



State of Wisconsin  
Governor Scott Walker

---

**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

*Darlene M. Korble  
for  
Dr. McGraw*

**SUBJECT: ATCP 10/12–Animal Disease and Movement; Animal Markets, Dealers and Truckers; 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 (“Scope Statement”)(copy attached) for proposed amendments to current Department rules related to animal disease and movement and animal markets, dealers and truckers.

Division staff have discovered some provisions in the administrative rule that are unclear or not consistent within the rule, with statute, or with federal regulations. Many of these discoveries were made while implementing programs with requirements codified in chs. ATCP 10 and 12, Wis. Admin. Code, based on contacts with individuals licensed through the division, veterinarians and industry regulated by the division and staff from the federal USDA.

The proposed rule will be reviewed to determine if sections relating to bovine, swine, equine, poultry and farm-raised game birds, farm-raised deer, fish, sheep, goats, and other animals should be modified and whether certain provisions that currently pertain to only a few animal types should pertain to all animals.

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 the 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 Scope Statement with the Legislative Reference Bureau for

*Agriculture generates \$88 billion for Wisconsin*

2811 Agriculture Drive • PO Box 8911 • Madison, WI 53708-8911 • Wisconsin.gov

An equal opportunity employer

Department Board  
March 9, 2017

publication in the March 6, 2017, issue of the Wisconsin Administrative Register. The Department also filed a copy with DOA.

If the 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 the Department may hold public hearings on the rule proposal. The 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.: Chs. ATCP 10 and 12, Wis. Adm. Code (existing)

Relating to: Animal Disease and Movement; Animal Markets, Dealers and Truckers

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

The current rule will be reviewed to ensure provisions are clearly written and consistently stated throughout Wis. Admin. Code chs. ATCP 10 and 12. The Wisconsin Department of Agriculture, Trade and Consumer Protection (“Department”) will make minor modifications resulting from that review.

### 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:

The Department’s Division of Animal Health (“Division”) staff have discovered provisions in the administrative rule that are unclear or not consistent within the rule, with statute, or with federal regulations. Many of these discoveries were made while implementing programs with requirements codified in Wis. Admin. Code chs. ATCP 10 and 12, based on contacts with individuals licensed through the Division, veterinarians and industry regulated by the division and staff from the federal USDA.

The proposed rule will be reviewed to determine if sections relating to bovine, swine, equine, poultry, farm-raised game birds, farm-raised deer, fish, sheep, goats, and other animals should be modified, and whether certain provisions that currently pertain to only a few animal types should pertain to all animals.

The following areas in statute in Wis. Admin. Code chs. ATCP 10 and 12, 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):

- Farm-raised deer (see Wis. Stats. § 95.55 (6)).
- Poultry and farm-raised game birds (see Wis. Stats. §§ 95.57 (1) and (2)).
- Fish farms (see Wis. Stats. §§ 95.60 (3), (4) (c), (4s), and (5)).
- Animal markets (see Wis. Stats. § 95.68 (8)).
- Animal dealers (see Wis. Stats. § 95.69 (8)).
- Animal truckers (see Wis. Stats. § 95.71 (8)).
- Feed and veal lots (see Wis. Stats. §§ 95.715 (2) (d) and (3) (d)).
- Import requirements (see Wis. Stats. §§ 93.07 (1), (2), and (10), 95.20, 95.45 (4) (c) and (5), 95.55 (6), 95.60 (4s), 95.68 (8), 95.69 (8), 95.71 (8), and 95.715 (2) (d) and (3) (d)).

- Disease testing requirements of animals (see Wis. Stats. §§ 93.07 (1) and (10), 95.20, 95.22 (1) and (2), 95.42, 95.43, 95.45 (4) (c) and (5), 95.55 (6), and 95.60 (4s)).
- Disease reporting requirements (see Wis. Stats. §§ 93.07 (1) and (10), 93.15, 95.20, 95.22 (1) and (2), 95.38 (3), 95.43, 95.55 (6), 95.60 (4s), 95.68 (8), 95.69 (8), 95.71 (8) and 95.715 (2) (d) and (3) (d)).
- Federal/state requirements for the training and certification of veterinarians in Wisconsin (see Wis. Stats. §§ 93.07 (1) and (2), 93.15, 95.22 (1) and (2), 95.38 (3), 95.42, 95.43, and 95.60 (4s)).
- Requirements for approval by the Department for persons collecting test samples, laboratories, out-of-state forms, etc. (see Wis. Stats. §§ 93.07 (1), (2) and (10), 93.15, 95.20, 95.38 (3), 95.42, 95.43, 95.45 (4) (c), 95.55 (6), and 95.60 (4s)).
- Recordkeeping requirements by licensees, including acceptability of electronic storage of records (see Wis. Stats. §§ 93.07 (1), (2), and (10), 93.15, 95.20, 95.22 (1) and (2), 95.38 (3), 95.42, 95.43, 95.45 (4) (c) and (5), 95.55 (6), 95.60 (4s), 95.68 (8), 95.69 (8), 95.71 (8), and 95.715 (2) (d) and (3) (d)).
- Application requirements and exemptions from licensing (see Wis. Stats. §§ 93.07 (1) and (2), 95.55 (6), 95.68 (2m) (b), 95.69 (2m) and 95.71 (8)).
- Fees charged throughout the rule and fees to be charged by the Department for medical separation and other inspections of premises prior to licensing (see Wis. Stats. §§ 93.06 (1f), (1n), (1p), and 95.55 (2) and (3), 95.60 (5) and (5m)).

As of this date, there are no existing policies and no new policies that will be incorporated into the proposed rule.

If the Department does not modify currently inconsistent rule provisions and fees, and reorganize sections to pertain to all animals, rather than specific animals, it may give conflicting or unclear information that is difficult to find or follow.

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

**93.06 Department powers.** The department may:

**(1f) ANIMAL HEALTH INSPECTION AND TESTING.** Perform animal health inspections and tests and examine animal health documentation at the state fair, the world dairy expo, the world beef expo, the midwest horse fair, and other livestock exhibitions held in this state and attended by participants from outside of this state, as specified by the department by rule. The department may charge a fee to the sponsor of the exhibition to cover the reasonable costs of the department's inspection and testing services whether or not the sponsor requests the services. This subsection does not apply to county fairs or other local livestock exhibitions.

\* \* \*

**(1n) ELECTRONIC PROCESSING.**

(a) Accept and process by electronic means applications and payments for licenses, permits, registrations and certificates that are issued by the department.

(b) Accept and process by electronic means requests and payments for goods and services that the department is authorized to provide.

(c) Promulgate rules specifying fees to cover the department's electronic processing costs under pars. (a) and (b). The fees under this paragraph are in addition to any other fees required to be paid to the department.

(1p) SERVICE TESTING RELATED TO DEPARTMENT PROGRAMS. Provide inspection services, diagnostic services and analytical or testing services upon request if the requested service is related to an authorized department program and serves program objectives. The department may charge a fee to cover its cost to provide the requested services.

**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.

(2) Forms. To prescribe forms for all applications, notices and reports required to be made to the department or which are necessary in its work.

\* \* \*

(10) ANIMAL HEALTH; QUARANTINE. To protect the health of animals located in this state and of humans residing in this state and to determine and employ the most efficient and practical means for the prevention, suppression, control, and eradication of communicable diseases among animals. For these purposes, the department may establish, maintain, enforce, and regulate such quarantine and such other measures relating to the importation, movement, and care of animals and their products, the disinfection of suspected localities and articles, and the disposition of animals, as the department determines are necessary. The definition of "communicable disease" in s. 990.01 (5g) does not apply to this subsection.

**93.15 Reports to department; inspections.**

(1) The department may, by general or special order, require persons engaged in business to file with the department, at such time and in such manner as the department may direct, sworn or unsworn reports or sworn or unsworn answers in writing to specific questions, as to any matter which the department may investigate.

(2) The department or any of its authorized agents may have access to and may copy any document, or any part thereof, which is in the possession or under the control of any person engaged in business, if such document, or such part thereof, is relevant to any matter which the department may investigate.

(3) No person shall refuse or fail to render any report or answer required under this section at such time and in such manner as the department may prescribe. No person shall refuse, neglect or fail to submit, for the purpose of inspection or copying, any document demanded under this section. No person shall willfully make any false entry or statement in any report or answer required or document demanded under this section. No person shall willfully fail to make full and true entries and statements in any report or answer required or document demanded under this section. No person shall, for the purpose of embarrassing the department in the conduct of any investigation, hearing or proceeding, remove out of the state or mutilate or alter any document. No person shall, except through judicial process, resist or obstruct any official or subordinate of the department in the exercise of the official's or subordinate's lawful authority.

**95.20 Import and movement of animals.** The department may prohibit or regulate the importing of animals into this state or the movement of animals within this state if the department has reasonable grounds to believe that regulation or prohibition is necessary to prevent the introduction or spread of a disease in this state that threatens the health of animals or of humans.

**95.22 Reporting animal diseases.**

(1) A veterinarian and the department of natural resources shall report to the department of agriculture, trade and consumer protection any disease specified in the rules promulgated under sub. (2) (a) each time a veterinarian or the department of natural resources discovers that such a disease is present in any animal in this state.

(2) The department shall promulgate rules that specify all of the following:

(a) The diseases that a veterinarian or the department of natural resources must report under this section.

(b) For each disease specified in par. (a), the deadline for reporting the disease after the date of its discovery.

(c) The information that a veterinarian or the department of natural resources must include in his or her report.

(d) Procedures to be used in preparing and submitting the report.

\* \* \*

**95.38 Altering records; tampering with ear tags.**

\* \* \*

(3) The department may adopt rules that are necessary to administer this section.

**95.42 Revocation of permit to test.** Only veterinarians approved by the department may apply the tuberculin test to cattle and farm-raised deer, and no veterinarian applying the test may tag or brand reactors except as specifically authorized or directed by the department. Any veterinarian who fails to comply with this section and the rules and instructions furnished by the department shall forfeit all right to apply the tuberculin test.

**95.43 Application of brucellosis test.**

(1) The brucellosis test shall be applied only by approved veterinarians. Any veterinarian who fails to comply with the laws or regulations of the department relating to disease control may be denied such approval.

(2) Every veterinarian who applies the brucellosis test shall promptly reactor tag and permanently mark all reactors in conformity with the law and the regulations of the department, and shall promptly report the result of each test to the department. No person shall interfere in any way with the identification of reactors as required herein.

**95.45 Certificates of veterinary inspection; tests for interstate shipment.**

\* \* \*

(4)(e) The department may promulgate rules to impose requirements on the form, issuance, and filing of certificates of veterinary inspection.

(5) Any certificate of veterinary inspection prepared under this chapter or ch. 169 shall comply with any rules that are promulgated by the department.

**95.55 Farm-raised deer.**

\* \* \*

(2) Application. A person shall register under this section using a form provided by the department. The form shall be accompanied by the applicable fees specified under sub.

(3). Upon registration, the department shall issue the person a registration certificate.

(3) Registration fee; reinspection fee.

(a) The department shall, by rule, specify the fee for registration under this section. The department may not require an individual who is eligible for the veterans fee waiver program under s. 45.44 to pay a fee for registration under this section.

(b) 1. If the department reinspects the premises where farm-raised deer are kept because the department has found a violation of this chapter or rules promulgated under this

chapter, the department shall charge the person registered under this section the reinspection fee specified under subd. 2.

2. The department shall specify the reinspection fee to be charged under subd. 1. by rule. The reinspection fee may not exceed the reasonable costs to reinspect the premises. The department may specify different reinspection fees for different premises.

3. A reinspection fee under this paragraph is payable when the reinspection is completed, and is due upon written demand from the department. The department may issue a demand for payment when it issues a registration renewal application form to the person registered to keep farm-raised deer under this section.

\* \* \*

**(6) Rules.**

(a) The department shall promulgate rules to regulate persons who keep farm-raised deer. The rules shall establish disease testing requirements for bovine tuberculosis and chronic wasting disease and may establish testing requirements for other diseases.

(b) The rules promulgated under this subsection may include any of the following:

1. Standards to be followed by persons keeping farm-raised deer to prevent the spread of disease.
2. Provisions requiring that registration under this section be on an annual basis.
3. Exemptions from any annual registration requirements established under subd. 2.

**95.57 Poultry and farm-raised game birds; national poultry improvement program.**

(1) PARTICIPATION IN PROGRAM. The department may promulgate rules to require that any of the following originate from a flock of a person participating in the national poultry improvement plan under 9 CFR part 145:

(a) Poultry, including their eggs, that are used for breeding purposes.

(b) Farm-raised game birds, including their eggs, that are used for breeding purposes.

(2) FEES. The department shall promulgate a rule to set any fee that it imposes on a person for participation in the national poultry improvement plan.

**95.60 Importing fish; fish farms.**

\* \* \*



**(3)** The department may promulgate rules, applicable to persons who operate fish farms, that require any evidence of fish health that the department determines is necessary.

\* \* \*

**(4) (c)** Except as provided in par. (d), a person who operates a fish farm shall keep records on purchases, sales and production of fish and fish eggs and any other records required by the department by rule. The department may inspect these records upon request.

\* \* \*

**(4s)** The department shall do all of the following:

**(a)** In consultation with the department of natural resources, promulgate rules specifying requirements for the labeling and identification, in commerce, of fish reared in fish farms.

**(b)** In consultation with the department of natural resources, promulgate rules specifying fish health standards and requirements for certifying that fish meet those standards for the purpose of s. 29.736.

**(c)** Promulgate rules specifying the qualifications that a person who is not a veterinarian must satisfy in order to provide evidence of fish health.

**(d)** In consultation with the department of natural resources, promulgate rules specifying diseases and requirements for certifying that fish are free of those diseases for the purposes of sub. (2) (b).

**(e)** Promulgate rules establishing the period for which a record required under sub. (4) (c) must be retained.

**(5)** The department shall, by rule, specify the fees for permits, certificates, registration and inspections under this section, including any reinspection fees required under sub. (5m). The department may not require an individual who is eligible for the veterans fee waiver program under s. 45.44 to pay a fee for a permit under sub. (2) (a) or a registration under sub. (3m).

**(5m) (a)** If the department reinspects a fish farm because the department has found a violation of this chapter or rules promulgated under this chapter, the department shall charge the fish farm operator the reinspection fee specified under par. (b).

**(b)** The department shall specify the reinspection fee to be charged under par. (a) by rule. The reinspection fee may not exceed the reasonable costs to reinspect the fish farm. The department may specify different reinspection fees for different fish farms.

(c) A reinspection fee under this subsection is payable when the reinspection is completed, and is due upon written demand from the department. The department may issue a demand for payment when it issues a registration renewal application form to the fish farm operator.

\* \* \*

**95.68 Animal markets.**

\* \* \*

**(2m) Exemptions.**

(a) A person is not required to obtain a license under sub. (2) to operate an occasional auction sale sponsored by a livestock breeder association or a youth agricultural organization if records of the transactions at the sale are maintained by an auctioneer registered under ch. 480 or by an animal dealer licensed under s. 95.69.

(b) The department may promulgate rules to exempt groups of persons from the licensing requirement under sub. (2) or the registration requirement under sub. (7) or both.

\* \* \*

(8) Rules. The department may promulgate rules to regulate the operation of animal markets, including rules related to market operator qualifications, market construction and maintenance, construction and maintenance of animal transport vehicles, identification of animal transport vehicles, disease sanitation, humane treatment of animals, identification of animals, record keeping, reports to the department and compliance with applicable financial security requirements under state or federal law.

\* \* \*

**95.69 Animal dealers.**

\* \* \*

(2m) Exemption. The department may promulgate rules to exempt groups of persons from the licensing requirement under sub. (2) or the registration requirement under sub. (7) or both.

\* \* \*

(8) Rules. The department may promulgate rules to regulate animal dealers, including rules related to animal dealer qualifications, construction and maintenance of animal transport vehicles, identification of animal transport vehicles, disease sanitation, humane treatment of animals, identification of animals, record keeping, reports to the department and compliance with applicable financial security requirements under state or federal law.

\* \* \*

**95.71 Animal truckers.**

\* \* \*

(8) Rules. The department may promulgate rules to regulate animal truckers, including rules related to animal trucker qualifications, construction and maintenance of animal transport vehicles, identification of animal transport vehicles, disease sanitation, humane treatment of animals, identification of animals, record keeping, reports to the department and compliance with applicable financial security requirements under state or federal law.

\* \* \*

**95.715 Feed lots and veal lots.**

\* \* \*

(2) Approved feed lot.

\* \* \*

(d) The department may promulgate rules to specify permit fees under par. (a) and to regulate feed lots. The rules may include requirements related to the construction and maintenance of approved feed lots, the segregation of imported feeder cattle and record-keeping requirements related to feeder cattle.

\* \* \*

(3) APPROVED VEAL LOT.

\* \* \*

(d) The department may promulgate rules to regulate approved veal lots. The rules may include requirements related to the construction and maintenance of approved veal lots, the segregation of imported veal calves and record-keeping requirements related to veal calves.

**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, coordinating advisory committee meetings, 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 rule will make minor modifications in order to provide consistency and clarity to chs. ATCP 10 and 12 and will provide important health protection for the Wisconsin livestock industry. This rule will have a direct impact on animal markets, animal dealers, animal truckers, veterinarians, livestock operators, farm-raised deer keepers, fish farm operators, and other persons licensed by the Department.

**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:**

Most animal health regulations are adopted and administered at the state level. However, the U.S. Department of Agriculture (“USDA”) administers federal regulations related to the interstate movement of animals, particularly with respect to traceability, identification and certain major diseases (including chronic wasting disease and tuberculosis). States regulate intrastate movement and imports to the state. States certify the disease status of certain herds, at the request of herd owners, to facilitate interstate movement of animals from those herds. States also license and regulate entities such as animal markets, animal dealers and animal truckers (regulations vary by state).

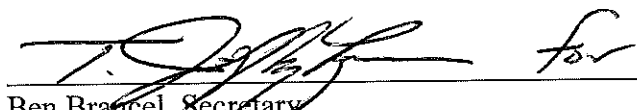
State regulation of interstate animal movement is generally consistent with federal standards, where applicable. However, states may impose additional import requirements if those requirements are reasonably designed to prevent the spread of disease, and do not impose an unreasonable burden on interstate commerce.

Existing federal accreditation standards for veterinarians will have to be considered if the rule is modified relating to accredited and state-certified veterinarians.

**7. Anticipated economic impact**

The Department expects the rule to have minimal to no economic impact statewide and locally.

**Contact Person:** Darlene Konkle, DVM, Assistant State Veterinarian, DATCP; Phone (608) 224-4902

  
\_\_\_\_\_  
Ben Brancel, Secretary  
Department of Agriculture, Trade and Consumer Protection

2-21-17  
Date Submitted