

CR 85-2

STATE OF WISCONSIN)
)
DEPARTMENT OF AGRICULTURE,) SS.
TRADE & CONSUMER PROTECTION)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Norman E. Kirschbaum, Administrator, Food Division, State of Wisconsin Department of Agriculture, Trade and Consumer Protection, and custodian of the official records of said Division, do hereby certify that the annexed order adopting rules relating to food establishment licensing and inspection by cities and counties under agency agreement with the Department of Agriculture, Trade and Consumer Protection, Chapter Ag 35, Wis. Adm. Code, was duly approved and adopted by the Department on April 19, 1985.

I further certify that said copy has been compared by me with the original on file in the Department and that the same is a true copy thereof, and of the whole of such original.

RECEIVED

APR 19 1985

3:45 pm
Revisor of Statutes
Bureau

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Department offices in the city of Madison, this 19th day of April, 1985.

Norman E. Kirschbaum
Norman E. Kirschbaum
Administrator
Food Division

ORDER
OF THE
STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING, AMENDING AND REPEALING RULES .

1 To create chapter Ag 35 relating to food establishment
2 licensing and inspection by cities and counties under agency
3 agreements with the department of agriculture, trade and consumer
4 protection.

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

The department's rules creating ch. Ag 35, Wis. Adm. Code, set forth standards for food establishment licensing and inspection programs conducted by agent cities and counties pursuant to agency agreements with the department. The department's authority for granting agent status to a city or county is contained in ss. 93.06(11), 93.08, 97.12 and 97.41, Stats. Under a written agreement with the city or county, the department designates the city or county as the department's agent for the purpose of licensing and inspecting counter freezers, retail food processing plants, bakeries and confectionaries. Upon signing an agreement with a city or county, the department discontinues all licensing, inspection and enforcement activities which the city or county agrees to undertake, except that the department may inspect in response to an emergency, or for the purpose of monitoring and evaluating the program, or at the request of the city or county.

Under the rules, a city or county wishing to become an agent must submit a written proposal to the department. The rules set forth general terms and conditions for an agency agreement, including personnel requirements for agent cities or counties, food establishment plan review requirements, inspection and investigation standards, recordkeeping and reporting requirements, documentation of program costs, state reimbursement requirements, and program evaluation standards. An agency agreement may be terminated by a city or county upon 90 days written notice to the department. The department may also terminate by written notice, if the department finds that the agent city or county has failed to comply with the department's rules, or with the terms and conditions of the agency agreement.

1 Pursuant to authority vested in the state of Wisconsin
2 department of agriculture, trade and consumer protection by
3 ss. 93.07(1), 93.06(11), 93.08, 97.12 and 97.41, Stats., the
4 department adopts rules interpreting s. 97.41, Stats., as
5 follows:

6 SECTION 1. Chapter Ag 35 is created to read:

7 CHAPTER AG 35

8 FOOD ESTABLISHMENT LICENSING AND

9 INSPECTION; AGENT CITIES AND COUNTIES

10 Ag 35.01 DEFINITIONS. As used in this chapter:

11 (1) "Agency agreement" means a written agreement under this
12 chapter between the department and a city or county, whereby the
13 city or county is authorized to administer a food establishment
14 licensing program.

15 (2) "Agent city or county" means a city or county which has
16 entered into an agency agreement.

17 (3) "Department" means the state of Wisconsin department of
18 agriculture, trade and consumer protection.

19 (4) "Food" means a substance or material as defined in
20 s. 97.01(2), Stats.

21 (5) "Food establishment" means:

22 (a) A counter freezer subject to licensing under s. 97.26,
23 Stats.

24 (b) A retail food processing plant subject to licensing
25 under s. 97.28(2)(b), Stats.

26 (c) A bakery subject to a licensing under s. 97.36, Stats.

27 (d) A confectionary subject to licensing under s. 97.38, Stats.

1 (e) Other establishments which are engaged in the sale,
2 storage or processing of food under a city or county license, and
3 which are covered by an agency agreement.

4 (6) "Food establishment licensing program" means a program
5 administered by a city or county under this chapter, pursuant to
6 an agency agreement.

7 (7) "Retail food sales operation" means an unlicensed
8 business which is engaged in the sale of food, and which is
9 subject to inspection by an agent city or county pursuant to
10 s. Ag 35.05(2).

11 Ag 35.02 FOOD ESTABLISHMENT LICENSING PROGRAM; CITY OR
12 COUNTY AGENCY AGREEMENT. (1) AUTHORITY. (a) Pursuant to
13 s. 97.41, Stats., the department may enter into a written
14 agreement with a city or county, whereby the city or county is
15 authorized to administer a food establishment licensing program in
16 the city or county as the agent of the department. A food
17 establishment licensing program may include, but is not limited
18 to:

19 1. Licensing of food establishments.

20 2. Inspection of food establishments.

21 3. Inspection of unlicensed retail food sales operations,
22 as provided in s. Ag 35.05(2).

23 4. Investigation of food related consumer complaints
24 involving a food establishment or retail food sales operation.

25 5. Enforcement of specified provisions of ch. 97, Stats., as
26 provided in the agency agreement.

27 6. Enforcement of specified department rules, as provided in

1 the agency agreement.

2 (b) Upon execution of an agency agreement, the department
3 shall discontinue all licensing, inspection and enforcement
4 activities which the agent city or county agrees to undertake
5 under the agreement, except as provided in s. 97.41(8), Stats. An
6 agency agreement under this section shall continue in effect until
7 terminated by the city or county, or by the department.

8 (2) CITY OR COUNTY PROPOSAL. A city or county wishing to
9 enter into an agency agreement with the department under this
10 section shall submit a written proposal to the department. The
11 proposal shall include a complete plan for the administration of
12 the licensing program, including:

13 (a) The proposed coverage of the licensing program.

14 (b) The functions to be performed by the city or county
15 under the licensing program.

16 (c) Projected staffing and budget for the program, including
17 staffing and budget for inspection and enforcement.

18 (d) Approximate license fees to be charged by the city or
19 county under the program.

20 (e) A description of the proposed licensing and
21 recordkeeping system to be maintained by the city or county under
22 the program.

23 (f) A description of the proposed inspection and enforcement
24 program to be implemented by the city or county.

25 (g) Procedures to assure coordination with appropriate fed-
26 eral, state and local agencies in the event of an emergency or
27 disaster.

1 (h) The time period within which the city or county will act
2 upon license applications. Time periods may not exceed 60 days,
3 except as otherwise provided by department rule.

4 (i) A reasonable assurance of continuing adequate support
5 for the food establishment licensing program by the city or
6 county.

7 (j) Any other information which the department may require,
8 if the information is reasonably necessary or relevant to the
9 department's review of a city or county proposal.

10 (3) TERMS AND CONDITIONS. Every agency agreement and every
11 food establishment licensing program under this section shall pro-
12 vide for the full and adequate enforcement of those provisions of
13 ch. 97, Stats., and those rules of the department which are
14 specified in the agency agreement. Every agency agreement shall
15 set forth the specific terms and conditions of the agreement.

16 (4) REVIEW AND EVALUATION. At least once each year, the
17 department shall review and evaluate the food establishment
18 licensing program of each city or county having an agency
19 agreement with the department, as provided in s. Ag 35.09.

20 (5) TERMINATION BY CITY OR COUNTY. An agency agreement
21 under this section may be terminated by a city or county upon 90
22 days written notice to the department.

23 (6) TERMINATION BY DEPARTMENT. If the department finds that
24 an agent city or county has failed to comply with this chapter, or
25 with the terms and conditions of the agency agreement, the depart-
26 ment may terminate the agency agreement. Notice of termination
27 shall be in writing and shall specify the reasons for termination

1 and the date of termination. An agency agreement may be
2 terminated without prior notice, if the department finds that
3 immediate termination is necessary in an emergency to protect the
4 public health, safety or welfare. In lieu of an immediate
5 termination, the department may notify the agent city or county of
6 any deficiencies in the food establishment licensing program, and
7 establish a deadline date for the correction of the deficiencies.

8 Ag 35.03 PERSONNEL. (1) A food establishment licensing
9 program administered by a city or county under an agency agreement
10 with the department shall be adequately staffed to permit
11 compliance with this chapter, and with the terms and conditions of
12 the agreement. Food establishment inspections under the licensing
13 program shall be made by a Wisconsin registered public health san-
14 itarian, or under the supervision of a Wisconsin registered public
15 health sanitarian. Personnel making food establishment inspec-
16 tions shall be provided with appropriate equipment by the city or
17 county, as provided in the agency agreement with the department.

18 (2) The department assumes no liability for the job safety
19 or welfare of city or county employes, or for the actions or
20 omissions of city or county employes under this chapter, except as
21 otherwise provided by law.

22 Ag 35.04. ESTABLISHMENT PLAN REVIEW. An applicant for, or a
23 holder of a food establishment license within a city or county may
24 submit proposed establishment plans, including construction or
25 remodeling plans, to the agent city or county for review. The
26 agent city or county shall review every submitted plan for com-
27 pliance with applicable provisions of ch. 97, Stats. and

1 applicable rules of the department, as specified in the agency
2 agreement. The plan review shall include, but not be limited to a
3 review of the following:

4 (1) Food service equipment.

5 (2) Floors, walls, and ceilings.

6 (3) Water supply.

7 (4) Sewage disposal.

8 (5) Handwashing facilities.

9 (6) Lighting.

10 (7) Ventilation.

11 (8) Toilet facilities.

12 (9) Locker rooms.

13 (10) Garbage storage and disposal.

14 (11) Food storage areas.

15 Ag 35.05 INSPECTIONS. (1) An agent city or county shall
16 conduct inspections of food establishments licensed by the city or
17 county under an agency agreement. Inspections shall be made for
18 the purpose of enforcing those provisions of ch. 97, Stats., and
19 those rules of the department which are specified in the agency
20 agreement. This does not prohibit an agent city or county from
21 adopting and enforcing stricter requirements applicable to food
22 establishments licensed by the city or county. An agent city or
23 county shall conduct at least one unannounced inspection per year
24 at each food establishment licensed by the city or county, unless
25 the agency agreement with the department requires the city or
26 county to conduct additional inspections.

27 (2) An agent city or county shall conduct inspections, as

1 necessary, at retail food sales operations which are normally
2 inspected by the department but not subject to licensing under
3 ch. 97, Stats., including farmers' markets, food stores, and food
4 sales operations which are ancillary to non-food retail
5 establishments.

6 (3) Inspection of a licensed food establishment or retail
7 food sales operation by an agent city or county shall include, but
8 not be limited to a review of the following:

9 (a) Food sources, transportation and storage.

10 (b) Food preparation, including temperature control if
11 applicable.

12 (c) Equipment and utensils, including storage procedures.

13 (d) Cleaning and sanitizing procedures.

14 (e) Waste disposal.

15 (f) Insect and rodent control.

16 (g) Personal hygiene.

17 (h) Lighting, ventilation, and water temperature.

18 (i) Other items specified in the agency contract between the
19 city or county and the department.

20 (4) As part of a retail food establishment inspection, an
21 agent city or county shall:

22 (a) Collect food and water samples as necessary.

23 (b) Prepare an inspection report which identifies violations
24 of law, and specifies deadline dates for the correction of
25 violations by the food establishment or retail food sales
26 operations.

27 (c) Provide a copy of the inspection report to the food

1 establishment or retail food sales operation, and discuss the report
2 with the owner or manager of the establishment or operation. Pro-
3 vision of the inspection report to the owner or manager shall be docu-
4 mented by a written acknowledgement of receipt.

5 (d) Conduct timely reinspections to determine compliance with
6 requirements for the correction of violations.

7 Ag 35.06 INVESTIGATIONS. (1) An agent city or county shall
8 investigate every food related complaint received by the city or
9 county involving a food establishment or retail food sales operation
10 licensed or inspected by the city or county under an agency agreement.
11 Each complaint shall be assigned a relative priority according to an
12 established priority system, and be investigated using established
13 investigation procedures. The following types of complaints shall be
14 treated in descending order of priority:

15 (a) If a complaint alleges facts, such as swollen food cans,
16 a serious illness or an incidence of botulism, which indicate an
17 imminent public health hazard, the complaint shall be investigated
18 immediately.

19 (b) If a complaint alleges facts, such as food spoilage or
20 extraneous matter in food, which indicate a potential public health
21 problem but not an imminent public health hazard, the complaint shall
22 be investigated as soon as practicable.

23 (c) If a complaint has no public health significance, the
24 complaint may be investigated when time permits.

25 (2) Complaints concerning food establishments or retail food
26 sales operations regulated by other federal, state or local
27 government agencies shall be initially investigated by interviewing

1 the complainant. Following initial investigation, the complaint shall
2 be referred to the appropriate federal, state or local government
3 agency.

4 Ag 35.07 RECORDS AND REPORTS.

5 (1) Every agent city or county shall license food establishments
6 on forms approved by the department.

7 (2) By the 10th day of each month, every agent city or county
8 shall file a report with the department identifying:

9 (a) All food establishments newly licensed during the preceding
10 month; and

11 (b) All changes in license status, during the preceding month, of
12 food establishments licensed by the agent city or county.

13 (3) All records related to a food establishment licensing program
14 by an agent city or county, including all licensing, inspection,
15 investigation and enforcement records, shall be kept by an agent city
16 or county for at least 3 years. Upon termination of an agency agree-
17 ment with the department, the agent city or county shall file copies
18 of all significant licensing, inspection, investigation and enforce-
19 ment records with the department.

20 (4) Within 10 days after filing any court complaint, or
21 initiating any license suspension or license revocation proceeding
22 against a food establishment or retail food sales operation, the
23 agent city or county shall file a copy of the complaint, notice or
24 order with the department. Upon request by an agent city or county,
25 the department may assist the agent city or county in the
26 pursuit of an enforcement action.

27

1 Ag 35.08 COSTS; REIMBURSEMENT.

2 (1) The fiscal year under an agency agreement shall begin on
3 July 1 and end on June 30, except as otherwise authorized by the
4 department. By March 1 of each year, the agent city or county
5 shall file with the department all reimbursement required under
6 s. 97.41(5), Stats. for licenses issued during the first half of
7 the fiscal year beginning on the preceding July 1. By September 1
8 of each year, an agent city or county shall file with the depart-
9 ment all remaining reimbursement required under s. 97.41(5),
10 Stats. for the remainder of the preceding fiscal year ending on
11 June 30.

12 (2) Every agent city or county shall maintain records to
13 document the cost of the food establishment licensing program
14 administered by the agent city or county under its agreement with
15 the department. Costs may include costs for licensing,
16 inspection, investigation, enforcement, and the provision of
17 information and technical assistance to licensed food
18 establishments. License fees collected and retained by an agent
19 city or county may not exceed the reasonable costs incurred by the
20 agent city or county under this subsection.

21 Ag 35.09 REVIEW AND EVALUATION. (1) At least once each
22 year, the department shall review and evaluate the food
23 establishment licensing program of each city or county having an
24 agency agreement with the department. The annual review and
25 evaluation shall cover all categories of food establishments
26 licensed by the agent city or county under the agreement. The
27 annual review and evaluation shall include:

1 (a) A survey evaluation of a representative sample of food
2 establishments within each category of establishments licensed by
3 the agent city or county under the agency agreement.

4 (b) A review and evaluation of records pertaining to
5 inspections, food establishment plan reviews, enforcement actions,
6 and consumer complaint investigations by the agent city or county.

7 (c) A review and evaluation of licensing, recordkeeping, and
8 reporting procedures followed by the agent city or county under the
9 agency agreement.

10 (d) Any other review and evaluation which the department may
11 consider necessary.

12 (2) In addition to the annual review and evaluation under
13 sub. (1), the department may perform any additional reviews and
14 evaluations which the department may consider necessary.

15 (3) If the department finds that the agent city or county
16 has failed to comply with this chapter, or with the terms and
17 conditions of the agency contract, the department may take action
18 as provided in s. Ag 35.02(6).

19 SECTION 2. The rules contained in this order shall take
20 effect on the first day of the month following publication in the
21 Wisconsin administrative register, as provided in s. 227.026(1)

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1 (intro.), Stats.

2 Dated this 19th day of April, 1985.

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STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Norman E. Kirschbaum
Norman E. Kirschbaum
Administrator
Food Division

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4/16/85-5