



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection

DATE: March 5, 2020

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Randy J. Romanski, Interim Secretary
Steve Ingham, Administrator, Division of Food and Recreational Safety

SUBJECT: ATCP 78, Recreational and Educational Camps; Rulemaking Scope Statement

TO BE PRESENTED BY: Steve Ingham

REQUESTED ACTION:

At the March 5, 2020 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board (Board) to approve a scope statement (copy attached) for potential changes to ch. ATCP 78 relating to Recreational and Educational Camps.

A scope statement spells out the general purpose and scope of a proposed rule. DATCP may not begin drafting a proposed rule (including a proposal to amend or repeal an existing rule) until the Governor approves a scope statement for the proposed rule and the DATCP Board approves the scope statement. In accordance with Wis. Stat. § 227.135 (2), the Governor approved this scope statement for permanent rule changes on December 5, 2019, thereby allowing DATCP to submit this scope statement for publication and to seek approval of the scope statement by the DATCP Board.

DATCP formally published this draft scope statement in the February 10, 2020 *Wisconsin Administrative Register* and filed a copy with the Department of Administration (DOA) at least 10 days before the Board could approve the scope statement. After publication, the Joint Committee for the Review of Administrative Rules required DATCP to hold a public hearing on the scope statement under Wis. Stat. § 227.136 (1). The Board approved the public hearing notice at its January 30, 2020 meeting as required by Wis. Stat. § 227.136 (2). The Department held the hearings on Friday, February 14, 2020 in Madison, and in Wausau on Monday, February 17, 2020. Public comments were allowed until Monday, February 24, 2020. DATCP received 11 oral and written comments on the scope statement. The comments primarily expressed opinions on several issues identified in the scope statement as worthy of consideration during rule revision. No comments indicated a need for the rule revision scope to be broadened or narrowed. Several commenters expressed interest in working with DATCP on its revision efforts.

If the Board approves the scope statement, the Department will begin work to draft the permanent rule. Approval of a scope statement is an important initial step in a lengthy process for enacting permanent rules. The Board will have at least two further opportunities to review the proposed rule. The Board must approve a hearing draft rule before DATCP may hold public hearings on the rule proposal. The Board must also approve the final draft rule before DATCP may adopt the rule. The permanent rule will be effective when the final draft has been approved by the DATCP Board, approved by the Governor, reviewed by the Legislature, and adopted by the Secretary.

STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection

Rule No.: Chapter ATCP 78, Wis. Adm. Code

Relating to: Recreational and Educational Camps

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

Not Applicable

2. Detailed description of the objective of the proposed rule:

In general, rule changes are needed because camps and camper demographics have changed over the years and the rule has not kept pace with these changes or with changing technology and innovations in the recreational and educational camp industry.

The objectives of the proposed rule under consideration include:

- a. Expanding definitions of some terms used in ATCP 78 to provide clarity, removing definitions not used, and including new definitions to describe previously undefined terms. Examples include:
 - The undefined term 'planned program of recreation or education', within the definition of 'camp', creates confusion as to what activities fall under ATCP 78's jurisdiction.
 - There are also terms based on imprecise generic definitions. For example, 'first aid supplies' are not defined, and certain pieces of rescue equipment are not precisely defined, so they refer to items that may not be effective as intended (rescue rings are not required to have tow ropes).
 - Defining organized groups that utilize a licensed recreational and educational camp.
 - The term 'high risk activity' is outdated, is not used by the industry, and does not accurately describe activities such as rock walls, ropes courses and zip-lines. Consider better definitions to provide a distinction between these types of activities and activities such as horse-back riding.
- b. Requirements for the camp to be kept clean and sanitary are provided in rule, but there is no general requirement for the camp to be kept in 'good repair.' Consider adding language for the recreational and education camp to be maintained in good repair.
- c. Current rule requires logging of administered medications into a bound book with pre-printed page numbers, or use of an approved software. Industry has expressed concerns about the limited number of ways medication logging requirements can be currently met. Industry has requested that the Department of Agriculture, Trade and Consumer Protection (Department) explore other options for the logging of administered medications. Because of the number of campers with one or more medications, entry of information in currently-allowed medication and treatment logs slows the camp activity schedule and does not support reliable recordkeeping. Some internet connections make the use of software impossible for some camps as internet service may not be reliable or the additional computers are too costly. Consider flexibility in allowing camps to utilize current data management and health care technology.

- d. Consider language that incorporates standards, including criminal background checks, for hiring and maintaining recreational and educational camp staff.
- e. Consider including federal or other state regulations, impacting recreational and educational camps, into the rule to provide greater clarity. Examples include:
 - The Federal Emergency Medical Treatment and Labor Act (EMTALA) enacted in 1986 as part of COBRA (Consolidated Omnibus Budget Reconciliation Act) – This makes the requirement for written hospital arrangements in s. ATCP 78.19 (1) (a) obsolete.
 - The Code of Federal Regulations: 16 CFR 1513 regulates bunk bed construction for minors and 16 CFR 1213 regulates bunk bed construction for adults. Federal regulations are more comprehensive than those found in s. ATCP 78.21.
 - The International Plumbing Code (IPC), specifically section 403.1.2, allows single-user toilet rooms to be marked as for either males or females.
- f. Consider addressing emerging communicable diseases and other threats to safety. The Department will consider including appropriate definitions and provisions to support camps in addressing emerging pathogens and other new threats. Examples of emerging threats include:
 - Naturally-produced toxins, such as harmful algal blooms
 - Tick-borne diseases
 - Rabies
- g. Consider language that removes the requirements for health and supervision when a recreational and educational camp is only used for families or for non-developmentally disabled adults. Because supervision is not needed for groups of adults (unless they are developmentally disabled adults) and families know their children's health needs, there is no value to recreational and educational camp supervision regulations being applicable to these situations. Examples include quilting and scrapbooking events.
- h. Consider incorporating measures to assure the health, safety and security of developmentally disabled campers.
- i. Consider language for addressing requirements that may be applicable to the organized user groups that use a recreational and educational camp, but are not the licensee of the camp. The Department believes that more accountability may be needed to assure these "organized user groups" are meeting the health and safety requirements needed for the care of children and individuals with disabilities.
- j. Fees associated with recreational and educational camps have not been addressed since 2007. Consider increasing fees to keep pace with the increased costs of conducting inspections, licensing, and performing investigations and explore an alternative licensing fee structure based on the complexity of programs, facilities, and activities.
- k. Consider adding requirements for reporting illnesses, injuries, and accidents that require an emergency medical service (EMS) response. This data will assist in designing effective outreach and meaningful interventions and the data collected may help support future rule development.
- l. Consider incorporating criticality methodology throughout the rule. This methodology seeks to identify those provisions that are more critical for protecting public health and to designate the risk level of hazards. This method provides clarity to industry by identifying those provisions which are more likely to cause illness or injury, and supports a risk-based inspection approach.

- m. Explore current industry practices and methods for incorporation into the rule. Examples include:
- Consider aligning rule provisions with industry standards, such as those of the American Camp Association, to create greater consistency.
 - Consider industry standards pertaining to third party inspection and certification of high-risk activities.
 - Consider exploring options for allowing national, state or other approved courses as acceptable for use in Wisconsin to meet first aid, CPR and other related credential requirements.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Existing policies relevant to the rule

- EMS time within 15-minutes – This policy allows for camps to have less stringent first aid requirements if they are within 15-minutes response time (to the most distant camp location) by EMS.
- What is a bound medication log book – this policy details what types of bound notebooks are acceptable in meeting the Department’s rule requirement.

Policy alternatives

The alternative to updating the rule would be to continue as is, attempting to continue to apply the existing rule to new methods, innovations, and trends not currently addressed or permitted under the existing rule. Industry groups and associations would find this alternative undesirable as they are eager for the rule be updated to reflect current industry best practices and trends. Furthermore, the Department would need to devote the additional time and resources towards resolving the confusion that impedes implementation of the existing code (consultation, staff training and special workshops for industry).

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

93.07 Department duties. It shall be the duty of the department:

(1) REGULATIONS. To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, which regulations shall have the force of law.

97.67 Recreational licenses and fees.

(1) Except as provided in sub. (1g) and s. 93.135, the department or a local health department granted agent status under s. 97.615 (2) shall issue licenses to and regulate campgrounds and camping resorts, recreational and educational camps and public swimming pools. No person or state or local government who has not been issued a license under this section may conduct, maintain, manage or operate a campground and camping resort, recreational camp and educational camp or public swimming pool, as defined by departmental rule.

(4) Licenses issued under this section expire on June 30, except that licenses initially issued during the period beginning on April 1 and ending on June 30 expire on June 30 of the following year. Except as provided in s. 97.615 (2) (d) and (e), the department shall promulgate rules that establish, for licenses

issued under this section, amounts of license fees, pre-licensing inspection fees, reinspection fees, fees for operating without a license, and late fees for untimely license renewal.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

The Department estimates that the work associated with developing and promulgating the proposed rule, including conducting advisory group meetings, will require approximately 0.25 FTE of staff time.

6. List with description of all entities that may be affected by the proposed rule:

Entities that may be affected by the new rule include:

- Children and families participating in camps
- Rental groups that use camps for a short period of time (also known as 'organized user groups')
- Recreational and educational camp operators and staff
- Local health department agent programs
- EMS, hospitals, and physicians who are in contact with camps
- Developmentally disabled individuals

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

There are no existing or proposed federal regulations that address the activities to be regulated by the proposed rules. As mentioned above, federal regulations are in place for health care provision and bunk bed construction.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The Department expects the proposed rule to have a positive impact on all stakeholders because it will give more flexibility for businesses in complying with the rule requirements, allocate regulatory requirements more fairly, and be based on risk-based inspection methods. Comments from stakeholders indicate eagerness for an update of this rule. There will be an anticipated economic impact related to any increase in licensing and inspection fees. Licensing fees have not increased since 2007, but basing the licensing fee on risk and activity and creating a new licensing structure should help to moderate the impact of a fee increase. The following cost estimates were provided through the internet and with the assistance of various recreational and educational camp operators:

- Consider onsite inspection requirements by qualified experts for high-risk activities such as ropes courses, climbing walls, and zip lines. These requirements may impose a cost of \$900 - \$3,000 per camp that utilize high-risk activities.
- Consider certification requirements for staff that operate high-risk activities. This certification may cost \$500 per camp that utilize high risk activities.
- Consider language that incorporates standards for hiring and maintaining recreational educational camp staff. This could include criminal background checks. This requirement may cost \$40 per staff member (to include a national sex offender search).

Cost savings could that could attributed to a rule revision include:

- Reduced cost for medication administration. Cost for medication administration depends on training of staff (minimum approved first aid or RN). Assuming a nurse is paid \$25 per hour, the cost savings may average \$700 per camp.
- Reduced cost by implementing EMS policy into rule. Average savings may be \$29 per camp.
- Reduced cost by expanding the approved provider list for first aid and CPR courses, as more camps will be able to meet code by just having basic first aid and CPR. Reductions in course

costs and elimination of travel and overnights for training could result in a savings of around \$600 or more per camp.

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Signed this 3 day of October 2019



Bradley M. Pfaff
Secretary
State of Wisconsin Department of Agriculture,
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