



State of Wisconsin
Governor Scott Walker

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

DATE: February 5, 2015

TO: The Honorable Mary Lazich
President, Wisconsin State Senate
Room 220 South, State Capitol
PO Box 7882
Madison, WI 53707-7882

The Honorable Robin Vos
Speaker, Wisconsin State Assembly
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FROM: Ben Brancel, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: **Technical Changes Related to: Plant Inspection and Pest Control; Pesticide Use and Control; Pesticide Product Restrictions; Fertilizer and Pesticide Bulk Storage; Agricultural Chemical Cleanup Program; Fertilizer and Related Products; Commercial Feed; Farmland Preservation; Soil and Water Resource Management Program; Food Warehouses and Bulk Milk Distributors; Fair Packaging and Labeling; Selling Commodities by Weight, Measure or Count; Weights & Measures; Petroleum and Other Liquid Fuel Products; Sales Below Cost; Electronic Communication Services; Direct Marketing; Agricultural Development and Market Promotion; Final Draft Rule (Clearinghouse Rule #14-047)**

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. The proposed rule will make technical changes (non-substantive or minor substantive changes) to a number of administrative code chapters administered by DATCP. The following existing rules will be updated: ATCP 21, 29, 30, 33, 35, 40, 42, 49, 50, 71, 90, 91, 92, 94, 105, 123, 127 and 161.

Rule Content

This rule makes minor or technical changes to a number of current DATCP rules. This rule does all of the following:

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Plant Inspection and Pest Control

Makes a small change indicating that a responsible state agency, rather than a U.S. department of agriculture official, may now declare an area to be infested with thousand cankers disease.

Pesticide Use and Control

- Decreases licensing fees and surcharges to be consistent with recent statutory changes.
- Corrects spelling and capitalization errors.
- Changes several notes to provide online resources for certification, training and examination materials.

Pesticide Product Restrictions

- Corrects incorrect references to subsections and the misspelling of “strychnine.”
- Amends notes to update website addresses.
- Removes outdated reference to treatment of aldicarb from the 1980s.
- Incorporates by reference the most recent edition of the current rule standard concerning pesticide poisonings.
- Modifies the record keeping provision relating to chloropicrin to reflect that soil temperature at the time of application is not required to be kept.

Fertilizer and Pesticide Bulk Storage

- Incorporates by reference the most recent edition of minimum design standards for concrete agrichemical containment.
- Updates sections relating to the use of tarps for dry fertilizer unloading from railway cars and sections relating to asphalt and concrete block structures.

Agricultural Chemical Cleanup Program

Amends references required by the renumbering of an administrative code chapter relating to the department of natural resources and corrects a statutory reference to “hazardous substance.”

Fertilizer and Related Products

- Decreases various license and tonnage fees and surcharges to be consistent with recent statutory changes.
- Incorporates by reference the most recent edition of the current rule standard concerning fertilizers.

Commercial Feed

Updates the technical standards in the current rule to the most recent versions. Several notes have been modified to add more information about obtaining electronic copies of those publications.

Farmland Preservation

Makes a small change to add language into the zoning section to match language used in the planning section.

Soil and Water Resource Management Program

Updates several sections to reference the current versions of technical standards.

Food Warehouse and Bulk Milk Distributors

Corrects an outdated fee structure relating to the re-inspection of small warehouses which hold non-potentially hazardous foods versus those that hold potentially hazardous foods.

Fair Packaging and Labeling; Selling Commodities by Weight, Measure or Count; Weights and Measures; Petroleum and Other Liquid Fuel Products

Corrects small grammatical errors and updates the technical references to cite the current NIST Handbook and ATSM fuel standards.

Sales Below Cost

Corrects a grammatical error.

Electronic Communications Services

Aligns the rule with recent legislature changes.

Direct Marketing

Deletes a note no longer necessary in that section.

Agricultural Development and Market Promotion

Amends the "Buy Local" section to reflect a statute change that directs the matching requirement to be an amount at least equal to the grant amount.

Public Hearing

DATCP held one public hearing on this rule on August 28, 2014 in Madison. There were no attendees at the hearing and no one testified or registered in support or opposition to the hearing draft rule. Following the public hearing, the hearing record remained open until September 10, 2014 for additional comments. DATCP did not receive any written comments on this rule.

Rule Changes Following Public Hearing

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. Minor changes were also made due to notification from one of the Divisions that several of the standards incorporated into certain portions of the rule had recently been updated.

Small Business Regulatory Review Report

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

Fiscal Impact

This rule will not have a fiscal impact on state government or local government. A complete *fiscal estimate* is attached.

Business Impact

This rule will not have any impact on small businesses or other business. This rule makes minor technical changes that will not have any impact on business standards, costs or operations. See the complete *Final Regulatory Flexibility Analysis* that accompanies this rule.

Federal and Surrounding State Laws

The technical rule changes proposed in this rule will not create any disparities between Wisconsin rules and federal statutes and regulations or adjacent states.