

Clearinghouse Rule 14-039

DATCP Docket No. 14-R-01  
Rules Clearinghouse No. XX-XXX

Proposed Hearing Draft Rule  
April 30, 2014

**PROPOSED ORDER  
OF THE WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION  
ADOPTING RULES**

- 1 The Wisconsin department of agriculture, trade and consumer protection proposes the following
- 2 rule *to repeal* ch. ATCP 104 *relating to* Leaf Tobacco Buying and Selling.

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

*Statutes Interpreted*

Statutes Interpreted: s. 100.20 (1), Stats.

*Statutory Authority*

Statutory Authority: ss. 93.07 (1) and 100.20 (2)(a), Stats.

*Explanation of Statutory Authority*

DATCP has broad general authority, under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. DATCP has authority under s. 100.20 (2) (a), Stats., to promulgate administrative rules forbidding trade practices which are determined by the department to be unfair and prescribing trade practices that are determined by the department to be fair.

*Related Statutes and Rules*

There are no Wisconsin Statutes or other rules that regulate transactions between tobacco growers and tobacco buyers.

*Plain Language Analysis*

**Background**

The existing ch. ATCP 104, Wis. Adm. Code, prohibits leaf tobacco buyers from engaging in certain practices:

- Attempting to induce another tobacco buyer to engage in specific activities that would artificially manipulate the market price for tobacco.
- Refusing to negotiate with any grower for the purchase of tobacco because such tobacco was previously graded or submitted for grade.
- Falsely representing in negotiations with a grower that any particular lot or crop of tobacco was purchased at less than the price actually paid, or that another tobacco buyer has or will cease buying tobacco.
- Purchasing tobacco under any contract which does not include a specific time within which delivery and payment are to be made.
- Giving or offering to give any grower any secret or separately stated bonus, commission, payment or other consideration.

The existing rule also prohibits tobacco growers or sellers from soliciting or receiving any secret or separately stated bonus, commission, payment or other consideration.

This rule was originally promulgated as Department of Agriculture General Order #138 in 1952. At that time, tobacco farming was a prominent business in Wisconsin, and much of the crop was sold in cash markets at the conclusion of the growing season. This rule was necessary to ensure fair transactions between growers and buyers.

Today, the crop is generally produced and sold under contract (as opposed to a cash market at the end of the season). This means that ch. ATCP 104, Wis. Adm. Code, as it is currently written, is irrelevant to the current industry.

## **Rule Content**

This rule would repeal chapter ATCP 104, Leaf Tobacco, Buying and Selling, in its entirety.

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

There are no known federal statutes or regulations (existing or proposed) that are comparable to ch. ATCP 104, Wis. Adm. Code.

### ***Comparison with Rules in Adjacent States***

There are no known rules in adjacent states that are comparable to ch. ATCP 104, Wis. Adm. Code.

### ***Summary of Factual Data and Analytical Methodologies***

This proposed rule simply deletes an unused chapter from the administrative code. It does not rely on factual or analytical data other than anecdotal information that growing under contract has replaced cash markets.

*Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis*

Since repealing the rule has no effect on business (see above), no analysis is required under this section.

*Effect on Small Business*

This proposed rule would simply delete an outdated and obsolete chapter of the administrative code. DATCP does not anticipate any effect on small business.

*DATCP Contact Person*

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

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*Place where comments are to be submitted and deadline for submission*

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The deadline for submitting hearing draft comments will be determined at a later date.

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- 1           **SECTION 1.** Chapter ATCP 104 is repealed.
  - 2           **SECTION 2. EFFECTIVE DATE:** This rule takes effect on the first day of the third month
  - 3 following publication in the Wisconsin administrative register, as provided in
  - 4 s. 227.22(2)(intro.), Stats.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By: \_\_\_\_\_  
Ben Brancel  
Secretary