

**PROPOSED ORDER
OF THE WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

1 The Wisconsin department of agriculture, trade and consumer protection hereby proposes the
2 following rule *to repeal and recreate* ATCP 74, *relating to* agent status for local health
3 departments to license, investigate, and inspect retail food, vending, lodging, and recreational
4 establishments and ensure public health.

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

This rule repeals and recreates Wis. Admin. Code Ch. ATCP 74 (Retail Food Establishments; Local Government Regulation) as “Local Agents and Regulation.”

Statutes Interpreted

Statutes Interpreted: Wis. Stat. § 97.41, “Retail food: agent status for local health departments,” Wis. Stat. § 97.615, “Agent status for local health departments,” and Wis. Stat. § 97.625, “Powers of the department and local health departments.”

Statutory Authority

Statutory Authority: Wis. Stat. §§ 93.07 (1), 97.41 (2) and (5), and 97.615 (2) (b) and (e).

Explanation of Statutory Authority

The Department has specific authority, under Wis. Stat. §§ 97.41 (2) and (5) and 97.615 (2) (b) and (e), to promulgate rules to establish standards and fees for local health departments granted agent status to license, investigate, and inspect the operations of retail food, lodging, and recreational establishments within a designated jurisdiction. The Department of Agriculture, Trade and Consumer Protection (“Department”) has broad general authority, under Wis. Stat. § 93.07 (1), to adopt rules to implement programs under its jurisdiction.

Related Statutes and Rules

Wisconsin's retail food establishments, vending, lodging, and recreational establishments (including pools and water attractions, recreational and educational camps, and campgrounds) are governed by Wis. Stat. § Ch. 97, Section 97.30, "Retail food establishments," contains requirements related to retail food establishments (including restaurants) for licensing, fees, and inspection. Subchapter III, Wis. Stat. § Ch. 97, "LODGING AND VENDING MACHINES," contains requirements related to these establishments for licensing, fees, and inspection. Finally, Subchapter IV, Wis. Stat. § Ch. 97, "RECREATIONAL SANITATION," contains recreational establishment requirements for licensing, fees, and inspection.

Plain Language Analysis

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, dealing with the relationship of the Department's new Division of Food and Recreational Safety ("DFRS") and its local health department agent programs. Under the authority of an approved DHS scope statement, the new DFRS is now revising Wis. Admin. Code Ch. ATCP 74.

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 clarifies Department expectations for persons hired by an agent program to hold, or be eligible to work toward holding, the Registered Sanitarian ("RS") certification. The RS certification is the preferable credential to be held by agent-program sanitarians doing food inspections and the revised rule clarifies the Department's expectations regarding inspections done by those sanitarians who have not yet earned the RS certification, as well as the staffing procedures to be followed by an agent program, 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 an agent program 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 an agent program to enforce the Wisconsin Food Code, to inform the Department of its enforcement activities, and do such sampling as is required by the Department. It also clarifies the financial responsibilities of the agent program 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 the agent program may be

required to make to the Department, and the types of financial records that the agent program shall make available to the Department upon request. In particular, it spells out the responsibility of the agent program to demonstrate that the fees charged by the local program are reasonable and used only for maintaining the local program.

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

The Federal Food and Drug Administration (“FDA”) does not have jurisdiction over retail food establishments. The Department uses the FDA’s model Food Code as the basis for its Wisconsin Food Code (ATCP 75 Appendix) that spells out retail food establishment requirements. The Department expects its agent local health department programs to enforce the same standards in the Wisconsin Food Code.

Comparison with Rules in Adjacent States

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. The state evaluates the local programs at the same frequency Wisconsin does, and continuation of local programs depends on passing an evaluation.

Summary of Factual Data and Analytical Methodologies

This rule was developed using Wis. Admin. Code Ch. DHS 192 and Wis. Admin. Code Ch. ATCP 75 and the Department's new contract with agent programs. Inquiries were also made to surrounding states in an effort to ascertain their requirements and practices for similar programs.

Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis

This rule relates to the administration of the local health department agent program and has no direct impact on small businesses. However, the rule was posted for comment on the potential economic impact and the Department received comments from organizations that represent businesses, some of which may be small businesses, who are inspected by local health department agents.

Effect on Small Business

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.

This rule change is anticipated to have no impact on small business. All economic impact 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.

DATCP Contact

Questions and comments related to this rule may be directed to:

Peter Haase, Director
Bureau of Food and Recreational Businesses
Division of Food and Recreational Safety
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone: (608) 224-4711
Email: Peter.Haase@Wisconsin.gov

1 SECTION 1. ATCP 74 is repealed and recreated to read:

2 **Chapter ATCP 74**

3 **LOCAL AGENTS AND REGULATION**

4 ATCP 74.01 Definitions.
5 ATCP 74.02 Scope.
6 ATCP 74.04 Agent status.
7 ATCP 74.06 Terms of the contract.
8 ATCP 74.08 Staffing.
9 ATCP 74.10 Inspections.
10 ATCP 74.12 Complaint investigations.
11 ATCP 74.14 Evaluation and training.
12 ATCP 74.16 Enforcement and sampling.
13 ATCP 74.18 Reimbursements and other payments for services.
14 ATCP 74.20 Reports and records.
15 ATCP 74.22 Licensing and standards.
16 ATCP 74.24 License denial, suspension or revocation.
17 ATCP 74.26 Contract termination, revocation, refusal to renew, or suspension.

18 **Note:** Chapter ATCP 74 was created from applicable portions of ch. ATCP 75 and ch. DHS
19 192 to facilitate the oversight of agent programs, formerly under the Department of Health
20 Services, by the Department of Agriculture, Trade and Consumer Protection.

21 **ATCP 74.01 Definitions.** As used in this chapter:

22 (1) "Agent" means a local health department as defined in s. 250.01 (4), Stats., that has
23 entered into a contract with the department and is authorized under the terms of that contract to
24 administer a retail food establishment, lodging and recreational safety regulatory program,
25 pursuant to s. 97.41 and 97.615 (2), Stats., in the health department's area of jurisdiction.

26 (2) "Agent program" means the retail food establishment, lodging, and recreational safety
27 regulatory program operated by an agent.

28 (3) "Contract" means a signed, written agreement between a local health department and the
29 department setting forth the obligations of each party in the operation of an agent program.

30 (4) "Department" means the Wisconsin department of agriculture, trade, and consumer
31 protection.

32 (5) "Establishment" means a retail food establishment, hotel or motel, tourist rooming
33 house, bed and breakfast establishment, vending machine, vending machine commissary,
34 camping resort or other campground, recreational camp, educational camp, public pool, or water
35 attraction licensed pursuant to ch. 97, Stats.

36 (6) "Fiscal year" means July 1 of one year through June 30 of the next year.

37 (7) "Food" has the meaning given in s. 97.01 (6), Stats.

38 (8) "Inspection fee" means a fee charged by the agent program, the amount of which is
39 reasonably related to the cost of performing an assessment of an establishment's compliance
40 with the statutes and rules, under which a license is granted.

41 (9) "Inspector" means any employee inspecting establishments for the department or the
42 agent under the jurisdiction of an agent program.

43 (10) "License" means the legal authority granted by the department or its agent to operate an
44 establishment.

45 (11) "Licensee" means the person or entity licensed to operate an establishment as defined in
46 sub. (5).

47 (12) "New agent" means an agent that has entered into its first contract with the department
48 or an agent that has applied to re-enter into a contract with the department after termination of a
49 previous contract.

50 (13) “Registered environmental health specialist/registered sanitarian” or “REHS/RS” means
51 a person who holds a REHS/RS credential awarded by the National Environmental Health
52 Association.

53 (14) “Registered sanitarian” or “RS” means an individual who is a Wisconsin-registered
54 sanitarian, pursuant to s. 440.98, Stats., and chs. DHS 174 – 177, or is recognized as a registered
55 environmental health specialist/registered sanitarian.

56 (15) “Restaurant” means a retail food establishment as defined in s. 97.01 (14g), Stats.

57 (16) “Retail food establishment” has the meaning defined in s. 97.30 (1) (c), Stats.

58 (17) “Sanitarian” means a person who is qualified to conduct inspections as an agent of the
59 department and meets the requirements under s. ATCP 74.08 (2).

60 (18) “Standard” means a department or agent employee who is certified as correctly
61 interpreting and enforcing chs. ATCP 72, 73, 75, 75 Appendix, 76, 78, and 79.

62 (19) “Standardization exercise” means an evaluation conducted by a standard to determine if
63 a sanitarian is correctly interpreting and enforcing chs. ATCP 72, 73, 75, 75 Appendix, 76, 78,
64 and 79.

65 **ATCP 74.02 Scope.** (1) This chapter applies to agent program inspection and regulatory
66 oversight of licensees and establishments, as defined in this chapter.

67 (2) An agent program shall ensure that licensees operating retail food establishments under
68 its jurisdiction comply with ch. ATCP 75 Appendix.

69 **NOTE:** Pursuant to s. 227.14 (1s), Stats., the department has published ch. ATCP 75
70 Appendix in the format of the model food code published by the United States food and drug
71 administration.

72 (3) An agent program shall enforce applicable provisions in ch. ATCP 70, at retail food
73 establishments conducting food processing operations but exempt from the requirement to hold a
74 food processing plant license, pursuant to s. ATCP 70.03 (7) (a), Wis. Adm. Code.

75 **ATCP 74.04 Agent status. (1)** AGENT PROPOSED PROGRAM PLAN. To become a new agent, a
76 local health department shall submit a written proposed program plan to the department, in a
77 form specified by the department, describing the proposed agent program. The proposed
78 program plan shall describe all of the following:

79 (a) Employee positions that will issue licenses or conduct investigations and inspections.

80 (b) Staffing and budget plans for issuing licenses, making investigations and inspections,
81 providing technical assistance, and enforcing applicable state statutes and rules and local
82 ordinances.

83 (c) A list of the licenses that may be issued by the agent. A local ordinance may combine and
84 expand license categories, so long as those categories include all of the types of establishments
85 that shall be licensed under the agent contract.

86 (d) A list of the fees to be charged by the agent to licensees. A local ordinance may establish
87 local license fees that differ from fees charged under chs. ATCP 72, 73, 75, 75 Appendix, 76, 78,
88 and 79 for licenses issued by the department. All license fees shall be based on the agent's
89 reasonable program costs, pursuant to s. 97.41 (4), Stats.

90 (e) A description of the inspection and enforcement program to be implemented by the agent
91 including a copy of applicable village, city, or county ordinances or regulations.

92 (f) Procedures to ensure cooperation between the agent and appropriate federal, state, local,
93 and tribal agencies in the event of a natural disaster or other emergency.

94 (g) Procedures for investigating complaints concerning licensees under the contract and
95 unlicensed activity that may require licensing and inspection.

96 (h) Procedures for notifying the department when the agent receives information or a
97 complaint concerning an establishment that may need to be licensed or inspected within the
98 agent's geographical area but under the department's jurisdiction.

99 (i) Procedures for investigating reports of suspected foodborne illness, including cooperation
100 with the department.

101 (j) Procedures to ensure the time period, within which the agent will make a determination on
102 an application for a license, does not exceed 30 days following receipt of a complete application.

103 (k) Any other information that the department may reasonably require for its review of the
104 agent's program plan.

105 (2) LOCAL HEALTH DEPARTMENT OUTREACH TO AFFECTED LICENSE HOLDERS. The local health
106 department shall provide opportunities for affected licensees to review the proposed program
107 plan and provide comments and feedback to the local health agency and the department.

108 (3) DEPARTMENT ACTION ON PROPOSED PLAN. The department shall review the proposed
109 program plan and accept or deny the application, pursuant to sub. (1), within 60 days after the
110 department receives it.

111 **ATCP 74.06 Terms of the contract.** (1) If the department accepts the proposed program
112 plan from the local health department, the department shall prepare a contract to be signed by
113 both parties, whereby the agent agrees to comply with this chapter and chs. ATCP 72, 73, 75, 75
114 Appendix, 76, 78, and 79 and has met all the conditions in the accepted program plan, including
115 enactment of local ordinances that adopt the department's rules, by reference, or are at least as
116 stringent and do not conflict with the department's rules.

117 (2) The contract shall be in effect for three fiscal years unless otherwise specified, and shall
118 remain in effect during the three fiscal years unless specifically terminated, revoked, or

119 suspended, as provided in the contract. The department shall issue contracts for future contract
120 periods to the agent by January 1 of the last fiscal year of the current contract. The agent shall
121 commit to continue as the department's agent for the future contract period, by signing and
122 returning the contract by March 1 of the last fiscal year of the current contract.

123 (3) Either party may terminate the contract by providing written notice of termination to the
124 other party at least 90 days before the termination is to take effect.

125 (4) When the contract is signed by both parties, the local health department shall assume
126 authority and the responsibility to enforce the provisions of ss. 97.30, 97.617, and 97.67, Stats.,
127 and chs. ATCP 72, 73, 74, 75, 75 Appendix, 76, 78, and 79. The agent program shall issue
128 licenses and perform all inspections necessary to enforce these statutes and rules.

129 (5) Upon execution of the contract, the department shall discontinue all licensing and
130 enforcement activities in the agent's jurisdiction, for the period of time the contract is in effect,
131 pursuant to ss. 97.30 and 97.65, Stats.

132 (6) Notwithstanding subs. (4) and (5), the department may act, pursuant to ss. 97.41 (8) and
133 97.615 (2) (h), Stats., to take appropriate inspection or enforcement action or both if the
134 department has determined that the agent program has not acted expeditiously or appropriately to
135 take such action.

136 (7) Whenever feasible, the department shall provide notice to an agent program at least one
137 fiscal year before making any changes to department policies and procedures not specified in the
138 contract that would adversely affect the budget of an agent program.

139 **ATCP 74.08 Staffing.** (1) The agent program shall have sufficient employees to implement
140 the program according to the terms of the agent program's contract with the department.

141 (2) Sanitarians employed by agent programs shall meet one of the following requirements:

142 (a) Is RS-eligible, which means having met one of the following criteria:

143 1. Holding a baccalaureate or higher degree in environmental health from an accredited
144 college or university and completing at least 30 semester or 45-quarter hour academic credits in
145 environmental, physical, biological, chemical, or environmental health courses.

146 2. Holding a baccalaureate or higher degree in physical or biological sciences from an
147 accredited college or university and completing at least 30 semester or 45 quarter hour academic
148 credits in environmental, physical, biological, chemical, or environmental health courses.

149 3. Holding a baccalaureate or higher degree from an accredited college or university.

150 4. Holding an associate degree from an accredited college, community college or technical
151 institute in environmental, physical, biological or chemical sciences.

152 (b) Is a RS in training.

153 (c) Holds a valid Wisconsin registered sanitarian or REHS/RS credential.

154 (3) The agent program shall employ at least one registered sanitarian to conduct inspections
155 and supervise any inspectors or sanitarians who are not registered sanitarians. The agent shall
156 only hire sanitarians who are registered sanitarians or will become registered sanitarians within 5
157 years after the date of hire. Inspectors or sanitarians who were employed by the agent program
158 prior to July 1, 2018, and are not eligible to become registered sanitarians within 5 years, shall
159 perform inspections under the supervision of a registered sanitarian and shall be deemed
160 competent to perform inspections by passing standardization exercises.

161 (4) If an agent loses its only registered sanitarian, the agent shall hire a registered sanitarian
162 replacement within 120 days or, upon the agent's written request, the department may allow the
163 agent additional time to hire a qualified replacement. A replacement who is not a registered
164 sanitarian may be hired, if approved by the department, if the agent has a signed agreement with

165 another agent for a registered sanitarian to provide supervisory oversight and the replacement
166 hire shall become a registered sanitarian within six months of being hired. A copy of the
167 supervisory oversight contract shall be provided to the department and shall include the amount
168 of time allotted for oversight activities and what specific duties the supervising registered
169 sanitarian will provide.

170 (5) The agent shall designate a sanitarian or registered sanitarian, as required by the
171 department, to undergo the standardization exercise evaluating enforcement of ATCP 75 and its
172 Appendix. After successfully completing the exercises, the staff person shall be designated as
173 the agent standard.

174 (6) The agent standard shall perform department-required exercises with the department to
175 maintain his or her status as the agent standard.

176 (7) The agent standard shall perform standardization and maintenance exercises with other
177 sanitarians in their jurisdiction, using procedures specified by the department.

178 (8) The agent is required to send at least one sanitarian or registered sanitarian to attend
179 training provided by the department.

180 (9) An employee of the agent shall participate on department rulemaking and policy advisory
181 committees when requested.

182 (10) The agent may not permit an employee to conduct an inspection in a situation in which
183 the employee, a member of his or her family, or an organization with which the employee is
184 associated or has a financial interest or where the employee's relationship with any person at the
185 inspected facility could cause the employee not to be able to conduct an objective, unbiased
186 inspection.

187 (11) The agent program is solely responsible for all employment-related issues involving the
188 persons it employs in the program and for the actions or omissions of the agent program's
189 employees, except as otherwise provided by law.

190 (12) Upon the agent's request, the department shall provide technical assistance and training
191 to staff.

192 (13) The agent shall report to the department in writing any change in the assignment of a
193 supervisor of sanitarians and any change in the organization of the staff including authority line
194 changes within 10 days after the date on which it takes place. For those agents employing one or
195 two sanitarians, the agent shall also report any change in assignment of inspection staff who are
196 providing services under the contract.

197 **ATCP 74.10 Inspections.** (1) Agent program sanitarians shall inspect all establishments
198 covered in the contract for compliance with s. 97.30, Stats., subchs. III and IV of ch. 97, Stats.,
199 and chs. ATCP 72, 73, 75 and Appendix, 76, 78 and 79, Wis. Adm. Code.

200 (2) The agent program shall follow standard inspection methods and procedures prescribed
201 by the department.

202 (3) Each fiscal year the agent shall conduct one routine inspection of each licensed
203 establishment under its jurisdiction, except for vending machines and temporary retail food
204 establishments. The agent may propose a different inspection frequency to the department which
205 may only be implemented if approved by the department in writing.

206 (4) The agent program shall collect food and water samples as necessary or as requested by
207 the department.

208 (5) The agent program shall perform a pre-licensing inspection of a license applicant's
209 establishment for compliance with all applicable ordinances, rules, and statutes. The pre-

210 licensing inspection shall be conducted before the applicant is issued a license and conducts
211 business.

212 (6) The department may conduct inspections at an establishment in an agent program's
213 jurisdiction for all of the following purposes:

214 (a) Training or standardization of department staff or agent program staff.

215 (b) In response to an emergency.

216 (c) For monitoring and evaluating the agent program's licensing, inspection, and enforcement
217 program.

218 (d) At the request of the agent program.

219 (7) Whenever feasible, the department shall notify the agent program of the department's
220 intent to inspect an establishment in the agent program's jurisdiction.

221 **ATCP 74.12 Complaint Investigations.** (1) An agent program shall investigate every
222 complaint that it receives against any licensee under its jurisdiction. The agent shall prioritize
223 and investigate complaints according to the procedures in this section and procedures adopted by
224 the agent program under the contract with the department. The complaints shall be addressed in
225 decreasing order of priority as follows:

226 (a) An allegation indicating a serious or imminent public health hazard is associated with a
227 licensee or establishment under the agent program's jurisdiction.

228 (b) An allegation indicating a potential public health problem, that is neither a serious or
229 imminent public health hazard, is associated with a licensee or establishment under the agent
230 program's jurisdiction.

231 (c) An allegation of a violation, not indicating a public health hazard, associated with a
232 licensee or establishment under the agent program's jurisdiction.

233 (2) Agent programs shall notify and consult with the department and other affected agencies
234 having jurisdiction, as necessary, about complaints or foodborne or waterborne illnesses that
235 may be of significant concern to those agencies. An agent program shall coordinate complaint
236 investigations, as necessary, with other agencies having jurisdiction.

237 **ATCP 74.14 Evaluation and training.** (1) At least once each year, the agent program shall
238 submit a self-assessment in a format determined by the department. The department shall
239 evaluate the agent program based on the following required information in the self-assessment:

240 (a) The agent program's compliance with the contract terms.

241 (b) The agent program's progress in meeting program standards adopted by the department.

242 (c) The agent program's records and reports required pursuant to s. ATCP 74.20.

243 (2) At least once every three years, the department shall conduct an on-site evaluation of the
244 agent's program.

245 (3) The department shall provide the agent program with the department's written findings
246 based on the review of the self-assessment or an on-site evaluation. The department may, as
247 deemed necessary, increase the evaluation frequency.

248 (4) The agent shall submit to the department any required corrective action plan detailing
249 how the agent will meet contract requirements.

250 (5) The department shall review the corrective action plan and may make additional
251 comments or approve the corrective action plan if deemed acceptable.

252 (6) If the agent fails to meet the conditions specified in the corrective action plan, the
253 department shall:

254 (a) Notify the agent, in writing, of the deficiencies in meeting the corrective action plan and
255 place the contract in a conditional status with a deadline for the agent to meet the corrective
256 action plan conditions.

257 (b) Remove conditional status of the contract if deficiencies are corrected within the
258 conditional time period.

259 (c) Notify the agent of its intent to terminate the contract and revoke agent status, as provided
260 pursuant to ATCP 74.26, if deficiencies remain uncorrected after a conditional deadline has
261 passed.

262 (7) Notwithstanding these provisions, the department may exercise its right to immediately
263 suspend a contract, pursuant to s. ATCP 74.26 (3), to protect public health or safety.

264 **ATCP 74.16 Enforcement and sampling.** (1) The agent program shall take necessary
265 actions to enforce the provisions of s. 97.30, Stats., and subchs. III and IV of ch. 97, Stats., and
266 related administrative rules in chs. ATCP 70, 72, 73, 75, 75 Appendix, 76, 78, and 79, Wis.
267 Adm. Code, and any local ordinances or regulations, adopted pursuant to ss. 97.41 (7) and
268 97.615 (2) (g), Stats., for establishments over which the agent program has been delegated
269 authority under the contract between the department and the agent program.

270 (2) Enforcement actions may include license revocation; license suspension; fines or civil
271 forfeitures; orders to close; temporary or final hold orders on equipment, food, processes, or
272 establishments; and the placement of conditions on licenses.

273 (3) The agent program shall maintain a written enforcement policy that is distributed to its
274 inspection staff and shall make it available to the department during evaluations, whenever it is
275 substantively changed, or upon request.

276 (4) The agent program shall notify the department, in writing within 10 days, after taking any
277 enforcement action against an establishment involving license suspension, license revocation, or
278 court or administrative actions.

279 (5) The agent program shall be responsible for costs incurred in enforcement actions taken in
280 the agent program's jurisdiction.

281 (6) The agent program shall take samples requested by the department.

282 (7) The agent program may conduct any requested sample analyses in a laboratory certified
283 by the department, pursuant to ch. ATCP 77 for those analyses. All costs associated with
284 collecting and testing these samples shall be assumed by the agent program.

285 (8) The agent program shall share laboratory results with the department.

286 (9) Agent programs that do not have the laboratory capability to perform required analyses,
287 or choose not to perform those analyses, shall submit samples to the department's bureau of
288 laboratory services for analysis. The agent program shall assume the cost of collecting samples
289 and shipping them to the department's laboratory. The department shall assume the cost of the
290 laboratory analysis of those samples.

291 (10) If the department has notified an agent program of deficiencies by any licensee, in
292 complying with the enforcement provisions of this chapter or any other rules or statutes
293 applicable under the contract, and that agent program does not act expeditiously or take effective
294 action with the licensee, the department may act, pursuant to ss. 97.12, and 97.65, Stats., to
295 enforce compliance with this chapter.

296 (11) The agent, if requested by the department, shall conduct effectiveness checks after
297 product recalls or other situations in which a license holder is required to remove food from sale
298 or service.

299 **ATCP 74.18 Reimbursement and other payments for services. (1) DEPARTMENT**
300 REIMBURSEMENT TO AGENTS. By September 30 of each fiscal year, the department shall
301 reimburse agent programs for inspecting vending machines during the previous fiscal year under
302 terms and conditions specified in the contract. The department shall, upon written request,
303 provide any agent with information on how to request reimbursement.

304 (a) Fee reimbursements for the inspection of vending machines that have moved from one
305 agent program's jurisdiction to another shall be credited to the agent program making the first
306 inspection during the fiscal year.

307 (b) The reimbursement rate may not exceed 20% of the state license fees the department sets
308 by administrative rule for the types of establishments that the agent issues licenses. The
309 calculation of the state fees is based on state license fees only, not pre-inspection and
310 reinspection fees. The current reimbursement rate is set within these limits by the contract.

311 **(2) AGENT REIMBURSEMENT TO THE DEPARTMENT.** By September 30 of each fiscal year, agent
312 programs shall reimburse the department for each license issued by the agent program during the
313 preceding fiscal year as a fee for agent training, support, and oversight costs under terms and
314 conditions specified in the contract. The reimbursement rate may not exceed 20% of the state
315 license fees the department sets by administrative rule for the types of establishments that the
316 agent issues licenses. The department shall provide at least one fiscal year notice before an
317 increase in reimbursement occurs.

318 (a) Retail food and recreational establishment license fee reimbursement shall be:

319 1. A fee equal to 10% of the applicable state license fee, regardless of the license fee
320 actually charged by the local agent, if the local agent prepares and submits to the department, by
321 September 30 of that year, an annual self-assessment as required by ss. 97.41 and 97.615, Stats.

322 2. A fee equal to 20% of the applicable state license, regardless of the license fee actually
323 charged by the local agent, if the local agent fails to submit the annual self-assessment in par. (a)
324 to the department by September 30 of that year. A fee payment under this paragraph does not
325 exempt the agent from the duty to prepare and submit an annual self-assessment.

326 (3) ADDITIONAL DEPARTMENT COSTS. If an agent program has contracted with the
327 department, pursuant to s. 97.41, Stats., and s. ATCP 74.06, for the department to collect fees
328 and issue licenses, the agent program shall pay the department for the actual cost of providing
329 these services.

330 **ATCP 74.20 Reports and records.** (1) An agent program shall retain complete and accurate
331 records including, but not limited to, copies of all reports and inspections, follow-up inspections,
332 sampling, and all orders, for a minimum of 3 years after completion, and longer if required by
333 applicable statutes, rules, or local ordinances. The records shall include accurate records of all
334 licenses and license holders, license fee revenues, inspection charges, complaints, complaint
335 investigations, and all program costs.

336 (2) The agent program shall accurately and completely document the cost of the agent's
337 program that is administered under the contract with the department. The cost may include direct
338 costs for licensing, inspection, complaint handling and investigation, enforcement, information
339 management, reporting, and any other activities carried out within the limits of the contract with
340 the department. The costs may also include documented indirect costs normally associated with
341 the program. These costs may include staff, equipment, facilities, contract service, and other
342 documented costs allocated to the program.

343 (3) The agent program shall provide upon the department's written request all information
344 necessary to monitor the agent program's detailed costs and revenues as specified in s. ATCP
345 74.20 (2), agent program performance and activities, and the status of regulated facilities.

346 (4) The agent program shall submit to the department by the 10th of each month the
347 following specific information:

348 (a) All new licensees under the contract within the preceding month.

349 (b) All changes in the license status of existing establishments during the previous month.

350 (5) By September 1 of each fiscal year, the agent program shall provide the department with
351 a complete list of the names and addresses of persons licensed by the agent program during the
352 previous fiscal year.

353 (6) The agent shall maintain records to demonstrate that license and other program-related
354 fees collected by an agent program do not exceed the reasonable costs incurred by the agent
355 program for enforcing and administering the provisions of the contract.

356 **ATCP 74.22 Licensing and standards.** (1) The agent program shall issue licenses in its
357 jurisdiction, in accordance with s. 97.30, Stats., and subchs. III and IV of ch. 97, Stats., and shall
358 ensure that no person in its jurisdiction, subject to regulation under those statutes, operates an
359 establishment without a valid license except:

360 (a) Mobile retail food establishments, operating in more than one jurisdiction, shall be
361 licensed by the department, pursuant to s. 97.30 (2) (a), Stats.

362 1. If the mobile retail food establishment has a service base, as defined in ch. ATCP 75
363 Appendix Part 1-201.10 (B), located within an agent's jurisdictional boundary, the agent shall
364 issue the service base license.

365 2. The agent may charge an inspection fee for any inspection of a department-licensed
366 mobile retail food establishment.

367 (b) Temporary retail food establishments that operate in more than one jurisdiction shall be
368 licensed by the department pursuant to s. 97.30 (2) (a), Stats.

369 1. The department shall provide a guidance document for the agent to use to determine which
370 temporary retail food establishment license applies.

371 2. The agent may charge an inspection fee for any inspection of a department-licensed
372 temporary retail food establishment.

373 (c) Any establishment that is selling, holding, or distributing food and exempt from the
374 requirement to hold a retail food establishment license, pursuant to s. 97.30 (2) (b), Stats., is
375 under the regulatory authority of the department and may not be licensed, charged a fee, or
376 inspected in any manner related to food, dairy or meat processing, or wholesale or retail food
377 operations by the agent.

378 **(2)** An annual license issued by the agent program shall include:

379 (a) The individual, married couple or legal entity who will hold the license and a complete
380 street address. A website address or post office box number do not meet this requirement.

381 (b) Doing business as (DBA) name and complete address of the establishment.

382 (c) License number and expiration date.

383 (d) Type of establishment, for licensing purposes.

384 (e) Numbers of units, rooms, or sites and complexity, if applicable.

385 **(3)** Each license issued by the agent program shall expire on June 30, except for the
386 following:

387 (a) New licenses issued during the period beginning on April 1 and ending on June 30 shall
388 expire on June 30 of the next calendar year.

389 (b) A local health department of a city of the 1st class that has contracted with the department
390 may issue a license for a retail food establishment or a bed and breakfast establishment, pursuant
391 to ss. 97.30 (2) (am) or 97.605 (5) (b), Stats., at any time during the year. That license shall
392 expire one year after the date it was issued.

393 (4) The agent program shall notify the department when, in the performance of its duties, it
394 encounters an unlicensed establishment that falls under the department's licensing and inspection
395 authority.

396 (5) The department shall notify an agent program when, in the performance of its duties, it
397 encounters an unlicensed establishment that falls under the agent program's licensing and
398 inspection authority.

399 (6) The agent program may, pursuant to the provisions of and subject to s. ATCP 75.03 (6),
400 issue an interim license.

401 (7) The agent program may not issue an interim license in response to a renewal application
402 by the holder of an existing license.

403 **ATCP 77.24 License denial, suspension, or revocation.** The agent program may deny,
404 suspend, or revoke a license or impose conditions on a license, as provided in s. 93.06 (7) and
405 (8), Stats. Except as otherwise provided by statute, rule, or local ordinance, the suspension or
406 revocation of a license shall comply with the prior notice requirements of s. 227.51, Stats.

407 **ATCP 74.26 Contract termination, revocation, refusal to renew, or suspension.**

408 (1) An agent program may terminate the contract upon 90 days written notice to the
409 department. The notice shall specify the reason or reasons for the termination and the last day,

410 not to exceed the term of the current contract, that the agent program will maintain its agent
411 status.

412 (2) If the department finds that the agent program has failed to comply with this chapter, with
413 the conditions in ss. 97.30, 97.41, Stats., or subch. III or IV of ch. 97, Stats., or with the terms
414 and conditions of the contract, the department may revoke the agent program's agent status as
415 provided in s. 97.41 (2), Stats., upon 90 days written notice to the agent program, or refuse to
416 renew a contract for the next contract period. The notice shall specify the reason or reasons the
417 agent program has had its agent status revoked or refused to renew, and shall specify the last day
418 in which the local health department may operate an agent program.

419 (3) If the department determines that it is necessary to suspend an agent program's contract
420 to protect public health or safety, the department may immediately suspend the contract upon
421 written notice to the agent program.

422 (4) The agent program, following a revocation, refusal to renew, or suspension, may request
423 a hearing if it is requested in writing by the agent program within 10 days of the department's
424 written notice. A final decision, after hearing, on a revocation or refusal to renew shall be issued
425 by the department before the last day of the contract, specified in the department's written notice.
426 If a hearing on a suspension is requested, the department shall hold it within 15 days after the
427 department receives that request, unless the parties agree to an extension. Any suspension shall
428 continue until such time as the department has issued a final decision.

429 **SECTION 2. EFFECTIVE DATE:** This rule shall take effect 90 days from the date of
430 publication in the Wisconsin administrative register, as provided under s. 227.22 (2) (b), to assist
431 local agents in complying with the proposed rule.

432

Dated this _____ day of _____, _____.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Jeff Lyon, Interim Secretary