

1 Clearinghouse Rule 16-082
2

DATCP Docket No. 15-R-19
Rules Clearinghouse No. ____

Proposed Hearing Draft
November 30, 2016

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

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

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

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

Statutes Interpreted

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

Statutory Authority

Statutory Authority: ss. 93.07 (1), 97.41 (2) and (5), and 97.615 (2) (b) and (e), Stats.

Explanation of Statutory Authority

The Department of Agriculture, Trade and Consumer Protection (“department”) has broad general authority, under s. 93.07 (1), Stats., to adopt rules to implement programs under its jurisdiction. The department has specific authority, under ss. 97.41 (2) and (5) and 97.615 (2) (b) and (e), Stats., 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.

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 ch. 97, Stats. Section 97.30, Stats., "Retail food establishments," contains requirements related to retail food establishment, including restaurants, for licensing, fees, and inspection. Subchapter III, ch. 97, Stats., "LODGING AND VENDING MACHINES," contains requirements related to these establishments for licensing, fees, and inspection. Finally, Subchapter IV, ch. 97, Stats., "RECREATIONAL SANITATION," contains requirements, related to recreational establishments, for licensing, fees, and inspection.

Plain Language Analysis

On July 1, 2016, ch. DHS 192 and the section of ch. ATCP 75, dealing with agent programs, were combined into a new ch. ATCP 74, dealing with the relationship of the department's new Division of Food and Recreational Safety (DFRS) and its agent programs. Under the authority of an approved DHS scope statement, the new DFRS is now revising ch. ATCP 74.

The new rule standardizes language from ATCP 75 and DHS 192. It also standardizes, expands, and clarifies definitions of agent program terms. In doing so, it clarifies department expectations for persons hired by agent programs 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 inspection done by those sanitarians who have not yet earned the RS certification, as well as the staffing procedures to be followed by agent programs if certified RS staff leave the program.

The revised 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 expectations of the department for agent programs seeking to enter into a contractual relationship and the procedures to enter into that agreement, and it clarifies the procedures for either or both entities to end the contractual relationship. The rule also updates and clarifies the roles that both the department and the agent program shall play under the contractual relationship and the types of support, levels of training, and information that are to be shared by each of the partners in the contractual relationship.

This new rule clarifies the responsibilities of the agent programs to enforce the Wisconsin Food Code, to inform the department of their enforcement activities, and do such sampling as is required by the department. It also clarifies the financial responsibilities of the agent programs for that sampling. In addition, the new rule clarifies the responsibilities of the department to provide general and specialized training, and laboratory support for the agent programs.

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 agent programs to demonstrate that the fees charged by the local program are reasonable and used only for maintaining the local program.

Federal and Surrounding State Programs

Federal Programs – The Federal Food and Drug Administration (“FDA”) lacks 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, so the department expects its agent programs to enforce the same standards in the *Wisconsin Food Code*.

Surrounding State Programs – This chapter is specifically intended to clarify the relationship between the department’s DFRS and the local health departments that wish to act as agents of DFRS. The practices of surrounding states have little bearing on this relationship or the contract between a local health department and DFRS.

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 require 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 rate Wisconsin does, and their program depends on passing an evaluation.

Data and Analytical Methodologies

This rule was developed using chs. DHS 192 and ATCP 75 and the department's new contract with agent programs. Enquiries were also made to surrounding states in an effort to ascertain their requirements and practices for similar programs.

Effect on Small Business

This rule change is anticipated to have no impact on small business, as local agents were already handling licensing, investigations, and inspection for many of these businesses, when the programs were in two agencies, this department and the Department of Health Services.

DATCP Contact

Questions and comments (including hearing comments) related to this rule may be directed to:

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Rule comments will be accepted up to two weeks after the last public hearing is held on this rule. Hearing dates will be scheduled after this rule is approved by the Board of Agriculture, Trade and Consumer Protection.

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

2 **Chapter ATCP 74**

3 **LOCAL AGENTS AND REGULATION**

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|---|------------|------------------------|
| 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. |

- 1 ATCP 74.10 Inspections.
- 2 ATCP 74.12 Complaint investigations.
- 3 ATCP 74.14 Evaluation and training.
- 4 ATCP 74.16 Enforcement and sampling.
- 5 ATCP 74.18 Reimbursements and other payments for services.
- 6 ATCP 74.20 Reports and records.
- 7 ATCP 74.22 Licensing and standards.
- 8 ATCP 74.24 License denial, suspension or revocation.
- 9 ATCP 74.26 Contract denial, termination, revocation or suspension.

10 **Note:** Chapter ATCP 74 was created from applicable portions of ch. ATCP 75 and ch. DHS
11 192, to facilitate the oversight of agent programs, formerly under the Department of Health
12 Services, by the Department of Agriculture, Trade and Consumer Protection.

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

14 (1) “Agent” means a local health department of a village, city, county, or portions of
15 counties, or consortium of counties that has entered into a contract with the department and is
16 authorized under the terms of that contract to administer a retail food establishment, lodging and
17 recreational safety program, under s. 97.41 and 97.615 (2) (b), Stats., in the health department’s
18 area of jurisdiction.

19 (2) “Agent program” means the retail food establishment, lodging, and recreational safety
20 regulatory program operated by an agent.

21 (3) “Department” means the Wisconsin department of agriculture, trade, and consumer
22 protection.

23 (4) “Contract” means a signed, written agreement between a local health department seeking
24 agent status and the department setting forth the obligations of each party in the operation of an
25 agent program.

1 **(5)** “Establishment” means a retail food establishment under s. 97.30, Stats., a hotel or motel,
2 tourist rooming house, bed and breakfast establishment, food vending operation, camping resort
3 or other campground, recreational camp, educational camp, public pool, or water attraction under
4 s. 97.615 (2), Stats.

5 **(6)** “Fiscal Year” means the July 1 of one year through June 30 of the next year.

6 **(7)** “Food” has the meaning defined in s. 97.01 (6), Stats.

7 **(8)** “Inspection fee” means a fee charged by the agent program, the amount of which is
8 reasonably related to the cost of performing an assessment of an establishment’s compliance
9 with the statutes and rules, under which a license is granted.

10 **(9)** “Inspector” means any employee inspecting retail food establishments or other facilities
11 for the department or the agent under the jurisdiction of an agent program.

12 **(10)** “Licensee” means the person or entity licensed to operate an establishment.

13 **(11)** “New agent” means an agent that has entered into its first contract with the department
14 or an agent that has applied to re-enter into a contract with the department after termination of a
15 previous contract.

16 **(12)** “Registered sanitarian or RS” means an individual, who is a Wisconsin-registered
17 sanitarian under s. 440.98, Stats., chs. DHS 174 – 177, or is recognized as a registered
18 environmental health specialist/registered sanitarian (REHS / RS) by the National Environmental
19 Health Association (NEHA).

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

21 **(14)** “Retail food establishment” has the meaning defined in s. 97.30 (1) (c), Stats.

22 **(15)** “Sanitarian” means an environmental health inspector who is qualified to conduct
23 inspections as an agent of the department by meeting one of the following requirements:

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

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

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

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

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

11 (b) Being an RS in training, or

12 (c) Holding a Wisconsin registered sanitarian or NEHA REHS/RS credential.

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

15 (17) “Standardization Exercise” means an evaluation conducted by a standard to determine if
16 a sanitarian is correctly interpreting and enforcing chs. ATCP 72, 73, 75, 75 Appendix, 76, 78,
17 and 79.

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

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

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

1 (3) An agent program shall enforce applicable provisions in ch. ATCP 70 at retail food
2 establishments conducting food processing operations but exempt from the requirement to hold a
3 food processing plant license, pursuant to s. ATCP 70.07 (a) (2).

4 **ATCP 74.04 Agent Status. (1) AGENT PROPOSED PROGRAM PLAN.** The local health
5 department wishing to become a new agent shall submit a written proposal to the department, in
6 a form specified by the department, describing the proposed agent program. The proposal shall
7 describe all of the following:

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

9 (b) A description of the staffing and budget for issuing licenses, making investigations and
10 inspections, providing technical assistance, and enforcing applicable state statutes and rules, and
11 local ordinances.

12 (c) A list of the licenses that may be issued by the agent. A local ordinance may combine and
13 expand license categories, so long as those categories include all of the types of retail food
14 establishments that shall be licensed under s. ATCP 75.03 and the agent contract.

15 (d) A list of the fees to be charged by the agent to licensees under the contract. A local
16 ordinance may establish local license fees that differ from fees charged under s. ATCP 75.03 (3),
17 for licenses issued by the department. However, license fees must be based on the agent's
18 reasonable program costs, pursuant to sub. (4) (c) and s. 97.41 (4), Stats.

19 (e) A description of the inspection and enforcement program to be implemented by the agent,
20 with a copy of any applicable city or county ordinance or regulation.

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

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

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

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

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

10 (k) Any other information that the department requires for its review of agent's program
11 plan.

12 (2) DEPARTMENT ACTION ON PROPOSED PLAN. The department shall review the
13 proposed agent program plan and accept or deny the application, under sub. (1), within 60 days
14 after the department receives it.

15 **ATCP 74.06 Terms of the Contract.** (1) If the department accepts the proposal from the
16 local health department, the department shall prepare a contract to be signed by both parties.
17 Signing the contract indicates the agent's agreement to comply with this chapter and chs. ATCP
18 72, 73, 75, 75 Appendix, 76, 78, and 79, and that all the conditions in the accepted application
19 have been met, including adoption of ordinances that adopt the department's rules by reference,
20 or are at least as stringent and do not conflict with the department's rules.

21 (2) The contract shall be in effect for three fiscal years unless otherwise specified, and shall
22 remain in effect unless specifically terminated, revoked, or suspended, as provided in the
23 contract. The department shall issue contracts, for future contract periods, to the agent by

1 January 1 of the last year of the current contract. The agent shall commit to continue as the
2 department's agent for the future contract period, by signing and returning the contract by March
3 1 of the last year of the current contract.

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

6 (4) When the contract is signed by both parties, the local health department shall assume
7 authority and the responsibility to enforce the provisions of s. 97.30, 97.625, and 97.71, Stats.,
8 and chs. ATPCP 72, 73, 74, 75, 75 Appendix, 76, 78, and 79. The agent program shall also issue
9 licenses and perform all inspections necessary to enforce these statutes and rules.

10 (5) Upon execution of the contract, the department shall discontinue all licensing and
11 enforcement activities, pursuant to s. 97.30, and 97.65, Stats., in the agent's jurisdiction for the
12 period of time the contract is in effect, except as provided in s. ATPCP 75.09 (2).

13 (6) Notwithstanding subs. (4) and (5), the department may act under s. 97.615 (h), Stats., to
14 take either appropriate inspection or enforcement action, or both, if the department has
15 determined that the agent program has not acted expeditiously or appropriately to take such
16 action.

17 **ATCP 74.08 Staffing.** (1) The agent program shall employ enough people to implement the
18 program according to the terms of the agent program's contract with the department.

19 (2) The agent program shall employ at least one registered sanitarian to conduct inspections
20 and supervise any inspectors who are not registered sanitarians. After July 1, 2017, the agent
21 shall only hire inspectors who are sanitarians or shall become registered sanitarians within five
22 (5) years. After July 1, 2017, existing staff who conduct inspections, and are not eligible to

1 become sanitarians within five (5) years, shall be under the supervision of a registered sanitarian
2 and shall be deemed competent to perform inspections by passing standardization exercises.

3 (3) If the agent loses its only registered sanitarian, the agent shall hire a registered sanitarian
4 replacement within 120 days; or upon the agent's written request, the department may allow the
5 agent additional time to hire a qualified replacement. A replacement who is not a registered
6 sanitarian may be hired, if approved by the department, and if the agent has a signed agreement
7 with another agent for a registered sanitarian to provide supervisory oversight. The replacement
8 hire shall become a registered sanitarian within six months of being hired. A copy of the
9 oversight contract shall be provided to the department and shall include the amount of time
10 allotted for oversight activities and what specific duties the supervising registered sanitarian will
11 provide.

12 (4) The agent shall designate sanitarians or registered sanitarians, as required by the
13 department, to undergo the standardization exercise evaluating enforcement of ATCP 75 and its
14 Appendix. After successfully completing the exercises, the staff person shall be designated as
15 the agent standard.

16 (5) The agent standard shall perform department-required exercises with the department to
17 maintain their status as the agent standard.

18 (6) The agent standard shall perform standardization and maintenance exercises with other
19 environmental health inspection personnel in their jurisdiction, using procedures specified by the
20 department.

21 (7) The agent is required to send at least one sanitarian or registered sanitarian to attend
22 training provided by the department.

1 (8) An employee of the agent shall participate on department rule making and policy
2 advisory committees when requested.

3 (9) The agent shall not permit an employee to conduct an inspection in a situation in which
4 the employee, a member of his or her family, or an organization, with which the employee is
5 associated, has a financial interest or where the employee's relationship, with any person at the
6 inspected facility, could cause the employee not to be able to conduct an objective, unbiased
7 inspection.

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

11 (11) Upon the agent's request, the department will provide technical assistance and training
12 to staff.

13 **ATCP 74.10 Inspections.** (1) Agent program sanitarians shall inspect all establishments
14 covered in the agent contract for compliance with Wis. Stat. § 97.30 and Subchs. III and IV of
15 ch. 97, Wis. Admin. Code chs. ATCP 72, 73, 75 and Appendix, 76, 78 and 79.

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

18 (3) Each fiscal year the agent shall conduct one routine inspection of each license holder's
19 establishments, under its jurisdiction, except for vending machines. The agent may propose a
20 different inspection frequency to the department which may only be implemented if approved by
21 the department, in writing.

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

1 (5) Before issuing a new license, the agent program inspector shall perform a pre-licensing
2 inspection of the license applicant's establishment for compliance with all applicable ordinances,
3 rules, and statutes. The pre-licensing inspection shall be conducted before the operator is issued a
4 license and conducts business.

5 (6) The department may conduct inspections in an establishment in an agent program's
6 jurisdiction:

7 (a) For training or standardization of department staff or for staff of an agent program.

8 (b) In response to an emergency.

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

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

12 (7) Whenever possible, the department shall notify the agent program of the department's
13 intent to inspect an establishment in the agent program's jurisdiction.

14 **ATCP 74.12 Complaint Investigations.** (1) Except as provided in s. ATCP 75.02, an agent
15 program shall investigate every complaint that it receives against any licensee under its
16 jurisdiction. The agent shall prioritize and investigate complaints according to the procedures in
17 this section and procedures adopted by the agent program under the contract with the
18 department. The complaints shall be addressed in order of priority as follows:

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

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

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

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

7 **ATCP 74.14 Evaluation and training.** (1) At least once each year, the agent program shall
8 submit a self-assessment in a format determined by the department.

9 (2) Once the self-assessment is submitted, the department shall evaluate the agent's program,
10 based upon a review of the following information in the self-assessment:

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

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

13 (c) The agent program's records and reports required under s. ATCP 74.20.

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

16 (4) The department shall provide the agent program with the department's written findings,
17 based on the review of the self-assessment or the on-site evaluation. The department may, as
18 deemed necessary, increase the evaluation frequency.

19 (5) In response to the department's written findings, the agent shall submit to the department
20 any required corrective action plan, detailing how the agent will meet contract requirements.

21 (6) The department, after receiving the corrective action plan, shall review it, make
22 additional comments, and approve the corrective action plan when it is deemed acceptable by the
23 department.

1 (7) If the agent fails to meet the conditions specified in the corrective action plan, the
2 department shall:

3 (a) Notify the agent, in writing, of the deficiencies in meeting the corrective action plan, and
4 place the agent contract in a conditional status, with a deadline set for the agent to meet the
5 corrective action plan conditions.

6 (b) If deficiencies are corrected within the conditional time period, the contract is returned to
7 active status.

8 (c) If deficiencies remain uncorrected after a conditional deadline has passed, the department
9 shall notify the agent of its intent to terminate the contract and revoke agent status as provided
10 under ATCP 74.26.

11 (8) Notwithstanding these provisions, the department may exercise its right to immediately
12 suspend an agent program's contract, under s. ATCP 74.26(3), to protect public health or safety.

13 **ATCP 74.16 Enforcement and Sampling.** (1) The agent program shall take necessary
14 actions to enforce the provisions of s. 97.30 and Subchs. III and IV of ch. 97, Stats., related
15 administrative rules in chs. ATCP 70, 72, 73, 75, 75 Appendix, 76, 78, and 79, and any local
16 ordinances or regulations adopted under ss. 97.41 (7) and 97.615 (2) (g), Stats., for facilities for
17 which the agent program has been delegated authority under the contract between the department
18 and the agent program.

19 (2) Enforcement actions may include license revocation, license suspension, fines or civil
20 forfeitures, orders to close, temporary or final hold orders on equipment, food, processes or
21 facilities, and the placement of conditions on licenses.

1 **(3)** The agent program shall promulgate or adopt an enforcement policy that is distributed to
2 its inspection staff, and shall make it available to the department during evaluations and at other
3 times if it is substantively changed or upon request.

4 **(4)** The agent program shall notify the department in writing within ten (10) days after taking
5 any enforcement action against a facility involving license suspension, license revocation, or
6 court or administrative actions.

7 **(5)** The agent program shall be responsible for costs incurred in enforcement actions taken in
8 the local agent program's jurisdiction.

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

10 **(7)** The agent program may conduct any requested sample analyses in a laboratory certified
11 by the department under ch. ATCP 77 for those analyses. All costs associated with collecting and
12 testing these samples shall be assumed by the agent program.

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

14 **(9)** Those agent programs that do not have the laboratory capability to perform required
15 analyses or that do not choose to perform those analyses shall submit those samples to the
16 department's bureau of laboratory services for analysis.

17 (a) The agent program shall assume the cost of collecting samples and shipping them to the
18 department's laboratory.

19 (b) The department shall assume the cost of the laboratory analysis of those samples.

20 **(10)** If the department has notified an agent program of deficiencies by any licensee to
21 comply with the enforcement provisions of this chapter or any other rules or statutes applicable
22 under the contract, and that program does not act expeditiously or take effective action with the

1 licensee, the department may act under ss. 97.12, and 97.65, Stats., to enforce compliance with
2 this chapter.

3 (11) The agent, if requested by the department, shall conduct effectiveness checks after
4 product recalls or other situations in which a license-holder must remove food from sale or
5 service.

6 **ATCP 74.18 Reimbursement and other payments for services.** (1) Unless otherwise
7 specified in the contract, a fiscal year is defined in ATCP 74.01(6).

8 (2) By September 30 of each year, the department shall reimburse agent programs for
9 inspecting vending machines during the previous fiscal year under terms and conditions
10 specified in the contract. The department shall, upon written request, provide any agent with
11 information on how to request reimbursement.

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

15 (b) The reimbursement rate shall not exceed 20% of the state license fees the department sets
16 by administrative rule for the types of facilities which the agent issues licenses. The calculation
17 of the state fees is based on state license fees only, not pre-inspection and reinspection fees. The
18 current reimbursement rate is set within these limits by the contract.

19 (3) By September 30 of each year, agent programs shall reimburse the department for each
20 license issued by the agent program during the preceding fiscal year as a fee for training,
21 support, and oversight costs.

22 (4) The department may increase the reimbursement rate up to a maximum rate of 20% by
23 announcing the increase before the licensing year for which the change applies.

1 (5) Retail food and recreational establishment license fee reimbursement shall be:

2 (a) A fee equal to 10% of the applicable state license fee, regardless of the license fee
3 actually charged by the local agent, if the local agent prepares and submits to the department, by
4 September 30 of that year, an annual self-assessment as required by ss. 97.41 and 97.615, Stats.

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

9 (6) If an agent program has contracted with the department under s. 97.41, Stats., and s.
10 ATCP 74.06, for the department to collect fees and issue licenses, the agent program shall pay
11 the department for the actual cost of providing these services.

12 **ATCP 74.20 Reports and records.** (1) An agent program shall retain complete and accurate
13 records including, but not limited to, copies of all reports and inspections, follow-up inspections,
14 sampling, and all orders, for at least three (3) years after completion, and longer if required by
15 applicable statutes, rules, or local ordinances. These records shall also include accurate records
16 of all licenses and license holders, license fee revenues, inspection charges, complaints,
17 complaint investigations, and all program costs. These records also shall be retained for at least
18 three years.

19 (2) The agent program shall accurately and completely document the cost of the agent's
20 program that is administered under the contract with the department. The cost may include direct
21 costs for licensing, inspection, complaint handling and investigation, enforcement, information
22 management, reporting, and any other activities carried out within the limits of the contract with
23 the department. The costs may also include documented indirect costs normally associated with

1 the program. These costs may include staff, equipment, facilities, contract service, and other
2 documented costs allocated to the program.

3 (3) The agent program shall provide upon the department's written request all information
4 necessary to monitor the agent program's detailed costs and revenues as specified in s. ATCP
5 74.20 (2), agent program performance and activities, and the status of regulated facilities.

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

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

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

10 (c) All records except those specified in s. ATCP 74.16 (3), and paperwork associated with
11 any actions taken under s. ATCP 74.16 (3), within the preceding month.

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

15 (6) The license and other program-related fees collected by an agent program may not exceed
16 the reasonable costs incurred by the agent program for enforcing and administering the
17 provisions of the contract.

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

22 (a) Mobile retail food establishments, operating in more than one jurisdiction, shall be
23 licensed by the department under s. 97.30 (2) (a), Stats.

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

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

6 (b) Temporary retail food establishments that operate in more than one jurisdiction, shall be
7 licensed by the department under s. 97.30 (2) (a), Stats.

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

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

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

17 **(2)** An annual license issued by the agent program shall include, at minimum:

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

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

21 **(c)** License number and expiration date.

22 **(d)** Type of establishment, for licensing purposes.

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

1 (3) Each license issued by the agent program shall expire on June 30, except that new
2 licenses issued during the period beginning on April 1 and ending on June 30 shall expire on
3 June 30 of the next calendar year, except:

4 (a) A local health department of a city of the 1st class that has contracted with the department
5 may issue a license for a retail food establishment or a bed and breakfast establishment under s.
6 97.30 (2) (am) or 97.605 (5) (b), Stats., at any time during the year. That license shall expire one
7 year after the date it was issued.

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

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

14 (6) The agent program may, under the provisions of and subject to s. ATCP 75.03 (6), issue
15 an interim license.

16 (7) The agent program shall not issue an interim license in response to a renewal application
17 by the holder of an existing license.

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

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

1 (1) An agent program may terminate the agent contract upon ninety (90) days written notice
2 to the department. The notice shall specify the reason(s) for the termination and the last day, not
3 to exceed the term of the current contract, that the agent program will maintain its agent status.

4 (2) If the department finds that the agent program has failed to comply with this chapter, with
5 the conditions in s. 97.30, 97.41, or Subch. III or IV of ch. 97, Stats., or with the terms and
6 conditions of the contract, the department may revoke the agent program's agent status as
7 provided under s. 97.41 (2), Stats., upon ninety (90) days written notice to the agent program, or
8 refuse to renew a contract for the next contract period. The notice shall specify the reason(s) the
9 agent program has had its agent status revoked or refused to renew, and shall specify the last day
10 in which the local health department may operate an agent program.

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

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

21 **SECTION 2. EFFECTIVE DATE:** This rule shall take effect on the first day of the month
22 following publication in the Wisconsin administrative register, as provided under s. 227.22 (2)
23 (intro).

Dated this _____ day of _____, _____.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary