



State of Wisconsin
Governor Scott Walker

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

DATE: August 27, 2013

TO: The Honorable Mike Ellis
President, Wisconsin State Senate
Room 220 South, State Capitol
PO Box 7882
Madison, WI 53707-7882

The Honorable Robin Voss
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
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FROM: Ben Brancel, Secretary
Department of Agriculture, Trade and Consumer Protection

**SUBJECT: **Manufactured Home Communities – Fair Trade Practices
(Clearinghouse Rule #13-027)****

Introduction

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) is transmitting this rule for legislative committee review, as provided in s. 227.19 (2) and (3), Stats. DATCP will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19 (2), Stats.

This rule makes a number of updates and revisions to existing Ch. ATCP 125, Mobile Home Parks.

Background

ATCP 125 was first promulgated as Ag 125 in 1972. At the time, zoning restrictions led to a shortage of mobile home sites in many areas of the state, which inhibited competition and market choice. The rule was promulgated to address unfair trade practices and methods of competition that emerged in the industry. The rule prohibited mobile home park operators from using unfair or deceptive trade practices. It also required that rental contracts be in writing and contain specific disclosures. The rule was revised in 1976 and again in 1987.

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Rule Content

This rule does all of the following:

- Modernizes the existing rule by incorporating the defined terms “manufactured home” and “manufactured home community”. These terms replace the current rule’s “mobile home” and “mobile home park”.
- Repeals the definition “television service” and creates the definition “electronic communication service” which will specify the mechanisms operators are allowed to use, or are prohibited from using, when billing tenants for these services.
- Amends the definition “utility service” to exclude water and sewer services. Section 100.20 (2) (b), Stats., was created after the promulgation of the current rule, which prohibits DATCP from regulating water and sewer services provided by manufactured home community operators.
- Updates the phrase “mobile home parking fee assessed by local units of government” with the term “municipal permit fee,” as specified under ch. 66, Stats.
- Repeals outdated and obsolete provisions in the current rule.

Under the current rule, rent and other charges may not be increased during the term of the rental agreement. However, this provision does not apply to “mobile home parking fees” and charges for utility services not included in rent. This rule expands the exceptions to include waste hauling or recycling fees that are assessed by local units of government.

Under the current rule, rental agreements are required to express the amount of rent due in each rent paying period in dollars. Under the proposed rule, if the tenant requests a rental agreement that is three years or greater, the amount of rent due in each rent paying period may be expressed in either a dollar amount or a defined formula based on the consumer price index.

Under the current rule, a rental agreement may not include a security deposit greater than either \$350 or three months’ rent, whichever is less. This rule updates the maximum security deposit to \$750, or two months’ rent, whichever is less.

Public Hearings

DATCP held two public hearings on this rule. The first was in Wausau on April 30, 2013 and second was in Madison on May 1, 2013. There were no attendees at the Wausau hearing. There were two attendees at the Madison hearing, Ross Kinzler and Amy Bliss, both representing the Wisconsin Housing Alliance. Both registered support for the proposed rule. Mr. Kinzler provided verbal testimony. DATCP did not receive any written comments.

***DATCP's Rule Changes in Response to
Public Hearings and Rules Clearinghouse Comments***

DATCP made some organizational revisions and technical corrections based on Rules Clearinghouse suggestions. However, there are no substantive policy changes from the hearing draft.

Small Business Regulatory Review Board Report

The Small Business Regulatory Review Board did not issue a report on this rule.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations

The federal government does not generally regulate manufactured home sales or rental practices. However, Congress did pass the National Manufactured Housing Construction and Safety Standards Act of 1974, which direct the Department of Housing and Urban Development (HUD) to develop regulations; which are now known as the Federal Manufactured Housing Construction and Safety Standards.

Comparison with Rules in Adjacent States

Illinois statutes contain the Mobile Home Landlord and Tenant Rights Act. Among other things, this act restricts park owners from prohibiting television antennas, requires written leases, allows for temporary occupancy in certain situations, requires park owners to disclose information about rent charged during the last five years and projections for the next three, and restricts park owners' ability to control the sale of mobile homes within the park.

Minnesota administrative code regulates mobile home parks and the methods park owners can use to bill residents for utility costs incurred by the community. For example, rental agreements must be in writing and specify certain terms and conditions related to the location of the lot, amount of rent, services or facilities that the park owner agrees to provide, and the name of any person holding a security interest in the resident's home. Minnesota law prohibits park owners from requiring residents to use the services of a particular dealer or broker when selling their home, or buy goods or services from a particular vendor.

Iowa does not have any laws in place related to mobile or manufactured homes or parks. Iowa legislation was introduced in 2011 to grant mobile home residents rights similar to tenants and proposed to place restrictions on park operators operating as real estate agents. This legislation did not pass.

Michigan has law in place related to mobile home park owners and specifies the rights of a tenant. Park owners are prohibited from charging entrance and exit fees, charging more than 1.5 times the amount of monthly rent as a security deposit and cannot require a person to buy a

mobile home from another person as a condition of renting space in that park. Park owners must offer tenants a written lease for one year or more, and provide a copy of rules that govern maintenance, pets, fees, and charges that may be incurred by the tenant. Park owners must keep specific written records for each tenant.

Summary of Factual Data and Analytical Methodologies

According to the Department of Safety and Professional Services web page (www.dsps.wisconsin.gov), there are approximately 1,074 licensed manufactured home communities in Wisconsin, with a total of 52,316 home sites (these statistics are from an on-line listing of licensed manufactured home parks by DSPS (March, 2011)).

Effect on Small Business

The rule impacts manufactured home park operators. Many manufactured home park operators are small businesses. This rule does make some minor changes to park operators' duties and responsibilities, but it does not represent major changes from current rule. Therefore, the effect on small business is expected to be minimal.