



State of Wisconsin  
Governor Tony Evers

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

**DATE:** November 17, 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 Agricultural Resource Management

**REQUESTED ACTION:**

At the November 17, 2022 Board meeting, the Department will request a hearing draft approval and approval to proceed with a public hearing regarding Wis. Admin. Code chs. ATCP 21, 29, and 35 relating to removal of obsolete language and resolve statutory conflicts. Board approval will allow the Department to submit the hearing draft rule to the Legislative Council Rules Clearinghouse and hold a public hearing on the proposed rule.

**SUMMARY:**

Presently, ATCP 21 contains references to a pest common name that has been changed and is now obsolete, and contains outdated pest infestation levels and outdated diagnostic techniques.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 diagnostics techniques, and inclusive language. This project will modify the rules to ensure statutory compliance including necessary updates resulting from 2017 ACT 59.

The Economic Impact Analysis for this proposed rule, along with a hearing rule draft and a Regulatory Flexibility Analysis were posted on the DATCP website for a comment period of 14 days. No comments were received.

The Department will hold a public hearing on the hearing draft rule on December 16, 2022 in Madison, with both in-person and virtual hearing options.

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STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION  
PROPOSED ORDER OF THE DEPARTMENT OF AGRICULTURE, TRADE AND  
CONSUMER PROTECTION ADOPTING 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), 94.01 (1), and 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 is specified in Wisconsin Statute sections 25.468.

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*

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.

This proposed rule makes adjustments to gendered references in ch. ATCP 35.

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

The department identified portions of s. ATCP 21.10 as obsolete to the extent these portions use an obsolete common name for the live insect, *Lymantria dispar*, or “spongy moth,” and this proposed rule corrects this where used.

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.

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 section 1260 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 1285, 1289, 1290, and 1292, respectively. Section ATCP 35.22 conflicts with s. 94.73 (6) (b), (c), Stats., as 2017 Wisconsin Act 59 section 1302 increased the maximum eligible reimbursement costs for eligible sites under the Agricultural Chemical Cleanup Program.

### *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.Steinel@wisconsin.gov](mailto:Bradford.Steinel@wisconsin.gov)  
Telephone at (608) 224-5024

The Regulatory Flexibility Analysis is attached.

*Department Contact Person*

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

Madison, WI 53708-8911  
(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 December 27, 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 Lymantriidae, in
- 3 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 trees, woody
- 9 shrubs, cut Christmas trees, logs, pulpwood, slabwood, firewood, or wood chips that originate from a
- 10 gypsyspongy moth regulated area designated by the United States department of agriculture under 7 CFR
- 11 301.45-2a.
- 12 (b) Except as provided under sub. (3), no person may move any trees, woody shrubs, cut Christmas trees,
- 13 logs, pulpwood, slabwood, firewood, or wood chips out of any area in this state which the United States
- 14 department of agriculture has designated as a gypsyspongy moth regulated area under 7 CFR 301.45-2a.
- 15 SECTION 5. ATCP 21.10 (2) (a) and (b) is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

48 ~~2.1. The Morphometric Method for Identification of Africanized and European Honey Bees Using Large  
49 Reference Populations.~~

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

55 ~~3.2. Any other method approved by the department.~~

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

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

58 ATCP 29.10 (3) (c) A report that does both of the following:

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

60 ~~2. States the gross revenue which the applicant derived from the sale or distribution of each pesticide  
61 product, for use in this state, during the preceding year as defined under s. ATCP 29.11 (1) (d). The  
62 department may not disclose sales revenue information obtained under this subdivision.~~

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

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

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

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

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

70 ATCP 29.11 (3) Nonhousehold pesticides; cleanup surcharge. An applicant for a license under s. ATCP  
71 29.10 shall pay an agricultural chemical cleanup surcharge for each nonhousehold pesticide product that  
72 the applicant sells or distributes. Except as provided in sub. (6) or (7), the amount of the surcharge is \$30, as  
73 follows:

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

102 1. A license fee of \$40.

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

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

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

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

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

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

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

115 ATCP 35.20 (3) Joint application. The department shall deny a reimbursement application unless every  
116 responsible person successfully notified under sub. (2) includes ~~his or her~~their full claim for reimbursement  
117 as part of the same joint application, or waives any claim for reimbursement related to discharges to date at  
118 that discharge site. If a notified person fails to submit an application within 30 days after receiving notice,

119 or fails to provide documentation under s. ATCP 35.06 (1) within 60 days after receiving notice, that failure  
120 constitutes a waiver of that person's claim with respect to that application.

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

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

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

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

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

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

134 1. Eighty percent of the eligible corrective action costs incurred up to \$400,000 prior to January 1, 2004  
135 that exceed \$3,000.

136 2. Seventy-five percent of the difference between \$400,000650,000 and the eligible corrective action costs  
137 incurred prior to January 1, 2004.

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

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

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

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

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

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

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

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

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

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

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

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

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(END OF RULE TEXT)

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Dated this 31 day of October, 2022

WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

  
By: Randy Romanski, Secretary

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original   <input type="checkbox"/> Updated   <input type="checkbox"/> Corrected</p>	<p>2. Date 8/10/2022</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) ATCP 21, Plant Inspection and Pest Control ATCP 29, Pesticide Use and Control ATCP 35, Agricultural Chemical Cleanup Program</p>	
<p>4. Subject Removal of obsolete language and resolve statutory conflicts</p>	
<p>5. Fund Sources Affected <input type="checkbox"/> GPR   <input type="checkbox"/> FED   <input type="checkbox"/> PRO   <input type="checkbox"/> PRS   <input type="checkbox"/> SEG   <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected</p>
<p>7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect   <input type="checkbox"/> Increase Existing Revenues   <input type="checkbox"/> Increase Costs   <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate   <input type="checkbox"/> Decrease Existing Revenues   <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy   <input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units   <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0.00 Because these changes are technical, to conform to changes already implemented in Statute or to comply with industry standards, there is no cost to businesses to implement or comply.</p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes   <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule 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. ATCP 35 contains gendered language regarding licensees. 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 propose rule language to ensure statutory compliance, including necessary updates resulting from 2017 Wisconsin Act 59.</p>	
<p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The Department expects the proposed rule to have minimal, if any, impact on small businesses, including: - 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</p>	
<p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. Because local governmental units will not be impacted by proposed rule changes to ATCP 21, ATCP 29, and ATCP 35, they were not involved in the development of this EIA.</p>	
<p>14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be</p>	

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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Incurred)

Proposed changes to ATCP 21, ATCP 29, and ATCP 35 are not anticipated to have any impacts on public utility rate payers, local units of government, businesses, or the state's economy as a whole.

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15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

These proposed rule revisions clarify terminology and standards for Wisconsin's nursery industry and beekeepers. This also aligns agency rules to state statutes, which reduces the possibility for confusion or error related to pesticide licensing, and assessment of fees and surcharges.

Clarifying spongy moth regulations will benefit Wisconsin's nursery industry, which generates \$2.85 billion in revenue per year and supports over 52,000 Wisconsin jobs, according to a study published in the Journal of Environmental Horticulture published in 2010.

Removing obsolete apiary rules will benefit Wisconsin's beekeepers, who play an integral role in pollinating Wisconsin's crops valued at \$213 million, and producing honey, valued at \$5.5 million in 2021.

Updating agency language to be consistent with the 2017 Act 59 (the 2017-2019 biennial budget Act) provides clearer understanding of pesticide-related revenues and expenditures. Positive impacts to business have been realized through the implementation of statutory changes resulting from the implementation of 2017 Wisconsin Act 59, which reduced compliance costs for businesses and consumers. This proposed rule change will bring agency rules into compliance with the current statutes.

The alternative is to do nothing, which allows continued mis-alignment of agency rules with state statute and industry standards.

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16. Long Range Implications of Implementing the Rule

Over the long-term, implementation of these rule changes will continue to benefit Wisconsin's nursery industry, beekeepers, pesticide manufacturers and labelers, pesticide dealers and distributors, commercial pesticide applicators, and those responsible persons requesting reimbursement through the ACCP. Benefits of these changes to improve consistency and clarify regulations will continue to benefit Wisconsin's agricultural industry.

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17. Compare With Approaches Being Used by Federal Government

The technical rule changes proposed in this rule will not create any disparities between Wisconsin rules and federal statutes and regulations.

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18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

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.

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19. Contact Name

Jill Hoskins

20. Contact Phone Number

608-224-4509

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This document can be made available in alternate formats to individuals with disabilities upon request.

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

**ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

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5. Describe the Rule's Enforcement Provisions

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes    No
-

# Wisconsin Department of Agriculture, Trade and Consumer Protection

## Regulatory Flexibility Analysis

***Rule Subject:***                    **Obsolete language and statutory alignment**

***Adm. Code Reference:***        **ATCP 21, ATCP 29, ATCP 35**

***Rules Clearinghouse No.:***

***DATCP Docket No.:***         **22-R-05**

### *Rule Summary*

The Department of Agriculture, Trade and Consumer Protection (Department) has conducted a comprehensive review of chs. ATCP 21, ATCP 29, and ATCP 35. The proposed rules remove obsolete language and better align with statute.

Presently, ch. 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.

Chapter ATCP 29 contains obsolete language regarding licensing of pesticide manufacturers and labelers.

Chapters 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 chs. ATCP 21, 29, and 35 with regard to recent statutory changes, current diagnostic techniques, and inclusive language. This proposed rule change will ensure compliance with industry standards and Wisconsin statutes, including necessary updates resulting from 2017 Wisconsin Act 59.

### *Small Businesses Affected*

The Department expects the proposed rule to have no adverse impact on small businesses, which may include:

- 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 (ACCP)

***Reporting, Bookkeeping and other Procedures***

The proposed rule revisions do not create new reporting, bookkeeping or other procedures required for compliance. The proposed rule eliminates obsolete language, corrects terminology, and aligns administrative rule with statutes.

***Professional Skills Required***

The proposed rule revisions do not create any new professional skill requirements for compliance with the rule.

***Accommodation for Small Business***


No accommodations for small business will be necessary for the proposed rule revisions.

***Conclusion***

These proposed rule revisions do not have an economic impact on small business, as defined in s. [227.114 \(1\)](#), Stats.

Dated this 5th day of October, 2022.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By   
Brian Weigel, Administrator,  
Division of Agricultural Resources Management



**State of Wisconsin  
Department of Agriculture, Trade and Consumer Protection**

**NOTICE OF PUBLIC HEARING AND COMMENT PERIOD**

The Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on a permanent rule for chapters ATCP 21, 29, and 35 relating to the removal of obsolete language and to resolve statutory conflicts, at the time and place shown below.

**Hearing Information**

Date: Friday, December 16, 2022

Time: 9:00a.m.

Location: In person: Prairie Oak State Office Building, Room 106  
2811 Agriculture Drive  
Madison, Wisconsin 53708

Virtual: Join ZoomGov meeting at:  
<https://www.zoomgov.com/j/1618273776?pwd=OXE1Z1hsSGhBenhpbXdEUUpqZ1ZzQT09>  
Meeting ID: 161 827 3776  
Passcode: 685473

**Appearances at the Hearing and Submittal of Written Comments**

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by December 9, 2022 by writing to Jill Hoskins at [jill.hoskins@wisconsin.gov](mailto:jill.hoskins@wisconsin.gov), or by phone at (608) 224-4509. Alternatively, you may contact the Department of Agriculture, Trade and Consumer Protection TDD at (608) 224-5058.

The rule may be reviewed and comments made at [https://datcp.wi.gov/Pages/About\\_Us/AdministrativeRules.aspx](https://datcp.wi.gov/Pages/About_Us/AdministrativeRules.aspx) no later than 4:30 p.m. on December 27, 2022.

Comments may be submitted to Jill Hoskins, Agrichemical Management Policy Analyst, Department of Agriculture, Trade and Consumer Protection, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708-8911, or by email to [jill.hoskins@wisconsin.gov](mailto:jill.hoskins@wisconsin.gov). Comments must be received by 4:30 p.m. on December 27, 2022 to be included in the record of rule-making proceedings.

**Initial Regulatory Flexibility Analysis**

The proposed rule will not have an effect on small businesses, as defined under s. 227.114 (1), Stats.

**Agency Small Business Regulatory Coordinator**

Bradford Steine, [Bradford.Steine1@wisconsin.gov](mailto:Bradford.Steine1@wisconsin.gov), (608) 224-5024