

Chapter ATCP 74

LOCAL AGENTS AND REGULATION

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Note: Ch. ATCP 74 in effect before 5-27-18 is published in full following s. ATCP 74.26.

Note: Chapter ATCP 74 as it existed on May 26, 2018 was repealed and a new ch. ATCP 74 created, effective May 27, 2018 by CR 16-082. Chapter ATCP 74 was created from applicable portions of ch. ATCP 75 and ch. DHS 192 to facilitate the oversight of agent programs, formerly under the Department of Health Services, by the Department of Agriculture, Trade and Consumer Protection.

Note: Chapter HSS 192 was renumbered to Chapter HFS 192 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, August, 1998, No. 512. Chapter HFS 192 was renumbered chapter DHS 192 under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637. Chapter DHS 192 was renumbered subchapter I of chapter ATCP 74 under s. 13.92 (4) (b) 1., Stats., Register June 2016 No. 726.

Note: Subchapter II of chapter ATCP 74 was renumbered from subchapter III of chapter ATCP 75 under s. 13.92 (4) (b) 1., Stats., Register June 2016 No. 726.

ATCP 74.01 Definitions. As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) "Registered sanitarian" or "RS" means an individual who is a Wisconsin-registered sanitarian, pursuant to s. 440.98, Stats., and chs. SPS 174 to 177, or is recognized as a registered environmental health specialist/registered sanitarian.

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

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

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

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

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

History: CR 16-082: cr. Register February 2018 No. 746, eff. 5-27-18; correction in (14) made under s. 13.92 (4) (b) 7., Stats., and correction in (14), (19) made under s. 35.17, Stats., Register February 2018 No. 746.

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

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

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

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

History: CR 16-082: cr. Register February 2018 No. 746, eff. 5-27-18; correction in (3) made under s. 35.17, Stats., Register February 2018 No. 746.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: CR 16-082: cr. Register February 2018 No. 746, eff. 5-27-18; correction in (1) (d) made under s. 35.17, Stats., Register February 2018 No. 746.

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

(2) The contract shall be in effect for three fiscal years unless otherwise specified, and shall remain in effect during the three fiscal years unless specifically terminated, revoked, or suspended, as provided in the contract. The department shall issue contracts for future contract periods to the agent by January 1 of the last fiscal year of the current contract. The agent shall commit to continue as the department's agent for the future contract period, by signing and returning the contract by March 1 of the last fiscal year of the current contract.

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

(4) When the contract is signed by both parties, the local health department shall assume authority and the responsibility to enforce the provisions of ss. 97.30, 97.617, and 97.67, Stats., and chs. ATCP 72, 73, 74, 75, 76, 78, and 79 and ch. ATCP 75 Appen-

dix. The agent program shall issue licenses and perform all inspections necessary to enforce these statutes and rules.

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

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

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

History: CR 16-082: cr. Register February 2018 No. 746, eff. 5-27-18; correction in (1), (4) made under s. 35.17, Stats., Register February 2018 No. 746.

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

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

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

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

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

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

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

(b) Is an RS in training.

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

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

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

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

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

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

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

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

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

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

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

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

History: CR 16-082: cr. Register February 2018 No. 746, eff. 5-27-18; correction in (3), (5) made under s. 35.17, Stats., Register February 2018 No. 746.

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

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

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

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

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

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

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

(b) In response to an emergency.

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

(d) At the request of the agent program.

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

History: CR 16-082: cr. Register February 2018 No. 746, eff. 5-27-18; correction in (1) made under s. 35.17, Stats., Register February 2018 No. 746.

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

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

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

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

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

History: CR 16-082: cr. Register February 2018 No. 746, eff. 5-27-18.

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

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

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

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

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

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

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

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

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

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

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

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

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

History: CR 16-082: cr. Register February 2018 No. 746, eff. 5-27-18; correction in (6) (c) made under s. 35.17, Stats., Register February 2018 No. 746.

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

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

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

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

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

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

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

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

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

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

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

History: CR 16-082: cr. Register February 2018 No. 746, eff. 5-27-18; correction in (1) made under s. 35.17, Stats., Register February 2018 No. 746.

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

(am) Fee reimbursements for the inspection of vending machines that have moved from one agent program's jurisdiction

to another shall be credited to the agent program making the first inspection during the fiscal year.

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

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

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

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

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

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

History: CR 16-082: cr. Register February 2018 No. 746, eff. 5-27-18; correction in numbering in (1), (2) made under s. 13.92 (4) (b) 1., Stats., and correction in (2) (am) 2. made under s. 13.92 (4) (b) 7., Stats., Register February 2018 No. 746.

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

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

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

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

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

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

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

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

History: CR 16-082: cr. Register February 2018 No. 746, eff. 5-27-18.

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

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

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

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

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

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

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

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

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

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

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

(c) License number and expiration date.

(d) Type of establishment, for licensing purposes.

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

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

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

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

(4) The agent program shall notify the department when, in the performance of its duties, it encounters an unlicensed estab-

lishment that falls under the department's licensing and inspection authority.

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

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

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

History: CR 16-082: cr. Register February 2018 No. 746, eff. 5-27-18.

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

History: CR 16-082: cr. Register February 2018 No. 746, eff. 5-27-18.

ATCP 74.26 Contract termination, revocation, refusal to renew, or suspension. (1) An agent program may terminate the contract upon 90 days written notice to the department. The notice shall specify the reason or reasons for the termination and the last day, not to exceed the term of the current contract, that the agent program will maintain its agent status.

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

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

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

History: CR 16-082: cr. Register February 2018 No. 746, eff. 5-27-18.

Note: Chapter ATCP 74 is repealed and recreated effective 5-27-18. Prior to 5-27-18 it reads:

Chapter 74 - Local Agents and Regulation

Subchapter I - Cities, Counties, and Villages Designated as Agents of the Department for Public Health Protection Purposes

ATCP 74.01 Authority and purpose. This subchapter is promulgated under the authority of s. 97.615 (2) (b), Stats., to provide standards for villages, cities, and counties designated by the department to be its agents in issuing permits to and making investigations and inspections of hotels and motels, tourist rooming houses, restaurants, bed and breakfast establishments, campgrounds, including camping resorts, recreational and educational camps, mobile home parks, and public swimming pools, and in making investigations and inspections of food vending machines, their operators, and vending machine commissaries.

Note: Effective 7-1-16, pursuant to 2015 Wis. Act 55, mobile home parks are not under the authority of the department for inclusion as facilities that may be licensed, inspected, and investigated by local health department agents.

History: Cr. Register, January, 1988, No. 385, eff. 2-1-88; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476; renum. from

DHS 192.01 Register June 2016 No. 726; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 74.02 Applicability. This subchapter applies to a village, city, or county designated as an agent of the department or applying for agent status.

History: Cr. Register, January, 1988, No. 385, eff. 2-1-88; renum. from DHS 192.02 Register June 2016 No. 726; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 74.03 Definitions. In this subchapter:

(1) "Agent" means a village, city, or county which has organized or appointed a county, city and county, or multiple county health department under s. 251.02, Stats., a health commission or committee under s. 141.01, 1991 Stats., a city board of health or health officer under s. 141.015, 141.02 or 141.04, 1991 Stats., or a community human services board under s. 46.23, Stats., has a population greater than 5,000, and has entered into an agent agreement with the department.

(2) "Agent agreement" means a written agreement authorized by s. 97.615, Stats., between the department and a village, city or county, whereby the village, city or county is authorized to enforce, on behalf of the department, subchs. III and IV of ch. 97, Stats., and related administrative rules.

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

(4) "Facility" means a hotel or motel, tourist rooming house, restaurant, bed and breakfast establishment, food vending machine, or vending machine commissary under subch. III of ch. 97, Stats., or a camping resort or other campground, recreational camp, educational camp, mobile home park or public swimming pool under s. 97.67, Stats.

(5) "Fiscal year" means the state fiscal year, July 1 through the following June 30.

(6) "New agent" means a village, city or county that has applied for and has been granted agent status for the first time, or a village, city, or county that has reapplied for and has been granted agent status after termination of the original agent agreement.

(7) "Registered sanitarian" means a sanitarian registered under s. 440.98, Stats., and chs. SPS 174 to 177.

(8) "Related administrative rules" means department rules that implement subchs. III and IV of ch. 97, Stats., namely, chs. ATCP 72 to 79, or equivalent or more stringent local requirements.

History: Cr. Register, January, 1988, No. 385, eff. 2-1-88; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476; correction in (7) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 2001, No. 546; corrections in (3), (7) and (8) made under s. 13.92 (4) (b) 6. and 7., Stats., Register January 2009 No. 637; correction in (7) made under s. 13.92 (4) (b) 7., Stats., Register March 2011 No. 663; correction in (7) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671; renum. from DHS 192.03 Register June 2016 No. 726; correction in (intro.) (2), (4), (8) made under s. 13.92 (4) (b) 7., Stats., correction in (3) made under s. 13.92 (4) (b) 6., Stats., Register June 2016 No. 726.

ATCP 74.04 Agent status. (1) **AGENT PLAN FOR ADMINISTRATION AND ENFORCEMENT.** A village, city, or county wishing to become a new agent shall enter into an agent agreement with the department by submitting a written proposal to the department which shall include a plan for the administration and enforcement of subchs. III and IV of ch. 97, Stats., and related administrative rules. The plan shall include, at minimum:

(a) Identification of the agency or agencies of village, city, or county government that will issue permits and conduct investigations and inspections;

(b) A description of the projected staffing and budget for issuing permits, making investigations and inspections, providing technical assistance, and enforcing applicable state rules and local ordinances;

(c) A list of the fees to be charged by the village, city, or county for facilities issued permits under the agent agreement;

(d) A description of the proposed permit issuance and recordkeeping system to be maintained by the village, city, or county under the agent agreement;

(e) A declaration that the village, city, or county granted agent status will contract with the department, as permitted by s. 97.615 (2) (dm), Stats., if the village, city or county wants the department to collect fees and issue permits;

(f) A description of the proposed inspection and enforcement program to be implemented by the village, city, or county, with a copy of the applicable city or county ordinance;

(g) A plan of action to ensure that there will be cooperation with appropriate federal, state, and local agencies in the event of a natural disaster or other emergency;

(h) Procedures for the investigation and follow-up of citizen complaints about facilities that were issued permits under the agent agreement;

(i) Procedures for the investigation and follow-up of reports of suspected foodborne illness;

(j) The time period within which the village, city, or county will make a determination on an application for a permit. The time period may not exceed 30 days following receipt of a complete application;

(k) An assurance of continued support by the village, city, or county for carrying out the agent agreement; and

(L) Any other information which the department considers necessary or relevant for its review of a village, city, or county plan.

(2) **DEPARTMENT REVIEW OF AGENT PLAN.** The department shall review the agent's plan under sub. (1) for completeness and for the adequacy and appropriateness of the proposed program, fee schedules and procedures for proper administration and enforcement of subchs. III and IV of ch. 97, Stats., and related administrative rules.

(3) **AGENT AGREEMENT.** If the department approves the agent's plan, the department shall prepare an agent agreement. The agent agreement shall be signed by both parties. By signing the agent agreement, the village, city, or county agrees to comply with this subchapter. In return, the department authorizes the village, city or county to enforce, on behalf of the department, subchs. III and IV of ch. 97, Stats., and related administrative rules.

(4) **IMPLEMENTATION OF AGREEMENT.** (a) *Dependent on local ordinance.* The implementation of the agent agreement shall be contingent on the village, city, or county adopting an ordinance that incorporates the department's rules by reference or an ordinance that consists of requirements which are at least as stringent as those in the department's rules and do not conflict with those rules. Nothing in this subchapter shall prevent a village, city, or county from adopting more stringent requirements.

(b) *Agent authority and responsibility.* Upon both parties signing the agent agreement, the agent shall have the authority and responsibility to enforce provisions of subchs. III and IV of ch. 97, Stats., and related administrative rules.

(c) *Department discontinuation of activities.* Upon execution of an agent agreement, the department shall discontinue all permit issuance and enforcement activities under subchs. III and IV of ch. 97, Stats., in the area of the agent's jurisdiction for the period of the agreement, except as provided in s. ATCP 74.07 (4) and s. 97.615 (2) (h), Stats.

(d) *Duration and amendment.* An agent agreement shall continue in effect until terminated by the agent or terminated, suspended or revoked by the department pursuant to s. ATCP 74.11. An agent agreement may be amended by the written agreement of both parties.

(e) *Permit issuance and inspection.* The agent shall issue permits to facilities and make investigations and inspections of facilities as specified in the agent agreement.

History: Cr. Register, January, 1988, No. 385, eff. 2-1-88; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476; renum. from DHS 192.04 Register June 2016 No. 726; correction in (1) (intro.), (e), (2), (3), (4) (a) to (d) made under s. 13.92 (4) (b) 7., Stats., and correction in numbering in (4) (c) made under s. 13.92 (4) (b) 1., Stats., Register June 2016 No. 726.

ATCP 74.05 Staffing. (1) **HIRING CRITERIA.** The agent's inspection staff shall meet hiring criteria set forth in local ordinances and personnel policies and the educational or experience requirements established for sanitarian registration under chs. SPS 174 to 177.

(2) **REGISTERED SANITARIAN.** Inspections shall be made by a sanitarian registered under chs. SPS 174 to 177 or by a person supervised by a Wisconsin registered sanitarian. The person making inspections shall be working to obtain registration under chs. SPS 174 to 177 if he or she is not already a registered sanitarian.

(3) **PERSONNEL CHANGES.** Within 10 days after the date on which it takes place, the agent shall report to the department in writing any change in the assignment of a supervisor of the inspection staff who are not currently Wisconsin registered sanitarians and any change in the organization of the inspection staff including authority line changes. For those agents employing only one or 2 sanitarians, the agent shall also report any change in assignment of inspection staff who are providing services under the agent agreement.

History: Cr. Register, January, 1988, No. 385, eff. 2-1-88; corrections in (1) and (2) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 2001, No. 546; corrections in (1) and (2) made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637; correction in (1), (2) made under s. 13.92 (4) (b) 7., Stats., Register March 2011 No. 663; correction in (1), (2) made under s. 13.92 (4) (b) 7., Stats., Register November 2011 No. 671; renum. from DHS 192.05 Register June 2016 No. 726.

ATCP 74.06 Inspections. (1) **MINIMUM NUMBER OF INSPECTIONS.** The agent shall conduct one or more inspections of each facility within the jurisdiction of the agent each fiscal year to determine the facility's compliance with subchs. III and IV of ch. 97, Stats., and related administrative rules.

(2) **INSPECTION BEFORE ISSUANCE OF PERMIT.** Before issuing a permit to a new facility or to a facility that has changed operators, the agent shall inspect the facility. Every inspection before issuance of a permit shall be conducted before the operator opens for business. The agent may not knowingly allow a facility to operate unless the facility has been properly issued a permit.

(3) **INSPECTION PRIORITIES.** The agent shall give inspections that are made prior to issuance of permits and emergency complaint inspections priority over routine inspections.

(4) **INSPECTIONS BY THE DEPARTMENT.** The department may conduct an inspection of a facility in an agent's jurisdiction in response to an emergency, for the purpose of monitoring and evaluating the agent's permit issuance, inspection and enforcement program, or at the request of the agent. The department shall make a reasonable effort to notify the agent before an inspection is conducted.

History: Cr. Register, January, 1988, No. 385, eff. 2-1-88; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476; renum. from DHS 192.06 Register June 2016 No. 726; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 74.07 Enforcement. (1) **ACTION FOR ENFORCEMENT.** The agent shall take necessary and reasonable action to enforce subchs. III and IV of ch. 97, Stats., and related administrative rules for the types of facilities for which the agent has been delegated agent status, and shall incur the costs of these actions. The department shall provide technical assistance in enforcement to agents on request.

(2) **ENFORCEMENT ACTIVITIES.** The agent shall use state statutes, administrative rules and any applicable local ordinances in its enforcement activities. Enforcement actions may include revocation, suspension, fines, orders to close,

temporary or final hold orders on equipment, food, processes, or facilities and conditional permits.

(3) **ENFORCEMENT NOTIFICATION.** The agent shall notify the department in writing within 10 days after taking any enforcement action involving permit suspension or revocation or court action. The department shall assist agents in enforcement activities upon request.

(4) **DEPARTMENT ENFORCEMENT ACTION.** In the event that the agent has been notified by the department of any deficiency on the part of a facility under its jurisdiction in complying with this subchapter and has had reasonable opportunity to take enforcement action, but has either neglected to act expeditiously in taking appropriate enforcement action or has determined not to take enforcement action, the department may act under s. 97.65, Stats., to enforce this subchapter.

History: Cr. Register, January, 1988, No. 385, eff. 2-1-88; correction in (1) and (4) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476; correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 2001, No. 546; renum. from DHS 192.07 Register June 2016 No. 726; correction in (1), (4) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 74.08 Reports and records. (1) **RETENTION OF RECORDS AND NOTIFICATION.** The agent shall retain copies of all reports of investigations and inspections and all orders for at least 3 years after completion and longer if required by applicable statutes or local ordinances. Inspection report forms approved by the department shall be used for all pre-licensing, routine, and follow-up inspections. When a permit is issued for a new facility or for a facility that has changed operators, the department shall be notified as indicated in the agent agreement.

(2) **REPORTS TO THE DEPARTMENT.** The agent shall submit reports as requested by the department. The department may review or request a copy of any inspection report, correspondence, or order on any facility in the area of the agent's jurisdiction, and any other report the department determines that it needs to monitor agent performance or keep informed about program activities and the regulated facilities.

(3) **RECORD MAINTENANCE.** The agent shall maintain current records of facilities that have been issued permits. These records shall be maintained as required by the department in the agent agreement.

(4) **IDENTIFICATION.** The department shall provide the agent with an identification number for each new facility.

(5) **INITIAL INSPECTION REPORTS.** By the 10th of each month after the month in which the agent issues a permit or receives notification from a facility of a change affecting the permit, the agent shall provide to the department a copy of the report of the inspection made before issuance of the permit, or a copy of the agent change form, FD 293, or of the notification of change, in order for the department to maintain current records of facilities that are issued permits in the area of the agent's jurisdiction. Temporary restaurants as defined in s. ATCP 75.103 (7) are included in this reporting requirement.

(6) **LIST OF OPERATORS.** By September 1 of each year, the agent shall provide the department with a complete list of the names and addresses of operators of facilities that were issued permits by the agent during the previous fiscal year.

(7) **AGENT COSTS.** The agent shall keep and shall provide to the department on request records showing the cost of issuing permits to, making investigations and inspections of, and providing education, training and technical assistance to facilities, and the cost of enforcing applicable state statutes and rules and local ordinances. The program fees collected by an agent may not exceed the reasonable costs incurred by the agent. A summary report on all costs for providing services required under the agent agreement and on all program fees collected by the agent shall be sent to the department upon request.

Note: An agent's use of the electronic HealthSpace system constitutes compliance with this section.

History: Cr. Register, January, 1988, No. 385, eff. 2-1-88; correction in (5) made under s. 13.93 (2m) (b) 7., Stats., Register, June, 2001, No. 546; correction in (5) made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637; renum. from DHS 192.08 Register June 2016 No. 726; corrections in (5) made under s. 13.92 (4) (b) 6. and 7., Stats., Register June 2016 No. 726.

ATCP 74.09 Reimbursements and other payments for services. (1) **REIMBURSEMENT OF AGENTS FOR VENDING INSPECTIONS.** (a) By September 30 of each year, the department shall reimburse agents for inspecting vending machine commissaries and vending machines during the previous fiscal year, as required under ss. 97.607 (2) and 97.615 (1), Stats. The department shall provide agents with information on how to request reimbursement.

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

(2) **REIMBURSEMENT OF THE DEPARTMENT FOR STATE FEES COLLECTED.** By September 30 of each year, each agent shall reimburse the department for state fees collected by the agent during the previous fiscal year, as required under s. 97.615 (2) (e), Stats., and shall provide a complete roster of all permits issued by the agent during the preceding fiscal year and a reimbursement summary showing all amounts reimbursed by facility type. The department shall use this information to confirm the amount of reimbursement due the department.

(3) **PAYMENT TO THE DEPARTMENT FOR COLLECTING FEES AND ISSUING PERMITS.** If an agent has contracted with the department under s. 97.615 (2) (dm), Stats., and s. ATCP 74.04 (1) (e) for the department to collect fees and issue permits, the agent shall pay the department for the actual and reasonable cost of providing these services.

History: Cr. Register, January, 1988, No. 385, eff. 2-1-88; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476; renum. from DHS 192.09 Register June 2016 No. 726; correction in (1) (a), (2), (3) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 74.10 Expiration of permits. All permits issued by the agent under subchs. III and IV of ch. 97, Stats., shall expire annually on June 30th.

History: Cr. Register, January, 1988, No. 385, eff. 2-1-88; correction made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476; renum. from DHS 192.10 Register June 2016 No. 726; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 74.11 Termination, revocation or suspension of agent agreement. (1) **TERMINATION.** An agent may terminate the agent agreement upon 90 days written notice to the department. The notice shall specify the reasons for termination and the last day that the [village,] city, or county will have agent status.

Note: The bracketed "village" was unintentionally omitted from the agency's order promulgating this rule. See the definitions of "agent" and "agent agreement" in s. ATCP 74.03 (1) and (2).

(2) **REVOCAION.** If the department finds that the agent has failed to comply with this subchapter or with the terms and conditions of the agent agreement, the department may revoke agent status as provided in s. 97.615 (2) (b), Stats., upon 90 days written notice to the agent. The notice shall specify the reasons for revocation and the last day that the village, city, or county will have agent status.

(3) **SUSPENSION.** If the department finds that suspension of the agent agreement is necessary to protect the public's health or safety, the department may immediately suspend the agent agreement upon notice to the agent. The department shall hold a hearing if requested by the agent. If a hearing is requested, the hearing will be held within 15 days after the department receives the request. The suspension shall remain in effect until the final hearing decision is issued. In lieu of a suspension, the department may notify the agent of any deficiencies in the agent's inspection and permit issuance program and establish a deadline for correction of the deficiencies.

History: Cr. Register, January, 1988, No. 385, eff. 2-1-88; correction in (2) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1995, No. 476; renum. from DHS 192.11 Register June 2016 No. 726; correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 74.12 Evaluation and training. (1) **ANNUAL EVALUATION.** The department shall annually evaluate the performance of each agent. A uniform method shall be employed to evaluate agents and state staff. The evaluation shall include:

(a) A survey of a random sample of facilities licensed by the agent under the agent agreement;

(b) A review of records dealing with inspections, enforcement actions, consumer complaints, and epidemiological investigations; and

(c) A review of licensing, recordkeeping, and reporting procedures followed by the agent under the agent agreement.

(2) **ADDITIONAL EVALUATIONS.** In addition to the annual evaluation under sub. (1), the department may at any time perform any additional evaluations of an agent's performance.

(3) **TECHNICAL ASSISTANCE AND TRAINING.** (a) Upon request of an agent, the department shall provide technical assistance to the agent's staff and shall train the agent's staff.

(b) The agent shall cooperate with the department in conducting training programs for operators and employees of facilities located in the area of the agent's jurisdiction.

History: Cr. Register, January, 1988, No. 385, eff. 2-1-88; renum. from DHS 192.12 Register June 2016 No. 726.

ATCP 74.13 Waivers. The department may, in its discretion, waive a requirement of this subchapter if the department determines that the waiver will not adversely affect the health, safety or welfare of the public and that strict enforcement of the requirement would result in unreasonable hardship for the agent. The department may condition the grant of a waiver upon the performance by the agent of alternative measures.

History: Cr. Register, January, 1988, No. 385, eff. 2-1-88; renum. from DHS 192.13 Register June 2016 No. 726; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

Subchapter II — Local Regulation of Retail Food Establishments

Note: See s. ATCP 75.01 for definitions.

ATCP 74.21 Retail food program; agent agreement. (1) **AUTHORITY.** (a) The department may enter into an agent agreement with a local health department, under which the department authorizes the local health department to administer a retail food program as the department's local agent. An agent agreement may authorize the local agent to do any of the following as part of the local agent's retail food program within the local jurisdiction:

1. License and inspect retail food establishments that are required to be licensed under s. ATCP 75.03. A local agent shall use license forms approved by the department. The local agent may deny, suspend or revoke a license as provided in s. ATCP 75.04.

2. Inspect retail food establishments that are not required to be licensed under s. ATCP 75.03.

3. Investigate food-related consumer complaints involving retail food establishments.

4. Enforce subch. II of ch. ATCP 75 and other state food safety laws identified in the agent agreement.

5. Review retail food establishment construction and remodeling plans pursuant to s. ATCP 75.03 (8).

6. Exercise other authority delegated by the department under s. 97.41, Stats., and the agent agreement.

Note: Paragraph (a) does not limit a local health department's authority to do any of the following:

1. Enforce additional local ordinance requirements related to retail food establishments.

2. Regulate restaurants, hotels or vending machine commissaries pursuant to an agreement with the Wisconsin department of health services under s. 97.615, Stats.

(b) An agent agreement takes effect on the date specified in the agreement, and continues in effect until terminated by the local agent or the department. During the term of the agreement, the department may not perform in the local jurisdiction any of the activities that the local agent agrees to perform under the agreement, except as provided in s. 97.41 (8), Stats., or the agent agreement.

(c) Upon request by a local agent, or as provided in the agent agreement, the department may assist the local agent in an inspection, investigation, enforcement action, plan review, or other activity under the agent agreement.

(2) LOCAL APPLICATION FOR AGREEMENT. A local health department that wishes to enter into an agent agreement shall submit a written application to the department, in a form specified by the department. The application shall include a complete plan for the retail food program that the local health department proposes to implement under the agreement. The plan shall include all of the following:

(a) The proposed coverage of the program.

(b) The functions that the local health department proposes to perform under the program.

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

(d) The entities that the local health department proposes to license under the program, and the approximate license fees that the local health department proposes to charge.

Note: A local ordinance may combine and expand license categories, as long as those categories include all of the retail food establishments that are required to be licensed under s. ATCP 75.03 and the agent agreement. A local ordinance may establish local license fees that differ from the fees charged under s. ATCP 75.03 (3) for licenses issued by the department. However, license fees must be based on the local agent's reasonable program costs. See sub. (4) (c) and s. 97.41 (4), Stats.

(e) A description of the proposed licensing and recordkeeping system that the local health department proposes to maintain under the program.

(f) A description of the proposed inspection and enforcement program that the local health department proposes to implement under the program.

(g) Proposed procedures for coordinating with federal, state and local agencies in the event of an emergency or disaster.

(h) The procedures that the local health department will use to grant or deny retail food establishment license applications, and the time periods within which the local health department will grant or deny a complete application. Procedures and time periods shall be consistent with those provided in s. ATCP 75.03 (5) to (7).

(i) Reasonable assurance that the local health department will provide continuing adequate funding and other support for the program.

(j) Other information, required by the department, which is reasonably necessary or relevant to the department's review of the application.

(3) DEPARTMENT ACTION ON LOCAL APPLICATION. The department shall grant or deny an application under sub. (2) within 60 days after the department receives a complete application.

(4) AGREEMENT TERMS AND CONDITIONS. (a) An agent agreement shall do all of the following:

1. Clearly describe the retail food licensing program that the local agent agrees to implement. The program shall comply with applicable requirements under this subchapter.

2. Provide for full and adequate enforcement of subch. II of ch. ATCP 75 and other laws identified in the agreement.

(b) An agent agreement may incorporate, by reference, information contained in the application under sub. (2).

(c) Retail food establishment license fees charged by a local agent may exceed the amounts specified in s. ATCP 75.03 (3), but the amount of license fees collected less the amount paid to the department under s. ATCP 74.26 (2) may not exceed an amount reasonably required to cover the local agent's program costs under s. ATCP 74.25 (2).

Note: See s. 97.41 (4), Stats.

(5) REVIEW AND EVALUATION. The department shall periodically review and evaluate a local agent's implementation of an agent agreement, as provided in s. ATCP 74.27.

(6) AMENDMENTS. An agent agreement may be amended at any time, by agreement of the parties.

(7) TERMINATION BY LOCAL AGENT. A local agent may terminate an agent agreement by giving 90 days prior written notice to the department.

(8) TERMINATION BY DEPARTMENT. (a) If the department finds that a local agent has failed to comply with the terms of the agent agreement, the department may by written notice terminate the agreement. The termination notice shall specify the termination date and reasons for termination.

(b) A notice under par. (a) may terminate an agent agreement immediately, without prior notice, if the department finds that immediate termination is necessary in an emergency to protect the public health, safety or welfare.

(c) The department may issue a warning notice to a local agent, stating that the department may terminate an agent agreement if the local agent fails by a specified date to correct deficiencies identified in the warning notice.

History: CR 07-093; cr. Register December 2008 No. 636, eff. 1-1-09; correction to numbering in (1) (a) 4. to 6. made under s. 13.92 (4) (b) 1., Stats., Register December 2008 No. 636; renum. from ATCP 75.06 Register June 2016 No. 726; correction in (4) (a) 1., (c), (5) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 74.22 Local agent staff. (1) STAFF NUMBERS; QUALIFICATIONS AND EQUIPMENT. A local agent shall employ adequate staff to implement the retail food program described in the agent agreement. One or more registered public health sanitarians, employed by the local agent, shall perform or directly supervise all retail food establishment inspections under the program. The local agent shall provide appropriate equipment to inspection personnel, as provided in the agent agreement.

(2) TRAINING IN STANDARD PROCEDURES. The department shall train one or more registered public health sanitarians employed by each local agent, so that the sanitarians can apply standard inspection procedures prescribed by the department and if necessary teach those procedures to other inspectors employed by the local agent. The department shall evaluate its trainees, to ensure that they understand and can apply and teach the standard inspection procedures. The department may, from time to time, update standard inspection procedures.

(3) DEPARTMENT ASSUMES NO LIABILITY. The department assumes no liability for the job safety or welfare of a local agent's employees, or for the actions or omissions of the local agent's employees, except as otherwise provided by law.

History: CR 07-093; cr. Register December 2008 No. 636, eff. 1-1-09; renum. from ATCP 75.07 Register June 2016 No. 726.

ATCP 74.23 Inspections. (1) GENERAL. A local agent shall inspect retail food establishments for compliance with subch. II of ch. ATCP 75 and other laws identified in the agent agreement. A local agent shall use standard inspection procedures that the department may, from time to time, prescribe.

(2) LICENSED RETAIL FOOD ESTABLISHMENTS; INSPECTION FREQUENCY AND SCOPE. A local agent shall conduct at least one unannounced inspection per year at each licensed retail food establishment, unless the agent agreement specifies a different inspection frequency. The inspection shall evaluate all of the following, subject to the terms of the agent agreement:

(a) License status and overall sanitation.

(b) Food sources, transportation, and storage.

(c) Food preparation, holding, and display, including temperature control if applicable.

(d) Equipment and utensils, including storage procedures.

(e) Cleaning and sanitizing procedures.

(f) Waste disposal.

(g) Insect and rodent control.

(h) Personal hygiene.

(i) Lighting, ventilation, and water temperature.

(j) Other matters identified in the agent agreement.

(3) INSPECTION-RELATED TASKS. A local agent shall do all of the following as part of an inspection under this section:

(a) Collect food and water samples as necessary.

(b) Prepare an inspection report that identifies law violations, if any, and specifies correction deadlines. The inspector shall use an inspection report form approved by the department. The inspector shall provide a copy of the inspection report to the operator of the retail food establishment. If possible, the inspector shall discuss the report with the operator and obtain a receipt acknowledgment from the operator.

(c) Conduct timely reinspections, as necessary, to determine whether violations have been corrected.

History: CR 07-093; cr. Register December 2008 No. 636, eff. 1-1-09; renum. from ATCP 75.08 Register June 2016 No. 726; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726; correction in (3) (c) made under s. 35.17, Stats., Register June 2016 No. 726.

ATCP 74.24 Complaint investigations. (1) GENERAL. Except as provided in sub. (2), a local agent shall investigate every food-related complaint that it receives against a retail food establishment under its jurisdiction. The local agent shall prioritize and investigate complaints according to established complaint handling and investigation procedures. The following types of complaints shall be treated in descending order of priority:

(a) If a complaint alleges facts that indicate a serious or imminent public health hazard, the local agent shall investigate immediately.

(b) If a complaint alleges facts that indicate a potential public health problem, but not a serious or imminent public health hazard, the local agent shall investigate as soon as practicable.

(c) If a complaint has no public health significance, the local agent may investigate the complaint when time permits.

(2) COORDINATION WITH OTHER AGENCIES. A local agent shall notify and consult with the department and other affected agencies having jurisdiction, as necessary, related to complaints that may be of significant concern to those agencies. A local agent shall coordinate complaint investigations, as necessary, with other agencies having jurisdiction.

History: CR 07-093; cr. Register December 2008 No. 636, eff. 1-1-09; renum. from ATCP 75.09 Register June 2016 No. 726

ATCP 74.25 Records and reports. (1) GENERAL. (a) A local agent shall keep complete and accurate records of its activities under an agent agreement, including complete and accurate records of all licenses and license holders, license fee revenues, inspections, complaints, investigations, enforcement actions, and program costs.

(b) A local agent shall retain a copy of each record, in electronic or hard copy form, for at least 3 years.

(c) Upon termination of an agent agreement, a local agent shall file with the department copies of records that are relevant to the local agent agreement or the regulation of retail food establishments.

(2) COST DOCUMENTATION. A local agent shall document the cost of the retail food program that it administers under the agent agreement. The cost may

include direct costs for licensing, inspection, complaint handling, investigation, enforcement, information management, reporting, and other activities under the program, as well as indirect costs reasonably allocated to the program. Costs may include staff, equipment, facility, contract service, and other costs reasonably allocated to the program.

(3) **REPORTS TO THE DEPARTMENT.** (a) A local agent shall report information to the department upon request, and shall make information available to the department for inspection and copying upon request.

(b) A local agent shall file a monthly report with the department, by the 10th day of each month. The report shall identify all of the following:

1. All retail food establishments newly licensed during the preceding month.

2. All changes in the license status of retail food establishments during the preceding month.

(c) A local agent shall promptly notify the department, in writing, whenever the local agent takes formal enforcement action against a retail food establishment. A formal enforcement action includes a court complaint, an enforceable administrative order, or an action to suspend or revoke a license, but does not include a warning notice. The local agent shall include, with its notice to the department, a copy of the relevant court complaint, administrative order, or license action.

History: CR 07-093; cr. Register December 2008 No. 636, eff. 1-1-09; renum. from ATCP 75.10 Register June 2016 No. 726.

ATCP 74.26 Reimbursement of department costs. (1) **FISCAL YEAR.** The fiscal year under an agent agreement begins on July 1 and ends on June 30, except as otherwise provided in the agent agreement.

(2) **PAYMENT TO DEPARTMENT.** By September 30 of each year, a local agent shall pay to the department, for each retail food establishment licensed by the local agent during the preceding fiscal year, the following applicable fee:

(a) A fee equal to 10% of the license fee provided in s. ATCP 75.03 (3), regardless of the license fee actually charged by the local agent, if the local agent prepares and submits to the department by September 30 of that year an annual self assessment as required by s. ATCP 74.27 (1).

(b) A fee equal to 20% of the license fee provided in s. ATCP 75.03 (3), regardless of the license fee actually charged by the local agent, if the local agent fails to submit to the department by September 30 of that year an annual self-assess-

ment as required by s. ATCP 74.27 (1). A fee payment under this paragraph does not exempt the local agent from the duty to prepare and submit an annual self-assessment.

History: CR 07-093; cr. Register December 2008 No. 636, eff. 1-1-09; renum. from ATCP 75.11 Register June 2016 No. 726; correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 74.27 Review and evaluation. (1) **ANNUAL EVALUATION.** At least once each year, the department shall review and evaluate a local agent's implementation of its agent agreement with the department, and the local agent shall submit a self-assessment in a format determined by the department. The department's review and evaluation may be based, in part, upon the self-assessment and may include all of the following:

(a) The terms of the agent agreement, and a renegotiation of terms if necessary.

(b) Local agent compliance with the terms of the agreement.

(c) Local agent records and reports under s. ATCP 74.25.

(d) Local agent procedures, including licensing, inspection, complaint handling, investigation, and enforcement procedures.

(e) Local agent costs, license revenues, license fees, and related accounting and financial management.

Note: The evaluation under sub. (1) will normally be patterned, in part, after evaluation procedures outlined in the "Voluntary National Retail Food Regulatory Program Standards" issued by the United States food and drug administration.

(2) **THREE-YEAR ON-SITE EVALUATION.** At least once every 3 years, the department shall conduct an on-site evaluation of a local agent's retail food program. The department shall evaluate the program for compliance with this subchapter and the agent agreement. The department may, as part of its evaluation, conduct survey inspections of retail food establishments licensed by the local agent. In lieu of conducting its own evaluation, the department may accept an equivalent evaluation conducted by the Wisconsin department of health services pursuant to a cooperative agreement with that department under s. 93.06 (11), Stats.

History: CR 07-093; cr. Register December 2008 No. 636, eff. 1-1-09; renum. from ATCP 75.12 Register June 2016 No. 726; correction in (1) (c), (2) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.