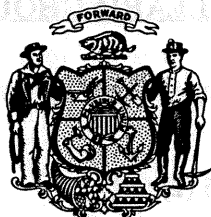


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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-149

AN ORDER to amend ATCP 74.08 (1), relating to fees required of agent cities and counties that license and inspect retail food establishments.

Submitted by **DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION**

10-25-00 RECEIVED BY LEGISLATIVE COUNCIL.

11-15-00 REPORT SENT TO AGENCY.

RS:NZ:rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING, AMENDING OR REPEALING RULES**

- 1 The state of Wisconsin department of agriculture, trade and consumer protection proposes the
- 2 following order to amend ATCP 74.08(1), relating to fees required of agent cities and counties
- 3 that license and inspect retail food establishments.

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

Statutory authority: ss. 93.07(1), 97.41(2) and 97.41(5), Wis. Stats

Statute interpreted: s. 97.41(5), Wis. Stats.

The Department of Agriculture, Trade and Consumer Protection ("DATCP") licenses and inspects retail food establishments under s. 97.30, Stats. Under s. 97.41, Stats., DATCP may enter into an agreement with a city or county, under which the city or county licenses and inspects retail food establishments as DATCP's local agent. DATCP monitors, trains and assists the local agent. From the license fees it collects, the local agent must pay DATCP an annual fee to cover DATCP's costs. DATCP sets the fee by rule.

Under current rules, a local agent must pay DATCP an annual fee for each locally licensed retail food establishment that is equal to 20% of the license fee DATCP would charge if DATCP licensed the establishment directly. Effective February 1, 1998, DATCP increased license fees for retail food establishments that it licenses. The fee increase resulted, in part, from a legislative budget change that required DATCP to recover 60% (rather than 50%) of its food safety program costs from license fees. The fee change approximately doubled DATCP's license fees, increasing the maximum retail food license fee from \$210 to \$450 and the minimum fee from \$42 to \$90.

As an indirect consequence of DATCP's 1998 license fee increase, local agents were also required to pay increased fees to DATCP beginning with the license year ending June 30, 2000. Because local agents were required to pay 20% of the increased license fee amounts, their fee obligations to DATCP effectively doubled. This projected fee increase exceeded DATCP's needs and burdened local agents.

DATCP adopted an emergency rule to ease this fee burden for the license year ending June 30, 2000. The emergency rule temporarily reduced the local agents' percentage fee payment from 20% to 10%. This rule "permanently" reduces the local agents' percentage fee payment from 20% to 10%.

1 **SECTION 1.** ATCP 74.08(1) is amended to read:

2 ATCP 74.08(1) The fiscal year under an agency agreement shall begin on July 1 and end
3 on June 30, except as otherwise authorized by the department. Each agent city or county shall
4 pay the department ~~20%~~ 10% of the license fee charged under s. ATCP 75.015(2m), to reimburse
5 the department for costs as required under s. 97.41(5), Stats. By September 30 of each year, the
6 agent city or county shall file with the department all reimbursement required under this
7 subsection for licenses issued during the previous fiscal year.

8 **EFFECTIVE DATE.** The rules contained in this order shall take effect on the first day
9 of the month following publication in the Wisconsin administrative register, as provided in
10 s. 227.22(2)(intro.), Stats.

Dated this _____ day of _____, 2000

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary



State of Wisconsin
Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary

DATE: June 28, 2000

TO: State Legislators

FROM: Ben Brancel, Secretary

SUBJECT: **Emergency Rule Reducing Fees for Agent Cities and Counties that License and Inspect Retail Food Establishments**

Pursuant to s. 227.24(3), Stats., the Department of Agriculture, Trade and Consumer Protection is forwarding a copy of an emergency rule to reduce excessive fees charged to agent cities and counties that license and inspect retail food establishments under contract with the department. This emergency rule benefits agent cities and counties as well as the retail food establishments they license by reducing fees that they must pay the department. This emergency rule reduced the percentage fee payment from 20% to 10% beginning with the license year that ends June 30, 2000.

Background

The department licenses and inspects retail food establishments under s. 97.30, Stats. Under s. 97.41, Stats., the department may enter into an agreement with a city or county whereby the city or county licenses and inspects retail food establishments as an agent of the department. The department monitors and assists the agent city or county. From the license fees that it collects, an agent city or county must pay the department an annual fee to cover department costs. The fee is set by department rule.

By rule, the department establishes state license fees for retail food establishments that it licenses directly. An agent city or county may charge a license fee that differs from the license fee established by the department.

Under current rules, an agent city or county must pay the department an annual fee for each retail food establishment that is equal to 20% of the license fee the department would charge if it licensed the establishment directly. This percentage rate has been in effect since the agent program was established.

Effective February 1, 1998, the department adopted rules which increased license fees for retail food establishments that the department licenses. The fee increase was caused, in part, by a legislative budget change that required the department to recover 60% (rather than 50%) of its program costs from license fees. The fee change approximately doubled the departments license fees, increasing the maximum retail food license fee from \$210 to \$450 and the minimum fee from \$42 to \$90.

The department's 1998 license fee increase effectively increased the annual fees that agent cities and counties were required to pay to the department, beginning with the license year ending June 30, 2000. Agent cities and counties were required to pay the department 20% of the increased license fee amounts. This effectively doubled projected city and county fee payments to the department, and imposed a serious financial burden on city and county governments. The increased fee payments would have exceeded the amounts needed to cover the department's costs under agent city and agent county agreements.

Why an Emergency Rule is Needed

In order to reduce the financial burden on local governments and eliminate the surplus in department fee receipts, it was necessary to reduce the percentage fee payment by agent cities and counties from 20% to 10% beginning with the license year that ends June 30, 2000. The department needed to make this rule change by June 30, 2000, but could not do so using normal rulemaking procedures. The department therefore adopted this rule change by emergency rule, pending adoption by normal rulemaking procedures.

Emergency Rule Contents

This is a simple rule change that merely reduces the annual percentage fee payment required of agent cities and counties from 20% to 10%.

Fiscal Effect

Even with this fee reduction, the department will be able to cover its costs under the retail food agent program. The rule will ease a serious fiscal problem for county and local agents. A fiscal estimate is attached. The rule change may also benefit retail food establishments licensed by agent cities and counties.

Next Steps

An emergency rule is a temporary rule that takes effect upon publication in the official state newspaper. An emergency rule remains in effect for 150 days, unless extended by the Legislature's Joint Committee for Review of Administrative Rules. The department will hold a public hearing on the emergency rule as required by chapter 227, Stats. The date, time and location for that hearing has not been determined. Notice of the hearing will be published as required by chapter 227, Stats.

**ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING EMERGENCY RULES**

- 1 The state of Wisconsin department of agriculture, trade and consumer protection hereby adopts
2 the following emergency rule to amend ATCP 74.08(1), relating to fees required of agent cities
3 and counties that license and inspect retail food establishments.

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

Statutory authority: ss. 93.07(1), 97.41(2) and 97.41(5), Wis. Stats

Statute interpreted: s. 97.41(5), Wis. Stats.

The Department of Agriculture, Trade and Consumer Protection (“department”) licenses and inspects retail food establishments under s. 97.30, Stats. Under s. 97.41, Stats., the department may enter into an agreement with a city or county, under which the city or county licenses and inspects retail food establishments as the department’s agent. The department monitors and assists the agent city or county. From the license fees it collects, an agent city or county must pay the department an annual fee to cover the department’s costs. The department sets the fee by rule.

Under current rules, an agent city or county must pay the department an annual fee for each locally licensed retail food establishment that is equal to 20% of the license fee the department would charge if it licensed the establishment directly. This emergency rule reduces the fee to 10%.

FINDING OF EMERGENCY

The state of Wisconsin department of agriculture, trade and consumer protection (“department”) finds that an emergency exists and that the following emergency rule is necessary to promote the public welfare, and prevent unnecessary economic hardship on cities and counties that license and inspect retail food establishments for the department. The facts constituting the emergency are as follows:

- (1) The department licenses and inspects retail food establishments under s. 97.30, Stats.

Under s. 97.41, Stats., the department may enter into an agreement with a city or county, under

which the city or county licenses and inspects retail food establishments for the department. The department monitors and assists the agent city or county. From the license fees it collects, an agent city or county must pay the department an annual fee to cover the department's costs. The department sets the amount of the annual fee by rule.

(2) The department, by rule, establishes state license fees for retail food establishments that the department licenses directly. An agent city or county may charge a license fee that differs from the state license fee established by the department.

(3) Under current rules, an agent city or county must pay the department an annual fee for each retail food establishment that is equal to 20% of the license fee the department would charge if it licensed the establishment directly.

(4) Effective February 1, 1998, the department increased license fees for retail food establishments that it licenses. The fee increase was caused, in part, by a legislative budget change that required the department to recover 60% (rather than 50%) of its food safety program costs from license fees. The fee change approximately doubled the department's license fees, increasing the maximum retail food license fee from \$210 to \$450 and the minimum fee from \$42 to \$90.

(5) As an indirect consequence of the department's 1998 license fee increase, agent cities and counties were also required to pay increased fees to the department beginning with the license year ending June 30, 2000. Because agent cities and counties were required to pay 20% of the increased license fee amounts, their fee obligations to the department effectively doubled. The increased fee obligations exceeded the amounts needed to cover the department's costs and imposed an unnecessary burden on county and municipal governments.

(6) In order to reduce the financial burden on local governments and eliminate a projected surplus in fee collections, it is necessary to reduce the agent city and county percentage fee payment from 20% to 10% beginning with the license year that ends June 30, 2000. However, it is not possible to make this rule change by June 30 using normal rulemaking procedures. DATCP is therefore adopting this rule change by emergency rule, pending adoption by normal rulemaking procedures.

EMERGENCY RULE

SECTION 1. ATCP 74.08(1) is amended to read:

ATCP 74.08(1) The fiscal year under an agency agreement shall begin on July 1 and end on June 30, except as otherwise authorized by the department. Each agent city or county shall pay the department ~~20%~~ 10% of the license fee charged under s. ATCP 75.015(2m), to reimburse the department for costs as required under s. 97.41(5), Stats. By September 30 of each year, the agent city or county shall file with the department all reimbursement required under this subsection for licenses issued during the previous fiscal year.

EFFECTIVE DATE. The emergency rule contained in this order shall take effect upon publication, and shall remain in effect for 150 days, as provided under s. 227.24(1)(c), Wis. Stats. The department may seek to extend this emergency rule as provided in s. 227.24, Stats.

Dated this 28 day of June, 2000

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Ben Brancel
Ben Brancel, Secretary