

APR 05 2001

Clearinghouse No. 00-149
Docket No. 00-R-13

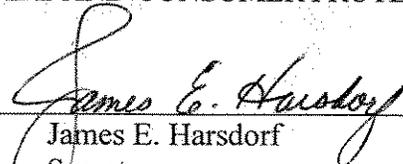
STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
NOTICE OF SUBMISSION OF PROPOSED RULES TO PRESIDING OFFICERS OF
EACH HOUSE OF THE LEGISLATURE

NOTICE IS HEREBY GIVEN, pursuant to s. 227.19(2), Stats., that the State of Wisconsin Department of Agriculture, Trade and Consumer Protection is submitting a final draft of proposed Clearinghouse Rule Number 00-149 to the presiding officer of each house of the legislature for standing committee review. The proposed rule adopts Chapter ATCP 74; relating to Fee reduction for cities and counties that license and inspect retail food establishments.

Dated this 30th day of March, 2001.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By


James E. Harsdorf
Secretary



State of Wisconsin
Scott McCallum, Governor

Department of Agriculture, Trade and Consumer Protection
James E. Harsdorf, Secretary

DATE: March 21, 2001

TO: The Honorable Fred A. Risser
President, Wisconsin State Senate
220 South, State Capitol
P. O. Box 7882
Madison, WI 53707-7882

The Honorable Scott Jensen
Speaker, Wisconsin State Assembly
211 West, State Capitol
P. O. Box 8952
Madison, WI 53708-8952

FROM: James E. Harsdorf, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: **Proposed Rule Relating to Fee Reduction for Cities and Counties that License and Inspect Retail Food Establishments (Clearinghouse Rule No. 00-149)**

The Department of Agriculture, Trade and Consumer Protection (DATCP) hereby transmits the above rule for legislative committee review, pursuant to ss. 227.19(2) and (3), Stats. We are enclosing 3 copies of the final draft rule, together with the following report. We will publish a notice of this referral in the Wisconsin Administrative Register, as required by s. 227.19(2), Stats.

Background

This rule reduces the fees that DATCP charges to county and local governments that license retail food establishments for DATCP. DATCP currently 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.

Agent cities and counties set their own license fees. From the license fees that they collect, they must pay annual fees to cover DATCP's costs for oversight, training and support. DATCP sets these annual fees by rule. Under current rules, a local agent must

pay DATCP an annual fee, for each retail food establishment, that is equal to 20% of the license fee that DATCP would charge if DATCP licensed the establishment directly. This percentage rate has been in effect since the agent program was established.

Effective February 1, 1998, DATCP by rule 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 program costs from license fees. The fee change approximately doubled DATCP 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 the department's 1998 license fee increase, agent cities and counties were also required to pay increased fees beginning with the license year ending June 30, 2000. Because the local agents were required to pay 20% of the increased license fee amounts, their fee obligations to the department effectively doubled. The new fee obligations exceeded the department's needs and burdened the local agents.

In order to reduce the burden on local agents and eliminate a projected fee surplus, the department reduced the percentage fee payment required of local agents from 20% to 10%. By emergency rule, the department reduced fees for the license year ending June 30, 2000. However, the emergency rule remains in effect for only 150 days. This rule will make the fee reduction "permanent."

Rule Contents

The rule change in Wis. Adm. Code § ATCP 74.08(1) will lower the required reimbursement rate for the retail agent program from 20% to 10% of fees charged in § ATCP 75.015(2m). This will eliminate the increase in reimbursement costs for the local governments, which resulted from the department's last increase in license fees. This will, in turn, reduce the need for county and local governments to increase license fees for retail food establishments.

Hearing Comments

The department held one hearing in Madison on January 17, 2001, to solicit comments on the draft rule. No persons appeared at the hearing for information purposes or to testify either in support or opposition to the proposed amendment. The hearing record remained open until January 26, 2001 for receipt of additional written comments. The department received no written comments.

Changes from Hearing Draft

The department made no changes in the final draft rule after the public hearing. The Legislative Council Rules Clearinghouse report made no recommendations for changes in the hearing draft.

Fiscal Estimate

This rule is not expected to have a significant fiscal impact on the department. The rule change will ease a potentially serious fiscal problem for local governments that have entered into an agent city or county agreement with the department to license and inspect retail food establishments within their jurisdiction. A fiscal estimate is attached as *Appendix A*.

Small Business Analysis

The rule change will reduce the need for county and local government to increase license fees for retail food establishments within the city's or county's jurisdiction. A final small business analysis ("final regulatory flexibility analysis") is attached as *Appendix B*.

**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 _____, 2001

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary

Fiscal Estimate — 1999 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number Ch. ATCP 74

Subject
 Reimbursement Costs for Cities and Counties that Contract with DATCP to License and Inspect Retail Food Establishments

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.
 Yes No
 Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations
 20.115(1)(gb)

Assumptions Used in Arriving at Fiscal Estimate

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 for DATCP. DATCP monitors and assists the agent city or county. From the license fees that it collects, an agent city or county must pay DATCP an annual fee to cover DATCP's cost. Under current rules, an agent city or county must pay DATCP an annual fee for each retail food establishment that is equal to 20% of the license fee that DATCP would charge if DATCP licensed the establishment directly. This percentage rate has been in effect since the agent program was established.

DATCP, by rule, 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 state license fee established by DATCP.

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

DATCP's 1998 license fee increase incidentally increases the annual fees that agent cities are required to pay to DATCP, beginning with the license year ending June 30, 2000. As a result of DATCP's license fee increase, agent cities and counties are required to pay DATCP 20% of the increased license fee amounts. This effectively doubles city and county fee payments to DATCP and may impose a serious financial burden on city and county governments. The increased fee payments also would exceed the amounts needed to cover DATCP costs under agent city and agent county agreements.

Long-Range Fiscal Implications

None

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Authorized Signature <i>Barbara Knapp</i>	Telephone No. 224-4746	Date (mm/dd/ccyy) 3-19-01



State of Wisconsin
Scott McCallum, Governor

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

Final Regulatory Flexibility Analysis

Amendment of Section ATCP 74.08(1), Wis. Adm. Code

Fees Required of Agent Cities and Counties that License and Inspect
Retail Food Establishments

The modifications to s. ATCP 74.08(1), Wis. Adm. Code (Retail Food Establishment; Local Government Regulation) will help small businesses. There are 23 agents and approximately 3,600 retail food establishments that are part of the department's agent retail food establishment licensing and inspection program. Chapter ATCP 74, Wis. Adm. Code, gives the city and county governments jurisdiction to license and inspect these establishments. The cities and counties also have the right to charge their own fees based on the costs of their programs.

Section ATCP 74.08(1), Wis. Adm. Code requires the local governments to pay the department a 20% reimbursement based on the fees charged in s. ATCP 75.015(2m) Wis. Adm. Code. When the department increases its fees, this causes the local governments to increase their fees. Those actions increase the fees charged to the retail food establishments.

The proposed change to s. ATCP 74.08(1) Wis. Adm. Code, will lower the required reimbursement rate for the retail agent program from 20% to 10% of the fees charged in s. ATCP 75.015(2m). This will eliminate the increase in reimbursement costs for the local governments, which resulted from the department's last increase in license fees. This will, in turn, reduce the need for county and local governments to increase license fees for retail food establishments.

Signed this 19th day of March, 2001

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

By Steven B. Steinhoff
Steven B. Steinhoff, Administrator
Division of Food Safety