



State of Wisconsin  
Governor Tony Evers

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**Department of Agriculture, Trade and Consumer Protection**  
Secretary-designee Randy Romanski

**DATE:** September 24, 2020

**TO:** Board of Agriculture, Trade and Consumer Protection

**FROM:** Randy Romanski, Secretary-designee  
Darlene Konkle, DVM, MS, DACVIM, Administrator, Division of Animal Health

**SUBJECT: ATCP 16, Dog Sellers and Dog Facility Operators**

**PRESENTED BY:** Darlene Konkle, DVM, MS, DACVIM, Administrator, Division of Animal Health

**REQUESTED ACTION:**

At the September 24, 2020, Board meeting, the department will request approval of the attached scope statement, regarding ch. ATCP 16 (Dog Sellers and Dog Facility Operators).

**SUMMARY:**

The objective of the proposed rule is to evaluate whether to change fee amounts for dog sellers and dog facility operators. These fees include license fees and reinspection fees. The department would form an advisory group to assist in writing the proposed rule, pursuant to Wis. Stat. s. 173.41 (14).

The Governor approved the scope statement on July 1, 2020. On July 20, 2020, the Joint Committee for Review of Administrative Rules directed the department to hold a preliminary public hearing and comment period, pursuant to Wis. Stat. s. 227.136 (1). The department held the preliminary public hearing on August 20, 2020, with a written comment period through August 27, 2020. Please see the attached summary of public comments.

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**Summary of Public Comments  
Statement of Scope SS 093-20  
Chapters ATCP 16  
Permanent Rule Regarding Dog Sellers and Dog Facility Operators**

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**Statement of Scope Preliminary Public Hearing  
Teleconference, 10:00 am, August 20, 2020**

<b>Name/Organization</b>	<b>Position</b>	<b>Summary of Comments</b>
Eilene Ribbens, Wisconsin Federated Humane Society		<ul style="list-style-type: none"> <li>- Would like the department to consider including a category for non-profit animal sheltering organizations, like animal control facilities, rescue groups, and humane societies. A fee increase would pose a hardship for these non-profit organizations. Given societal conditions, it would be a hardship for them to increase their dog adoption fees to cover the licensing fee.</li> <li>- Sat through the advisory committee process and want to compliment the department, Dr. Bellay, and the leadership team on how the process was done, and that it was well balanced and equitable, and is looking forward to that same situation as we move forward into this new advisory group.</li> <li>- Has a question about why a dog sporting organization, whose primary activity involves dogs, would be included in the advisory group, if they are not license holders or required to be licensed.</li> </ul>
Megan Nicholson, Wisconsin State Director for the Humane Society of the United States		<ul style="list-style-type: none"> <li>- Agrees with what Eilene Ribbens covered.</li> <li>- Appreciates DATCP's program and wants to see it continue.</li> <li>- Biggest concern would be for non-profits, and if the license fees for non-profits would be raised.</li> </ul>

**Statement of Scope Preliminary Public Comment Period  
Written Comments Received through August 27, 2020**

No written comments were received.

# STATEMENT OF SCOPE

## Department of Agriculture, Trade and Consumer Protection

**Rule No.:** Ch. ATCP 16, Wis. Admin. Code (Existing)

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**Relating to:** Dog Sellers and Dog Facility Operators

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**Rule Type:** Permanent

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### 1. Finding/nature of emergency (Emergency Rule only):

Not applicable.

### 2. Detailed description of the objective of the proposed rule:

The objective of the proposed rule is to evaluate whether to change fee amounts for dog sellers and dog facility operators. These fees include license fees and reinspection fees. The department would form an advisory group to assist in writing the proposed rule, pursuant to Wis. Stat. s. 173.41 (14).

### 3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

#### *Existing Policies Relevant to the Rule:*

ATCP 16.08 specifies license fees as follows:

**ATCP 16.08 License fees and surcharges.** A license application under s. ATCP 16.06 shall include all of the following nonrefundable fees and surcharges, as applicable:

- (1) A license fee of \$125 for each animal shelter or animal control facility that the applicant may operate during the license year. If the applicant operates a combined animal shelter and animal control facility at the same location, the \$125 fee for that location covers the combined operations.
- (2) The following fee based on the number of dog sales reported under s. ATCP 16.06 (6):
  - (a) \$250 if the number is at least 25 but less than 50.
  - (b) \$500 if the number is at least 50 but less than 100.
  - (c) \$750 if the number is at least 100 but less than 250.
  - (d) \$1,000 if the number is at least 250.

- (3) If the applicant is an out-of-state dog seller, a fee that is 150 percent of the fee calculated under sub. (2).
  - (4) A late renewal surcharge equal to 20 percent of all applicable license fees required under subs. (1) to (3) if the applicant seeks to renew a license after that license has expired.
  - (5) A surcharge equal to the total of all applicable license fees required under subs. (1) to (3) if the department determines that any of the following apply:
    - (a) Within 365 days prior to submitting the license application, the applicant operated without a license required under s. ATCP 16.02 (1).
    - (b) The applicant knowingly misrepresented information in the applicant's license application for the preceding license year, in order to avoid payment of any required license fees.
- Note: A surcharge payment under sub. (5) does not relieve the applicant of any other penalties or liabilities that the applicant may incur as a result of any act or omission under sub. (5), but does not constitute evidence of a law violation.
- (6) Any unpaid reinspection fee properly charged under s. ATCP 16.12 (6).

ATCP 16.12 (6) specifies reinspection fees as follows:

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

The program revenue appropriation (appropriated by Wis. Stat. s. 20.115 (2) (j)) does not have adequate revenue to recover costs. The appropriation under-recovered by \$199,000 in fiscal year 2019, resulting in a negative cash balance of -\$185,300. The appropriation includes the dog seller program as well as dog licensing, rabies, and humane programs. The portion of the appropriation specific to the dog seller program under-recovered by \$157,400 in fiscal year 2019, resulting in a negative cash balance of -\$146,400. Fiscal year 2019 expenditures and revenues for the dog seller program were \$338,600 and \$181,200, respectively. The department has evaluated expenditures. 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. s. 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.

*New Policies Proposed to be Included in the Rule:*

DATCP proposes evaluating whether to change fee amounts for dog sellers and dog facility operators. These fees include license fees and reinspection fees.

*Analysis of Policy Alternatives:*

Rule Proposal: Under the proposed rule, the department would evaluate whether to change fee amounts for dog sellers and dog facility operators. These fees include license fees and reinspection fees. The department would form an advisory group to assist in writing the proposed rule, pursuant to Wis. Stat. s. 173.41 (14). Fees would be evaluated to ensure recovery of program costs through program revenues and to eliminate the current negative cash balance.

No Change: Without the proposed rule, the department would not be able to evaluate whether to change fee amounts for dog sellers and dog facility operators. The appropriation would continue to operate in a negative cash balance until a different change occurs, such as the creation of an alternate funding source or a statutory change. The department would continue to report the negative cash balance to the Joint Committee on Finance.

**4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

Section 173.41 (3), Stats., authorizes the department to promulgate rules specifying license fees as follows:

**173.41 (3) License Fees.**

- (a) Except as provided under par. (b) or (c), the annual fee for a license under sub. (2) is as follows:

1. For a person who sells or offers to sell at least 25 but fewer than 50 dogs per year, \$250.
  2. For a person who sells or offers to sell at least 50 but fewer than 100 dogs per year, \$500.
  3. For a person who sells or offers to sell at least 100 but fewer than 250 dogs per year, \$750.
  4. For a person who sells or offers to sell 250 or more dogs per year, \$1,000.
  5. For a person who operates an animal shelter or animal control facility, \$125.
- (b) Except as provided under par. (c), the annual license fee for an out-of-state dog dealer is 150 percent of the fee determined under par. (a), based on the number of dogs sold in this state.
- (c) The department may promulgate rules specifying fees for licenses under sub. (2) that are higher than the fees in pars. (a) and (b) if necessary to cover the costs of administering this section.

Section 173.41 (6), Stats., authorizes the department to promulgate rules specifying the fee for reinspection as follows:

**173.41 (6) Inspections.**

- (a) The department shall inspect the premises at which a person who is required to obtain a license under sub. (2) (a) 1. to 5. operates before issuing the initial license and at least once every 2 years after the year in which the person is first licensed. The department is not required to inspect the out-of-state premises at which an out-of-state dog dealer operates.
- (b) The department may enter and inspect the premises for which a person is required to obtain a license under sub. (2) at any time during normal business hours to ensure compliance with this section.
- (c) The department may charge a fee for an inspection that it undertakes to determine whether a previous violation of this section or rules promulgated under this section has been corrected.
- (d) An inspection fee under par. (c) is due upon written demand from the department. Unless otherwise specified by the department by rule, the fee for an inspection under par. (c) is \$150.

Section 173.41 (14), Stats., authorizes the department to promulgate rules regulating persons who sell dogs or operate animal shelters as follows:

### **173.41 (14) Rules.**

- (a) The department, in consultation with the advisory committee established under par. (b), shall promulgate rules to implement and administer this section.
- (b) Before the department promulgates rules under par. (a), it shall establish an advisory committee to assist in writing the rules that consists of at least one representative from each of the following groups but that does not consist of more than 12 members:
  - 1. Persons selling dogs at retail.
  - 2. Dog breeders that sell large dogs and that sell fewer than 50 dogs per year.
  - 3. Dog breeders that sell small dogs and that sell fewer than 50 dogs per year.
  - 4. Dog breeders that sell large dogs and that sell 50 or more dogs per year.
  - 5. Dog breeders that sell small dogs and that sell 50 or more dogs per year.
  - 6. Sporting associations whose primary activities involve dogs.
  - 7. Humane societies providing shelter to fewer than 500 dogs per year.
  - 8. Humane societies providing shelter to 500 or more dogs per year.
  - 9. Veterinarians.
  - 10. Animal control facilities.
  - 11. Breed rescue groups.
- (c) The department shall select any member of an advisory committee under par. (b) who represents veterinarians from nominations made by the Wisconsin Veterinary Medical Association and shall select each other member from nominations made by one or more organizations representing the group that the member represents.
- (d) An advisory committee under par. (b) does not expire until 12 months after the rules are promulgated and shall make recommendations to the department for amendments to the rules.

### **5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

DATCP estimates that it will use approximately 0.5 FTE staff to develop this rule. This estimate includes time required for the investigation and analysis, rule drafting, preparing related documents, holding public hearings, and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

## **6. List with description of all entities that may be affected by the proposed rule:**

The proposed rule would impact persons who annually sell 25 or more dogs from more than three litters or operate animal shelters. As of license year 2020, there are 471 licensed dog sellers:

- 113 entities licensed to sell or offer to sell at least 25 but fewer than 50 dogs per year
- 87 entities licensed to sell or offer to sell at least 50 but fewer than 100 dogs per year
- 64 entities licensed to sell or offer to sell at least 100 but fewer than 250 dogs per year
- 25 entities licensed to sell or offer to sell 250 or more dogs per year
- 182 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. s. 173.41. For example, Wis. Stat. s. 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 once every 2 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 license fees to continue these statutorily required inspections and protect animal health and wellbeing, human health, and consumer protection.

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.

Under this statement of scope, the department would form an advisory group to assist in writing the proposed rule, pursuant to Wis. Stat. s. 173.41 (14). The advisory group would consist of at least one representative from each of the following groups:

- Persons selling dogs at retail
- Dog breeders that sell large dogs and that sell fewer than 50 dogs per year
- Dog breeders that sell small dogs and that sell fewer than 50 dogs per year
- Dog breeders that sell large dogs and that sell 50 or more dogs per year
- Dog breeders that sell small dogs and that sell 50 or more dogs per year
- Sporting associations whose primary activities involve dogs

- Humane societies providing shelter to fewer than 500 dogs per year
- Humane societies providing shelter to 500 or more dogs per year
- Veterinarians
- Animal control facilities
- Breed rescue groups

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

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. s. 173.41 (1), these are entities that shelter or sell 25 or more dogs in a year.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

The proposed rule would evaluate fee amounts for dog sellers and dog facility operators. Most or all affected entities are small businesses, pursuant to the definition under Wis. Stat. s. 227.485 (1) (c).

The overall anticipated economic impact is moderate but could be significant for individual entities depending upon the individual business and the amount of the fee change evaluated.

The economic impact may also be passed on to consumers in the price to buy a dog.

**Contact Person:** Angela Fisher (Angela.Fisher1@wisconsin.gov); Phone (608) 224-4890

Signed this 22<sup>nd</sup> day of June, 2020

A handwritten signature in cursive script that reads "Randy Romanski".

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Randy Romanski  
Secretary-designee  
State of Wisconsin Department of Agriculture,  
Trade and Consumer Protection