



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Sheila E. Harsdorf, Secretary

DATE: September 11, 2018

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Sheila Harsdorf, Secretary *Sheila Harsdorf*
Melissa Mace, Acting Administrator, Division of Animal Health *Melissa Mace*

SUBJECT: Dog Sellers and Dog Facility Operators
Wis. Admin. Code ch. ATCP 16 (Final draft rule)

PRESENTED BY: Darlene Konkle, DVM, MS, DACVIM, Acting State Veterinarian,
Division of Animal Health
Melissa Mace, Acting Administrator, Division of Animal Health

REQUESTED ACTION:

At the September 20, 2018 meeting of the Board of Agriculture, Trade and Consumer Protection, the Department will ask the DATCP Board to approve a final draft rule relating to Dog Sellers and Dog Facility Operators, under Wis. Admin. Code ch. ATCP 16.

SUMMARY:

This rule specifies requirements for persons to become licensed under the Wisconsin dog sellers and dog facility operators program. Among other things, this rule does all of the following:

General rule changes

- Updates statutory cross references.
- Adds statutory language to the rule or modifies the rule to reflect statutory language.
- Makes other minor modifications to the rule.

Definitions

- Adds a definition of “dog” to clarify that the rule applies to domestic dogs and not dog hybrids.
- Modifies the definition of “dog dealer” specifically to include persons selling, or offering to sell, at least 25 dogs in a license year. This change makes the rule definition of “dog dealer” consistent with the statutory definition of “dog dealer”.
- Modifies the definition of “home custody provider” to apply only to an animal control facility or animal shelter.

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License requirements

- Adds a note clarifying that because a license is not transferable between locations, a licensed entity which moves to a new location must apply for a new license prior to operating at the new location.

Record keeping requirements

- Clarifies that vaccination records must include the name of the vaccine manufacturer, the vaccine serial number and lot number, the date on which the vaccine was administered, and the name of the person who administered the vaccine. Currently, this information must be provided on a certificate of veterinary inspection. Therefore, this information should also be maintained in the dog seller's records.

Dog sale requirements

- Clarifies that when a dog is sold, the following information must be provided to the purchaser:
 - A valid certificate of veterinary inspection.
 - All vaccination records.

Certificate of veterinary inspection (CVI)

Whenever a person, who is required to be licensed as a dog seller or dog facility operator, sells a dog in this state, the dog must be accompanied by the dog's vaccination records and CVI. The proposed rule makes the following modifications to the CVI requirement:

- Clarifies that a CVI must be on a form provided or approved by the Department. The current rule implies that only a CVI provided by the Department may be used. This clarification is consistent with CVI requirements specified under Wis. Admin. Code ch. ATCP 10.
- Clarifies that the veterinarian completing the CVI must list only those vaccinations administered by that veterinarian (or another veterinarian) if those vaccinations are properly documented. Currently, the rule implies that the dog's entire vaccination record must be included on the CVI, regardless of who administered the vaccination, including the dog seller. Any vaccinations administered by the dog seller must be maintained in his or her record for that dog and may not be included on a CVI.
- Clarifies that all dogs imported to Wisconsin must have CVIs. The current rule implies that if a CVI accompanied a dog imported to this state, certain information from that CVI must be added to the CVI of a dog being sold.
- Clarifies when a CVI may be re-used. The current rule is confusing because the rule requires the name of the new seller to be updated on the CVI before it can be re-used. However, a CVI cannot be updated by anyone other than the veterinarian who originally completed it. This rule modification clarifies that in spite of the requirement that the name and address of the dog seller be on a CVI, the CVI may be re-used if it is valid in all other respects.

Age at which dogs may be sold

- Requires that a puppy be at least 7 weeks of age before it can be physically transferred to a buyer. The current rule conflicts with the language of the statute by allowing transfer of puppies under 7 weeks of age to occur if certain requirements were met. The proposed rule no longer allows that to occur. The proposed rule is now congruent with the state statute.

General dog care requirements

- The current rule requires water containers, food containers, and the like to be cleaned and sanitized as often as necessary but does not specify a minimum timeframe. The proposed rule retains the requirement that the items must be cleaned and sanitized as often as necessary, but new language adds the additional requirement that these items be cleaned and sanitized at least once a week, at a minimum.
- Clarifies that each dog must be groomed as necessary to maintain the dog's health, comfort, and welfare. This language is consistent with terminology used throughout the rule.
- Reorganizes the rule to clarify that certain provisions apply to dogs regardless of whether those dogs are kept indoors or outdoors, including:
 - Whelping, nursery, and temporary dog enclosures are currently specified under the "Dogs kept indoors" section of the rule. While the rule specifies the requirements for these indoor enclosures, it is unclear whether these rules apply to outdoor enclosures as well. The rule clarifies the following:
 1. Whelping enclosures must be indoors unless a variance is granted from the Department. Other enclosure requirements remain the same as the current rule.
 2. Nursery enclosures must be indoors unless outdoor temperatures are adequate so as to not adversely affect the health of the puppies. The rule provides direction for maintaining adequate shade in the nursery during sunlight hours to prevent heat stress and avoid inclement weather. Other enclosure requirements remain the same as the current rule.
 3. Temporary enclosures for one dog must be indoors unless meeting the same exception criteria as nursery enclosures. Other enclosure requirements remain the same as the current rule.
 - Current requirements for run and exercise areas are specified under both the "Dogs kept indoors" and "Dogs kept outdoors" sections of the rule. These requirements apply to both situations. The requirements for runs and exercise areas have been moved to "general dog care requirements" but remain the same as current rule.
- Clarifies that primary enclosures must be structurally sound and maintained in good repair to protect the dog from injury. This reflects statutory language.

- Re-sequences the current primary enclosure measurement requirements that overlap in the current rule.

Dogs kept indoors

- Requires that an indoor facility be heated at a minimum of 50 degrees Fahrenheit.

Dogs kept outdoors

- Adds outdoor shelter requirements to protect dogs kept outdoors.

Cleaning and sanitation

- Harmonizes the cleaning and sanitation requirements for dogs kept indoors and outdoors. Current cleaning and sanitation requirements vary slightly for dogs kept indoors versus outdoors. These provisions have been modified to improve consistency.

Prohibited conduct

- Clarifies the current requirement that a licensed dog seller may not convey custody or control of a dog to another person who is required to be licensed as a dog seller but has failed to obtain the license.

Public Hearing

A public hearing was held on June 10, 2018, in Madison, Wisconsin. The hearing record remained open until July 25, 2018. See the attached “Summary of Public Comments” for additional information.

Changes from the Hearing Draft

No changes were made based on public comment as no comments requested changes to be made. The Legislative Council Clearinghouse suggested several minor modifications be made to the rule. The department accepted all the recommended changes suggested by the Clearinghouse and modified the rule as appropriate.

Summary of, and comparison with, existing or proposed federal statutes and regulations

Wisconsin’s dog seller rule licenses different entities than the United States Department of Agriculture (USDA). The USDA licenses entities based on the number of animals to be bred or the number of breeding-age females for commercial sales. Wisconsin licenses entities based on the number of dogs sold to the public and is more strict than federal regulations regarding record keeping and enclosures.

Currently, the USDA licenses and inspects fewer than 50 kennels in Wisconsin that are selling puppies wholesale. USDA establishes minimum facility standards for those licensed facilities.

Comparison to Rules in Adjacent States

Iowa is the only adjacent state that has rules relating to dog sellers. Iowa's rules are similar to these proposed rule changes with respect to minimum temperatures, whelping enclosures, and cleaning requirements.

Summary of Factual Data and Analytical Methodologies

The dog sellers and dog facility operator program went into effect on June 1, 2011. This program licenses the following:

- Animal control facilities and animal shelters that shelter at least 25 dogs;
- Dog breeders who sell 25 or more dogs from more than 3 litters;
- Dog breeding facilities from which 25 or more dogs are sold in a year;
- Dog dealers who sell, distribute, trade, or offer for sale, distribution, or trade, 25 or more dogs in a year; and
- Out of state dog dealers who are not residents of this state and who bring 25 or more dogs into Wisconsin for sale here in a year.

With this license, the Department inspects facilities, establishes health requirements for selling dogs, defines the age that a dog may be sold, and defines standards of care (including enclosure and exercise requirements, vaccinations, record keeping, and requirements for temporary dog markets).

The rules established for this program have not been modified since the program was created. The Department's Animal Health Division staff have discovered some provisions in the administrative rule that are ambiguous or that optimally could provide additional guidance if modified. Many of these discoveries occurred during the implementation of certain program requirements codified in Wis. Admin. Code ch. ATCP 16. The Division staff also received feedback from licensed individuals and business stakeholders, as well as input from veterinarians.

The following areas in Wis. Admin. Code ch. ATCP 16 were reviewed to address these issues and may be modified as a result (the statutory authority to make rules in these areas is noted):

1. Inspection requirements (see Wis. Stat. §§ 173.41 (6) and (14)).
2. Health requirements for selling dogs (see Wis. Stat. §§ 173.41 (8) and (14)).
3. Standards of care (see Wis. Stat. §§ 173.41 (10) and (14)).
4. Record keeping (see Wis. Stat. §§ 173.41 (11) and (14)).
5. License fees (see Wis. Stat. § 173.41 (3)).

Wis. Admin. Code ch. ATCP 16 was originally created in June of 2011 to implement the requirements mandated by Wis. Stat. § 173.41. As required by Wis. Stat. § 173.41 (14), the Department convened an advisory committee to initially develop the rules under Wis. Admin.

Code ch. ATCP 16. The Department reconvened the advisory committee in May 2012 to review the rules again. Minor modifications were suggested at the time. However, because the program had not been in operation for a substantial period of time, the modifications were not implemented. Now that the program has been in place for seven years, the time has come to incorporate the advisory committee's suggested modifications and re-organize the rule to improve the clarity of the various rule provisions. It should be noted that, having met its statutory obligations, the advisory committee is no longer active. However, many of the minor modifications suggested by the committee in 2012 have now been incorporated into the proposed rule.

On March 5, 2018, the Department met with an advisory group of licensed dog sellers to discuss the proposed rule changes as well as costs associated with the proposed rule changes. The committee members represented entities selling more than 50 dogs per year, entities selling fewer than 50 dogs, dog shelters, dog dealers, and dog breeders. See *Effect on Small Business*, below.

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

The rule will have little to no fiscal impact. Most of the rule modifications clarify the current rule or reorganize requirements under the rule. There are no fee changes under the proposed rule.

The Animal Health Division at the Department has a strong history of engaging stakeholder involvement and input. As mentioned, pursuant to Wis. Stat. § 173.41(14) (b), the Department established the Dog Sellers Advisory Committee. Division staff last met with the Dog Sellers Advisory Committee on May 12, 2012, one year after the original rule was initially promulgated. Comprised of stakeholders and representatives of groups to be licensed under the rule, the advisory committee suggested rule modifications, many of which are incorporated in this proposed rule.

On March 5, 2018, the Department met with another stakeholder group comprised of licensed dog sellers representing entities selling more than 50 dogs, entities selling fewer than 50 dogs, dog shelters, dog dealers, and dog breeders. The Department discussed the proposed rule changes with the committee, including any potential costs associated with the changes.

Effect on Small Business

This rule is expected to have a generally positive impact on dog sellers and dog facility operators, as the rule will clarify several provisions. The Department licenses 178 dog shelters and 246 dog sellers in Wisconsin, as well as 10 dog sellers based outside Wisconsin. While it is unknown how many licensees have indoor and/or outdoor facilities, the proposed rule articulates certain standards for such facilities.

The impact on the industry is anticipated to be minimal because the language of the current rule already requires the industry to ensure, in general, the health, comfort, and welfare of dogs. The

proposed rule fleshes out the requisite contours of such health, comfort, and welfare. For example, the proposed rule requires that dogs kept indoors and outdoors must be regularly cleaned and their quarters regularly sanitized. The proposed rule also requires the utilization of windbreaks against cold temperatures for dogs kept outdoors and requires dog shelters to be moisture proof, windproof, and insulated. These requirements are little more than common-sense dictates that are now spelled out in the rule, for the sake of clarity. Assuming that industry participants are already guided by common sense and by a generalized concern for health and welfare, compliance costs are expected to be minimal.

The proposed rule requires indoor facilities be kept at a minimum temperature of 50 degrees Fahrenheit, designed to mirror the temperature set by USDA and by other states. Fifty degrees is a temperature at which water will not freeze, and it is a minimum temperature needed for cleaning to be effective. Stakeholders agreed that this minimum temperature standard is a reasonable one. Most dog sellers and proprietors of dog shelters stated that they were under the impression that facilities within the state were already maintained, or should have been maintained, at 50 degrees or higher, even absent the proposed standard. Indeed, depending upon the type of dog kept in the facility (e.g. Chihuahuas), the minimum temperature would need to be well above 50 degrees.

Financial outlays relating to this provision are expected to be minimal. Industry participants are already required to ensure dogs' health, comfort, and welfare under the current rule. Thus, in the case of the temperature standard, the industry should already have been maintaining an appropriate temperature level above 50 degrees for the safety of the animals. Consequently, it is anticipated that all or most businesses are already in compliance and would incur no additional energy costs. As to any structure not currently in compliance, the cost to heat the structure would vary widely depending on the building's construction and insulation, the number and size of dogs kept in the building, the size of the building, the temperature outside of the building, and the type of heating (gas, electricity, or wood). Department staff contacted Madison Gas and Electric (MG&E) to determine whether a more specific cost could be calculated. MG&E staff opined that given the potential variances concerning the building type, insulation ("R value"), and heating source, the heating costs are necessarily indeterminate and incalculable.

On March 5, 2018, the Department met with an advisory group of licensed dog sellers. The committee members represented entities selling more than 50 dogs per year, entities selling fewer than 50 dogs per year, dog shelters, dog dealers, and dog breeders. The Department's Animal Health Division asked the committee of stakeholders to provide feedback as to whether the proposed rule provisions would be onerous or burdensome in any way. The Department also wished to learn about what potential financial costs might result from the proposed rule changes.

Results from this meeting with stakeholders were both positive and encouraging. All participants agreed that the proposed changes added useful clarifications to the existing rule. The stakeholders indicated that the proposed rule changes would not be burdensome. No stakeholder foresaw any significant costs associated with the implementation of the proposed rule.

As a final note, the advisory committee members also strongly encouraged the Department to incorporate statutory requirements into the rule as most dog sellers refer to the rule only when seeking program requirements.

Next Steps

If the DATCP Board approves this final rule draft, the Department will submit it to the Governor's Office of Regulatory Compliance. If the Governor's office approves, the Department will then submit the rule to the Legislature for legislative committee review. If the Legislature has no objection to the rule, the Department secretary will sign the final rulemaking order and transmit it for publication. The rule will take effect on the first day of the third month following publication.

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

1 The Wisconsin department of agriculture, trade and consumer protection proposes the following
2 permanent rule **to repeal** ATCP 16.18 (2) and (3), 16.22 (4) to (6), 16.22 (7) (b) Note, 16.24 (7)
3 (a) 1. and 2., 16.24 (8) (intro.); **to renumber and amend** ATCP 16.14 (3) (h), 16.24 (7) (a)
4 (intro.); **to amend** ATCP 16.01 (3), 16.01 (7) (a) and (9), 16.02 (1) (intro.), 16.04 (1), 16.06 (8)
5 (b), 16.08 (4) and (5) (intro.), 16.14 (3) (b), 16.16 (title), (1), (2), (3) (a) and (b) Note and (4)
6 (intro.) and (d), 16.16 (4) (d) 4., 16.16 (4) (e) and (f) Note, 16.16 (7) (a) and (b), 16.20 (1) (f), (2)
7 (d), (e), (f) and Note, and (3) (a) and (c) 3., 16.22 (1) (a), 16.22 (1) (b) 4. and (c) 3., (2) (b) 5., (c)
8 5., and (e), and (3) (d), 16.22 (7) (b), 16.22 (8) (a), 16.22 (8) (b), 16.24 (2) (a) 5. and (b) 5., and
9 (3), 16.24 (4) (c) and (5) (a), 16.24 (7) (b), 16.24 (8) (title), 16.24 (8) (a), 16.30; **to consolidate,**
10 **renumber and amend** ATCP 16.18 (intro.) and (1), and **to create** ATCP 16.01 (4m), 16.02 (3)
11 Note, 16.04 (2) (g), 16.04 (3) (f), 16.14 (3) (h) 2., 16.15, 16.16 (4) (g) Note, 16.19, 16.20 (7) to
12 (10), 16.22 (1) (am), 16.22 (8) (am), 16.24 (3m), 16.24 (5) (am), 16.24 (8) (d) and (e), 16.28 (6),
13 relating to the dog sellers and dog facility operator licensing requirements and affecting small
14 businesses.
15

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

This proposed rule specifies requirements for persons to become licensed under the Wisconsin dog sellers and dog facility operators program.

Statutes Interpreted

Statutes interpreted: Wis. Stat. § 173.41.

Statutory Authority

Statutory authority: Wis. Stat. §§ 93.07 (1) and 173.41(14).

Explanation of Statutory Authority

The Department of Agriculture, Trade and Consumer Protection (DATCP) has authority under Wis. Stat. § 173.41 (14) to promulgate rules to implement and administer the dog seller and dog facility operators program that is established by Wis. Stat. § 173.41. DATCP also has authority under Wis. Stat. § 93.07 (1) to promulgate regulations that are necessary and proper.

Wis. Admin. Code ch. ATCP 16 was originally created in June of 2011 to implement the requirements mandated by Wis. Stat. § 173.41. As required by Wis. Stat. § 173.41 (14), the Department convened an advisory committee to initially develop the rules under Wis. Admin. Code ch. ATCP 16. The Department reconvened the advisory committee in May 2012 to review the rules again. Minor modifications were suggested at the time, but not incorporated into the rule during the 2012 time frame due to the short duration the program had been in operation. However, many of the minor modifications suggested by the committee in 2012 have now been incorporated into this proposed rule. Having fulfilled its statutory obligation, the advisory committee is no longer active.

Related Statutes and Rules

None.

Plain Language Analysis

This rule specifies requirements for persons to become licensed under the Wisconsin dog sellers and dog facility operators program. Among other things, this rule does all of the following:

General rule changes

- Updates statutory cross references.
- Adds statutory language to the rule or modifies the rule to reflect statutory language.
- Makes other minor modifications to the rule.

Definitions

- Adds a definition of “dog” to clarify that the rule applies to domestic dogs and not dog hybrids.
- Modifies the definition of “dog dealer” specifically to include persons selling, or offering to sell, at least 25 dogs in a license year. This change makes the rule definition of “dog dealer” consistent with the statutory definition of “dog dealer”.
- Modifies the definition of “home custody provider” to apply only to an animal control facility or animal shelter.

License requirements

- Adds a note clarifying that because a license is not transferable between locations, a licensed entity which moves to a new location must apply for a new license prior to operating at the new location.

Record keeping requirements

- Clarifies that vaccination records must include the name of the vaccine manufacturer, the vaccine serial number and lot number, the date on which the vaccine was administered, and the name of the person who administered the vaccine. Currently, this information must be provided on a certificate of veterinary inspection. Therefore, this information should also be maintained in the dog seller’s records.

Dog sale requirements

- Clarifies that when a dog is sold, the following information must be provided to the purchaser:
 - A valid certificate of veterinary inspection.
 - All vaccination records.

Certificate of veterinary inspection (CVI)

Whenever a person, who is required to be licensed as a dog seller or dog facility operator, sells a dog in this state, the dog must be accompanied by the dog's vaccination records and CVI. The proposed rule makes the following modifications to the CVI requirement:

- Clarifies that a CVI must be on a form provided or approved by the Department. The current rule implies that only a CVI provided by the Department may be used. This clarification is consistent with CVI requirements specified under Wis. Admin. Code ch. ATCP 10.
- Clarifies that the veterinarian completing the CVI must list only those vaccinations administered by that veterinarian (or another veterinarian) if those vaccinations are properly documented. Currently, the rule implies that the dog's entire vaccination record must be included on the CVI, regardless of who administered the vaccination, including the dog seller. Any vaccinations administered by the dog seller must be maintained in his or her record for that dog and may not be included on a CVI.
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- Clarifies when a CVI may be re-used. The current rule is confusing because the rule requires the name of the new seller to be updated on the CVI before it can be re-used. However, a CVI cannot be updated by anyone other than the veterinarian who originally completed it. This rule modification clarifies that in spite of the requirement that the name and address of the dog seller be on a CVI, the CVI may be re-used if it is valid in all other respects.

Age at which dogs may be sold

- Requires that a puppy be at least 7 weeks of age before it can be physically transferred to a buyer. The current rule conflicts with the language of the statute by allowing transfer of puppies under 7 weeks of age to occur if certain requirements were met. The proposed rule no longer allows that to occur. The proposed rule is now congruent with the state statute.

General dog care requirements

- The current rule requires water containers, food containers, and the like to be cleaned and sanitized as often as necessary but does not specify a minimum timeframe. The proposed rule retains the requirement that the items must be cleaned and sanitized as often as necessary, but new language adds the additional requirement that these items be cleaned and sanitized at least once a week, at a minimum.
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- Reorganizes the rule to clarify that certain provisions apply to dogs regardless of whether those dogs are kept indoors or outdoors, including:
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kept indoors” section of the rule. While the rule specifies the requirements for these indoor enclosures, it is unclear whether these rules apply to outdoor enclosures as well. The rule clarifies the following:

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 - Re-sequences the current primary enclosure measurement requirements that overlap in the current rule.

Dogs kept indoors

- Requires that an indoor facility be heated at a minimum of 50 degrees Fahrenheit.

Dogs kept outdoors

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The impact on the industry is anticipated to be minimal because the language of the current rule already requires the industry to ensure, in general, the health, comfort, and welfare of dogs. The proposed rule fleshes out the requisite contours of such health, comfort, and welfare. For example, the proposed rule requires that dogs kept indoors and outdoors must be regularly cleaned and their quarters regularly sanitized. The proposed rule also requires the utilization of windbreaks against cold temperatures for dogs kept outdoors and requires dog shelters to be moisture proof, windproof, and insulated. These requirements are little more than common-sense dictates that are now spelled out in the rule, for the sake of clarity. Assuming that industry participants are already guided by common sense and by a generalized concern for health and welfare, compliance costs are expected to be minimal.

The proposed rule requires indoor facilities be kept at a minimum temperature of 50 degrees Fahrenheit, designed to mirror the temperature set by USDA and by other states. Fifty degrees is a temperature at which water will not freeze, and it is a minimum temperature needed for cleaning to be effective. Stakeholders agreed that this minimum temperature standard is a reasonable one. Most dog sellers and proprietors of dog shelters stated that they were under the impression that facilities within the state were already maintained, or should have been maintained, at 50 degrees or higher, even absent the proposed standard. Indeed, depending upon the type of dog kept in the facility (e.g. Chihuahuas), the minimum temperature would need to be well above 50 degrees.

Financial outlays relating to this provision are expected to be minimal. Industry participants are already required to ensure dogs' health, comfort, and welfare under the current rule. Thus, in the case of the temperature standard, the industry should already have been maintaining an appropriate temperature level above 50 degrees for the safety of the animals. Consequently, it is anticipated that all or most businesses are already in compliance and would incur no additional energy costs. As to any structure not currently in compliance, the cost to heat the structure would vary widely depending on the building's construction and insulation, the number and size of dogs kept in the building, the size of the building, the temperature outside of the building, and the type of heating (gas, electricity, or wood). Department staff contacted Madison Gas and Electric (MG&E) to determine whether a more specific cost could be calculated. MG&E staff opined that given the potential variances concerning the building type, insulation ("R value"), and heating source, the heating costs are necessarily indeterminate and incalculable.

On March 5, 2018, the Department met with an advisory group of licensed dog sellers. The committee members represented entities selling more than 50 dogs per year, entities selling fewer than 50 dogs per year, dog shelters, dog dealers, and dog breeders. The Department's Animal Health Division asked the committee of stakeholders to provide feedback as to whether the proposed rule provisions would be onerous or burdensome in any way. The Department also wished to learn about what potential financial costs might result from the proposed rule changes.

Results from this meeting with stakeholders were both positive and encouraging. All participants agreed that the proposed changes added useful clarifications to the existing rule. The stakeholders indicated that the proposed rule changes would not be burdensome. No

stakeholder foresaw any significant costs associated with the implementation of the proposed rule.

As a final note, the advisory committee members also strongly encouraged the Department to incorporate statutory requirements into the rule as most dog sellers refer to the rule only when seeking program requirements.

Environmental Impact

This rule has no environmental impact.

Standards Incorporated by Reference

The Department will request approval from the Attorney General to update the reference to the Guidelines on Euthanasia published by the American Veterinary Medical Association from 2007 to 2013.

DATCP Contact

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Public Hearing

A public hearing was held on June 10, 2018, in Madison, Wisconsin. The hearing record remained open until July 25, 2018.

SECTION 1. ATCP 16.01 (3) is amended to read:

ATCP 16.01 (3) “Animal shelter” means a facility or legal entity in this state that is operated for the purpose of providing for and promoting the welfare, protection, and humane treatment of animals, that is used to shelter at least 25 dogs in a license year, and that is operated by a humane society, animal welfare society, animal rescue group, or other nonprofit group.

SECTION 2. ATCP 16.01 (4m) is created to read:

ATCP 16.01 (4m) “Dog” means canis familiaris.

SECTION 3. ATCP 16.01 (7) (a) and (9) are amended to read:

ATCP 16.01 (7) (a) A person who in any license year sells or offers to sell in this state at least 25 dogs that the person owns but has not bred and raised.

(9) “Home custody provider” means an individual who is not required to be licensed under s. ATCP 16.02 (1), but who keeps dogs at his or her home for a person who is licensed under s. ATCP 16.02 (1) (a) or (b).

SECTION 4. ATCP 16.02 (1) (intro.) is amended to read:

ATCP 16.02 (1) (intro.) LICENSE REQUIRED. (intro.) Except as provided in s. ATCP 16.04, no person may do any of the following activities or combination of activities in any license year without an annual license from the department:

SECTION 5. ATCP 16.02 (3) Note is created to read:

ATCP 16.02 (3) Note: Because a license is not transferable between locations, a licensed entity that moves to a new location must apply for a new license prior to operating under sub. (1) at the new location.

SECTION 6. ATCP 16.04 (1) is amended to read:

ATCP 16.04 (1) VETERINARIAN. A veterinarian who keeps dogs for the purpose of providing care or treatment in the normal course of veterinary practice, within the scope of the veterinarian’s license under ch. ~~453~~ 89, Stats.

SECTION 7. ATCP 16.04 (2) (g) is created to read:

ATCP 16.04 (2) (g) The person does not engage in activities for which a license is required under s. ATCP 16.02 (1) in the next year.

SECTION 8. ATCP 16.04 (3) (f) Note is created to read:

ATCP 16.04 (3) (f) Note: A person may obtain a one-time liquidation sale or temporary dog market form by calling (608) 224-4872, by visiting the department website at <https://www.datcp.wi.gov> or by writing to the following address:

Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Animal Health
P.O. Box 8911
Madison, WI 53708-8911

SECTION 9. ATCP 16.06 (8) (b) Note is amended to read:

ATCP 16.06 (8) (b) Note: A person may obtain a license ~~for~~ by calling (608) 224-4872, by visiting the department website at ~~www.datcp.wi.gov~~ <https://www.datcp.wi.gov> or by writing to the following address:

Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Animal Health
P.O. Box 8911
Madison, WI 53708-8911

SECTION 10. ATCP 16.08 (4) and (5) (intro.) are amended to read:

ATCP 16.08 (4) A late renewal surcharge equal to 20 percent of all applicable license fees required under subs. (1) to (3) if the applicant seeks to renew a license after that license has expired.

(5) (intro.) A surcharge equal to the total of all applicable license fees required under subs. (1) to (3) if the department determines that any of the following apply:

SECTION 11. ATCP 16.14 (3) (b) is amended to read:

ATCP 16.14 (3) (b) The location at which the dog is kept, including ~~any~~ the address of any home custody provider.

SECTION 12. ATCP 16.14 (3) (h) is renumbered ATCP 16.14 (3) (h) 1. and as renumbered is amended to read:

ATCP 16.14 (3) (h) 1. Health records related to the dog, including ~~vaccination~~, observation and treatment records and whether the health care was administered by the license holder or by a licensed veterinarian.

SECTION 13. ATCP 16.14 (3) (h) 2. is created to read:

ATCP 16.14 (3) (h) 2. Vaccination records related to the dog. The vaccination record shall identify each type of vaccination that the dog has received. For each type of vaccination, the record shall include all of the following:

- a. The name of the vaccine manufacturer.
- b. The vaccine serial number and lot number.
- c. The date on which the vaccine was administered.
- d. The name of the person who administered the vaccine.

SECTION 14. ATCP 16.15 is created to read:

ATCP 16.15 Dog sales; general. Whenever a person who is required to be licensed under s. ATCP 16.02 (1), sells a dog in this state, the dog shall be accompanied by all of the following:

- (1) A valid certificate of veterinary inspection under s. ATCP 16.16.
- (2) All vaccination records required under s. ATCP 16.14 (3) (h) 2.

SECTION 15. ATCP 16.16 (title), (1), (2), (3) (a) and (b) Note and (4) (intro.) and (d) are amended to read:

ATCP 16.16 (title) ~~Dog sales; certificate~~ Certificate of veterinary inspection.

(1) ~~WHEN REQUIRED DOG SALES.~~ Whenever a person who is required to be licensed under s. ATCP 16.02 (1) sells a dog in this state, the dog shall be accompanied by a valid certificate of veterinary inspection required to sell a dog under s. ATCP 16.15 (1) shall meet all of the requirements under this section. A single certificate may cover more than one dog.

(2) WHO MAY ISSUE. A certificate of veterinary inspection under sub. (1) shall be prepared and signed by a Wisconsin certified veterinarian described under s. ATCP 10.05, except that a certificate accompanying a dog imported into this state ~~may~~ shall be issued by an accredited veterinarian defined under s. ATCP 10.01 (2).

(3) FORM. (a) A certificate of veterinary inspection shall be issued on a form provided or approved by the department, ~~the United States department of agriculture, or the state in which the certificate is issued.~~ ~~A certificate issued in this state shall be issued on a form provided by the department.~~

(b) Note: Wisconsin certificate of veterinary inspection forms may be obtained for \$0.60 each. Forms may be obtained online at: ~~<http://www.onlineservices.datcp.wi.gov/vetcatalog>~~ <https://datcpservices.wisconsin.gov/vetcatalog/index.jsp> or by contacting the department at the following address:

Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Animal Health
P.O. Box 8911
Madison, WI 53708-8911
Phone: (608) 224-4872
Fax: (608) 224-4871

(4) CONTENTS. (intro.) A certificate of veterinary inspection under sub. (1) shall include all of the following information:

(d) ~~The dog's vaccination record. The vaccination record shall identify each type of vaccination that the dog has received. For each type of vaccination, the record shall include vaccinations administered by the veterinarian completing the certificate of veterinary inspection, including all of the following:~~

SECTION 16. ATCP 16.16 (4) (d) 4. is amended to read:

ATCP 16.16 (4) (d) 4. The name of the ~~person~~ veterinarian who administered the vaccine.

SECTION 17. ATCP 16.16 (4) (e) and (f) Note are amended to read:

ATCP 16.16 (4) (e) ~~Any~~ The information required under s. ATCP ~~10.06 (4) or~~ 10.80 ~~if~~ on the certificate of veterinary inspection ~~accompanies~~ that accompanied a dog imported into this state.

(f) Note: Approved brucellosis test methods may be obtained by contacting the department online at ~~http://www.datcp.wi.gov~~ https://www.datcp.wi.gov or by contacting the department at the following address:

Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Animal Health
P.O. Box 8911
Madison, WI 53708-8911
Phone: (608) 224-4872
Fax: (608) 224-4871

SECTION 18. ATCP 16.16 (4) (g) Note is created to read:

ATCP 16.16 (4) (g) Note: Pursuant to s. 95.19, Stats., a heartworm positive dog may not be sold, transported or exhibited as it is considered to have an infectious, contagious or communicable disease.

SECTION 19. ATCP 16.16 (7) (a) and (b) are amended to read:

ATCP 16.16 (7) RE-USING A CERTIFICATE. (a) If a dog is ~~resold~~ sold again prior to the expiration of a certificate of veterinary inspection previously issued for ~~a prior sale of the~~ same dog, the unexpired certificate ~~shall~~ may accompany the resold dog. The original certificate may not be amended and no new certificate is required for the resale, provided that ~~all~~ both of the following apply:

~~1. The unexpired certificate is updated to include required information related to the new seller.~~

2 ~~1.~~ The new seller keeps a copy of the ~~updated~~ certificate.

3. ~~2.~~ The new buyer receives a copy of the ~~updated~~ certificate.

(b) ~~A certificate of veterinary inspection~~ veterinarian may incorporate information from a prior unexpired certificate of veterinary inspection for the same dog, but shall include the information required under sub. (4) (e), if applicable. ~~The new certificate~~ veterinarian shall include the following statement or a substantially similar statement on the new certificate:

"The (identify pertinent information incorporated from the prior certificate) on this certificate has been ~~copied~~ duplicated from the attached certificate of veterinary inspection issued by (name of veterinarian who issued the prior certificate) at (address) on (date)."

SECTION 20. ATCP 16.18 (intro.) and (1) are consolidated, renumbered ATCP 16.18 and amended to read:

ATCP 16.18 Age at which dogs may be sold. A person who is required to be licensed under s. ATCP 16.02 (1) may not, in connection with the sale of a dog, transfer that dog to the physical custody of the buyer unless ~~one of the following applies~~:

~~(1) The~~ the dog is at least 7 weeks old.

SECTION 21. ATCP 16.18 (2) and (3) are repealed.

SECTION 22. ATCP 16.19 is created to read:

ATCP 16.19 Dog imports. No person may import any dog into this state unless it meets the requirements under s. ATCP 10.80.

SECTION 23. ATCP 16.20 (1) (f), (2) (d), (e), (f) and Note, and (3) (a) and (c) 3. are amended to read:

ATCP 16.20 (1) (f) Water containers, non-disposable food containers and non-disposable utensils shall be cleaned with an appropriate detergent, rinsed, and sanitized with an appropriate sanitizer as often as necessary but at least once a week to keep them free of accumulated dirt, debris, and disease hazards.

(2) (d) Each dog shall be groomed as necessary to ~~prevent~~ maintain dog health, comfort and welfare, including preventing abnormal matted hair and overgrown nails, and ~~to allow~~ allowing freedom of movement and normal bodily functions.

(e) A licensed veterinarian shall examine each dog as often as necessary to ensure adequate health care. The examining licensed veterinarian shall use appropriate methods to prevent, control, diagnose, and treat diseases and injuries. The license holder shall follow the veterinarian's recommendations.

(f) Sick, diseased or injured dogs shall be provided with timely veterinary care or shall be euthanized by a method described in Appendix 1 to the AVMA Guidelines on for the Euthanasia of Animals: 2013 Edition published by the American Veterinary Medical Association (~~June 2007~~).

Note: Copies of ~~Appendix 1 to the~~ AVMA Guidelines on for the Euthanasia of Animals: 2013 Edition published by the American Veterinary Medical Association (~~June 2007~~) are on file with the department and may be obtained online at <http://www.avma.org/issues/animal>

welfare/euthanasia.pdf <https://www.avma.org/KB/Policies/Documents/euthanasia.pdf> or from

the American Veterinary Medical Association at the following address:

American Veterinary Medical Association
1931 N. Meacham Rd
Suite 100
Schaumburg, IL 60173-4360

(3) (a) Except as provided in par. (c) and subs. (7), (8) and (9), dogs shall be kept in facilities that comply with ss. ATCP 16.22 and 16.24.

(c) 3. The dogs are sold only to animal care facilities licensed or registered by the United States department of agriculture or other countries' equivalent, and are not resold to any other person.

SECTION 24. ATCP 16.20 (7) to (10) are created to read:

ATCP 16.20 (7) WHELPING ENCLOSURES. (a) *General.* Outdoor whelping enclosures are prohibited unless a variance is granted from the department.

(b) *Whelping enclosure.* An indoor primary enclosure for a single whelping dam and her puppies shall comply with all of the following requirements, rather than the requirements under s. ATCP 16.22 (2) or (3):

1. The enclosure shall be of an appropriate type for the breed kept in the enclosure.
2. The enclosure shall have a solid floor in that portion of the enclosure that is accessible to the puppies.
3. The enclosure shall be tall enough for the dam to stand normally and comfortably.
4. The enclosure shall be large enough for the dam to lie down in a stretched out position, so that all puppies can simultaneously nurse.
5. The enclosure shall be large enough for the number and temperament of the puppies.

6. The enclosure shall include an area that is accessible only to the dam and is large enough to accommodate the dam. That area may have a non-solid floor that complies with s. ATCP 16.22 (1) (b).

(8) NURSERY ENCLOSURE. A primary enclosure for puppies between the age of weaning and the age of 4 months shall comply with the following requirements, rather than the requirements under s. ATCP 16.22 (2) or (3) for indoor enclosures and s. ATCP 16.24 (2) for outdoor enclosures:

(a) The enclosure shall be large enough to allow all of the puppies to turn around, stand up, lie down, and exercise normal postural movements.

(b) The enclosure shall be large enough to encourage socialization and exercise.

(c) The enclosure shall be indoors unless outdoor temperatures are adequate as to not adversely affect the health of the puppies, there is shade adequate to shade all dogs in the nursery from direct sunlight during any sunlight hours in which heat stress may occur, and there is no inclement weather.

(9) TEMPORARY ENCLOSURE FOR ONE DOG. (a) A dog may be kept for up to 12 hours a day in a temporary enclosure that does not meet the standards for a primary enclosure under ss. ATCP 16.22 and 16.24 if all of the following apply:

1. Only one dog is kept in the temporary enclosure at any time.
2. The temporary enclosure is long enough to accommodate the entire length of dog's head and body, measured from the tip of the dog's nose to the base of the dog's tail.
3. The temporary enclosure is tall enough for the dog to stand normally and comfortably, and large enough for the dog to turn around and lie down.

(b) A temporary dog enclosure shall be kept indoors unless outdoor temperatures are adequate so as to not adversely affect the health of the dog, there is shade to protect the dog from direct sunlight during any sunlight hours in which heat stress may occur, and there is no inclement weather.

(10) RUNS AND EXERCISE AREAS.

(a) A run or exercise area shall meet all of the following requirements:

1. It shall be large enough for the dog's size and temperament, considering the number of dogs that may use the run or exercise area at the same time, and shall be large enough for the dog to achieve a running stride.

2. If outdoors, it shall include a shaded area that is large enough, during all hours in which the run or exercise area is used, to shade all dogs using the run or exercise area without crowding.

SECTION 25. ATCP 16.22 (1) (a) is amended to read:

ATCP 16.22 (1) (a) *Size and configuration.* An indoor primary enclosure shall comply with sub. (2) or (3), except that a whelping enclosure shall comply with ~~sub. (4)~~ s. ATCP 16.20 (7) and a nursery enclosure shall comply with ~~sub. (5)~~ s. ATCP 16.20 (8).

SECTION 26. ATCP 16.22 (1) (am) is created to read:

ATCP 16.22 (1) (am) *General structure and maintenance.* The primary enclosure shall be structurally sound and maintained in good repair to protect the dog from injury.

SECTION 27. ATCP 16.22 (1) (b) 4., and (c) 3., (2) (b) 5., (c) 5., and (e), and (3) (d) are amended to read:

ATCP 16.22 (1) (b) 4. Floors and other interior surfaces shall be constructed and maintained to keep the dog clean, dry, and safe from injury. Surfaces shall be regularly cleaned and sanitized.

(c) 3. Each stacked enclosure shall have a fully ventilated front side and a solid floor or floor with a solid catch pan that can be easily cleaned and sanitized.

(2) (b) 5. For a dog ~~26~~ 27 to 30 inches long, 24 square feet.

(c) 5. For a dog ~~26~~ 27 to 30 inches long, 18 square feet.

(e) Each dog kept in the primary enclosure shall have access for at least 30 minutes each day to an indoor or outdoor run or exercise area ~~for exercise that is large enough for the dog's size and temperament, considering the number of dogs that may use the run or exercise area at the same time. The run or exercise area shall be large enough so that the dog can achieve a running stride that meets the requirements under s. ATCP 16.20 (10).~~

(3) (d) The dog kept in the primary enclosure shall have access for at least 120 minutes each day to an indoor or outdoor run or exercise area that ~~is large enough for the dog's size and temperament, considering the number of dogs that may use the run or exercise area at the same time. The run or exercise area shall be large enough so that the dog can achieve a running stride~~ meets the requirements under s. ATCP 16.20 (10).

SECTION 28. ATCP 16.22 (4) to (6) are repealed.

SECTION 29. ATCP 16.22 (7) (b) is amended to read:

ATCP 16.22 (7) (b) An indoor facility shall have adequate heating and cooling ~~facilities,~~ and shall be heated ~~and~~ at a minimum of 50 degrees Fahrenheit. The indoor facility shall be heated or cooled as necessary to keep temperatures within appropriate limits, based on the dog

breeds kept at the facility and the ability of those breeds to acclimate to temperature variation.

Dogs shall be protected from heat, cold and humidity that may be injurious to their health.

SECTION 30. ATCP 16.22 (7) (b) Note is repealed.

SECTION 31. ATCP 16.22 (8) (a) is amended to read:

ATCP 16.22 (8) (a) Excreta shall be removed from primary enclosures, exercise areas, and other dog holding areas at least daily, and more often as necessary for the health and comfort of all dogs.

SECTION 32. ATCP 16.22 (8) (am) is created to read:

ATCP 16.22 (8) (am) Pests and parasites shall be controlled as necessary to maintain dog health and comfort.

SECTION 33. ATCP 16.22 (8) (b) is amended to read:

ATCP 16.22 (8) (b) Primary enclosures and other dog holding areas shall be cleaned with an appropriate detergent, rinsed, and sanitized with an appropriate sanitizer, as often as necessary but at least once a week to keep them free of accumulated dirt, debris, and disease hazards.

SECTION 34. ATCP 16.24 (2) (a) 5. and (b) 5., and (3) are amended to read:

ATCP 16.24 (2) (a) 5. For a dog ~~26~~ 27 to 30 inches long, 24 square feet.

(b) 5. For a dog ~~26~~ 27 to 30 inches long, 18 square feet.

(3) **OUTDOOR PRIMARY ENCLOSURE; CONSTRUCTION.** An outdoor primary enclosure shall be ~~constructed and maintained~~ structurally sound and maintained in good repair to protect the dog from injury and to prevent ~~dogs~~ the dog from escaping ~~from~~ the enclosure. If any portion of the primary enclosure is covered by a roof or overhead screen, the roof or screen

shall be at least 12 inches above the standing height of the tallest dog kept in the primary enclosure.

SECTION 35. ATCP 16.24 (3m) is created to read:

ATCP 16.24 (3m) OUTDOOR NURSERY AND TEMPORARY DOG ENCLOSURES.

A primary nursery enclosure may be outside if it meets the requirements under s. ATCP 16.20 (8). A temporary dog enclosure may be kept outdoors if it meets the requirements under s. ATCP 16.20 (9).

SECTION 36. ATCP 16.24 (4) (c) and (5) (a) are amended to read:

ATCP 16.24 (4) (c) A windbreak, other than the dog shelter under sub. (5), which is adequate to shelter all dogs in the primary enclosure from wind for protection against cold temperatures that may adversely affect the health of the dogs.

(5) (a) It shall be a moisture proof and windproof structure, insulated to protect against cold and dampness, and made of a durable material and shall have with 4 sides, a roof, and a flat, solid moisture-proof floor or a floor raised at least two inches from the ground.

SECTION 37. ATCP 16.24 (5) (am) is created to read:

ATCP 16.24 (5) (am) During cold or inclement weather likely to have an adverse impact on the health of the dog, the structure shall have a windbreak at the entrance and clean, dry bedding that is appropriate for the dog's breed, age and physical condition.

SECTION 38. ATCP 16.24 (7) (a) (intro.) is renumbered ATCP 16.24 (7) (a) and as renumbered is amended to read:

ATCP 16.24 (7) (a) A dog kept outdoors shall have access, for at least 30 minutes each day, to a run or exercise area that meets ~~all of the following requirements:~~ the requirements under s. ATCP 16.20 (10).

SECTION 39. ATCP 16.24 (7) (a) 1. and 2. are repealed.

SECTION 40. ATCP 16.24 (7) (b) is amended to read:

ATCP 16.24 (7) (b) A run or exercise area, under ~~par. (a)~~ s. ATCP 16.20 (10), is not required to include a dog shelter under sub. (5) or a windbreak, unless the run or exercise area also serves as a primary enclosure.

SECTION 41. ATCP 16.24 (8) (title) is amended to read:

ATCP 16.24 (8) (title) ~~FACILITY MAINTENANCE~~ CLEANING AND SANITATION.

SECTION 42. ATCP 16.24 (8) (intro.) is repealed.

SECTION 43. ATCP 16.24 (8) (a) is amended to read:

ATCP 16.24 (8) (a) All excreta shall be removed from outdoor primary enclosures, exercise areas, and other dog holding areas at least daily and more often as necessary for the health and comfort of all dogs.

SECTION 44. ATCP 16.24 (8) (d) and (e) are created to read:

ATCP 16.24 (8) (d) The interior surfaces of outdoor dog shelters, that cannot be readily cleaned and sanitized, must be replaced when worn or soiled.

(e) Primary enclosures and other dog holding areas shall be cleaned with an appropriate detergent, rinsed, and sanitized with an appropriate sanitizer, where possible, to keep them free of accumulated dirt, debris, and disease hazards. Dogs shall be removed from the primary enclosures or other dog holding areas before those areas are cleaned and sanitized. Dogs may not be returned to the cleaned or sanitized enclosure or area until the enclosure or area is dry.

SECTION 45. ATCP 16.28 (6) is created to read:

ATCP 16.28 (6) Convey custody or control of a dog to a person who is required to be licensed under s. ATCP 16.02 (1) but has failed to obtain the required license.

SECTION 46. ATCP 16.30 is amended to read:

ATCP 16.30 Variances. The department may, in response to a written request, grant a variance from a standard under s. ATCP 16.20 (7), 16.22, 16.24, or 16.26 if the department finds that the variance is reasonable and necessary under the circumstances and will not compromise the purpose served by the standard. The variance shall be issued in writing, shall include the department's findings, and shall include the specific terms of the variance including any time limit on the variance. A request for a variance shall include information to show that the variance is justified under this section.

SECTION 47. EFFECTIVE DATE. This rule takes effect on the first day of the first month commencing after the date of publication.

Dated this _____ day of _____, 2018.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Sheila Harsdorf
Secretary

Wisconsin Department of Agriculture, Trade and Consumer Protection

Final Regulatory Flexibility Analysis

Rule Subject: Dog sellers program
Adm. Code Reference: ATCP 16
Rules Clearinghouse #: 18-032
DATCP Docket #: 17-R-03

Rule Summary

This rule specifies requirements for persons to become licensed under the Wisconsin dog sellers and dog facility operators program. Among other things, the rule does all of the following:

General rule changes

- Updates statutory cross references.
- Adds statutory language to the rule or modifies the rule to reflect statutory language.
- Makes other minor modifications to the rule.

Definitions

- Adds a definition of “dog” to clarify that the rule applies to domestic dogs and not dog hybrids.
- Modifies the definition of “dog dealer” specifically to include persons selling, or offering to sell, at least 25 dogs in a license year. This change makes the rule definition of “dog dealer” consistent with the statutory definition of “dog dealer”.
- Modifies the definition of “home custody provider” to apply only to an animal control facility or animal shelter.

License requirements

- Adds a note clarifying that because a license is not transferable between locations, a licensed entity which moves to a new location must apply for a new license prior to operating at the new location.

Record keeping requirements

- Clarifies that vaccination records must include the name of the vaccine manufacturer, the vaccine serial number and lot number, the date on which the vaccine was administered, and the name of the person who administered the vaccine. Currently, this information must be provided on a certificate of veterinary inspection. Therefore, this information should also be maintained in the dog seller’s records.

Dog sale requirements

- Clarifies that when a dog is sold, the following information must be provided to the purchaser:
 - A valid certificate of veterinary inspection.
 - All vaccination records.

Certificate of veterinary inspection (CVI)

Whenever a person who is required to be licensed as a dog seller or dog facility operator sells a dog in Wisconsin, the dog must be accompanied by the dog's vaccination records and CVI. The proposed rule makes the following modifications to the CVI requirement:

- Clarifies that a CVI must be on a form provided or approved by the Department. The current rule implies that only a CVI provided by the Department may be used. This clarification is consistent with CVI requirements specified under Wis. Admin. Code ch. ATCP 10.
- Clarifies that the veterinarian completing the CVI must list only those vaccinations administered by that veterinarian (or another veterinarian) if those vaccinations are properly documented. Currently, the rule implies that the dog's entire vaccination record must be included on the CVI, regardless of who administered the vaccination, including the dog seller. Any vaccinations administered by the dog seller must be maintained in his or her record for that dog and may not be included on a CVI.
- Clarifies that all dogs imported to Wisconsin must have CVIs. The current rule implies that if a CVI accompanied a dog imported to Wisconsin, certain information from that CVI must be added to the CVI of a dog being sold.
- Clarifies when a CVI may be re-used. The current rule is confusing because the rule requires the name of the new seller to be updated on the CVI before it can be re-used. However, a CVI cannot be updated by anyone other than the veterinarian who originally completed it. This rule modification clarifies that in spite of the requirement that the name and address of the dog seller be on a CVI, the CVI may be re-used if it is valid in all other respects.

Age at which dogs may be sold

- Requires that a puppy be at least 7 weeks of age before it can be physically transferred to a buyer. The current rule conflicts with the language of the statute by allowing transfer of puppies under 7 weeks of age to occur if certain requirements were met. The proposed rule no longer allows that to occur. The proposed rule is now congruent with the state statute.

General dog care requirements

- The current rule requires water containers, food containers, and the like to be cleaned and sanitized as often as necessary but does not specify a minimum timeframe. The proposed rule retains the requirement that the items must be cleaned and sanitized as often as necessary, but new language adds the additional requirement that these items be cleaned and sanitized at least once a week, at a minimum.
- Clarifies that each dog must be groomed as necessary to maintain the dog's health, comfort, and welfare. This language is consistent with terminology used throughout the rule.

- Reorganizes the rule to clarify that certain provisions apply to dogs regardless of whether those dogs are kept indoors or outdoors, including:
 - Whelping, nursery, and temporary dog enclosures are currently specified under the “Dogs kept indoors” section of the rule. While the rule specifies the requirements for these indoor enclosures, it is unclear whether these rules apply to outdoor enclosures as well. The rule clarifies the following:
 1. Whelping enclosures must be indoors unless a variance is granted from the Department. Other enclosure requirements remain the same as the current rule.
 2. Nursery enclosures must be indoors unless outdoor temperatures are adequate so as to not adversely affect the health of the puppies. The rule provides direction for maintaining adequate shade in the nursery during sunlight hours to prevent heat stress and avoid inclement weather. Other enclosure requirements remain the same as the current rule.
 3. Temporary enclosures for one dog must be indoors unless meeting the same exception criteria as nursery enclosures. Other enclosure requirements remain the same as the current rule.
 - Current requirements for run and exercise areas are specified under both the “Dogs kept indoors” and “Dogs kept outdoors” sections of the rule. These requirements apply to both situations. The requirements for runs and exercise areas have been moved to “general dog care requirements” but remain the same as current rule.
- Clarifies that primary enclosures must be structurally sound and maintained in good repair to protect the dog from injury. This reflects statutory language.
- Re-sequences the current primary enclosure measurement requirements that overlap in the current rule.

Dogs kept indoors

- Requires that an indoor facility be heated at a minimum of 50 degrees Fahrenheit.

Dogs kept outdoors

- Adds outdoor shelter requirements to protect dogs kept outdoors.

Cleaning and sanitation

- Harmonizes the cleaning and sanitation requirements for dogs kept indoors and outdoors. Current cleaning and sanitation requirements vary slightly for dogs kept indoors versus outdoors. These provisions have been modified to improve consistency.

Prohibited conduct

- Clarifies the current requirement that a licensed dog seller may not convey custody or control of a dog to another person who is required to be licensed as a dog seller but has failed to obtain the license.

Small Businesses Affected

The rule is expected to have a generally positive impact on dog sellers and dog facility operators, as the rule will clarify several provisions that are ambiguous or arguably contradictory as currently phrased. As noted above, some of the proposed modifications arose via recommendations received from the Dog Sellers Advisory Committee that met on May 12, 2012, one year after the original rule was initially promulgated. Comprised of stakeholders and representatives of groups to be licensed under the rule, the advisory committee provided guidance to the Department in connection with the initial drafting of the rule.

The Department licenses 178 dog shelters and 246 dog sellers in Wisconsin, as well as 10 dog sellers based outside Wisconsin. While it is unknown how many licensees have indoor and/or outdoor facilities, the proposed rule articulates certain standards for such facilities.

The impact on the industry is anticipated to be minimal because the language of the current rule already requires the industry to ensure, in general, the health, comfort, and welfare of dogs. The proposed rule fleshes out the requisite contours of such health, comfort, and welfare. For example, the proposed rule requires that dogs kept indoors and outdoors must be regularly cleaned and their quarters regularly sanitized. The proposed rule also requires the utilization of windbreaks against cold temperatures for dogs kept outdoors and requires dog shelters to be moisture proof, windproof, and insulated. These requirements are little more than common-sense dictates that are now spelled out in the rule, for the sake of clarity. Assuming that industry participants are already guided by common sense and by a generalized concern for health and welfare, compliance costs are expected to be minimal.

The proposed rule requires indoor facilities be kept at a minimum temperature of 50 degrees Fahrenheit, designed to mirror the temperature set by USDA and by other states. Fifty degrees is a temperature at which water will not freeze, and it is a minimum temperature needed for cleaning to be effective. Stakeholders agreed that this minimum temperature standard is a reasonable one. Most dog sellers and proprietors of dog shelters stated that they were under the impression that facilities within the state were already maintained, or should have been maintained, at 50 degrees or higher, even absent the proposed standard. Indeed, depending upon the type of dog kept in the facility (e.g. Chihuahuas), the minimum temperature would need to be well above 50 degrees.

Financial outlays relating to this provision are expected to be minimal. Industry participants are already required to ensure dogs' health, comfort, and welfare under the current rule. Thus, in the case of the temperature standard, the industry should already have been maintaining an appropriate temperature level above 50 degrees for the safety of the animals. Consequently, it is anticipated that all or most businesses are already in compliance and would incur no additional energy costs. As to any structure not currently in compliance, the cost to heat the structure would vary widely depending on the building's construction and insulation, the number and size of dogs kept in the building,

the size of the building, the temperature outside of the building, and the type of heating (gas, electricity, or wood). Department staff contacted Madison Gas and Electric (MG&E) to determine whether a more specific cost could be calculated. MG&E staff opined that given the potential variances concerning the building type, insulation (“R value”), and heating source, the heating costs are necessarily indeterminate and incalculable.

On March 5, 2018, the Department met with an advisory group of licensed dog sellers. The committee members represented entities selling more than 50 dogs per year, entities selling fewer than 50 dogs per year, dog shelters, dog dealers, and dog breeders. The Department’s Animal Health Division asked the committee of stakeholders to provide feedback as to whether the proposed rule provisions would be onerous or burdensome in any way. The Department also wished to learn about what potential financial costs might result from the proposed rule changes.

Results from this meeting with stakeholders were both positive and encouraging. All participants agreed that the proposed changes added useful clarifications to the existing rule. The stakeholders indicated that the proposed rule changes would not be burdensome. No stakeholder foresaw any significant costs associated with the implementation of the proposed rule.

As a final note, the advisory committee members also strongly encouraged the Department to incorporate statutory requirements into the rule as most dog sellers refer to the rule only when seeking program requirements.

Reporting, Bookkeeping and other Procedures

The current rule requires that health records be kept. These records include vaccinations, observation and treatment records, and whether the health care was administered by the license holder or by a veterinarian. The proposed rule clarifies that vaccination records must include the name of the vaccine manufacturer, vaccine serial number and lot number, and the date on which the vaccine was administered. This vaccination information is required because:

- Pursuant to Wis. Stat. § 173.41 (8) (a) 2., a copy of all vaccination records for the dog is required to be provided to the purchaser. This information includes the date it was administered and the name of the person who administered it.
- The specific vaccination information in the proposed rule (vaccine manufacturer, serial number and lot number, and date of administration) is currently required to be provided on the CVI of any dog sold. The CVI only reflects the vaccinations provided by the veterinarian who issues the CVI. For consistency and completeness, the same vaccination information required on the CVI should be kept in the dog’s record, including any vaccinations administered by the dog seller.

The fiscal costs relating to these bookkeeping requirements are expected to be minimal and are required for the welfare of the purchaser.

Professional Skills Required

The proposed rule does not specify any professional skills required for small businesses.

Accommodation for Small Business

Many of the businesses affected by the rule are small businesses. The requirements in the proposed rule are necessary for the health, comfort, and welfare of the dogs and puppies being kept and for the protection of consumers purchasing those dogs and puppies. For that reason, the proposed rule does not make special exceptions for small businesses because the rule's requirements apply equally to all businesses, large or small.

Conclusion

The rule will generally benefit affected businesses, including small businesses. The rule will not have a significant adverse effect on small business and will not be subject to the delayed "small business" effective date provided in Wis. Stat. § 227.22(2)(e).

Dated this 11th day of September, 2018.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Melissa Mace
Melissa Mace, Acting Administrator
Division of Animal Health

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date 9/20/2018
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Wis. Admin. Code ch. ATCP 16	
4. Subject Dog Sellers and Dog Facility Operators	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected
7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input checked="" type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget <input type="checkbox"/> Decrease Cost	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Would Implementation and Compliance Costs Be Greater Than \$20 million? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
10. Policy Problem Addressed by the Rule The proposed rule aligns several provisions with statutory language. The proposed rule mostly reorganizes and clarifies provisions of the existing rule.	
11. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments. Any animal control facility, animal shelter, dog breeder, dog breeding facility operator, or dog dealer (dog sellers and dog facility operators) are required to hold a license under Wis. Admin. Code ch. ATCP 16.	
12. Identify the local governmental units that participated in the development of this EIA. None.	
13. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) There is no fiscal impact on public utility rate payers and or to local governmental units. See the Initial Regulatory Flexibility Analysis for more information on the fiscal effect on dog sellers and dog facility operators.	
14. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule Wis. Admin. Code ch. ATCP 16 was originally created in June 2011 to implement the requirements mandated by Wis. Stat. s. 173.41. Division staff met with an advisory committee as required by Wis. Stat. s. 173.41 (14) (b) for the purpose of developing the rules. The department met with that advisory committee again in May 2012 to review the rules. Minor modifications were suggested at the time. However, because the program had not been in operation for a substantial period of time, the modifications were not implemented. Now that the program has been in place for seven years, the time has come to incorporate the advisory committee's suggested modifications and re-organize the rule for the sake of clarity. On March 5, 2018, the department met with an advisory group of licensed dog sellers. The committee members represented entities selling more than 50 dogs per year, entities selling fewer than 50 dogs per year, dog shelters, dog dealers, and dog breeders. The Department's Animal Health Division asked the committee of stakeholders to provide feedback as to whether the proposed rule provisions would be onerous or burdensome in any way. The Department also	

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

wished to learn about what potential financial costs could result from the proposed rule changes.

Results from this meeting with stakeholders were both positive and encouraging. All advisory committee members agreed that the proposed rule changes added helpful clarifications to the existing rule. The stakeholders indicated that the proposed rule modifications would be easy to comply with. No stakeholder forecasted that there would be any significant cost associated with implementation of the proposed rule.

15. Long Range Implications of Implementing the Rule

To protect the health and well-being of dogs and puppies, and to provide healthy animals to persons who purchase dogs or puppies to become part of their families.

16. Compare With Approaches Being Used by Federal Government

Currently, the United States Department of Agriculture (USDA) licenses and inspects fewer than 50 kennels in Wisconsin selling puppies wholesale. USDA establishes minimum facility standards for those licensed facilities.

17. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Iowa is the only adjacent state that has rules relating to dog sellers. Iowa's rules are similar to these proposed rule changes with respect to minimum temperatures, whelping enclosures, and cleaning requirements.

18. Contact Name	19. Contact Phone Number
Darlene Konkle, DVM, Assistant State Veterinarian	608-224-4902

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The rule will have little to no fiscal impact. Most of the rule modifications clarify the current rule or reorganize requirements under the rule. There are no fee changes under the proposed rule. The proposed rule necessitates that temperatures for indoor facilities be kept at a minimum of 50 degrees Fahrenheit. The Department's selection of this standard is designed to mirror the temperature set by the United States Department of Agriculture (USDA) and by other states. Fifty degrees is a temperature at which water will not freeze, and it is a minimum temperature needed for cleaning to be effective. Feedback received from stakeholders confirmed that this minimum temperature standard is a reasonable one. Most dog sellers and dog shelters indicated that the facilities within the state were already maintained, or should have been maintained, at 50 degrees or greater, even absent the standard specified in this proposed rule. Indeed, depending upon the type of dog kept in the facility (e.g. Chihuahuas), the minimum temperature would need to be well above 50 degrees Fahrenheit.

On March 5, 2018, the department met with a stakeholder advisory group comprised of licensed dog sellers. The committee members represented entities selling more than 50 dogs, entities selling fewer than 50 dogs, dog shelters, dog dealers, and dog breeders. Discussions addressed the proposed rule changes, including any potential costs associated with the proposed rule changes. All participants agreed that the rule changes add useful clarifications to the existing rule. All advisory committee members agreed that the proposed rule changes would be easy to comply with. No stakeholder forecasted that there would be a significant cost associated with implementation of the proposed rule.

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

The proposed hearing draft was posted on the department's website for 14 calendar days to receive public comment regarding the economic impact of the proposed rule. The department received no comments.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

Many of the businesses affected by this rule are "small businesses." For the most part, this rule does not make special exceptions for small business because requirements relating to the health and well being of puppies and dogs should not be different based upon the size of a given business operation. In fact, the smaller the dog facility, the easier it should be to house, feed, and maintain dogs; heat, clean, and maintain dog facilities; and comply with other rule requirements.

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

N/A

5. Describe the Rule's Enforcement Provisions

Enforcement provisions are specified under Wis. Stat. s. 173.41 (15). Pursuant to Wis. Admin. Code s. ATCP 16.30, the Department may, in response to a written request, grant a variance from certain standards specified in the rule.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No