



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: December 19, 2013

TO: The Honorable Mike Ellis
President, Wisconsin State Senate
Room 220 South, State Capitol
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The Honorable Robin Voss
Speaker, Wisconsin State Assembly
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FROM: Ben Brancel, Secretary
Department of Agriculture, Trade and Consumer Protection

**SUBJECT: ATCP 17, 21, 53, 60, 70, 80 - Technical Changes - Livestock Premises
Registration; Plant Inspection and Pest Control; Agricultural Enterprise
Areas; Dairy Farms; Food Processing Plants; Dairy Plants
(Clearinghouse Rule #13-063)**

Introduction

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) is transmitting this rule for legislative committee review, as provided in s. 227.19 (2) and (3), Stats. DATCP will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19 (2), Stats.

This rule makes technical rule changes for the following existing rules: ATCP 17; 21; 53; 60; 70; and, 80.

Rule Content

Livestock Premises Registration

This rule amends current DATCP rule ch. ATCP 17, relating to Livestock Premises Registration. In ATCP 17.01, certain terms used in the chapter are defined. In that section, there are currently two definitions for “captive game birds,” at ATCP 17.01(9) and (19). This rule amends ATCP

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17.01(9) by amending the current definition to conform to the definition for “captive game bird” now found in ATCP 17.01(19), and repeals ATCP 17.01(19).

Plant Inspection and Pest Control

This rule makes two minor technical changes in ch. ATCP 21. The current rule defines, in ATCP 21.21(1) (c) 1, an “infested area” by listing the states known to be infected at the time the current rule was adopted. The proposed amendment adds the states of North Carolina, Virginia, Ohio, and Pennsylvania to the list of states included in that definition. Each of those states now has quarantined counties based on a detection of TCD (Thousand Cankers Disease).

Appendix A to ATCP 21 is being repealed and replaced because Hemlock Woolly Adelgid has been detected in additional counties in other states since the last time ATCP 21 was updated. The proposed language identifies those new counties. In some states the status has changed so that the entire state is now considered generally infested and the state as a whole is now listed. Because this pest is not federally regulated, DATCP cannot reference the Code of Federal Regulations to identify infested areas, but has to identify them specifically in our rule.

Agricultural Enterprise Areas

This rule repeals ch. ATCP 53 in its entirety for the following reasons. Section 91.84, Stats., authorizes the department to designate agricultural enterprise areas (AEAs) for the Farmland Preservation Program. Section 91.84(2) previously required that designation to be made through the emergency rulemaking process. For several years, the department used emergency rulemaking to designate AEAs in ch. ATCP 53. In 2011 Wis. Act 253, sec. 91.84 (2) on emergency rulemaking was repealed, sub. (2m) was created (requiring all previous designations by rule to remain in effect only through December 31, 2012), and other provisions of s. 91.84 were amended to authorize the department’s secretary to designate AEAs by publication of a special order. Since, as of January 1, 2013, ch. ATCP 53 is no longer in effect, this proposed rule repeals that chapter in its entirety.

Dairy Farms

This rule makes the following technical changes to ch. ATCP 60 relating to dairy farms. In ATCP 60.08(3) and (6), the references to “NR 811 or 812” are changed to “NR 810, 811, or 812” due to the splitting of the former NR 811 into NR 810 and NR 811. This rule also amends the reference in ATCP 60.01(23m) to the “2005 revision” of the Pasteurized Milk Ordinance (the “PMO”) to refer to the “2011 revision” of the PMO, since the PMO is updated every two years.

Food Processing Plants

This rule amends ch. ATCP 70 by making the following technical change. ATCP 70.03 (7) (b)1 currently exempts a restaurant, which holds a permit under s. 254.64, Wis. Stats., from the requirement to obtain a food processing plant license if the restaurant “does not process food for wholesale distribution, and is not engaged in canning or production of processed fish.” This rule would amend that language to read “does not process food for wholesale distribution, and is not engaged in canning of food products or in the production of processed fish.” The proposed change clarifies that “canning” applies to all canned foods and not just processed fish.

Dairy Plants

This rule amends ch. ATCP 80 relating to dairy plants as follows. ATCP 80.01(7) (c) defines a “dairy product” as a “commodity in which milk or any milk product or by-product is a principal ingredient.” This rule amends this section by adding, after “ingredient,” the following: “except prepared foods made in a licensed food processing plant for which the federal food and drug administration has not prescribed a standard of identity under title 21 of the code of federal regulations and which contain dairy products manufactured at a dairy plant from ingredients that are pasteurized or are produced under other processes that eliminate or reduce to an acceptable level the food safety hazards associated with the dairy products, including aseptically processed foods, high acid foods, heat treated foods, aged foods, cold pack foods, and similarly processed foods.” The proposed amendment incorporates new statutory language in, 2011 Wisconsin Act 195, which narrows the definition of a dairy product in s. 97.20(2)(e)5, Wis. Stats.

This rule amends ATCP 80.01 (27m) by changing the reference to the “2005 revision” of the PMO to the “2011 revision” of the PMO.

This rule amends ATCP 80.24(3) (a) 2 by deleting “dried whey and nonfat dry milk.” This rule amends ATCP 80.24(3) (a) by adding a new section, ATCP 80.24(3) (a) 3, to read: “3. 10,000 per gram for nonfat dry milk, dried whey and dry milk products.” This rule amends ATCP 80.24 (3) (b) by deleting “other than cultured grade A dairy products” from that section. These changes reflect changes in the most recent PMO.

Public Hearings

DATCP held one public hearing on this rule, with no attendees, with a written comment period open through September 24th. No written comments were received.

DATCP’s Rule Changes in Response to Public Hearings and Rules Clearinghouse Comments

DATCP made several minor edits to the hearing draft to conform to form, style, and placement requirements, in response to comments received from the Rules Clearinghouse. However, there are no substantive policy changes from the hearing draft.

Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not issue a report on this rule.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations

The vast majority of dairy farms in Wisconsin have Grade “A” permits, which means that their milk, or pasteurized milk and certain other dairy products made from the farm’s milk, can be shipped across state and international boundaries. Milk moving in this manner, referred to as

Grade “A” milk, must be produced, transported, and processed in accordance with the Pasteurized Milk Ordinance (PMO). The PMO is a document written by the US Food and Drug Administration and regulators from the 50 states and Puerto Rico, which participate in the biennial National Conference on Interstate Milk Shipments, and it is periodically revised. State regulations governing the production and processing of Grade “A” milk must be at least as stringent, and consistent with, the PMO. Some states adopt the PMO by reference; Wisconsin regularly revises ATCP 60 (Dairy Farms), ATCP 82 (Milk Haulers), and ATCP 80 (Dairy Plants) to ensure the necessary stringency and consistency with the current PMO.

Comparison with Rules in Adjacent States

The housekeeping and technical rules changes proposed in this rule will not create any disparities between Wisconsin and the adjacent states.

Summary of Factual Data and Analytical Methodologies

This rule does not depend on any complex analysis of data. This rule merely makes minor or technical changes to current rules.

Effect on Small Business

This rule makes technical housekeeping changes that will have no effect upon small businesses.