



State of Wisconsin  
Governor Scott Walker

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

**DATE:** December 4, 2015

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

**FROM:** Ben Brancel, Secretary *Ben Brancel*  
Karley Downing, Chief Legal Counsel *Karley Downing*

**SUBJECT:** Chs. ATCP 30, 40, 42, 50, 75 Appendix, 90, 91, 92, 93, 94, 105, 127, 134, 141  
Minor and Technical Changes to Multiple Department Chapters;  
Scope Statement

**TO BE PRESENTED BY:** Karley Downing

**REQUESTED ACTION:**

At the December 16, 2015, Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve a "Statement of Scope" (copy attached) for proposed minor and technical amendments to current DATCP rule chs 30, 40, 42, 50, 75 Appendix, 90, 91, 92, 93, 94, 105, 127, 134, 141 related to Pesticide Product Restrictions; Fertilizer and Related Products; Commercial Feed; Soil and Water Resource Management Program; Wisconsin Food Code; Fair Packaging and Labeling; Selling Commodities by Weight, Measure or Count; Weights & Measures; Flammable, Combustible, and Hazardous Liquids; Petroleum and Other Liquid Fuel Products; Sales Below Cost; Direct Marketing; Residential Rental Practices; Cherry Marketing Order. The proposed rule will make technical changes (non-substantive or minor substantive changes) to a number of administrative code chapters administered by DATCP.

A scope statement spells out the general purpose and scope of a proposed rule. DATCP 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 DATCP 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 November 18, 2015, thereby allowing DATCP to submit this scope statement for publication and to seek approval of the scope statement by the DATCP Board.

DATCP 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. DATCP filed the attached statement of scope with the Legislative Reference Bureau for publication in the November 23, 2015, issue of the Wisconsin Administrative Register. DATCP also filed a copy with DOA.

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If the Board approves the scope statement, DATCP will begin work to draft the permanent rule. Approval of the 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 DATCP may hold public hearings on the rule proposal. The Board must also approve the final draft rule before DATCP may adopt the rule. The permanent rule will be effective when the final draft has been approved by the DATCP 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 30, 40, 42, 50, 75 Appendix, 90, 91, 92, 93, 94, 105, 127, 134, 141

Relating to: Pesticide Product Restrictions; Fertilizer and Related Products; Commercial Feed; Soil and Water Resource Management Program; Wisconsin Food Code; Fair Packaging and Labeling; Selling Commodities by Weight, Measure or Count; Weights & Measures; Flammable, Combustible, and Hazardous Liquids; Petroleum and Other Liquid Fuel Products; Sales Below Cost; Direct Marketing; Residential Rental Practices; Cherry Marketing Order

Rule Type: Permanent

**1. Finding/nature of emergency (Emergency Rule only): N/A**

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

This proposed rule will make technical changes (Non-substantive or minor substantive changes) to a number of administrative code chapters administered by DATCP. This rule may make the following technical changes to current rules:

- Update technical standards incorporated by reference in current rules (new editions of technical references cited in current rules).
- Correct erroneous and obsolete citations and cross-references.
- Correct typographical errors.
- Make non-substantive organizational and drafting changes.
- Make other minor changes to current rules to incorporate new statutory language.

**3. 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:**

This proposed rule makes solely minor technical changes that make no policy changes.

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

**93.07 (1) and (24)**

### **93.07 Department duties:**

(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.

(24) ENFORCEMENT OF LAWS. To enforce chs. 88 and 93 to 100 and all other laws entrusted to its administration, and especially:

(a) To enforce the laws regarding the production, manufacture and sale, offering or exposing for sale or having in possession with intent to sell, of any dairy, food or drug product.

(b) To enforce the laws regarding the adulteration or misbranding of any articles of food, drink, condiment or drug.

(c) To inspect any milk, butter, cheese, lard, syrup, coffee, tea or other article of food, drink, condiment or drug made or offered for sale within this state which it may suspect or have reason to believe to be impure, unhealthful, misbranded, adulterated or counterfeit, or in any way unlawful.

(d) To prosecute or cause to be prosecuted any person engaged in the manufacture or sale, offering or exposing for sale or having in possession with intent to sell, of any adulterated dairy product or of any adulterated, misbranded, counterfeit, or otherwise unlawful article or articles of food, drink, condiment or drug.

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

The department estimates that it will use approximately 0.20 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.

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

The proposed technical changes to current rules will not have any impact on persons covered by those rules. There will be no adverse impact on business or local government.

### **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:**

Not applicable.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

None.

**Contact Person:** Kelly Monaghan, Legal Assistant, (608) 224-5023.

Ben Brancel  
Department Head or Authorized Signature

10-21-15  
Date Submitted

