

Modifications From Agency

THE DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER
PROTECTION'S PROPOSED ORDER TO ADOPT PERMANENT RULES

PROPOSED ORDER

The Wisconsin Department of Agriculture, Trade and Consumer Protection proposes an order *to repeal* ATCP 21.01 (15), 21.13 (2) (c) 1. and 1. (Note), 29.10 (3) (c) (2), 29.11 (1) (d), 29.11 (2) (a), 29.11 (2) (b), 29.11 (2) (c), 29.11 (3) (a), 29.11 (3) (b), 29.11 (3) (c), 29.11 (3m), 29.11 (6) (b), 29.25 (5) (a) 1.; *to amend* ATCP 21.01 (8), 21.10, (title), 21.10 (1) (a) and (b), 21.10 (2) (a) and (b), 21.10 (3), 21.13 (2) (c), 29.10 (3) (c) (intro) and 1., 29.11 (2), 29.11 (3), 29.11 (5), 29.11 (6) (c), 29.11 (6) (d), 29.15 (4) (b), 29.20 (6) (b), 29.25 (5) (a), 35.04 (5) (b), 35.06 (3) (c), 35.20 (3), 35.22 (1) (a), 35.22 (1) (b), 35.22 (1) (c), 35.22 (2) (a) (intro.), 35.22 (c), and 35.22 (2) (d); *to create* ATCP 29.20 (6) (c), *relating to* removing obsolete language and resolving statutory conflicts.

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

Statutes Interpreted: ss. 93.07 (12), 93.07 (13), 94.01, 94.68 (2), 94.681, 94.685 (3), 94.703 (3), 94.704 (3), 94.73 (6), and 94.76, Stats.

Statutory Authority: ss. 93.07 (1), 93.07 (12), 93.07 (13), 94.01, 94.68 (2), 94.681, 94.685 (3), 94.70, 94.703 (3), 94.704 (3), 94.73 (11), 94.76, and 227.11 (2) (a), Stats.

Explanation of Agency Authority

The Department of Agriculture, Trade and Consumer Protection (department) has broad general authority, under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. The department also has broad general authority, under ss. 93.07 (12) and (13), 94.01 (1), and 94.76 (1) Stats., to conduct surveys and inspections for the detection and control of injurious pests; and to make, modify, and enforce reasonable rules, including adoption of control measures necessary to prevent, suppress or control the introduction, establishment and spread of injurious pests.

The department has broad authority under s. 94.70, Stats., to regulate the sale and/or distribution of pesticides within the state, and authority under, ss. 94.68 and 94.681, Stats., to process license applications and issue licenses to pesticide manufacturers and labelers, and to collect fees and surcharges for their products. The department also has authority under s. 94.685, Stats., regarding the licensing of, and collection of fees from, dealers and distributors of restricted-use pesticides. Authority for licensing of

commercial pesticide application businesses, and licensing of individual commercial pesticide applicators, is given under ss. 94.703 and 94.704, Stats., respectively. Additional authority for changes to ss. ATCP 29.11, 29.15 (4), 29.20 (6), and 29.25 (5), are specified in language regarding ss. 94.681, 94.685(3)(a), 94.703 (3) (a), and 94.704 (3) (a), Stats., detailed in 2017 Wisconsin Act 59.

The department has broad authority under s. 94.73 (11), Stats., to promulgate rules to implement the Agricultural Chemical Cleanup Program (ACCP), and specifically under s. 94.73 (6), Stats., to specify amounts and formulas for reimbursements requested through the ACCP.

The department is proposing to adopt these rules, under authority of s. 227.11 (2) (a) (intro.), Stats., by the permanent rulemaking process.

Related Statutes and Rules

Chapter ATCP 21, Plant Inspection and Pest Control; ch. ATCP 29, Pesticide Use and Control; ch. ATCP 35, Agricultural Chemical Cleanup Program.

Plain Language Analysis

The department identified portions of s. ATCP 21.13 which are reportable as obsolete. Specifically, s. ATCP 21.13 (2) (c) 1. and 2., refer to outdated methods to certify that honeybees are European honeybees. Section ATCP 21.13 (3) is outdated because it requires a Varroa mite certification that hives are free of this pest. This rule is promulgated under s. 94.76 (1), Stats., which allows the department to issue such rules or orders or adopt such control measures which in its judgment may be necessary to prevent, suppress or control the introduction, spread or dissemination of honeybee diseases and pests in this state.

The department identified administrative code language in chs. ATCP 29 and ATCP 35 as obsolete or conflicting in our report filed with the Joint Committee for Review of Administrative Rules pursuant to s. 227.29, Stats. Section ATCP 29.10 (3) (c) 2. is unnecessary as it requires pesticide manufacturers and labelers applying for a license to include with an application a report that states the gross revenue of each pesticide product used in this state. 2017 Wisconsin Act 59 removed this requirement from s. 94.68 (2) (bm), Stats. Sections ATCP 29.11, 29.15 (4), 29.20 (6) and 29.25 (5) conflict with ss. 94.681, 94.685 (3) (a) 2., 94.703 (3) (a) 2., and 94.704 (3) (a) 2., Stats., due to changes in license fees by 2017 Wisconsin Act 59. Section ATCP 35.22 conflicts with s. 94.73 (6) (b) and (c), Stats., as 2017 Wisconsin Act 59 increased the maximum eligible reimbursement costs for eligible sites under the Agricultural Chemical Cleanup Program.

This proposed rule removes obsolete language and resolves statutory conflicts.

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

The department is unaware of any existing or proposed federal language that would affect the proposed rule's technical changes.

Summary of Comments Received during Preliminary Comment Period and at Public Hearing on Statement of Scope

The Joint Committee for Review of Administrative Rules did not request a preliminary hearing on the scope; thus, the department did not hold a preliminary hearing on the scope.

Comparison with Rules in Adjacent States

Illinois: The proposed rule's technical changes are not applicable to Illinois rules or statutes.

Iowa: The proposed rule's technical changes are not applicable to Iowa rules or statutes.

Michigan: The proposed rule's technical changes are not applicable to Michigan rules or statutes.

Minnesota: The proposed rule's technical changes are not applicable to Minnesota rules or statutes.

Summary of Factual Data and Analytical Methodologies

The department identified portions of s. ATCP 21.13 as obsolete. The department identified administrative code language in chs. ATCP 29 and ATCP 35 as obsolete or conflicting in our report filed with the Joint Committee for Review of Administrative Rules pursuant to s. 227.29, Stats. This proposed rule modifies provisions in the rule to align with statute.

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

The proposed rule was posted on the department's website for economic comments for 14 days and comments received were incorporated into the final draft. This proposed order aligns chs. ATCP 21, 29, and 35 with ss. 93.07 (12), 93.07 (13), 94.01, 94.68 (2), 94.681, 94.685 (3), 94.703 (3), 94.704 (3), 94.73 (6), and 94.76, Stats., and therefore, does not have an effect on small businesses.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on Small Business

This proposed rule does not have an effect on small businesses.

The Department's Regulatory Review Coordinator may be contacted by:

Email at Bradford.Steine1@wisconsin.gov

Telephone at (608) 224-5024

The Regulatory Flexibility Analysis is attached.

Department Contact Person

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Place Where Comments are to Be Submitted and Deadline for Submission:

Comments were received on or before December 27, 2022 to be included in the record of rule-making proceedings. Submit comments:

By mail to:

Robby Personette
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P.O. Box 8911
Madison, WI 53708-8911

By e mail to: robby.personette@Wisconsin.gov

RULE TEXT

1 **SECTION 1.** ATCP 21.01 (8) is amended to read:

2 ATCP 21.01 (8) "~~Gypsy~~Spongy moth" means the live insect, *Lymantria dispar*, family Lymantriidae, in
3 any life stage, including the egg, larva, pupa, or adult stage.

4 **SECTION 2.** ATCP 21.01 (15) is repealed.

5 **SECTION 3.** ATCP 21.10 (title), is amended to read:

6 ATCP 21.10 (**title**) ~~Gypsy~~Spongy moth; import controls and quarantine.

7 **SECTION 4.** ATCP 21.10 (1) (a) and (b) are amended to read:

8 ATCP 21.10 (1)(a) Except as provided under sub. (3), no person may import into this state any trees, woody
9 shrubs, cut Christmas trees, logs, pulpwood, slabwood, firewood, or wood chips that originate from a
10 ~~gypsyspongy~~moth regulated area designated by the United States department of agriculture under 7 CFR
11 301.45-2a.

12 (b) Except as provided under sub. (3), no person may move any trees, woody shrubs, cut Christmas trees,
13 logs, pulpwood, slabwood, firewood, or wood chips out of any area in this state which the United States
14 department of agriculture has designated as a ~~gypsyspongy~~moth regulated area under 7 CFR 301.45-2a.

15 **SECTION 5.** ATCP 21.10 (2) (a) and (b) are amended to read:

16 ATCP 21.10 (2) (a) Transport into this state, for delivery in this state, any outdoor household item that has
17 been used in a ~~gypsyspongy~~moth regulated area designated by the United States department of agriculture
18 under 7 CFR 301.45-2a.

19 (b) Transport, out of an area in this state which the United States department of agriculture has designated
20 as a gypsyspongy moth regulated area under 7 CFR 301.45-2a, any outdoor household item that has been
21 used in that area.

22 **SECTION 6.** ATCP 21.10 (3) is amended to read:

23 ATCP 21.10 (3) Inspected and certified items. Subsections (1) and (2) do not apply to items that are
24 inspected and certified by a pest control official in the state or province of origin, provided that the items
25 are accompanied by a written certificate issued by the pest control official who inspected those items. The
26 certificate shall identify the date of inspection and the items inspected. In the certificate, the pest control
27 official shall certify at least one of the following:

28 (a) That the inspected items originate from non-infested premises and have not been exposed to
29 gypsyspongy moth infestation.

30 (b) That the inspected items were found, at the time of inspection, to be free of gypsyspongy moth
31 infestation.

32 (c) That the inspected items have been effectively treated to destroy the gypsyspongy moth. The certificate
33 shall specify the method and date of treatment.

34 **Note:** Effective treatment methods include the methods described in the “Gypsy Moth Program Manual”
35 published by the United States department of agriculture, animal and plant health inspection service
36 (USDA-APHIS). A copy of the manual may be ~~inspected at the department, or may be obtained from~~
37 USDA-APHIS or viewed online at: [https://www.aphis.usda.gov/aphis/ourfocus/planthealth/complete-list-](https://www.aphis.usda.gov/aphis/ourfocus/planthealth/complete-list-of-electronic-manuals/ct_online_manuals)
38 [of-electronic-manuals/ct_online_manuals](https://www.aphis.usda.gov/aphis/ourfocus/planthealth/complete-list-of-electronic-manuals/ct_online_manuals).

39 (d) That the inspected items are produced, processed, stored, handled, or used under conditions, described
40 in the certificate, that effectively preclude the transmission of any gypsyspongy moth infestation.

41 **SECTION 7.** ATCP 21.13 (3) is repealed.

42 **SECTION 8.** ATCP 29.10 (3) (c) is amended to read:

43 ATCP 29.10 (3) (c) A report that: ~~does both of the following:~~

44 ~~1. I identifies~~ each pesticide product that the applicant sells or distributes.

45 ~~2. States the gross revenue which the applicant derived from the sale or distribution of each pesticide~~
46 ~~product, for use in this state, during the preceding year as defined under s. ATCP 29.11 (1) (d). The~~
47 ~~department may not disclose sales revenue information obtained under this subdivision.~~

48 **SECTION 9.** ATCP 29.11 (1) (d) is repealed.

49 **SECTION 10.** ATCP 29.11 (2) is amended to read:

50 ATCP 29.11 (2) Annual license fee. An applicant for a license under s. ATCP 29.10 shall pay an annual
51 license fee for each pesticide product that the applicant sells or distributes for use in this state during the
52 license year. Except as provided in subs. (5) to (7), the fee for each pesticide product is ~~as follows:~~ \$500

53 **SECTION 11.** ATCP 29.11 (2) (a), (b) and (c) are repealed.

54 **SECTION 12.** ATCP 29.11 (3) is amended to read:

55 ATCP 29.11 (3) Nonhousehold pesticides; cleanup surcharge. An applicant for a license under s. ATCP
56 29.10 shall pay an agricultural chemical cleanup surcharge for each nonhousehold pesticide product that
57 the applicant sells or distributes. Except as provided in sub. (6) or (7), the amount of the surcharge is as
58 ~~follows:~~ \$30.

59 **SECTION 13.** ATCP 29.11 (3) (a), (b), (c) and (3m) are repealed.

60 **SECTION 14.** ATCP 29.11 (5) is amended to read:

61 ATCP 29.11 (5) Unreported pesticide; increased license fee. If a person sells or distributes a pesticide
62 product without having filed a report for that product under s. ATCP 29.10 (3) (c) or (4), the license fee for
63 that product is twice the amount determined under sub. (2), except that if the pesticide product is exempt
64 from federal registration under 40 CFR 152.25, the license fee for that product is \$250.

65 **SECTION 15.** ATCP 29.11 (6) (b) is repealed.

66 **SECTION 16.** ATCP 29.11 (6) (c) is amended to read:

67 ATCP 29.11 (6) (c) By ~~March 31 of the year following~~ December 31 of the year in which the person stopped
68 selling the pesticide product for use in this state, pay a final license fee of \$500 for the pesticide product,
69 ~~calculated under sub. (2) based on sales of that product during the period specified in par. (b).~~

70 **SECTION 17.** ATCP 29.11 (6) (d) is amended to read:

71 ATCP 29.11 (6) (d) If the product is a nonhousehold pesticide, pay a final agricultural chemical cleanup
72 surcharge ~~calculated under sub. (3) based on sales of that product during the period specified in par. (b) of~~
73 \$30.

74 **SECTION 18.** ATCP 29.15 (4) (b) is amended to read:

75 ATCP 29.15 (4) (b) An agricultural chemical cleanup surcharge of ~~\$22.40~~\$20, except as provided in s.
76 94.73 (15), Stats.

77 **SECTION 19.** To repeal and recreate s. ATCP 29.20 (6) (b) to read:

78 ATCP 29.20 (6) (b) ~~Beginning with the license year that begins on January 1, 2015, an agricultural chemical~~
79 ~~cleanup surcharge of \$30.40~~An agricultural chemical cleanup surcharge of \$20, except as provided in par.
80 (c) or s. 94.73 (15), Stats.

81 **SECTION 20.** ATCP 29.20 (6) (c) is created to read:

82 ATCP 29.20 (6) (c) If the applicant manufactures or distributes bulk pesticides in this state, an additional
83 agricultural chemical cleanup surcharge of \$25, except as provided in s. 94.73 (15), Stats.

84 **SECTION 21.** ATCP 29.25 (5) (a) is amended to read:

85 ATCP 29.25 (5) (a) Except as provided under par. (b), an applicant for an annual license under sub. (1)
86 shall pay ~~the following annual license fee and surcharge:~~

87 ~~1. A license fee of \$40.~~

88 ~~Note: Section 1943, 1999 Wis. Act 9, added January 1, 2001 and January 1, 2002 to this requirement.~~

89 ~~2. A~~an agricultural chemical cleanup surcharge of \$11.20\$10, except as provided in s. 94.73 (15), Stats.

90 **SECTION 22.** ATCP 35.04 (5) (b) is amended to read:

91 ATCP 35.04 (5) (b) Installation of an engineered barrier to limit infiltration of existing contamination,
92 provided that the responsible person agrees in writing to maintain the barrier at ~~his or her~~the installer's
93 expense until the contamination is removed or fully degraded.

94 **SECTION 23.** ATCP 35.06 (3) (c) is amended to read:

95 ATCP 35.06 (3) (c) If any ~~person~~applicant has reason to believe that ~~he or she~~has the applicant received
96 any reimbursement for which ~~he or she~~the applicant is ineligible under this subsection, that person shall

97 immediately notify the department and shall refund with the notification the full amount of any
98 reimbursement for which the responsible person is ineligible.

99 **SECTION 24.** ATCP 35.20 (3) is amended to read:

100 ATCP 35.20 (3) Joint application. The department shall deny a reimbursement application unless every
101 responsible person successfully notified under sub. (2) includes ~~his or her~~the applicant's full claim for
102 reimbursement as part of the same joint application, or waives any claim for reimbursement related to
103 discharges to date at that discharge site. If a notified person fails to submit an application within 30 days
104 after receiving notice, or fails to provide documentation under s. ATCP 35.06 (1) within 60 days after
105 receiving notice, that failure constitutes a waiver of that person's claim with respect to that application.

106 **SECTION 25.** ATCP 35.22 (1) (a) is amended to read:

107 ATCP 35.22 (1) (a) Except as provided in subs. (2) through (6), the department shall reimburse a responsible
108 person for each discharge site an amount equal to 75% of the eligible corrective action costs that are greater
109 than \$3,000 and less than \$400,000 for costs incurred before July 1, 2017, or that are greater than \$3,000
110 and less than \$650,000 for costs incurred on or after July 1, 2017. To this amount, the department shall add
111 interest costs under s. ATCP 35.25.

112 **SECTION 26.** ATCP 35.22 (1) (b) is amended to read:

113 ATCP 35.22 (1) (b) If no more than \$3,000 of the eligible corrective action costs under par. (a) were
114 incurred prior to January 1, 2004, the total amount paid under par. (a) may not exceed ~~\$297,750~~\$485,250.

115 **SECTION 27.** ATCP 35.22 (1) (c) is amended to read

116 ATCP 35.22 (1) (c) If more than \$3,000 of the eligible corrective action costs under par. (a) were incurred
117 prior to January 1, 2004, the total amount paid under par. (a) may not exceed ~~\$317,600~~\$505,100 or the sum
118 of the following, whichever amount is less:

119 1. Eighty percent of the eligible corrective action costs incurred up to \$400,000 prior to January 1, 2004
120 that exceed \$3,000.

121 2. Seventy-five percent of the difference between ~~\$400,000~~\$650,000 and the eligible corrective action costs
122 incurred prior to January 1, 2004.

123 **SECTION 28.** ATCP 35.22 (2) (a) is amended to read:

124 ATCP 35.22 (2)(a) Except as provided in subs. (3) through (6), the department shall reimburse a responsible
125 person for each discharge site an amount equal to 75% of the eligible corrective action costs that are greater
126 than \$7,500 and less than \$400,000 for costs incurred before July 1, 2017, or that are greater than \$7,500
127 and less than \$650,000 for costs incurred on or after July 1, 2017, if any of the following apply at the time
128 the discharge occurs or is discovered:

129 **SECTION 29.** ATCP 35.22 (2) (c) is amended to read:

130 ATCP 35.22 (2) (c) If no more than \$7,500 of the eligible corrective action costs under par. (a) were incurred
131 prior to January 1, 2004, the total amount paid under pars. (a) and (b) may not exceed ~~\$294,375~~481,875.

132 **SECTION 30.** ATCP 35.22 (2) (d) is amended to read:

133 ATCP 35.22 (2) (d) If more than \$7,500 of the eligible corrective action costs under par. (a) were incurred
134 prior to January 1, 2004, the total amount paid under pars. (a) and (b) may not exceed ~~\$314,000~~501,500 or
135 the sum of the following, whichever amount is less:

136 1. Eighty percent of the eligible corrective action costs incurred up to \$400,000 prior to January 1, 2004
137 that exceed \$7,500.

138 2. Seventy-five percent of the difference between ~~\$400,000~~650,000 and the eligible corrective action costs
139 incurred prior to January 1, 2004.

140 **SECTION 31. EFFECTIVE DATE.** The rules adopted in this order shall take effect on the first day of the
141 month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.),
142 Stats.

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(END OF RULE TEXT)

Dated this 4th day of August, 2023

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: Randy Romanski, Secretary