



State of Wisconsin  
Governor Tony Evers

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**Department of Agriculture, Trade and Consumer Protection**  
Secretary Randy Romanski

**DATE:** July 21, 2022

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

**FROM:** Randy Romanski, Secretary  
Brian Weigel, Administrator, Division of Agricultural Resource Management

**SUBJECT:** ATCP 21, 29, and 35 (Removal of obsolete language and resolve statutory conflicts)

**PRESENTED BY:** Jill Hoskins, ACM Policy Analyst, Division of Agriculture Development

**REQUESTED ACTION:**

At the meeting of the Board on July 21 2022, the Department will request approval of the attached scope statement, regarding Wis. Admin. Code Ch. ATCP 21, 29, and 35 relating to removal of obsolete language and resolve statutory conflicts.

**SUMMARY:**

Presently, ATCP 21 contains references to a pest common name that has been changed by the Entomological Society of America and is now obsolete, and contains outdated pest infestation levels and outdated diagnostic techniques. ATCP 29 contains obsolete language regarding licensing of pesticide manufacturers and labelers. ATCP 29 and ATCP 35 each refer to incorrect fees and surcharges that were changed in statute by the 2017 Wisconsin Act 59. The objective of the proposed rule is to review chapters ATCP 21, 29, and 35 with regard to recent statutory changes, current diagnostic techniques, and inclusive language. This project will modify the rules to ensure statutory compliance including necessary updates resulting from 2017 Wisconsin Act 59.

The Governor approved the scope statement on July 7, 2022. Scope Statement 059-22 was published in the Administrative Register on July 11, 2022. The Joint Committee for Review of Administrative Rules has not requested a preliminary hearing be held on the scope statement.

DATCP is requesting approval of the Scope Statement in order to begin drafting rule revisions.

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# STATEMENT OF SCOPE

## Department of Agriculture, Trade and Consumer Protection

Rule No.: Chapters ATCP 21, 29, 35

Relating to: Removal of obsolete language and resolve statutory conflicts

Rule Type: Permanent

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

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

This proposed rule considers minor substantive changes to multiple administrative code chapters administered by the Department of Agriculture, Trade and Consumer Protection (Department). The objectives of this rule are:

- a) To consider revising portions of ss. ATCP 21.01 and ATCP 21.10 to reflect the recent pest common name change from gypsy moth to spongy moth.
- b) To consider revising portions of s. ATCP 21.13 related to Varroa mite levels and European honeybee subspecies certification in order to reflect current pest infestation levels and modern diagnostic techniques.
- c) To consider revising provisions within ch. ATCP 29 that contain obsolete language, necessary to align with recent statutory changes regarding licensing of pesticide manufacturers and labelers.
- d) To consider revising provisions within ch. ATCP 29 necessary to align with recent statutory changes regarding revised fees and surcharges already implemented by 2017 Wisconsin Act 59.
- e) To consider updating ss. ATCP 20.29 (1) (a), ATCP 35.04 (5) (b), ATCP 35.06 (3) (c), and ATCP 35.20 (3) for gender neutral language consistent with s. 227.10 (3), Stats.
- f) To consider revising provisions within ch. ATCP 35 that contain obsolete language, necessary to align with recent statutory changes already implemented by 2017 Wisconsin Act 59.

### 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:

- a) The Entomological Society of America approved “spongy moth” as the new common name for the invasive forest pest *Lymantria dispar*. This name replaces the old common name, “gypsy moth,” which was removed in 2021 due to its inclusion of a term derogatory to Romani people. All references to the common name gypsy moth in ss. ATCP 21.01 and ATCP 21.10 will be considered for change to spongy moth to reflect the common name change described above.
- b) Over the past two decades, increased demand for pollination services has caused many Wisconsin beekeepers, and beekeepers nationwide, to transport bees around the country to pollinate speciality crops, such as almonds. The increased movement of hives has increased the risks of moving and spreading honeybee pests and diseases and increased risks of introducing Africanized honeybees, which are more a more aggressive subspecies than their European counterparts. In particular, increased movement has caused the establishment of the Varroa mite worldwide. Section ATCP 21.13 (2) related to Species Certification will consider revisions to remove references

to the Fast Africanized Bee Identification System, as this method is no longer used for identifying Africanized honeybees. Section ATCP 21.13 (3) related to Varroa mite certification and requirements for honeybee colonies to be apparently free of Varroa mites, will be considered for repeal, as typical infestation levels of this pest make rule enforcement impractical.

- c) 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 for the preceding year. 2017 Wisconsin Act 59 removed this requirement from s. 94.68 (2) (bm), Stats.
- d) Sections ATCP 29.11, ATCP 29.15 (4), ATCP 29.20 (6), and ATCP 29.25 (5) revisions will be considered based upon statutory changes implemented in 2017 Wisconsin Act 59. This Act revised fees and surcharges for pesticide manufacturers and labelers, dealers and distributors of restricted-use pesticides, and commercial pesticide applicators.
- e) Sections ATCP 20.29 (1) (a), ATCP 35.04 (5) (b), ATCP 35.06 (3) (c), and ATCP 35.20 (3) revisions will be considered for gender-neutral language under the authority of s. 227.10 (3), Stats.
- f) Section ATCP 35.22 conflicts with s. 94.73 (6) (b) and (c), Stats., as 2017 Wisconsin Act 59 increased the maximum eligible reimbursement costs for eligible sites under the Agricultural Chemical Cleanup Program. The Department has fully implemented these changes, but has not yet updated the rule.

The alternative to these rule updates is to do nothing. If the Department does not move forward with the proposed rule, the administrative code will not be in conformity with state statutes, and portions of our apiary rules will continue to be unenforceable due to the inclusion of outdated requirements that honeybee colonies be apparently free of Varroa mites, and the inclusion of methods of identifying honeybee subspecies that do not reflect current diagnostic techniques and are no longer used.

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

a) **Wisconsin Statute s. 93.07 Department duties.**

“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.”

[s. 93.07 (1), Stats.]

“PLANT PESTS. To conduct surveys and inspections for the detection and control of pests injurious to plants, make, modify, and enforce reasonable rules needed to prevent the dissemination of pests, declare and manage emergencies relating to the detection and control of pests injurious to plants, provided that such declaration does not supersede the authority of the chief state forester under s. 23.114 or the department of natural resources under s. 26.30, and suggest methods of control.”

[s. 93.07 (12), Stats.]

“INSPECTION OF APIARIES. To inspect apiaries, furnish information to owners and caretakers with respect to the eradication and prevention of diseases and pest infestations injurious to honeybees.”

[s. 93.07 (13), Stats.]

**Wisconsin Statute s. 94.01 Plant inspection and pest control authority.**

“In the conduct of survey and inspectional programs for the detection, prevention and control of pests, the department may impose quarantines or such other restrictions on the importation into or movement of plants or other material within this state as necessary to prevent or control the dissemination or spread of injurious pests.”

[s. 94.01 (1), Stats.]

b) **Wisconsin Statute s. 94.76 Honeybee disease and pest control.**

“The department shall maintain surveillance of the beekeeping industry for the detection and prevention of honeybee diseases and pests, and may promulgate or 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.”  
[s. 94.76 (1), Stats.]

c) **Wisconsin Statute s. 94.68 Pesticides; licensing of manufacturers and labelers.**

“An application for a license under sub. (1) shall be made on a form prescribed by the department. An applicant shall submit all of the following with the application:

(am) All fees and surcharges required under s. 94.681.

(bm) A report identifying each pesticide that the applicant sells or distributes for use in this state.”

[s. 94.68 (2), Stats.]

d) Authority for changes to ss. ATCP 29.11, ATCP 29.15 (4), ATCP 29.20 (6), and ATCP 29.25 (5) are specified in language regarding **ss. 94.681, 94.703 (3) (a), and 94.704 (3) (a), Stats.**, detailed in **2017 Wisconsin Act 59**.

e) **Wisconsin Statute s. 227.10 Statements of policy and interpretations of law; discrimination prohibited.**

“No rule, either by its terms or in its application, may discriminate for or against any person by reason of sex, race, creed, color, sexual orientation, national origin or ancestry.”

[s. 227.10 (3) (a), Stats.]

f) **Wisconsin Statute s. 94.73 Agricultural chemical cleanup program.**

“Except as provided in pars. (c) and (e), the department shall reimburse a responsible person an amount equal to 75 percent of the corrective action costs incurred for each discharge site that are greater than \$3,000 and less than \$400,000 for costs incurred before July 1, 2017, or that are greater than \$3,000 and less than \$650,000 for costs incurred on or after July 1, 2017.”

[s. 94.73 (6) (b), Stats.]

“Except as provided in par. (e), the department shall reimburse a responsible person an amount equal to 75 percent of the corrective action costs incurred for each discharge site that are greater than \$7,500 and less than \$400,000 for costs incurred before July 1, 2017, or that are greater than \$7,500 and less than \$650,000 for costs incurred on or after July 1, 2017, if any of the following applies:

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

2. The responsible person employs more than 25 persons.

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

[s. 94.73 (6) (c), Stats.]

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

240 hours; the department will use existing staff to develop this rule.

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

- Businesses such as nurseries and loggers that transport or import articles regulated by the spongy moth quarantine,
- Beekeepers,
- Pesticide manufacturers and labelers credentialed or otherwise regulated by the department,
- Pesticide dealers and distributors of restricted-use pesticides,
- Commercial pesticide applicators credentialed or otherwise regulated by the Department,
- Responsible persons requesting reimbursement through the Agricultural Chemical Cleanup Program.

**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:**

None.

**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 anticipates that the proposed rule will have minimal, or no, economic impact on external stakeholders and regulated entities. The proposed rule is not likely to have a significant economic impact on small businesses.

**Contact Person:** Jill Hoskins, (608) 244-4509

Signed this 9th day of June, 2022

A handwritten signature in black ink that reads "Randy Romanski". The signature is written in a cursive style with a large initial "R".

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Randy J. Romanski  
Secretary  
State of Wisconsin Department of Agriculture, Trade and Consumer Protection