

**THE DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER
PROTECTION'S PROPOSED ORDER TO ADOPT PERMANENT RULES**

PROPOSED ORDER

The Wisconsin Department of Agriculture, Trade and Consumer Protection proposes an order *to amend* ATCP 16.08 (1) and (2), and 16.12 (6) *relating to* the dog sellers and dog facility operators.

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

Statutes Interpreted: Wis. Stat. § 173.41.

Statutory Authority: Wis. Stat. §§ 173.41 (3) (c) and (6) (d) and 173.41 (14).

Explanation of Agency Authority

Wis. Stat. § 173.41 (3) (c) authorizes the Department to promulgate a rule to increase the statutorily provided license fees if necessary to cover the cost of administering s. 173.41, Stats.

Wis. Stat. § 173.41 (6) (d) authorizes the Department to specify reinspection fees that differ from the amount provided by statute.

Wis. Stat. § 173.41 (14) authorizes the Department to promulgate rules in consultation with an advisory committee established under par. (b).

Related Statutes and Rules

Wis. Admin. Code ch. ATCP 16.

Plain Language Analysis

The Dog Sellers and Facilities Program was created in 2011 to ensure the welfare of dogs and provide consumer protection. The Department licenses and inspects about 500 facilities under this program. The minimum licensing fees were set when the program began and have not changed since 2011.

The program revenue appropriation (appropriated by Wis. Stat. § 20.115 (2) (j)) does not have adequate revenue to recover costs. The Department is not able to reduce expenditures to the level of current revenues without resulting in a failure to fulfill statutory requirements.

The Department convened an ATCP 16 Advisory Committee to advise the Department in relation to the Statement of Scope (SS 093-20), pertaining to license fees and reinspection fees for dog sellers and dog facility operators. The Committee was comprised of representatives from each of the groups under Wis. Stat. § 173.41 (14) (b).

This rule proposal includes a 100% license fee increase for shelter/control facilities, a 120% license fee increase for all other entities, and a 167% reinspection fee increase. The table below shows the current and proposed license and reinspection fee amounts, the amount of each change, the number of licensees in each category, and the average reinspection count each year.

Fee Proposal

Description	Current Fee	Proposed Fee	\$ Change	% Change	# Licenses/ Reinspect.
In-State License					
Dog Sellers: # Dogs/Year					
25-49	\$250	\$550	\$300	120%	114
50-99	\$500	\$1,100	\$600	120%	101
100-249	\$750	\$1,650	\$900	120%	75
250 or more	\$1,000	\$2,200	\$1,200	120%	27
Shelter/Control Facility	\$125	\$250	\$125	100%	179
Out-Of-State License					
Dog Sellers: # Dogs/Year					
25-49	\$375	\$825	\$450	120%	6
50-99	\$750	\$1,650	\$900	120%	2
100-249	\$1,125	\$2,475	\$1,350	120%	1
250 or more	\$1,500	\$3,300	\$1,800	120%	1
Shelter/Control Facility	\$188	\$375	\$188	100%	
Reinspection	\$150	\$400	\$250	167%	23

The proposed fees would ensure recovery of annual program costs and would gradually eliminate the current and projected deficit over five years. Without the proposed fee increase, the appropriation would continue to operate in a negative cash balance until a different change occurs, such as the creation of an alternative funding source or a statutory change. The Department would continue to report the negative cash balance to the Joint Committee on Finance.

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

The United States Department of Agriculture (USDA) licenses some businesses that breed or broker dogs. As of March 2020, there are 86 USDA-licensed dog breeders (Class A) and 10 USDA-licensed dog brokers (Class B) in Wisconsin. These numbers include some, but not all, businesses that are also licensed as dog sellers by the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP).

USDA and DATCP have different criteria for determining whether an entity needs to be licensed, as well as different minimum facility requirements. USDA does not license retail pet stores and does not license breeders with four or fewer breeding females. DATCP licenses persons who operate an animal shelter, animal control facility, dog breeder, dog breeding facility, dog dealer, or out-of-state dog dealer. Among other criteria defined in Wis. Stat. § 173.41 (1), these are entities that shelter or sell 25 or more dogs in a year.

Summary of Comments Received during Hearing and Comment Periods

Preliminary Public Hearing and Comment Period on the Statement of Scope

The Department held a preliminary hearing on the statement of scope (SS 093-20) on August 20, 2020, with comments open until August 27, 2020. The hearing was held remotely. The Department received two comments during the preliminary hearing. Both comments requested that the Department exempt shelter/control facilities from a fee increase. No written comments were received.

In response to public comments, the Department discussed options with the ATCP 16 Advisory Committee. All members of the Committee expressed support of an option to increase license fees to recover the annual costs and recover the projected deficit over five years. Individual members either expressed support of increasing all license fees by an equal percentage or expressed support of increasing the license fees for shelter/control facilities by 100% and all other license fees by a higher amount. The preliminary rule draft, as well as this final rule draft, included a 100% license fee increase for shelter/control facilities, a 120% license fee increase for all other entities, and a 167% reinspection fee increase.

Comment Period on the Economic Impact Analysis

The economic impact analysis was posted for 60 days, with comments accepted through June 21, 2021. No comments were received.

Public Hearing and Comment Period on the Preliminary Rule Draft

The Department held public hearings on the preliminary rule draft on August 31 and September 2, 2021, with comments accepted through September 16, 2021. Both hearings offered a combination of in-person access and remote access. The Department sent an email notice to licensees notifying them of the hearing and comment period, in addition to the posting in the Administrative Register. There were no attendees, either in-person or remote, at the public hearings. The Department received six written comments. Three opposed the fee increase generally, two opposed the size of the fee increase, and one did not express a position. Comments regarding the fee increase expressed that:

- Fee increases would be harmful to business
- Fee increases would punish entities operating legally
- A fee increase generally is understandable but the size is too large
- Fee increases should be done gradually over multiple years
- The program should be funded through other means, such as general fund revenue

This final rule draft includes the same fee increases as the preliminary rule draft, as these fee increases are necessary to recovery program costs and ensure the appropriation does not maintain a negative cash balance. The effective date of the rule will be delayed three months for small businesses, pursuant to Wis. Stat. § 227.22 (2) (e). Based on current projections for the timeline of the rule process, the proposed rule would become effective for all entities by the September 30, 2023 renewal cycle, which allows licensees two years from the time of the hearings (August and September 2021) to plan for the fee increases.

Without the proposed fee increase, the appropriation would continue to operate in a negative cash balance until a different change occurs, such as the creation of an alternative funding source or a statutory change. The Department would continue to report the negative cash balance to the Joint Committee on Finance.

One of the six comments also expressed that boarding kennels should be included in the program. The Department is unable to evaluate in this rule whether to include boarding kennels in the program, as the categories of entities requiring licensing are established by statute (Wis. Stat. § 173.41).

One of the six comments also asked why her not-for-profit non-stock corporation registered with the Wisconsin Department of Financial Institutions with a tax exempt Employer Identification Number (EIN) is licensed as a dog seller and not a shelter/control facility. The Department researched the question and determined that any entity meeting the statutory definition of animal control facility or animal shelter, under Wis. Stat. § 173.41 (1) (a) and (b), may be licensed under the shelter/control facility license category rather than one of the dog seller license categories. The Department is communicating with the commenter regarding the status of her license and whether a change to her license is appropriate.

Rules Clearinghouse

The Department modified the rule draft to address all Clearinghouse comments.

Comparison with Rules in Adjacent States

Each of the adjacent states has a program related to dog sellers and facilities, but the programs vary greatly. Below is a comparison of the programs in Wisconsin, Illinois, Iowa, Michigan, and Minnesota. Each have unique program structures, program requirements, and funding sources.

Wisconsin

Wisconsin licenses dog sellers and dog facility operators, including animal shelters and control facilities.

Wisconsin's program is funded through Program Revenue (PR). The primary source of program revenue is from license fees, but there is also a smaller portion of program revenue from reinspection fees.

Wisconsin's current license fees are shown below. The first amounts listed are the license fees for in-state entities and the second amounts listed in parentheses are the license fees for out-of-state entities, which are 150% of the license fees for in-state entities.

- \$250 (\$375) for entities licensed to sell or offer to sell at least 25 but fewer than 50 dogs per year
- \$500 (\$750) for entities licensed to sell or offer to sell at least 50 but fewer than 100 dogs per year
- \$750 (\$1,125) for entities licensed to sell or offer to sell at least 100 but fewer than 250 dogs per year
- \$1,000 (\$1,500) for entities licensed to sell or offer to sell 250 or more dogs per year
- \$125 (\$188) for entities licensed to operate an animal shelter or animal control facility

Wisconsin's current reinspection fee is \$150. On average, there are approximately 23 reinspections per year.

When the Department receives an application for licensure, that application is reviewed and processed. The Department conducts a pre-license inspection that the applicant must pass prior to the issuance of a license. The Department conducts routine inspections of all licensed premises at least once every two years.

The Department also receives and reviews complaints. The Department investigates cases of entities operating without a license and other alleged violations. The Department also conducts follow-up inspections and reinspections when violations are noted as part of an investigation or inspection, to ensure that compliance is gained. The Department takes compliance actions as appropriate, which can include an action on a license (such as to suspend, condition, deny, or revoke), or referral for civil forfeiture or criminal action.

Wisconsin has three dedicated companion animal inspectors, part of a veterinarian specialist, part of a license/permit program associate, and part of an inspector supervisor. Additional staff, including a compliance officer and other field staff, assist as needed when a reinspection or further actions are required.

Wisconsin currently licenses 506 entities:

- 120 (114 in-state and 6 out-of-state) entities licensed to sell or offer to sell at least 25 but fewer than 50 dogs per year
- 103 (101 in-state and 2 out-of-state) entities licensed to sell or offer to sell at least 50 but fewer than 100 dogs per year
- 76 (75 in-state and 1 out-of-state) entities licensed to sell or offer to sell at least 100 but fewer than 250 dogs per year
- 28 (27 in-state and 1 out-of-state) entities licensed to sell or offer to sell 250 or more dogs per year
- 179 (all in-state) entities licensed to operate an animal shelter or animal control facility

Illinois

Illinois licenses animal shelters and animal control facilities, dog and cat breeders, kennel operators, dog day care operators, pet store operators, dog dealers, horse rescues, and guard dog services.

Illinois' program is funded through General Revenue Funds (GRF). All licensing fees and fines go back into GRF.

Illinois' initial license application fee is \$350. The license renewal fee is \$100. Late license renewals have a \$300 late fee.

When Illinois receives an application, the inspector in that area is assigned to do an initial inspection. A license will not be sent until that inspection has been completed and approved by the inspector. Illinois does complaint-based inspections. Illinois strives for annual inspections, but annual inspections are not always obtainable due to resources and staffing.

Illinois currently has five field inspectors and one field veterinarian, who are also responsible for inspection of animal health licenses (such as auctions, markets, etc) and other duties as assigned.

Illinois currently has the following number of licensees:

- 168 animal controls
- 517 animal shelters
- 6 cat breeders
- 9 dog dealers
- 4 guard dog services
- 22 horse rescues
- 585 kennel operators
- 196 dog breeders with over six intact females
- 228 day care operators
- 340 pet shop operators

Iowa

Iowa authorizes the operation of:

- Commercial establishments which are commercial breeders (breeds and sells dogs or cats and owns four or more intact males or females)
- Dealers (which includes rescues)
- Animal shelters
- Pounds
- Research facilities
- Commercial kennels (grooming, boarding, training, dog daycare)
- Boarding kennels
- Pet stores
- Public auctions
- Iowa also permits USDA licensed breeders and dealers

Iowa's program is funded through licensing fees and an appropriation from the general fund.

Iowa's program fee is \$175 per year for all of the above mentioned commercial establishments, except for animal shelters and pounds which are \$75 per year.

In order to be an authorized commercial establishment in Iowa, one must apply and submit an application fee. Once these are received, an inspector performs a pre-licensing inspection. If the facility is compliant, a license is issued. If the facility is noncompliant, then the inspector documents the areas of noncompliance and the corrective actions that are necessary and discusses a timeline with the applicant. The inspector will perform a reinspection. All commercial establishments, with the exception of USDA permittees, are inspected once per calendar year. Inspections are unannounced. If the facility is noncompliant, then the inspector documents the areas of noncompliance, the corrective actions necessary to become compliant, and a deadline to become compliant. The inspector then performs a reinspection. An inspection is also performed if Iowa receives a complaint against a licensed establishment.

Iowa has eight inspectors and two compliance investigators. About two-thirds to three-quarters of each inspectors' duties are inspections of commercial establishments. However, they do have other job duties. Iowa does not inspect USDA permittees unless Iowa receives a complaint against one. Iowa responds under the state's animal welfare law, not the program regulations.

Iowa has 1,540 authorized commercial establishments, of which 291 are licensed as commercial breeders plus an additional 299 USDA permittees.

Michigan

Michigan requires licensure or registration for pet shops, animal shelters, and large-scale dog breeding kennels. The pet shop program is currently suspended.

Michigan's program is funded partially through license fees and partially through general funds.

Michigan's pet shops program has a one-time fee of \$100. Michigan's large-scale dog breeding kennels (16 or more intact females that have whelped before) has a yearly license fee of \$500. Michigan's animal shelters program is funded entirely by general funds. There is no required application or registration fee for Michigan's animal shelters program.

Michigan law requires a pre-licensing inspection for shelters and pet shops. Michigan requires that all three entity types demonstrate their facilities comply with the state rules. There are few regulations in Michigan law. Inspections are done by field staff, field veterinarians, and a licensed veterinary technician. There is no specified period for reinspection or annual inspection. The law requires an inspection prior to licensure and requires facilities to demonstrate that they are in compliance. Due to this, the Michigan department's response to additional inspections has varied in past years. Many years ago, the Michigan department inspected facilities multiple times a year. There have been times when the Michigan department did not inspect beyond the pre-licensing inspection unless they received a complaint. The Michigan department has been striving for annual reinspection most recently.

The Michigan pet shops program is currently suspended. Before the suspension, Michigan last licensed around 250 pet shop facilities. Michigan currently has 13 large-scale dog breeding kennels and 195 shelters registered.

Minnesota

Minnesota has a commercial dog and cat breeder licensing program. The program requires a person who possesses or has an ownership interest in animals, is engaged in the business of breeding animals for sale or for exchange in return for consideration, possesses ten or more adult intact animals, and whose animals produce more than five total litters of puppies or kittens per year to be licensed and comply with all applicable statutes.

Minnesota also has a kennel licensing program. The program requires any person who operates a kennel where dogs or cats are kept, congregated, or confined to be licensed and comply with all applicable statutes. This includes if the dogs or cats were obtained from municipalities, pounds, auctions, or by advertising for unwanted dogs or cats, or dogs or cats strayed, abandoned, or stolen. This includes humane societies, rescue organizations, and impound facilities. This does not include a pound owned and operated by any political subdivision of the state, a person's home where dogs or cats are kept as pets, or a veterinarian licensed to practice in the state.

Minnesota's dog and cat breeder program and kennel licensing program are both funded by state appropriation which is incorporated into the general fund. All fees and penalties collected for the commercial dog and cat breeder program are credited to the dog and cat breeders licensing account in the special revenue fund. Money in the account, including interest on the account, is annually appropriated to administer the dog and cat breeder program. Penalties and fees for the kennel licensing program are deposited into the general fund.

Minnesota's commercial dog and cat breeders fee is \$10 per adult intact animal up to a maximum of \$250. The kennel license fee is \$15.

Under Minnesota's commercial dog and cat breeders program, there is an initial pre-license inspection within 60 days from the date of receiving a license application. The Minnesota board initially inspects each licensed facility at least annually. If, after the pre-license inspection, the commercial breeder has two consecutive years of inspections with no violations, the Minnesota board must inspect the commercial breeder at least every two years. If the commercial breeder has any violations during an inspection or if there is cause, the Minnesota board must inspect the commercial breeder at least annually. The Minnesota board must initiate an investigation upon receiving a formal complaint alleging violations. The program has 11 inspectors, consisting of state employees, veterinarians, and agriculture specialists.

Under Minnesota's kennel licensing program, the kennel must be initially inspected by the Minnesota board. Periodic inspections must be made pursuant to Minnesota statutes. Upon request, the Minnesota board must be allowed to inspect any building or structure on a premises where a kennel is operated. Inspections are done at a minimum annually. The Minnesota board initiates an investigation upon receiving a formal complaint alleging violations. The program has 24

inspectors, consisting of state employees, federal employees, veterinarians, animal health technicians, and agriculture specialists.

All Minnesota staff, both veterinarians and non-veterinarians, conduct a myriad of inspections including breeders and kennels. The key difference is that federal staff do not perform breeder inspections, which are conducted by state staff only.

Minnesota licenses 123 commercial dog and cat breeders and 82 kennels.

Summary of Factual Data and Analytical Methodologies

The program revenue appropriation (appropriated by Wis. Stat. § 20.115 (2) (j)) does not have adequate revenue to recover costs. The appropriation currently has a negative cash balance. The appropriation includes the dog seller program as well as the dog licensing, rabies, and humane programs. This rule proposal addresses the dog seller program portion of the appropriation and not the dog licensing, rabies, and humane programs side of the appropriation.

Based on current projections for the timeline of the rule process, the proposed rule would become effective by the beginning of Fiscal Year 2024 (July 1, 2023). The cash balance of the dog sellers program at that time is projected to be -\$300,873. The tables below show projected expenditures, revenues, and losses from Fiscal Year 2021 to the beginning of Fiscal Year 2024. There is an item in the biennial budget to eliminate the Fiscal Year 2021 negative ending cash balance in the appropriation, which is included in the projected Fiscal Year 2022 ending cash balance.

Fiscal Year 2021 Actuals

Program	Expenditures	Revenue					Net Income (Loss)	Ending Cash Balance
		Seller/ Facility License Fee	Seller/ Facility Reinspect	Dog License Tax	Rabies Control	Humane Officers		
Dog Sellers Program	\$337,260	\$212,390	\$6,950				(\$117,920)	(\$294,564)
Dog Licenses, Rabies Control, & Humane Programs	\$120,388			\$75,010			(\$45,378)	(\$118,279)
Total	\$457,648	\$212,390	\$6,950	\$75,010	\$0	\$0	(\$163,298)	(\$412,843)

Fiscal Year 2022 Projections

Program	Expenditures	Revenue					Net Income (Loss)	Ending Cash Balance
		Seller/ Facility License Fee	Seller/ Facility Reinspect	Dog License Tax	Rabies Control	Humane Officers		
Dog Sellers Program	\$342,319	\$191,000	\$3,450				(\$147,869)	(\$147,869)
Dog Licenses, Rabies Control, & Humane Programs	\$122,194			\$75,010	\$1,700	\$5,400	(\$40,084)	(\$2,927)
Total	\$464,513	\$191,000	\$3,450	\$75,010	\$1,700	\$5,400	(\$187,953)	(\$150,796)

Fiscal Year 2023 Projections

Program	Expenditures	Revenue					Net Income (Loss)	Ending Cash Balance
		Seller/ Facility License Fee	Seller/ Facility Reinspect	Dog License Tax	Rabies Control	Humane Officers		
Dog Sellers Program	\$347,454	\$191,000	\$3,450				(\$153,004)	(\$300,873)
Dog Licenses, Rabies Control, & Humane Programs	\$124,027			\$75,010	\$1,700	\$1,100	(\$46,217)	(\$49,143)
Total	\$471,481	\$191,000	\$3,450	\$75,010	\$1,700	\$1,100	(\$199,221)	(\$350,016)

Fiscal Year 2024 Projections

Program	Expenditures
Dog Sellers Program	\$352,666
Dog Licenses, Rabies Control, & Humane Programs	\$125,887
Total	\$478,553

The Department is not able to reduce expenditures to the level of current revenues without resulting in a failure to fulfill statutory requirements. Pursuant to Wis. Stat. § 173.41, the Department is required to:

- Implement and administer licensing of dog sellers and dog facility operators
- Inspect the premises at which a person who is required to obtain a license operates before issuing the initial license and at least once every 2 years after the year in which the person is first licensed
- Report mistreatment of dogs to a humane officer or law enforcement agency if the Department has reasonable grounds to believe that a dog in the possession of a person required to be licensed is being mistreated in violation of ch. 951
- Promulgate rules to implement and administer regulations of persons who sell dogs or operate animal shelters, including licensing, inspections, health requirements, standards of care, and record keeping

The above statutory requirements are critical to ensuring appropriate standards of care in licensed facilities. These statutory requirements benefit animal health and wellbeing, human health, and consumer protection.

The current dog seller program fees were established in 2011 when the program was first created and have not been increased in the ten years since.

In 2019, the Department held three listening sessions with stakeholders to brainstorm solutions to the current financial under-recovery and get their individual points of view about the possible pros and cons of alternatives to address the financial under-recovery. No stakeholder expressed that the

current fees should not be evaluated and no stakeholder expressed an interest in removing or reducing the activities of the programs.

The Department held a preliminary hearing on the statement of scope (SS 093-20) on August 20, 2020, with comments open until August 27, 2020. The Department received two comments during the preliminary hearing. Both comments requested that the Department exempt shelter/control facilities from a fee increase.

The Department convened an ATCP 16 Advisory Committee to advise the Department in relation to the Statement of Scope (SS 093-20). The Committee was comprised of representatives from each of the groups under Wis. Stat. § 173.41 (14) (b). The Department submitted a notice to JCRAR with the names of the Committee members on February 1, 2021 and submitted an amended notice on March 15, 2021. The ATCP 16 Advisory Committee met on March 2, 2021 to discuss potential fee options.

All members of the ATCP 16 Advisory Committee expressed support of an option to increase license fees to recover the annual costs and recover the projected deficit over five years. Individual members either expressed support of increasing all license fees by an equal percentage or expressed support of increasing the license fees for shelter/control facilities by 100% and all other license fees by a higher amount.

Those supporting an equal percentage expressed that all licensees should have to share in the cost of operating and should not be exempt from cost increases over time. Those supporting a lower percentage for shelter/control facilities expressed that shelter/control facilities are non-profit entities and that an increase of more than 100% would have a significant impact to small shelters in rural communities.

All members of the ATCP 16 Advisory Committee expressed support of increasing the reinspection fee by a higher percentage than the license fee. The Department analyzed the cost of conducting reinspections over the past few years. The cost of a reinspection varies depending on the extent of issues to address and the time required. The average cost of a reinspection is approximately \$400.

This rule proposal includes a 100% license fee increase for shelter/control facilities, a 120% license fee increase for all other entities, and a 167% reinspection fee increase. The table below shows the current and proposed license and reinspection fee amounts, as well as the projected financial impact. Both the current and proposed license fees listed below are for in-state entities. The fees for out-of-state entities are 150% of the respective fee amount. The current revenue and potential revenue amounts account for the higher fees for out-of-state entities.

Fee Proposal - Financial Detail

Description	Current Fee	% Change	Proposed Fee	# Licensees In-State	# Licensees Out-of-State	Average # Reinspect.	Current Revenue	Projected Revenue	Revenue Change
Dog Sellers: # Dogs/Year									
25-49	\$250	120%	\$550	114	6		\$30,750	\$67,650	\$36,900
50-99	\$500	120%	\$1,100	101	2		\$52,000	\$114,400	\$62,400
100-249	\$750	120%	\$1,650	75	1		\$57,375	\$126,225	\$68,850
250 or more	\$1,000	120%	\$2,200	27	1		\$28,500	\$62,700	\$34,200
Shelter/Control Facility	\$125	100%	\$250	179			\$22,375	\$44,750	\$22,375
Reinspection	\$150	167%	\$400			23	\$3,450	\$9,200	\$5,750
			Total:	496	10	23	\$194,450	\$424,925	\$230,475

This fee proposal would recover the annual costs of the program as well as gradually recover the projected deficit over five years. The projected deficit to be recovered is the projected dog sellers program Fiscal Year 2023 negative ending cash balance of -\$300,873.

Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis

The proposed rule would impact persons who annually sell 25 or more dogs from more than three litters or operate animal shelters. There are currently 506 licensees:

- 120 entities licensed to sell or offer to sell at least 25 but fewer than 50 dogs per year
- 103 entities licensed to sell or offer to sell at least 50 but fewer than 100 dogs per year
- 76 entities licensed to sell or offer to sell at least 100 but fewer than 250 dogs per year
- 28 entities licensed to sell or offer to sell 250 or more dogs per year
- 179 entities licensed to operate an animal shelter or animal control facility

The proposed rule would also impact consumers, pet owners, and other persons and groups affected by the Department fulfilling its duties under Wis. Stat. § 173.41. For example, Wis. Stat. § 173.41 (6) requires the Department to inspect the premises at which a person who is required to obtain a license operates before issuing the initial license and at least every two years after the year in which the person is first licensed. These inspections are critical to ensure that licensed entities are meeting health requirements for selling dogs, the age for the transfer of a puppy, standards of care, and recordkeeping requirements, which are required under sections 173.41 (8), (9), (10), and (11), Wis. Stats., respectively. The proposed rule would ensure program revenue funding through fees to continue these statutorily required inspections and protect animal health and wellbeing, human health, and consumer protection.

In 2019, the Department held three listening sessions with stakeholders to brainstorm solutions to the current financial under-recovery and get their individual points of view about the possible pros and cons of alternatives to address the financial under-recovery. No stakeholder expressed that the current fees should not be evaluated and no stakeholder expressed an interest in removing or reducing the activities of the programs.

The Department held a preliminary hearing on the statement of scope (SS 093-20) on August 20, 2020, with comments open until August 27, 2020. The Department received two comments during

the preliminary hearing. Both comments requested that the Department exempt shelter/control facilities from a fee increase.

The Department convened an ATCP 16 Advisory Committee to advise the Department in relation to the Statement of Scope (SS 093-20). The Committee was comprised of representatives from each of the groups under Wis. Stat. § 173.41 (14) (b). The Committee met on March 2, 2021 to discuss potential fee options.

All members of the ATCP 16 Advisory Committee expressed support of an option to increase license fees to recover the annual costs and recover the projected deficit over five years. Individual members either expressed support of increasing all license fees by an equal percentage or expressed support of increasing the license fees for shelter/control facilities by 100% and all other license fees by a higher amount.

Those supporting an equal percentage expressed that all licensees should have to share in the cost of operating and should not be exempt from cost increases over time. Those supporting a lower percentage for shelter/control facilities expressed that shelter/control facilities are non-profit entities and that an increase of more than 100% would have a significant impact to small shelters in rural communities.

All members of the ATCP 16 Advisory Committee expressed support of increasing the reinspection fee by a higher percentage than the license fee. The Department analyzed the cost of conducting reinspections over the past few years. The cost of a reinspection varies depending on the extent of issues to address and the time required. The average cost of a reinspection is approximately \$400.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on Small Business

The proposed rule would increase license and reinspection fees for dog sellers and dog facility operators. Most or all affected entities are small businesses, pursuant to the definition under Wis. Stat. § 227.485 (2) (c).

The overall anticipated economic impact is estimated to be moderate but could be significant for individual entities depending upon the individual business. Pursuant to Wis. Stat. § 227.22 (2) (e), the rule will apply to small businesses on the first day of the 3rd month commencing after the date of publication of the rule. Based on current projections for the timeline of the rule process, the proposed rule would become effective for all entities by the beginning of Fiscal Year 2024 (July 1, 2023).

This rule proposal includes a 100% license fee increase for shelter/control facilities, a 120% license fee increase for all other entities, and a 167% reinspection fee increase. The table below shows the

current and proposed license and reinspection fee amounts, the amount of each change, the number of licensees in each category, and the average reinspection count each year.

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Shelter/Control Facility	\$188	\$375	\$188	100%	
Reinspection	\$150	\$400	\$250	167%	23

The Department’s Regulatory Review Coordinator may be contacted by:
 Email at Bradford.Steine1@wisconsin.gov
 Telephone at (608) 224-5024

The Regulatory Flexibility Analysis is attached.

Department Contact Person

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RULE TEXT

- 1 SECTION 1. ATCP 16.08 (1) and (2) are amended to read:
- 2 **ATCP 16.08 (1)** A license fee of ~~\$125~~\$250 for each animal shelter or animal control facility
- 3 that the applicant may operate during the license year. If the applicant operates a combined animal

4 shelter and animal control facility at the same location, the ~~\$125~~\$250 fee for that location covers
5 the combined operations.

6 (2) The following fee based on the number of dog sales reported under s. ATCP 16.06 (6):

7 (a) ~~\$250~~\$550 if the number is at least 25 but less than 50.

8 (b) ~~\$500~~\$1,100 if the number is at least 50 but less than 100.

9 (c) ~~\$750~~\$1,650 if the number is at least 100 but less than 250.

10 (d) ~~\$1,000~~\$2,200 if the number is at least 250.

11 **SECTION 2.** ATCP 16.12 (6) is amended to read:

12 **ATCP 16.12 (6) REINSPECTION FEES.** The department may charge, to the holder of a license
13 under s. ATCP 16.02 (1), a reinspection fee of ~~\$150~~\$400 for a reinspection that the department
14 makes to determine whether that person has corrected a previous violation of this chapter, noted
15 on a previous inspection report. The department may not charge a reinspection fee under this
16 subsection for a routine or regularly scheduled inspection, or for an inspection that is required
17 under this chapter.

18 **EFFECTIVE DATE.** This rule is effective on the first day of the month commencing after the date
19 of publication, as provided under Wis. Stat. § 227.22 (2) (intro.). The rule applies to small
20 businesses on the first day of the 3rd month commencing after the date of publication of the rule,
21 as provided under Wis. Stat. § 227.22 (2) (e).

(END OF RULE TEXT)

Dated this 4th day of November, 2021

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: Randy Romanski, Secretary