

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

ATCP 74, Local Agents and Regulations

3. Subject

To merge, revise, and clarify the rule, merging portions of Wis. Admin. Code Ch. ATCP 75 and Wis. Admin. Code Ch. DHS 192, setting forth the contractual relationship between the Department and local agent programs after the merger of DHS's Food and Recreational Licenses Unit with Department's Division of Food and Recreational Safety.

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

20.115(1)(gb)

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

The rule was not promulgated to correct a policy issue. It was promulgated to merge and clarify two existing rules from separate Departments (DATCP and DHS) following the merger of the units in these Departments that inspect food and recreational businesses.

10. 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.

This rule does not focus on business but, rather, on local health departments and their relationship with the Department.

11. Identify the local governmental units that participated in the development of this EIA.

The rule was posted for comment and many business entities provided feedback. The scope of this rule had very minimal fiscal impact on business. All comments were taken into account, but fiscal issues raised by business (such as capping license fees charged by agent programs) were beyond the scope of this rule.

12. 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 Incurred)

The proposed rule change neither eliminates a fee nor creates one. The rule is primarily directed at local governmental units that enter into a contractual relationship with the State to do retail food, lodging, and recreational safety inspections. Since the rule clarifies contractual language, merges the language and expectations of two programs, and clarifies expectations for credentialing of staff, it should have a positive impact by allowing local governmental units to do better planning.

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

The benefit to the implementation of this rule is that it will clarify the rules for all the local agent programs that will now work as agents of one state agency instead of two.

14. Long Range Implications of Implementing the Rule

The new rule sets out the expectations for the local agent food safety and recreational programs. It will promote statewide consistency in many areas, which will be good for businesses, consumers, and the Department.

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15. Compare With Approaches Being Used by Federal Government

The federal government has similar relationships with state programs that do contract inspection work for both the FDA and the USDA.

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

This chapter clarifies the unique relationship between the Department and any local health department in Wisconsin that requests to act as an agent of the Department. Local jurisdictions in each state provide state-specific and unique levels of service, so comparison of rules adopted in surrounding states with Wisconsin's rules, related to local health department agents, is of limited benefit.

Minnesota currently has only seven local health department agent programs that perform retail food establishment inspections under the oversight of the Minnesota Department of Agriculture ("MDA"). All other food-related inspections are completed under the oversight of the Minnesota Department of Health ("MDH"). The agent programs have their own fee structure and issue their own licenses. The MDA has taken parts of the 2005 FDA model Food Code and incorporated them into their administrative rules. They require a Registered Environmental Health Sanitarian ("REHS") certification for inspection staff or a degree-equivalent in order to perform food inspections. They also require new hires without the REHS to earn that credential within two years and to operate under the supervision of a credentialed inspector until they earn the credential. The MDH has similar requirements.

Iowa also has agent program food inspectors regulating retail food establishments. The agent programs perform only retail food inspections, follow Iowa's state rules, and must use Iowa's inspection program. They must also use Iowa's fee structure for licenses. An RS or REHS certification or supervision by a certified person for food inspections is not required, but Iowa is working toward meeting Standard 2 (Trained Regulatory Staff) in the FDA's National Voluntary Program Standards. Iowa's policies and program expectations may change as the Iowa program meets FDA's retail food inspection regulatory standards.

Michigan allows local jurisdictions to perform only restaurant inspection. All other retail food establishment inspection is done by the state. Michigan does not require restaurant inspectors to hold an RS or an REHS credential, but does have state accreditation standards that are roughly similar, and requires twenty Continuing Education Units ("CEUs") of on-going education per year as well as the successful completion of an audit. The agent programs are allowed to issue licenses and set fees.

Illinois does not perform any retail food inspection on a state level. Local programs perform all the retail and restaurant inspection. They do not issue licenses locally, but are funded by a state grant, the Local Health Program Grant. The state requires a Licensed Health Professional certification, which is Illinois' version of Wisconsin's RS or the national REHS. This certification requires five CEUs per year. Illinois evaluates the local programs at the same frequency Wisconsin does, and continuation of local programs depends on passing an evaluation.

17. Contact Name

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18. Contact Phone Number

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ATTACHMENT A

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)

This rule is expected to have a minimal effect on businesses since they are already regulated by either DATCP or Local Agent Programs. The focus of this rule is the relationship between the Local Agent Programs and the Department (DATCP).

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

The focus of this rule is on the relationship between DATCP and agent local health departments, not businesses.

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:

This rule does not focus on business but, rather, on agent local health departments and their relationship with the Department.

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

This rule does not focus on business but, rather, on agent local health departments and their relationship with the Department.

5. Describe the Rule's Enforcement Provisions

The Department is empowered to enter into contractual relationships with agent local health departments to allow them to do retail inspections and follow-up work under Wis. Stat. 97.41. Agent programs are evaluated to determine compliance with the provisions of the contract, and any failure of the evaluation or breach of contract will be a violation of Wis. Admin. Code Ch. ATCP 74. This will improve accountability of agent programs and promote consistency across the State.

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

- Yes No
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