

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

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PROPOSED ORDER

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

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

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

***Statutory Authority:*** ss. 93.07 (1), 93.07 (12), 93.07 (13), 94.01, 94.68 (2), 94.681, 94.685 (3), 94.70, 94.703 (3), 94.704 (3), 94.73 (11), 94.76, 227.10 (3) and 227.11 (2) (a), Stats.

***Explanation of Agency Authority***

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

The department has broad authority under s. 94.70, Stats., to regulate the sale and/or distribution of pesticides within the state, and authority under, ss. 94.68 and 94.681, Stats., to process license applications and issue licenses to pesticide manufacturers and labelers, and to collect fees and surcharges for their products. The department also has authority under s. 94.685, Stats., regarding the licensing of, and collection of fees from, dealers and distributors of restricted-use pesticides. Authority for licensing of commercial pesticide application businesses, and licensing of individual commercial pesticide applicators, is given under ss. 94.703 and s. 94.704, Stats., respectively. Additional authority for changes to sections ss. ATCP 29.11, ATCP 29.15 (4), ATCP 29.20 (6),

and ATCP 29.25 (5) are specified in language regarding Wisconsin Statute sections 94.681, 94.703 (3) (a), and 94.704 (3) (a) detailed in 2017 Wisconsin Act 59.

The department has authority under s. 227.10 (3), Stats. regarding prohibiting discrimination to revise gender-specific language.

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

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

### ***Related Statutes and Rules***

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

### ***Plain Language Analysis***

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

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

This proposed rule resolves obsolete language and the conflicts with Wisconsin statutes.

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

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

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

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

***Comparison with Rules in Adjacent States***

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

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

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

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

***Summary of Factual Data and Analytical Methodologies***

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

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

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

***Fiscal Estimate and Economic Impact Analysis***

The Fiscal Estimate and Economic Impact Analysis is attached.

***Effect on Small Business***

The Department's Regulatory Review Coordinator may be contacted by:  
Email at [Bradford.Steine1@wisconsin.gov](mailto:Bradford.Steine1@wisconsin.gov)  
Telephone at (608) 224-5024

The Regulatory Flexibility Analysis is attached.

***Department Contact Person***

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(608) 224-4509  
[Jill.Hoskins@Wisconsin.gov](mailto:Jill.Hoskins@Wisconsin.gov)

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

Comments must be received on or before \_\_\_\_\_, 2022 to be included in the record of rule-making proceedings. Submit comments:

**By mail to:**

Jill Hoskins  
Division of Agricultural Resource Management  
Department of Agriculture, Trade and Consumer Protection  
P.O. Box 8911  
Madison, WI 53708-8911

**By email to:** [Jill.Hoskins@Wisconsin.gov](mailto:Jill.Hoskins@Wisconsin.gov)

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RULE TEXT

- 1 SECTION 1. ATCP 21.01 (8) is amended to read:
- 2 **ATCP 21.02 (8)** "~~GypsySpongy~~ moth" means the live insect, *Lymantria dispar*, family
- 3 Lymantriidae, in any life stage, including the egg, larva, pupa, or adult stage.
- 4 SECTION 2. ATCP 21.01 (15) is repealed.
- 5 SECTION 3. ATCP 21.10, (title), is amended to read:
- 6 **ATCP 21.10 (title)** ~~GypsySpongy~~ moth; import controls and quarantine.
- 7 SECTION 4. ATCP 21.10 (1) (a) and (b) is amended to read:
- 8 **ATCP 21.10 (1)** (a) Except as provided under sub. (3), no person may import into this state any
- 9 trees, woody shrubs, cut Christmas trees, logs, pulpwood, slabwood, firewood, or wood chips that
- 10 originate from a ~~gypsyspongy~~ moth regulated area designated by the United States department of
- 11 agriculture under 7 CFR 301.45-2a.

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

16 SECTION 5. ATCP 21.10 (2) (a) and (b) is amended to read:

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

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

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

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

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

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

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

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

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

44 SECTION 7. ATCP 21.13 (2) (c) is amended to read:

45 **ATCP 21.13 (2) (c)** A pest control official may use any of the following methods to certify that  
46 honeybees are European honeybees:

47 ~~1. The Fast Africanized Bee Identification System published by the United States department of~~  
48 ~~agriculture, agricultural research service.~~

49 ~~**Note:** Copies of the Fast Africanized Bee Identification Systems (FABIS) are on file with the~~  
50 ~~department and the legislative reference bureau. Copies are available at cost from the department.~~

51 ~~2.1.~~ The Morphometric Method for Identification of Africanized and European Honey Bees Using  
52 Large Reference Populations.

53 **Note:** The Morphometric Method for Identification of Africanized and European Honey Bees  
54 Using Large Reference Populations is described in Rinderer et al., “Morphometric identification  
55 of Africanized and European honey bees using large reference populations,” Apidologie (1993)  
56 24, 569-585. Copies of this article are on file with the department and the legislative reference  
57 bureau. Copies are available at cost from the department.

58 ~~3.2.~~ Any other method approved by the department.

59 SECTION 8. ATCP 21.13 (3) is repealed.

60 SECTION 9. ATCP 29.10 (3) (c) is amended to read:

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

62 ~~1. Identifies each pesticide product that the applicant sells or distributes.~~

63 ~~2. States the gross revenue which the applicant derived from the sale or distribution of each~~  
64 ~~pesticide product, for use in this state, during the preceding year as defined under s. ATCP 29.11~~

65 ~~(1) (d). The department may not disclose sales revenue information obtained under this~~  
66 ~~subdivision.~~

67 SECTION 10. ATCP 29.11 (1) (d) is repealed.

68 SECTION 11. ATCP 29.11 (2) is amended to read:

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

73 SECTION 12. ATCP 29.11 (2) (a), (b) and (c) are repealed.

74 SECTION 13. ATCP 29.11 (3) is amended to read:

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

79 SECTION 14. ATCP 29.11 (3) (a), (b), (c) and (3m) are repealed.

80 SECTION 15. ATCP 29.11 (5) is amended to read:

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

86 SECTION 16. ATCP 29.11 (6) (b) is repealed.

87 SECTION 17. ATCP 29.11 (6) (c) is amended to read:

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

92 SECTION 18. ATCP 29.11 (6) (d) is amended to read:

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

96 SECTION 19. ATCP 29.15 (4) (b) is amended to read:

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

99 SECTION 20. ATCP 29.20 (6) (b) is amended to read:

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

103 SECTION 21. ATCP 29.20 (6) (c) is created to read:



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

107 SECTION 22. ATCP 29.25 (5) (a) is amended to read:

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

110 1. A license fee of \$40.

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

113 2. An agricultural chemical cleanup surcharge of ~~\$11.20~~10, except as provided in s. 94.73 (15),  
114 Stats.

115 SECTION 23. ATCP 35.04 (5) (b) is amended to read:

116 **ATCP 35.04 (5) (b)** Installation of an engineered barrier to limit infiltration of existing  
117 contamination, provided that the responsible person agrees in writing to maintain the barrier at ~~his~~  
118 ~~or her~~their expense until the contamination is removed or fully degraded.

119 SECTION 24. ATCP 35.06 (3) (c) is amended to read:

120 **ATCP 35.06 (3) (c)** If any person has reason to believe that ~~he or she~~they ~~has~~have received any  
121 reimbursement for which ~~he or she~~they ~~is~~are ineligible under this subsection, that person shall  
122 immediately notify the department and shall refund with the notification the full amount of any  
123 reimbursement for which the responsible person is ineligible.

124 SECTION 25. ATCP 35.20 (3) is amended to read:

125 **ATCP 35.20 (3)** Joint application. The department shall deny a reimbursement application unless  
126 every responsible person successfully notified under sub. (2) includes ~~his or her~~their full claim for

127 reimbursement as part of the same joint application, or waives any claim for reimbursement related  
128 to discharges to date at that discharge site. If a notified person fails to submit an application within  
129 30 days after receiving notice, or fails to provide documentation under s. ATCP 35.06 (1) within  
130 60 days after receiving notice, that failure constitutes a waiver of that person's claim with respect  
131 to that application.

132 SECTION 26. ATCP 35.22 (1) (a) is amended to read:

133 **ATCP 35.22 (1)** (a) Except as provided in subs. (2) through (6), the department shall reimburse a  
134 responsible person for each discharge site an amount equal to 75% of the eligible corrective action  
135 costs that are greater than \$3,000 and less than \$400,000 for costs incurred before July 1, 2017, or  
136 that are greater than \$3000 and less than \$650,000 for costs incurred on or after July 1 2017. To  
137 this amount, the department shall add interest costs under s. ATCP 35.25.

138 SECTION 27. ATCP 35.22 (1) (b) is amended to read:

139 ATCP 35.22 (1) (b) If no more than \$3,000 of the eligible corrective action costs under par. (a)  
140 were incurred prior to January 1, 2004, the total amount paid under par. (a) may not exceed  
141 \$297,750485,250.

142 SECTION 28. ATCP 35.22 (1) (c) is amended to read:

143 **ATCP 35.22 (1)** (c) If more than \$3,000 of the eligible corrective action costs under par. (a) were  
144 incurred prior to January 1, 2004, the total amount paid under par. (a) may not exceed  
145 \$317,600505,100 or the sum of the following, whichever amount is less:

- 146 1. Eighty percent of the eligible corrective action costs incurred up to \$400,000 prior to January 1,  
147 2004 that exceed \$3,000.
- 148 2. Seventy-five percent of the difference between \$400,000650,000 and the eligible corrective  
149 action costs incurred prior to January 1, 2004.

150 SECTION 29. ATCP 35.22 (2) (a) is amended to read:

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

156 1. The responsible person is required to be licensed under ss. 94.67 to 94.71, Stats.

157 2. The responsible person employs more than 25 persons.

158 3. The responsible person has gross annual sales of more than \$2,500,000.

159 SECTION 30. ATCP 35.22 (2) (c) is amended to read:

160 **ATCP 35.22 (2)** (c) If no more than \$7,500 of the eligible corrective action costs under par. (a)  
161 were incurred prior to January 1, 2004, the total amount paid under pars. (a) and (b) may not exceed  
162 ~~\$294,375~~481,875.

163 SECTION 31. ATCP 35.22 (2) (d) is amended to read:

164 **ATCP 35.22 (2)** (d) If more than \$7,500 of the eligible corrective action costs under par. (a) were  
165 incurred prior to January 1, 2004, the total amount paid under pars. (a) and (b) may not exceed  
166 ~~\$314,000~~501,500 or the sum of the following, whichever amount is less:

167 1. Eighty percent of the eligible corrective action costs incurred up to \$400,000 prior to January 1,  
168 2004 that exceed \$7,500.

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

171 SECTION 32. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day  
172 of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22  
173 (2) (intro.), Stats.

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(END OF RULE TEXT)

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Dated this \_\_\_\_ day of \_\_\_\_\_, 2022

WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

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By: Randy Romanski, Secretary