



State of Wisconsin  
Governor Scott Walker

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

**DATE:** March 9, 2017

**TO:** Board of Agriculture, Trade and Consumer Protection

**FROM:** Ben Brancel, Secretary  
Paul McGraw, DVM, Administrator, Division of Animal Health

*Barbara M. Kunkle  
for  
Dr. McGraw*

**SUBJECT: ATCP 16–Dog Sellers and Dog Facility Operators; Rulemaking Scope Statement**

**TO BE PRESENTED BY:** Dr. Paul McGraw, Administrator, Division of Animal Health

**REQUESTED ACTION:**

At the March 16, 2017, Board meeting, the Department of Agriculture, Trade and Consumer Protection (“Department”) will ask the Department Board to approve a “Statement of Scope” (copy attached) for proposed amendments to current Department rules related to dog sellers and dog facility operators.

The dog sellers and dog facility operator program went into effect on June 1, 2011. This program licenses animal control facilities, animal shelters that: (1) shelter at least 25 dogs; (2) dog breeders that sell 25 or more dogs from more than 3 litters; (3) dog breeding facilities from which 25 or more dogs are sold in a year; (4) dog dealers who sell, distribute, trade, or offer for sale, distribution, or trade, 25 or more dogs in a year; and (5) out of state dog dealers who are not residents of this state and who bring 25 or more dogs into this state 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. Division staff have discovered some provisions in the administrative rule that are unclear or need additional direction. Many of these discoveries were made while implementing programs with requirements codified in ch. ATCP 16, Wis. Admin. Code, based on contacts with individuals licensed through the division and veterinarians.

The following areas in ch. ATCP 16, Wis. Admin. Code, will be reviewed to address these issues, and may be modified as a result:

1. Inspection requirements.
2. Health requirements for selling dogs.
3. Standards of care.
4. Record keeping.
5. License fees

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As required under s. 173.41 (14), Wis. Stats., the department convened an advisory committee to initially develop the rules under ch. ATCP 16, Wis. Admin. Code. The department reconvened the advisory committee in 2012 to review the rules again. Minor modification suggestions were made at the time but were not modified in rule due to the short time the program had been in operation. After meeting its statutory obligation, the advisory committee is no longer active. However the minor modifications suggested by the committee in 2012 will be revisited.

A scope statement spells out the general purpose and scope of a proposed rule. The Department 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 Department Board approves the scope statement. In accordance with 2011 Wisconsin Act 21 (s.227.135(2), Stats.), the Governor approved this scope statement for permanent rule changes on March 3, 2017, thereby allowing Department to submit this scope statement for publication and to seek approval of the scope statement by the Department Board.

The Department must publish a draft scope statement in the Wisconsin Administrative Register, and file a copy with the Department of Administration ("DOA"), at least 10 days before the Board approves the scope statement. The Department filed the attached statement of scope with the Legislative Reference Bureau for publication in the March 6, 2017, issue of the Wisconsin Administrative Register. The Department also filed a copy with DOA.

If the Department Board approves the scope statement, the Department will begin work to draft the permanent rule. Approval of a scope statement is just the first, preliminary 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 Department may hold public hearings on the rule proposal. The Department Board must also approve the final draft rule before the Department may adopt the rule. The permanent rule will be effective when the final draft has been approved by the Department Board, approved by the Governor, completed the legislative review process and adopted by the Secretary.

# STATEMENT OF SCOPE

## Department of Agriculture, Trade and Consumer Protection (DATCP)

Rule No.: Ch. ATCP 16, Wis. Adm. Code (Existing)

Relating to: Dog Sellers and Dog Facility Operators

### 1. Description of the objective of the rule:

This proposed rule may modify current animal health rules related to the dog sellers and facility operators program established pursuant to Wis. Stats. § 173.41.

### 2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

History and background. The dog sellers and dog facility operator program went into effect on June 1, 2011. This program licenses animal control facilities, animal shelters that: (1) shelter at least 25 dogs, (2) dog breeders that sell 25 or more dogs from more than 3 litters, (3) dog breeding facilities from which 25 or more dogs are sold in a year, (4) 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 (5) who bring 25 or more dogs into this state 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. Division staff have discovered provisions in the administrative rule that are unclear or need additional direction. Many of these discoveries were made while implementing programs with requirements codified in Wis. Admin. Code ch. ATCP 16, based on contacts with individuals licensed through the division and veterinarians.

The following statutes in Wis. Admin. Code ch. ATCP 16 will be 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. Stats. §§ 173.41 (6) and (14)).
2. Health requirements for selling dogs (see Wis. Stats. §§ 173.41 (8) and (14)).
3. Standards of care (see Wis. Stats. §§ 173.41 (10) and (14)).
4. Record keeping (see Wis. Stats. §§ 173.41 (11) and (14)).
5. License fees (see Wis. Stats. § 173.41 (3)).

As required under Wis. Stats. § 173.41 (14), Wis. Stats., the Department convened an advisory committee to initially develop the rules under Wis. Admin. Code ch. ATP 16. The Department reconvened the advisory committee in 2012 to review the rules again and make any recommendations for necessary changes to the rule. After meeting its statutory obligation, the advisory committee expired per statutory provisions and is no longer active.

Policy Alternatives. The Department may take no action. If the Department does not review the current rule and make modifications that have been identified as necessary during the years of implementation of the program, the current rule would stay in effect.

**3. Statutory authority for the rule (including the statutory citation and language):**

Sections 93.07 (1) and 173.41(14), Stats.

**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.

**173.41 Regulation of persons who sell dogs or operate animal shelters.**

**(3) LICENSE FEES.** (a) Except as provided under par. (b) or (c), the annual fee for a license under sub. (2) is as follows:

\* \* \*

(c) The department may promulgate rules specifying fees for licenses under sub. (2) that are higher than the fees in pars. (a) and (b) if necessary to cover the costs of administering this section.

**(6) INSPECTIONS.**

\* \* \*

(c) The department may charge a fee for an inspection that it undertakes to determine whether a previous violation of this section or rules promulgated under this section has been corrected.

(d) An inspection fee under par. (c) is due upon written demand from the department. Unless otherwise specified by the department by rule, the fee for an inspection under par. (c) is \$150

**(12) TEMPORARY DOG MARKETS.**

\* \* \*

(b) *Seller responsibilities.* A person who sells or offers to sell a dog at a temporary dog market shall provide all of the following information to the operator of the temporary dog market:

\* \* \*

4. Documentation showing that the person complied with s. 95.21 (2) and with any applicable rules of the department relating to bringing dogs into this state.

(14) RULES. (a) The department, in consultation with the advisory committee established under par. (b) shall promulgate rules to implement and administer this section.

(d) An advisory committee under par. (b) does not expire until 12 months after the rules are promulgated and shall make recommendations to the department for amendments to the rules.

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

The Department estimates that it will use approximately .5 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, holding public hearings and communicating with affected persons and groups. The Department will use existing staff to develop this rule.

**5. Description of all entities that may be impacted by the rule:**

The following entities must obtain a dog seller license under Wis. Stats. § 173.41 and may be affected by any rule modifications:

- Any entity that sells 25 or more dogs in a year, from 3 or more litters (including a nonresident who brings dogs into this state for sale).
- Any entity that operates a dog breeding facility (a place at which dogs are bred and raised) from which 25 or more dogs, from 3 or more litters, are sold in a year.
- Any entity that operates an auction at which 50 or more dogs are sold or offered for sale in a year.
- Any entity that operates an animal shelter that is used to shelter at least 25 dogs in a year.
- Any entity that operates an animal control facility under a contract with a city, village, town, or county.

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

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.

**7. Anticipated economic impact**

The Department expects the proposed rule to have no negative economic impact statewide and locally. Since dogs sellers who meet the definitions are already licensed and inspected, rule revisions will be designed to make clarifications or correct discrepancies identified in the rule.

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Ben Brancel  
Secretary  
Department of Agriculture, Trade and Consumer Protection

2-21-17  
Date Submitted