Wisconsin Department of Agriculture, Trade and Consumer Protection

Initial Regulatory Flexibility Analysis

Rule Subject:	**Technical Rule**
Adm. Code Reference:	**ATCP various sections**
Rules Clearinghouse #:	**Not yet assigned**
DATCP Docket #:	**13-R-02**

Rule Summary

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

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 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 repealing the definition now found in 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Appendix A to ATCP 21 is being repealed and replaced because Hemlock Woolly Adelgid has been detected in additional counties in other states since the last time ATCP 21 was updated.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 Act 253, sec. 91.84 (2) on emergency rulemaking was repealed, sub.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.

Small Business Affected

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

Reporting, Bookkeeping and other Procedures

The proposed rule does not create any reporting, bookkeeping or other requirement for small businesses.

Professional Skills Required

The proposed rule does not require any profession skill of small businesses.

Accommodation for Small Business

This rule has no impact upon small businesses and as a result, no accommodations are needed.

Conclusion

This rule will not have any effect on "small business," and is not subject to the delayed "small business" effective date provided in s. 227.22(2) (e), Stats.

Dated this 28th day of June, 2013.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

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