

STATEMENT OF SCOPE

Department of Health Services

(DHS)

Rule No.: DHS 192 (Cities, Counties and Villages Designated as Agents of the Department for Public Health Protection Purposes)

Relating to: Local Health Agents

1. Description of the objective of the rule:

The primary objective of this rule revision is to amend, clarify and modernize DHS 192, consolidate the rule with similar provisions found in ATCP 75 and facilitate the transfer of the rule to the Department of Agriculture, Trade and Consumer Protection (DATCP).

This proposed rule revision is part of an initiative to transfer food safety and recreational licensing regulations from the Department of Health Services (DHS) to DATCP. 2015 Wisconsin Act 55 authorized the transfer of the DHS's Food Safety and Recreational Licensing Section to DATCP's Division of Food Safety, effective July 1, 2016. As part of that consolidation, ch. DHS 192 will be renumbered as subch. I of a newly created ch. ATCP 74 (Local Agents and Regulation) on the effective date of the transfer.

Although the rule will be transferred and incorporated into ch. ATCP 74 on July 1, 2016, additional revisions will be necessary to create a comprehensive, streamlined foundation for regulating the oversight of local health agents. To avoid delay in creating the comprehensive streamlined foundation the rulemaking process will begin with this statement of scope from DHS and will continue and be completed by DATCP so that a rule will be in effect as soon after the transfer date as possible.

DHS will collaborate with DATCP to work with stakeholders, including local health agents, who will provide advice on the content of rule amendments and best approaches for consolidating DHS 192 and subch. III of ch. ATCP 75 into ch. ATCP 74. Adopting this scope statement will allow DHS and DATCP to begin the work amending ch. DHS 192 and identifying approaches for consolidating the rule with the existing provisions found in subch. III of ch. ATCP 75.

2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

History and Background. State law allows local health departments, in jurisdictions with a population of more than 5,000, to contract with the state to inspect retail food and recreational establishments within their jurisdictions. Section 254.69, Stats., allows these "local agents" to contract with DHS to license and inspect local restaurants and other retail food and recreational businesses regulated by DHS. Similarly, s. 97.41, Stats., authorizes local agents to contract with DATCP to license and inspect all other types of local retail food establishments. DHS contracts with 53 local health departments and DATCP contracts with 43 local agents. Many local agents

hold two contracts (one each with DATCP and DHS) so they can inspect the full range of retail food establishments, but 12 agencies contract only with DHS and one holds a contract with DATCP only.

The number of local health departments operating as local agents has grown over time, such that approximately 60 percent of restaurant and retail food establishment licensees are now under local agent jurisdiction. While state agencies have directly licensed fewer retail food establishments over time, they have assumed new and complex contract management, training, and oversight responsibilities in order to standardize local inspections and monitor overall program effectiveness. The increasing proportion of retail food establishments inspected by local agents has also created logistical challenges for efficiently scheduling retail food inspections as a “checkerboard” of agent and state jurisdictions has been created. Combining inspection staffs for retail food and recreational business inspections will mitigate this effect by producing smaller sanitarian work-areas and thereby reducing the travel needed to conduct inspections.

Consolidation with DATCP Division of Food Safety. The transfer of DHS’s Food Safety and Recreational Licensing Section to DATCP’s Division of Food Safety will improve services for local agents. Consolidation will provide a one-stop contact for local agents and reduce duplication in the local health agent program. For example, under the proposed consolidation, local agents will only need to negotiate one contract related to food and recreational licenses rather than two contracts with two state agencies. Efficiencies may also be gained in providing interpretations and training, and overseeing local health agent programs. This proposed rulemaking initiative will provide the necessary regulatory foundation for these critical reforms in the oversight of local health agent programs.

Proposed Policies. The proposed rule is intended to streamline and consolidate provisions in DHS 192 with similar provisions found in subch. III of ch. ATCP 75. It will create a single, comprehensive set of regulations governing local health agent programs, eliminating duplication and inefficiencies created by two separate oversight systems, as was intended with the consolidation of the programs into DATCP by 2015 Wisconsin Act 55.

Related Rulemaking Activities. This scope statement is one of three scope statements prepared by DHS to facilitate the transfer of the Food Safety and Recreational Licensing Section to DATCP’s Division of Food Safety. The other scope statements are for chs. DHS 196 and its appendix and DHS 198.

DHS has also prepared a scope statement for DHS 196 (Restaurants) and DHS 196 Appendix (Wisconsin Food Code). The goal of that rule revision is to update the food code to reflect the most recent version of the FDA model food code and to consolidate DHS 196 with the DATCP’s ATCP 75 and ATCP 75 Appendix.

In addition, DHS also prepared a scope statement for DHS 198 (Vending of Food). DHS 198 will be renumbered as a newly created subch. IV of ATCP 75 on July 1, 2016. DHS and DATCP staff will work with stakeholders to evaluate the content of DHS 198 and determine whether or how to streamline these

regulations, transferring relevant provisions into ATCP 75 Appendix (Wisconsin Food Code) and eliminating any duplicative provisions.

In addition to the three scope statements prepared by DHS, DATCP has also prepared a scope statement for ATCP 75 and ATCP 75 Appendix to amend regulations related to retail food establishments and to consolidate DHS restaurant and vending regulations transferred to DATCP on July 1, 2016.

Policy Alternatives. Do nothing. DHS 192 will be transferred to DATCP on July 1, 2016 and incorporated as subch. I of a newly created ATCP 74. Subch. III of ATCP 75 will also be renumbered as subch. II of ATCP 74 on that date. If DHS and DATCP do nothing further, ch. ATCP 74 will include provisions that are duplicative. If DHS and DATCP do not begin identifying approaches for integrating rules that are scheduled to be transferred, it will delay implementation of a simplified, streamlined regulatory system for Wisconsin's local health agents and their stakeholders in the process.

3. Statutory authority for the rule (including the statutory citation and language):
Statutory Authority: Section 254.69 Stats.

254.69 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% of the net license fee per license per year issued in the jurisdictional area.

(2) HOTELS, RESTAURANTS, TOURIST ROOMING HOUSES AND OTHER ESTABLISHMENTS. (am) In the administration of this subchapter or s. 254.47, 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 permits to and making investigations or inspections of hotels, restaurants, temporary restaurants, 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 of health services may issue permits, collect fees established by rule under s. 254.68 and make investigations or inspections of hotels, restaurants, temporary restaurants, 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 permit for the same operations other than the permit issued by the local health department under this subsection. The department shall coordinate the designation of agents under this subsection with the department of agriculture, trade and consumer protection to ensure that, to the extent feasible, the same local health department is granted agent status under this subsection and under s. 97.41. Except as otherwise provided by the department, a local health department granted agent status shall

regulate all types of establishments for which this subchapter permits the department of health services to delegate regulatory authority.

(b) A local health department granted agent status under this subsection shall meet standards promulgated, by rule, by the department of health services. 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 health services 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. [254.47](#) and rules promulgated under this subchapter and s. [254.47](#).

(d) Except as provided in par. (dm), a local health department granted agent status under this subsection shall establish and collect the permit fee for each type of establishment. The local health department may establish separate fees for preinspections of new establishments, for preinspections of existing establishments for which a person intends to be the new operator or for the issuance of duplicate permits. No fee may exceed the local health department's reasonable costs of issuing permits 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 permit 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 of health services for the department of health services to collect fees and issue permits. 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. [254.47](#) 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 permit fees established under par. (d), collect the state fees and reimburse the department for the state fees collected. For each type of establishment, the state fee may not exceed 20% of the permit fees charged under ss. [254.47](#) and [254.68](#).

(f) If, under this subsection, a local health department becomes an agent or its agent status is discontinued during a permittee's permit year, the department of health services and the local health department shall divide any permit fee paid by the permittee for that permit year according to the proportions of the permit year occurring before and after the local health department's agent status is granted or discontinued. No additional fee may be required during the permit 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 permittees and premises for which the local health department is the designated agent under this subsection, which are stricter than this subchapter, s. [254.47](#) or rules

promulgated by the department of health services under this subchapter or s. 254.47. 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 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.

(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 permit 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 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.

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

There is no federal law related to regulating local health agents.

5. Description of all entities that may be impacted by the rule:

This rule will impact local health agents and the retail food and recreational establishments currently licensed and inspected by these entities.

6. Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

DHS estimates that it will use approximately 0.50 FTE staff time to develop this rule. This includes research, drafting, preparing related documents, holding public hearings, and communication with affected persons and groups. DHS will assign existing staff to develop this rule. DHS will work jointly with DATCP staff, who are separately proposing to revise ATCP 75 and ATCP 75 Appendix, to facilitate seamless consolidation of DHS 192 and subch. III of ATCP 75 into ch. ATCP 74.

7. Anticipated economic impact

The proposed rule is not expected to have any negative economic impact and will positively affect state and local food safety inspectors and public health. As part of the larger initiative to consolidate and streamline Wisconsin's food safety programs, it will remove unnecessary duplication of regulations and create a comprehensive, streamlined system for the oversight of local health agents.

Both DATCP and DHS will work closely with stakeholders to ensure the rule revisions protect public health without imposing an undue economic burden on local health agents or the industries they regulate. Proposed rule revisions will not raise fees.

Contact Person: Jim Kaplanek, Food Safety and Recreational Licensing Section Chief, (608) 261-8361,
James.kaplanek@wisconsin.gov.