

Wisconsin Department of Agriculture, Trade and Consumer Protection

Final Regulatory Flexibility Analysis

Rule Subject: Local Agents and Regulation
Adm. Code Reference: ATCP 74
Rules Clearinghouse #: 15-R-19
DATCP Docket #: 16-082

Rule Summary

On July 1, 2016, Wis. Admin. Code Ch. DHS 192 and the section of Wis. Admin. Code Ch. ATCP 75 related to agent programs were combined to create a new Wis. Admin. Code Ch. ATCP 74 relating specifically to the relationship of the Department's new Division of Food and Recreational Safety ("DFRS") and its local health department agent programs. The proposed Wis. Admin. Code Ch. ATCP 74 clarifies the Department's expectations for agent program inspection systems, aligning those expectations with statutory requirements.

The new rule standardizes language from Wis. Admin. Code Ch. ATCP 75 and Wis. Admin. Code Ch. DHS 192. It also standardizes, expands, and clarifies definitions of agent program terms. In doing so, it spells out Department expectations for persons hired by agent programs to hold, or be eligible to obtain and to work toward holding, the Registered Sanitarian ("RS") certification. The RS certification is the preferred credential for all sanitarians doing food and recreation inspections. The revised rule clarifies the Department's expectations regarding inspection done by those sanitarians who have not yet earned the RS certification, as well as the staffing procedures to be followed by agent programs if certified RS staff leave the program.

The revised Wis. Admin. Code Ch. ATCP 74 also clarifies the Department's expectations for agent program inspection systems and databases, and spells out the terms to be covered by forthcoming Department-agent contracts. It adds a mandatory expiration date after which the contract may be renewed. The rule clarifies the Department's expectations for agent programs seeking to enter into a contractual relationship and the procedures to enter into that agreement, and it clarifies the procedures for either or both entities to end the contractual relationship. The rule also updates and clarifies the roles that both the Department and the agent program shall play under the contractual relationship and the types of support, levels of training, and information that are to be shared by each of the partners in the contractual relationship.

This new rule clarifies the responsibilities of the agent programs to enforce Department statutes, rules, and policies; to inform the Department of their enforcement activities; and do such sampling as is required by the Department. It also clarifies the financial responsibilities of the agent programs for that sampling. In addition, the new rule clarifies the responsibilities of the

Department to provide general and specialized training and laboratory support for the agent programs.

Wis. Admin. Code Ch. ATCP 74 further clarifies statutory requirements, including reimbursements owed to the Department, the payments-for-services that the agent program may be required to make to the Department, and the types of financial records that the agent program must make available to the Department upon request. In particular, it spells out the responsibility of agent programs to demonstrate that the fees charged by the local program are reasonable and used only for maintaining the local program.

Small Businesses Affected

The Small Business Regulatory Review Board did not issue a report on this rule since this rule change is anticipated to have no impact on small business. The focus of this rule is on the administration of the local agent programs and has no overall impact on small businesses. The rule was, however, posted for general comment including any potential economic impact. The Department did receive comments from organizations that represent businesses, including small businesses, inspected by local health agents. The Wisconsin Grocers Association submitted public hearing comments in support of the rule, and the Wisconsin Association of Local Health Departments and Boards and the Wisconsin Restaurant Association indicated they neither supported nor opposed the rule.

Accommodation for Small Business

The rule's impact is on governmental units and their interaction with other governmental units. There is only minimal, incidental effect on small business.

Conclusion

The revised rule brings clarity, consistency, and transparency to the relationships between the Department and agent local health departments. In particular, the transparency required of local health departments in their assessment of fees charged to cover the costs of their programs could be very helpful to small businesses.

The revised rule also clarifies the contractual obligations between the Department and the local health department agents as well as setting up a sunset clause on any contracts creating those agencies. This clarification will be helpful in promoting state-wide uniformity and baseline standards.

This rule will not have a significant adverse effect on "small business" and is not subject to the delayed "small business" effective date provided in Wis. Stat § 227.22(2)(e).

The Department will, to the maximum extent feasible, seek voluntary compliance with this rule.

Dated this _____ day of _____, 2017.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
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Division of Food and Recreational Safety