

Chapter ATCP 75

RETAIL FOOD ESTABLISHMENTS

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Note: Chapter Ag 32 was renumbered ch. ATCP 75 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448. Chapter ATCP 75 as it existed on January 31, 2001 was repealed and a new chapter ATCP 75 was created effective February 1, 2001. Subchapter III or Chapter ATCP 75 was renumbered subchapter II of chapter ATCP 74 under s. 13.92 (4) (b) 1., Stats., Register June 2016 No. 726.

Note: Chapter H 96 was renumbered chapter HSS 196 effective August 1, 1982. Chapter HSS 196 as it existed on June 30, 1985 was repealed and a new chapter HSS 196 was created effective July 1, 1985. Chapter HSS 196 was renumbered chapter HFS 196 under s. 13.93 (2m) (b) 1., Stats., corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, January, 1997, No. 492. Chapter HFS 196 as it existed on January 31, 2001 was repealed and a new chapter HFS 196 was created effective February 1, 2001. Chapter HFS 196 was renumbered chapter DHS 196 effective February 1, 2009. Chapter DHS 196 was renumbered subchapter III of chapter ATCP 75 under s. 13.92 (4) (b) 1., Stats., Register June 2016 No. 726.

Note: Chapter HSS 198 as it existed on June 30, 1985 was repealed and a new chapter HSS 198 was created effective July 1, 1985. Chapter HSS 198 was renumbered chapter HFS 198 under s. 13.93 (2m) (b) 1., Stats., correction made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, January, 1997, No. 493. Chapter HFS 198 was renumbered chapter DHS 198 effective February 1, 2009, and corrections made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637. Chapter DHS 198 was renumbered subchapter IV of chapter ATCP 75 under s. 13.92 (4) (b) 1., Stats., Register January 2016 No. 726.

Note: Effective 7–1–16, 2015 Wis. Act 55 amended the word “permit” in ch. 254, stats., to become “license” in ch. 97, stats., and all references in this chapter to “permit” mean “license” for the purpose of licensing, regulation, and enforcement of this chapter by the department.

Subchapter I — Definitions and General Provisions

ATCP 75.01 Definitions. In this subchapter and subch. II:

(1) “Agent agreement” means a written agreement between the department and 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.

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

(3) “Food” has the meaning given in s. 97.01 (6), Stats.

(4) “Local agent” means a local health department that enters into an agent agreement with the department to administer a retail food program.

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

Note: See s. 97.41 (1) (b), Stats.

(6) “Registered public health sanitarian” means an individual who is registered under s. 440.98, Stats., or is recognized as a “registered environmental health specialist/registered sanitarian” by the national environmental health association.

(7) “Retail food establishment” has the meaning given in s. 97.30 (1) (c), Stats.

(8) “Retail food program” means a program administered by a local agent pursuant to subch. II.

History: CR 07–093: cr. Register December 2008 No. 636, eff. 1–1–09; correction in (3) made under s. 13.92 (4) (b) 7., Stats., and correction in (8) made under s. 35.17, Stats., Register June 2015 No. 714; correction in (intro.), (8) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726; correction in (6) made under s. 13.92 (4) (b) 6., Stats., Register June 2016 No. 726; **correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register October 2018 No. 754.**

ATCP 75.02 Authority, scope and purpose. (1) The department licenses and regulates retail food establishments under s. 97.30, Stats. Under s. 97.41, Stats., the department may authorize local health departments to license and regulate retail food establishments as local agents of the department.

(2) The department has adopted this subchapter and subch. II under authority provided in ss. 93.07 (1), 97.30 (5), 97.41 (2) and (5), and 227.14 (1s), Stats.

(3) Subchapter II describes retail food establishment licensing requirements and procedures, and establishes food safety standards for retail food establishments. A retail food establishment must comply with the model food code, ch. ATCP 75 Appendix. Pursuant to s. 227.14 (1s), Stats., the department has adopted the model food code in the format published by the United States food and drug administration.

(4) Subchapter II of ch. ATCP 74 describes the standards and procedures under which the department may authorize a local health department to license and inspect retail food establishments as the department’s local agent.

Note: Subchapter II of ch. ATCP 74 was repealed. This provision will be treated in future rulemaking.

History: CR 07–093: cr. Register December 2008 No. 636, eff. 1–1–09; correction in (2) to (4) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726; **correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register October 2018 No. 754.**

Subchapter II — Retail Food Establishments; Licensing and Standards

ATCP 75.03 Retail food establishments; licensing.

(1) LICENSE REQUIRED. Except as provided under sub. (9), no person may operate a retail food establishment without a valid license issued by the department or an agent municipality or county. Licenses expire on June 30 annually. Each retail food establish-

ment shall have a separate license, which shall be prominently displayed in the retail food establishment. A license is not transferable between persons or establishments.

(2) LICENSE APPLICATION. A person applying for a retail food establishment license shall apply on a form provided by the department, or by the agent municipality or county. The application shall include applicable fees required under this section.

(3) ANNUAL LICENSE FEE. An applicant for a retail food establishment license shall pay an annual license fee as follows:

(a) For a retail food establishment that has annual sales of at least \$25,000 but less than \$1,000,000 and processes potentially hazardous food, an annual license fee of \$265.

(b) For a retail food establishment that has annual sales of at least \$1,000,000 and processes potentially hazardous food, an annual license fee of \$685.

(c) For a retail food establishment that has annual sales of at least \$25,000 and is engaged in food processing, but does not process potentially hazardous food, an annual license fee of \$190.

(d) For a retail food establishment that has annual food sales of less than \$25,000, and is engaged in food processing, an annual license fee of \$60.

(e) For a retail food establishment that is not engaged in food processing, an annual license fee of \$45.

Note: A person applying for an annual retail food establishment license is required to pay, in addition to the license fee under sub. (3), a weights and measures inspection fee under s. ATCP 92.12. A license may not be issued or renewed until all applicable fees are paid. See s. 97.30 (3) (d) and (3m), Stats.

(4) REINSPECTION FEE. (a) If the department reinspects a retail food establishment because the department has found a violation of ch. 97, Stats., or this subchapter, on a regularly scheduled inspection, the department shall charge the retail food establishment operator the reinspection fee specified in par. (b). A reinspection fee is payable when the reinspection is completed, and is due upon written demand from the department. The department may issue a demand for payment when it issues a license renewal application form to the retail food establishment operator.

(b) The reinspection fee required under par. (a) is as follows:

1. For a retail food establishment that has annual food sales of at least \$25,000 but less than \$1,000,000, and processes potentially hazardous food, the reinspection fee is \$190.

2. For a retail food establishment that has annual food sales of at least \$1,000,000, and processes potentially hazardous food, the reinspection fee is \$450.

3. For a retail food establishment that has annual food sales of at least \$25,000, and is engaged in food processing but does not process potentially hazardous food, the reinspection fee is \$190.

4. For a retail food establishment that has annual food sales of less than \$25,000, and is engaged in food processing, the reinspection fee is \$90.

5. For a retail food establishment that is not engaged in food processing, the reinspection fee is \$90.

(5) ACTION ON LICENSE APPLICATION. Within 15 business days after the department or its agent municipality or county receives a complete license application, the department or its agent shall do one of the following:

(a) Grant the application.

(b) Deny the application. If the department or its agent denies the application it shall give the applicant written notice specifying the reasons for the denial.

(c) Issue an interim license under sub. (6).

(6) INTERIM LICENSE. The department or its agent municipality or county may issue an interim license, for a period not to exceed 40 business days, pending final action on an application for an annual retail food establishment license. The department or its agent shall grant or deny the annual license application before the interim license expires. If the department or its agent denies a

license application before the applicant's interim license expires, the interim license is automatically terminated when the applicant receives written notice of the denial. The holder of an interim license acquires no license rights beyond those conferred by the interim license under this subsection. The department or its agent may not issue an interim license in response to a renewal application by the holder of an existing license.

(7) PRE-LICENSE INSPECTION. The department or its agent municipality or county may inspect a retail food establishment, as the department or agent deems necessary, before issuing a license to the retail food establishment. The department or its agent may not issue a license or interim license for a new retail food establishment until it inspects the new retail food establishment for compliance with this subchapter. A previously licensed retail food establishment is not considered a new retail food establishment under this subsection solely because of a change of ownership, or solely because of alterations in the retail food establishment.

(8) PLAN REVIEW. A person may ask the department or its agent to review plans for the construction, reconstruction or alteration of a retail food establishment before the person constructs, reconstructs or alters the retail food establishment, or converts an existing structure for use as a retail food establishment.

(9) LICENSE EXEMPTIONS. A retail food establishment license is not required under s. 97.30, Stats., or this section for any of the following:

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

(b) A retail food establishment operated by a person holding a food processing plant license under s. 97.29, Stats., if all the following apply:

1. The person operates the retail food establishment at the same location as the licensed food processing plant.

2. Sales from the retail food establishment are included in the computation of the food processing plant license fee under s. 97.29 (3), Stats.

(c) A retail food establishment operated by a person holding a restaurant permit issued under s. 97.605, Stats., if all of the following apply:

1. The person operates the retail food establishment at the same location as the restaurant for which the person holds a permit under s. 97.605, Stats.

2. Non-meal food sales from that location comprise no more than 50% by dollar volume of all meal and non-meal food sales from that location. Sales of alcohol beverages and vitamin supplements shall be excluded from the calculation of food sales under this subdivision.

(d) A restaurant, vending machine, vending machine commissary or other establishment for which a permit is issued under s. 97.605, Stats., to the extent that the activities of the establishment are covered by that permit.

(e) A retail food establishment operated by a person holding a dairy plant license under s. 97.20, Stats., if all the following apply:

1. The person operates the retail food establishment at the same location as the licensed dairy plant.

2. Food sales from that location, other than sales of dairy products produced at that location, comprise no more than 25% by dollar volume of all dairy and nondairy food sales from that location.

(f) A retail food establishment operated in conjunction with a state licensed or federally inspected meat establishment if all the following apply:

1. The meat establishment is licensed under s. 97.42, Stats., or inspected under 21 USC 601 et seq. or 21 USC 451 et seq.

2. The person operating the meat establishment operates the retail food establishment at the same location.

3. Food sales from that location, other than sales of inspected meat or meat products produced at that location, comprise no more than 25% by dollar volume of all meat and non-meat food sales from that location.

(g) A retail food establishment primarily engaged in selling fresh fruits and vegetables, honey, cider, sorghum, or maple syrup produced by the operator of the retail food establishment if no other food processing activities are conducted at that retail food establishment.

(h) A temporary retail food establishment operated by a religious, charitable or nonprofit organization for no more than 12 days in any license year.

History: Cr. Register, January, 2001, No. 541, eff. 2–1–01; CR 04–096: am. (3) (d) Register June 2005 No. 594, eff. 7–1–05; CR 05–044: am. (2), (3) and (4) (b) Register December 2005 No. 600, eff. 1–1–06; CR 07–037: am. (3) (a) to (e) and (4) (b) 1. to 5. Register April 2008 No. 628, eff. 5–1–08; CR 07–093: renum. from ATCP 75.02 Register December 2008 No. 636, eff. 1–1–09; CR 08–075: am. (1) and (9) (f) 1. Register April 2009 No. 640, eff. 5–1–09; correction in (4) (a), (7), (9) (c) (intro.), (d) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726; correction in (9) (c) 2., (h) made under s. 35.17, Stats., Register June 2016 No. 726; **correction in (7) made under s. 13.92 (4) (b) 7., Stats., Register October 2018 No. 754.**

ATCP 75.04 Denial, suspension or revocation of license; conditional license. The department or its agent may deny, suspend or revoke a license, or impose conditions on a license as provided under 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. Register, January, 2001, No. 541, eff. 2–1–01; CR 07–093: renum. from ATCP 75.03 Register December 2008 No. 636, eff. 1–1–09.

ATCP 75.05 Standards for retail food establishments. A retail food establishment shall comply with the model food code, ch. ATCP 75 Appendix.

History: Cr. Register, January, 2001, No. 541, eff. 2–1–01; CR 07–093: renum. from ATCP 75.04 Register December 2008 No. 636, eff. 1–1–09; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

Subchapter III — Restaurants

ATCP 75.101 Authority and purpose. Sections 97.33 (6) and 97.625 (1), Stats., authorize the department to prescribe rules for restaurants and to enforce those rules for the purpose of protecting public health and safety. This subchapter, including ch. ATCP 75 Appendix, establishes definitions; sets standards for management and personnel and for safe food operations and equipment and facilities; provides for restaurant plan review, permit issuance, inspection and enforcement actions; and requires food protection practices certification for restaurant operators and managers. For purposes of ch. ATCP 75 Appendix, a restaurant is a type of food service establishment.

History: Cr. Register, January, 2001, No. 541, eff. 2–1–01; CR 08–073: renum. from HFS 196.01 Register January 2009 No. 637, eff. 2–1–09; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2013 No. 690; renum. from DHS 196.01 Register June 2016 No. 726; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 75.102 Applicability. The provisions of this subchapter, including ch. ATCP 75 Appendix, apply to any restaurant, mobile restaurant, temporary restaurant or special organization serving meals, except that Chapter 9 of ch. ATCP 75 Appendix applies only to mobile restaurants, Chapter 10 of ch. ATCP 75 Appendix applies only to temporary restaurants. Chapter 12 of ch. ATCP 75 Appendix, relating to food protection practices certification of operators and managers, does not apply to temporary restaurants or to special organizations serving meals.

History: Cr. Register, January, 2001, No. 541, eff. 2–1–01; CR 04–093: am. Register June 2005 No. 594, eff. 7–1–05; CR 08–073: renum. from HFS 196.02 Register January 2009 No. 637, eff. 2–1–09; renum. from DHS 196.02 Register June 2016 No. 726; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 75.103 Definitions. In addition to the following definitions, the definitions in part 1–2 of ch. ATCP 75 Appendix apply to this subchapter:

(1) “Agent” means the city, county or village designated by the department to issue permits to and make investigations or inspections of restaurants, including temporary restaurants and mobile restaurants.

(1g) “Catering” is the activity of providing food for a specific event at a location other than the licensed restaurant on a contractual, prearranged basis to a predefined subset of the general public, such as invited guests to a wedding or similar celebration, or to participants in an organized group or activity. Catering does not include the sale of individual meals directly to the consumer.

(1r) “Contract cook” is a person who specializes in a home food service and prepares food in the home of an individual only for members of that household and houseguests for private parties.

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

(2g) “Extensive remodeling” means the construction or repair of an existing restaurant that significantly alters the design or operation of the food service area. Extensive remodeling does not include redecorating, cosmetic refurbishing, or altering seating design or capacity.

(2r) (a) “General public” means; any person who is served or sold a meal, except as provided under par. (c).

(b) “General public” includes, but is not limited to employees, members, guests, customers, or occupants of private clubs, industrial plants, offices, or businesses.

(c) “General public” does not include any of the following:

1. Members of a household or personal guests in a private home, who are served a meal prepared by a member of the household.

2. Persons who are served a free meal by a religious or other nonprofit charitable organization, at a “soup kitchen,” food pantry, or similar location where meals are served to the needy.

3. Members and guests of a religious organization, such as a church, synagogue, temple, or mosque, who are served a meal in conjunction with a religious service or celebration when the meal is prepared by members of the religious organization.

4. Members and guests of a fraternal, patriotic, or service organization who are served a meal prepared by the organization’s members or affiliates, when the meal is part of, or incidental to, a meeting of the organization.

5. Employees attending an occasional meal prepared by management or their coworkers for the purpose of expressing appreciation or building workplace morale.

6. Guests attending a meal served in connection with a birthday, anniversary, or similar celebration if the food is prepared by persons participating in the celebration.

7. Residents, patients, employees, or visitors of patients or residents of a health care facility, defined in s. 150.84 (2), Stats.

8. Residents, clients, employees, or visitors of residents or clients of a facility licensed under ch. 48, Stats.

9. Inmates, residents, employees, or guests of inmates or residents of a prison, defined in s. 302.01, Stats., a county jail, defined in s. 302.30, Stats., a juvenile correctional facility, defined in s. 938.02 (10p), Stats., or a juvenile detention facility, defined in s. 938.02 (10r), Stats.

(3) “Immediate family member” means any of the following:

(a) A spouse.

(b) A grandparent, parent, sibling, child, grandchild, or stepchild.

(c) The spouse of a person under par. (b).

(3m) (a) “Meal” means any ready-to-eat food served or sold to the general public in individual or prepackaged single portions

or servings for immediate on–premises consumption, or transported off–premises in individual prepackaged carryout servings for immediate consumption, or specifically preordered individual or multiple serving portions which are transported to an off–premises location for immediate consumption.

(b) “Meal” includes but is not limited to sandwiches, individual portions of cured and pickled food sold from bulk containers, hard boiled eggs, hot ready–to–eat soup, or raw or cooked processed foods sold or served in individual portions.

(c) “Meal” does not include soft drinks, ice cream, milk, milk drinks, coffee, tea, ices, confections, pastry items, or food items sold by the weight, count, or piece in individual packages which require further preparation for consumption at another location.

(4) “Mobile restaurant” has the meaning of “mobile food establishment” in ch. ATCP 75 Appendix.

(4f) “Occasional” or “occasionally” means not more than 3 days during any 12–month period.

(4i) “Premises” means each individual building, space, or stand where food is prepared, served, or sold.

(4m) “Prepackaged restaurant” means a restaurant that serves only individually wrapped single food servings that are prepared and packaged off–premise by a licensed processor with preparation on the premise limited to heating and serving.

(5) “Restaurant” means any building, room or place where meals are prepared, served, or sold to transients or the general public, and all places used in connection with the building, room, or place and includes any public or private school lunchroom for which food service is provided by contract. “Restaurant” does not include any of the following:

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

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

(c) Any public or private school lunchroom for which food service is directly provided by the school.

(d) Bed and breakfast establishments.

(e) A private individual selling food from a movable or temporary stand at a public farm sale.

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

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

(h) A concession stand at a locally sponsored sporting event, such as a little league game. In this paragraph, “concession stand” means a food stand that serves meals and is operated exclusively for the benefit of a participating youth sports team or program or the governing youth sports organization, and “locally sponsored sporting event” means a competitive game, taking place inside or outside, specifically for youth, that is organized or sponsored by one or more local business, governmental, or other civic organization, or by parents of the youth, including a school–sponsored interscholastic sports competition.

Note: For the purposes of this subchapter, the term “restaurant” is synonymous with the term “food establishment” used in ch. ATCP 75 Appendix.

(6) “Special organization serving meals” means a restaurant licensed under s. 97.605, Stats., operated by a church or a religious, fraternal, youth or patriotic organization or a service club or civic organization that prepares, serves, or sells meals to which members of the general public are invited, for at least 4 but not more than 12 days during any 12–month period. “Meals”, as used in this subsection, does not include a meal that is incidental to normal activities intended exclusively for members of the particular

special organization nor does it include a meal served in conjunction with a church worship service, such as a funeral or wedding or to persons who attended that service.

(7) “Temporary restaurant” means a restaurant that operates at a fixed location in conjunction with a single event or celebration such as a fair, carnival, circus, public exhibition, or anniversary sale for a period of no more than 14 consecutive days or in conjunction with an occasional sales promotion.

History: Cr. Register, January, 2001, No. 541, eff. 2–1–01; CR 04–093: cr. (1g), (1r) and (4m), r. and recr. (6) Register June 2005 No. 594, eff. 7–1–05; CR 08–073: renum. from HFS 196.03 and am. (2) Register January 2009 No. 637, eff. 2–1–09; CR 12–038: cr. (2g), (2r), (3m), (4f), (4i), am. (7) Register June 2013 No. 690, eff. 9–1–13; renumber (2r) (c) to (2r) (c) (intro.), 1. to 9. under s. 13.92 (4) (b) 1., Stats., correction in (intro.), (4), made under s. 13.92 (4) (b) 7., Stats., Register June 2013 No. 690; renum. from DHS 196.03 Register June 2016 No. 726; correction in (intro.), (4), (6) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726; correction in (2) made under s. 13.92 (4) (b) 6., Stats., Register June 2016 No. 726; correction in (2r) (c) 2., 5., (4m), (5) (b) under s. 35.17, Stats., Register June 2016 No. 726.

ATCP 75.104 Permits. (1) PERMIT REQUIRED. (a) Except as specified in pars. (c) and (d), no restaurant may be opened to the public until the owner of the restaurant has obtained a permit from the department or its agent by submitting an application under sub. (4) and paying the applicable fee specified in Table ATCP 75.105 B or C, whichever is applicable. A separate permit is required for each restaurant.

(b) If any permit holder sells or otherwise transfers ownership or operation of a restaurant to another person, except as provided in sub. (3), a new initial permit is required, and the restaurant may not be opened to the public until the department has issued a new permit.

(c) A contract cook who adheres to all of the following is exempt from the permit requirement under par. (a):

1. The contract cook is paid for his or her service, culinary skills, technique, or expertise.

2. The contract cook either uses food provided by the person employing the cook’s services or the cook shops for food from a list provided by the person.

3. The contract cook uses only the home kitchen of the person requesting the food service to prepare food for the person.

4. The contract cook does not prepare or store food in bulk quantities for use at multiple sites or for meals served to the general public. If a contract cook prepares or stores food in bulk quantities for use at multiple sites or for meals served to the general public, the contract cook shall obtain a restaurant permit.

5. The contract cook does not transport any portion of a meal prepared by the contract cook from one location to another location. If a contract cook transports any portion of a meal prepared by the contract cook from one location to another location, the contract cook shall obtain a restaurant permit.

(d) A caterer operating from the caterer’s permitted restaurant is not required to obtain a restaurant permit for the locations where the caterer serves food.

(2) PERMIT DURATION AND RENEWAL. (a) Each permit issued under this subchapter expires on June 30, except that a permit initially issued during the period beginning on April 1 and ending on June 30 expires on June 30 of the following year.

(b) Each permit shall be renewed annually as provided in sub. (4) (b).

(3) TRANSFERABILITY OF PERMITS. An individual may transfer a permit to an immediate family member, as defined in s. 97.605 (4) (a) 2., Stats., if the individual is transferring operation of the restaurant. A sole proprietorship that reorganizes as a business entity, as defined in s. 179.70 (1), Stats., or a business entity that reorganizes as a sole proprietorship or a different type of business entity may transfer a permit to the newly formed business entity or sole proprietorship if the restaurant remains at the location for which the permit was issued and at least one individual who had an ownership interest in the sole proprietorship or business entity to which the permit was issued has an ownership interest in the

newly formed sole proprietorship or business entity. Except as provided in this subsection, no permit issued under this subchapter is transferable from one premise to another or from one person or entity to another.

Note: Under s. s. 97.605 (4) (a) 2., Stats., “Immediate family member” means a spouse, grandparent, parent, sibling, child, stepchild, or grandchild or the spouse of a grandparent, parent, sibling, child, stepchild, or grandchild. Under ss. 97.605 (4) (a) 1. and 179.70 (1), Stats., a “business entity” means: a corporation, as defined in s. 180.0103 (5), Stats., a limited liability company, as defined in s. 183.0102 (10), Stats., a limited partnership, or a corporation, as defined in s. 181.0103 (5), Stats., a foreign limited liability company, as defined in s. 183.0102 (8), Stats., a foreign limited partnership, a foreign corporation, as defined in s. 180.0103 (9), Stats., or a foreign corporation, as defined in s. 181.0103 (13), Stats.

(4) PERMIT APPLICATION. (a) *Initial permit.* Application for an initial or new permit shall be made on an application form furnished by the department or its agent and shall be accompanied by all of the following:

1. The applicable fees specified under s. ATCP 75.105 and any fees previously due to the department or its agent.

2. Documentation that the department of safety and professional services has approved plans and specifications for the restaurant, if required.

3. Information, as determined by the department or its agent, indicating that the restaurant will be maintained and operated in compliance with applicable federal and state laws and that rules have been implemented for the operation of the restaurant that will protect the health, safety, and welfare of the public.

Note: To obtain a copy of the retail food establishment – restaurant operator license application form, or to determine which agent to contact for an application form, call (608) 224-4923 or send an e-mail to datcpdfslicensing@wi.gov.

(b) *Renewal permit.* To renew the license of a restaurant, the owner shall pay the department, the license fee specified under Table ATCP 75.105 B or C, as applicable, before the license expires. If the payment to renew the license of an establishment is not made to the department before the expiration date of the establishment license, the late fee specified under s. ATCP 75.105 (4) (c) shall be paid in addition to the license fee.

Note: Local health departments that are agents for the department have authority under s. 97.615 (2) (d), Stats., to establish and collect fees for licenses issued by the local health department. If your establishment was licensed by a local health department, contact the local health department for its license fee schedule.

(5) DEPARTMENT ACTION ON PERMIT APPLICATION. (a) The department or its agent shall issue or deny a permit within 30 days after receiving a complete application, all applicable fees, and the other information required under sub. (4).

(b) Except as provided in s. 93.135, Stats., the initial issuance, renewal, or continued validity of a permit issued under this paragraph may be conditioned upon the requirement that the permit holder correct a violation of this subchapter, s. 97.605, Stats., or ordinances adopted under s. 97.615 (2) (g), Stats., within a period of time specified. If the condition is not met within the specified time or after an extension of time as approved by the department, the permit is void. No person may operate a restaurant after a permit has been voided under this paragraph, and any person who does so shall be subject to the penalties under ss. 97.72 and 97.73, Stats. An operator whose permit is voided under this paragraph may appeal the decision under s. ATCP 75.108.

(c) The department or its agent may refuse to issue or renew a permit to operate a restaurant under any of the following circumstances:

1. The department or its agent has not conducted a preinspection of a restaurant for which an initial or new permit is required under sub. (1).

2. The owner of a restaurant has not corrected a condition for which the department or agent has issued a written health or safety-related order.

3. All applicable fees under s. ATCP 75.105 have not been paid, including the permit fee, preinspection fee, reinspection fee, or other applicable fees.

4. The owner has modified, repaired or maintained the restaurant in a manner that is not in accordance with what the department recognizes as safe practice as outlined in this subchapter.

5. The owner, applicant, or permit holder has failed to provide the department or its agent with information required under sub. (4).

6. The owner or applicant has violated ch. 97, Stats., this subchapter, ch. ATCP 75 Appendix, or any order, ordinance, or regulation created by a village, city, county, or local board of health having jurisdiction, provided such violation is related to the operation of the restaurant.

(d) If the department or its agent denies an application for a permit, the applicant shall be given reasons, in writing, for the denial and information regarding appeal rights under s. ATCP 75.108.

(6) VOIDED PERMIT FOR FAILURE TO PAY FEES. If an applicant or owner fails to pay all applicable fees, late fees and processing charges under s. ATCP 75.105 within 15 days after the applicant or owner receives notice of an insufficiency under s. ATCP 75.105 (6), or within 45 days after the expiration of the permit, whichever occurs first, the permit is void. An owner whose permit is voided under this subsection may appeal the decision under s. ATCP 75.108. In an appeal concerning a voided permit under this subsection, the burden is on the permit applicant or owner to show that the entire applicable fees, late fees and processing charges have been paid. During any appeal process concerning a payment dispute, operation of the restaurant is deemed to be operation without a permit and is subject to the fees under s. ATCP 75.105 (4) (e) in addition to the fees otherwise due, unless the applicant or owner meets its burden of proof under this subsection.

(7) PERMIT POSTING. A current permit issued by the department shall be posted in a place visible to the public. A permit may not be altered or defaced.

History: Cr. Register, January, 2001, No. 541, eff. 2–1–01; CR 01–016: r. and recr. (2) (b) to (e), cr. (f) and (2m) Register May 2002 No. 557, eff. 6–1–02; CR 04–093: am. (1) (b), (2) (b) 4. and table HFS 196.04, cr. (1) (d) and (e) Register June 2005 No. 594, eff. 7–1–05; CR 08–073: renum. from HFS 196.04, r. and recr. Register January 2009 No. 637, eff. 2–1–09; corrections in (4) (b) and (6) made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637; correction in (4) (a) 2. made under s. 13.92 (4) (b) 6., Stats., Register January 2012 No. 673; renum. from DHS 196.04 Register June 2016 No. 726; correction in (1) (a), (2) (a), (3), (4) (a) 1., (b), (5) (b), (c) 3., 4., 6., (d), (6) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 75.105 Department fees. (1) DEFINITION. In this subsection, “seating capacity” means the number of seats available for use by restaurant patrons.

(2) RESTAURANT PERMIT CATEGORY ASSIGNMENT. (a) 1. Except with respect to a prepackaged restaurant, a temporary restaurant, or a mobile restaurant base with no food preparation, the department shall assign a restaurant to a permit category by evaluating the complexity of the restaurant based on the criteria specified in Table ATCP 75.105 A.

2. A restaurant whose point value equals zero, shall be included in the simple permit category.

3. A restaurant whose point value is at least one but not greater than 4 shall be included in the moderate permit category.

4. A restaurant whose point value equals 5 or greater shall be included in the complex permit category.

5. A restaurant that has been ordered closed by a state or local health department or that has caused a foodborne outbreak within the previous licensing year shall be included in the complex category.

Note: Cause of foodborne outbreaks are determined using standard epidemiological practices.

(b) The operator of a restaurant may ask the department to reconsider the restaurant’s permit category assignment within 30 days of the category assignment.

Note: To request reconsideration of permit category assignment call the Bureau of Environmental Health at 608–266–2835 or send your written request to the Bureau of Environmental Health, P.O. Box 2659, Madison, WI 53701–2659.

Table ATCP 75.105 A
Determination of Restaurant Permit Category

Complexity Factors	Point(s)
Food is not prepared until an order is placed.	0
Food items are held hot for one meal period or for a maximum of 4 hours, whichever is less.	0
Food preparation is limited to mixing together prepackaged products that do not need to be cooked further except for aesthetic reasons (such as frozen soup concentrate with milk), or to condiment preparation (such as slicing pickles and onions).	0
The restaurant contains a self–service salad or food bar.	1
The restaurant handles raw poultry, meat, or seafood.	1
The seating capacity of the restaurant or operation is 50 or more.	1
Food is served through a drive through window for food pickup.	1
The restaurant promotes delivery of ready–to–eat food products to customers.	1
Potentially hazardous foods are cooled, reheated, or hot or cold held for service longer than 4 hours.	1
Food is prepared in one location and then transported to be served in another location.	1
The restaurant contains or uses banquet facilities as well as main dining area.	1
Food is served that requires preparation activities such as chopping, dicing, slicing, boiling, and blanching in order for that product to be served.	1

(3) FEE SCHEDULES. The fees listed in Table ATCP 75.105 B shall apply to permits issued from April 1, 2009 through March 31, 2011. The fees listed in Table ATCP 75.105 C shall apply to permits issued on or after April 1, 2011.

Note: Local health departments that are agents for the department have authority under s. 97.615 (2) (d), Stats., to establish and collect fees for permits issued by the local health department. If your establishment was permitted by a local health department, contact the local health department for its permit fee schedule.

(4) TYPES OF FEES. (a) *Preinspection fee.* The owner of a restaurant shall, pursuant to sub. (4), pay the applicable preinspection fee listed in Table ATCP 75.105 B or C to the department before an initial or new permit is issued under s. ATCP 75.104.

(b) *Permit fee.* The operator of a restaurant that serves meals prepared from raw, canned, dried, packaged or frozen foods shall, pursuant to sub. (4), pay an annual permit fee to the department as listed in Table ATCP 75.105 B or C for each restaurant that the operator applies for a permit to operate under s. ATCP 75.104 (1)

or (2). Except for a prepackaged restaurant, a temporary restaurant, or a mobile restaurant base with no food preparation, the annual permit fee shall be based on the permit category assigned to the restaurant under sub. (2). In addition, \$100.00 shall be charged per area for any physically separate food holding, serving, or preparation area.

(c) *Late fee.* If the permit fee for a permit renewal is not paid before the expiration date of the permit, the owner of the restaurant shall pay to the department a late fee of \$85.00 in addition to the renewal permit fee.

(d) *Reinspection fee.* If the department conducts a reinspection of a restaurant under s. ATCP 75.106 (1) (b) the owner shall, pursuant to sub. (4), pay to the department the applicable reinspection fee listed in Table ATCP 75.105 B or C. The department shall assess an additional reinspection fee as listed in Table ATCP 75.105 B or C, whichever is applicable, for any additional reinspection conducted under s. ATCP 75.106 (1) (b) 4.

(e) *Fees for operating without a permit.* Any restaurant found to be operating without a permit shall pay to the department a fee of \$749.00, in addition to all applicable fees and any processing charges under s. ATCP 75.104 (6).

Note: Anyone operating a restaurant without a permit is also subject to a fine of not less than \$100 nor more than \$1,000 under s. 97.72, Stats.

(f) *Duplicate permit.* The department shall charge the operator of a restaurant \$15 for a duplicate permit.

(g) *Fees for special condition inspections.* For inspection or consultation activities that are not directly related to the department’s permitting and licensing responsibilities, the departments shall charge the operator or the entity requesting the inspection or consultation \$175.

(h) *Fee for operating without a Wisconsin certified food manager.* The department shall charge the operator of a restaurant \$150 for operating without a Wisconsin certified food manager.

Note: Requirements for certified food managers may be found in Chapter 12 of ch. ATCP 75 Appendix.

(5) METHOD OF PAYMENT. If the payment for an initial or renewal permit is by check or other draft drawn upon an account containing insufficient funds, the applicant or owner shall, within 15 days after receipt of notice from the department of the insufficiency, pay all applicable fees under sub. (4) and the financial institution’s processing charges by cashier’s check or other certified draft, money order, or cash.

(6) CHANGE OF OPERATOR. The operator of a restaurant shall promptly notify the department in writing of his or her intention to cease operations and shall supply the department with the name and mailing address of any prospective new operator.

Note: To notify the Department of a change in operator, call (608) 224–4923 or send an e–mail to datcpdfslicensing@wi.gov.

(7) PLAN REVIEW. An operator of a new or extensively remodeled restaurant shall submit equipment layout plans, equipment schedules, detailed descriptions of food processing operations, and menus to the department or its agent for review as requested. The department or its agent may require an operator to submit this documentation when a change of ownership has occurred. Submission of plans under this subsection does not replace or supersede plan review requirements of the Wisconsin department of safety and professional services, division of industry services.

**Table ATCP 75.105 B
 Fee Schedule — SFY 2010
 For permits issued April 1, 2009 through March 31, 2011**

Permit Category	Permit Fee	Preinspection Fee	First Reinspection Fee	Second and Subsequent Reinspection Fee
Prepackaged Restaurant	\$90	\$115	\$86	\$115
Simple Restaurant	\$195	\$265	\$199	\$265
Moderate Restaurant	\$300	\$425	\$319	\$425
Complex Restaurant	\$430	\$610	\$458	\$610
Temporary Restaurant	\$165			
Mobile Restaurant Base with no food preparation	\$90	\$115	\$86	\$115
Additional Area	\$100			

**Table ATCP 75.105 C
 Fee Schedule — SFY 2012
 For permits issued on or after April 1, 2011**

Permit Category	Permit Fee	Preinspection Fee	First Reinspection Fee	Second and Subsequent Reinspection Fee
Prepackaged Restaurant	\$105	\$130	\$98	\$130
Simple Restaurant	\$230	\$320	\$240	\$320
Moderate Restaurant	\$330	\$470	\$353	\$470
Complex Restaurant	\$540	\$770	\$578	\$770
Temporary Restaurant	\$170			
Mobile Restaurant Base with no food preparation	\$105	\$165	\$98	\$130
Additional Area	\$80			

History: CR 08-073; cr. Register January 2009 No. 637, eff. 2-1-09; correction in (7) made under s. 13.92 (4) (b) 6., Stats., Register January 2012 No. 673; CR 12-038; am. Table A, (7) Register June 2013 No. 690, eff. 9-1-13; renun. from DHS 196.05 Register June 2016 No. 726; correction in (2) (a) 1., (3), (4) (a), (b), (d), (e), Table A, B, C made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726; correction in (7) made under s. 13.92 (4) (b) 6., Stats., Register June 2016 No. 726.

ATCP 75.106 Enforcement. (1) INSPECTIONS AND ACCESS TO THE PREMISES. (a) *Inspections.* Under ss. 97.615 (2) and 97.65 (1), Stats., an authorized employee or agent of the department, upon presenting proper identification, may enter any restaurant at any reasonable time, for any of the following purposes:

1. To inspect the restaurant.
2. To determine if there has been a violation of this subchapter, ch. ATCP 75 Appendix, or ss. 97.603 to 97.65, Stats.
3. To determine compliance with previously written violation orders.
4. To secure samples or specimens.
5. To examine and copy relevant documents and records provided such information is related to the operation of the restaurant.
6. To obtain photographic or other evidence needed to enforce this subchapter.

(b) *Reinspections.* 1. The department or its agent may reinspect a restaurant whenever an inspection or the investigation of a complaint reveals the existence of a violation that is potentially hazardous to the health and welfare of patrons or employees of the restaurant.

2. A reinspection shall be scheduled to allow the owner a reasonably sufficient time to correct the deficiencies.

3. A reinspection fee shall be charged for the reinspection according to Table ATCP 75.105 B or C, whichever is applicable,

or the applicable charges as determined by an agent of the department.

4. If an additional reinspection is required because a violation has not been corrected in the scheduled time, the department shall assess the owner an additional reinspection fee according to Table ATCP 75.105 B or C, whichever is applicable, as authorized under s. ATCP 75.105. The department may order the owner to show just cause why the permit should not be suspended or revoked under s. ATCP 75.107.

(2) GENERAL ORDERS TO CORRECT VIOLATIONS. (a) If upon inspection of a restaurant, the department or agent finds that the restaurant is not designed, constructed, equipped or operated as required under this subchapter, the department or agent shall issue a written order to correct the violation. The order shall specify the correction needed for compliance and the time period within which the correction should be made. The time period specified in the order may be extended at the discretion of the department or agent.

(b) If the order to correct violations is not carried out by the expiration of the time period stated in the order, or any extension of time granted for compliance, the department or agent may issue an order under s. ATCP 75.107 to suspend or revoke the permit to operate the restaurant.

(c) Under s. 97.12 (5), Stats., any person who fails to comply with an order of the department shall forfeit \$50 for each day of

noncompliance after the order is served upon or directed to him or her. A person may appeal a forfeiture under s. ATCP 75.108.

(3) TEMPORARY ORDERS. (a) As provided in s. 97.65, Stats., whenever the department or agent has reasonable cause to believe that an immediate danger to health or safety exists as a result of an inspection under sub. (1), the department or agent may issue a temporary order without advance notice or hearing to do any of the following:

1. Prohibit the continued operation or method of operation of specific equipment.

2. Require the premises to cease operations and close until remedies are applied which eliminate the immediate danger to health or safety.

(b) 1. A temporary order shall take effect upon delivery to the operator or responsible supervisor. Except as provided in par. (c), the temporary order shall remain in effect for 14 days from the date of delivery, but a temporary order may be reissued for one additional 14-day period if necessary to complete any analysis or examination of samples, specimens, or other evidence.

2. No operation or method of operation prohibited by the temporary order may be resumed without the approval of the department or agent until the order has terminated or the time period specified in subd. 1. has expired, whichever occurs first. If, upon completed analysis or examination, the department or agent determines that construction, sanitary condition, operation or method of operation of the premises or equipment does not constitute an immediate danger to health or safety, the department or agent shall immediately notify the owner, operator or responsible supervisor in writing and the temporary order shall terminate upon receipt of the written notice.

(c) If the analysis or examination shows that the construction, sanitary condition, operation or method of operation of the premises or equipment constitutes an immediate danger to health or safety, the department or agent, within the effective period of the temporary order specified in par. (b) 1., shall provide written notice of the findings to the owner, operator or responsible supervisor. Upon receipt of the notice, the temporary order remains in effect until a final decision is issued under s. ATCP 75.108. The notice shall include a statement that the facility has a right to request a hearing under s. ATCP 75.108 within 15 days after issuance of the notice.

(d) Any person who fails to comply with a temporary order issued by the department may be fined not more than \$10,000 or imprisoned not more than one year in the county jail, or both, under s. 97.65 (5) (a), Stats.

History: Cr. Register, January, 2001, No. 541, eff. 2-1-01; correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Register May 2002 No. 557; CR 08-073: renum. from HFS 196.06, r. and recr. Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 196.06 Register June 2016 No. 726; correction in (1) (a) (intro.), 2., 6., (b) 3., 4., (2), (3) (a) (intro.), (c), (d) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726; correction in (3) (b) 1. under s. 35.17, Stats., Register June 2016 No. 726.

ATCP 75.107 Suspension or revocation of permit.

The department may, after a hearing under s. ATCP 75.108, suspend or revoke a permit for violation of ss. 97.30 to 97.33 and 97.65, Stats., this subchapter, ch. ATCP 75 Appendix, or an order issued by the department. The suspension or revocation order shall take effect 15 days after the date of issuance unless a hearing is requested under s. ATCP 75.108.

History: CR 08-073: cr. Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 196.07 Register June 2016 No. 726; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 75.108 Appeals of actions by the department.

(1) (a) Except as provided in sub. (2) or (3), a request for a hearing for denial of a permit, a voided permit, suspension, revocation, forfeiture, or an order given under s. ATCP 75.106 (1) (a) 4. or (2) shall be submitted in writing to the department of administration's division of hearings and appeals within 15 days after receipt of the notice of the department's action.

(b) A request for hearing that is mailed to the division of hearings and appeals shall be considered filed with the division on the date of the postmark.

(c) A request for hearing that is hand-delivered to the division of hearings and appeals shall be considered filed on the date the request is received by the division of hearings and appeals.

(d) A request for hearing transmitted by facsimile to the division of hearings and appeals shall be considered filed on the date and time imprinted by the division's facsimile machine on the transaction report that accompanies the document. Documents received by facsimile after midnight local time shall be deemed filed on the first following business day.

Note: Effective 7-1-16, pursuant to 2015 Wis. Act 55 and s. 227.43 (1m), Stats., a request for hearing shall be submitted to the DATCP Secretary via e-mail at datapapeals@wisconsin.gov, faxed to (608) 224-5034, mailed to PO Box 8911, Madison, Wisconsin 53708-8911, or hand delivered to 2811 Agriculture Drive, Madison, Wisconsin 53718.

(e) As a condition for requesting a hearing under this subsection to appeal the voiding of a permit, an applicant or owner shall comply with sub. (3). In an appeal concerning voiding a permit, the burden is on the applicant or owner to show that the entire applicable fees, late fees and processing charges have been paid.

(2) A request for hearing on a temporary order given by the department under s. ATCP 75.106 (3) shall be made in writing to the department within 15 days of receipt of the order. The department shall hold a hearing within 15 days after the department receives the written request for hearing, unless the department and the owner agree to a later date, the immediate danger to health is removed, the order is not contested or the owner and the department mutually agree that no purpose would be served by a hearing. A final decision shall be issued under s. 227.47, Stats., within 10 days following the conclusion of the hearing. The decision may order any of the following to remove the danger to health:

(a) Changes to or replacement of equipment or construction.

(b) Changes in or cessations of any operation or method of operation of the equipment or premises.

Note: A request for a hearing under sub. (2) may be submitted by mail or hand-delivered to the Department of Health Services, at 1 W. Wilson St., Room 650, P.O. Box 7850, Madison, WI, 53707-7850, or faxed to the Department at (608) 266-7882. The hearing may be conducted by the department secretary, the secretary's designee, or a hearing examiner under s. 227.43 (1) (bu), Stats.

(3) If the department voids a permit under s. ATCP 75.104 (6), the owner shall submit, within 15 days after receipt of the notice of the department's action, documentary evidence that all applicable fees, late fees and processing charges have been paid and that there are no outstanding payments due to the department.

History: CR 08-073: cr. Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 196.08 Register June 2016 No. 726; correction in (1) (a), (2) (intro.), (3) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 75.109 Appeals of actions by agent health departments. If an agent issues a permit under this subchapter, the agent shall create enforcement and appeal procedures under ss. 66.0417 and 97.615 (2) (g), Stats.

History: CR 08-073: cr. Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 196.09 Register June 2016 No. 726; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 75.110 Special organizations serving meals.

(1) APPLICABLE RULES. In addition to the specific requirements of this subchapter, Chapters 1 to 7 in ch. ATCP 75 Appendix apply to special organizations serving meals as applicable.

(2) SUPERVISION. An individual who has successfully completed a department-approved food handler training course or who has been trained in food handling by the department or agent staff shall personally supervise meal preparation and serving.

(3) APPROVED COURSES. (a) A department approved food handler training course shall consist of a minimum of 2 hours instruction time in all of the following subjects:

1. Temperature control of potentially hazardous food during preparation.

2. Storage.

3. Transportation and serving.
4. Effective cleaning and sanitizing of utensils and equipment.
5. Storage of utensils and equipment.
6. Food worker personal hygiene; effective handwashing techniques.
7. Food worker health.
8. Prevention of foodborne illness.
9. Safe food sources.
10. The storage and the use of toxic products.

(b) The department, or its agent, may require that additional subjects be addressed relating to the particular food service operation.

(5) EQUIPMENT AND UTENSILS. Residential sinks, refrigerators, freezers and mechanical dishwashing machines for washing multi-use eating and drinking utensils and pots, pans and other cooking utensils may be used. Dishpans may be used to accomplish the final sanitizing rinse.

History: CR 04–093; cr. Register June 2005 No. 594, eff. 7–1–05; CR 08–073; renum. from HFS 196.045 Register January 2009 No. 637, eff. 2–1–09; correction in (1) made under 13.92 (4) (b) 7., Stats., Register June 2013 No. 690; renum. from DHS 196.10 Register June 2016 No. 726; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 75.111 Inspections. (1) ACCESS. An authorized employee or agent of the department, upon presenting proper identification, shall be permitted to enter, at any reasonable hours, any premises for which a permit is required under this subchapter to inspect the premises, secure samples or specimens, examine and copy relevant documents and records or obtain photographs or other evidence needed to enforce the requirements of this subchapter.

(2) FREQUENCY. (a) The department or its agent shall perform a food safety inspection of every restaurant that does not function as a prepackaged restaurant at least once every 12 months.

(b) The department or its agent may increase the interval between inspections specified in par. (a) for a prepackaged restaurant, if the prepackaged restaurant is assigned an inspection frequency based on a written department–approved risk–based inspection schedule that assigns a lower risk to the establishment and that is being uniformly applied by the department or its agent. Every prepackaged restaurant shall be inspected at least once every 18 months.

(c) If the inspection frequency assigned under par. (b) is less than once every 12 months, the department or its agent shall contact the food establishment by telephone or other means at least once every 12 months to ensure that the food establishment operator and the nature of food operation have not changed.

(3) PREINSPECTION. (a) Except as provided under par. (b), the department or its agent may not grant a permit to a person intending to operate a restaurant without a preinspection of the restaurant.

(b) A preinspection is not required for a temporary restaurant, to a special organization serving meals or when a permit is transferred to an immediate family member.

History: Cr. Register, January, 2001, No. 541, eff. 2–1–01; CR 04–093; am. (2) (a) and (b) Register June 2005 No. 594, eff. 7–1–05; CR 08–073; renum. from HFS 196.05 Register January 2009 No. 637, eff. 2–1–09; renum. from DHS 196.11 Register June 2016 No. 726; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726; correction in (2) (a), (b) under s. 35.17, Stats., Register June 2016 No. 726.

ATCP 75.112 Adoption of Wisconsin food code. As permitted by s. 227.14 (1s), Stats., an amended version of the 2009 U.S. food and drug administration (FDA) recommended model food code adopted as ch. ATCP 75 Appendix and retitled the Wisconsin Food Code is in the format of the FDA–recommended food code to ensure uniformity between the Wisconsin department of health services and the Wisconsin department of agriculture, trade

and consumer protection in the application and enforcement of food safety requirements.

History: Cr. Register, January, 2001, No. 541, eff. 2–1–01; CR 04–093; am. Register June 2005 No. 594, eff. 7–1–05; CR 08–073; renum. from HFS 196.07 Register January 2009 No. 637, eff. 2–1–09; correction made under s. 13.92 (4) (b) 6., Stats., Register January 2009 No. 637; CR 12–038; am. Register June 2013 No. 690, eff. 9–1–13; correction made under s. 13.92 (4) (b), Stats., Register June 2013 No. 690; renum. from DHS 196.12 Register June 2016 No. 726; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

Subchapter IV — Vending of Food

ATCP 75.201 Authority and purpose. Section 97.625, Stats., gives the department authority to prescribe rules for vending machine commissaries and vending machines and their location and servicing, and to enforce these rules for the purpose of protecting the public health.

History: Cr. Register, June, 1985, No. 354, eff. 7–1–85; correction made under s. 13.93 (2m) (b) 7., Stats., Register, January, 1995, No. 469; CR 08–073; renum. from HFS 198.01 Register January 2009 No. 637, eff. 2–1–09; renum. from DHS 198.01 Register June 2016 No. 726; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 75.202 Scope. (1) APPLICABILITY. The provisions of this subchapter apply to any vending machine commissary and to any self–service food vending machine offered for public use, except a vending machine which dispenses only bottled, prepackaged or canned soft drinks, candy, gum, nuts, nut meats, cookies, crackers, pastry items which have a pH level of 4.6 or below or a water activity (a_w) value of 0.85 or less under standard conditions, or prepackaged Grade A pasteurized milk or milk products.

(2) APPROVED COMPARABLE COMPLIANCE. When it appears to the department that strict adherence to a provision of this subchapter appears to be impractical for a particular vending machine commissary or vending machine operator, the department may approve a modification in that rule for that facility if the department is provided with satisfactory proof that the grant of a variance will not jeopardize the public’s health, safety or welfare.

History: Cr. Register, June, 1985, No. 354, eff. 7–1–85; CR 08–073; renum. from HFS 198.02 Register January 2009 No. 637, eff. 2–1–09; renum. from DHS 198.02 Register June 2016 No. 726; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 75.203 Definitions. In this subchapter:

(1) “Adulterated” means the condition of a food if it bears or contains any poisonous or deleterious substance in a quantity which may be injurious to health; if it bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established under U.S. food and drug administration regulations, or in excess of the tolerance if one has been established; if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human consumption; if it has been processed, prepared, packed or held under unsanitary conditions, whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; if it is in whole or in part the product of a diseased animal, or an animal which has died otherwise than by slaughter; or if its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health.

(2) “Agent” means the city or county designated by the department to make investigations or inspections of vending machines, vending machine operations, and vending machine commissaries for compliance with this subchapter.

(3) “Approved” means acceptable to the department, based on its determination of conformance with this subchapter and good public health practices.

(4) “Closed” means fitted together snugly, leaving no openings large enough to permit the entrance of vermin.

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

(6) “Food” means any raw, cooked or processed edible substance, beverage, ice, water, or ingredient used or intended for use in whole or in part for human consumption.

(7) “Food contact surfaces” means those surfaces of equipment and utensils with which food normally comes in contact and those surfaces with which food may come in contact and drain back onto surfaces normally in contact with food.

(8) “Hot liquid food or beverage” means liquid food or beverage, the temperature of which at the time of service to the consumer is at least 150° F. (66° C.).

(9) “Milk and milk products” means grade A milk and grade A milk products.

(10) “Person” means an individual, partnership, association, firm, company, corporation, city, village, county or town, whether tenant, owner, lessee or licensee, or the agent, heir or assignee of any of these.

(11) “Potentially hazardous food” means any food that consists in whole or in part of milk, milk products, eggs, meat, poultry, fish, shellfish, edible crustacea or any other ingredients, including synthetic ingredients, which are in forms capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. “Potentially hazardous food” does not include clean, whole uncracked, and odor-free shell eggs or foods which have a pH level of 4.6 or below or a water activity (a_w) value of 0.85 or less under standard conditions.

(12) “Sealed” means free of cracks or other openings which permit the entry or passage of moisture.

(13) “Single-service article” means a cup, container, lid or closure, plate, knife, fork, spoon, stirrer, paddle, straw, place mat, napkin, doily, wrapping material, or any similar article which is constructed wholly or in part from paper, paperboard, molded pulp, foil, wood, plastic, synthetic or other readily destructible material, and which is intended by the manufacturer and generally recognized by the public as for one usage only and then to be discarded.

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

(15) “Vending machine commissary” means any building, room or place in the state at which foods, containers, transport equipment, or supplies for vending machines are kept, handled, prepared, or stored by a vending machine operator, except a place at which the operator is licensed to manufacture, distribute, or sell food products under ch. 97, Stats.

(16) “Vending machine location” has the meaning in s. 97.01 (15w), Stats., namely, the room, enclosure, space, or area where one or more vending machines are installed and operated.

(17) “Vending machine operator” or “operator” has the meaning prescribed in s. 97.01 (15y), Stats., namely, the person maintaining a place of business in the state and responsible for the operation of one or more vending machines.

History: Cr. Register, June, 1985, No. 354, eff. 7–1–85; correction in (16) and (17) made under s. 13.93 (2m) (b) 7., Stats., Register, January, 1995, No. 469; CR 08–073; renum. from HFS 198.03 and am. (5) Register January 2009 No. 637, eff. 2–1–09; renum. from DHS 198.03 Register June 2016 No. 726; correction in (intro.), (2), (3), (16), (17) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726; correction in (5) made under s. 13.92 (4) (b) 6., Stats., Register June 2016 No. 726.

ATCP 75.204 Permits. (1) PERMIT REQUIRED. (a) No person may operate a vending machine, vending machine commissary, or vending machine commissary storage unless the person, the vending machine, vending machine commissary, or vending machine commissary storage has a permit from the department. To receive an operator’s permit or a permit for a vending machine, vending machine commissary, or vending machine commissary

storage, the operator shall submit an application under sub. (4) and pay the applicable fee specified in Table ATCP 75.205 A or B. A separate permit is required for each vending machine, vending machine commissary, or vending machine commissary storage.

(b) If a vending machine operator sells or otherwise transfers ownership or operation of a vending machine, vending machine commissary, or vending machine commissary storage except as provided under sub. (3), a new permit is required and the vending machine, vending machine commissary, or vending machine commissary storage may not be opened until the department has issued a new permit.

(2) PERMIT DURATION AND RENEWAL. (a) Each permit issued under this subchapter expires on June 30, except that a permit initially issued during the period beginning on April 1 and ending on June 30 expires on June 30 of the following year.

(b) Each permit shall be renewed annually as provided in sub. (4) (b).

(3) TRANSFERABILITY OF PERMITS. An individual may transfer a permit to an immediate family member, as defined in s. 97.605 (4) (a) 2., Stats., if the individual is transferring operation of a vending machine, vending machine commissary, or vending machine commissary storage. A sole proprietorship that reorganizes as a business entity, as defined in s. 179.70 (1), Stats., or a business entity that reorganizes as a sole proprietorship or a different type of business entity may transfer a permit to the newly formed business entity or sole proprietorship if the vending machine, vending machine commissary, or vending machine commissary storage remains at the location for which the permit was issued and at least one individual who had an ownership interest in the sole proprietorship or business entity to which the permit was issued has an ownership interest in the newly formed sole proprietorship or business entity. Except as provided in this subsection, no permit issued under this subchapter is transferable from one premise to another or from one person or entity to another.

Note: Under s. 97.605 (4) (a) 2., Stats., “immediate family member” means a spouse, grandparent, parent, sibling, child, stepchild, or grandchild or the spouse of a grandparent, parent, sibling, child, stepchild, or grandchild. Under s. 97.605 (4) (a) 1. and s. 179.70 (1), Stats., a “business entity” means: a corporation, as defined in s. 180.0103 (5), Stats., a limited liability company, as defined in s. 183.0102 (10), Stats., a limited partnership, or a corporation, as defined in s. 181.0103 (5), Stats., a foreign limited liability company, as defined in s. 183.0102 (8), Stats., a foreign limited partnership, a foreign corporation, as defined in s. 180.0103 (9), Stats., or a foreign corporation, as defined in s. 181.0103 (13), Stats.

(4) PERMIT APPLICATION. (a) *Initial permit.* Application for an initial or new permit shall be made on an application form furnished by the department and shall be accompanied by all of the following:

1. The applicable fees specified under s. ATCP 75.205 and any fees previously due to the department.

2. Information, as determined by the department, indicating that the vending machine, vending machine commissary, or vending machine storage will be maintained and operated in compliance with applicable federal and state laws and that rules have been implemented for the operation of the vending machine or vending machine commissary that will protect the health, safety, and welfare of the public.

Note: To obtain a copy of the a vending machine, vending machine commissary, or vending machine commissary storage operator license application form, call (608) 224–4923 or send an e-mail to datepdfslicensing@wi.gov.

(b) *Renewal permit.* To renew the permit of an establishment, the operator shall pay the department, the applicable establishment permit fee specified under s. ATCP 75.205 before the permit expires. If the payment to renew the permit of an establishment is not made to the department before the expiration date of the establishment permit, the late fee specified under s. ATCP 75.205 (2) (c) shall be paid in addition to the permit fee.

(5) DEPARTMENT OR AGENT ACTION ON PERMIT APPLICATION. (a) The department shall issue or deny a permit within 30 days after receiving a complete application, all applicable fees, and the other information required under sub. (4).

(b) Except as provided in s. 93.135, Stats., the initial issuance, renewal, or continued validity of a permit issued under this paragraph may be conditioned upon the requirement that the permit holder correct a violation of this subchapter, ss. 97.603 to 97.65, Stats., or ordinances adopted under s. 97.615 (2) (g), Stats., within a period of time specified. If the condition is not met within the specified time or after an extension of time as approved by the department, the permit is void. No person may operate a vending machine, vending machine commissary, or vending machine commissary storage after the permit for the operator, vending machine, vending machine commissary, or vending machine commissary storage has been voided under this paragraph, and any person who does so shall be subject to the penalties under s. 97.72 and 97.73, Stats. An owner whose permit is voided under this paragraph may appeal the decision under s. ATCP 75.208.

(c) The department may refuse to issue or renew a permit to operate a vending machine commissary or vending machine commissary storage under any of the following circumstances:

1. The department or its agent has not conducted a preinspection of the vending machine commissary or vending machine commissary storage for which an initial or new permit is required under sub. (1).

2. The operator of a vending machine, vending machine commissary, or vending machine commissary storage has not corrected a condition for which the department or agent has issued a written a health or safety–related order.

3. All applicable fees under s. ATCP 75.205 have not been paid, including the permit fee, preinspection fee, reinspection fee, or other applicable fees.

4. The vending machine operator has modified, repaired or maintained the vending machine, vending machine commissary, or vending machine commissary storage in a manner that is not in accordance with what the department recognizes as safe practice as outlined in this subchapter.

5. The vending machine operator, applicant, or permit holder has failed to provide the department or its agent with information required under sub. (4).

6. The vending machine operator or applicant has violated ch. 97, Stats., this subchapter, or any order, ordinance, or regulation created by a village, city, county, or local board of health having jurisdiction, provided such violation is related to the operation of the vending machine, vending machine commissary, or vending machine commissary storage.

(d) If the department denies an application for a permit, the applicant shall be given reasons, in writing, for the denial and information regarding appeal rights under s. ATCP 75.208.

(6) VOIDED PERMIT FOR FAILURE TO PAY FEES. If an applicant or vending machine operator fails to pay all applicable fees, late fees and processing charges under s. ATCP 75.205 within 15 days after the applicant or operator receives notice of an insufficiency under s. ATCP 75.205 (3), or within 45 days after the expiration of the permit, whichever occurs first, the permit is void. An operator whose permit is voided under this subsection may appeal the decision under s. ATCP 75.208. In an appeal concerning a voided permit under this subsection, the burden is on the permit applicant or operator to show that the entire applicable fees, late fees and processing charges have been paid. During any appeal process concerning a payment dispute, operation of the vending machine, vending machine commissary, or vending machine commissary storage is deemed to be operation without a permit and is subject to the fees under s. ATCP 75.205 (2) (e) in addition to the fees otherwise due, unless the applicant or operator meets its burden of proof under this subsection.

(7) PERMIT POSTING. A current permit issued by the department shall be posted in a place visible to the public. A permit may not be altered or defaced.

History: Cr. Register, June, 1985, No. 354, eff. 7–1–85; emerg. am. (1), cr. (1m), eff. 7–1–94; am. (1), cr. (1m), Register, January, 1995, No. 469, eff. 2–1–95; emerg.

am. (1m) (a) 1., (b) 1., (c) and (e), eff. 7–1–96; am. (1m), Register, January, 1997, No. 493, eff. 2–1–97; am. (1m), cr. (1m) (f), Register, August, 1998, No. 512, eff. 9–1–98; CR 01–016: r. and recr. (1) and (1m) Register May 2002 No. 557, eff. 6–1–02; CR 08–073: renum. from HFS 198.04, r. and recr. Register January 2009 No. 637, eff. 2–1–09; corrections in (3) and (4) (b) made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637; renum. from DHS 198.04 Register June 2016 No. 726; correction in (1) (a), (2) (a), (3), (4) (a) 1., (b), (5) (b), (c) 3., 4., 6., (d), (6) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 75.205 Department fees. (1) FEE SCHEDULES.

The fees listed in Table ATCP 75.205 A shall apply to permits issued from April 1, 2009 through March 31, 2011. The fees listed in Table ATCP 75.205 B shall apply to permits issued on or after April 1, 2011.

(2) TYPES OF FEES. (a) *Preinspection fee.* The operator of a vending machine commissary or vending machine commissary storage shall, pursuant to sub. (1), pay the applicable preinspection fee listed in Table ATCP 75.205 A or B to the department before an initial or new permit is issued under s. ATCP 75.204.

(b) *Permit fee.* The operator of a vending machine, vending machine commissary, or vending machine commissary storage shall, pursuant to sub. (1), pay the applicable permit fee listed in Table ATCP 75.205 A or B to the department for each vending machine, vending machine commissary, or vending machine commissary storage that the operator applies for a permit to operate under s. ATCP 75.204 (1) or (2).

(c) *Late fee.* If the permit fee for an operator's, vending machine commissary, or vending machine commissary storage permit renewal is not paid before the expiration date of the permit, the operator of the vending machine commissary or vending machine commissary storage shall pay to the department a late fee of \$85.00 in addition to the renewal permit fee for each permit for which the department receives after the expiration date of the permit.

(d) *Reinspection fee.* If the department conducts a reinspection of a vending machine commissary or vending machine commissary storage under s. ATCP 75.206 (1) (b) 1. and 2., the vending machine operator shall pursuant to sub. (1), pay to the department the applicable reinspection fee listed in Table ATCP 75.205 A or B. The department shall assess an additional reinspection fee equal to the reinspection fee listed in Table ATCP 75.205 A or B, whichever is applicable, for any additional reinspection conducted under s. ATCP 75.206 (1) (b) 4.

(e) *Fees for operating without a permit.* 1. For any operator, or vending machine commissary, or vending machine commissary storage found to be operating without a permit, the operator shall pay to the department \$749 in addition to all applicable fees and processing charges under s. ATCP 75.204 (6).

2. For any vending machine found to be operating without a permit, the operator shall pay to the department 3 times the annual vending machine permit fee listed in Table ATCP 75.205, in addition to all applicable fees and processing charges under s. ATCP 75.204 (6).

Note: Anyone operating a vending machine, vending machine commissary, or vending machine commissary storage without a permit is also subject to a fine of not less than \$100 nor more than \$1,000 under s. 97.72, Stats.

(f) *Duplicate permit.* The department shall charge the operator of a vending machine commissary or vending machine commissary storage \$15 for a duplicate permit.

(g) *Fees for special condition inspections.* For inspection or consultation activities that are not directly related to the department's permitting and licensing responsibilities, the departments shall charge the operator or the entity requesting the inspection or consultation \$175.

(3) METHOD OF PAYMENT. If the payment for an initial or renewal permit is by check or other draft drawn upon an account containing insufficient funds, the applicant or owner shall, within 15 days after receipt of notice from the department of the insufficiency, pay all applicable fees under sub. (1) and the financial institution's processing charges by cashier's check or other certified draft, money order, or cash.

Table ATCP 75.205 A
Fee Schedule — SFY 2010
For permits issued April 1, 2009 through March 31, 2011

Type of Permit	Permit Fee	Preinspection Fee	First Reinspection Fee	Second and Subsequent Reinspection Fee
Vending Machine Commissary	\$230	\$455	\$252	\$335
Vending Machine Commissary — Storage	\$150	\$285	\$158	\$210
Vending Machine Operator	\$125			
Vending Machine permit (each machine)	\$8			

Table ATCP 75.205 B
Fee Schedule — SFY 2012
For permits issued on or after April 1, 2011

Type of Permit	Permit Fee	Preinspection Fee	First Reinspection Fee	Second and Subsequent Reinspection Fee
Vending Machine Commissary	\$280	\$675	\$300	\$400
Vending Machine Commissary — Storage	\$215	\$515	\$233	\$310
Vending Machine Operator	\$125			
Vending Machine permit (each machine)	\$9			

History: CR 08-073: cr. Register January 2009 No. 637, eff. 2-1-09; correction in (2) (e) 2. made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637; renum. from DHS 198.05 Register June 2016 No. 726; correction in (1), (2) (a), (b), (d), (e), Table A, B made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 75.206 Enforcement. (1) **INSPECTIONS AND ACCESS TO THE PREMISES.** (a) *Inspections.* Under ss. 97.615 (2) and 97.65 (1), Stats., an authorized employee or agent of the department, upon presenting proper identification, may enter any vending machine, vending machine commissary, or vending machine commissary storage at any reasonable time, for any of the following purposes:

1. To inspect the vending machine, vending machine commissary, or vending machine commissary storage.
2. To determine if there has been a violation of this subchapter or ss. 97.603 to 97.65, Stats.
3. To determine compliance with previously written violation orders.
4. To secure samples or specimens.
5. To examine and copy relevant documents and records provided such information is related to the operation of the vending machine, vending machine commissary, or vending machine commissary.
6. To obtain photographic or other evidence needed to enforce this subchapter.

(b) *Reinspections.* 1. The department or its agent may reinspect a vending machine, vending machine commissary, or vending machine commissary storage whenever an inspection or the investigation of a complaint reveals the existence of a violation that is potentially hazardous to the health and welfare of patrons or employees of the vending machine, vending machine commissary, or vending machine commissary storage.

2. A reinspection shall be scheduled to allow the operator a reasonably sufficient time to correct the deficiencies.

3. A reinspection fee shall be charged for the reinspection according to Table ATCP 75.205 A or B, or applicable charges as determined by an agent of the department.

4. If an additional reinspection is required because a violation has not been corrected in the scheduled time, the department shall assess the operator an additional reinspection fee equal to the reinspection fee in Table ATCP 75.205 A or B, as applicable, as authorized under s. ATCP 75.205 (2) (d), and the department may order the owner to show just cause why the permit should not be suspended or revoked under s. ATCP 75.207.

(2) **GENERAL ORDERS TO CORRECT VIOLATIONS.** (a) If upon inspection of a vending machine, vending machine commissary, or vending machine commissary storage, the department or agent finds that the vending machine, vending machine commissary, or vending machine commissary storage is not designed, constructed, equipped or operated as required under this subchapter, the department or agent shall issue a written order to correct the violation. The order shall specify the correction needed for compliance and the time period within which the correction should be made. The time period specified in the order may be extended at the discretion of the department or agent.

(b) If the order to correct violations is not carried out by the expiration of the time period stated in the order, or any extension of time granted for compliance, the department or agent may issue an order under s. ATCP 75.207 to suspend or revoke the permit to operate the vending machine or vending machine commissary.

(c) Under s. 97.12 (5), Stats., any person who fails to comply with an order of the department shall forfeit \$50 for each day of noncompliance after the order is served upon or directed to him or her. A person may appeal a forfeiture under s. ATCP 75.208.

(3) TEMPORARY ORDERS. (a) As provided in s. 97.65, Stats., whenever the department or agent has reasonable cause to believe that an immediate danger to health or safety exists as a result of an inspection under sub. (1), the department or agent may issue a temporary order without advance notice or hearing to do any of the following:

1. Prohibit the continued operation or method of operation of specific equipment.

2. Require the premises to cease operations and close until remedies are applied which eliminate the immediate danger to health or safety.

(b) 1. A temporary order shall take effect upon delivery to the operator. Except as provided in par. (c), the temporary order shall remain in effect for 14 days from the date of delivery, but a temporary order may be reissued for one additional 14-day period if necessary to complete any analysis or examination of samples, specimens, or other evidence.

2. No operation or method of operation prohibited by the temporary order may be resumed without the approval of the department or agent until the order has terminated or the time period specified in subd. 1. has expired, whichever occurs first. If, upon completed analysis or examination, the department or agent determines that construction, sanitary condition, operation, or method of operation of the premises or equipment does not constitute an immediate danger to health or safety, the department or agent shall immediately notify the owner, operator, or responsible supervisor in writing and the temporary order shall terminate upon receipt of the written notice.

(c) If the analysis or examination shows that the construction, sanitary condition, operation or method of operation of the premises or equipment constitutes an immediate danger to health or safety, the department or agent, within the effective period of the temporary order specified in par. (b) 1. shall provide written notice of the findings to the owner, operator or responsible supervisor. Upon receipt of the notice, the temporary order remains in effect until a final decision is issued under s. ATCP 75.208. The notice shall include a statement that the facility has a right to request a hearing under s. ATCP 75.208 within 15 days after issuance of the notice.

(d) Any person who fails to comply with a temporary order issued by the department may be fined not more than \$10,000 or imprisoned not more than one year in the county jail, or both under s. 97.65 (5) (a), Stats.

History: CR 08-073: cr. Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 198.06 Register June 2016 No. 726; correction in (1) (a) (intro.), 2., 6., (b) 3., 4., (2), (3) (a) (intro.), (c), (d) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726; correction in (1) (a) 1., (b) 1., (2), (3) (b) 1. made under s. 35.17, Stats., Register June 2016 No. 726.

ATCP 75.207 Suspension or revocation of permit.

The department may, after a hearing under s. ATCP 75.208, suspend or revoke a permit for violation of ss. 97.603 to 97.65, Stats., this subchapter or an order issued by the department. The suspension or revocation order shall take effect 15 days after the date of issuance unless a hearing is requested under s. ATCP 75.208 (1).

History: CR 08-073: cr. Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 198.07 Register June 2016 No. 726; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 75.208 Appeals of actions by the department.

(1) (a) Except as provided in sub. (2) or (3), a request for a hearing for denial of a permit, a voided permit, suspension, revocation, forfeiture, or an order given under s. ATCP 75.206 (1) (b) 4. or (2) shall be submitted in writing to the department of administration's division of hearings and appeals within 15 days after receipt of the notice of the department's action.

(b) A request for hearing that is mailed to the division of hearings and appeals shall be considered filed with the division on the date of the postmark.

(c) A request for hearing that is hand-delivered to the division of hearings and appeals shall be considered filed on the date the request is received by the division of hearings and appeals.

(d) A request for hearing transmitted by facsimile to the division of hearings and appeals shall be considered filed on the date and time imprinted by the division's facsimile machine on the transaction report that accompanies the document. Documents received by facsimile after midnight local time shall be deemed filed on the first following business day.

Note: Effective 7-1-16, pursuant to 2015 Wis. Act 55 and s. 227.43(1m), Stats., a request for hearing shall be submitted to the DATCP Secretary via e-mail at datcpappeals@wisconsin.gov, faxed to (608) 224-5034, mailed to PO Box 8911, Madison, Wisconsin 53708-8911, or hand delivered to 2811 Agriculture Drive, Madison, Wisconsin 53718.

(e) As a condition for requesting a hearing under this subsection to appeal the voiding of a permit, an applicant or owner shall comply with sub. (3). In an appeal concerning voiding a permit, the burden is on the applicant or owner to show that the entire applicable fees, late fees and processing charges have been paid.

(2) A request for hearing on a temporary order given by the department under s. ATCP 75.206 (3) shall be made in writing to the department within 15 days of receipt of the order. The department shall hold a hearing within 15 days after the department receives the written request for hearing, unless the department and the owner agree to a later date, the immediate danger to health is removed, the order is not contested or the owner and the department mutually agree that no purpose would be served by a hearing. A final decision shall be issued under s. 227.47, Stats., within 10 days following the conclusion of the hearing. The decision may order any of the following to remove the danger to health:

(a) Changes to or replacement of equipment or construction.

(b) Changes in or cessations of any operation or method of operation of the equipment or premises.

Note: A request for hearing, under sub. (2), shall be submitted to the DATCP Secretary via e-mail at datcpappeals@wisconsin.gov, faxed to (608) 224-5034, mailed to PO Box 8911, Madison, Wisconsin 53708-8911, or hand delivered to 2811 Agriculture Drive, Madison, Wisconsin 53718. The hearing may be conducted by the department secretary or designee.

(3) If the department voids a permit under s. ATCP 75.204 (6), the vending machine operator shall submit, within 15 days after receipt of the notice of the department's action, documentary evidence that all applicable fees, late fees and processing charges have been paid and that there are no outstanding payments due to the department.

History: CR 08-073: cr. Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 198.08 Register June 2016 No. 726; correction in (1) (a), (2) (intro.), (3) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 75.209 Appeals of actions by agent health departments.

If an agent issues a permit under this subchapter, the agent shall create enforcement and appeal procedures under ss. 66.0417 and 97.615 (2) (g), Stats.

Note: To obtain a copy of the application form for a permit to operate vending machines or a vending machine commissary, write: Bureau of Public Health, P.O. Box 309, Madison, Wisconsin 53701.

History: CR 08-073: cr. Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 198.09 Register June 2016 No. 726; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 75.210 Compliance with restaurant rules.

An operator shall ensure that each vending machine commissary or vending machine commissary storage that is operated is in compliance with the provisions of subch. III. The department shall not grant a permit to a person intending to operate a new vending machine commissary or vending commissary storage or to a person intending to be the new operator of an existing vending machine commissary or vending machine commissary storage without a prior inspection of the commissary for compliance with the applicable provisions of this subchapter and subch. III.

History: CR 08-073: cr. Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 198.10 Register June 2016 No. 726; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 75.211 Approval of vending machines and related equipment. (1) APPROVAL AUTHORITY. All vending machines and related equipment used at a vending machine location shall be approved by:

(a) The department, on the basis of construction criteria developed by the national sanitation foundation (NSF) or the national automatic merchandising association (NAMA);

(b) An agent of the department, on the basis of the criteria under par. (a); or

(c) A testing laboratory approved by the department. Testing laboratories approved by the department are the national sanitation foundation (NSF) and laboratories participating in the national automatic merchandising association (NAMA) vending machine evaluation program.

Note: Department or agent approval is based upon the NSF or NAMA construction criteria. Copies of the criteria can be obtained by writing the National Sanitation Foundation, 3475 Plymouth Road, Ann Arbor, Michigan 48105 or the National Automatic Merchandising Association, 7 South Dearborn Street, Chicago, Illinois 60603. The criteria may be reviewed at the offices of the Secretary of State, the Legislative Reference Bureau, or the Department's Bureau of Public Health.

(2) ISSUANCE OF A PERMIT. The department shall issue a permit for each vending machine approved under sub. (1).

(3) DISPLAY OF THE PERMIT. The vending machine operator shall ensure that each machine is identified at all times with the vending machine permit prescribed and furnished by the department. The vending machine permit shall be securely and conspicuously attached to the near center and upper front of the vending machine. The vending machine operator shall maintain the permit in a legible state. Vending machine permits are not transferable from one machine to another.

(4) INSPECTION FOR EVIDENCE OF APPROVAL. Whenever an authorized employee or agent of the department inspects a vending machine and finds that the vending machine does not contain an identifiable permit as required under sub. (3), the authorized employee or agent of the department shall place the vending machine in a nonvend position by sealing the coin insert slot. Failure of the operator to maintain a nonvend condition until an authorized employee or agent of the department is satisfied that the vending machine is properly approved and identified shall be cause for an action under ss. 97.72 and 97.73, Stats.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Register, January, 1995, No. 469; CR 08-073; renun. from HFS 198.05 Register January 2009 No. 637, eff. 2-1-09; renun. from DHS 198.11 Register June 2016 No. 726; correction in (4) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 75.212 Vending machine location.

(1) RECORD. (a) A vending machine location record shall be maintained on file at the operator's place of business within the state. That record shall include the following location information for each machine:

1. Post office address of the building;
2. The floor level in the building; and
3. The room or area on the floor.

(b) The entry under each machine in the vending machine location record shall include the machine serial number and model number, the department's permit number, and a designation of the machine by primary vending purpose. Primary vending purposes are heated, refrigerated, beverages, food other than beverages, and a combination of any 2 of these.

(2) STANDARDS. (a) The area in which vending machines are placed shall be well-lighted, maintained in good repair and kept clean and free from accumulation of filth, garbage, or rubbish.

(b) Each vending machine shall be located so that the space around, over and under the machine can be readily cleaned and is kept clean.

(c) The floor area on which a vending machine is located shall be reasonably smooth and of cleanable construction.

(d) The area around a vending machine shall be free from excessive condensation.

(e) Vending machines may not be located where there is overhead leakage or under drains or waste piping.

(f) Vending machines may not be located in areas that are subjected to flooding or to the accumulation of water.

(g) The placement of a vending machine beneath exposed stairways is prohibited unless an overhead cover is provided for the machine.

(h) Vending machines may not be located in areas where there is an undue amount of air-borne dust or dirt or in areas of factories where workers must wear respirators.

(i) Each vending machine location where unpackaged food or ingredients are handled shall have in proximity to it adequate handwashing facilities consisting of hot and cold running water, soap and single-service drying facilities. Proper handwashing facilities in toilet rooms or in other places in the building or area where vending machines are located shall be considered satisfactory.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; correction in (2) (h) made under s. 13.93 (2m) (b) 5., Stats., Register, January, 1995, No. 469; CR 08-073; renun. from HFS 198.06 Register January 2009 No. 637, eff. 2-1-09; renun. from DHS 198.12 Register June 2016 No. 726.

ATCP 75.213 Inspection of vending machines and commissaries.

An authorized employee or agent of the department shall be permitted to enter at any reasonable times, upon any private or public property within the state where vending machines or commissaries are operated, or from which machines are otherwise serviced, for the purpose of determining compliance with this subchapter. The operator shall make provision for the department employee or agent to have access, either in company with an employee of the operator or otherwise, to the interior of all vending machines operated by him or her.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; CR 08-073; renun. from HFS 198.07 Register January 2009 No. 637, eff. 2-1-09; renun. from DHS 198.13 Register June 2016 No. 726; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 75.214 Foods. (1) APPROVED SOURCE. All foods offered for sale through vending machines, including beverages and ingredients, shall be manufactured, processed and prepared in commissaries or establishments that comply with all applicable local, state and federal laws.

(2) WHOLESOMENESS. All foods offered for sale through vending machines, including beverages and ingredients, shall be clean and wholesome and free from spoilage and adulteration.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; CR 08-073; renun. from HFS 198.08 Register January 2009 No. 637, eff. 2-1-09; renun. from DHS 198.14 Register June 2016 No. 726.

ATCP 75.215 Food protection. (1) GENERAL. All foods, including beverages and ingredients, shall be stored, transported, displayed, and dispensed in such a manner as to be reasonably protected from dust, flies, vermin, contamination by rodents, insecticides, rodenticides, unnecessary handling, droplet infection, overhead leakage, and other contamination at all times. The wet storage of cartoned, bottled, canned, or packaged foods is prohibited.

(2) PACKAGING. Potentially hazardous food offered for sale through vending machines shall be dispensed to the consumer in the individual original container or wrapper into which it was placed at the commissary or at the manufacturer's or processor's plant, except the following:

(a) Foods with natural protective coverings which are not ordinarily eaten with the food, need not be wrapped or be in containers;

(b) Foods dispensed into an approved single-service container inside the vending machine immediately prior to delivery to the customer need not be wrapped or be in covered containers.

(3) **FOOD TEMPERATURES.** Potentially hazardous foods within a vending machine shall be maintained at a temperature not higher than 40° F. (4° C.), or a temperature not lower than 150° F. (66° C.). Canned foods are not potentially hazardous foods and for this reason are exempt from these temperature requirements. Frozen food shall be kept frozen at a temperature of 0° F. (-18° C.) or below except in vending machines with automatic defrosting in which the temperature shall not exceed 10° F. (-12° C.). Vending machines dispensing potentially hazardous foods shall be provided with adequate refrigeration or heating units and thermostatic controls which ensure that these food temperatures are maintained at all times. These vending machines shall also have controls which prevent the machine from vending the potentially hazardous food in the event of power failure or other condition which permits the food to attain a temperature above 45° F. (7° C.) or below 150° F. (66° C.), whichever is applicable, until serviced by the operator. These temperature maintenance requirements do not apply to the actual time required to fill or otherwise service the machine and for a maximum period of 30 minutes following completion of filling or servicing operations.

(4) **THERMOMETERS.** A thermometer accurate to $\pm 2^\circ$ F. (1° C.) shall be provided in the vending machine to indicate the air temperature of the warmest part of the cold food storage area of the machine or the coldest part of the hot food storage area of the machine, as applicable. This thermometer shall be visible to the employee during normal filling and servicing operations.

(5) **SINGLE-SERVICE ITEMS.** (a) *Storage.* All single-service containers which receive food from machines dispensing these products in bulk, shall be purchased in sanitary cartons or packages which protect the containers from contamination, shall be stored in a clean dry place until used and shall be handled in a sanitary manner. The containers shall be stored in the original carton or package in which they were placed at the point of manufacture until introduced into the container magazine or dispenser of the vending machine. The vending machine magazine or dispenser shall protect the food contact surface of single-service articles from manual contact, dust, insects, rodents, and other contamination.

(b) *Dispensing.* All single-service articles with which food normally comes in contact, including straws, spoons, forks, and containers, shall be furnished to the customer in the original individual wrapper, unopened, or in a sanitary single-service dispenser approved by the department.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; CR 08-073; renum. from HFS 198.09 Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 198.15 Register June 2016 No. 726.

ATCP 75.216 Equipment maintenance and sanitizing. (1) **MAINTENANCE.** Vending machines and related equipment shall be maintained in a clean and sanitary condition and in good repair.

(2) **REPLACEMENT PARTS.** All replacement parts and tubing shall be equal to or exceed original equipment specifications. Where clear tubing is used, it shall be replaced with clear tubing. No part built in as a function of the vending machine may be removed or bypassed.

(3) **SERVICE CONNECTIONS.** (a) *Utility openings.* All service connections through an exterior wall of the machine, including water, gas, electrical and refrigeration connections, shall be grommets or closed to prevent the entry of insects and rodents.

(b) *Closing methods.* Grommets, clamps or other effective closures may be used. Where the opening is not used until the point of installation, the closure may be shipped with the machine in packet form rather than in the installed position.

(c) *Shipping bolt holes.* Where shipping bolt holes are used, the holes shall be closed by the use of grommets, durable tapes, sealants, or reusable bolts provided by the manufacturer. These closures shall be easily identifiable or adequately described in the instruction manual for their intended use.

(d) *Miscellaneous openings.* Miscellaneous openings into the cabinet and through the cabinet wall other than coin entrance, coin returns and crown pullers, but including openings for optional service connections or alternate installations, shall be provided with effective closures by the manufacturer. The closures shall be provided for these not-in-use openings, and shall be easily identifiable, properly marked or adequately described in the instruction manual for their intended use.

(e) *Disconnection safeguards.* All service connections to utilities shall be of a type which will discourage their unauthorized or unintentional disconnection.

(4) **CLEANING AND SANITIZING FACILITIES.** Approved facilities for cleaning and sanitizing equipment shall be available for each vending machine location or at a central location. If at a central location, reasonable precautions shall be taken to protect the product contact surfaces from contamination during storage, transportation, and installation. Facilities for cleaning and sanitizing shall include either permanently fixed sinks of adequate size which are used only for this or a similar purpose or there shall be portable washing facilities such as a service wagon, metal or plastic pails, or another mobile device which can be satisfactorily moved from one location to another. Sinks and portable receptacles shall be large enough to submerge at least 50% of the largest single piece of equipment or part of a vending machine which is to be cleaned and sanitized. Water used for cleaning product contact surfaces shall not be less than 110° F. (43° C.), shall contain an adequate amount of effective soap or detergent and shall be kept clean by changing it frequently.

(5) **MANUAL SANITIZING.** Sanitizing of handwashed product contact surfaces shall be by one of the following methods:

(a) Submerge washed equipment for 30 seconds in clean water maintained at a temperature of 170° F. (77° C.) or more. Mechanical spray rinsing for a period of 10 seconds at 180° F. (82° C.) is also approved; or

(b) Submerge or rinse equipment following the washing operation in water at a minimum temperature of 110° F. (43° C.) to remove soap or detergent, and then submerge the equipment for at least 2 minutes in a hypochlorite solution which shall be made up with a chlorine concentration of at least 100 parts per million and shall be discarded when the chlorine concentration goes below 50 parts per million. Hypochlorite solutions shall be prepared fresh at least daily. Other sanitizing solutions may be used provided that use is at the concentration at which tested and approved by the department.

(6) **THERMOMETERS.** The employee doing the cleaning shall be equipped with a thermometer which registers from 0° F. (-18° C.) to not less than 200° F. (93° C.) and has an accuracy of $\pm 2^\circ$ F. (1° C.) and shall use this thermometer to check water temperatures.

(7) **CLEANED IN PLACE.** In machines designed so that food-contact surfaces are not readily removable, all surfaces intended for in-place cleaning shall be designed and fabricated so that:

(a) Cleaning and sanitizing solutions can be circulated throughout a fixed system using an effective cleaning and sanitizing regimen;

(b) Cleaning and sanitizing solutions will contact all food-contact surfaces;

(c) The system is self-draining or capable of being completely evacuated; and

(d) The procedures used result in thorough cleaning and sanitizing of the equipment.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; CR 08-073; renum. from HFS 198.10 Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 198.16 Register June 2016 No. 726; correction in (2) under s. 35.17, Stats., Register June 2016 No. 726.

ATCP 75.217 Water supply. (1) **APPROVED SOURCE.** Water used in vending machines shall be of safe and sanitary quality. Where a public water supply is available, connection and use

are required. Where a public water supply is not available, the well or wells supplying the machines shall comply with ch. NR 812, rules of the department of natural resources concerning well construction and pump installation.

(2) TRANSPORTATION AND PLUMBING. Water used as a product ingredient shall be piped into the vending machine under pressure or brought to the vending machine in portable containers which have been filled directly from an approved water supply outlet. Portable containers shall be designed and maintained as food contact surfaces and shall be cleaned and sanitized, using the procedures established in s. ATCP 75.216 (4) and (5), at the commissary or other approved facility before each use. These containers and their contents shall be continuously protected against contamination during filling, transporting to the location, and sale of the product. All plumbing connections and fittings shall be installed in accordance with chs. SPS 382 and 383.

(3) WATER FILTERS. If used, water filters or other water-conditioning devices shall be of a type which may be disassembled for periodic cleaning or replacement of the active element. Replacement elements shall be handled in a sanitary manner.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; correction in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, January, 1995, No. 469; CR 08-073; renum. from HFS 198.11 Register January 2009 No. 637, eff. 2-1-09; correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637; correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register February 2012 No. 674; renum. from DHS 198.17 Register June 2016 No. 726; correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 75.218 Waste disposal. (1) REMOVAL. All trash and other food product waste material shall be removed from the machine location as frequently as may be necessary to prevent a nuisance and unsightliness, and shall be disposed of in a manner that will not cause an insect or rodent problem.

(2) CONTAINERS. Self-closing, leakproof and easily cleanable refuse containers shall be provided in the vicinity of each machine or machines to receive cartons, wrappers, and other items of refuse.

(3) WASTE COLLECTION. (a) Containers shall be provided within all machines dispensing liquid products in bulk for the collection of drip, spillage, overflow, and other internal wastes.

(b) An automatic shutoff device shall be provided which will place the vending machine out of operation before a container overflows. The cutoff mechanism shall be set at a point to permit removal of the waste container from the machine without spillage.

(c) Containers and surfaces on which wastes may accumulate shall be readily removable for cleaning, easily cleanable, and corrosion resistant.

(4) WASTE CONNECTIONS. Liquid waste drainage pipes from a vending machine may not be connected to plumbing unless an air gap meeting the requirements of s. SPS 382.33 (7) (a) is provided.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Register May 2002 No. 557; CR 08-073; renum. from HFS 198.12 Register January 2009 No. 637, eff. 2-1-09; correction in (4) made under s. 13.92 (4) (b) 7., Stats., Register February 2012 No. 674; renum. from DHS 198.18 Register June 2016 No. 726; correction in (3) (b), (c) under s. 35.17, Stats., Register June 2016 No. 726.

ATCP 75.219 Delivery of foods. (1) PROTECTION. Foods, including beverages and ingredients, in transit to vending machine locations shall be protected from the elements, dirt, dust, insects, rodents, and other contamination. Similar protection shall be provided for single-service containers and for the product contact surfaces of equipment, containers, and devices in transit to machine locations.

(2) FOOD TEMPERATURES. Readily perishable foods, including beverages and ingredients, in transit to vending machine locations shall be maintained at a temperature of not more than 40° F. (4° C.) or at a temperature of not less than 150° F. (66° C.), as appropriate.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; CR 08-073; renum. from HFS 198.13 Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 198.19 Register June 2016 No. 726.

ATCP 75.220 Personnel. (1) HEALTH. (a) No person who is known to be infected with a disease in a form that is communicable by food handling may be employed in activities involving food handling in a vending machine operation or a vending machine commissary.

(b) If the vending machine operator or the operator of a vending machine commissary suspects that any employee has contracted any disease in a communicable form that may be transmitted by food handling, the operator shall exclude the employee from any activities involving food handling and, in the case of a reportable communicable disease defined under s. DHS 145.03 (2), shall notify the local health authority immediately.

(2) CLEANLINESS. Employees shall wash their hands immediately prior to engaging in any vending machine servicing operation which may bring them in contact with foods, including beverages or ingredients, or with product contact surfaces of utensils, containers or equipment. While engaged in the servicing operations, employees shall wear clean outer garments.

(3) TOBACCO USE. No employee while engaged in filling, emptying or in any way servicing the food contact surfaces of vending machines may use tobacco in any form.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; correction in (1) (b) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1998, No. 512; CR 08-073; renum. from HFS 198.14 Register January 2009 No. 637, eff. 2-1-09; correction in (1) (b) made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637; renum. from DHS 198.20 Register June 2016 No. 726.