

## CHAPTER 97

## FOOD, LODGING, AND RECREATION

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## SUBCHAPTER I

## DEFINITIONS

**Cross-reference:** See definitions in s. 93.01.

**97.01 Definitions.** In this chapter, unless inconsistent with context:

(1g) “Bed and breakfast establishment” means any place of lodging that satisfies all of the following:

- Provides 8 or fewer rooms for rent to no more than a total of 20 tourists or transients.
- Provides no meals other than breakfast and provides the breakfast only to renters of the place.
- Is the owner's personal residence.
- Is occupied by the owner at the time of rental.
- Was originally built and occupied as a single-family residence, or, prior to use as a place of lodging, was converted to use and occupied as a single-family residence.

(1r) “Butter” means the clean, nonrancid product made by gathering in any manner the fat of fresh or ripened cow's milk or cream into a mass, which also contains a small portion of the other milk constituents, with or without salt or added coloring matter, and contains not less than 80 percent of milk fat. Renovated or process butter is the product made by melting butter and reworking, without the addition or use of chemicals or any substances except milk, cream, or salt, and contains not more than 16 percent of water and at least 80 percent of milk fat.

(3) “Contaminated with filth” applies to any food not securely protected from dust, dirt and, as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

(4) “Department” means the department of agriculture, trade and consumer protection.

(4m) “Distressed food” means food, or packages or containers of food, that may have been damaged, or rendered unsafe or unsuitable for sale or use as food while being transported, stored, handled or sold or the food the label of which has been lost, defaced or obliterated.

(5) “Federal act” means the federal food, drug and cosmetic act, as amended (Title 21 USC 301 et seq.) or the federal wholesome meat act, as amended (Title 21 USC 71 et seq.), or the federal poultry products inspection act, as amended (Title 21 USC 451 et seq.), or the federal fair packaging and labeling act (Title 15 USC 1451 et seq.) which may be applicable.

(6) “Food” means:

- Articles used for food or drink by persons.
- Chewing gum.
- Articles used for components of matters specified in pars. (a) and (b).

(7) “Hotel” means all places wherein sleeping accommodations are offered for pay to transients, in 5 or more rooms, and all places used in connection therewith. “Hotelkeeper”, “motel-keeper” and “innkeeper” are synonymous and “inn”, “motel” and “hotel” are synonymous.

(8) “Label” means a display of written, printed or graphic matter upon the immediate container of any article. A requirement made under this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement or other information also appears on the outside container or wrapper if any, of the retail package of such article, or is easily legible through the outside container or wrapper. “Immediate container” does not include package liners.

(9) “Labeling” means all labels and other written, printed or graphic matter upon an article or any of its containers or wrappers or accompanying the article.

(9m) “Micro market” means any indoor, unstaffed, self-service area that is accessible only to persons authorized by the person in control of the premises and not accessible to the general public, where a customer may obtain unit servings of food or beverage either in bulk or in package before payment at an automated kiosk or by other automated method, without the necessity of replenishing the area between each transaction. “Micro market” does not include a vending machine and does not include a device which dispenses only bottled, prepackaged, or canned soft drinks, a one-cent vending device, a device dispensing only candy, gum, nuts, nut meats, cookies, or crackers, or a device dispensing only prepackaged Grade A pasteurized milk or milk products.

(9q) “Micro market operator” means the person maintaining a place of business in the state and responsible for the operation of one or more micro markets.

(10) (a) “Milk” means the lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy cows, goats, or sheep. Milk from cows shall contain not less than 3 percent of milk fat, and not less than 8.25 percent of milk solids not fat. Milk from cows may be standardized by the addition or removal of cream or by the addition of concentrated milk, dry whole milk, skim milk, concentrated skim milk, or non-fat milk. Milk from cows may also be standardized by removing water through reverse osmosis or other nonthermal methods and adding potable water. When standardized, milk from cows sold in final package form shall contain not less than 3.25 percent of milk fat, and not less than 8.25 percent of milk solids not fat. Milk may be homogenized.

(b) “Lowfat milk” means cow’s milk from which sufficient milk fat has been removed to produce a food having a milk fat content of either 0.5 percent, 1 percent, 1.5 percent, or 2 percent and a milk solids not fat content of not less than 10 percent.

(c) “Skim milk” means cow’s milk from which sufficient milk fat has been removed to reduce its milk fat content to less than 0.5 percent and which has a milk solids not fat content of not less than 9 percent.

(11) “Nonfat dry milk” means the product resulting from the removal of fat and water from cow’s milk, and contains the lactose, milk proteins and milk minerals in the same relative proportions as in the fresh cow’s milk from which made. It contains not over 5 percent by weight of moisture. The fat content is not over 1 1/2 percent by weight unless otherwise indicated.

(12) “Package” means any container or wrapper in which any food is enclosed for use in the delivery or display of that food to retail purchasers, but does not include:

(a) Shipping containers or wrappings used solely for the transportation of any food in bulk or in quantity to manufacturers, packers or processors, or to wholesale or retail distributors.

(b) Shipping containers or outer wrappings used by retailers to ship or deliver any food to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity.

(13) “Pesticide chemical” means any substance which, alone, in chemical combination, or in formulation with one or more other substances is a “pesticide” within the meaning of s. 94.67 (25) and

which is used in the production, storage or transportation of raw agricultural commodities.

(13g) “Potluck event” means an event to which all of the following apply:

(a) Attendees of the event provide food and beverages to be shared with other attendees and consumed at the event.

(b) No compensation is provided to any person who conducts or assists in providing the event or who provides food and beverages to be shared at the event, and no compensation is paid by any person for consumption of food or beverages at the event.

(c) The event is sponsored by any of the following:

1. A church.
2. A religious, fraternal, youth, or patriotic organization or service club.
3. A civic organization.
4. A parent–teacher organization.
5. A senior citizen center or organization.
6. An adult day care center.

(13r) “Public health and safety” means the highest degree of protection against infection, contagion or disease and freedom from the danger of fire or accident that can be reasonably maintained in the operation of a hotel, tourist rooming house, bed and breakfast establishment, vending machine or vending machine commissary.

(14) “Raw agricultural commodity” means any food in its raw or natural state, including all fruits that are washed, colored or otherwise treated in their unpeeled natural form prior to marketing.

(14g) “Restaurant” means any building, room or place at which the predominant activity is the preparation, service, or sale of meals to transients or the general public, including all places used in connection with it and including any public or private school lunchroom for which food service is provided by contract. “Meals” does not include soft drinks, ice cream, milk, milk drinks, ices and confections. “Restaurant” does not include:

(a) Taverns that serve free lunches consisting of popcorn, cheese, crackers, pretzels, cold sausage, cured fish or bread and butter.

(b) Churches, religious, fraternal, youths’ or patriotic organizations, service clubs and civic organizations which occasionally prepare, serve or sell meals to transients or the general public.

(c) Any public or private school lunchroom for which food service is directly provided by the school, or a private individual selling foods from a movable or temporary stand at public farm sales.

(d) Any bed and breakfast establishment that serves breakfasts only to its lodgers.

(e) The serving of food or beverage through a licensed vending machine.

(f) Any college campus, as defined in s. 36.05 (6m), institution as defined in s. 36.51 (1) (b) or technical college that serves meals only to the students enrolled in the college campus, institution or school or to authorized elderly persons under s. 36.51 or 38.36.

(g) A concession stand at a locally sponsored sporting event, such as a little league game.

(h) A potluck event.

(i) The serving of food or beverage through a licensed micro market.

(14m) “Salvaging distressed food” means reconditioning or preparing distressed food for sale or use as food, including cleaning, culling, sorting, scouring, labeling, packaging, processing or treating the food.

(15) “Sell”, “sale” or “sold” includes delivering, shipping, consigning, exchanging, offering or exposing for sale, or having in possession with intent to sell.

(15b) “Temporary restaurant” means a restaurant that operates at a fixed location in conjunction with a single event such as

a fair, carnival, circus, public exhibition, anniversary sale or occasional sales promotion.

**(15f)** “Tourist or transient” means a person who travels from place to place away from his or her permanent residence for vacation, pleasure, recreation, culture, business or employment.

**(15k)** “Tourist rooming house” means any lodging place or tourist cabin or cottage where sleeping accommodations are offered for pay to tourists or transients. “Tourist rooming house” does not include:

(a) A private boarding or rooming house, ordinarily conducted as such, not accommodating tourists or transients.

(b) A hotel.

(c) Bed and breakfast establishments.

**(15p)** “Vending machine” means any self-service device offered for public use which, upon insertion of a coin or token, or by other means, dispenses unit servings of food or beverage either in bulk or in package, without the necessity of replenishing the device between each vending operation. “Vending machine” does not include a micro market or a device which dispenses only bottled, prepackaged, or canned soft drinks, a one-cent vending device, a vending machine dispensing only candy, gum, nuts, nut meats, cookies, or crackers, or a vending machine dispensing only prepackaged Grade A pasteurized milk or milk products.

**(15s)** “Vending machine commissary” means any building, room or place where the food, beverage, ingredients, containers, transport equipment or supplies for vending machines or micro markets are kept, handled, prepared or stored by a vending machine or micro market operator. “Vending machine commissary” does not mean any place at which the operator is licensed to manufacture, distribute or sell food products under this chapter.

**(15w)** “Vending machine location” means the room, enclosure, space or area where one or more vending machines are installed and operated.

**(15y)** “Vending machine operator” means the person maintaining a place of business in the state and responsible for the operation of one or more vending machines.

**(16)** “Whey cream” means that portion of whey rich in milk fat which is separated from whey by centrifugal force, is fresh and clean and contains not less than 30 percent of milk fat.

**History:** 1975 c. 94 s. 91 (10); 1975 c. 308; 1977 c. 29 s. 1650m (4); 1977 c. 106 s. 15; 1983 a. 189, 261; 1987 a. 276; 1995 a. 225; 2013 a. 374; 2015 a. 55 ss. 2643, 4065, 4067 to 4077; 2015 a. 242; 2017 a. 225.

**97.02 Standards; adulterated food.** For the purposes of this chapter, a food is adulterated if it is adulterated within the meaning of 21 USC 342, except that the department may not consider a food to be adulterated solely because it contains industrial hemp, as defined in s. 94.67 (15r), or an industrial hemp product.

**History:** 1971 c. 156; 1979 c. 89; 2005 a. 253; 2009 a. 177; 2013 a. 374; 2017 a. 100.

**Cross-reference:** See also ch. ATCP 55, Wis. adm. code.

**97.03 Standards; misbranding.** For the purposes of this chapter, a food is misbranded if it is misbranded within the meaning of 21 USC 343.

**History:** 1971 c. 156 ss. 2, 3, 5; 1977 c. 216; 1991 a. 111; 1993 a. 492; 1995 a. 225; 2013 a. 374.

**Cross-reference:** See also ch. ATCP 55, Wis. adm. code.

**97.07 Interpretation.** If an article is alleged to be misbranded because the labeling is misleading, then in determining whether the labeling is misleading, there shall be taken into account not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the labeling fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling relates under the conditions of use prescribed in the labeling or under such conditions of use as are customary or usual.

**97.09 Rules. (1)** Definitions and standards of identity, composition, quality and fill of container for foods, and amendments

thereto, now or hereafter adopted under the federal act or this chapter are definitions and standards of identity, composition, quality and fill of container under s. 97.03. However, when such action will promote honesty and fair dealing in the interest of consumers, the department may amend, stay or reject such federal regulations or make rules establishing definitions and standards of identity, composition, quality and fill of container for foods where no federal regulations exist, or which differ from federal regulations.

**(2)** Temporary permits granted under the federal act for interstate shipment of experimental packs of food varying from the requirements of federal definitions and standards of identity are automatically effective in this state under conditions set forth in such permits.

**(3)** The department may also issue temporary marketing permits upon a convincing showing of need to continue a market study where the interests of consumers are safeguarded. Such permits are subject to terms and conditions prescribed by departmental rules but may not be issued for a period exceeding 6 months plus one renewal period of 6 months after departmental review.

**(4)** The department may, by rule, establish and enforce standards governing the production, processing, packaging, labeling, transportation, storage, handling, display, sale, including retail sale, and distribution of foods that are needed to protect the public from the sale of adulterated or misbranded foods.

**(5)** The department shall promulgate rules establishing standards and procedures for the labeling of organic food. The rules may establish a process whereby organizations, businesses and firms certify that foods represented as organic foods comply with established standards. In this subsection, “organic food” means any food that is marketed using “organic” or any derivative of “organic” in its labeling or advertising.

**History:** 1971 c. 156; 1983 a. 261; 1987 a. 278; 2015 a. 242.

**Cross-reference:** See also ch. ATCP 55, Wis. adm. code.

**97.10 Prohibited acts. (1)** The sale of any food that is adulterated or misbranded is prohibited.

**(2)** It is unlawful to manufacture, prepare for sale, store, or sell food unless the food is protected from filth, flies, dust or other contamination or unclean, unhealthful or insanitary conditions.

**(3)** No person shall be subject to the penalties of s. 97.72 for having violated sub. (1), if he or she establishes a guaranty or undertaking signed by, and containing the name and address of the person residing in this state from whom the article was received in good faith, to the effect that such article is not adulterated or misbranded within the meaning of ss. 97.02 and 97.03.

**History:** 1971 c. 156; 1983 a. 261.

**Cross-reference:** See also ch. ATCP 55, Wis. adm. code.

## SUBCHAPTER II

### FOOD SAFETY AND REGULATION

**97.12 Enforcement. (1)** For the purpose of enforcing this chapter, the department and its agents may, at reasonable hours, enter and inspect any premises for which a license is required under this chapter or any farm, factory, warehouse, building, room, establishment or place at or in which foods are manufactured, processed, packed, packaged, stored or held for sale, and may enter any vehicle, including a vehicle used to transport or hold foods in commerce. The department and its agents may also secure samples or specimens, including samples or specimens of food and any product or substance that may affect food, examine and copy relevant documents and records, and obtain photographic and other evidence needed to enforce this chapter or a rule promulgated under this chapter. The department shall examine any samples secured and shall conduct other inspections and examinations needed to determine whether there is a violation of this chapter. The department shall pay or offer to pay the market value of samples taken.

(2) (a) Whenever any duly authorized inspector of the department has reasonable cause to believe that any food examined by him or her is adulterated or misbranded and is dangerous to health or misleading to the injury or damage of the purchaser or consumer, the inspector shall issue and deliver to the owner or custodian of the food a holding order prohibiting the sale or movement of the food for any purpose until the analysis or examination of the sample obtained has been completed. A holding order may be effective for a period of not longer than 14 days from the time of its delivery, but it may be reissued for one additional 14-day period if necessary to complete the analysis or examination of the food.

(b) No food described in any such holding order so issued and delivered shall be sold or moved for any purpose without the approval of the department until such analysis or examination has been completed within the time specified in par. (a). If the department upon completed analysis or examination determines that the food described in such holding order is not adulterated or misbranded, then the owner or custodian thereof shall be promptly so notified in writing, and such holding order shall terminate upon such notification.

(c) Where the analysis or examination shows that the food is adulterated or misbranded and is dangerous to health or misleading to the injury or damage of the purchaser or consumer, the owner or custodian of the food shall be so notified in writing within the effective time of the holding order. Such notice has the effect of a special order issued under s. 93.18. Upon receipt of a notice the food subject to the holding order may not be sold, moved, disposed of or brought into compliance with applicable standards without the approval of the department. If such food is not brought into compliance, sold, moved or disposed of within 30 days, or other agreed upon period of time, from the date the owner or custodian received notice that the food was adulterated or misbranded, the department may issue an order directing the disposition of the food. Such an order has the effect of a special order issued under s. 93.18.

(d) 1. Any person violating an order issued under this section may be fined not more than the maximum amount under subd. 2. or imprisoned not more than one year in the county jail or both.

2. The maximum fine under this paragraph equals \$10,000 plus the retail value of the product moved, sold or disposed of in violation of the order issued under this section.

(3) (a) The department may issue a special order as provided under s. 93.18 to any person engaged in the production, processing, sale or distribution of food if the department finds a violation of this chapter or the rules promulgated under this chapter. An order shall state the violations found and shall specify a fixed period of time for correction. If the department finds that a piece of equipment, a facility or a practice used is a danger to public health, it may order that the situation be abated or eliminated immediately and that the equipment, facility or practice not be used until the violation is corrected and the correction is confirmed by the department. The department may, instead of issuing an order, accept written agreements of voluntary compliance which have the effect of an order.

(b) The department may, by summary order and without prior notice or hearing, suspend a license or permit issued under this chapter if the department finds that there has been a substantial failure to comply with the applicable requirements of this chapter and the rules promulgated under this chapter and that the continuation of the violations constitutes a serious danger to public health. The order shall be in writing, have the force and effect of an order issued under s. 93.18, and is subject to right of hearing before the department, if requested within 10 days after date of service. Hearings, if requested, shall be conducted within 10 days after receipt of a request for a hearing. Enforcement of the order shall not be stayed pending action on the hearing.

(4) Any person who does either of the following may be fined not more than \$5,000 or imprisoned not more than one year in the county jail or both:

(a) Assaults, restrains, threatens, intimidates, impedes, interferes with, or otherwise obstructs a department inspector, employee or agent in the performance of his or her duties.

(b) Gives false information to a department inspector, employee or agent with the intent to mislead the inspector, employee or agent in the performance of his or her duties.

(5) Any person who fails to comply with an order issued under this chapter may be required to forfeit \$50 for each day of non-compliance.

**History:** 1971 c. 156; 1983 a. 261; 2015 a. 55.

**Cross-reference:** See also ch. ATCP 55, Wis. adm. code.

A warrantless inspection of a dairy farm under authority of ss. 93.08, 93.15 (2), and 97.12 (1) and related administrative rules made without prior notice and without the owner being present was not unconstitutional. Because the administrative rules govern operations, equipment, and processes not typically conducted in residential areas, the rules and statutes sufficiently preclude making warrantless searches of residences. *Lundeen v. DATCP*, 189 Wis. 2d 255, 525 N.W.2d 758 (Ct. App. 1994).

**97.13 Sale of fish flour regulated.** No person shall sell any food product for human consumption within this state containing whole fish flour, except fish flour made from the normally edible portions of fish or fish protein concentrate. No package containing fish flour or fish protein concentrate shall be sold by any person unless it bears a statement declaring that the contents thereof are made only from the edible portions of fish.

**97.17 Buttermaker and cheesemaker license.** (1) In this section the terms “buttermaker” and “cheesemaker” mean a person employed or who may be employed in a butter or a cheese factory who has charge of and supervision over the actual process of manufacturing butter or cheese, and shall not include a person employed in a butter or cheese factory for the purpose of assisting in the manufacture of such product. This section shall not affect a person making up a product produced on the person’s farm, nor shall it be unlawful for a licensed cheesemaker employed in a licensed cheese factory to make butter or whey cream butter for the use or consumption only of the patrons thereof.

(2) No person shall engage as a buttermaker or cheesemaker unless the person has a license from the department. The license shall be issued by the department under regulations that the department shall prescribe relating to the qualifications of applicants for licenses. The qualifications shall include the applicant’s record in operating and keeping in sanitary condition the butter or cheese factory in which the applicant has been employed.

(3) Application for a buttermaker’s or cheesemaker’s license shall be made upon a form furnished by the department. Upon receipt of the application the department shall issue a permit to the applicant to carry on the work of a buttermaker or cheesemaker. The permit shall have the force and effect of a license to a buttermaker or cheesemaker until a license shall have been issued to the applicant or until the applicant shall have been notified of the denial of the application. At the time that the permit is issued, the department shall furnish the applicant with the regulations incident to securing a license and also suggestions relating to the proper method of operating butter or cheese factories.

(4) Each application for a license shall be accompanied by a fee that is \$50 unless otherwise established by department rule, except that an individual who is eligible for the veterans fee waiver program under s. 45.44 is not required to pay a fee.

(6) The license shall expire on the first day of January of the 2nd year commencing after the date of issuance or renewal. Renewal applications shall be submitted on department forms and be accompanied by the biennial license fee under sub. (4).

**History:** 1977 c. 216; 1979 c. 342; 1987 a. 27; 1989 a. 174; 1991 a. 39; 1993 a. 492; 1995 a. 225; 2011 a. 209.

**Cross-reference:** See also ch. ATCP 69, Wis. adm. code.

**97.175 Butter and cheese grader license requirements.** (1) In this section and ss. 97.176 and 97.177, “butter grader” or “cheese grader” means a person who grades butter or cheese.

(2) No person may act as a butter grader or a cheese grader without a license granted by the department. A person desiring a license shall apply on a form furnished by the department and shall pay to the department a fee that is \$50 unless otherwise established by department rule, except that an individual who is eligible for the veterans fee waiver program under s. 45.44 is not required to pay a fee. Before issuing a license, the department shall require the applicant to demonstrate his or her competence to act as a butter grader or a cheese grader in a manner determined by the department. A license expires on September 30 of the 2nd year commencing after the date of issuance.

(3) Butter graders and cheese graders must act in accordance with the standards and requirements established under ss. 93.07, 97.176 and 97.177.

(4) The department may deny, suspend or revoke a license under this section by an order if the department finds that the applicant or licensee is not qualified to act as a butter grader or cheese grader or that the applicant or licensee has applied inaccurate grades or has obtained the license by fraud, perjury or through error. The department shall notify the applicant or licensee of the order and shall follow the procedures for issuing a special order under s. 93.18.

**History:** 1983 a. 131; 1987 a. 27; 1991 a. 39; 2011 a. 209.

**97.176 Butter; grading; label.** (1) It is unlawful to sell, offer or expose for sale, or have in possession with intent to sell, any butter at retail unless it has been graded. Butter shall be graded as follows:

- (a) Grade, Wisconsin, AA — 93 score;
- (b) Grade, Wisconsin, A — 92 score;
- (c) Grade, Wisconsin, B — 91–90 score;
- (d) Grade, Wisconsin, undergrade — all butter below Wisconsin B.

(2) United States AA, A, and B grades shall be accepted in lieu of the corresponding Wisconsin AA, A, and B grades, but all United States grades below B shall, for the purpose of this section, correspond to Wisconsin undergrade.

(3) As used in this section, score or grade means the grading of butter by its examination for flavor and aroma, body and texture, color, salt, package and by the use of other tests or procedures approved by the department for ascertaining the quality of butter in whole or in part.

(4) Details for methods and procedures to be used for ascertaining quality, for labeling, and for arbitrating disputes with respect to grades, shall be developed by the department as a result of public hearings to be held at a convenient location in the state.

(5) Butter from outside of the state sold within the state shall be provided with a label which indicates that it complies with the state grade standards as provided in this section and which indicates the grade in a manner equivalent to the requirements for butter manufactured and sold within the state.

(6) Butter that carries the state grade labels shall be graded by butter graders licensed under s. 97.175.

(7) No person, for himself or herself, or as an agent, shall advertise the sale of any butter at a stated price, unless the grade of the butter is set forth in such advertisement in not less than 10–point type.

**History:** 1977 c. 29 s. 1650m (4); 1983 a. 131 s. 2; Stats. 1983 s. 97.176; 1991 a. 39; 1993 a. 492.

**Cross-reference:** See also ch. ATCP 85, Wis. adm. code.

Wisconsin’s butter–grading law does not violate the due process clause, the equal protection clause, or the dormant commerce clause. This section is rationally related to the state’s legitimate interest in consumer protection and does not discriminate against out-of-state businesses. *Minerva Dairy, Inc. v. Harsdorf*, 905 F.3d 1047 (2018).

**97.177 Cheese; grading; labeling.** (1) The department shall by rule adopt standards for grades of cheese manufactured in Wisconsin.

(2) Cheese which carries a state grade must be graded by a cheese grader licensed under s. 97.175 and must conform to the standards for the grade. Graded cheese must be plainly labeled to indicate the grade of the cheese and the license number of the cheese grader.

(3) Cheese manufactured in Wisconsin must be labeled on either the cheese itself or the container at the factory where it is manufactured. The label must remain on the cheese until the cheese is used in a different food manufacturing process or relabeled by the buyer for later sale. The label must contain all of the following:

- (a) The type or variety of cheese.
- (b) The word Wisconsin or the code number 55.
- (c) The factory number designated by the department.
- (d) The date of manufacture.
- (e) The number of the vat in which the cheese was manufactured if more than one vat of cheese was manufactured in the factory on the same day.

(4) The department may adopt rules for the administration of this section.

**History:** 1983 a. 131.

**Cross-reference:** See also ch. ATCP 81, Wis. adm. code.

**97.18 Oleomargarine regulations.** (1) (a) For the purposes of this section “oleomargarine” or “margarine” includes oleomargarine, margarine, butterine and other similar substances, fats and fat compounds sufficiently adaptable to the ordinary uses of butter, to lead readily to use as an alternative to butter, but this section shall not apply to lard, cream cheese, cheese food compounds, nor to any other dairy product made exclusively of cow’s milk or milk solids with or without added vitamins, if such product is sold or distributed in such manner and form as will clearly distinguish it from butter. Nor shall this section apply to shortenings not churned or emulsified in milk or cream or having a melting point of 112 degrees Fahrenheit or more as determined by the capillary tube method unless there is sold or given away with such shortening any compound which, when mixed with such shortening, makes oleomargarine, butterine or similar substances.

(b) “Colored oleomargarine” or “colored margarine” is oleomargarine or margarine having a tint or shade containing more than 1 6/10 degrees of yellow or of yellow and red collectively but with an excess of yellow over red, as measured in terms of Lovibond tintometer scales or its equivalent.

(3) No person shall sell, offer or expose for sale at retail any oleomargarine or margarine unless:

- (a) Such oleomargarine or margarine is packaged;
- (b) The net weight of the contents of any package sold in a retail establishment is one pound;
- (c) There appears on the label of the package the word “oleomargarine” or “margarine” in type or lettering at least as large as any other type or lettering on the label in a color of print which clearly contrasts with its background, and a full accurate statement of the ingredients contained in the oleomargarine or margarine; and

(d) Each part of the contents of the package is contained in a wrapper or separate container which bears the word “oleomargarine” or “margarine” in type or lettering not smaller than 20–point type.

(4) The serving of colored oleomargarine or margarine at a public eating place as a substitute for table butter is prohibited unless it is ordered by the customer.

(5) The serving of oleomargarine or margarine to students, patients or inmates of any state institutions as a substitute for table butter is prohibited, except that such substitution may be ordered

by the institution superintendent when necessary for the health of a specific patient or inmate, if directed by the physician in charge of the patient or inmate.

(6) Any person who violates any provision of this section may be fined not less than \$100 nor more than \$500 or imprisoned not more than 3 months or both; and for each subsequent offense may be fined not less than \$500 nor more than \$1,000 or imprisoned in the county jail not less than 6 months nor more than one year.

**History:** 1971 c. 125; 1973 c. 90; 1975 c. 41; 1977 c. 289 ss. 3m, 11; Stats. 1977 s. 97.18; 1995 a. 27 s. 9126 (19); 1995 a. 225; 1997 a. 35; 2007 a. 20 s. 9121 (6) (a); 2013 a. 374; 2015 a. 55, 242.

**97.20 Dairy plants. (1) DEFINITIONS.** In this section:

(a) “Dairy plant” means a processing plant, receiving station, or transfer station.

(b) “Dairy product” means any of the following:

1. Milk or any product or by-product derived solely from milk.

2. Hooved or camelid mammals’ milk or any product or by-product derived solely from hooved or camelid mammals’ milk.

3. An item that meets a definition or standard of identity under 21 CFR 131, 133, 135.3 to 135.140, or 184.1979 or under 21 USC 321a or 321c.

4. An item that fails to meet a definition or standard of identity specified in subd. 3. solely because the item contains hooved or camelid mammals’ milk or milk from goats or sheep instead of or in addition to milk from cows.

5. A product that is ready to eat, sell, distribute, or market and that is made solely of 2 or more of the items under subds. 1. to 4.

(c) “Fluid milk product” has the meaning given under s. 97.24 (1) (ar).

(d) “Grade A dairy plant” means a dairy plant required to hold a permit under sub. (3).

(e) “Grade A milk” has the meaning given under s. 97.24 (1) (b).

(f) “Grade A milk product” has the meaning given under s. 97.24 (1) (c).

(fg) “Hooved or camelid mammal” includes water buffalo, yaks, and other bovine species; camels, llamas, alpacas, and other camelid species; and horses, donkeys, and other equine species.

(fm) “Hooved or camelid mammals’ milk” means the lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy hooved or camelid mammals.

(gm) “Milk producer” has the meaning given in s. 97.22 (1) (f).

(h) “Processing plant” means a facility engaged in pasteurizing or manufacturing dairy products, or processing dairy products into other dairy products, for sale or distribution.

(i) “Receiving station” means a facility which is designed for the receipt and bulk storage of milk, and which is used to receive or store milk in bulk. “Receiving station” does not include a processing plant or a facility used to distribute pasteurized milk in bottled or packaged form to consumers.

(j) “Transfer station” means a facility which is designed and used solely to transfer milk from one bulk transport vehicle to another without intervening storage.

(2) **DAIRY PLANT LICENSE.** (a) *License requirement.* Except as provided in par. (e), no person, including this state, may operate a dairy plant without a valid license issued by the department for that dairy plant. A dairy plant license expires on April 30 annually, except that a license issued for a new dairy plant on or after January 30 but before May 1 expires on April 30 of the following year. A dairy plant license is not transferable between persons or locations.

(b) *License application.* An application for a dairy plant license shall be made on a form provided by the department and shall be accompanied by each applicable fee required under subs. (2c) and (2n) to (2w). The application shall include all information reasonably required by the department for purposes of licens-

ing. The application shall state whether the dairy plant is a processing plant, receiving station or transfer station, and shall describe the nature of any processing operations conducted at the dairy plant.

(d) *Issuance or renewal of license.* The department may not issue or renew a dairy plant license unless all of the following conditions are met prior to licensing:

1. The license applicant pays all fees that are due and payable by the applicant under subs. (2c) to (2w), as set forth in a statement from the department. The department shall refund a fee paid under protest if the department determines that the fee was not due and payable as a condition of licensing under this subsection.

2. The license applicant has filed all financial information required under s. 126.44 and any security required under s. 126.47. If an applicant has not filed all financial information under s. 126.44 and any security required under s. 126.47, the department may issue a conditional dairy plant license under s. 93.06 (8) which prohibits the licensed operator from purchasing milk or fluid milk products from milk producers or their agents, but allows the operator to purchase milk or fluid milk products from other sources.

3. If the dairy plant is a new dairy plant, the department has inspected the dairy plant for compliance with this chapter and rules promulgated under this chapter.

(e) *License exemptions.* A dairy plant license under this section is not required for:

1. A farm manufacturing or processing dairy products solely for consumption by the owner or operator of the farm, or members of the household or nonpaying guests or employees.

2. The retail preparation and processing of meals for sale directly to consumers or through vending machines, if the preparation and processing is covered under a license issued under s. 97.605.

3. A retail food establishment licensed under s. 97.30 if the establishment processes dairy products solely for retail sale at the establishment.

4. A dairy plant that is exempted from licensing by department rule.

5. A food processing plant licensed under s. 97.29 that processes dairy products into a prepared food that is not a dairy product if the dairy products used by the food processing plant are manufactured at a dairy plant from ingredients that are pasteurized or are produced under other processes that eliminate or reduce to an acceptable level the food safety hazards associated with the dairy products, including aseptically processed foods, high acid foods, heat treated foods, aged foods, cold pack foods, and similarly processed foods.

(f) *Added operations.* No dairy plant may add a new category of dairy plant operations during the time period for which a dairy plant license was issued unless the dairy plant first notifies the department and obtains written authorization for the new category of operations. In this paragraph, “new category of operations” includes the manufacture or processing of any of the following which was not identified on the dairy plant’s most recent license application:

1. Fluid milk products.
2. Cheese and related cheese products.
3. Frozen dessert dairy products.

(2c) **DAIRY PLANT LICENSE FEE.** (a) *Annual license fee.* An applicant for a dairy plant license shall pay an annual license fee specified under par. (b) as follows:

1. An applicant for a license to operate a dairy plant that operated during the previous calendar year shall pay the basic annual license fee plus the supplementary dairy plant license fee based on the amount of milk that was delivered to the dairy plant from milk producers in the previous calendar year, whether or not that particular applicant operated the dairy plant during the previous calendar year.

2. An applicant for a license to operate a dairy plant that has not been operated in the previous calendar year shall pay the basic annual license fee plus the supplementary dairy plant license fee that is established by department rule.

(b) *License fee amounts.* Unless otherwise established by department rule, the annual license fees required under par. (a) are a basic annual license fee of \$80 for each dairy plant plus:

1. For a grade A processing plant, a supplementary annual license fee of \$650 if the plant received more than 2,000,000 pounds of milk from milk producers or of \$500 if the plant received 2,000,000 pounds or less of milk from milk producers.

2. For a processing plant that is not a grade A processing plant and that annually manufactures or processes more than 1,000,000 pounds of dairy products or more than 200,000 gallons of frozen dairy products, a supplementary annual license fee of \$270.

3. For a grade A receiving station, a supplementary annual license fee of \$250.

(c) *Surcharge for operating without license.* An applicant for a dairy plant license shall pay a license fee surcharge if the department determines that within one year before submitting the license application, the applicant operated the dairy plant without a license in violation of sub. (2). The amount of the surcharge is \$100, or \$500 if the dairy plant operator procures milk or fluid milk products from milk producers or their agents. Payment of this license fee surcharge does not relieve the applicant of any other civil or criminal liability that results from the unlicensed operation of the dairy plant, but does not constitute evidence of any violation of law.

(2g) MILK PROCUREMENT FEE. (a) *Monthly procurement fee.* A dairy plant operator shall pay a milk procurement fee on or before the 25th day of each month in the amount specified under par. (b) as follows:

1. The operator of a dairy plant that operated during the month preceding the month when the payment is due shall pay a milk procurement fee based on the amount of milk that was delivered to the dairy plant from milk producers in the month preceding the month when the payment is due, whether or not that particular dairy plant operator operated the dairy plant during the month preceding the month when the payment is due.

2. The operator of a dairy plant that has not been operated in the month preceding the month when the payment is due shall pay a milk procurement fee in the month when the payment is due that is established by department rule.

(b) *Amount of fees.* The department shall specify the amount of milk procurement fees by rule.

(c) *Out-of-state milk shipments.* A milk producer who ships milk to an out-of-state dairy plant shall pay a milk procurement fee, specified under par. (b), on that milk, unless the out-of-state dairy plant voluntarily pays that fee for the milk producer.

(2n) DAIRY PLANT REINSPECTION FEE. (a) *Reinspection fees.* If the department reinspects a dairy plant because the department has found a violation of this chapter or rules promulgated under this chapter, the department shall charge the dairy plant operator the reinspection fee specified under par. (b). A reinspection fee is payable when the reinspection is completed, and is due upon written demand from the department. The department may issue a demand for payment when it issues a license renewal application form to the dairy plant operator.

(b) *Reinspection fee amounts.* Unless otherwise established by department rule, the fees for reinspection required under par. (a) are a basic fee of \$40 for each dairy plant reinspection, plus:

1. For a grade A processing plant, a supplementary reinspection fee of \$160 if the plant received more than 2,000,000 pounds of milk from milk producers or of \$125 if the plant received 2,000,000 pounds or less of milk from milk producers.

2. For a processing plant that is not a grade A processing plant, a supplementary reinspection fee of \$140.

3. For a grade A receiving station, a supplementary reinspection fee of \$60.

(2r) MILK PRODUCER FEES. A dairy plant operator shall pay milk producer license and reinspection fees on behalf of milk producers, subject to s. 97.22 (2) (c) and (4) (b). A milk producer reinspection fee is payable by a dairy plant operator when a dairy farm reinspection is completed, and is due upon written demand from the department. The department may issue a demand for payment when it issues a license renewal application to the dairy plant operator.

(2w) DAIRY PRODUCT GRADING FEE. An applicant for a license for a dairy plant that has been operated in the previous calendar year, that is not a grade A dairy plant and that produces butter or cheese shall pay a grading fee that, unless otherwise established by department rule, is 1.09 cents for each 100 pounds of butter or cheese that is gradable and produced by the dairy plant during the previous calendar year. An applicant for a license for a dairy plant that has not been operated in the previous calendar year, that is not a grade A dairy plant and that produces butter or cheese shall pay a grading fee that is established by the department by rule.

(3) GRADE A DAIRY PLANT; PERMIT. (a) *Permit requirement.* No person operating a dairy plant at which milk or fluid milk products are received, transferred, manufactured or processed may sell or distribute that milk or those fluid milk products as grade A milk or grade A milk products unless the person holds a valid grade A dairy plant permit issued by the department for that dairy plant. A grade A dairy plant permit expires on April 30 annually and is not transferable between persons or locations. A grade A dairy plant permit may be issued in the form of an endorsement on a dairy plant license under sub. (2). An application for a grade A dairy plant permit shall be made on a form provided by the department and shall be accompanied by each grade A dairy plant supplementary license fee required under sub. (2c).

(b) *Grade A standards.* A grade A dairy plant shall comply with standards applicable to the receipt, transfer, manufacture, processing and distribution of grade A milk and grade A milk products under this chapter or rules of the department. A grade A dairy plant may not receive, transfer or process milk that is not grade A milk unless the department provides written authorization. Except as provided by the department by rule, the department may not grant that authorization unless the grade A dairy plant maintains separate facilities for the receipt, transfer and processing of milk that is not grade A milk.

(d) *Surcharge for operating without a permit.* An applicant for a grade A dairy plant permit shall pay a grade A dairy plant permit surcharge of \$100 if the department determines that, within one year prior to submitting the permit application, the applicant operated the dairy plant as a grade A dairy plant without a grade A permit, in violation of par. (a). Payment of this surcharge does not relieve the applicant of any other civil or criminal liability which results from a violation of par. (a), but does not constitute evidence of a violation of any law.

(e) *Permit contingent on payment of fees.* The department may not issue or renew a grade A dairy plant permit until the permit applicant pays all applicable fees under this subsection or subs. (2c) to (2w). The department shall refund a fee paid under protest if the department determines that the fee was not required as a condition of the issuance of a grade A dairy plant permit under this subsection.

(3g) CRISIS HOTLINE INFORMATION. The department shall develop, and furnish to a dairy plant on request, a standard form containing information about the crisis hotline.

(3m) CONFIDENTIALITY. Any information kept by the department under this section or s. 97.24 that identifies individual milk producers who deliver milk to a dairy plant licensed under this section and that is a composite list for that dairy plant is not subject to inspection under s. 19.35 unless inspection is required under s.

126.70 or unless the department determines that inspection is necessary to protect the public health, safety or welfare.

(4) **RULE MAKING.** The department may promulgate rules to establish amounts of fees required under subs. (2c) to (2w) or to govern the operation of dairy plants. The rules may include standards for the safety, wholesomeness and quality of dairy products; the construction, maintenance and sanitary operation of dairy plants; the design, installation, cleaning and maintenance of equipment and utensils; personnel sanitation; storage and handling of milk and fluid milk products; pasteurization and processing procedures; sampling and testing; and reports and record keeping. The rules may also set forth the duties of dairy plants to inspect dairy farms, collect and test producer milk samples and make reports to the department.

**History:** 1971 c. 125, 156, 211; 1975 c. 39, 199; 1977 c. 203 s. 106; 1979 c. 257; 1983 a. 189, 203; 1987 a. 27, 399; 1989 a. 31, 174; 1991 a. 39, 269; 1993 a. 27; 2001 a. 16; 2011 a. 195; 2013 a. 302, 303; 2015 a. 55, 242.

**Cross-reference:** See also chs. ATCP 65 and 100, Wis. adm. code.

**97.21 Milk haulers and milk distributors. (1) DEFINITIONS.** In this section:

(a) “Bulk milk tanker” means a mobile bulk container used to transport milk, fluid milk products, whey or whey cream in bulk from a dairy farm, or to or from a dairy plant in this state. “Bulk milk tanker” includes a mobile bulk container which is permanently mounted on a motor vehicle or which is designed to be towed by a motor vehicle. “Bulk milk tanker” does not include a mobile bulk container which is used by a milk producer solely to transport that producer’s own milk.

(am) “Dairy plant” has the meaning given under s. 97.20 (1) (a).

(b) “Fluid milk product” has the meaning given under s. 97.24 (1) (ar).

(c) “Grade A milk” has the meaning given under s. 97.24 (1) (b).

(e) “Milk distributor” means a person who distributes milk or fluid milk products. “Milk distributor” does not include a dairy plant, a milk hauler, a milk producer, as defined in s. 97.22 (1) (f), or a retail food establishment, as defined in s. 97.30 (1) (c).

(2) **BULK MILK TANKER; GRADE A PERMIT.** No person may operate a bulk milk tanker to transport milk or fluid milk products in bulk for sale or distribution as grade A milk or grade A milk products without a valid grade A bulk milk tanker permit issued annually by the department or an equivalent regulatory agency in another state for that bulk milk tanker. A grade A bulk milk tanker permit is not transferable between persons or bulk milk tankers. An application for a permit shall be made on a form provided by the department. An applicant shall include with an application for a permit proof that the bulk milk tanker has passed an inspection conducted within the preceding year by the department or an individual certified by the department to conduct bulk milk tanker inspections. Except as provided in sub. (4), the department may not charge a fee for a grade A bulk milk tanker permit issued under this paragraph.

(3) **MILK DISTRIBUTORS; LICENSE.** No person may operate as a milk distributor without a valid license issued by the department. A milk distributor license expires on April 30 annually. An application for a license shall be made on a form provided by the department and shall be accompanied by applicable fees under sub. (4). The application shall include all information reasonably required by the department for purposes of issuing the license.

(4) **FEES.** (a) *License fee.* An applicant for a milk distributor license shall pay the license fee specified under sub. (4m).

(b) *Reinspection fee.* If the department reinspects a bulk milk tanker or the vehicle or facilities of a milk distributor because the department finds a violation of this chapter or rules promulgated under this chapter, the department shall charge the bulk milk tanker operator or milk distributor the reinspection fee specified under sub. (4m). The reinspection fee is payable when the reinspection is completed, and is due upon written demand from the

department. The department may issue a demand for payment when it issues a permit renewal application to the bulk milk tanker operator or a license renewal application to the milk distributor.

(c) *Surcharge for operating without a license.* An applicant for a milk distributor license shall pay a license fee surcharge of \$100 or twice the amount of the annual license fee specified under sub. (4m), whichever is less, if the department determines that, within one year prior to submitting the license application, the applicant operated without a license in violation of this section. Payment of this license fee surcharge does not relieve the applicant of any other civil or criminal liability that results from a violation of sub. (3), but does not constitute evidence of any violation of law.

(4m) **FEE AMOUNTS.** The department shall establish the fees required under sub. (4) (a) and (b) by rule.

(5) **LICENSING AND PERMITTING CONTINGENT ON PAYMENT OF FEES.** The department may not issue or renew a grade A bulk milk tanker permit or milk distributor license unless the permit or license applicant pays all fees that are due and payable by the applicant under sub. (4), as set forth in a statement from the department. The department shall refund a fee paid under protest if the department determines that the fee was not due and payable as a condition of permitting or licensing under this section.

(6) **RULE MAKING.** The department may promulgate rules to establish amounts of fees required under sub. (4) or to regulate bulk milk tanker operators and milk distributors. The rules may include standards for the construction, maintenance and sanitary operation of bulk milk tankers, milk distribution vehicles and milk distribution facilities; the design, installation, cleaning and maintenance of equipment and utensils; personnel sanitation; storage and handling of milk and fluid milk products; identification of bulk milk tankers and milk distribution vehicles; and record keeping.

**History:** 1987 a. 399; 1989 a. 174; 1991 a. 39; 1995 a. 27; 2015 a. 55, 242.

**Cross-reference:** See also ch. ATCP 82, Wis. adm. code.

**97.22 Milk producers. (1) DEFINITIONS.** In this section:

(a) “Dairy farm” means any place where one or more cows, sheep or goats are kept for the production of milk.

(b) “Dairy plant” has the meaning given under s. 97.20 (1) (a).

(c) “Fluid milk product” has the meaning given under s. 97.24 (1) (ar).

(d) “Grade A milk” has the meaning given under s. 97.24 (1) (b).

(f) “Milk producer” means any person who owns or operates a dairy farm, and sells or distributes milk produced on that farm.

(2) **LICENSE.** (a) *License required.* No person may operate a dairy farm as a milk producer without a valid license issued by the department for that dairy farm. A license expires on April 30 annually and is not transferable between persons or dairy farms. Every milk producer shall comply with standards applicable to the production of milk and fluid milk products under this chapter and rules promulgated under this chapter.

(b) *License fee.* Unless otherwise established by department rule, the fee for a milk producer license under par. (a) is \$20, except that an individual who is eligible for the veterans fee waiver program under s. 45.44 is not required to pay a fee. The department also may establish by rule a reduced license fee for a producer who is properly inspected at least once annually by a special dairy farm inspector certified under sub. (7).

(c) *Dairy plant to pay license fee for milk producer.* The operator of a dairy plant licensed under s. 97.20 shall pay the milk producer license fee under this subsection for every dairy farm from which the dairy plant receives milk at the time the fee payment is due. An applicant for a dairy plant license shall submit that fee with the applicant’s dairy plant license application under s. 97.20. A dairy plant operator who pays a milk producer license fee may charge that fee back to the milk producer if the dairy plant operator notifies the milk producer in writing of the dairy plant operator’s intent to charge the fee to the milk producer. A dairy plant operator



may not discriminate between milk producers with respect to fees charged under this paragraph, but may charge back license fees to all milk producers who cease shipping milk to the dairy plant during the license year. A dairy plant operator who pays a milk producer license fee may not deduct the amount of the fee from any payment to the milk producer for milk that the dairy plant operator purchases from the milk producer.

**(3) GRADE A DAIRY FARM PERMIT.** No milk producer may sell or distribute milk from his or her dairy farm as grade A milk without a valid grade A dairy farm permit issued by the department for that dairy farm. A grade A dairy farm permit expires on April 30 annually and is not transferable between persons or dairy farms. A grade A dairy farm permit may be issued in the form of an endorsement on a milk producer license under sub. (2). Every milk producer holding a grade A dairy farm permit shall comply with standards applicable to the production of grade A milk under this chapter or rules promulgated under this chapter.

**NOTE:** Sub. (3) is shown as renumbered from sub. (3) (a) by the legislative reference bureau under s. 13.92 (1) (bm) 2. Par. (a) (title) was removed under s. 35.17 as unnecessary.

**(4) REINSPECTION AND REINSTATEMENT FEES.** (a) *Fee required.* 1. If the department or a special dairy inspector has found a violation of this chapter or rules promulgated under this chapter, and if the department has not lowered the grade of the milk that may be sold or distributed from the dairy farm because of the violation, the department shall charge the reinspection fee specified under par. (am) to reinspect the dairy farm.

2. If the department or a special dairy inspector has found a violation of this chapter or rules promulgated under this chapter, and if the department has lowered the grade of the milk that may be sold or distributed from the dairy farm because of the violation, the department shall charge the reinstatement fee specified under par. (am) to reinspect the dairy farm.

3. A reinspection or reinstatement fee is payable when the reinspection is completed, and is due upon written demand from the department.

(am) *Fee amounts.* The reinspection fee under par. (a) 1., unless otherwise established by department rule, is \$20. The reinstatement fee under par. (a) 2., unless otherwise established by department rule, is \$40.

(b) *Dairy plant to pay reinspection or reinstatement fee for milk producer.* The operator of a dairy plant licensed under s. 97.20 shall pay the dairy farm reinspection or reinstatement fee under this subsection for every milk producer who was shipping milk from the reinspected dairy farm to that dairy plant at the time the dairy farm was reinspected. The department may issue an annual statement of reinspection or reinstatement fees payable by the dairy plant, and may demand payment from the dairy plant on an annual basis, when it issues an application form for the renewal of the dairy plant's license under s. 97.20. A dairy plant operator who pays a dairy farm reinspection or reinstatement fee shall charge that fee back to the milk producer.

**(5) FEES PAYABLE BY MILK PRODUCER IF NOT PAID BY DAIRY PLANT.** If a milk producer ships milk to a dairy plant which is not subject to licensure under s. 97.20, the unlicensed dairy plant may voluntarily pay the fees required under this section on behalf of the milk producer if the dairy plant is authorized by the milk producer to pay the fees. If no dairy plant pays the fees required under this section on behalf of a milk producer, the milk producer shall pay the fees.

**(6) DAIRY FARM INSPECTION; FREQUENCY.** The department shall inspect every dairy farm other than a grade A dairy farm at least once every 2 years, and shall inspect every grade A dairy farm at the frequency required by the department by rule under s. 97.24.

**(7) SPECIAL DAIRY FARM INSPECTORS.** The department may certify a dairy plant employee or agent to inspect dairy farms on behalf of the department as a special dairy farm inspector. A special dairy farm inspector shall inspect dairy farms and make written reports to the department according to procedures prescribed by the department. The department may promulgate rules govern-

ing the certification of special dairy farm inspectors; defining the authority and responsibilities of those inspectors; establishing inspection and reporting requirements; and establishing procedures by which the department will review inspector performance.

**(8) RULE MAKING.** The department may promulgate rules to establish the fees required under sub. (2) (b) or (4) (a) or to govern the operation of dairy farms by milk producers. The rules may include standards for any of the following:

(a) The safety, wholesomeness and quality of milk.

(b) The sanitary construction and maintenance of dairy farm facilities used in milk production.

(c) The availability of safe and adequate water supplies for milk production.

(d) The sanitary construction, maintenance and cleaning of equipment and utensils used in milk production.

(e) Personnel sanitation related to milk production.

(f) Sanitary procedures for the production of milk, including but not limited to the handling, transfer and storage of milk on a dairy farm.

**(10) CONFIDENTIALITY.** Any information obtained and kept by the department under this section, under s. 97.24, or under rules promulgated under those sections, that pertains to individual milk producer production, milk fat and other component tests and quality records is not subject to inspection under s. 19.35 except as required under s. 126.70 or except as the department determines is necessary to protect the public health, safety or welfare.

**History:** 1975 c. 39; 1987 a. 27, 399; 1989 a. 31; 1991 a. 39; 1993 a. 114; 2001 a. 16; 2011 a. 209; 2013 a. 374; 2015 a. 242; s. 13.92 (1) (bm) 2.; s. 35.17 correction in (3).

**Cross-reference:** See also ch. ATCP 65, Wis. adm. code.

**97.23 Drug residues in milk.** (1) In this section:

(a) “Dairy plant” has the meaning given in s. 97.20 (1) (a).

(c) “Milk producer” has the meaning given in s. 97.22 (1) (f).

(2) (a) If, in accordance with a rule promulgated by the department under s. 93.07 (1), 97.09 (4), 97.20 (4), 97.22 (8), or 97.24 (3), a dairy plant operator rejects a bulk milk shipment because it is adulterated with a drug residue and if the dairy plant operator incurs a monetary loss as a result of the rejection of the bulk milk shipment, the dairy plant operator may recover the amount of the monetary loss from the milk producer who caused the bulk shipment to be adulterated with the drug residue. A dairy plant operator may deduct the amounts recoverable by him or her under this paragraph from the proceeds of milk sold to or through the dairy plant operator by the milk producer who caused the adulteration.

(b) 1. Except as provided in subd. 2., the department may, by rule, require a dairy plant operator who rejects a bulk milk shipment because it is adulterated with a drug residue and who suffers a monetary loss as a result of the rejection of the bulk milk shipment to recover all or part of the monetary loss from the milk producer who caused the adulteration by deducting from the proceeds of milk sold by the milk producer an amount that is specified by the department by rule.

2. The department may not require a dairy plant operator who rejects a bulk milk shipment because it is adulterated with a drug residue to recover an amount that exceeds the dairy plant operator's actual monetary loss.

**History:** 1991 a. 231; 2013 a. 374; 2015 a. 242.

**97.24 Milk and milk products.** (1) **DEFINITIONS.** In this section:

(a) “Dairy farm” means any place where one or more cows, sheep or goats are kept for the production of milk.

(am) “Dairy plant” has the meaning given in s. 97.20 (1) (a).

(ar) “Fluid milk product” means cream, sour cream, half and half, whipped cream, concentrated milk, concentrated milk products, cottage cheese, skim milk, flavored milk, buttermilk, cultured buttermilk, cultured milk, yogurt, vitamin and mineral forti-

fied milk or milk products, and any other product made by adding any substance to milk or any of these products.

(b) “Grade A milk” means milk which is produced, processed and distributed in compliance with grade A standards established by the department by rule under this chapter.

(c) “Grade A milk product” means a fluid milk product which is produced, processed and distributed in compliance with grade A standards established by the department by rule under this chapter.

(d) “Milk distributor” has the meaning given under s. 97.21 (1) (e).

(e) “Milk hauler” means any person, other than a milk producer hauling his or her own milk only, who transports milk or fluid milk products to or from a dairy plant or a collecting point.

(f) “Milk producer” means any person who owns or operates a dairy farm, and sells or distributes milk produced on that dairy farm.

**(2) REQUIREMENTS FOR MILK AND FLUID MILK PRODUCTS; GRADE A REQUIREMENT.** (a) No person may sell or distribute any milk unless that milk is produced, processed and distributed in compliance with standards established by the department by rule under this chapter.

(b) No person may sell or distribute any milk or fluid milk products which are not grade A milk or grade A milk products to consumers, or to any restaurant, institution or retailer for consumption or resale to consumers. Grade A milk and grade A milk products shall be effectively pasteurized, and shall be produced, processed and distributed in compliance with standards established by the department by rule under this chapter.

(c) No person may sell or distribute milk or fluid milk products which are labeled or otherwise represented as grade A milk or grade A milk products unless the milk and fluid milk products comply with this chapter and with standards established by the department by rule under this chapter.

(d) This section does not prohibit:

1. The sale of milk or fluid milk products which are heat sterilized in hermetically sealed containers.
2. Incidental sales of milk directly to consumers at the dairy farm where the milk is produced.
3. Incidental sales of pasteurized milk at a dairy plant licensed under s. 97.20.
4. The sale of grade A milk or grade A milk products which are produced and processed under equivalent laws or rules of another state or a local governmental unit, as provided under sub. (4) (b).

**(3) RULES.** The department, in consultation with the department of health services, shall issue rules governing the production, transportation, processing, pasteurization, handling, identity, sampling, examination, labeling and sale of milk and fluid milk products; the inspection of dairy herds, dairy farms and dairy plants; the issuing and revocation of permits to milk producers and milk haulers, and of licenses to dairy plants and milk distributors. Insofar as permitted by the laws of this state, such rules shall be in reasonable accord with the minimum standards and requirements for milk and fluid milk products currently recommended and published by the U.S. public health service as a milk ordinance and code, except that the requirements for bottling and sterilization of bottles in such standards shall not apply to milk sold by a producer, selling only milk produced by the producer on the producer’s dairy farm under the producer’s own supervision, and selling such milk only in the producer’s own milk house, which milk meets the requirements of grade A standards as set forth by the department of agriculture, trade and consumer protection, to a purchaser who has provided his or her own container, which has been sanitized in a manner comparable to the sanitizing of the utensils used in the production of milk by the producer, if the purchaser is purchasing milk for his or her own consumption.

**(4) LEGISLATIVE PURPOSE; UNIFORMITY; RECIPROCITY.** (a) Regulation of the production, processing and distribution of milk and fluid milk products under minimum sanitary requirements which are uniform throughout this state and the United States is essential for the protection of consumers and the economic well-being of the dairy industry, and is therefore a matter of statewide concern; however, nothing in this section shall impair or abridge the power of any municipality or county to regulate milk or fluid milk products under sanitary requirements and standards which are in reasonable accord with those established under this section or the power to impose reasonable license permit and inspection fees which combined shall not exceed the cost of necessary inspection. A municipality or county may not impose any fee for its inspection of milk producers, dairy plant facilities or dairy products which are under the inspection supervision of another governmental unit within or without the state with a valid certification rating made or approved by the department. No governmental unit may impose or collect a fee directly from the producer. A license or permit fee not to exceed \$25 annually may be imposed on milk distributors licensed under s. 97.22 and on dairy plants under the inspection supervision of another governmental unit which are engaged in the distribution of milk within a municipality or county.

(b) No sanitary requirement or standard established under this section or contained in any ordinance may prohibit the sale of milk or fluid milk products which are produced and processed under laws or rules of any governmental unit, within or without this state, which are substantially equivalent to the requirements of the rules promulgated under this section, and which are enforced with equal effectiveness, as determined by a milk sanitation rating made or approved by the department, under rules promulgated under this section.

**(5) CERTIFICATION OF GRADE A DAIRY OPERATIONS.** The department shall conduct evaluation surveys of grade A dairy operations in this state to the extent necessary to certify to the federal food and drug administration, out-of-state markets, the federal public health service, and local health departments, the compliance rating of the grade A dairy operations based upon the sanitation and enforcement requirements of the grade A pasteurized milk ordinance of the federal public health service and its related documents. The department may promulgate rules establishing fees which may be charged to dairy plants to fund these activities.

**History:** 1971 c. 125, 156, 228; 1973 c. 333; 1975 c. 39, 199; 1977 c. 29; 1979 c. 221; 1981 c. 390 s. 252; 1983 a. 189 ss. 128, 329 (20); 1987 a. 27, 399; 1989 a. 56 s. 259; 1993 a. 114; 1995 a. 27 s. 9126 (19); 2003 a. 33 ss. 1757, 1758, 2454; 2007 a. 20 s. 9121 (6) (a); 2015 a. 242.

**Cross-reference:** See also ch. ATCP 65, Wis. adm. code.

### 97.25 Use of synthetic bovine growth hormone; labeling of dairy products. (1) DEFINITIONS. In this section:

(a) “Dairy plant” has the meaning given in s. 97.20 (1) (a).

(b) “Dairy product” means cow’s milk or any product or by-product derived solely from cow’s milk, or any item in which cow’s milk or any product or by-product derived solely from cow’s milk is a principal ingredient.

(c) “Milk producer” has the meaning given in s. 97.22 (1) (f).

**(2) PROHIBITION.** No person may place upon the label of a dairy product a statement indicating that the dairy product is not produced from herds being administered synthetic bovine growth hormone except as provided in sub. (3).

**(3) RULES.** The department shall promulgate rules authorizing the operator of a dairy plant licensed under s. 97.20 or a retail food establishment licensed under s. 97.30 who complies with the rules to place upon the label of a dairy product the statement “Farmer-certified rBGH free.” or an equivalent statement that is not false or misleading. The statement shall be based upon affidavits from milk producers stating that the milk producers do not use synthetic bovine growth hormone for the production of milk.

(4) **RECIPROCITY.** A person may sell a dairy product that is labeled for retail sale in another state the label of which indicates that the dairy product is not produced from herds being administered synthetic bovine growth hormone only if the dairy product is from a state identified by the department as having laws comparable to this state's laws on labeling dairy products not produced with synthetic bovine growth hormone and is labeled in compliance with the laws of that state.

**History:** 1993 a. 476; 1995 a. 225; 2015 a. 55, 242.

**Cross-reference:** See also ch. ATCP 83, Wis. adm. code.

**97.27 Food warehouses. (1) DEFINITIONS.** In this section:

(a) “Cold-storage warehouse” means a warehouse in which food is to be stored at temperatures between zero and 50 degrees Fahrenheit.

(b) “Food warehouse” means a warehouse used for the storage of food, and includes a cold-storage warehouse, frozen-food warehouse and frozen-food locker plant. “Food warehouse” does not include:

2. A warehouse used solely for the storage of grain or other raw agricultural commodities.

3. A retail food establishment or other retail facility at which food is stored on a temporary basis incidental to retail preparation or sale.

4. A warehouse located in a dairy plant licensed under s. 97.20, a food processing plant licensed under s. 97.29, or a meat establishment licensed under s. 97.42, and used primarily for the storage of food ingredients or food products manufactured or processed at the licensed establishment.

5. A warehouse operated by a milk distributor licensed under s. 97.21 (3), and used primarily for the storage and distribution of milk, as defined in s. 97.01 (10) (a), and fluid milk products, as defined in s. 97.24 (1) (ar).

6. A facility owned or operated by a consumer and used by that consumer to store food for the consumer's use.

(c) “Frozen-food locker plant” means a warehouse in which individual locked compartments not exceeding 20 cubic feet in capacity are rented to consumers for the storage of food at temperatures at or below 5 degrees Fahrenheit.

(d) “Frozen-food warehouse” means a warehouse at which food is to be stored at temperatures at or below 5 degrees Fahrenheit.

(dm) “Potentially hazardous food” means any food that can support rapid and progressive growth of infectious or toxicogenic microorganisms.

(e) “Retail food establishment” has the meaning given under s. 97.30 (1) (c).

(f) “Warehouse” means any building, room, structure or facility used for the storage of property.

(2) **LICENSE REQUIRED.** No person may operate a food warehouse without a valid license issued by the department for the food warehouse. A food warehouse license expires on June 30 annually, except that a license issued for a new food warehouse on or after March 30 but before July 1 expires on June 30 of the following year. Every food warehouse shall have a separate license. A license is not transferable between persons or food warehouse locations. Application for a license shall be made on a form provided by the department and shall be accompanied by applicable fees required under sub. (3). An application shall include information reasonably required by the department for licensing purposes.

(3) **FEES.** (a) *License fee.* An applicant for a food warehouse license shall pay the license fee specified under sub. (3m).

(b) *Reinspection fee.* If the department reinspects a food warehouse because the department finds a violation of this chapter or rules promulgated under this chapter on a regularly scheduled inspection, the department shall charge the food warehouse operator the reinspection fee specified under sub. (3m). A reinspection fee is payable by the food warehouse operator when the reinspec-

tion is completed, and is due upon written demand from the department. The department may issue a demand for payment when it issues a license renewal application form to the food warehouse operator.

(c) *Surcharge for operating without a license.* An applicant for a food warehouse license shall pay a license fee surcharge of \$100 if the department determines that, within one year prior to submitting the license application, the applicant operated a food warehouse without a license in violation of this subsection. Payment of this license fee surcharge does not relieve the applicant of any other civil or criminal liability which results from the unlicensed operation of the food warehouse, but does not constitute evidence of a violation of law.

(3m) **FEE AMOUNTS.** Unless otherwise established by department rule, the fees required under sub. (3) are:

(a) For a food warehouse that stores potentially hazardous food, and that has fewer than 50,000 square feet of storage area, an annual license fee of \$50 and a reinspection fee of \$50.

(am) For a food warehouse that stores potentially hazardous food, and that has 50,000 or more square feet of storage area, an annual license fee of \$100 and a reinspection fee of \$100.

(b) For a food warehouse that does not store potentially hazardous food, and that has fewer than 50,000 square feet of storage area, an annual license fee of \$25 and a reinspection fee of \$50.

(c) For a food warehouse that does not store potentially hazardous food, and that has 50,000 or more square feet of storage area, an annual license fee of \$50 and a reinspection fee of \$100.

(4) **LICENSING CONTINGENT ON PAYMENT OF FEES.** The department may not issue or renew a food warehouse license unless the license applicant pays all fees which are due and payable under sub. (3), as set forth in a statement from the department. The department shall refund a fee paid under protest if the department determines that the fee was not due and payable as a condition of licensing under this section.

(5) **RULE MAKING.** The department may promulgate rules to establish the fees required under sub. (3) or to govern the sanitary operation of food warehouses. Rules may include any of the following:

(a) Standards for the construction and maintenance of food storage facilities.

(b) Standards for the storage, identification and handling of food.

(c) Record-keeping requirements to show the length of time that food is kept in storage.

(d) Freezing and temperature requirements applicable to frozen-food warehouses, frozen-food locker plants and cold-storage warehouses.

**History:** 1987 a. 399; 1989 a. 174; 1991 a. 39, 210; 1999 a. 83; 2013 a. 302; 2015 a. 55, 242.

**Cross-reference:** See also ch. ATCP 71, Wis. adm. code.

**97.28 Direct sale of eggs. (1)** In this section:

(a) “Candling” means carefully examining, in a dark place, the interior and exterior of a whole egg that is placed in front of a strong light source.

(b) “Egg” means the shell egg of the domestic chicken, *Gallus gallus domesticus*, and of turkey, duck, goose, guinea, or other avian species whose eggs are used for human consumption.

(c) “Egg producer” means a person who sells eggs laid only by a bird or a flock of birds owned by that person.

(d) “Egg sales route” means one or more residences inhabited by consumers who regularly buy eggs from an egg producer who travels to the residences.

(e) “Farmer's market” means a building, structure, or place where 2 or more individuals gather on a regular, recurring basis to sell, directly to the consumer, any of the following:

1. Raw agricultural commodities that are grown, harvested, or collected by the individual.

2. Food that is prepared by the individual.

(f) “Nest–run egg” means an egg that is not washed, graded, or subject to candling before sale.

(2) An egg producer who satisfies all of the following need not obtain a license under s. 97.29 to sell eggs, including nest–run eggs:

(a) The number of egg–laying birds in the egg producer’s flock does not exceed 150.

(b) The egg producer sells the eggs directly to a consumer through one of the following venues:

1. At the premises where the eggs were laid.
2. At a farmers’ market located in this state.
3. On an egg sales route.

(c) The egg producer packages the eggs in a carton that is labeled only with the following information:

1. The egg producer’s name and address.
2. The date on which the egg producer packed the eggs into the carton.
3. A date that falls no more than 30 days after the date on which the eggs were packed by which the eggs must be sold.
4. A statement indicating that the eggs in the package are ungraded and uninspected.

(d) The egg producer keeps the eggs, packaged as provided under par. (c) and held, as packaged, for sale at a venue identified under par. (b), at an ambient temperature of 41 degrees Fahrenheit or below at all times.

**History:** 2013 a. 245.

**97.29 Food processing plants. (1) DEFINITIONS.** In this section:

(a) “Alcohol beverage” has the meaning given under s. 125.02 (1).

(b) “Bakery” means any place where bread, crackers, pasta or pies, or any other food product for which flour or meal is the principal ingredient, are baked, cooked or dried, or prepared or mixed for baking, cooking or drying, for sale as food.

(c) “Bottling establishment” means any place where drinking water, soda water beverage or alcohol beverage is manufactured or bottled for sale. “Bottling establishment” does not include a retail establishment engaged in the preparation and sale of beverages under a license issued under s. 125.26 or 125.51 or a license issued under s. 97.30 for a restaurant or other license issued under s. 97.605.

(d) “Canning” means the preservation and packaging in hermetically sealed containers of low–acid or acidified foods.

(e) “Confectionary” means any place where candy, fruit, nutmeats or any other food product is manufactured, coated or filled with saccharine substances for sale as food.

(f) “Drinking water” means water used or intended for use for human consumption. “Drinking water” includes distilled water, artesian water, spring water and mineral water, whether carbonated or uncarbonated, if consumed by humans or intended for human consumption.

(g) “Food processing” means the manufacture or preparation of food for sale through the process of canning, extracting, fermenting, distilling, pickling, freezing, baking, drying, smoking, grinding, cutting, mixing, coating, stuffing, packing, bottling, or packaging, or through any other treatment or preservation process. “Food processing” includes the activities of a bakery, confectionary, or bottling establishment, and also includes the receipt and salvaging of distressed food for sale or use as food.

(h) “Food processing plant” means any place used primarily for food processing, where the processed food is not intended to be sold or distributed directly to a consumer. “Food processing plant” does not include any of the following:

1. A retail food establishment if the food processing activities at that establishment are authorized by a license issued under s. 97.30.

2. A restaurant or other establishment where meals are prepared or processed for retail sale directly to consumers or through vending machines if the food processing activities at that establishment are authorized by a license issued under s. 97.605.

3. An establishment covered by a license or permit under ch. 125 to sell alcohol beverages if the food processing activities related to alcohol beverages at that establishment are limited to preparing individual servings of alcohol beverages that are sold on the premises in accordance with the terms of the establishment’s license or permit under ch. 125.

4. A dairy plant if the food processing activities at that plant are authorized by a license issued under s. 97.20.

5. A meat or poultry establishment if the food processing activities at that establishment are authorized by a license issued under s. 97.42 or are authorized under 21 USC 451 to 472 or 21 USC 601 to 695.

6. An egg products plant if the food processing activities at that establishment are inspected by the federal department of agriculture under 21 USC 1031 to 1056.

7. A dairy farm and milking operation licensed under s. 97.22 that produces milk for shipment to a dairy plant licensed under s. 97.20 or under the equivalent laws of another state.

8. A place used by a beekeeper solely for extracting honey from the comb or producing and selling raw honey or raw bee products.

9. A place used solely for washing or packaging fresh or otherwise unprocessed fruits or vegetables.

10. A place used by a nonprofit organization solely for receiving and salvaging distressed food pursuant to the organization’s purposes if the organization is described in section 501 (c) (3) of the Internal Revenue Code and is exempt from federal income tax under section 501 (a) of the Internal Revenue Code.

11. A place on a farm used by an egg producer solely for handling, cleaning, or packaging whole eggs, including nest–run eggs, that are produced as allowed under s. 97.28 (2).

12. A place used solely for producing and packaging maple syrup or concentrated maple sap for sale directly to consumers or to a food processing plant licensed under this section if those sales do not exceed \$5,000 in any 12–month period.

13. Any other place exempted by the department by rule.

(hm) “Potentially hazardous food” has the meaning given in s. 97.27 (1) (dm).

(i) “Soda water beverage” means all beverages commonly known as soft drinks or soda water, whether carbonated, uncarbonated, sweetened or flavored.

**(2) LICENSE.** (a) *Requirement.* Except as provided under par. (b) and s. 97.28, no person may operate a food processing plant without a valid license issued by the department for that food processing plant. A license expires on March 31 annually, except that a license issued for a new food processing plant on or after January 1 but before April 1 expires on March 31 of the following year. Each food processing plant shall have a separate license. A license is not transferable between persons or locations. Application for a license shall be made on a form provided by the department and be accompanied by the applicable fees required under sub. (3). An applicant shall identify the categories of food processing activities which the applicant proposes to conduct at the food processing plant. An application shall include additional information which may reasonably be required by the department for licensing purposes.

(b) *Exemptions.* 1. If a dairy plant licensed under s. 97.20 or a meat establishment licensed under s. 97.42 is incidentally engaged in the operation of a food processing plant at the same location, the department may exempt by rule the dairy plant or meat establishment from licensing under this section.

2. A person is not required to obtain a license under this section to sell at retail food products that the person prepares and cans at home in this state if all of the following apply:

a. The food products are pickles or other processed vegetables or fruits with an equilibrium pH value of 4.6 or lower.

b. The person sells the food products at a community or social event or a farmers' market in this state.

c. The person receives less than \$5,000 per year from the sale of the food products.

d. The person displays a sign at the place of sale stating: "These canned goods are homemade and not subject to state inspection."

e. Each container of food product that is sold is labeled with the name and address of the person who prepared and canned the food product, the date on which the food product was canned, the statement "This product was made in a private home not subject to state licensing or inspection.", and a list of ingredients in descending order of prominence. If any ingredient originates from milk, eggs, fish, crustacean shellfish, tree nuts, wheat, peanuts, or soybeans, the list of ingredients shall include the common name of the ingredient.

(c) *Added operations.* No food processing plant may add a new category of food processing operations during the time period for which a food processing plant license was issued unless the operator of the food processing plant first notifies the department and obtains written authorization for the new category of operations. "New category of food processing operations" may include any of the following operations which were not identified on the most recent license application for the food processing plant:

1. Bakery operations.
2. Confectionary operations.
3. Bottling establishment operations.
4. Canning operations.

5. Freezing, smoking or other food preservation operations which constitute a significant departure from the operations described in the most recent license application.

6. Any other category of food processing operations which constitutes a significant departure from the operations described in the most recent license application.

(3) **FEES.** (a) *Annual license fee; all food processing plants.* An applicant for a food processing plant license shall pay the license fee specified under par. (am), based on the dollar volume of production by the food processing plant during the previous license year. The annual dollar volume of production shall be determined by gross sales of the product processed during the license year, plus the inventory value of any portion of the product not sold. If the food processing plant was not licensed during the previous license year, the license applicant shall pay an estimated license fee based on projected annual production in the license year for which application is made. At the end of the license year for which an estimated fee has been paid, the licensee shall report to the department the actual production during the license year, and the license fee for that year shall be recomputed based on the actual production. If the license fee based on actual production differs from the estimated license fee, the licensee shall pay the balance due or receive a credit from the department on the next year's license fee.

(am) *Fee amounts.* Unless otherwise required by department rule, the annual fees required under par. (a) are:

1. For a food processing plant that has an annual production of \$25,000 or more but less than \$250,000 and that is engaged in processing potentially hazardous food or in canning, an annual license fee of \$120.

2. For a food processing plant that has an annual production of \$250,000 or more and that is engaged in processing potentially hazardous food or in canning, an annual license fee of \$270.

3. For a food processing plant that has an annual production of \$25,000 or more but less than \$250,000 and that is not engaged

in processing potentially hazardous food or in canning, an annual license fee of \$50.

4. For a food processing plant that has an annual production of \$250,000 or more and that is not engaged in processing potentially hazardous food or in canning, an annual license fee of \$110.

5. For a food processing plant that has an annual production of less than \$25,000, an annual license fee of \$40.

(b) *Canning operations; license fee surcharge.* If a food processing plant is engaged in canning operations, a license applicant shall pay a license fee surcharge of \$195, beginning with the license year which ends on March 31, 1989, which shall be added to the license fee under par. (a).

(c) *Reinspection fee.* If the department reinspects a food processing plant because the department finds a violation of this chapter or rules promulgated under this chapter, the department shall charge the food processing plant operator the reinspection fee specified under par. (cm). The reinspection fee shall be based on the dollar volume of production by the food processing plant during the previous license year, and may include a reinspection fee surcharge for a food processing plant engaged in canning operations. The reinspection fee is payable when the reinspection is completed, and is due upon written demand from the department. The department may issue a demand for payment when it issues a license renewal application form to the food processing plant operator.

(cm) *Fee amounts.* Unless otherwise required by department rule, the reinspection fee required under par. (c) is:

1. For a food processing plant that has an annual production of \$25,000 or more but less than \$250,000 and that is engaged in processing potentially hazardous food or in canning, the reinspection fee is \$80.

2. For a food processing plant that has an annual production of \$250,000 or more and that is engaged in processing potentially hazardous food or in canning, the reinspection fee is \$180.

3. For a food processing plant that has an annual production of \$25,000 or more but less than \$250,000 and that is not engaged in processing potentially hazardous food or in canning, the reinspection fee is \$50.

4. For a food processing plant that has an annual production of \$250,000 or more and that is not engaged in processing potentially hazardous food or in canning, the reinspection fee is \$110.

5. For a food processing plant that has an annual production of less than \$25,000, the reinspection fee is \$40.

(d) *Surcharge for operating without a license.* An applicant for a food processing plant license shall pay a license fee surcharge if the department determines that, within one year prior to submitting a license application, the applicant operated the food processing plant without a license in violation of this subsection. The amount of the surcharge is \$100. Payment of this license fee surcharge does not relieve the applicant of any other civil or criminal liability which results from the unlicensed operation of the food processing plant, but does not constitute evidence of a violation of any law.

(e) *Licensing contingent on payment of fees.* The department may not issue or renew a food processing plant license unless the license applicant pays all fees which are due and payable under this subsection, as set forth in a statement from the department. The department shall refund a fee paid under protest if the department determines that the fee was not due and payable as a condition of licensing under this subsection.

(4) **FOOD PROCESSING PLANTS BUYING VEGETABLES FROM PRODUCERS.** The department may not issue or renew a license to operate a food processing plant to any applicant who is a vegetable contractor, as defined in s. 126.55 (14), unless the applicant has filed all financial information required under s. 126.58 and any security that is required under s. 126.61. If an applicant has not filed all financial information required under s. 126.58 and any security that is required under s. 126.61, the department may issue a conditional license under s. 93.06 (8) that prohibits the licensed

operator from procuring vegetables from a producer or a producer's agent, but allows the operator to procure vegetables from other sources.

(5) **RULE MAKING.** The department may promulgate rules to establish the fees required under sub. (3) (a) or (c) or to govern the operation of food processing plants. Rules may include standards for the construction and maintenance of facilities; the design, installation, cleaning and maintenance of equipment and utensils; personnel sanitation; food handling and storage; sanitary production and processing; and food sources and food labeling.

(6) **INFORMATION ABOUT HOME CANNING.** (a) The department shall encourage persons to whom the exemption in sub. (2) (b) 2. applies to attend and complete training, that is approved by the department, concerning preparing and canning foods and to have their recipes and processes reviewed by a person who is knowledgeable about the food canning industry and who is recognized by the department as an authority on preparing and canning food.

(b) The department, in cooperation with the University of Wisconsin—Extension, shall attempt to maximize the availability of information and technical services and support for persons who wish to home prepare and home can low-acid and acidified food products.

**History:** 1987 a. 399; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 27, 264; 1995 a. 460; 1997 a. 27; 2001 a. 16; 2009 a. 101; 2013 a. 245, 302; 2015 a. 55, 195, 242; 2017 a. 365.

**Cross-reference:** See also ch. ATPC 70, Wis. adm. code.

**97.30 Retail food establishments. (1) DEFINITIONS.** In this section:

(a) “Agent city or county” means a city or county granted agent status by the department under s. 97.41.

(b) “Food processing” has the meaning given under s. 97.29 (1) (g).

(bm) Except as provided by the department by rule, “potentially hazardous food” means a food that requires temperature control because it is in a form capable of supporting any of the following:

1. Rapid and progressive growth of infectious or toxigenic microorganisms.

2. Growth and toxin production of *Clostridium botulinum*.

3. In raw shell eggs, growth of *Salmonella enteritidis*.

(c) “Retail food establishment” means a permanent or mobile food processing facility where food processing is conducted primarily for direct retail sale to consumers at the facility, a mobile facility from which potentially hazardous food is sold to consumers at retail or a permanent facility from which food is sold to consumers at retail, whether or not that facility sells potentially hazardous food or is engaged in food processing. “Retail food establishment” includes a restaurant or temporary restaurant, but does not include an establishment holding a license under s. 97.605, to the extent that the activities of the establishment are covered by that license.

(2) **LICENSE.** (a) *Requirement.* Except as provided under par. (b), no person may operate a retail food establishment without a valid license issued by the department or an agent city or county. Except as provided in par. (am), licenses expire on June 30 annually, except that a license issued for a new retail food establishment on or after March 30 but before July 1 expires on June 30 of the following year. Each retail food establishment shall have a separate license. A license is not transferable between persons or establishments. Application for a license shall be made on a form provided by the department, or by the agent city or county, and be accompanied by the applicable fees required under sub. (3) or (3s) or s. 97.41. An application shall indicate whether food processing is conducted at the establishment and shall specify the nature of any food processing activities. An application shall include other information reasonably required by the department, or by the agent city or county, for licensing purposes.

(am) *License issuance for a retail food establishment located in a city of the 1st class.* 1. The local health department of a city

of the 1st class that has entered into an agreement with the department under s. 97.41 (1m) may issue to a retail food establishment the license required under par. (a) at any time during the year. A license issued under this subdivision shall expire one year from the date of its issuance.

2. A retail food establishment may request an extension to the term of a license issued under par. (a) by the local health department of a city of the 1st class that has entered into an agreement with the department under s. 97.41 (1m) for the purpose of aligning the annual term of any other license or permit issued to that retail food establishment with the annual term of a license to be issued to that retail food establishment under subd. 1. The local health department may require a retail food establishment that receives an extension under this subdivision to pay a prorated fee in an amount determined by dividing the license fee imposed under s. 97.41 (4) by 12 and multiplying the quotient by the number of months by which the license issued under par. (a) is extended under this subdivision.

(b) *Exemptions.* 1. A license is not required under this section for any of the following:

a. A retail food establishment that sells only packaged foods or fresh fruits and vegetables, if the establishment does not sell potentially hazardous food and does not engage in food processing.

b. A retail food establishment which is primarily engaged in selling fresh fruits and vegetables, honey, cider or maple syrup produced by the operator of the retail food establishment, if that retail food establishment is not engaged in other food processing activities.

c. A retail food establishment which is exempted from licensing by the department by rule. If an establishment for which a license has been issued under s. 97.605 is incidentally engaged in operating a retail food establishment at the same location, the department may exempt by rule the establishment from licensing under this section.

d. A retail food establishment where popcorn is popped, if the retail food establishment is not required to obtain a license under this section to sell or process any other food.

2. If a dairy plant licensed under s. 97.20, a food processing plant licensed under s. 97.29 or a meat establishment licensed under s. 97.42 is incidentally engaged in the operation of any retail food establishment at the same location, the department may exempt by rule that establishment from licensing under this section.

(c) *Pre-licensing inspection.* Except as provided under par. (d), the department or an agent city or county may not issue a license for a new retail food establishment until it inspects the new retail food establishment for compliance with this section and rules promulgated under this section. A licensed retail food establishment is not considered a new retail food establishment under this paragraph solely because of a change in ownership, or solely because of alterations in the retail food establishment.

(d) *Initial inspection of micro market.* The department or an agent city or county may issue a license for a new retail food establishment that is a micro market before it inspects the new retail food establishment that is a micro market for compliance with this section and rules promulgated under this section. Before one year after the date that the department or the agent city or county issues a license for a new retail food establishment that is a micro market, it shall inspect the new retail food establishment for compliance with this section and rules promulgated under this section.

(3) **FEES; RETAIL FOOD ESTABLISHMENTS LICENSED BY DEPARTMENT.** (a) *License fee.* Except as provided under sub. (3s), an applicant for a retail food establishment license shall pay the license fee specified under sub. (3m), based on gross receipts from food sales at the retail food establishment during the previous license year. If a retail food establishment was not licensed during the previous license year, a license applicant shall pay an estimated license fee based on projected gross receipts from food

sales in the license year for which application is made. At the end of the license year for which an estimated fee has been paid, the licensee shall submit a report to the department stating the actual gross receipts from food sales during the license year. The license fee for that year shall be recomputed based on actual gross receipts. If the license fee based on actual gross receipts differs from the estimated license fee which was paid, the licensee shall pay the balance due or receive a credit from the department on the next year's license fee.

(am) *Weights and measures inspection fee.* An applicant for a retail food establishment license shall pay the weights and measures inspection fee specified under sub. (3m), based on gross receipts from food sales at the retail food establishment during the previous license year. If a retail food establishment was not licensed during the previous license year, a license applicant shall pay an estimated weights and measures inspection fee based on projected gross receipts from food sales in the license year for which application is made. At the end of the license year for which an estimated fee has been paid, the licensee shall submit a report to the department stating the actual gross receipts from food sales during the license year. The weights and measures inspection fee for that year shall be recomputed based on actual gross receipts. If the weights and measures inspection fee based on actual gross receipts differs from the estimated weights and measures inspection fee which was paid, the licensee shall pay the balance due or receive a credit from the department on the next year's weights and measures inspection fee. This paragraph does not apply to a retail food establishment that is a micro market.

(b) *Reinspection fee.* If the department reinspects a retail food establishment because the department finds a violation of this chapter or rules promulgated under this chapter, the department shall charge the retail food establishment operator the reinspection fee specified under sub. (3m). A reinspection fee is payable when the reinspection is completed, and is due upon written demand from the department. The department may issue a demand for payment when it issues a license renewal application form to the retail food establishment operator. This paragraph does not apply to a retail food establishment that is a micro market.

(c) *Surcharge for operating without a license.* An applicant for a retail food establishment license shall pay a license fee surcharge of \$100 or twice the amount of the annual license fee specified under sub. (3m) whichever is less, or if the applicant operates a micro market a license fee surcharge of \$100 or twice the amount of the annual license fee specified under sub. (3s) whichever is less, if the department determines that, within one year prior to submitting a license application, the applicant operated the retail food establishment without a license in violation of this subsection. Payment of this license fee surcharge does not relieve the applicant of any other civil or criminal liability which results from the unlicensed operation of the retail food establishment, but does not constitute evidence of a violation of any law.

(d) *Licensing contingent on payment of fees.* The department may not issue or renew a retail food establishment license unless the license applicant pays all fees which are due and payable under this subsection and sub. (3m) or (3s), as set forth in a statement from the department. The department shall refund a fee paid under protest if the department determines that the fee was not due and payable as a condition of licensing under this subsection.

**(3m) FEE AMOUNTS.** The department shall specify by rule the amount of the fees under sub. (3) for a restaurant. Unless otherwise required by department rule, the fees required under sub. (3) for a retail food establishment other than a restaurant are:

(a) For a retail food establishment, other than a restaurant, that has annual food sales of \$25,000 or more but less than \$1,000,000 and that processes potentially hazardous food, the following amounts:

1. An annual license fee of \$90.
2. A reinspection fee of \$60.

3. An annual weights and measures inspection fee of \$45, except that this fee does not apply to a retail food establishment that is located in a municipality that has established a municipal department of weights and measures under s. 98.04 (1) or that recovers fees from the retail food establishment under s. 98.04 (2) for the purpose of enforcement of the provisions of ch. 98.

(b) For a retail food establishment, other than a restaurant, that has annual food sales of \$1,000,000 or more and that processes potentially hazardous food, the following amounts:

1. An annual license fee of \$210.
2. A reinspection fee of \$140.

3. An annual weights and measures inspection fee of \$100, except that this fee does not apply to a retail food establishment that is located in a municipality that has established a municipal department of weights and measures under s. 98.04 (1) or that recovers fees from the retail food establishment under s. 98.04 (2) for the purpose of enforcement of the provisions of ch. 98.

(c) For a retail food establishment, other than a restaurant, that has annual food sales of \$25,000 or more and that is engaged in food processing, but that does not process potentially hazardous food, the following amounts:

1. An annual license fee of \$80.
2. A reinspection fee of \$80.

3. An annual weights and measures inspection fee of \$25, except that this fee does not apply to a retail food establishment that is located in a municipality that has established a municipal department of weights and measures under s. 98.04 (1) or that recovers fees from the retail food establishment under s. 98.04 (2) for the purpose of enforcement of the provisions of ch. 98.

(cm) For a retail food establishment, other than a restaurant, that has annual food sales of less than \$25,000 and that is engaged in food processing, an annual license fee of \$40 and a reinspection fee of \$40.

(d) For a retail food establishment, other than a restaurant, that is not engaged in food processing, an annual license fee of \$20 and a reinspection fee of \$50.

**(3s) FEES; MICRO MARKETS.** An applicant for a retail food establishment license to operate a micro market shall pay one of the following annual license fee amounts:

- (a) For one micro market located in a building, \$40.
- (b) For 2 or more micro markets located in the same building, \$60.

**(4) FEES; RETAIL FOOD ESTABLISHMENT LICENSED BY AGENT CITY OR COUNTY.** (a) Subsection (3) does not apply to any retail food establishment licensed by an agent city or county under s. 97.41. Except as provided under par. (b), an applicant for a retail food establishment license issued by an agent city or county shall pay fees established by the agent city or county under s. 97.41.

(b) An applicant for a retail food establishment license to be issued by an agent city or county shall pay the fee under sub. (3s) if the application is for a micro market.

**(5) RULE MAKING.** The department may promulgate rules to establish the fees required under sub. (3) or to govern the operation of retail food establishments. Rules may include standards for the construction and maintenance of facilities; the design, installation, cleaning and maintenance of equipment and utensils; personnel sanitation; food handling, display and storage; and food sources and food labeling.

**History:** 1987 a. 399; 1989 a. 174; 1991 a. 39, 210; 1993 a. 16, 27, 264, 491; 1995 a. 27 ss. 3599, 9126 (19); 1997 a. 27; 1999 a. 9; 2007 a. 20 s. 9121 (6) (a); 2013 a. 298, 302; 2015 a. 55, 195; 2017 a. 225.

**Cross-reference:** See also chs. ATCP 55 and 75, Wis. adm. code.

**97.305 Restaurants serving fish.** (1) A restaurant or temporary restaurant may serve fish taken from the wild to the individual who caught the fish, or to his or her guests, without obtaining a permit under s. 29.541 (1) (b) if all of the following conditions are satisfied:

- (a) The fish are legally taken.
- (b) While the fish are at the restaurant and before the fish are prepared for eating, they are stored in a cooler, which may be a portable cooler, that does not contain any other food.
- (c) The area where the fish are prepared for eating is washed and sanitized before and after preparation of the fish.
- (d) All items used to prepare and serve the fish are washed in a dishwasher after such use.

(2) A restaurant or temporary restaurant may make a pecuniary profit from preparing and serving fish as provided under sub. (1).

**History:** 2007 a. 20; 2015 a. 55 s. 4088; 2015 Stats. s. 97.305.

**97.307 Average annual surveys.** The department or a local health department granted agent status under s. 97.41 shall annually make a number of inspections of restaurants in this state that shall equal the number of restaurants for which annual licenses are issued under s. 97.30.

**History:** 1987 a. 27; 1993 a. 27 s. 69; Stats. 1993 s. 254.66; 2015 a. 55 s. 4082; Stats. 2015 s. 97.307.

**97.32 Special dairy and food inspectors. (1)** Special dairy and food inspectors may be appointed by the department for any factory, plant, receiving station, or group thereof, which buys or receives milk or cream for the purpose of manufacturing, processing or any other purpose whatsoever, upon petition therefor signed by more than two-thirds of the regular patrons of such factory, plant, receiving station, or group thereof, or by the officers of such factory, plant, receiving station or group thereof, or of the officers of any association organized under ch. 185 or 193 representing patrons of such factory, plant, receiving station or group thereof, and upon receiving satisfactory proof that such special dairy and food inspectors will be compensated in full for all services rendered and traveling expenses incurred upon and pursuant to such appointment as provided in this section. If the inspector is appointed pursuant to petition signed by the officers of an organization, such compensation and expenses shall be paid by such organization; and any factory, plant, receiving station or group thereof shall pay to the association the checkoff as contracted for between the member and the association. If appointed pursuant to petition signed by patrons, each patron of the factory, plant, receiving station or group thereof shall pay such proportion of the total amount of such compensation and expenses as the amount of milk or cream delivered thereto by the patron bears to the total amount delivered thereto by all patrons. The state shall not be liable for any such compensation or expenses.

(3) Each such special dairy and food inspector shall have all powers conferred by law upon dairy and food inspectors, shall at all times be under the supervision of the department and shall make such reports to the department as the department may require. The special dairy and food inspector shall supervise and inspect the weighing and testing of and shall inspect all milk, cream, butter or cheese delivered to such factory, plant, receiving station or group thereof, except that if the special dairy and food inspector be appointed upon petition by an association organized under ch. 185 or 193, the special dairy and food inspector shall perform duties only for its members, and for such purpose the special dairy and food inspector may use any or all weighing or testing apparatus in such factory, plant, receiving station or group thereof. In addition to the duties herein specifically prescribed, the special dairy and food inspector shall perform such duties as the patrons or organization compensating the special dairy and food inspector or the department may direct.

(4) An appointment of a special dairy and food inspector may be denied, suspended or revoked by the department as provided in s. 93.06 (7). Rehearing and judicial review shall be as provided in ch. 227.

**History:** 1975 c. 308; 1975 c. 414 s. 28; 1993 a. 492; 2005 a. 441.

**97.33 Certificate of food protection practices. (1g)** In this section:

(a) “Approved examination” means an examination that allows an individual to demonstrate basic knowledge of food protection practices and that is approved by the department as meeting the standards established under sub. (6) (b).

(b) “Certificate holder” means an individual who holds a valid certificate of food protection practices issued under this section.

(c) “Food handler” means an individual engaged in the preparation or processing of food at a restaurant and who is not a certificate holder.

(1m) No person may conduct, maintain, manage, or operate a school lunchroom that is in a school that is participating in the national school lunch program under 42 USC 1751 to 1769j for which food service is directly provided by the school unless the operator or manager of the lunchroom, or his or her designee, is a certificate holder. For purposes of this subsection, the “operator or manager of the lunchroom” is the individual responsible for the administration of food services for a private school, charter school established under s. 118.40 (2r), or school district. A private school, charter school established under s. 118.40 (2r), or school district complies with the requirements of this subsection if the school or school district has one certificate holder.

(1r) After January 1, 1995, no person may conduct, maintain, manage or operate a restaurant unless the operator or manager of the restaurant is a certificate holder.

(2) Except as provided in s. 93.135, the department may issue a certificate of food protection practices to an individual who satisfactorily completes an approved examination or who has achieved comparable compliance.

(3) Each certificate is valid for 5 years from the date of issuance and, except as provided in s. 93.135, may be renewed by the certificate holder if he or she satisfactorily completes all of the following:

(a) If he or she operates or manages a restaurant employing more than 5 food handlers, an approved examination.

(b) If he or she operates or manages a restaurant employing 5 or fewer food handlers, one of the following:

1. A recertification training course approved by the department.
2. An approved examination.

(3g) (a) For a certificate issued under sub. (3) (b) 1., all of the following apply:

1. The certificate is called a “licensure of food safety training for small operators.”

2. The certificate applies only in a restaurant the certificate holder is operating or managing at the time of the renewal or in other restaurants employing 5 or fewer food handlers.

3. A licensure of food safety training for small operators may be renewed under sub. (3) (b) 1. every 5 years.

(b) The department shall approve recertification training courses that were approved by the department as of December 31, 2014, and substantially similar courses.

(c) The department may not adopt different regulatory and inspection standards based on the type of certificate issued under this section.

(3m) The department shall accept relevant education, training, instruction, or other experience that an applicant has obtained in connection with military service, as defined in s. 111.32 (12g), to count toward satisfying the education, training, instruction, or other experience that is required to obtain a certificate of food protection practices if the applicant demonstrates to the satisfaction of the department that the education, training, instruction, or other experience that the applicant obtained in connection with his or her military service is substantially equivalent to the education,



training, instruction, or other experience that is required to obtain a certificate of food protection practices.

(5) The department shall conduct evaluations of the effect that the food protection practices certification program has on compliance by restaurants with requirements established under s. 97.30 (5).

(6) The department shall promulgate rules concerning all of the following:

(a) Establishing a fee for certification and recertification of food protection practices, except that a certification fee may not be imposed on an individual who is eligible for the veterans fee waiver program under s. 45.44.

(b) Specifying standards for approval of examinations and training courses for recertification of food protection practices required under this section.

(c) Establishing procedures for issuance, except as provided in s. 93.135, of certificates of food protection practices, including application submittal and review.

**History:** 1991 a. 39; 1993 a. 16; 1993 a. 27 s. 74; Stats. 1993 s. 254.71; 1997 a. 27, 191; 2011 a. 120, 209; 2013 a. 292; 2015 a. 9, 46; 2015 a. 55 s. 4087; Stats. 2015 s. 97.33; 2017 a. 366 s. 70.

**Cross-reference:** See also ch. ATCP 75, Wis. adm. code.

**97.34 Bottled drinking water and soda water beverage; standards; sampling and analysis.** (1) In this section:

(a) “Bottled drinking water” means all water packaged in bottles or similar containers and sold or distributed for drinking purposes. This term includes distilled water, artesian water, spring water and mineral water, whether carbonated or uncarbonated.

(b) “Soda water beverage” means and includes all beverages commonly known as soft drinks or soda water, whether carbonated, uncarbonated, sweetened or flavored. This term does not include alcohol beverages.

(2) (a) The department shall promulgate by rule standards of purity for all ingredients used in the manufacture or bottling of soda water beverages or bottled drinking water which ensure a pure and unadulterated product.

(b) No person may manufacture or bottle bottled drinking water for sale or distribution in this state unless the bottled drinking water complies with state drinking water standards adopted by the department of natural resources under s. 280.11, 281.15 or 281.17 (8) and with health-related enforcement standards adopted by the department of natural resources under ch. 160.

(c) The department may require testing of bottled drinking water for substances subject to any standard under par. (b) and for any other substance if the department determines that the water system used as the source of the bottled drinking water has a potential of being contaminated, based on contamination of other water systems or groundwater in the vicinity. The department shall adopt by rule requirements for periodic sampling and analysis for the purposes of this subsection. The department shall require all analyses to be conducted by a laboratory certified under s. 299.11.

(d) No person may manufacture or bottle bottled drinking water for sale or distribution in this state unless the water system used by the manufacturer or bottler complies with ch. 280 and rules promulgated by the department of natural resources under that chapter.

(e) The department shall publish an annual report summarizing the results of bottled drinking water sampling and analysis.

**History:** 1973 c. 126; 1981 c. 79 s. 17; 1983 a. 410; 1987 a. 27, 399; 1995 a. 227, 378; 1997 a. 35.

**97.41 Retail food: agent status for local health departments.** (1) In this section:

(a) “Local board of health” has the meaning given in s. 250.01 (3).

(b) “Local health department” has the meaning given in s. 250.01 (4).

(1m) In the administration of this chapter, the department may enter into a written agreement with a local health department, if the jurisdictional area of the local health department has a population greater than 5,000, which designates the local health department as the agent of the department of agriculture, trade and consumer protection for issuing licenses to and making investigations or inspections of retail food establishments, as defined in s. 97.30 (1) (c). When the designation is made, no license other than the license issued by the local health department under this section may be required by the department of agriculture, trade and consumer protection or the local health department for the same operations. The department of agriculture, trade and consumer protection shall oversee the designation of agents under this section to ensure that, to the extent feasible, the same local health department is granted agent status under this section and under s. 97.615 (2). Except as otherwise provided by the department of agriculture, trade and consumer protection, a local health department granted agent status shall regulate all types of establishments for which this subsection permits the department of agriculture, trade and consumer protection to delegate regulatory authority.

(2) A local health department granted agent status under this section shall meet standards adopted, by rule, by the department. The department shall annually evaluate the licensing, investigation and inspection program of each local health department granted agent status. If, at any time, a local health department granted agent status fails to meet the standards, the department may revoke its agent status.

(3) The department shall provide education and training to agents designated under this section to ensure uniformity in the enforcement of this chapter and rules adopted under this chapter.

(4) (a) Except as provided in par. (b) or (c), a local health department granted agent status under this section shall establish and collect the license fee for retail food establishments, as defined in s. 97.30 (1) (c). The local health department may establish separate fees for pre-licensing inspections of new establishments, for pre-licensing inspections of existing establishments for which a person intends to be the new operator or for the issuance of duplicate licenses. No fee may exceed the local health department’s reasonable costs of issuing licenses to, making investigations and inspections of, and providing education, training and technical assistance to the establishments, plus the state fee established under sub. (5). A local health department which is granted agent status under this section or under s. 97.615 may issue a single license and establish and collect a single fee which authorizes the operation on the same premises of more than one type of establishment with respect to which it is granted agent status under this section or under s. 97.615 (2).

(b) A local health department granted agent status under this section may contract with the department for the department to collect fees and issue licenses. The department shall collect from the local health department the actual and reasonable cost of providing the services.

(c) A local health department granted agent status under this section shall collect the license fees under s. 97.30 (3s) for retail food establishments, as defined in s. 97.30 (1) (c), that are micro markets.

(5) The department shall establish state fees for its costs related to setting standards for retail food establishments, as defined in s. 97.30 (1) (c), setting standards for agents under this section and monitoring and evaluating the activities of, and providing education and training to, agent local health departments. Agent local health departments shall include the state fees in the license fees established under sub. (4) (a), collect the state fees, and reimburse the department for the state fees collected. The state fee may not exceed 20 percent of the license fee charged under s. 97.30 (3), or for a retail food establishment that is a micro market, 20 percent of the license fee charged under s. 97.30 (3s), for a license issued by the department.

(6) If, under this section, a local health department becomes an agent or its agent status is discontinued during a licensee's license year, the department and the local health department shall divide any license fee paid for that license year according to the proportions of the license year occurring before and after the local health department's agent status is granted or discontinued. No additional fee may be required during the license year due to the change in agent status.

(7) A local board of health may adopt and impose regulations on licensees and premises for which the local health department is the designated agent under this section, which are stricter than this chapter or rules promulgated by the department under this chapter. No such regulation may conflict with this chapter or rules promulgated by the department.

(8) This section does not limit the authority of the department to inspect establishments in jurisdictional areas of local health departments where agent status is granted if it inspects in response to an emergency, for the purpose of monitoring and evaluating the local health department's licensing, inspection and enforcement program or at the request of the local health department.

(9) The department shall hold a hearing under ch. 227 if any interested person, in lieu of proceeding under ch. 68, appeals to the department alleging any of the following:

(a) A permit fee established by a local health department granted agent status exceeds the reasonable costs described under sub. (4) (a).

(b) The person issuing, refusing to issue, suspending or revoking a permit or making an investigation or inspection of the appellant has a financial interest in a regulated establishment which may interfere with his or her ability to properly take that action.

(c) That a license fee for a retail food establishment license issued by an agent local health department under this section exceeds the reasonable costs of that agent local health department for issuing the license, investigating and inspecting the establishment, and providing education, training and technical assistance to the establishment.

**History:** 1983 a. 203; 1985 a. 29 ss. 1643y to 1645, 3202 (3); 1987 a. 27 ss. 1693hL, 3200 (4); 1987 a. 399, 403; 1989 a. 56; 1993 a. 27; 1995 a. 27 s. 9126 (19); 2007 a. 20 s. 9121 (6) (a); 2015 a. 55; 2017 a. 225.

**97.42 Compulsory inspection of livestock or poultry, and meat or poultry products. (1) DEFINITIONS.** In this section:

(b) "Capable of use as human food" applies to any meat or poultry product unless it is denatured, identified as unfit for human consumption as required by department rules, or is naturally inedible by humans.

(bg) "Captive game animal" means an animal of a normally wild type that is produced in captivity for slaughter and consumption. "Captive game animal" does not include a farm-raised deer, ratite, captive game bird, fish, or an animal that is kept solely for hunting purposes at a hunting preserve.

(br) "Captive game bird" means a bird of a normally wild type that is produced in captivity for slaughter and consumption, including a pheasant, quail, wild turkey, migratory wildfowl, or other bird that the department designates as a captive game bird by rule. "Captive game bird" does not include poultry, ratites, or birds kept solely for hunting purposes at a hunting preserve.

(cm) "Denature" means to intentionally make an item unfit for human consumption by adding a substance to it to alter the item's appearance or other natural characteristics.

(d) "Establishment" means a plant or premises, including retail premises, where livestock or poultry are slaughtered for human consumption, or where meat or poultry products are processed, but does not include any of the following:

1. Establishments subject to 21 USC 451 to 695.

3. Premises of a person who is the owner of the livestock or poultry to be slaughtered or of the meat or poultry products to be

processed, if the resulting product is for exclusive use by the owner, members of the owner's household, or the owner's non-paying guests and employees.

(dm) "Farm-raised deer" has the meaning given in s. 95.001 (1) (ag).

(e) "Inspector" means any person employed or authorized by the department to do any work or perform any duty in connection with the department's meat and poultry inspection program.

(em) "Livestock" means cattle, sheep, swine, goats, farm-raised deer, alpacas, llamas, bison, ratites, rabbits, and other species that the department designates as livestock by rule.

(f) "Meat broker" means any person engaged in the business of buying or selling meat or poultry products on commission, or otherwise negotiating purchases or sales of meat or poultry products other than for the person's own account or as an employee of another person.

(fm) "Meat distributor" means a person who is engaged in the business of distributing in this state meat or poultry products at wholesale.

(h) "Meat or poultry products" means any parts, including the viscera, of slaughtered livestock or poultry that are capable of use as human food.

(i) "Mobile processor" means a person, other than the owner of the livestock or poultry being slaughtered or the meat or poultry products being processed, who slaughters livestock or poultry or processes meat or poultry products for the general public for compensation other than the trading of services on an exchange basis, and conducts the slaughtering or processing at the premises of the owner of the livestock or poultry being slaughtered or the meat or poultry products being processed.

(k) "Official inspection mark" means the symbol formulated under the rules of the department to indicate that the meat or poultry product was inspected pursuant to the department's rules.

(L) "Poultry" means any domesticated birds, including chickens, turkeys, geese, ducks, or guineas, but does not include captive game birds or ratites.

(n) "Veterinarian" means a graduate veterinarian of an accredited school of veterinary medicine who is qualified on the basis of training and experience, as determined by the department.

**(2) LICENSE; CERTIFICATE OF REGISTRATION.** (a) Subject to pars. (b) and (bg), no person may operate an establishment without a valid license issued by the department. That license expires on June 30 annually, except that a license issued for a new establishment on or after March 30 but before July 1 expires on June 30 of the following year. No license may be issued unless the applicant has complied with the requirements of this section. The department shall establish by rule the annual license fees for establishments, not to exceed \$200, based on the type of mandatory inspection required to be performed at the establishment. The department shall establish a reduced annual license fee for those establishments engaged only in slaughtering uninspected livestock or poultry or processing uninspected meat or poultry products as a custom service, but not for other operations for which a license under this section is required. No person may be required to obtain a license under s. 97.29 or 97.30 for activities licensed under this section or for establishments inspected under 21 USC 451 to 472 and 601 to 695.

(b) Paragraph (a) does not apply to any person operating an establishment that only processes meat or poultry products for sale directly to consumers at retail on the premises where the products were processed, if only inspected meat or poultry products are permitted on the premises and sales to hotels, restaurants, and institutions are restricted to 25 percent of the gross annual value of meat or poultry product sales or the adjusted dollar limitation published by the federal department of agriculture under 9 CFR 303.1 (d) (2) (iii) (b), whichever is less. No person exempt from licensure under this paragraph may sell any cured, smoked,

canned, or cooked meat or poultry products produced by that person to hotels, restaurants, or institutions.

(bg) Paragraph (a) does not apply to any person operating an establishment that meets the requirements under 9 CFR 303.1 (d) (2) (iv) (c) or (e) (1), or 381.10 (d) (2) (iv) (c) or (e) (1).

(c) No person may operate as a mobile processor without an annual registration certificate issued by the department, except that no registration certificate is required for a mobile processor who holds a license issued under par. (a). A registration certificate expires on June 30, annually. An application for an annual registration certificate shall be submitted on a form provided by the department and shall include information reasonably required by the department for registration purposes. The department shall promulgate rules regulating mobile processors, including rules related to facilities, sanitation, identification of carcasses, and record keeping.

(d) No person may operate as a meat broker or meat distributor without an annual registration certificate issued by the department, except that no registration certificate is required for a meat broker or a meat distributor who holds a license issued under par. (a). A registration certificate expires on June 30, annually. An application for an annual registration certificate shall be made on a form provided by the department and shall include information reasonably required by the department for registration purposes.

(3) STATE INSPECTION. (a) *Examination before slaughter.* For the purpose of preventing the sale and use in this state of meat or poultry products that are adulterated or otherwise not capable of use as human food, the department shall cause to be made, by inspectors who may be veterinarians on either a full-time or part-time basis, under supervision of the department, an examination and inspection of all livestock and poultry before they are slaughtered in any establishment, except as provided in pars. (d) and (em). All livestock and poultry found to show symptoms of disease shall be condemned or set apart and slaughtered separately from all other livestock and poultry, and when so slaughtered the meat or poultry products thereof shall be subject to careful examination, inspection, and disposition, in accordance with rules issued by the department.

(b) *Examination after slaughter.* For the purpose stated in par. (a), the department shall cause to be made, by inspectors who may be veterinarians on either a full-time or part-time basis, under supervision of the department, an examination and inspection of the meat or poultry products of all livestock and poultry slaughtered at any establishment, except as provided in pars. (d) and (em). Meat or poultry products found to be not adulterated and capable of use as human food shall be marked, stamped, tagged, or labeled by inspectors as “Wis. inspected and passed”. Inspectors shall mark, stamp, tag, or label as “Wis. inspected and condemned” all meat or poultry products found to be adulterated or otherwise not capable of use as human food, and all meat or poultry products so inspected and condemned shall be destroyed, in accordance with rules issued by the department. Inspection marks, stamps, tags, and labels shall be prescribed by the department and shall include thereon the identification number of the establishment assigned by the department.

(c) *Reexaminations.* Inspectors shall, when deemed advisable, reinspect meat or poultry products to determine whether they have become adulterated or otherwise not capable of use as human food. If any meat or poultry products, upon a reexamination, are found to be adulterated or otherwise not capable of use as human food, they shall be destroyed, in accordance with rules issued by the department.

(cm) *Voluntary reimbursable inspection services.* The department shall provide slaughter inspection services for licensed establishments for certain captive game animals and captive game birds, and shall designate by rule the species of captive game animals and captive game birds for which these services may be provided. The establishment requesting these services shall reim-

burse the department for the actual cost of providing the services at rates established by rule by the department.

(d) *Custom service slaughtering.* This subsection does not apply to livestock and poultry slaughtered as a custom service for the owner of the livestock or poultry exclusively for use by the owner, members of the owner’s household, and the owner’s non-paying guests and employees, unless department inspection is specifically requested and performed at establishments where examinations before and after slaughter are otherwise required. The rules of the department shall make provision for the furnishing of this inspection service, subject to availability of inspector personnel, and for the identification of all livestock and poultry custom slaughtered for the owners thereof without department inspection.

(e) *Periodic inspections.* The department shall make periodic inspections of construction, operation, facilities, equipment, labeling, sanitation, and practices for ensuring meat or poultry products are not adulterated, at establishments or any other premises, including vehicles engaged in transportation of meat or poultry products. Inspection of products and plant operations shall cover operations such as cutting and boning, curing and smoking, grinding and fabrication, manufacturing, packaging, labeling, storage and transportation. Periodic inspections of processing operations shall be conducted as uniformly as possible among establishments subject to overtime inspection under sub. (4) (f) to avoid the imposition of undue inspection fees against any establishment. Inspections at overtime rates shall only be held where necessary to assure the safety of products for human consumption and compliance with the requirements of this section and rules of the department.

(em) *Slaughter of farm-raised deer.* The requirements of pars. (a) and (b) do not apply to the slaughter of a farm-raised deer if its meat products are not sold by an operator of a retail food establishment, as defined under s. 97.30 (1) (c). The operator of an establishment in which farm-raised deer or their meat products are examined and inspected under this subsection shall pay the department for the cost of the department’s examination and inspection.

(f) *Label requirements.* In addition to label requirements otherwise provided by law, meat or poultry products shall bear a label, stamp, mark or tag including thereon the official inspection mark and identification number of the establishment where processed. Meat or poultry products processed and sold at retail to household consumers on the premises do not require official inspection marks and identification numbers.

(4) RULES. The department may issue reasonable rules requiring or prescribing any of the following:

(a) The inspection before and after slaughter of all livestock and poultry killed or dressed for human consumption at any establishment.

(b) The inspection and marking of meat or poultry products intended for human consumption, and prohibiting the unauthorized use of any official inspection mark or simulation or counterfeit thereof.

(d) The seizure, retention, and destruction of any livestock or poultry or meat or poultry products which have not been inspected or passed or are adulterated or misbranded, for the purpose of preventing human consumption.

(e) The hours and days in each week when slaughtering or processing may be conducted in any establishment subject to a license under sub. (2). The schedules so fixed shall be as nearly as possible in accord with existing industry standards of establishments subject to inspection. However, in order to avoid excessive costs for inspection and stay within the limit of appropriations, the schedules may require that:

1. Slaughtering or processing be conducted continuously during successive days and hours of the regular workweek for state employees;

2. The rate of slaughter for the different classes of livestock and poultry conform to reasonable minimum levels per hour;

3. Inspection of livestock and poultry slaughtered as a custom service be restricted to the time of the regular slaughter schedule fixed for the establishment. When inspection is provided for custom slaughtering and custom processing the inspection shall be conducted in accordance with sub. (3) (a) to (c) and rules prescribed under this subsection; and

4. The department be notified a reasonable time in advance of any deviation from existing schedules or when slaughtering or processing is to be conducted at times other than those specified under regularly established schedules.

(em) The rate at which an operator of an establishment that slaughters farm-raised deer or processes the meat products of farm-raised deer shall pay the costs of examination and inspection under sub. (3) (em) and the manner in which the department shall collect those amounts.

(f) Overtime agreements with the department whereby the operator of any establishment subject to a license under sub. (2) agrees to pay the cost for salaries, at overtime rates, and other expenses of department inspectors whenever slaughtering, carcass preparation, or the processing of meat or poultry products is conducted beyond hours or days limited under par. (e), or on Saturdays, Sundays, or holidays for state employees under s. 230.35 (4), or before 6 a.m. or after 6 p.m., or in excess of 40 hours in any week. Overtime charges for periodic inspections under sub. (3) (e) shall, insofar as possible, be limited to the minimum number of hours reasonably required for conducting those inspections. The department may assess overtime charges under this paragraph even though the department provides compensatory time in lieu of overtime compensation under s. 103.025.

(g) Specifications and standards for location, construction, operation, facilities, equipment, and sanitation for any premises, establishment, or mobile facility where slaughter or processing is carried on, including custom slaughtering of livestock or poultry and custom or retail processing of meat or poultry products.

(h) Conditions of sanitation under which meat or poultry products shall be stored, transported, or otherwise handled by any person engaged in the business of buying, selling, freezing, storing, transporting, or processing meat or poultry products.

(i) Record-keeping requirements for persons engaged in slaughtering or processing operations, or in the storage or transportation of meat or poultry products, including record-keeping requirements for meat brokers and the registration of meat brokers with the department.

(j) Any other rules reasonably necessary to the administration and enforcement of this section.

**(4m) FEDERAL REQUIREMENTS.** The operator of an establishment that is required to be licensed under this section shall comply with federal requirements as provided in rules promulgated by the department.

**(6) PROHIBITIONS.** (a) No person may slaughter any livestock or poultry for the purpose of selling the meat or poultry products thereof for human food, or sell, offer for sale, or have in his or her possession with intent to sell any meat or poultry products for human food, unless the livestock or poultry and the meat or poultry products thereof have been first inspected and approved as provided by any of the following:

1. This section and the rules issued thereunder.
2. The federal meat inspection act.
3. The federal poultry products inspection act.

(b) No person may sell, offer for sale, or have in his or her possession with intent to sell any meat or poultry products unless those products have been processed in accordance with this section or the federal meat inspection act.

(c) No person may slaughter horses, mules, or other equines or process equine carcasses or meat at establishments where livestock or poultry are slaughtered or where meat or poultry products are processed.

(d) No county or municipality may prohibit the sale of any meat or poultry products if the meat or poultry products are inspected and passed by the department or by the federal department of agriculture, provided the meat or poultry products are not adulterated or misbranded at the time of sale.

**(7) RIGHT OF ACCESS.** No person may prevent or attempt to prevent an inspector or other officer or agent of the department from entering, at any time, any establishment or any other place where meat or poultry products are processed, sold, or held for sale, for the purpose of any examination, inquiry, or inspection in connection with the administration and enforcement of this section. The examination, inquiry, or inspection may include taking samples, pictures, and documentary and physical evidence pertinent to enforcement of this section.

**(8) INTERFERENCE WITH INSPECTION.** Any person who forcibly assaults, threatens, obstructs, impedes, intimidates or interferes with any person while engaged in the performance of his or her official duties under this section shall be fined not more than \$5,000 or imprisoned in the county jail not to exceed one year or both.

**(9) TAGGING OF FACILITIES, EQUIPMENT AND PRODUCT.** (a) When in the opinion of the department, the use of any equipment, utensil, container, compartment, room, or facility which is unclean or unsanitary or improperly constructed could lead to contamination of a meat or poultry product, the department may attach a "Rejected" tag to the item, room, or facility. No equipment, utensil, container, compartment, room, or facility so tagged may be used until made acceptable and released by a department representative, or until that item, room, or facility is replaced with an acceptable item, room, or facility.

(b) 1. When in the opinion of the department any meat or poultry product, or supplies or ingredients used in the processing thereof, may be adulterated or misbranded, or otherwise fail to meet standards or requirements of this section or rules adopted under this section, the department may tag the product, supplies, or ingredients with a "Retained" tag to hold them for further inspection, analysis, or examination. No meat or poultry product, supplies, or ingredients so tagged may be used, removed from the premises, or otherwise disposed of unless released by a department representative. A tagged item may not be retained for more than 30 days without prior notice to the owner or custodian and the right to an immediate hearing.

2. When in the opinion of the department any meat or poultry product, or supplies or ingredients used in the processing thereof, is adulterated or misbranded, or otherwise fails to meet standards or requirements of this section or rules adopted under this section, the department may tag the product, supplies, or ingredients with a "Detained" tag to hold them for destruction or other disposition. No meat or poultry product, supplies, or ingredients so tagged may be used, removed from the premises, or otherwise disposed of unless released by a department representative. A tagged item may not be destroyed or detained for more than 30 days without prior notice to the owner or custodian and the right to an immediate hearing.

(c) No person may alter, deface or remove any tag from facilities, equipment, products or supplies to which it has been attached by a department inspector without the express consent or approval of the inspector or other department representative.

**(10) SUSPENSION.** The department may, upon written notice, summarily suspend the operations in whole or in part at any establishment for substantial violations of this section or rules issued hereunder when, in the opinion of the department, a continuation of the operation would constitute an imminent danger to public health. The department may, upon written notice, summarily suspend inspection at any establishment for acts punishable under

sub. (8) where those acts substantially impair an inspector's ability to conduct an orderly inspection. Upon suspension of operations or inspection, the operator of the establishment may demand a hearing to determine whether the suspension should be vacated. The department shall, within 5 days after receipt of the demand, hold a hearing and adjudicate the issues as provided in ch. 227. A demand for hearing does not operate to stay the suspension pending the hearing.

(11) EXEMPTION. This section does not apply to owners of poultry with respect to poultry produced on the owner's farm, provided his or her sales do not exceed 1,000 birds annually, and the birds are labeled and tagged to identify the name and address of the producer and are marked "NOT INSPECTED". Persons processing more than 1,000 birds but less than 20,000 birds shall be fully subject to the provisions of this section relating to licensing, sanitation, facilities, and practices for ensuring product is not adulterated, except that, if the department determines that the protection of consumers from adulterated poultry products will not be impaired, it may exempt these persons from sub. (3) (a) and (b) provided the birds are labeled or tagged to identify the name and address of the producer and are marked "NOT INSPECTED".

(12) SUBSTANTIAL OR REPEATED VIOLATIONS. The department may deny, revoke or suspend the license of any person for substantial or repeated violations of this section.

**History:** 1971 c. 270 s. 104; 1973 c. 206; 1975 c. 308, 421; 1977 c. 196 s. 131; 1977 c. 216, 365; 1979 c. 110, 154; 1981 c. 314; 1983 a. 189, 261; 1983 a. 500 s. 44; 1985 a. 29; 1987 a. 399; 1989 a. 174; 1991 a. 39, 175, 269; 1993 a. 16, 27, 144, 492; 1995 a. 79, 225; 1999 a. 9, 185; 2001 a. 56; 2013 a. 302; 2015 a. 55, 243; 2017 a. 365.

**Cross-reference:** See also chs. ATCP 55 and 57, Wis. adm. code.

**97.43 Meat from dead or diseased animals.** (1) No meat from any diseased animal, or any dead animal as defined under s. 95.72 (1) (c), may be sold or used for human consumption, or dismembered or stored at premises where other food is sold or prepared for sale.

(2) No carcass meat or other part of any animal shall be fed to food-producing animals or to animals used for human consumption unless it has been thoroughly rendered or cooked.

(3) Subsection (1) shall not apply to meat from animals affected by any disease which does not ordinarily render such meat unfit for human consumption, provided the animals so affected have been slaughtered in establishments where meat inspection is maintained under s. 97.42 or the federal meat inspection act.

(4) Whoever violates this section is guilty of a Class H felony.

**History:** 1971 c. 40 s. 93; 1979 c. 129 s. 6; Stats. 1979 s. 97.43; 1981 c. 66; 1985 a. 229; 1997 a. 283; 2001 a. 109.

**Cross-reference:** See also ch. ATCP 55, Wis. adm. code.

This section is not unconstitutionally vague. *State v. Ehlenfeldt*, 94 Wis. 2d 347, 288 N.W.2d 786 (1980).

**97.44 Identification of meat for animal feed; registration and records of buyers.** (1) No person shall buy, sell or transport any carcasses, parts thereof or meat or meat food products of any animals which are not intended for use as human food, unless they are denatured or otherwise identified as required by rules of the department or are naturally inedible by humans.

(2) Animal feed manufacturers and operators of fur farms, exempt from s. 95.72, shall register their names and business locations with the department if they engage in slaughtering animals or in buying dead animals or parts of the carcasses of such animals. The department, by rule, may require that they keep records of their purchase and disposition of such animals and carcass parts.

(3) As used in this section, "animals" means cattle, sheep, goats, swine, equines, farm-raised deer, as defined in s. 95.001 (1) (ag), and poultry, except in the phrase "animal feed manufacturers".

**History:** 1975 c. 308; 1995 a. 79; 2001 a. 56.

**Cross-reference:** See also ch. ATCP 57, Wis. adm. code.

**97.56 Kosher meat.** (1) Under this section "kosher" means prepared in accordance with the Jewish ritual and sanctioned by Hebrew orthodox religious requirements.

(2) No person may, with intent to defraud, do any of the following:

(a) Sell or expose for sale any meat or meat preparation, whether raw or prepared for human consumption, and falsely represent the meat or meat preparation to be kosher, and as having been prepared under and of a product or products sanctioned by the orthodox Hebrew religious requirements.

(b) Falsely represent any food product or the contents of any package or container to be kosher and as having been prepared under and of a product or products sanctioned by the orthodox Hebrew religious requirements, by having or permitting to be inscribed on the package or container the word "kosher" in any language.

(c) Sell or expose for sale in the same place of business both kosher and nonkosher meat or meat preparations, either raw or prepared for human consumption, unless all of that person's window signs and display advertising indicate, in block letters at least 4 inches in height, "Kosher and Nonkosher Meat Sold Here".

(d) Expose for sale in any show window or place of business both kosher and nonkosher meat or meat preparations, either raw or prepared for human consumption, unless the person displays over each kind of meat or meat preparation so exposed a sign in block letters at least 4 inches in height reading "Kosher Meat", or "Nonkosher Meat", as the case may be.

(3) No person, with intent to defraud, may do any of the following:

(a) Sell or expose for sale in any such restaurant or other place where food products are sold for consumption on the premises, any article of food or food preparations that is falsely represented to be kosher and as having been prepared in accordance with the orthodox Hebrew religious requirements.

(b) Sell or expose for sale in any restaurant or other place both kosher and nonkosher food or food preparations for consumption on the premises when not prepared in accordance with the Jewish ritual and not sanctioned by the Hebrew orthodox religious requirements, unless the person's window signs and display advertising state, in block letters at least 4 inches in height, "Kosher and Nonkosher Food Served Here".

**History:** 1993 a. 492; 1997 a. 253.

**97.57 Planted or cultivated rice.** (1) In this section:

(a) "Paddy-grown rice" means rice which is mechanically planted, mechanically harvested or cultivated with the use of chemical fertilizers or herbicides.

(b) "Wild rice" means rice which is not mechanically harvested and which is cultivated without the use of any chemical fertilizer or herbicide.

(2) Any wholesaler or supplier who sells or offers for sale any paddy-grown rice which is not blended with any other rice may not label that paddy-grown rice "wild rice" unless he or she includes on the label, immediately before, after or above the largest words "wild rice", the word "paddy-grown" in legible, bold-face print or type which is in distinct contrast to all other printed or graphic material on the label and in a type or print size which is not less than one-half the size of the largest type or print used in the words "wild rice" with which the word "paddy-grown" appears.

(3) No wholesaler or supplier may sell or offer for sale any rice labeled "100 percent natural wild rice" unless that rice is wild rice which is not blended with any other rice.

**History:** 1987 a. 375.

**97.59 Handling foods.** No person in charge of any public eating place or other establishment where food products to be consumed by others are handled may knowingly employ any person handling food products who has a disease in a form that is communicable by food handling. If required by the local health officer or any officer of the department for the purposes of an investigation, any person who is employed in the handling of foods or is suspected of having a disease in a form that is communicable by

food handling shall submit to an examination by the officer or by a physician, physician assistant, or advanced practice nurse prescriber designated by the officer. The expense of the examination, if any, shall be paid by the person examined. Any person knowingly infected with a disease in a form that is communicable by food handling who handles food products to be consumed by others and any persons knowingly employing or permitting such a person to handle food products to be consumed by others shall be punished as provided by s. 97.72.

**History:** 1981 c. 291; 1993 a. 27 s. 298; Stats. 1993 s. 252.18; 2005 a. 187; 2011 a. 161; 2015 a. 55 s. 4040; Stats. 2015 s. 97.59.

**97.60 Coordination; certification.** (1) The department shall enter into memoranda of understanding with other state agencies to establish food protection measures.

(2) The department shall promulgate rules that establish a food sanitation manager certification program.

(3) The department shall accept relevant education, training, instruction, or other experience that an applicant has obtained in connection with military service, as defined in s. 111.32 (12g), to count toward satisfying any education, training, instruction, or other experience requirement in the food sanitation manager certification program established under sub. (2) if the applicant demonstrates to the satisfaction of the department that the education, training, instruction, or other experience that the applicant obtained in connection with his or her military service is substantially equivalent to the education, training, instruction, or other experience that is required to obtain an initial certificate under the food sanitation manager certification program.

**History:** 1993 a. 27; 2011 a. 120; 2015 a. 55 s. 4078; Stats. 2015 s. 97.60.

### SUBCHAPTER III

#### LODGING AND VENDING MACHINES

**97.603 Motels.** Upon the written request of the hotel operator made on forms furnished by the department, the department may classify a hotel as a “motel”, if the operator of the hotel furnishes on-premises parking facilities for the motor vehicles of the hotel guests as a part of the room charge, without extra cost.

**History:** 1983 a. 203 ss. 3, 5; 1983 a. 538 s. 67; 1993 a. 27 s. 66; Stats. 1993 s. 254.63; 2015 a. 55 s. 4079; Stats. 2015 s. 97.603.

**97.605 Lodging and vending licenses.** (1) (a) No person may conduct, maintain, manage or operate a hotel, tourist rooming house, vending machine commissary or vending machine if the person has not been issued an annual license by the department or by a local health department that is granted agent status under s. 97.615 (2).

(b) No person may maintain, manage or operate a bed and breakfast establishment for more than 10 nights in a year without having first obtained an annual license from the department.

(c) Except as provided in s. 93.135, no license may be issued under this section until all applicable fees have been paid. If the payment is by check or other draft drawn upon an account containing insufficient funds, the license applicant shall, within 15 days after receipt of notice from the department of the insufficiency, pay by cashier’s check or other certified draft, money order or cash the fees, late fees and processing charges that are specified by rules promulgated by the department. If the license applicant fails to pay all applicable fees, late fees and processing charges within 15 days after the applicant receives notice of the insufficiency, the license is void. In an appeal concerning voiding of a license under this paragraph, the burden is on the license applicant to show that the entire applicable fees, late fees and processing charges have been paid. During any appeal process concerning payment dispute, operation of the establishment in question is deemed to be operation without a license.

(d) If a person or establishment otherwise licensed under this chapter is incidentally engaged in an activity for which a license is required under this section, the department may, by rule, exempt

the person or establishment from the license requirement under this section.

(1m) No county, city, village or town may require any license of, or impose any license or inspection fee on, a vending machine operator, vending machine commissary or vending machine licensed under this chapter.

(1p) Except as provided in s. 93.135, the department may condition the initial issuance, renewal or continued validity of a license issued under this section on correction by the licensee of a violation of this subchapter, rules promulgated by the department under this subchapter or ordinances or regulations adopted under s. 97.615 (2) (g), within a specified period of time. If the licensee fails to meet the condition within the specified period of time, the license is void.

(2) Except as provided in sub. (3), a separate license is required for each hotel, tourist rooming house, bed and breakfast establishment, or vending machine commissary.

(3) (a) A bulk milk dispenser may be operated in a restaurant without a vending machine or vending machine operator license.

(b) A restaurant may operate as a vending machine commissary without a vending machine commissary license.

(4) (a) In this subsection:

1. “Business entity” has the meaning given in s. 179.70 (1).

2. “Immediate family member” means a spouse, grandparent, parent, sibling, child, stepchild, or grandchild or the spouse of a grandparent, parent, sibling, child, stepchild, or grandchild.

(b) Except as provided in par. (d) or (e), no license is transferable from one premises to another or from one person to another.

(d) The holder of a license issued under this section may transfer the license to an individual who is an immediate family member if the holder is transferring operation of the hotel, tourist rooming house, bed and breakfast establishment, or vending machine to the immediate family member.

(e) A sole proprietorship that reorganizes as a business entity or a business entity that reorganizes as either a sole proprietorship or a different type of business entity may transfer a license issued under this section for operation of a hotel, tourist rooming house, bed and breakfast establishment, or vending machine commissary to the newly formed business entity or sole proprietorship if the following conditions are satisfied:

1. The hotel, tourist rooming house, bed and breakfast establishment, or vending machine commissary remains at the location for which the license was issued.

2. At least one individual who had an ownership interest in the sole proprietorship or business entity to which the license was issued has an ownership interest in the newly formed sole proprietorship or business entity.

(5) (a) Except as provided in par. (b), all licenses expire on June 30, except that licenses initially issued during the period beginning on April 1 and ending on June 30 expire on June 30 of the following year.

(b) 1. The local health department of a city of the 1st class that has entered into an agreement with the department under s. 97.615 (2) may issue a license for a bed and breakfast establishment required under this section at any time during the year. A license issued under this subdivision shall expire one year from the date of its issuance.

2. The holder of a license for a bed and breakfast establishment may request an extension to the term of a license issued under this section by the local health department of a city of the 1st class that has entered into an agreement with the department under s. 97.615 (2) for the purpose of aligning the annual term of any other license or permit issued to that license holder with the annual term of a license to be issued to that license holder under subd. 1. The local health department may require a license holder that receives an extension under this subdivision to pay a prorated fee in an amount determined by dividing the license fee imposed under s. 97.615 (2) by 12 and multiplying the quotient by the num-

ber of months by which the license issued under this section is extended under this subdivision.

**History:** 1975 c. 413 ss. 13, 18; Stats. 1975 s. 50.51; 1983 a. 163, 203; 1987 a. 27, 81, 399; 1989 a. 31; 1993 a. 16 ss. 1491, 1492; 1993 a. 27 s. 67; Stats. 1993 s. 254.64; 1993 a. 183, 491; 1997 a. 191; 2001 a. 16; 2005 a. 302; 2013 a. 298; 2015 a. 55 s. 4080; Stats. 2015 s. 97.6705; 2015 a. 197 s. 51.

**97.607 Pre–licensing inspection.** (1) The department or a local health department granted agent status under s. 97.615 (2) may not grant a license to a person intending to operate a new hotel, tourist rooming house, bed and breakfast establishment, or vending machine commissary or to a person intending to be the new operator of an existing hotel, tourist rooming house, bed and breakfast establishment, or vending machine commissary without a pre–licensing inspection. This section does not apply when a license is transferred under s. 97.605 (4) (d) or (e).

(2) Agents designated by the department under s. 97.615 (1) shall make pre–licensing inspections of vending machine commissaries as required under this subsection and shall be reimbursed for those services at the rate of 80 percent of the pre–licensing inspection fee designated in this subsection. Agents designated by the department under s. 97.615 (2) shall make pre–licensing inspections of hotels and tourist rooming houses and establish and collect pre–licensing inspection fees under s. 97.615 (2) (d).

**History:** 1983 a. 203 ss. 10, 16, 19; 1983 a. 538; 1987 a. 27, 81; 1993 a. 27 s. 68; Stats. 1993 s. 254.65; 2005 a. 302; 2015 a. 55 s. 4081; Stats. 2015 s. 97.607.

### 97.61 Vending machine commissary outside the state.

Foods, beverages and ingredients from commissaries outside the state may be sold within the state if such commissaries conform to the provisions of the food establishment sanitation rules of this state or to substantially equivalent provisions. To determine the extent of compliance with such provisions, the department may accept reports from the responsible authority in the jurisdiction where the commissaries are located.

**History:** 1975 c. 413 s. 13; Stats. 1975 s. 50.52; 1993 a. 27 s. 70; Stats. 1993 s. 254.67; 2015 a. 55 s. 4083; Stats. 2015 s. 97.61.

**97.613 Fees.** Except as provided in s. 97.615 (2) (d) and (e), the department shall promulgate rules that establish, for licenses issued under s. 97.605, license fees, pre–licensing inspection fees, reinspection fees, fees for operating without a license, late fees for untimely renewal, fees for comparable compliance or variance requests, and fees for pre–license review of restaurant plans.

**History:** 1973 c. 333; 1975 c. 224; 1975 c. 413 s. 13; Stats. 1975 s. 50.53; 1977 c. 222; 1979 c. 34; 1981 c. 20; 1983 a. 27, 163, 203, 538; 1985 a. 135; 1987 a. 27, 399; 1991 a. 178; 1993 a. 16 s. 1493; 1993 a. 27 s. 71; Stats. 1993 s. 254.68; 1993 a. 183; 2001 a. 16; 2015 a. 55 s. 4084; Stats. 2015 s. 97.613.

### 97.615 Agent status for local health departments.

(1) **VENDING OPERATIONS.** In the administration and enforcement of this subchapter, the department may use local health departments as its agents in making inspections and investigations of vending machine commissaries, vending machine operators and vending machines if the jurisdictional area of the local health department has a population greater than 5,000. If the designation is made and the services are furnished, the department shall reimburse the local health department furnishing the service at the rate of 80 percent of the net license fee per license per year issued in the jurisdictional area.

(2) **HOTELS, TOURIST ROOMING HOUSES, AND OTHER ESTABLISHMENTS.** (am) In the administration of this subchapter or s. 97.67, the department may enter into a written agreement with a local health department with a jurisdictional area that has a population greater than 5,000, which designates the local health department as the department’s agent in issuing licenses to and making investigations or inspections of hotels, tourist rooming houses, bed and breakfast establishments, campgrounds and camping resorts, recreational and educational camps, and public swimming pools. In a jurisdictional area of a local health department without agent status, the department may issue licenses, collect fees established by rule under s. 97.613 and make investigations or inspections of hotels, tourist rooming houses, bed and breakfast establishments,

campgrounds and camping resorts, recreational and educational camps, and public swimming pools. If the department designates a local health department as its agent, the department or local health department may require no license for the same operations other than the license issued by the local health department under this subsection. The department shall oversee the designation of agents under this subsection to ensure that, to the extent feasible, the same local health department is granted agent status under this subsection and under s. 97.41.

(b) A local health department granted agent status under this subsection shall meet standards promulgated, by rule, by the department. The department shall annually evaluate the licensing, investigation and inspection program of each local health department granted agent status. If, at any time, a local health department granted agent status fails to meet the standards, the department of agriculture, trade and consumer protection may revoke its agent status.

(c) The department shall provide education and training to agents designated under this subsection to ensure uniformity in the enforcement of this subchapter, s. 97.67 and rules promulgated under this subchapter and s. 97.67.

(d) Except as provided in par. (dm), a local health department granted agent status under this subsection shall establish and collect the license fee for each type of establishment specified in par. (am). The local health department may establish separate fees for pre–licensing inspections of new establishments, for pre–licensing inspections of existing establishments for which a person intends to be the new operator or for the issuance of duplicate licenses. No fee may exceed the local health department’s reasonable costs of issuing licenses to, making investigations and inspections of, and providing education, training and technical assistance to the establishments, plus the state fee established under par. (e). A local health department granted agent status under this subsection or under s. 97.41 may issue a single license and establish and collect a single fee which authorizes the operation on the same premises of more than one type of establishment for which it is granted agent status under this subsection or under s. 97.41.

(dm) A local health department granted agent status under this subsection may contract with the department for the department to collect fees and issue licenses. The department shall collect from the local health department the actual and reasonable cost of providing the services.

(e) The department shall establish state fees for its costs related to setting standards under this subchapter and s. 97.67 and monitoring and evaluating the activities of, and providing education and training to, agent local health departments. Agent local health departments shall include the state fees in the license fees established under par. (d), collect the state fees and reimburse the department for the state fees collected. For each type of establishment specified in par. (am), the state fee may not exceed 20 percent of the license fees charged under ss. 97.67 and 97.613.

(f) If, under this subsection, a local health department becomes an agent or its agent status is discontinued during a licensee’s license year, the department and the local health department shall divide any license fee paid by the licensee for that license year according to the proportions of the license year occurring before and after the local health department’s agent status is granted or discontinued. No additional fee may be required during the license year due to the change in agent status.

(g) A village, city or county may adopt ordinances and a local board of health may adopt regulations regarding the licensees and premises for which the local health department is the designated agent under this subsection, which are stricter than this subchapter, s. 97.67, or rules promulgated by the department under this subchapter or s. 97.67. No such provision may conflict with this subchapter or with department rules.

(h) This subsection does not limit the authority of the department to inspect hotels, tourist rooming houses, bed and breakfast

establishments, or vending machine commissaries in jurisdictional areas of local health departments where agent status is granted if it inspects in response to an emergency, for the purpose of monitoring and evaluating the local health department's licensing, inspection and enforcement program or at the request of the local health department.

(j) The department shall hold a hearing under ch. 227 if any interested person, in lieu of proceeding under ch. 68, appeals to the department alleging either of the following:

1. A license fee established by a local health department granted agent status exceeds the reasonable costs described under par. (d).

2. The person issuing, refusing to issue, suspending or revoking a license or making an investigation or inspection of the applicant has a financial interest in a regulated establishment specified in par. (am) which may interfere with his or her ability to properly take that action.

**History:** 1983 a. 203 ss. 15, 21; 1985 a. 29; 1985 a. 332 s. 251 (1); 1987 a. 27 ss. 1074m to 1076m, 3200 (24); 1987 a. 307; 1989 a. 31; 1991 a. 39, 315; 1993 a. 16; 1993 a. 27 s. 72; Stats. 1993 s. 254.69; 1993 a. 183; 1995 a. 27 s. 9126 (19); 2001 a. 16; 2007 a. 20 s. 9121 (6) (a); 2015 a. 55 s. 4085; Stats. 2015 s. 97.615

**Cross-reference:** See also ch. ATCP 74, Wis. adm. code.

**97.617 Application; lodging and vending. (1)** An applicant for a license under this subchapter shall complete the application prepared by the department or the local health department granted agent status under s. 97.615 (2) and provide, in writing, any additional information the department of agriculture, trade and consumer protection or local health department issuing the license requires.

(2) Upon receipt of an application for a vending machine operator license, the department may cause an investigation to be made of the applicant's commissary, servicing and transport facilities, if any, and representative machines and machine locations. The operator shall maintain at his or her place of business within this state a list of all vending machines operated by him or her and their location. This information shall be kept current and shall be made available to the department upon request. The operator shall notify the department of any change in operations involving new types of vending machines or conversion of existing machines to dispense products other than those for which such machine was originally designed and constructed.

**History:** 1975 c. 413 s. 13; Stats. 1975 s. 50.54; 1983 a. 163, 203, 538; 1987 a. 27 s. 3200 (24) (am); 1993 a. 27 s. 73; Stats. 1993 s. 254.70; 1995 a. 27 s. 9126 (19); 2007 a. 20 s. 9121 (6) (a); 2015 a. 55 s. 4086; Stats. 2015 s. 97.617.

**97.62 Health and safety; standard.** Every hotel, tourist rooming house, bed and breakfast establishment, vending machine commissary and vending machine shall be operated and maintained with a strict regard to the public health and safety and in conformity with this subchapter and the rules and orders of the department.

**History:** 1975 c. 413 s. 13; Stats. 1975 s. 50.55; 1983 a. 163, 203, 538; 1987 a. 27; 1993 a. 27 s. 75; Stats. 1993 s. 254.72; 2015 a. 55 s. 4089; 2015 Stats. s. 97.62.

**Cross-reference:** See also chs. ATCP 72, 73, 74, and 75, Wis. adm. code.

**97.623 Hotel safety. (1)** Every hotel with sleeping accommodations with more than 12 bedrooms above the first story shall, between the hours of 12 midnight and 6 a.m. provide a system of security personnel patrol, or of mechanical and electrical devices, or both, adequate, according to standards established by the department of safety and professional services, to warn all guests and employees in time to permit their evacuation in case of fire.

(2) Every hotel shall offer to every guest, at the time of registration for accommodation and of making a reservation for accommodation, an opportunity to identify himself or herself as a person needing assistance in an emergency because of a physical condition and shall keep a record at the registration desk of where each person so identified is lodged. No hotel may lodge any person so identified in areas other than those designated by the local fire department as safe for persons so identified, based on the capabilities of apparatus normally available to the fire company or companies assigned the first alarm. A person who does not

identify himself or herself as permitted in this subsection may be lodged in the same manner as any other guest. Violation of this subsection shall be punished by a forfeiture of not more than \$50 for the first violation and not more than \$100 for each subsequent violation.

**History:** 1975 c. 112, 199; 1975 c. 413 s. 13; Stats. 1975 s. 50.56; 1985 a. 135; 1993 a. 27 s. 76; Stats. 1993 s. 254.73; 1995 a. 27 ss. 6343, 9116 (5); 2011 a. 32; 2015 a. 55 s. 4090; 2015 Stats. s. 97.623.

**97.625 Powers of the department and local health departments. (1)** The department shall do all of the following:

(a) Administer and enforce this subchapter, the rules promulgated under this subchapter and any other rules or laws relating to the public health and safety in hotels, tourist rooming houses, bed and breakfast establishments, vending machine commissaries, vending machines and vending machine locations.

(am) Promulgate rules, in consultation with the department of safety and professional services, under which the department shall conduct regular inspections of sealed combustion units, as required under s. 101.149 (5) (c), for carbon monoxide emissions in hotels, tourist rooming houses, and bed and breakfast establishments. The rules shall specify conditions under which it may issue orders as specified under s. 101.149 (8) (a). The rules may not require the department to inspect sealed combustion units during the period in which the sealed combustion units are covered by a manufacturer's warranty against defects.

**NOTE:** Par. (am) is repealed eff. 11–1–19 by 2017 Wis. Act 330.

(b) Require hotels, tourist rooming houses, vending machine operators and vending machine commissaries to file reports and information the department deems necessary.

(c) Ascertain and prescribe what alterations, improvements or other means or methods are necessary to protect the public health and safety on those premises.

(d) Prescribe rules and fix standards, including rules covering the general sanitation and cleanliness of premises regulated under this subchapter, the proper handling and storing of food on such premises, the construction and sanitary condition of the premises and equipment to be used and the location and servicing of equipment. The rules relating to the public health and safety in bed and breakfast establishments may not be stricter than is reasonable for the operation of a bed and breakfast establishment, shall be less stringent than rules relating to hotels, tourist rooming houses, and vending machine commissaries regulated by this subchapter and may not require 2nd exits for a bed and breakfast establishment on a floor above the first level.

(e) Hold a hearing under ch. 227 if, in lieu of proceeding under ch. 68, any interested person in the jurisdictional area of a local health department not granted agent status under s. 97.615 appeals to the department alleging that a license fee for a hotel, tourist rooming house, campground, camping resort, recreational or educational camp or public swimming pool exceeds the license issuer's reasonable costs of issuing licenses to, making investigations and inspections of, and providing education, training and technical assistance to the establishment.

(1g) The department may inspect hotels, tourist rooming houses, and bed and breakfast establishments to ensure compliance with s. 101.149 (2) and (3).

(1p) (a) The department may grant the holder of a license for a bed and breakfast establishment a waiver from the requirement specified under s. 97.01 (1g) (b) to allow the holder of a license for a bed and breakfast establishment to serve breakfast to other tourists or transients if all of the following conditions are met:

1. The department determines that the public health, safety or welfare would not be jeopardized.

2. The other tourists or transients are provided sleeping accommodations in a tourist rooming house for which the license holder for the bed and breakfast establishment is the license holder.

3. The tourist rooming house is located on the same property as the bed and breakfast establishment or on property contiguous



to the property on which the bed and breakfast establishment is located.

4. The number of rooms offered for rent in the bed and breakfast establishment combined with the number of rooms offered for rent in the tourist rooming house does not exceed 8.

5. The number of tourists or transients who are provided sleeping accommodations in the bed and breakfast establishment combined with the number of tourists or transients who are provided sleeping accommodations in the tourist rooming house does not exceed 20.

(b) A waiver granted under par. (a) is valid for the period of validity of a license that is issued for the bed and breakfast establishment under s. 97.605 (1) (b).

(2) A local health department designated as an agent under s. 97.615 (2) may exercise the powers specified in sub. (1) (a) to (d), consistent with s. 97.615 (2) (g).

**History:** 1975 c. 413 s. 13; Stats. 1975 s. 50.57; 1983 a. 163, 203, 538; 1985 a. 29; 1985 a. 332 s. 251 (1); 1987 a. 27; 1991 a. 39; 1993 a. 27 s. 77; Stats. 1993 s. 254.74; 1995 a. 27 ss. 6343m, 9126 (19); 1995 a. 417; 1997 a. 43; 2007 a. 20 s. 9121 (6) (a); 2007 a. 205; 2011 a. 32, 78; 2015 a. 55 s. 4091; 2015 Stats. s. 97.625; 2017 a. 330.

**Cross-reference:** See also chs. *ATCP 72, 73, 74, and 75*, Wis. adm. code.

**97.627 Causing fires by tobacco smoking.** (1) Any person who, by smoking, or attempting to light or to smoke cigarettes, cigars, pipes or tobacco, in any manner in which lighters or matches are employed, shall, in a careless, reckless or negligent manner, set fire to any bedding, furniture, curtains, drapes, house or any household fittings, or any part of any building specified in sub. (2), so as to endanger life or property in any way or to any extent, shall be fined not less than \$50 nor more than \$250, together with costs, or imprisoned not less than 10 days nor more than 6 months or both.

(2) In each sleeping room of all hotels, rooming houses, lodging houses and other places of public abode, a plainly printed notice shall be kept posted in a conspicuous place advising tenants of the provisions of this section.

**History:** 1975 c. 413 s. 13; Stats. 1975 s. 50.58; 1993 a. 27 s. 79; Stats. 1993 s. 254.76; 2015 a. 55 s. 4092; 2015 Stats. s. 97.627.

**97.633 Hotelkeeper's liability.** (1) A hotelkeeper who complies with sub. (2) is not liable to a guest for loss of money, jewelry, precious metals or stones, personal ornaments or valuable papers which are not offered for safekeeping.

(2) To secure exemption from liability the hotelkeeper shall do all of the following:

(a) Have doors on sleeping rooms equipped with locks or bolts.

(b) Offer, by notice printed in large plain English type and kept conspicuously posted in each sleeping room, to receive valuable articles for safekeeping, and explain in the notice that the hotel is not liable for loss unless articles are tendered for safekeeping.

(c) Keep a safe or vault suitable for keeping the articles and receive them for safekeeping when tendered by a guest, except as provided in sub. (3).

(3) A hotelkeeper is liable for loss of articles accepted for safekeeping up to \$300. The hotelkeeper need not receive for safekeeping property over \$300 in value. This subsection may be varied by written agreement between the parties.

**History:** 1975 c. 413 s. 15; Stats. 1975 s. 50.80; 1991 a. 316; 1993 a. 27 s. 85; Stats. 1993 s. 254.80; 2015 a. 55 s. 4095; 2015 Stats. s. 97.633.

**97.634 Hotelkeeper's liability for baggage; limitation.** Every guest and intended guest of any hotel upon delivering to the hotelkeeper any baggage or other property for safekeeping, elsewhere than in the room assigned to the guest, shall demand and the hotelkeeper shall give a check or receipt, to evidence the delivery. No hotelkeeper shall be liable for the loss of or injury to the baggage or other property of a hotel guest, unless it was delivered to the hotelkeeper for safekeeping or unless the loss or injury occurred through the negligence of the hotelkeeper.

**History:** 1975 c. 413 s. 15; Stats. 1975 s. 50.81; 1991 a. 316; 1993 a. 27 s. 86; Stats. 1993 s. 254.81; 2015 a. 55 s. 4096; 2015 Stats. s. 97.634.

**97.635 Liability of hotelkeeper for loss of property by fire or theft; owner's risk.** A hotelkeeper is not liable for the loss of baggage or other property of a hotel guest by a fire unintentionally produced by the hotelkeeper. Every hotelkeeper is liable for loss of baggage or other property of a guest caused by theft or gross negligence of the hotelkeeper. The liability may not exceed \$200 for each trunk and its contents, \$75 for each valise and its contents and \$10 for each box, bundle or package and contents, so placed under the care of the hotelkeeper; and \$50 for all other effects including wearing apparel and personal belongings, unless the hotelkeeper has agreed in writing with the guest to assume a greater liability. When any person permits his or her baggage or property to remain in any hotel after the person's status as a guest has ceased, or forwards the baggage or property to a hotel before becoming a guest and the baggage or property is received into the hotel, the hotelkeeper holds the baggage or property at the risk of the owner.

**History:** 1975 c. 413 s. 15; Stats. 1975 s. 50.82; 1991 a. 316; 1993 a. 27 s. 87; Stats. 1993 s. 254.82; 2015 a. 55 s. 4097; 2015 Stats. s. 97.635.

**97.638 Hotel rates posted; rate charges; special rates.**

(1) Every hotelkeeper shall keep posted in a conspicuous place in each sleeping room in his or her hotel, in type not smaller than 12–point, the rates per day for each occupant. Such rates shall not be changed until notice to that effect has been posted, in a similar manner, for 10 days previous to each change. Any hotelkeeper who fails to have the rates so posted or who charges, collects or receives for the use of any room a sum different from the authorized charge shall be fined not less than \$50 nor more than \$100. A hotelkeeper may permit a room to be occupied at the rate of a lower priced room when all of the lower priced rooms are taken and until one of them becomes unoccupied. Special rates may be made for the use of sleeping rooms, either by the week, month or for longer periods or for use by families or other collective groups. The department or its representatives may enforce the posting of rates as provided in this subsection.

(2) (a) A hotelkeeper shall post, in each sleeping room in the hotel with a telephone, a notice of any fee imposed by the hotelkeeper for using the telephone.

(b) The notice required under par. (a) shall be all of the following:

1. In type not smaller than 12–point.

2. Conspicuously posted on the telephone or within 3 feet of the telephone's normal location.

(c) The department or its agents may inspect hotels to ensure compliance with pars. (a) and (b).

(d) A hotelkeeper who fails to post the notice required under par. (a) or who posts an inaccurate notice shall be fined not less than \$50 nor more than \$100.

**History:** 1975 c. 413 s. 15; Stats. 1975 s. 50.84; 1989 a. 31; 1993 a. 27 s. 89; Stats. 1993 s. 254.83; 2015 a. 55 s. 4098; 2015 Stats. s. 97.638.

**97.639 Motel rates.** (1) **DEFINITIONS.** (a) “Operator” includes a manager or any person in charge of the operation of motels and like establishments. “Operator” or “owner” includes natural persons, firms and corporations.

(b) “Outdoor sign” or “outside sign” means any sign visible to passersby, regardless of whether the sign is located in or outside of buildings.

(c) “Room rates” means the rates at which rooms or other accommodations are rented to occupants.

(2) **RENTAL POSTED.** No owner or operator of any establishment that is held out as a motel, motor court, tourist cabin or like accommodation may post or maintain posted on any outdoor or outside advertising sign for the establishment rates for accommodations in the establishment unless the sign has posted on it both the minimum and maximum room or other rental unit rates for accommodations offered for rental. All posted rates and descriptive data required by this section shall be in type and material of the same size and prominence as the minimum and maximum room or other rental unit rates. Signs that only state the rate per

person or bear the legend “and up” do not comply with the requirements of this subsection.

(3) **ACCOMMODATIONS MUST EXIST.** No owner or operator of any motel, motor court, tourist cabin or like accommodation may post or maintain posted on outdoor or outside advertising signs rates for accommodations in the establishment unless there is available, when vacant, accommodations in the establishment for immediate occupancy to meet the posted rates on the advertising signs.

(4) **MISREPRESENTATION.** No owner or operator of any motel, motor court, tourist cabin or like accommodation may post or maintain outdoor or outside advertising signs in connection with the establishment relating to rates which have any untrue, misleading, false, or fraudulent representations.

(5) **CONSTRUCTION.** Nothing in this section may be construed to require motels, motor courts, tourist cabins, or like accommodations to have outdoor or outside signs. This section shall be liberally construed so as to prevent untrue, misleading, false, or fraudulent representations relating to rates placed on outdoor or inside signs of the establishments.

**History:** 1975 c. 413 s. 15; Stats. 1975 s. 50.85; 1983 a. 189; 1993 a. 27 s. 90; Stats. 1993 s. 254.84; 2015 a. 55 ss. 4099, 4100; 2015 Stats. s. 97.639.

**97.65 Enforcement.** (1) The department may enter, at reasonable hours, any premises for which a license is required under this subchapter or s. 97.67 or any restaurant or temporary restaurant for which a license is required under s. 97.30 to inspect the premises, secure samples or specimens, examine and copy relevant documents and records, or obtain photographic or other evidence needed to enforce this subchapter or s. 97.30 or 97.67. If samples of food are taken, the department shall pay or offer to pay the market value of the samples taken. The department shall examine the samples and specimens secured and shall conduct other inspections and examinations needed to determine whether there is a violation of this subchapter, s. 97.30 or 97.67, or rules promulgated by the department under this subchapter or s. 97.30 or 97.67.

(2) (a) Whenever, as a result of an examination, the department has reasonable cause to believe that any examined food constitutes, or that any construction, sanitary condition, operation, or method of operation of the premises or equipment used on the premises creates, an immediate danger to health, the department may issue a temporary order and cause it to be delivered to the licensee, or to the owner or custodian of the food, or to both. The order may prohibit the sale or movement of the food for any purpose, prohibit the continued operation or method of operation of specific equipment, require the premises to cease other operations or methods of operation which create the immediate danger to health, or set forth any combination of these requirements. The department may order the cessation of all operations authorized by the license only if a more limited order does not remove the immediate danger to health. Except as provided in par. (c), no temporary order is effective for longer than 14 days from the time of its delivery, but a temporary order may be reissued for one additional 14-day period, if necessary to complete the analysis or examination of samples, specimens, or other evidence.

(b) No food described in a temporary order issued and delivered under par. (a) may be sold or moved and no operation or method of operation prohibited by the temporary order may be resumed without the approval of the department, until the order has terminated or the time period specified in par. (a) has run out, whichever occurs first. If the department, upon completed analysis and examination, determines that the food, construction, sanitary condition, operation or method of operation of the premises or equipment does not constitute an immediate danger to health, the licensee, owner, or custodian of the food or premises shall be promptly notified in writing and the temporary order shall terminate upon his or her receipt of the written notice.

(c) If the analysis or examination shows that the food, construction, sanitary condition, operation or method of operation of the premises or equipment constitutes an immediate danger to health, the licensee, owner, or custodian shall be notified within the effective period of the temporary order issued under par. (a). Upon receipt of the notice, the temporary order remains in effect until a final decision is issued under sub. (3), and no food described in the temporary order may be sold or moved and no operation or method of operation prohibited by the order may be resumed without the approval of the department.

(3) A notice issued under sub. (2) (c) shall be accompanied by a statement which informs the licensee, owner, or custodian that he or she has a right to request a hearing in writing within 15 days after issuance of the notice. The department shall hold a hearing no later than 15 days after the department receives the written request for a hearing, unless both parties agree to a later date. A final decision shall be issued under s. 227.47 within 10 days of the conclusion of the hearing. The decision may order the destruction of food, the diversion of food to uses which do not pose a danger to health, the modification of food so that it does not create a danger to health, changes to or replacement of equipment or construction, other changes in or cessations of any operation or method of operation of the equipment or premises, or any combination of these actions necessary to remove the danger to health. The decision may order the cessation of all operations authorized by the license only if a more limited order will not remove the immediate danger to health.

(4) A proceeding under this section, or the issuance of a license for the premises after notification of procedures under this section, does not constitute a waiver by the department of its authority to rely on a violation of this subchapter, s. 97.30 or 97.67, or any rule promulgated under this subchapter or s. 97.30 or 97.67 as the basis for any subsequent suspension or revocation of the license or any other enforcement action arising out of the violation.

(5) (a) Except as provided in par. (b), any person who violates this section or an order issued under this section may be fined not more than \$10,000 plus the retail value of any food moved, sold or disposed of in violation of this section or the order, or imprisoned not more than one year in the county jail, or both.

(b) Any person who does either of the following may be fined not more than \$5,000 or imprisoned not more than one year in a county jail, or both:

1. Assaults, restrains, threatens, intimidates, impedes, interferes with or otherwise obstructs a department inspector, employee or agent in the performance of his or her duties under this section.

2. Gives false information to a department inspector, employee or agent engaged in the performance of his or her duties under this section, with the intent to mislead the inspector, employee or agent.

**History:** 1983 a. 203; 1985 a. 182 s. 57; 1985 a. 332 s. 251 (1); 1987 a. 307; 1993 a. 27 s. 78; Stats. 1993 s. 254.85; 2015 a. 55 s. 4102; 2015 Stats. s. 97.65.

## SUBCHAPTER IV

### RECREATIONAL SANITATION

**97.67 Recreational licenses and fees.** (1) Except as provided in sub. (1g) and s. 93.135, the department or a local health department granted agent status under s. 97.615 (2) shall issue licenses to and regulate campgrounds and camping resorts, recreational and educational camps and public swimming pools. No person or state or local government who has not been issued a license under this section may conduct, maintain, manage or operate a campground and camping resort, recreational camp and edu-

cational camp or public swimming pool, as defined by departmental rule.

**(1g)** A campground permit is not required for camping at county or district fairs at which 4–H Club members exhibit, for the 4 days preceding the county or district fair, the duration of the county or district fair, and the 4 days following the county or district fair.

**(1m)** The department or a local health department granted agent status under s. 97.615 (2) may not, without a pre–licensing inspection, grant a license to a person intending to operate a new public swimming pool, campground, or recreational or educational camp or to a person intending to be the new operator of an existing public swimming pool, campground, or recreational or educational camp.

**(2)** (a) A separate license is required for each campground, camping resort, recreational or educational camp, and public swimming pool. Except as provided in par. (b) or (c), no license issued under this section is transferable from one premises to another or from one person, state or local government to another.

(b) A license issued under this section may be transferred from an individual to an immediate family member, as defined in s. 97.605 (4) (a) 2., if the individual is transferring operation of the campground, camping resort, recreational or educational camp, or public swimming pool to the immediate family member.

(c) A sole proprietorship that reorganizes as a business entity, as defined in s. 179.70 (1), or a business entity that reorganizes as a sole proprietorship or a different type of business entity may transfer a license issued under this section for a campground, camping resort, recreational or educational camp, or public swimming pool to the newly formed business entity or sole proprietorship if all of the following conditions are satisfied:

1. The campground, camping resort, recreational or educational camp, or public swimming pool remains at the location for which the license was issued.

2. At least one individual who had an ownership interest in the sole proprietorship or business entity to which the license was issued has an ownership interest in the newly formed sole proprietorship or business entity.

**(2m)** Except as provided in s. 93.135, the initial issuance, renewal or continued validity of a license issued under this section may be conditioned upon the requirement that the licensee correct a violation of this section, rules promulgated by the department under this section or ordinances adopted under s. 97.615 (2) (g), within a period of time that is specified. If the condition is not met within the specified period of time, the license is void.

**(4)** Licenses issued under this section expire on June 30, except that licenses initially issued during the period beginning on April 1 and ending on June 30 expire on June 30 of the following year. Except as provided in s. 97.615 (2) (d) and (e), the department shall promulgate rules that establish, for licenses issued under this section, amounts of license fees, pre–licensing inspection fees, reinspection fees, fees for operating without a license, and late fees for timely license renewal.

**(5)** No license may be issued under this section until all applicable fees have been paid. If the payment is by check or other draft drawn upon an account containing insufficient funds, the license applicant shall, within 15 days after receipt of notice from the department of the insufficiency, pay by cashier’s check or other certified draft, money order or cash the fees from the department, late fees and processing charges that are specified by rules promulgated by the department. If the license applicant fails to pay all applicable fees, late fees and the processing charges within 15 days after the applicant receives notice of the insufficiency, the license is void. In an appeal concerning voiding of a license under this subsection, the burden is on the license applicant to show that the entire applicable fees, late fees and processing charges have been paid. During any appeal process concerning payment dispute, operation of the establishment in question is considered to be operation without a license.

**(5m)** (a) In this subsection, “qualified health services staff” means any of the following:

1. A physician.
2. A registered nurse licensed under ch. 441.
3. A physician assistant licensed under subch. II of ch. 448.
4. A practical nurse licensed under ch. 441.
5. An athletic trainer certified by the national athletic trainers association.
6. An emergency medical services practitioner, as defined in s. 256.01 (5).
7. A person who is certified as completing the American Red Cross emergency response course.
8. A person who is certified as completing the American Red Cross responding to emergencies course or an equivalent course.

(b) For a camp that lasts longer than 3 days, the department shall allow qualified health services staff to designate an individual at the camp to administer to a camper, or staff member, who is under 18 years of age medications brought to the camp by that camper or staff member, other than medications that a camper or staff member may carry himself or herself.

**(6)** Before serving as a lifeguard at a public swimming pool or a recreational and educational camp or as an on–site health services staff member at a recreational and educational camp, an individual shall have proficiency in the use of an automated external defibrillator, as defined in s. 256.15 (1) (cr), achieved through instruction provided by an individual, organization, or institution of higher education achieved through instruction approved under s. 46.03 (38) to provide such instruction.

**(7)** The department may not require that a swimming pool be staffed by a lifeguard as a condition of receiving a license under this section if the swimming pool is less than 2,500 square feet, the swimming pool is located in a private club in the city of Milwaukee, and the club has a policy that prohibits a minor from using the swimming pool when not accompanied by an adult.

**History:** 1993 a. 16 ss. 2399 to 2401i; 1993 a. 27 ss. 182, 477; 1993 a. 183, 490; 1993 a. 491 s. 280; 1997 a. 191, 237; 2001 a. 16; 2005 a. 302; 2007 a. 104; 2009 a. 28, 180; 2013 a. 309; 2015 a. 55 ss. 4050 to 4055, 4057 to 4061; Stats. 2015 s. 254.47; 2017 a. 12.

**Cross–reference:** See also chs. ATCP 76, 78, and 79, Wis. adm. code.

## SUBCHAPTER V

### GENERAL PROVISIONS

**97.70 Authority of department of safety and professional services.** Nothing in this chapter affects the authority of the department of safety and professional services relative to places of employment, elevators, boilers, fire escapes, fire protection, or the construction of public buildings.

**History:** 2015 a. 55.

**97.703 Joint employment.** The department and the department of safety and professional services may employ experts, inspectors, or other assistants jointly.

**History:** 2015 a. 55.

**97.71 Suspension or revocation of license.** The department or a local health department designated as an agent under s. 97.615 (2) or 97.41 (2) may refuse or withhold issuance of a license under this chapter or may suspend or revoke a license for violation of this chapter or any rule or order of the department, ordinance of the village, city or county or regulation of the local board of health.

**History:** 1975 c. 413 s. 14; Stats. 1975 s. 50.70; 1983 a. 203; 1987 a. 27; 1993 a. 27 s. 83; Stats. 1993 s. 254.86; 1995 a. 27 s. 9126 (19); 2007 a. 20 s. 9121 (6) (a); 2015 a. 55 s. 4103; 2015 Stats. s. 97.71.

**97.72 Penalties. (1)** Any person who violates any of the provisions of this chapter for which a specific penalty is not prescribed shall be fined not less than \$100 nor more than \$1,000 or imprisoned for not more than 6 months, for the first offense; and for each subsequent offense, fined not less than \$500 nor more

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than \$5,000, or imprisoned for not less than 30 days nor more than one year in the county jail or both.

(2) In lieu of any criminal penalty provided under this chapter, a person who violates this chapter may be required to forfeit not more than \$1,000 for each violation. If the prosecutor seeks to impose a forfeiture, he or she shall proceed under ch. 778.

**History:** 1977 c. 216; 1979 c. 129; 1983 a. 261; 1985 a. 229; 1987 a. 398.

**97.73 Injunction.** In addition to penalties applicable to this chapter, the department may apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating provisions of this chapter and rules or orders issued under this chapter.

**History:** 1971 c. 156 s. 10; Stats. 1971 s. 97.73; 1983 a. 261.