

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

NOTICE OF HEARING

Rule Related to Dog Sellers and Dog Facilities

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) announces that it will hold public hearings on a proposed to create chapter ATCP 16, Wis. Adm. Code, relating to animal health and disease control.

DATCP will hold five public hearings at the times and places shown below. DATCP invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until Friday, October 8, 2010 for additional written comments. Comments may be sent to the Division of Animal Health at the address below, by email to Melissa.mace@wi.gov or online <http://AdminRules.Wisconsin.gov/>

You may obtain a free copy of this rule by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Animal Health, 2811 Agriculture Drive, P.O. Box 8911, Madison, WI 53708. You can also obtain a copy by calling (608) 224-4883 or emailing Melissa.mace@wi.gov. Copies will also be available at the hearings. To view the proposed rule online, go to: <http://AdminRules.Wisconsin.gov/>

To provide comments or concerns relating to small business, please contact DATCP's small business regulatory coordinator Keeley Moll at the address above, by emailing to Keeley.Moll@wi.gov or by telephone at (608) 224-5039.

Hearing impaired persons may request an interpreter for these hearings. Please make reservations for a hearing interpreter by September 9, 2010, by writing to Melissa Mace, Division of Animal Health, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4883. Alternatively, you may contact the DATCP TDD at (608) 224-5058. Handicap access is available at the hearings.

Hearing Dates and Locations:

Monday, September 20, 2010

5:00 p.m. - 7:00 p.m.

Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive,
First Floor – Room 106 (Boardroom)
Madison, Wisconsin 53718

Thursday, September 23, 2010

2:00 p.m. – 4:00 p.m.
Fox Valley Technical College
Room: E130 A&B
1825 North Bluemound Dr.
Appleton, WI 54914

Monday September 27, 2010

6:00 p.m. – 8:00 p.m.
The Plaza Hotel and Suites
Crystal 1 Room
1202 West Clairemont Ave
Eau Claire, WI 54701

Tuesday, September 28, 2010

2:00 p.m. - 4:00 p.m.
Wausau Public Library/Marathon County Public Library
Wausau room
300 North First St.
Wausau, WI 54403

Thursday, September 30, 2010

6:00 p.m. – 8:00 p.m.
Havenwoods State Forest
Auditorium
6141 North Hopkins Street
Milwaukee, WI 53209

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

This rule implements s. 173.41, Stats., created by 2009 Wis. Act 90. Act 90 requires the Department of Agriculture, Trade and Consumer Protection (“DATCP”) to license and regulate persons who do any of the following:

- *Operate an “animal control facility.”* Under this rule, an “animal control facility” means a facility in this state, for the care of animals, which is operated under a contract with a county, town or municipality under s. 173.15(1), Stats.
- *Operate an “animal shelter.”* Under this rule, an “animal shelter” means a facility in this state that is operated for the purpose of providing for and promoting the welfare, protection, and humane treatment of animals, that is used to shelter at least 25 dogs in a license year, and that is operated by a humane society, animal welfare society, animal rescue group, or other nonprofit group.

- *Operate as a “dog breeder.”* Under this rule, a “dog breeder” means a person who in any license year sells at least 25 dogs, from more than 3 litters, which that person has bred and raised in this state.
- *Operate a “dog breeding facility.”* Under this rule, a “dog breeding facility” means a place in this state where dogs are bred and raised and from which at least 25 dogs from more than 3 litters are sold in a license year.
- *Operate as a “dog dealer.”* Under this rule, a “dog dealer” means any of the following persons, other than an “out-of-state dog dealer:”
 - A person who in any license year sells in this state at least 25 dogs that the person owns but has not bred and raised.
 - A person, other than an auctioneer or auction company registered under ch. 480, Stats., who in any license year brokers or arranges the sale in this state of at least 25 dogs that are under that person’s custody or legal control (but that the person does not own and has not bred or raised).
 - An auctioneer or auction company registered under ch. 480, Stats., which operates one or more auctions in this state in which a combined total of 50 or more dogs are sold or offered for sale in any license year.
- *Operate in this state as an “out-of-state dog dealer.”* Under this rule, an “out-of-state dog dealer” means a non-resident person who in any license year imports at least 25 dogs for sale in this state, regardless of whether the dogs were bred or raised by that person.

This rule spells out standards required of license holders, including standards related to the care, transportation and sale of dogs.

Statutes Interpreted

Statutes Interpreted: 93.06(1g), (7) and (8), 93.21(5), 95.20, 95.23(1), 95.45(4)(c) and 173.41, Stats.

Statutory Authority

Statutory Authority: 93.07(1), 93.21(5), 95.20, 95.45(4)(c) and 173.41(3)(c) and (14), Stats.

Explanation of Statutory Authority

DATCP has broad general authority, under s. 93.07(1), Stats., to adopt rules interpreting laws under its jurisdiction. Under s. 173.41(14), Stats., DATCP is required to adopt rules implementing s. 173.41, Stats. DATCP also has relevant rulemaking authority under other statutes. DATCP has developed this rule in consultation with an advisory council, as required under s. 173.41(14), Stats.

Related Rules or Statutes

Under s. 173.27, Stats., and ch. ATCP 15, DATCP has adopted standards for the training and certification of county and local humane officers. Under s. 93.07(11), DATCP provides veterinary consultation and other assistance to county and local humane officers. Under ch. ATCP 10, DATCP has adopted general rules related to animal health, animal imports, animal movement and disease control.

Plain Language Analysis

License Required

Under this rule, a person who does any of the following must hold an annual license from DATCP, unless the person qualifies for a license exemption (see below):

- Operates an “animal control facility.”
- Operates an “animal shelter.”
- Operates as a “dog breeder.”
- Operates a “dog breeding facility.”
- Operates as a “dog dealer.”
- Operates in this state as an “out-of-state dog dealer.”

An annual license expires on September 30. A license holder must display a copy of the license at each animal control facility, animal shelter or dog breeding facility (if any) operated by the license holder. A license is not transferable between persons or facilities.

License Exemptions

The following activities are exempt from licensing under this rule:

- *Veterinary activities.* A veterinarian licensed under ch. 453, Stats., is not required to hold a license under this rule for activities that the veterinarian conducts in the normal course of veterinary practice, within the scope of the veterinarian’s license.
- *Agent care.* A person who, as contract agent for one or more license holders, keeps dogs owned or legally controlled by those license holders at a location owned or legally controlled by the agent is not required to be licensed under this rule if all of the following apply:
 - The agent keeps no more than 24 dogs at any single location owned or controlled by the agent.
 - The person keeps dogs for each license holder pursuant to a written agency contract with that license holder, subject to that holder’s license.
 - The agent agrees, in the agency contract, to meet the dog care standards in this rule and to permit reasonable DATCP inspection upon request.
 - Each license holder keeps records including the agent’s name and address, the address of each location at which the agent keeps dogs for the license holder, a copy of the agency

contract, the number of dogs that the agent keeps for the license holder, and the identification and health records required under this rule for each dog kept by the agent.

- *One-time liquidation sale.* No license is required under this rule for a one-time liquidation sale of dogs that the seller owns and keeps at a location owned by the seller if all of the following apply:
 - The seller gives DATCP written notice at least 30 days prior to the sale. The notice must include the starting date of the sale, the location of the sale, and the number of dogs that may be sold.
 - All dogs at the sale location are offered for sale.
 - No more than 30 dogs are offered for sale.
 - The seller does not add dogs during the sale, or include in the sale any dogs that the seller does not own.
 - The seller does not engage in any other activities for which a license is required, either during the license year in which the sale occurs or in the preceding or subsequent license year.

- *Breeding, raising and selling dogs for research.* No license is required under this rule to breed, raise and sell dogs solely for purposes of scientific research if all of the following apply:
 - The dogs are sold from the facility where they are bred and raised.
 - The dogs are sold only to animal care facilities licensed or registered by the United States department agriculture (USDA), and are not resold to any other person.
 - The facility at which the dogs are bred and raised complies with federal regulations under 9 CFR subchapter A (Animal Welfare).

- *Temporary dog market.* No license is required under this rule to operate a “temporary dog market” (a place where dog owners sell dogs from temporary booths or spaces that they rent from the market operator), provided that the market operator does all of the following:
 - Gives DATCP prior written notice of the market. The notice must include the beginning and ending dates of the market, the market location, and the approximate number of sellers who may bring dogs to the market.
 - Provides adequate facilities for, and takes reasonable steps to ensure, humane treatment of all dogs kept at the market.
 - Arranges for a Wisconsin certified veterinarian to examine all dogs kept at the market on each day of market operations, if the market operates for more than 2 consecutive days.
 - Obtains certain information from each person who brings dogs to the market, including the person’s name and address; the person’s dog seller license number (if any); the number of dogs that the person brings to the market; a description of each dog; the source of each dog (if the person has not owned the dog since its birth); documentation of rabies vaccination (if required); and documentation of legal import (if the dog was imported to this state). The market operator must keep the information for at least 5 years, and must make it available to DATCP for inspection and copying upon request.

- Allows DATCP to inspect the market during market hours.

Licensed Activities and Facilities

In some cases, a person may engage in more than one activity for which a license is required, or may operate more than one dog facility for which a license required. Under this rule, that person may obtain a single license document that covers all of those activities and facilities. However, the license document must identify each type of licensed activity and the location at which the license holder keeps dogs pursuant to the license. License fees are based on the number of licensed facilities, or the number of dogs sold by the license holder, or both:

- If a person operates one or more “animal control facilities” or “animal shelters,” the person must pay a separate license fee (flat amount) for *each* of those facilities.
- If a person operates one or more “dog breeding facilities,” the person must pay a separate license fee for *each* of those facilities based on the number of dogs sold from that facility.
- If a person sells dogs from one or more locations *other than* an “animal control facility,” “animal shelter” or “dog breeding facility,” the person must pay license fees based on the person’s combined annual dog sales from all of those locations.

A license holder may not keep dogs for any licensed purpose, either directly or through an agent, at any location other than the following:

- Locations identified in the license.
- Locations owned or legally controlled by contract agents who keep, for the license holder, dogs owned or legally controlled by the license holder. A license need not identify the license holder’s agents or agent locations. However:
 - The license application must disclose whether the license holder will use such agents.
 - The license holder must keep records identifying each agent and agent location, a copy of each agent’s contract with the license holder, the number of dogs (owned or legally controlled by the license holder) that are kept by each agent, and identification and health records related to those dogs.
 - The license holder must make the records available to DATCP for inspection and copying upon request.
- A “temporary dog market” that is registered and operated according to this rule.
- An auction location at which dogs are temporarily kept for the purpose of sale at auction, other than an auction conducted by the license holder.

Applying for a License

A person must apply for a license on a form provided by DATCP. The form must include all of the following:

- The applicant’s legal name and any trade names under which the applicant engages in licensed activities.
- The applicant’s principal business address.
- The address of each location at which the applicant may keep dogs pursuant to the license.
- A statement indicating whether any dogs owned or legally controlled by the applicant will be kept by agents at locations owned or legally controlled by those agents. The agents and agent locations need not be identified in the license application (but other requirements apply).
- A statement indicating whether the applicant operates any “animal control facility,” “animal shelter” or “dog breeding facility” and, if so, the type and address of each facility.
- An identification of each activity for which the applicant seeks a license.
- The total number of dogs that the applicant sold in this state during the preceding license year or, if the applicant did not sell any dogs in this state during the preceding license year, the total number of dogs that the applicant expects to sell in this state during the license year for which application is made. The applicant must report sales from all locations, including agent locations, but need not report sales from licensed “animal control facilities” or “animal shelters.” If any sales are made from a “dog breeding facility,” the application must indicate the number of sales made from that facility.
- All license fees and surcharges required under this rule (see below).
- If the applicant applies to be licensed as an “out-of-state dog dealer,” copies of all of the following:
 - Any dog seller’s license that the person is required to hold in the state from which that person operates in this state as an “out-of-state dog dealer.”
 - Any dog seller’s license that the person is required to hold under federal law.

License Fees and Surcharges

An annual license application must include the following nonrefundable fees and surcharges, as applicable:

- A license fee of \$125 for each “animal control facility.”
- A license fee of \$125 for each “animal shelter.”
- For each “dog breeding facility,” the following fee based on the number of dogs sold from that facility.

- \$250 if the number is at least 25 but less than 50.
 - \$500 if the number is at least 50 but less than 100.
 - \$750 if the number is at least 100 but less than 250.
 - \$1,000 if the number is at least 250.
- The following license fee based on the number of dogs sold from any location other than from an “animal control facility,” an “animal shelter” or a “dog breeding facility,” except that this fee does not apply to an “out-of-state dog dealer:”
 - \$250 if the number is at least 25 but less than 50.
 - \$500 if the number is at least 50 but less than 100.
 - \$750 if the number is at least 100 but less than 250.
 - \$1,000 if the number is at least 250.
 - A fee that is 150 percent of the above fee if the applicant is an “out-of-state dog dealer.”
 - A late renewal surcharge equal to 20% of all license fees required above if the applicant seeks to renew a license after that license has expired.
 - A surcharge equal to the total of all license fees required above if DATCP finds that the applicant operated without a license in the prior license year, or falsified the prior year’s license application to avoid fee payments.
 - Any unpaid reinspection fee properly charged under this rule (see below).

Timely Action on License Application

DATCP must grant or deny a license application 30 business days after it receives a complete license application except that, if the applicant seeks authorization to keep dogs at a location not previously licensed, DATCP must grant or deny the license within 30 days after it inspects that location (DATCP must complete the inspection within 60 days after it receives a complete license application).

Issuing or Withdrawing a License

DATCP may deny, suspend or revoke a license if the applicant or license holder fails to comply with applicable licensing requirements; is not fit, qualified or equipped to conduct the activity for which the license is required; has violated or failed to obey a relevant law, order, or regulation; or has misrepresented any information in a license application. DATCP may issue a license on a conditional basis, contingent on the license holder’s compliance with specified conditions.

DATCP may summarily suspend a license, without prior notice or hearing, if DATCP finds any of the following:

- That the license holder has violated this rule, and that the violation imminently threatens the health, safety, or welfare of any dog.

- That the license holder has committed an act of animal cruelty in violation of ch. 951, Stats.

Whenever DATCP denies, suspends or revokes a license, DATCP must give written notice specifying its reasons and notifying the applicant or license holder of the right to request a hearing on DATCP's action. DATCP may reinstate a license if circumstances warrant reinstatement.

Inspecting Licensed Operations

DATCP may at any time, during reasonable hours, inspect any location at which a person engages in any activity for which a license is required under this rule. Before DATCP licenses an applicant to keep dogs at a location not previously licensed, DATCP must inspect that location. DATCP must also inspect each licensed location at least once in every 2 license years. The inspection must examine the operator's compliance with applicable requirements under this rule, including applicable requirements related to recordkeeping, dog health and standards of care.

Whenever DATCP inspects a location under this rule, DATCP must give the operator a copy of its inspection report. The facility operator must post a copy of the most recent inspection report in a prominent place at the inspected location, so that visitors to that location can easily notice and read it.

DATCP may require a license holder to pay a reinspection fee of \$150 for each reinspection (other than a routine or regularly scheduled inspection) that DATCP makes to verify that rule violations noted in a previous inspection have been corrected. The reinspection fee is due upon written demand from DATCP, following the reinspection. An applicant for an annual license must include, in the license application, any unpaid reinspection fees.

Records Kept by License Holders

A license holder must keep all of the following records under this rule:

- *Dog records.* The following records related to each dog that comes under the license holder's custody or legal control, including any dog placed with a contract agent (see above):
 - A description of the dog including the dog's breed or type, sex, date of birth or approximate age, color, and distinctive markings.
 - Any USDA official identification assigned to the dog, including any official identification tag, tattoo or microchip information.
 - A statement that the dog was born under the license holder's custody or legal control, if that is the case.
 - All of the following information if the dog was not born under the license holder's custody or legal control:

- * The date on which the license holder acquired custody or legal control over the dog.
- * The identity of the person from whom the license holder acquired custody or legal control of the dog, including all of the following:
 - * The person's name and address, including state of residence.
 - * The person's USDA animal care facility license or registration number, if any.
- All of the following information if the dog is no longer under the license holder's custody or legal control:
 - * The date on which the dog left the license holder's custody or legal control.
 - * The disposition of the dog.
 - * The identity of the person, if any, to whom the license holder delivered custody or legal control of the dog.
- A copy of any certificate of veterinary inspection that accompanied the dog when it entered or left the license holder's custody or legal control.
- Health records related to the dog, including vaccination, observation and treatment records, whether the health care was administered by the license holder or by a veterinarian.
- Breed registration records if any.
- *Dog behavior and socialization plan.* A copy of the license holder's written dog behavior and socialization plan, as required by this rule (see below).
- *Records related to agents keeping dogs for license holder.* The following records related to each agent who keeps one or more dogs for the license holder at a location owned or legally controlled by the agent (see above):
 - The agent's name and address.
 - A copy of the agent's contract with the license holder.
 - The number of dogs placed with the agent.
 - Dog identification and health records related to all dogs placed with the agent (see above).

The license holder must keep the above records in written or readily readable electronic form. The records must be kept at the license holder's principal place of business, except that records related to a licensed animal control facility, animal shelter or dog breeding facility must be kept at that facility. The license holder must keep the records for at least 5 years after they are made, and must make them available to DATCP for inspection and copying upon request.

Dog Sales; Certificate of Veterinary Inspection

Under this rule, whenever a license holder sells a dog in this state, the dog must be accompanied by a certificate of veterinary inspection. The certificate must be prepared and signed by a Wisconsin certified veterinarian, except that a certificate accompanying a dog imported into this state may be issued by a veterinarian who is accredited by USDA and the state of origin.

A certificate of veterinary inspection must be issued on a form provided by DATCP, USDA, or the state in which the certificate is issued. A certificate issued in this state must be issued on a form provided by DATCP. The certificate must include all of the following:

- The name and address of the person selling the dog.
- The number, breed, sex and age of the dog.
- Whether the dog is spayed, neutered or sexually intact.
- The dog's vaccination record. The vaccination record must identify each type of vaccination that the dog has received. For each type of vaccination, the record must include all of the following:
 - The name of the vaccine manufacturer.
 - The vaccine serial number and lot number.
 - The date on which the vaccine was administered.
 - The name of the person who administered the vaccine.
- Import information required under current rules if the certificate accompanies a dog imported into this state.
- If the dog is sold at public auction, documentation showing that the dog has tested negative on a brucellosis test conducted within 30 days prior to the auction sale.
- The following statement, or a substantially similar statement, that is based on at least a brief personal examination by the veterinarian making the statement:

“I certify, as a veterinarian, that I have inspected the dogs identified on this certificate and that the dogs are not showing any sign of infectious, contagious or communicable disease, except as otherwise noted on this certificate. Vaccinations and test results are as indicated on this certificate. This certificate is not a warranty.”
- The veterinarian's signature and the date of signature.

The veterinarian must sign the certificate within 10 days after the veterinarian completes the examination on which the certificate is based. The certificate is valid for 30 days after the date of examination. Copies must be provided to the following persons:

- The person buying the dog.
- The person selling the dog.
- The veterinarian who issues the certificate.

Age at which Dogs May be Sold

A license holder may not, in connection with the sale of a dog, transfer that dog to the physical custody of the buyer unless one of the following applies:

- The dog is at least 7 weeks old.
- The dog is accompanied by its dam.
- The DATCP approves the transfer in writing.

Dog Care; General

A license holder (and the license holder's employees and agents) must comply with all of the following standards of care for dogs kept pursuant to the license:

- *Food and water:*
 - Each dog must be fed at least once a day, unless another schedule is needed to maintain or restore the dog's health.
 - The size and nutritional content of a dog's daily food ration must be based on dog's age, condition, size and weight.
 - Dog food must be wholesome, uncontaminated and palatable. Dog food must be stored in a manner that keeps it wholesome, uncontaminated and palatable. Food storage containers must be clean.
 - An adequate quantity of fresh water must be made available to each dog at all times, or as often each day as is necessary to keep the dog well-hydrated at all times. Water must be fluid, potable and uncontaminated.
 - Food and water must be provided in durable containers, except that food may be provided in disposable containers if discarded after one use.
 - Water containers, and non-disposable food containers and utensils, must be cleaned and sanitized as necessary to keep them in sanitary condition.
- *Animal health and veterinary care:*
 - Dogs must be handled as carefully as practicable, and in a manner that does not cause trauma, physical harm or unnecessary discomfort.
 - A caretaker must perform daily body, mobility and behavior checks on each dog.
 - A dog with a communicable disease must be separated from other susceptible animals.
 - Dogs must be groomed as necessary to prevent abnormal matted hair and overgrown nails, and to allow freedom of movement and normal bodily functions.
 - A veterinarian must examine each dog as often as necessary to ensure adequate health care.

- Sick, diseased or injured dogs must receive timely veterinary care or must be euthanized in a legal and humane manner.
- DATCP may, by written notice, require a license holder to submit a dog for veterinary examination if a DATCP inspection indicates that the dog is ill, injured or neglected.
- *Housing and transportation:* Dogs must be kept in facilities that comply with this rule (see below), and transported in compliance with this rule (see below).
- *Exercise:* Dogs must have reasonable daily exercise, based on the dog's breed, size, age and health condition. Dogs must have a daily access to a run or exercise area where they can achieve a running stride. Repetitive unsupervised physical activity, restrictive of other activities, must be avoided.
- *Dog grouping and separation:*
 - Dogs must be separated, as necessary, into compatible groups.
 - Females in season (estrus) may not be kept in the same un-separated enclosure with males, except for breeding purposes.
 - Dogs exhibiting potentially harmful aggressive behavior must be separated from other dogs.
 - Puppies under 4 months old may not be kept in the same un-separated enclosure with adult dogs other than their dam or foster dam, unless under direct supervision.
 - A dam in whelp must be separated from other dogs for at least one week prior to her expected whelping date.
- *Behavior and socialization:*
 - All dogs must have daily, full-body physical contact with other compatible dogs, except where such contact must be avoided for good cause.
 - All dogs must have daily positive human contact, not limited to feeding time.
 - All dogs must have play objects or other effective forms of inanimate enrichment in their primary enclosures, except where such objects or enrichment must be denied for good cause.
 - Dogs in solitary primary enclosures must have daily visual enrichment, except where that enrichment must be denied for good cause.
 - Dogs may not be deprived of contact, activity or enrichment for extended periods, except for good cause.
 - A license holder must have a written plan for meeting these requirements, and must instruct employees and agents on the terms of that plan.

Dogs Kept Indoors

The following requirements apply to an indoor facility at which a person keeps dogs pursuant to a license under this rule:

- *Primary enclosures; general requirements.* A “primary enclosure” is an enclosed space where a dog spends the majority of its sleeping and resting time. A “primary enclosure” must meet the following general requirements, except that different requirements apply to specific kinds of primary enclosures described below:
 - The area of the primary enclosure shall be at least equal to the sum of the following, where each dog’s length is measured from the tip of the dog’s nose to the base of the dog’s tail:
 - * For the largest dog in the primary enclosure, the following area:
 - 4.5 sq. ft. for a dog up to 10 inches long.
 - 8 sq. ft. for a dog 11 to 16 inches long.
 - 12 sq. ft. for a dog 17 to 22 inches long.
 - 18 sq. ft. for a dog 23 to 26 inches long.
 - 24 sq. ft. for a dog 26 to 30 inches long.
 - 30 sq. ft. for a dog more than 30 inches long.
 - * For each additional dog in the primary enclosure, the following area:
 - 3.375 sq. ft. for a dog up to 10 inches long.
 - 6 sq. ft. for a dog 11 to 16 inches long.
 - 9 sq. ft. for a dog 17 to 22 inches long.
 - 13.5 sq. ft. for a dog 23 to 26 inches long.
 - 18 sq. ft. for a dog 26 to 30 inches long.
 - 22.5 sq. ft. for a dog more than 30 inches long.
 - The height of the primary enclosure must be at least 12 inches taller than the tallest dog in the enclosure.
 - Each dog kept in the primary enclosure must have access, for at least 30 minutes each day, to a run or exercise area that is large enough for the dog’s size and temperament (considering the number of dogs that may use the run or exercise area at any given time), and large enough so that the dog can achieve a running stride.
- *Single-dog enclosure with separate run or exercise area.* The general requirements above do not apply to a primary enclosure for one dog if the enclosure is part of a facility that has a separate run or exercise area for the dog’s daily indoor or outdoor use and if all of the following apply:
 - The run or exercise area is large enough for the dog’s size and temperament (considering the number of dogs that may use the run or exercise area at any given time), and is large enough for the dog to achieve a running stride.
 - The dog spends at least 120 minutes per day in the run or exercise area.
 - The dog spends no more than 12 hours at a time in the primary enclosure, without access to the run or exercise area.

- The primary enclosure is long enough to accommodate the entire length of dog's head and body, measured from the tip of the dog's nose to the base of the dog's tail.
 - The primary enclosure is tall enough for the dog to stand normally and comfortably, and large enough for the dog to turn around and lie down.
- *Whelping enclosure.* A primary enclosure for a single whelping dam and her puppies must comply with all of the following requirements, rather than the general requirements above:
 - The enclosure must have a solid floor and be of an appropriate type for the breed.
 - The enclosure must be tall enough for the dam to stand normally and comfortably,
 - The enclosure must be large enough for the dam to lie down in a stretched out position, so that all puppies can simultaneously nurse.
 - The enclosure must be large enough for the number and temperament of the puppies.
 - The enclosure must be designed so that the dam can be away from puppies.
- *Nursery enclosure.* An primary enclosure for puppies between the age of weaning and the age of 4 months must comply with the following requirements, rather than the general requirements above:
 - The enclosure must be large enough to allow all of the puppies to turn around, stand up, lie down, and exercise normal postural movements.
 - The enclosure must be large enough to encourage socialization and exercise.
- *Floors and interior surfaces of indoor primary enclosures.* The following standards apply to all indoor primary enclosures:
 - Dirt floors are prohibited.
 - A floor, other than a floor in a whelping enclosure, may be constructed of metal wire mesh. Metal wire mesh floors must comply with all of the following requirements:
 - * The wire must be vinyl-coated.
 - * The wire must be of an adequate gauge to prevent sagging under the weight of the dog or dogs kept in the enclosure, and to prevent injury to the dogs' feet.
 - * The mesh openings must be small enough to prevent the feet of the smallest dog kept in the enclosure from passing through or becoming entangled in the mesh.
 - Floors and other interior surfaces must be constructed and maintained to keep dogs safe from injury, clean and dry. Surfaces must be regularly cleaned and sanitized.
- *Stacking primary enclosures.* No indoor primary enclosure may stacked on top of any other indoor primary enclosure unless the stacking arrangement complies with all of the following:
 - The floor of the top enclosure must be no higher than 52 inches from the floor of the room in which the enclosures are stacked.

- The stacking arrangement must provide for safe dog handling, adequate ventilation and temperature control, easy cleaning and sanitization, and easy inspection of all stacked enclosures.
 - Each stacked enclosure must have ventilated sides and a solid floor that can be easily cleaned and sanitized.
 - The stacked enclosures must be stable when filled to maximum capacity with dogs.
 - No dog in any of the stacked enclosures may be exposed to any excreta, urine, dirt or debris falling from a higher enclosure.
- *Lighting, temperature and ventilation.* Indoor facilities in which primary enclosures are located must meet all of the following requirements:
 - The facility must have well-distributed natural or artificial light that is adequate for proper care, maintenance and inspection of the facility and of all dogs kept in the facility. All areas in which dogs are kept must have a diurnal lighting cycle.
 - The facility must have adequate heating and cooling facilities, and must be heated and cooled as necessary to keep temperatures within appropriate limits, based on the dog breeds kept at the facility and the ability of those breeds to acclimate to temperature variation. Dogs must be protected from heat, cold and humidity that may be injurious to their health.
 - The facility must be adequately ventilated with fresh or filtered air to maintain the health and comfort of all dogs and to minimize odors, drafts, ammonia levels and moisture condensation. The facility must provide an exchange of air between indoor areas where dogs are kept and the outdoors.
- *Cleaning and sanitization.*
 - Excreta must be removed from primary enclosures and other dog holding areas at least daily, and more often as necessary for the health and comfort of all dogs.
 - Primary enclosures and other dog holding areas must be cleaned with an appropriate detergent, then rinsed and sanitized with an appropriate sanitizer, as often as necessary to be free of accumulated dirt, debris and disease hazards.
 - A primary enclosure must be cleaned and sanitized before any new dog is placed in the enclosure.
 - Dogs must be removed from primary enclosures and other dog holding areas before those enclosures or areas are cleaned and sanitized. Dogs may not be returned to a cleaned or sanitized enclosure or area until the enclosure or area is dry.
 - All dog bedding shall be maintained in a clean, dry condition.

Dogs Kept Outdoors

The following requirements apply to an outdoor facility at which a person keeps dogs pursuant to a license under this rule:

- *Dogs must be capable of staying outdoors.* A dog kept in an outdoor primary enclosure shall be all of the following:

- Readily able to tolerate the outdoor temperatures and conditions to which the dog may be exposed in that enclosure, considering the dog's breed, age, health and physical condition.
 - Acclimated to the outdoor temperatures and temperature variations that may occur in that enclosure.

- *Outdoor primary enclosure; minimum area.* The area of an outdoor primary enclosure (not counting the area of any *dog shelter* in the primary enclosure) shall be at least equal to the sum of the following, where each dog's length is measured from the tip of the dog's nose to the base of the dog's tail:
 - For the largest dog in the primary enclosure, the following area:
 - * 4.5 sq. ft. for a dog up to 10 inches long.
 - * 8 sq. ft. for a dog 11 to 16 inches long.
 - * 12 sq. ft. for a dog 17 to 22 inches long.
 - * 18 sq. ft. for a dog 23 to 26 inches long.
 - * 24 sq. ft. for a dog 26 to 30 inches long.
 - * 30 sq. ft. for a dog more than 30 inches long.

 - For each additional dog in the primary enclosure, the following area:
 - * 3.375 sq. ft. for a dog up to 10 inches long.
 - * 6 sq. ft. for a dog 11 to 16 inches long.
 - * 9 sq. ft. for a dog 17 to 22 inches long.
 - * 13.5 sq. ft. for a dog 23 to 26 inches long.
 - * 18 sq. ft. for a dog 26 to 30 inches long.
 - * 22.5 sq. ft. for a dog more than 30 inches long.

- *Shelter, shade and windbreak.* An outdoor primary enclosure shall include all of the following:
 - A *dog shelter* (see below) that is accessible by all dogs kept in the primary enclosure.
 - A shaded area, other than the dog shelter, which is adequate to shade all dogs in the primary enclosure from direct sunlight during all sunlight hours, without crowding.
 - A windbreak, other than the dog shelter, which is adequate to shelter all dogs in the primary enclosure from wind.

- *Dog shelter.* A dog shelter, provided for dogs kept in an outdoor primary enclosure, shall be all of the following:
 - Made of a durable material, have 4 sides, a roof, and a flat solid floor.

- Be big enough to accommodate all dogs kept in the primary enclosure without crowding. The roof of the shelter shall be at least 12 inches higher than the standing height of the tallest dog that may use the shelter.
- Be constructed and maintained to do all of the following:
 - * Prevent injury to dogs that use it.
 - * Allow all dogs using it to retain or dissipate enough body heat for health and comfort.
 - * Allow all dogs using it to remain dry and clean.
 - * Give all dogs using it reasonable protection from predators.
- *Outdoor primary enclosure; construction.* An outdoor primary enclosure shall be constructed and maintained to prevent dogs from escaping from the enclosure. If any portion of the primary enclosure is covered by a roof or overhead screen, the roof or screen must be at least 12 inches higher than the standing height of the tallest dog in the primary enclosure.
- *Outdoor tethering; general.* A dog may not be tethered outdoors unless all of the following apply.
 - The dog is of a breed for which tethering is considered reasonably appropriate.
 - The dog can readily tolerate tethering, based on its age, health and physical condition.
 - The tethered dog can easily enter and lie down in a dog shelter that complies with this rule (see above).
 - The tethered dog is not a pregnant or nursing female.
 - The tether cannot become entangled with any object.
 - The tether has an anchor swivel.
 - The tether is at least 6 feet long and of sufficient length for the size of the dog.
 - The tether is attached to the dog by means of a non-tightening collar or harness of sufficient size for the dog.
- *Tethering prohibited at animal control facilities and animal shelters.* Tethering may not be used for any dog kept outdoors at an animal control facility or animal shelter.
- *Access to run or exercise area.* Each dog kept in an outdoor primary enclosure must have access, for at least 30 minutes each day, to a run or exercise area that meets all of the following requirements:
 - It must be large enough for the dog's size and temperament (considering the number of dogs that may use the run or exercise area at any given time), and large enough so that the dog can achieve a running stride.
 - It must include a shaded area large enough to shade all dogs using the run or exercise area. However, the run or exercise area need not include a shelter unless the run or exercise area also serves as a primary enclosure.
- *Outdoor facility maintenance.* Outdoor facilities must be maintained to protect the health and safety of dogs kept in those facilities. Maintenance must include all of the following:

- Excreta must be removed from outdoor primary enclosures at least daily.
- Pests and parasites must be controlled as necessary to maintain dog health and comfort.
- Dog bedding must be kept in a clean, dry condition.

Transporting Dogs

A license holder (and the license holder's employees and agents) must comply with the following standards related to the transportation of dogs:

- *Portable enclosures.* A portable enclosure used to transport one or more dogs, including any enclosure that is placed on or forms part of a transport vehicle, must meet all of the following requirements:
 - It must be constructed of water-resistant and cleanable material.
 - It must be designed to keep all dogs within the enclosure clean and dry.
 - It must be designed to protect the health and safety of all dogs in the enclosure.
 - It must have ventilation openings to ensure the comfort and health of all dogs in the enclosure.
 - It must be securely closed when in use.
 - It must be cleaned and sanitized between occupancy by different dogs, and more often as necessary to keep it in a clean condition.
 - When on a transport vehicle, it must be all of the following:
 - * Positioned so that each dog in the enclosure has access to sufficient air for normal breathing.
 - * Positioned so that the opening through which dogs enter and exit the enclosure is accessible at all times for emergency removal of dogs from the enclosure.
 - * Positioned so that all dogs in the enclosure are protected from the elements.
 - * Positioned or protected so that no dog in the enclosure is exposed to excreta falling from above.
 - * Secured as necessary to prevent reasonably foreseeable movement that may injure dogs.
- *Care of dogs during transport.* The following standards apply to dogs that are being transported:
 - Each dog must at all times be protected from hypothermia and hyperthermia. Transportation vehicles must be heated or cooled, if necessary, to comply with this paragraph.

- Each dog must have sufficient space to turn, stand, and lie down.
 - Each dog must be provided with food and water, according to standards in this rule.
 - Dogs must be separated if incompatible (see grouping and separation standards above).
 - Each dog shall be visually inspected every 4 hours.
 - Each dog must be removed from the transport vehicle at least once every 12 hours, and be allowed to urinate, defecate and exercise.
 - Each dog must be promptly removed from the transport vehicle when the vehicle reaches its destination.
- *Transport vehicles.* The following standards apply to a transport vehicle that is used to transport dogs:
 - The vehicle must be equipped to provide fresh or filtered air, without injurious drafts, to all dogs that are transported in the vehicle.
 - The dog cargo space must be constructed and maintained to minimize the ingress of exhaust from the vehicle's engine.

Prohibited Conduct

No license holder may do any of the following, either directly or through an employee or agent:

- Prevent or interfere with a DATCP inspection under this chapter, or assault an inspector.
- Refuse or fail, without just cause, to produce evidence or records requested by DATCP.
- Misrepresent a dog's breed or pedigree, or move a diseased dog in violation of current law.
- Knowingly accept dogs from a person who is not properly licensed to supply those dogs (unless the person accepts the dogs to protect them, and promptly reports the acceptance to DATCP).

Variances

In response to a written request, DATCP may grant a written variance from an animal care standard under this rule if DATCP finds that the variance is reasonable and necessary under the circumstances and will not compromise the purpose served by the standard. A variance must be issued in writing, must include DATCP's findings, and must include the specific terms of the variance (including any time limit on the variance). A variance request must include information to show that the variance is justified.

Fiscal Impact

This rule will not have a significant state or local fiscal impact. Section 173.41(14), Stats., created by 2009 Wis. Act 90, requires DATCP to license and inspect "animal control facilities," "animal shelters," "dog breeders," "dog breeding facilities," "dog dealers" and "out of state dog breeders" that do business in this state. DATCP must inspect licensed facilities prior to

licensing, and at least once every 2 years. Act 90 provided staff and funding for this licensing and inspection activity.

This rule will not create additional staffing requirements or program costs, beyond those entailed by Act 90 itself, nor will it change license fee revenues. Act 90 authorized DATCP to change initial statutory license fees by rule. However, this rule does not make any significant changes to the statutory fees.

Under Act 90 and this rule, whenever a license holder sells a dog in this state, the dog must be accompanied by a certificate of veterinary inspection (health certificate). The certificate must be issued by a Wisconsin certified veterinarian, on an official form provided by DATCP. Certified veterinarians may purchase the forms from DATCP at a cost of \$0.60 each (the same as for certificates used under other animal health programs). DATCP estimates that certificate sales will generate \$44,000 in program revenue each year. Act 90 contemplates that these revenues will be used to help fund this program.

A complete *Fiscal Estimate* is attached.

Business Impact

This rule will affect persons who operate “animal control facilities,” “animal shelters” or “dog breeding facilities” in this state, or who operate as “dog breeders,” “dog dealers” or “out-of-state dog dealers” in this state. Under 2009 Wis. Act 90, these persons must be annually licensed and must pay annual license fees as provided in this rule (see above). This rule does not, by itself, increase license requirements or fees (beyond the licensing requirements and fees already created by Act 90).

This rule spells out licensing standards for persons who are required to be licensed under this rule, including standards for the care, transportation and sale of dogs. Many of the persons who are subject to licensing under this rule are already meeting the standards under this rule, but others will incur costs to bring their facilities and practices into compliance with this rule.

- Under Act 90 and this rule, whenever a license holder sells a dog in this state, the dog must be accompanied by a certificate of veterinary inspection (health certificate). The certificate must be issued by a Wisconsin certified veterinarian, on an official form provided by DATCP. The certificate forms cost only \$0.60 each (an estimated \$44,000 for sellers statewide), but there will be a significant cost for veterinarian services. This could have a significant financial impact on license holders, especially small dog breeders. However, this rule does not add any costs beyond those imposed by Act 90 itself.
- The facility requirements in this rule are, for the most part, rudimentary. However, some license holders may need to make significant facility upgrades in order to comply with the standards in this rule and ensure a humane level of care.
- This rule requires license holders to keep inventory, identification and health records related to dogs that they keep or sell. Many of the persons affected by this rule already keep such

records, but others do not. This rule may impose additional recordkeeping costs on those who do not. Many of the recordkeeping requirements in this rule are also contained (in more general form) in Act 90, so this rule does not add significantly to the costs already imposed by Act 90.

- This rule may require some dog sellers to hire additional staff, or hire professional services (especially veterinarian services) to comply with this rule and provide a humane level of care to dogs under their custody or control.

This rule will benefit the dog care and sales industry by establishing basic standards of humane care and fair competition. This rule will also benefit dog buyers by providing greater assurance that dogs are healthy and well-adjusted, and have been humanely treated.

Many of the persons affected by this rule are “small businesses.” This rule, like Act 90, exempts animal shelters that keep no more than 25 dogs per year. It also exempts dog breeders and dog dealers who sell no more than 25 dogs a year from no more than 3 litters. But neither Act 90 nor this rule make other significant exemptions for “small business,” because many of the most serious animal health and humane problems addressed by Act 90 are found in “small business” settings.

The standards in this rule give affected businesses some flexibility and choices, consistent with the basic requirement of humane care. DATCP may issue licenses on a conditional basis, giving some license holders additional time to bring their operations into full compliance. DATCP may also grant variances for good cause, if the variance does not undermine the purpose of the standard from which the variance is granted.

A complete *Business Impact Analysis* is attached.

Federal and Surrounding State Programs

Federal Programs

Currently, USDA licenses and inspects approximately 49 kennels in Wisconsin that are selling puppies wholesale. USDA establishes minimum facility standards for those licensed facilities.

Surrounding State Programs

- *Minnesota* has no comparable licensing program for dog sellers or dog facilities. Proposed legislation failed in the last session, but will likely be reintroduced in the next session.
- *Illinois* licenses and regulates persons that have custody of more than 5 female dogs who breed dogs for sale. Illinois also licenses and regulates pet shops, dog dealers, kennel operators and catteries. Regulations establish minimum standards of care, record keeping requirements, and requirements for dog movement.
- *Michigan* has no comparable licensing program for dog sellers or dog facilities.

- *Iowa* licenses and regulates person that have custody of more than 3 breeding male or female dogs, including boarding kennels, breeders and dealers. Regulations establish minimum standards of care, record keeping requirements, and requirements for dog movement.

Data and Analytical Methodologies

DATCP consulted with an advisory committee comprised of individuals that will be licensed and regulated under this rule, and veterinarians. DATCP representatives also attended USDA presentations related to humane dog care standards.

Standards Incorporated by Reference

This rule incorporates, by reference, humane euthanasia methods identified by the American Veterinary Medical Association in *Appendix 1* to its *Guidelines on Euthanasia (June 2007)*. DATCP will ask permission from the Attorney General and the Legislative Reference Bureau to incorporate this material by reference in this rule. Copies will be kept on file with DATCP and the Legislative Reference Bureau.

Dated this _____ day of August, 2010

STATE OF WISCONSIN,
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Randy Romanski, Deputy Secretary