Act 101. In order to facilitate compliance and protect consumers from potentially serious
11 food safety hazards, DATCP must adopt administrative rules to clarify the scope, application and
12 terms of the new license exemption.

1 (5) Implementing rules are urgently needed because of the seriousness of the potential
2 food safety hazards, and the seasonal nature of the farmers' markets and other events at which
3 home-canned products may be sold. The normal rulemaking process takes over a year to
4 complete, and cannot be completed in time for this summer's farmers' markets (which begin as
5 early as mid-April or May). Persons who wish to sell home-canned food products must clearly
6 understand the scope of the license exemption, and the food safety standards that must be met in
7 order to qualify.

8 (6) This temporary emergency rule clarifies the scope, application and terms of the new
9 license exemption under Act 101, pending the completion of "permanent" rules by the normal
10 rulemaking process. This emergency rule is needed to protect the public health, safety and
11 welfare, and to facilitate fair and orderly implementation of the new license exemption.

12 (7) This emergency rule also exempts, from food processing plant license requirements
13 under s. 97.29, Stats., a person who collects and processes relatively small quantities of maple
14 sap to produce maple syrup or concentrated maple sap for sale to other processors for further
15 processing. These small-scale processing activities pose minimal food safety risks, and the
16 current license requirement imposes an unnecessary cost and compliance burden. An emergency
17 rule is needed to relieve these cost and compliance burdens for the maple sap collection and
18 processing season that typically begins in March. This emergency rule creates a temporary
19 license exemption, pending the completion of "permanent" rules by the normal rulemaking
20 process. This emergency rule clearly defines the scope, application and terms of the exemption,
21 in order to protect public health, safety and welfare.

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EMERGENCY RULE

SECTION 1. ATCP 70.03(7)(e) and (f) and (notes) are created to read:

ATCP 70.03(7)(e) The processing of maple sap to produce maple syrup or concentrated maple sap if all of the following apply:

1. The processor sells the maple syrup or concentrated maple sap only to other processors for further processing.

2. The processor's combined gross receipts from all sales under subd. 1. during the license year total less than \$5,000.

3. The processor keeps a written record of every sale under subd. 1., retains that record for at least 2 years, and makes the record available for inspection and copying by the department upon request. The record shall include the name and address of the purchasing processor, the date of sale, the amount of maple syrup or concentrated maple sap sold, and the sale price.

4. The processor registers with the department before engaging in any processing activities under this paragraph in any license year ending March 31. A registration expires at the end of the license year. A processor shall register in writing on a form provided by the department, or shall register online at <http://www.datcp.state.wi.us/core/food/food.jsp>. The registration shall include information reasonably required by the department, including the registrant's name and address and information related to the nature, location and scope of the registrant's processing activities and product sales. There is no fee to register, and the registrant is not required to hold a registration certificate from the department.

(f) An individual canning a vegetable or fruit product at that individual's home in this state, for retail sale to consumers who take delivery in this state, if all of the following apply:

1 1. The individual sells and personally delivers the canned product to purchasers at a
2 community or social event or farmers' market, or at a roadside stand operated on the farm where
3 the individual resides.

4 2. The canned product has an equilibrium pH value of 4.6 or lower. The individual shall
5 test the first batch of product canned according to each separate recipe used by the individual
6 under this paragraph during each license year, to verify that products canned according to that
7 recipe meet this pH requirement. Each pH test shall be conducted with a pH meter that is
8 properly calibrated for that day's use, except that the test may be conducted with short-range pH
9 paper if the product type normally has a pH of 4.0 or lower and if the range of the pH paper
10 includes a pH of 4.6.

11 3. The individual's gross receipts from all retail sales of canned products under this
12 paragraph during the license year are less than \$5,000. If 2 or more individuals are engaged in
13 canning activities under this paragraph at the same residential address, none of those individuals
14 qualifies for the license exemption under this paragraph unless their combined gross receipts
15 from retail sales of canned products under this paragraph during the license year are less than
16 \$5,000.

17 4. The individual prominently displays a sign at each place of sale stating: ***"These***
18 ***canned goods are homemade in a kitchen that has not been subject to state inspection."***

19 5. Each container of the canned product is labeled with all of the following:

20 a. The name and address of the individual who canned the product.

21 b. The date on which the product was canned.

22 c. The following statement: ***"This product was made in a home not subject to state***
23 ***licensing or inspection."***

1 d. A list of ingredients in descending order of prominence. The list shall include the
2 common name of any ingredient that originates from milk, eggs, fish, crustacean shellfish, tree
3 nuts, wheat, peanuts or soybeans.

4 6. The individual registers with the department before engaging in any home canning
5 activities under this paragraph in any license year ending March 31. A registration expires at the
6 end of the license year. The individual shall register in writing on a form provided by the
7 department, or shall register online at <http://www.datcp.state.wi.us/core/food/food.jsp>. The
8 registration shall include information reasonably required by the department, including the
9 registrant's name and address and information related to the nature, location and scope of the
10 registrant's home canning activities and canned product sales. There is no fee to register, and the
11 registrant is not required to hold a registration certificate from the department.

12 7. The individual has documentation to show that he or she has completed a department-
13 approved acidified food processing course, or has canned the vegetable or fruit product
14 according to a written recipe that reliably ensures the safety of the product.

15 **NOTE:** An acidified food processing course provided or approved by the university of
16 Wisconsin-extension is deemed to be a department-approved course under
17 subd. 7. The department may approve other courses upon request.

18
19 A recipe qualifies under subd. 7. if it is published in the current edition of the *Ball*
20 *Blue Book* or the *Ball Complete Book of Home Preserving*, or is published by the
21 National Center for Home Food Preservation (www.uga.edu/nchfp) or the
22 University of Wisconsin (www.foodsafety.wisc.edu/preservation.html). Other
23 written recipes may qualify if the individual can objectively document that the
24 recipe (including food ingredients and canning procedures) reliably ensures the
25 safety of the canned food product.

26 8. The individual maintains a complete written record of every batch of product canned
27 for sale under this paragraph, including the name of the product, the product recipe including
28 procedures and ingredients, the amount of product canned and sold, the canning date, product

1 sale dates and locations, gross sales receipts, the results of any pH test conducted on product
2 from the batch, and the disposition of any product not sold. The individual shall retain the record
3 for at least 2 years after the individual sells or otherwise disposes of all product from the batch,
4 and shall make that record available to the department for inspection and copying upon request.

5 **NOTE:** The department offers a *Home Processing and Canning Fact Sheet* describing
6 the types of home-canned foods that may be canned for sale under par. (f) without
7 a state food processing plant license. You may obtain a free copy of the fact sheet
8 by contacting the department at the following address:

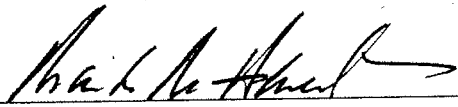
9
10 Wisconsin Department Agriculture, Trade and Consumer Protection
11 Division of Food Safety
12 PO Box 8911
13 Madison, WI 53708-8911

14
15 The fact sheet is also available at the department's website at
16 <http://www.datcp.state.wi.us/core/food/food.jsp>.

17
18 **SECTION 2. EFFECTIVE DATE:** This emergency rule takes effect upon publication and
19 remains in effect for 150 days. The department may seek to extend this emergency rule as
20 provided in s. 227.24, Stats.

Dated this 14/26 day of April, 2010.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 
Rodney J. Nilsestuen, Secretary

Wisconsin Department of Agriculture, Trade and Consumer Protection

Business Impact Analysis¹

Rule Subject: Emergency Rule Creating License Exemptions
For Certain Small Food Processors
Adm. Code Reference: ATCP 70
Rules Clearinghouse #: None
DATCP Docket #: 10-R-01

Rule Summary

This temporary emergency rule does all of the following:

- Implements 2009 Wis. Act 101, which exempts certain home canning operations from food processing plant licensing requirements under s. 97.29, Stats. This rule exempts individuals who home-can small amounts of vegetable or fruit products for sale at community or social events, a farmers' market or a farm roadside stand. The emergency rule clarifies the scope, application and terms of the statutory license exemption, and includes food safety requirements to protect the public from serious food safety hazards that may be associated with home canned products.
- Creates a food processing plant license exemption for maple sap processors who process limited amounts of sap to create maple syrup or concentrated maple sap that is sold to other processor for further processing.

The Department of Agriculture, Trade and Consumer Protection (DATCP) is adopting this temporary emergency rule pending the adoption of "permanent" rules on the same matters.

Business Impact

Home Canning License Exemption

This emergency rule will benefit home-canners who wish to sell their home-canned vegetable or fruit products at community or social events, at farmers' markets, or at their own farm roadside stands. Those home canners will no longer need a food processing plant license, provided that the sell less than \$5,000 worth of home-canned product during the license year and meet other requirements for exemption. Exempt home canners will save a \$95 annual license fee, and will be exempt from facility construction and sanitation requirements that apply to licensed food processing plants.

¹ This analysis includes, but is not limited to, a small business analysis ("regulatory flexibility analysis") under ss. 227.114 and 227.19(3)(e), Stats.

License-exempt sales of home-canned products may have an adverse competitive impact on licensed canners who currently supply those sales outlets, although the adverse effect is likely to be minimal. Larger food canning businesses that supply canned food for the mass consumer market will not be significantly affected by this emergency rule.

Maple Sap Processing Exemption

This emergency rule will also benefit persons who process maple sap to produce maple syrup or concentrated maple sap for sale to other processors for further processing. Those persons will no longer need a food processing plant license, provided that they sell less than \$5,000 worth of maple syrup or concentrated maple sap for further processing in the license year and meet other requirements for exemption. Exempt maple sap processors will save a \$95 annual license fee, and will be exempt from facility construction and sanitation requirements that apply to licensed food processing plants.

Accommodation for Small Business

This rule is designed to benefit certain small businesses, including home canners and maple sap processors, by exempting them from food processing plant licensing requirements. This rule will not have any significant adverse impact on small business.

To qualify for a license exemption under this rule, a small business must meet the food safety requirements prescribed in this rule. Those requirements are minimal requirements needed to protect public health and safety. Home-canned products, if not properly canned, may pose serious public health risks including botulism risks.

DATCP will publish fact sheets about this emergency rule, and will make them available to affected small businesses. DATCP will also notify interested small business and food processing associations, and invite their comments on this emergency rule and eventual "permanent" rule.

Conclusion

This rule will benefit certain small businesses, including certain maple sap processors and home canners. This rule will not have a significant adverse effect on small businesses or other business.

Dated this 12th day of March, 2010

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Steven C. Ingham
Steven C. Ingham, Administrator,
Division of Food Safety

Fiscal Estimate — 2001 Session

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number ATCP 70

Subject
 Food Processing Plant License Exemption for Certain Small Food Processors

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs — May be possible to absorb within agency's budget.

Yes No

Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory
3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

20.115(1a) and 1(gb)

Assumptions Used in Arriving at Fiscal Estimate

DATCP currently licenses and inspects food processing plants under s. 97.29, Stats., This emergency rule exempts certain persons from the need to obtain a food processing plant license. These persons include: (1) a person who cans or otherwise processes certain homemade foods and sells them at farmers' markets, community or social events but receives no more than \$5,000 in retail sales of these foods in a license year; and (2) a maple syrup processor that sells evaporated maple sap or syrup for further processing and receives no more than \$5,000 in a license year. For purposes of this fiscal estimate, DATCP makes the following assumptions (DATCP does not have any data to document these "best guess" assumptions):

1. About 100 home canners will begin to sell their home-canned products at community or social events or farmers' markets in response to the license exemption under this rule. Few, if any, currently licensed food processing plants will qualify for the exemption or drop their current licenses.

2. About 25 maple sap processors will qualify for a license exemption under this rule. Expected revenue loss is less than \$2,400.

Impact of the Rule on State Government

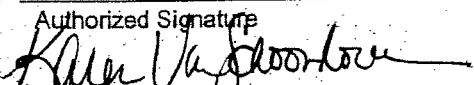
This emergency rule will have minimal fiscal impact on state government. Revenue losses will be less than \$2,400 and will be offset by reduced inspection costs. DATCP will incur some costs to implement the license exemptions and provide public information. DATCP estimates that it will need to reassign 0.1 FTE from other work, and will incur \$1,000 in added expense. DATCP expects to absorb these costs within its current budget.

Impact of the Rule on Local Governments

This rule will not have any fiscal impact on local governments.

Long-Range Fiscal Implications

No significant impact

Prepared By: C. T. Leitzke	Telephone No. 608-224-4711	Agency DATCP
Authorized Signature 	Telephone No. 608 224-4800	Date (mm/dd/ccyy) 3-11-10

Fiscal Estimate Worksheet — 2001 Session
 Detailed Estimate of Annual Fiscal Effect

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number ATCP 70

Subject
 Food Processing Plant License Exemptions for Certain Small Food Processors

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
 Initial and annual DATCP administrative cost to implement license exemptions and provide information to processors and local governments. Some potential loss of license fee revenue. Cost and revenue impacts are expected to be negligible, and will be absorbed with existing staff and budget.

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations — Salaries and Fringes		\$ 0	\$ - 0
(FTE Position Changes)		(0.00 FTE)	(- 0.00 FTE)
State Operations — Other Costs		1,000	- 0
Local Assistance		0	- 0
Aids to Individuals or Organizations		0	- 0
Total State Costs by Category		\$ -	\$ -
B. State Costs by Source of Funds			
		Increased Costs	Decreased Costs
GPR		\$ 500	\$ - 0
FED		0	- 0
PRO/PRS		500	- 0
SEG/SEG-S		0	- 0
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$ 0	\$ - 0
GPR Earned		0	- 0
FED		0	- 0
PRO/PRS		0	- 2,400
SEG/SEG-S		0	- 0
Total State Revenues		\$ 0	\$ - 2,400

Net Annualized Fiscal Impact

	State	Local
Net Change in Costs	\$ 1,000	\$ 0
Net Change in Revenues	\$ -2	\$ 0

Prepared By: C. T. Leitzke	Telephone No. 608-224-4711	Agency DATCP
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)

State of Wisconsin
Department of Agriculture, Trade, and Consumer Protection

HEARING NOTICE

**Food Processing Plant License Exemptions:
Emergency Rule and Informational Hearing**

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold a public hearing on its emergency rule related to food processing plant license exemptions. DATCP adopted a temporary emergency rule, effective April 22, 2010, to create license exemptions for certain small-scale home canners and maple syrup processors. DATCP is also soliciting public input to assist DATCP in developing "permanent" rules related to food processing plant license exemptions (DATCP has not yet proposed "permanent" rules).

DATCP will hold the public hearing at the time and location shown below. DATCP invites the public to attend the hearing and comment on the emergency rule (summarized below). DATCP also seeks public input for the development of proposed "permanent" rules, including answers to the following questions:

- Should small-scale processors of other types of foods also be exempted from food processing plant license requirements?
- If so, what food types? Under what conditions?
- If not, why not?
- Should food processors claiming exemption be required to register with DATCP and obtain a registration certificate, to help farmers market operators and others verify their license status?

Following the hearing, the hearing record will remain open until Monday, June 7, 2010 for additional written comments. Comments may be sent to DATCP's Division of Food Safety at the address below, by email to Debbie.mazanec@wi.gov or online at <http://AdminRules.Wisconsin.gov/>

You may obtain free copies of the temporary emergency rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You may also obtain copies by calling (608) 224-4712 or e-mailing deb.mazanec@wi.gov. Copies will also be available at the hearing. To view the proposed rule online, go to: <http://AdminRules.Wisconsin.gov/>

To provide comments or concerns relating to small business, you may also contact DATCP's small business regulatory coordinator Keeley Moll at the address above, or by emailing to Keeley.Moll@wi.gov or by telephone at (608) 224-5039.

- This emergency rule will take effect immediately upon publication in the official state newspaper, and will remain in effect for 150 days. The Legislature's Joint Committee for Review of Administrative Rules may extend this emergency rule for up to 120 additional days.

Statutes Interpreted

Statutes Interpreted: ss. 97.09(4), 97.29 and 227.24, Stats.

Statutory Authority

Statutory Authority: ss. 93.07(1), 97.09(4), 97.29(1)(g)8. and (5), and 227.24, Stats.

Explanation of Statutory Authority

- DATCP has broad general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction.
- Under s. 97.09(4), Stats., DATCP may establish and enforce standards governing the production, processing, packaging labeling, transportation, storage, handling, display, sale, including retail sale, and distribution of foods that are needed to protect the public from the sale of adulterated or misbranded foods.
- Under s. 97.29(1)(g)8. and (5), Stats., DATCP may spell out food processing plant license requirements and exemptions.
- DATCP is authorized to adopt temporary emergency rules under s. 227.24, Stats., if emergency rules are needed to protect the public health, safety or welfare pending the adoption of "permanent" rules on the same subject.

Related Statutes and Rules

DATCP administers Wisconsin's food safety and labeling laws under ch. 97, Stats., including food processing plant license requirements under s. 97.29, Stats. (as modified by 2009 Wis. Act 101). DATCP has adopted food processing plant licensing rules under ch. ATCP 70, Wis. Adm. Code.

A person who processes food for sale or distribution is generally required to hold a state food processing plant license under s. 97.29, Stats. (there are certain exemptions). Persons who are engaged in dairy or meat processing, or who operate retail food establishments, must be licensed under other statutes. Local food license and zoning regulations may apply in some cases.

- A list of ingredients in descending order of prominence (major ingredients must be of vegetable or fruit origin). The list must include the common name of any ingredient that originates from milk, eggs, fish, crustacean shellfish, tree nuts, wheat, peanuts or soybeans.
- The individual keeps a complete written record of every batch of canned product.
 - The batch record must include the name of the product, the product recipe (including procedures and ingredients), the amount of the product batch canned and sold, the canning and sale dates, the sale location, gross sales receipts, the results of any pH test conducted on the product, and the disposition of any product not sold.
 - The individual must keep the record for at least 2 years after the individual sells or otherwise disposes of the product, and must make that record available to DATCP for inspection and copying upon request.

Maple Sap Processed for Sale to Other Processors

Under this rule, a person who processes maple sap to produce maple syrup or concentrated maple sap for sale to another processor for further processing is exempt from licensing under s. 97.29, Stats., if all of the following apply:

- The person receives less than \$5,000 from those sales in a license year.
- The person registers annually with DATCP. There is no cost to register, and the registrant is not required to obtain a registration certificate from DATCP.
- The person keeps a written record of each sale, retains that record for at least 2 years, and makes the record available to DATCP for inspection and copying upon request. The record must include the name and address of the purchaser, the date of sale, the amount of maple syrup or concentrated maple sap sold, and the sale price.

Fiscal Impact

This rule will not have a significant fiscal impact on the state of Wisconsin or on local governments. A complete *fiscal estimate* is attached.

Business Impact

This emergency rule implements 2009 Wis. Act 101, which removes license requirements for certain home-canners who wish to sell their products to the public at community or social events, farmers' markets and farm roadside stands. The food safety standards in this rule will help protect the public from serious food safety hazards (including botulism) that may be associated with improperly home-canned products. The prevention of food safety problems promotes public confidence, and benefits the entire food industry including home-canners.

Data and Analytical Methodologies

This emergency rule is not based on any specialized data or analytical methodologies. Portions of this rule (such as pH requirements for home-canned food sold to the public) are based on well-established food science and public health principles.

DATCP Contact

Questions and comments related to this rule may be directed to:

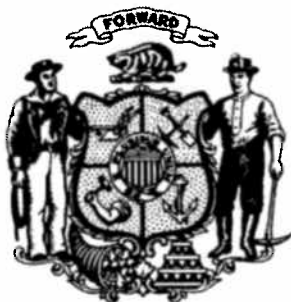
Debbie Mazanec
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-4712
E-Mail: debbie.mazanec@wi.gov

Dated this 30 day of April, 2010

STATE OF WISCONSIN,
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Randy Romank
for Rodney J. Nilsestuen, Secretary

State of Wisconsin



2009 Assembly Bill 229

Date of enactment: **February 4, 2010**
Date of publication*: **February 18, 2010**

2009 WISCONSIN ACT 101

AN ACT to renumber 97.29 (2) (b); and to create 97.29 (2) (b) 2. and 97.29 (6) of the statutes; relating to: the sale of home-canned food.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 97.29 (2) (b) of the statutes is renumbered 97.29 (2) (b) 1.

SECTION 2. 97.29 (2) (b) 2. of the statutes is created to read:

97.29 (2) (b) 2. A person is not required to obtain a license under this section to sell at retail food products that the person prepares and cans at home in this state if all of the following apply:

a. The food products are pickles or other processed vegetables or fruits with an equilibrium pH value of 4.6 or lower.

b. The person sells the food products at a community or social event or a farmers' market in this state.

c. The person receives less than \$5,000 per year from the sale of the food products.

d. The person displays a sign at the place of sale stating: "These canned goods are homemade and not subject to state inspection."

e. Each container of food product that is sold is labeled with the name and address of the person who pre-

pared and canned the food product, the date on which the food product was canned, the statement "This product was made in a private home not subject to state licensing or inspection.", and a list of ingredients in descending order of prominence. If any ingredient originates from milk, eggs, fish, crustacean shellfish, tree nuts, wheat, peanuts, or soybeans, the list of ingredients shall include the common name of the ingredient.

SECTION 3. 97.29 (6) of the statutes is created to read:

97.29 (6) INFORMATION ABOUT HOME CANNING. (a) The department shall encourage persons to whom the exemption in sub. (2) (b) 2. applies to attend and complete training, that is approved by the department, concerning preparing and canning foods and to have their recipes and processes reviewed by a person who is knowledgeable about the food canning industry and who is recognized by the department as an authority on preparing and canning food.

(b) The department, in cooperation with the University of Wisconsin-Extension, shall attempt to maximize the availability of information and technical services and support for persons who wish to home prepare and home can low-acid and acidified food products.

* Section 991.11, WISCONSIN STATUTES 2007-08: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].