

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 Chapter ATCP 75 as it existed on January 31, 2001 was repealed and a new chapter ATCP 75 was created effective February 1, 2001.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 Chapter HSS 196 as it existed on June 30, 1985 was repealed and a new chapter HSS 196 was created effective July 1, 1985.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 Chapter HFS 196 as it existed on January 31, 2001 was repealed and a new chapter HFS 196 was created effective February 1, 2001.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Note: Chapter HSS 198 as it existed on June 30, 1985 was repealed and a new chapter HSS 198 was created effective July 1, 1985.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. Chapter ATCP 75 as it existed on October 24, 2020, was repealed and a new chapter ATCP 75 was created effective October 25, 2020.

Subchapter I — Definitions and General Provisions

ATCP 75.01 Authority and purpose. (1) The department licenses and regulates retail food establishments as defined in this chapter under s. 97.30, Stats. Under s. 97.41 (1m), Stats., the department may also authorize local health departments as local agents of the department to license and regulate retail food establishments.

(2) The department has adopted this chapter under authority provided in ss. 93.07 (1), 97.12, 97.30 (5), 97.33, 97.613, 97.62, 97.625, 97.65 and 227.14 (1s), Stats., which authorizes the department to prescribe rules for retail food establishments and to enforce those rules for the purpose of protecting public health and safety. This chapter, including ch. ATCP 75 Appendix, establishes definitions; sets standards for management and personnel and for safe food operations, equipment, and facilities; provides for retail food establishment plan review, license issuance, inspection, and enforcement actions; and requires food protection practices certification for retail food establishment operators.

(3) During an inspection to evaluate compliance with this chapter and ch. ATCP 75 Appendix, the department or its agent

shall assess existing facilities or equipment that were in use before October 25, 2020, based on all of the following considerations:

(a) Compliance with food-contact surface requirements in ch. ATCP 75 Appendix part 4-101.

(b) Compliance with requirements for cooling, heating, and holding temperature capability in equipment, under ch. ATCP 75 Appendix part 4-301.11.

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20; correction in (3) (intro.), (a) made under s. 35.17, Stats., Register July 2020 No. 775.

ATCP 75.02 Applicability. (1) The provisions of this chapter, including ch. ATCP 75 Appendix, apply to any retail food establishment as defined in this chapter.

(2) A business or an organization operating as a retail food establishment that is exempt from licensing as a retail food establishment shall still meet the requirements as specified under sub. (1).

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20.

ATCP 75.03 Adoption of Wisconsin food code. As permitted by s. 227.14 (1s), Stats., an amended version of the 2013 U.S. food and drug administration (FDA) model food code, adopted as ch. ATCP 75 Appendix, is adopted and retitled the Wisconsin food code and is in the format of the FDA-recommended food code to ensure uniformity.

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20.

ATCP 75.04 Definitions. In this chapter:

(1) “Active managerial control” means the purposeful incorporation of systems in a retail food establishment that proactively reduce the risk of foodborne illness hazards through monitoring and verification.

(2) “Additional area” means a non-contiguous, separately located area that is on the same premises, but that is not a part of the primary food processing or warewashing operation, but contributes to the overall food operation. “Additional area” includes but is not limited to a banquet staging area, bakery preparation area, produce preparation area, or outdoor cooking area.

(3) “Adulterated” has the meaning specified in 21 USC 342.

(4) “Agent” means the city, county, village, or consortium health department designated by the department, in accordance with s. 97.41 Stats., to issue licenses and make investigations and inspections of retail food establishments under this chapter.

(5) “Amenable” means animal species or products made from animal species subject to mandatory inspection under state or federal meat and poultry inspection regulations.

(6) “Catering” means contracting for the preparation and service of a defined amount of food at a specific location, other than the licensed retail food establishment, to a defined set of guests at a wedding or similar event, or to participants in an organized group or activity. “Catering” does not include sale of individual meals directly to the consumer.

(7) “Certified food protection manager” means a person who holds a valid certificate of food protection practices issued under s. 97.33, Stats.

(8) “Cold holding” means maintaining a time/temperature controlled for safety food (TCS) under refrigeration at a temperature of 41°F or below.

(9) “Concession stand” means a food stand that serves meals in connection with a youth sporting event, operated exclusively for the benefit of a participating youth sports team or program, or the governing youth sports organization.

(10) “Condiment” means a non-meal food item added to food to enhance flavor or enjoyment.

Note: Sauces, dressings, relishes and spices are examples of condiments.

(11) “Contract cook” is a person who is under contract to only prepare food onsite, with food provided by the contractor, for a private occasion to the contractor or the contractor’s guests.

(12) “Cooling” means the process of reducing the temperature of a TCS food by refrigeration or alternate methods to a temperature of 41°F or below within a defined time period. “Cooling” does not include removing a TCS food from refrigeration during processing at ambient air temperature and then immediately returning the food to refrigeration.

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

(14) “Division” means the division of food and recreational safety.

(15) “Extensively remodeled” means the condition of an existing retail food establishment that has undergone reconstruction or repair that altered the design or operation of the food service area, beyond redecorating, cosmetic refurbishing, replacing like equipment, or altering seating design or capacity.

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

(17) “General public” means any person choosing to patronize a retail food establishment including, but not limited to employees, members, guests, customers, or occupants of private clubs, industrial plants, offices, or businesses. “General public” does not include any of the following:

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

(b) Persons who are served a free meal by a religious or other nonprofit charitable organization, as defined under 26 USC 501 (c), at a kitchen, shelter or similar location where meals are served to the needy.

(c) 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 members of the religious organization prepare the meal.

(d) 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.

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

(f) Guests attending a meal served in connection with a birthday, anniversary, or similar celebration, if persons participating in the celebration prepare the food.

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

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

(i) 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.

(17m) “Health department” has the meaning given it in s. 250.01 (4), Stats.

(18) “Hot holding” means maintaining a TCS food at a temperature of 135°F or above after cooking or reheating.

(19) “Imminent health hazard” means a condition that presents a substantial likelihood to cause severe adverse health consequences or death.

(20) “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.

(21) “Meal” means food that is ordered by, prepared for, or served to a customer with or without a beverage and is obtained from the retail food establishment in a ready-to-eat form with the expectation of immediate consumption, although consumption may occur at another location. “Meal” does not include single-bite sized free food samples or an equivalent portion given away to demonstrate the characteristics of the food.

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

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

(24) “Mobile retail food establishment” has the meaning of “mobile food establishment” given in ch. ATCP 75 Appendix part 1-201.10 (B).

(25) “Mobile or transient retail food establishment-not serving meals” means any of the following:

(a) A mobile retail food establishment, as defined in sub. (24), or a transient retail food establishment, as defined in sub. (39), where food processing is conducted primarily for direct retail sale of “time/temperature control for safety food” to consumers at the

mobile or transient facility, and does not prepare, serve, or sell any meals.

(b) A mobile retail food establishment, as defined in sub. (24), or a transient retail food establishment, as defined in sub. (39), from which food is sold to consumers at retail, whether or not that mobile or transient facility sells “time/temperature controlled for safety food” or processes food, and does not prepare, serve, or sell any meals.

(26) “Mobile or transient retail food establishment-serving meals” means a mobile retail food establishment, as defined in sub. (24), or a transient retail food establishment, as defined in sub. (39), that prepares, serves, or sells any meals.

(27) “New retail food establishment” means a retail food establishment not previously operated by the current license applicant.

(28) “Occasional” or “occasionally” means not more than 12 days for non-meal food sales and not more than 3 days for meal food sales during any licensing year.

(29) “Person” has the meaning in ch. ATCP 75 Appendix part 1-201.10.

(30) “Personal Chef” means an individual hired to prepare meals in a person’s private home for that individual, their family, or non-paying guests.

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

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

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

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

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

(32) “Retail” means selling food or food products directly to any consumer only for consumption by the consumer or the consumer’s immediate family or non-paying guests.

(33) “Retail food establishment” includes all of the following:

(a) Retail food establishment-not serving meals as defined in sub. (34).

(b) Retail food establishment-serving meals as defined in sub. (35).

(c) Vending machine as defined in sub. (40).

(d) Micro market as defined in sub. (22).

(e) Mobile or transient retail food establishment - not serving meals as defined in sub. (25).

(f) Mobile or transient retail food establishment - serving meals as defined in sub. (26).

(g) Retail food establishment serving prepackaged meals as defined in sub. (36).

(34) “Retail food establishment- not serving meals” means any of the following:

(a) A permanent retail food establishment where food processing is conducted primarily for direct retail sale of “time/tem-

perature controlled for safety food” to consumers at the facility, and the total non-meal sales exceed 50% of all retail food sales.

(b) A permanent retail food establishment from which food is sold to consumers at retail, whether or not that facility sells “time/temperature controlled for safety food” or processes food, and the total non-meal sales exceed 50% of all retail food sales.

(35) “Retail food establishment- serving meals” means a permanent retail food establishment operating as a restaurant where the total meal sales exceed 50% of all retail food sales. A retail food establishment- serving meals includes any building, room, or place where meals are prepared, served, or sold to the general public and all places used in connection with the building, room, or place; and any public or private school lunchroom for which food service is provided by contract. A retail food establishment-serving meals 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) Non-profit organizations, under 26 USC 501 (c), including 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 licensed vending machine that serves food or beverages.

(f) 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.

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

(h) A potluck event.

(36) “Retail food establishment serving prepackaged meals” means a retail food establishment-serving meals that only serves individually wrapped single food servings that are prepared and packaged off-premises by a food processing plant or retail food establishment, licensed under s. ATCP 75.06 (1), with preparation at the retail food establishment limited to heating and serving by establishment personnel.

(37) (a) “Special event” means a department-recognized event that is sponsored, planned, organized, and publicly advertised by organizations that include the following:

1. Neighborhood associations.
2. Religious groups.
3. Cultural groups.
4. Political parties.
5. Churches.
6. Schools.
7. Sports teams.
8. Fraternal organizations.
9. Non-profit organizations.
10. City, county, state or federal governments.

(b) Special events are limited to gatherings of people for concerts; sporting events; trade shows; flea markets or farmers markets; public exhibitions by artists, craftsman, or vehicle enthusiasts; a fair, carnival, circus, or governmentally recognized celebration based on a specific calendar date such as a holiday or anniversary; or any other event approved by the regulatory agency. A “potluck” is not a “special event”.

(38) “Time/temperature control for safety food” or “TCS food” has the meaning given in ch. ATCP 75 Appendix part 1-201.10 (B).

(39) “Transient retail food establishment” means a temporary retail food establishment that operates at a fixed location in conjunction with a special event and sells or serves food for a period of no more than 14 consecutive days or in conjunction with an occasional sales promotion.

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

(41) “Vending machine location” has the meaning in s. 97.01 (15w), Stats.

(42) “Vending machine operator” has the meaning prescribed in s. 97.01 (15y), Stats.

(43) “Wholesale” means the sale of any food to a person or commercial entity who will either re-sell it, distribute it for resale, or use it as an ingredient in a product that will be offered for sale. “Wholesale” includes activities in which the processor relinquishes control of the food. “Wholesale” does not include the movement of food between two food processing plants or retail food establishments licensed to the same licensee, except for the movement of dairy products as specified in s. ATCP 65.04.

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20; correction in numbering of (17m), (37) (a) made under s. 13.92 (4) (b) 1., Stats., and correction in (6), (12), (18), (21), (22), (37) (intro.) made under s. 35.17, Stats., Register July 2020 No. 775.

Subchapter II — Licensing and Fees

ATCP 75.06 Retail food establishments; licensing.

(1) **LICENSE REQUIRED.** Except as provided under s. ATCP 75.063, no person may operate a retail food establishment without a valid license issued by the department or its agent. Issuance of a retail food establishment license shall be done in accordance with all of the following:

(a) Each retail food establishment shall have a separate license.

(b) The current retail food establishment license issued by the department or its agent shall be posted in a place visible to the general public. A license may not be altered or defaced.

(c) A retail food establishment license is not transferable between persons or establishments.

Note: An agent, as defined in s. ATCP 75.04(4), has authority under s. 97.615 (2) (d), Stats., to establish and collect fees for licenses issued by the agent. The operator of a retail food establishment licensed by an agent should contact the agent for its license fee schedule.

(2) **LICENSE DURATION AND RENEWAL.** (a) Each license issued under this subchapter expires on June 30, except that a license initially issued during the period beginning on April 1 and ending on June 30 expires on June 30 of the following year, except when any of the following conditions exist:

1. The agent of a city of the 1st class may issue to a retail food establishment the license required under sub. (1) at any time during the year. A license issued under this subdivision shall expire one year from the date of its issuance.

2. The license holder may request an extension to the term of a license, issued under par. (a) by the agent of a city of the 1st

class, for the purpose of aligning the annual term of any other license or permit issued to that retail food establishment with the annual term of a license to be issued to that retail food establishment under subd. 1. The agent may require the license holder that receives an extension under this subdivision to pay a prorated fee in an amount determined by dividing the license fee imposed under s. 97.41 (4), Stats., by 12 and multiplying the quotient by the number of months by which the license issued under par. (a) is extended under this subdivision.

(b) Each license shall be renewed annually as provided in sub. (3).

(c) Transient retail food establishment licenses shall be valid for a period not to exceed 14 days in conjunction with a specific special event.

(3) **LICENSE APPLICATION AND RENEWAL.** (a) *Initial license.* A person applying for a retail food establishment license shall apply on a form provided by the department or its agent. The applicant shall fully complete the application form and send it with all applicable fees required under this section and any previous fees due to the department.

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

(b) *License renewal.* To renew the license of a retail food establishment, the license holder shall pay the fee, specified under Table ATCP 75.08 B, to the department before the license expires, along with any previous fees due to the department. If the license holder does not make the payment to renew the license of a retail food establishment to the department before the license expiration date, the late fee specified under Table ATCP 75.08 B shall be paid in addition to the license fee.

Note: Contact the department at (608) 224-4720 for questions regarding a retail food establishment license renewal or to determine which agent to contact.

(c) *Refusal of license issuance or renewal.* The department or its agent may refuse to issue or renew a license to operate a retail food establishment under any of the following circumstances:

1. The department or its agent has not conducted a pre-licensing inspection of a new retail food establishment.

2. The license holder has not corrected a violation for which the department or agent has issued a written health or safety related order at the retail food establishment.

3. The license holder has not paid all applicable fees under s. ATCP 75.08, including the permit fee, pre-licensing fee, reinspection fee, or other applicable fees.

4. The license holder or applicant has modified, repaired, or maintained the retail food establishment in a manner that does not comply with ch. ATCP 75 Appendix.

5. The license holder or applicant has violated ch. 97, Stats., ch. ATCP 75, 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 retail food establishment.

(4) **ACTION ON LICENSE APPLICATION.** Within 30 business days after the department or its agent 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.

(5) **PRE-LICENSING INSPECTION.** (a) Except as specified in par. (am), (b), or (c), the department or its agent may not issue a license for a new retail food establishment until it conducts a pre-licensing inspection of the new retail food establishment for com-

pliance with this chapter and all fees in Table ATCP 75.08 B have been paid, including any applicable pre-licensing fee.

(am) A pre-licensing inspection may not be conducted for a transient retail food establishment, vending machine, or vending machine operator.

(b) A pre-licensing inspection may not be conducted and a pre-licensing fee may not be charged under any of the following conditions:

1. An individual license holder transfers ownership of the retail food establishment to an immediate family member, as defined in s. 97.605 (4) (a) 2., Stats.

2. A retail food establishment remains at the location for which the license was issued and at least one individual who had an ownership interest in the sole proprietorship or business entity to which the license was issued retains an ownership interest in the newly formed sole proprietorship or business entity that will be the license holder.

3. A mobile retail food establishment license holder transfers from an agent issued license to a State-issued license.

(c) Initial inspection of micro-market. The department or its agent may issue a license for a new retail food establishment that is a micro-market before it inspects the new retail food establishment that is a micro-market for compliance with this chapter. Before one year after the date that the department or its agent issues a license for a new retail food establishment that is a micro-market, it shall inspect the new retail food establishment for compliance with this chapter.

(6) CONDITIONAL LICENSE. Except as provided in s. 93.135, Stats., the department may condition the initial issuance, renewal, or continued validity of a license issued under this section upon the requirement that the license holder correct a violation of this chapter and ch. ATCP 75 Appendix, s. 97.605, Stats., or ordinances adopted under s. 97.615 (2) (g), Stats., within a period of time specified by the department or its agent. If the condition is not met within the specified time or after an extension of time as approved by the department or its agent, the license is void. No person may operate a retail food establishment after a license 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. A license holder, whose license is voided under this paragraph, may appeal the decision under s. ATCP 75.14 or 75.16. The license holder may reapply for a new license when they have met requirements under this chapter.

(7) VOIDED LICENSE FOR FAILURE TO PAY FEES. If an applicant or license holder fails to pay all applicable fees, late fees, and processing charges under s. ATCP 75.08 (3) within 15 days after the applicant or owner receives notice of an insufficiency or within 45 days after the expiration of the license, whichever occurs first, the license is void. A license holder, whose license is voided under this subsection, may appeal the decision under s. ATCP 75.14 or 75.16. In an appeal concerning a voided license under this subsection, the burden of proof is on the license applicant or holder to show that all applicable fees, late fees, and processing charges have been paid. During any appeal process concerning a payment dispute, operation of the retail food establishment is deemed to be operation without a license and is subject to the fees under s. ATCP 75.08 (3) (e) in addition to the fees otherwise due, unless the applicant or license holder meets its burden of proof under this subsection.

(8) LICENSE HOLDER QUALIFICATIONS. To qualify for a license, an applicant shall do all of the following:

(a) Be an owner of the retail food establishment or an officer of the legal entity owning the retail food establishment.

(b) Comply with the requirements of this chapter.

(c) Allow authorized representatives of the department or its agent access to the retail food establishment and provide required information to those authorized representatives.

(d) Pay the applicable license fees at the time the application is submitted.

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20; correction in numbering of (5) (ag), (am) made under s. 13.92 (4) (b) 1., Stats., correction in (5) (ag) made under s. 13.92 (4) (b) 7. and 35.17, Stats., and correction in (6), (7) made under s. 35.17, Stats., Register July 2020 No. 775.

ATCP 75.063 Retail food establishments; license exemptions. A retail food establishment license is not required under s. 97.30 (2) (b), Stats., or this section for any of the following:

(1) A retail food establishment that sells only packaged foods or fresh fruits and vegetables, provided the establishment does not sell “time/temperature control for safety food” and does not engage in food processing.

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

(a) The person operates the retail food establishment at the same location as the licensed food processing plant.

(b) Sales from the retail food establishment are included in the computation of the food processing plant license fee under s. ATCP 70.06.

(c) Retail food sales from that location comprise no more than 25% by dollar volume of all food sales from that location.

(d) The operator of the food processing plant is not engaged in the activity of a retail food establishment – serving meals.

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

(a) The person operates the retail food establishment at the same location as the licensed dairy plant.

(b) 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.

(c) The operator of the dairy plant is not engaged in the activity of a retail food establishment – serving meals.

(4) A vending machine commissary, including one that supports operations of a micro market, or a warehouse supporting operations of vending machines or a micro market.

(5) A retail food establishment primarily engaged in selling honey, cider, sorghum, or maple syrup produced by the operator of the retail food establishment, if the operator conducts no other food processing activities at that retail food establishment.

(6) A retail food establishment – not serving meals, operated occasionally by a religious, charitable or nonprofit organization as defined under 26 USC 501 (c).

(7) A retail food establishment – serving meals, operated by a church; religious, fraternal, youth, or patriotic organization; service club; or civic organization, as defined under 26 USC 501 (c), that occasionally prepares, serves, or sells meals to transients or the general public.

(8) A contract cook who does all of the following:

(a) Is paid for his or her service, culinary skills, technique, or expertise.

(b) Uses the food provided by the contractor employing the cook’s services.

(c) Does not prepare or store food in quantities sufficient 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 retail food establishment license.

(d) 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 retail food establishment license.

(9) A personal chef who does all of the following:

(a) Is paid for his or her service, culinary skills, technique, or expertise.

(b) Either uses food provided by the contractor employing the chef's services or the chef shops for food from a list provided by the contractor.

(c) Uses only the home kitchen of the contractor to prepare food for the contractor, contractor's family, or contractor's non-paying guests.

(d) Does not prepare or store food in quantities sufficient for use at multiple sites or for meals served to the general public. If a personal chef prepares or stores food in bulk quantities for use at multiple sites or for meals served to the general public, the personal chef shall obtain a retail food establishment license.

(e) Does not transport any portion of a meal prepared by the personal chef from one location to another location. If a personal chef transports any portion of a meal prepared by the personal chef from one location to another location, the personal chef shall obtain a retail food establishment license.

(10) The location where a caterer is serving food that was prepared at the caterer's licensed retail food establishment.

(11) At a business location to which a licensed retail food establishment transports prepared food and conducts sales of individual meals directly to a work place's employees or the guests of the employees for no more than 2 days in any 7 day period at the same location, if all of the following requirements are met:

(a) The license holder shall conduct all food preparation activities at the licensed retail food establishment, except for final assembly at the service location.

(b) The license holder shall transport all food to the service location.

(c) The license holder shall conduct all food service and sales.

(d) The license holder shall provide food service utensils in sufficient quantity to adequately facilitate the meal service.

(e) The license holder shall clean and sanitize onsite food equipment before and after use.

(f) The license holder shall return all food, utensils, and service ware to the licensed retail food establishment for disposal or cleaning and sanitizing.

(g) The license holder and business shall have a written agreement requiring adequate access and use of conveniently located restrooms by the license holder staff at the service location. The license holder shall furnish the written agreement to the division or its agent upon request.

(h) In the absence of adequate hand washing facilities, the license holder shall provide portable handwash facilities (i.e. foot pump, electrical, or battery operated) at the service location during food service.

(i) The license holder shall employ a certified food protection manager, as defined in s. ATCP 75.04 (7), who shall be present at the service location during food service.

(j) The license holder shall transport and hold food at temperatures, according to either the requirements in ch. ATCP 75 Appendix or an approved time-as-a-public-health-control-plan.

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20; correction in (8) (c), (d), (9) (d), (e) made under s. 35.17, Stats., Register July 2020 No. 775.

ATCP 75.065 Retail food establishments; license exemption for food processing. (1) A license holder may

wholesale up to 25% of the gross annual sales of food that is manufactured and used in the retail food establishment without obtaining an additional food processing plant license under ch. ATCP 70. This exemption does not allow the manufacturing for wholesale or distribution of any of the following:

(a) Food that must be processed, in compliance with 21 CFR 108, 113, 114, in hermetically sealed containers.

(b) Dairy products or amenable meat and poultry products, except as allowed in ch. ATCP 55.

(c) Food processed at a mobile or transient retail food establishment.

(2) The following items may be processed in a retail food establishment under the 25% wholesale exemption in sub. (1):

(a) Juice processed in compliance with 21 CFR part 120.

(b) Fish and fishery products processed in compliance with 21 CFR part 123.

(3) The license holder is responsible for notifying, as deemed appropriate by the license holder, wholesale customers of any adulterated or misbranded products as necessary to protect public health. No written recall plan is required. Examples of customer notification could include website language, email, mail system, face-to-face, or other effective methods.

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20; correction in (2) (a), (b) made under s. 35.17, Stats., Register July 2020 No. 775.

ATCP 75.067 License holder responsibilities. Upon acceptance of the license issued by the department or its agent, the license holder shall do all of the following in order to retain the license:

(1) Comply with the provisions of this chapter and ch. ATCP 75 Appendix, including the conditions of a variance granted as specified in ch. ATCP 75 Appendix part 1-106.14.

(2) If a license holder is required to operate with a HACCP plan, under ch. ATCP 75 Appendix part 1-106.11, it shall comply with the plan as specified in ch. ATCP 75 Appendix part 1-106.14.

(3) Immediately contact the department or its agent to report an illness of a food employee or conditional employee as specified in ch. ATCP 75 Appendix part 2-201.11(B).

(4) Immediately discontinue operations and notify the department or its agent if an imminent health hazard may exist.

(5) Replace existing facilities and equipment that no longer comply with the criteria set forth in ch. ATCP 75 Appendix.

(6) Comply with directives of the department or its agent including deadlines for taking corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the department or its agent for the license holder's retail food establishment or in response to community emergencies.

(7) Accept notices issued and served by the department or its agent according to law.

(8) Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with ch. ATCP 75 Appendix, and any other directive of the department or

its agent, including deadlines for corrective actions specified in inspection reports, notices, orders, warnings, and other directives.

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20; correction in (1) made under s. 35.17, Stats., Register July 2020 No. 775.

ATCP 75.07 Mobile retail food establishment base; licensing. (1) Except for a mobile retail food establishment that operates only as a transient retail food establishment, each mobile retail food establishment shall have a base with its own license. The license holder shall submit a copy of the base license to the department or its agent upon application for a mobile retail food establishment license.

(2) The base shall be appropriate to support all the activities that will occur at the mobile retail food establishment, such as food preparation activities, cleaning and sanitization, storage, water and waste water handling and disposal.

(3) The license holder shall post a copy of the base license in a visible location in the mobile retail food establishment.

(4) The license holder shall provide a regulatory authority inspection report from the last 12 months for the base location upon request by the department or its agent.

(5) The license holder shall provide a copy of the schedule for the use of the base to the department or its agent upon request.

(6) The license holder, upon the department or its agent's request, shall provide details showing how the license holder will store, prepare, and hold for service, food in the mobile retail food establishment.

(7) The department and its agent shall honor a current base license from another state, if the license holder meets the relevant conditions under this section.

(8) The department may grant a variance, as specified in ch. ATCP 75 Appendix part 1-104.11, for a mobile food establishment to operate without a licensed base.

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20.

ATCP 75.075 Plan review. (1) **APPROVAL REQUIRED.** An applicant or license holder of a new or extensively remodeled retail food establishment shall submit a retail food establishment plan to the department or its agent. The department or its agent may require an applicant or license holder to submit this documentation when a change of ownership has occurred. An applicant or license holder shall obtain plan approval from the department or its agent before any of the following occurs:

(a) The applicant or license holder begins construction of a retail food establishment.

(b) The license holder modifies or extensively remodels a retail food establishment.

(2) **APPLICATION FOR PLAN APPROVAL.** (a) An applicant for plan approval shall submit all of the following to the department or its agent:

1. A fully and accurately completed, signed, and dated application for plan approval on a form provided by the department or its agent.

2. Equipment layout plans.

3. Equipment schedules.

4. Detailed descriptions of food processing operations.

5. Menus.

6. Copies of other state, county, or municipal approvals relating to the operation of the retail food establishment.

7. A copy of the plans and specifications drawn to scale or a drawing indicating distance of separation measured in feet in accordance with the applicable requirements of this chapter.

8. Any other information required by the department or its agent regarding the operation of the retail food establishment as it relates to the health, safety, and welfare of the public.

Note: To obtain a copy of the plan approval application form, send an email to datcpdfslicensing@wisconsin.gov or contact the Bureau of Food and Recreational Businesses at (608) 224-4700 or PO Box 8911, Madison, Wisconsin 53708-8911.

(b) If the department or its agent receives a plan or application that is not completed as specified in par. (a), the department shall contact the plan applicant to seek additional information.

(c) Within 30 days after receipt of complete information under par. (a), or any additional information requested under par. (b), the department or its agent shall approve or deny the plan. If the department or its agent approves the plan, the department or its agent shall issue a plan approval letter to the plan applicant. If the department or its agent denies a plan, it shall give the plan applicant the reason for the denial, in writing. The plan applicant may appeal the decision made by the department or its agent under ss. ATCP 75.14 and 75.16.

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20; correction in numbering of (1) made under s. 13.92 (4) (b) 1., Stats., Register July 2020 No. 775.

ATCP 75.08 Retail food establishment fees. (1) **LICENSE CATEGORY ASSIGNMENT.** (a) *Criteria.* 1. Except for a retail food establishment serving only prepackaged foods or meals, a transient retail food establishment, a vending machine, a micro market, or a mobile retail food establishment base with no food preparation, the department or its agent shall assign a retail food establishment to a license category by evaluating the complexity of the retail food establishment based on the criteria specified in Table A in this section.

2. The department or its agent shall assign a retail food establishment, whose point value is not greater than 2.5, to the simple license category.

3. The department or its agent shall assign a retail food establishment, whose point value is more than 2.5, but not greater than 4.5, to the moderate license category.

4. The department or its agent shall assign a retail food establishment, whose point value is 4.5 or more, to the complex license category.

5. If the department or its agent orders a retail food establishment closed, or it has caused a foodborne illness outbreak, the department or its agent shall immediately assign the retail food establishment to the complex category for the current and following licensing year. If no further outbreaks or closures occur, the department or its agent may reduce the license to the appropriate license category assignment.

Note: The cause of a foodborne illness outbreak is determined using standard epidemiological practices.

ATCP 75.08

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(b) *Point values for determining factors for assigning a retail food establishment's license category.*

Table A

Determining Factors for Assigning License Categories	Point Value
A retail food establishment that only sells pre-packaged food or meal items, regardless if the food items are time/temperature controlled for safety food.	0
The retail food establishment does not serve meals and has annual gross food sale receipts less than \$25,000.	0.25
The retail food establishment does not serve meals and has annual gross food sale receipts more than \$25,000 but not more than \$1,000,000.	0.5
The retail food establishment does not serve meals and has annual gross food sale receipts more than \$1,000,000 but not more than \$5,000,000.	1
The retail food establishment does not serve meals and has annual gross food sale receipts more than \$5,000,000.	2
The retail food establishment contains a self-service salad or food bar.*	1
The retail food establishment handles raw poultry, meat, eggs, or seafood.	1
The retail food establishment has a variance under 3-502.11 (special processing methods**) or a required HACCP plan under 3-502.12 (reduced oxygen packaging) of ch. ATCP 75 Appendix, Wisconsin Food Code.	1
The retail food establishment has an approval under 3-301.11 (bare hand contact plan) or 3-501.19 (time as a public health control plan) of ch. ATCP 75 Appendix, Wisconsin Food Code.	1
The retail food establishment has a catering operation or processes, packages, or holds customer preordered meals or food items.	1
The retail food establishment does cold holding, hot holding, or reheating of time/temperature control for safety foods.	1
The retail food establishment does cooling of cooked or reheated time/temperature control for safety foods.	1
The retail food establishment prepares TCS food at their location and then transports it to be sold, under the wholesale exemption for retail food establishments.	1
The retail food establishment serves or sells food that requires food processing activities including chopping, dicing, mixing, slicing, blanching, boiling, cooking, packaging, and assembly in order for that product to be served or sold.	1
The retail food establishment has one or more additional areas where food preparation activities occur.	1
The retail food establishment specifically prepares or serves food to a population identified as highly susceptible, such as a nursing home or day care.	1
The retail food establishment has a customer seating capacity greater than 75, or operates a motor vehicle drive-through service window for food purchase and service.	1

* If only "condiments" or other non-meal, ready-to-eat, non-TCS foods are offered or displayed for customer self-service, that display does not qualify as a salad or food bar, such as, but not limited to, pickles, onions, non-TCS dessert topping, relishes, garnishes, and bakery items.

** Smoking, curing, using food additives or components for preservation rather than flavor, reduced oxygen packaging, operating a molluscan shellfish life-support system, custom processing, sprouting seeds or beans, or any other method as determined by the department to require a variance.

(c) *Request for different license category assignment.* The license holder may ask the department or its agent to reconsider the retail food establishment's license category assignment within 30 days of the category assignment.

Note: To request reconsideration of license category assignment, contact the Bureau of Food and Recreational Businesses at 608-224-4700 or send your written request to the Bureau of Food and Recreational businesses at P.O. Box 8911 Madison, WI 53708-8911. For an agent reconsideration, please contact the agent health department.

(2) FEE SCHEDULE. An applicant to the department for a retail food establishment license shall pay an annual license fee as indicated in Table B:

Table B						
Type of Retail Food Establishment	License Fee	PreLicensing Inspection Fee	Reinspection Fee	Additional Reinspection Fees	Late Fee	Operating Without a License Fee
Retail Food Establishment – not serving meals (includes mobile retail food establishment – not serving meals)						
Prepackaged TCS food	\$45.00		\$90.00	\$90.00	\$9.00	\$90.00
Simple (final food product is Non-TCS)	\$60.00		\$90.00	\$90.00	\$12.00	\$100.00
Simple (TCS)	\$190.00		\$190.00	\$190.00	\$38.00	\$100.00
Moderate	\$265.00		\$190.00	\$190.00	\$53.00	\$100.00

Table B (Continued)						
Type of Retail Food Establishment	License Fee	PreLicensing Inspection Fee	Reinspection Fee	Additional Reinspection Fees	Late Fee	Operating Without a License Fee
Complex	\$685.00		\$450.00	\$450.00	\$137.00	\$100.00
Retail Food Establishment – serving meals (includes Retail food establishment serving prepackaged meals and mobile retail food establishments – serving meals)						
Prepackaged TCS	\$105.00	\$130.00	\$98.00	\$130.00	\$21.00	\$749.00
Simple	\$230.00	\$320.00	\$240.00	\$320.00	\$46.00	\$749.00
Moderate	\$330.00	\$470.00	\$353.00	\$470.00	\$66.00	\$749.00
Complex	\$540.00	\$770.00	\$578.00	\$770.00	\$108.00	\$749.00
Transient Retail Food Establishment						
Non-TCS food	\$75.00					
TCS Food	\$170.00					
Prepackaged TCS food only	\$45.00					
Mobile Retail Food Establishment Base						
No food preparation or processing activities	\$45.00		\$45.00	\$45.00	\$9.00	\$90.00
All other base license fees are calculated on the risk category assignment in Table A in this section for the activity conducted at the base.						
Vending						
Vending machine operator	\$125.00				\$25.00	\$749.00
Vending machine license	\$9.00 per machine					\$27.00 per machine
Micro Markets						
Single location	\$40.00				\$8.00	\$80.00
Multiple locations (on the same premises).	\$60.00				\$12.00	\$100.00

Note: A person applying for an annual retail food establishment license may be required to pay, in addition to the license fee listed in Table B, a weights and measures inspection fee under s. ATCP 92.12.

(3) TYPES OF FEES. (a) *Pre-licensing inspection fee.* The applicant shall pay to the department the applicable pre-licensing inspection fee listed in Table B before a license is issued to a new retail food establishment under s. ATCP 75.06.

(b) *License fee.* 1. Except as specified in subd. 2., the applicant shall pay an annual license fee to the department, as listed in Table B, for each retail food establishment that the applicant applies for a license to operate under s. ATCP 75.06. The department or its agent shall base the annual license fee on the point values assigned to the retail food establishment under Table A.

2. Table A does not apply to a retail food establishment serving prepackaged meals or a retail food establishment - not serving meals with only prepackaged foods, a transient retail food estab-

lishment, a mobile retail food establishment base with no food service or processing activities, a vending machine and vending machine operator, or a micro market. Fees for these retail food establishments are listed separately in Table B.

(c) *Late fee.* If the license holder does not pay the fee for a license renewal before the expiration date of the license, the license holder shall pay to the department the applicable late fee, as indicated in Table B, in addition to the renewal license fee.

(d) *Reinspection fee.* If the department reinspects a retail food establishment because the department has found a violation of ch. 97, Stats., this chapter, or its appendix during the preceding inspection, the department shall charge the license holder the reinspection fee specified in Table 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 to the license holder. If an additional reinspection is required to correct violations of ch. 97, Stats., this chapter, or its Appendix, the department shall assess an additional reinspection fee as listed in Table B.

(e) *Operating without a license fee.* Any license holder found to be operating a retail food establishment without a license shall pay to the department the applicable fee indicated in Table B for their designated license category. For any license holder found to be operating a vending machine without a license, the license holder shall pay to the department 3 times the annual vending machine license fee listed in Table B, in addition to all applicable fees.

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

(f) *Fees for special condition inspections.* For each inspection or consultation activity that is not directly related to the department's licensing responsibilities, the department may charge the requestor \$175.

(g) *Fee for operating without a certified food protection manager.* The department shall charge the license holder \$150 for operating without a certified food manager as defined in s. ATCP 75.04 (7).

Note: Certified food manager requirements may be found in Chapter 12 of ch. ATCP 75 Appendix.

(4) **METHOD OF PAYMENT.** If the applicant or license holder pays for a retail food establishment license by check or other draft drawn upon an account containing insufficient funds, the applicant or license holder shall, within 15 days after receipt of notice from the department of the insufficiency, pay all applicable fees and the financial institution's processing charges by cashier's check or other certified draft, or money order.

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20; correction in the numbering of (4) made under s. 13.92 (4) (b) 1., Stats., Register July 2020 No. 775.

Subchapter III — Enforcement and Appeals

ATCP 75.10 Enforcement. (1) **INSPECTIONS AND ACCESS TO THE PREMISES.** (a) *Inspections.* Under s. 97.12 (1) Stats., for the purpose of enforcing this chapter, the department and its agents may, at reasonable hours, enter and inspect any premises for which a license is required under this chapter or any farm, factory, warehouse, building, room, establishment or place at or in which foods are manufactured, processed, packed, packaged, stored or held for sale, and may enter any vehicle, including a vehicle used to transport or hold foods in commerce. The department and its agents may also secure samples or specimens, including samples or specimens of food and any product or substance that may affect food, examine and copy relevant documents and records, and obtain photographic and other evidence needed to enforce this chapter or a rule promulgated under this chapter. The department shall examine any samples secured and shall conduct other inspections and examinations needed to determine whether there is a violation of this chapter. The department shall pay or offer to pay the market value of samples taken.

(b) *Reinspections.* The department or its agent may reinspect a retail food establishment 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 retail food establishment. The time between an inspection, investigation, and a reinspection shall be sufficient to allow the license holder time to correct the deficiencies. The department shall charge a reinspection fee, according to s. ATCP

75.08 Table B or the applicable charges as determined by an agent. If an additional reinspection is required because the license holder has not corrected a violation, the department shall assess the license holder an additional reinspection fee according to s. ATCP 75.08 Table B, or the applicable charges as determined by an agent. The department may order the license holder to show just cause why the license should not be suspended or revoked under s. ATCP 75.12.

(2) **GENERAL ORDERS TO CORRECT VIOLATIONS.** (a) If upon inspection of a retail food establishment, the department or agent finds that the retail food establishment is not designed, constructed, equipped or operated as required under ch. 97 Stat., ch. ATCP 75 or ch. ATCP 75 Appendix, the department or agent shall issue a written order to correct the violation. The order shall specify the correction needed for compliance and the deadline by which the license holder shall make the correction. The department or agent, at its discretion, may extend the deadline specified in the order.

(b) If the license holder does not make the corrections to the violations by the deadline stated in the order, or any extension of time granted for compliance, the department or agent may issue an order under s. ATCP 75.12 to suspend or revoke the license to operate the retail food establishment.

(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 the person. A person may appeal a forfeiture under s. ATCP 75.14.

(3) **HOLD ORDERS.** As specified under s. 97.12 (2), Stats.:

(a) Whenever any duly authorized inspector of the department has reasonable cause to believe that any food examined by him or her is adulterated or misbranded and is dangerous to health or misleading to the injury or damage of the purchaser or consumer, the inspector shall issue and deliver to the owner or custodian of the food a holding order prohibiting the sale or movement of the food for any purpose until the analysis or examination of the sample obtained has been completed. A holding order may be effective for a period of no longer than 14 days from the time of its delivery and it may be reissued for one additional 14-day period if necessary to complete the analysis or examination of the food.

(b) No food described in a holding order issued and delivered under par. (a) may be sold or moved for any purpose without the approval of the department until such analysis or examination has been completed within the time specified in par. (a). Upon completion of the analysis or examination either of the following may apply:

1. If the department upon completed analysis or examination determines that the food described in such holding order is not adulterated or misbranded, then the owner or custodian thereof shall be promptly notified in writing, and such holding order shall terminate upon notification.

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

disposition of the food. Such an order has the effect of a special order issued under s. 93.18, Stats.

(c) Any person violating an order issued under this subsection may be fined not more than the maximum amount or imprisoned not more than one year in the county jail or both. The maximum fine under this paragraph equals \$10,000 plus the retail value of the product moved, sold, or disposed of in violation of the order issued under this subsection.

(4) SPECIAL ORDERS AND ORDERS TO ABATE A DANGER TO PUBLIC HEALTH. As specified under s. 97.12 (3), Stats.:

(a) The department may issue a special order as provided under s. 93.18 Stats., to any person engaged in the production, processing, sale, or distribution of food if the department finds a violation of this chapter or the rules promulgated under this chapter. An order shall state the violations found and shall specify a deadline for correction.

(b) If the department finds that a piece of equipment, a facility, or a practice used is a danger to public health, it may order that the situation be abated or eliminated immediately and that the equipment, facility or practice not be used until the violation is corrected and the correction is confirmed by the department. The department may, instead of issuing an order, accept written agreements of voluntary compliance, which have the effect of an order.

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20; correction in (1) (b), (2) (a), (3) (intro.) made under s. 35.17, Stats., Register July 2020 No. 775.

ATCP 75.12 Suspension or revocation of license.

The department may, by summary order and without prior notice or hearing, suspend a license issued under this chapter if the department finds that there has been a substantial failure to comply with the applicable requirements of this chapter and the rules promulgated under this chapter and that the continuation of the violations constitutes a serious danger to public health. The order shall be in writing, have the force and effect of an order issued under s. 93.18, Stats., and is subject to right of hearing before the department, if requested within 10 days after date of service.

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20.

ATCP 75.14 Appeals of actions by the department; right of hearing. If requested in writing within 10-days after date of the service of an order, a hearing shall be conducted within 10 days after receipt of a request for a hearing. Enforcement of the order shall not be stayed pending action on the hearing.

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20.

ATCP 75.16 Appeals of actions by agent health departments. If an agent issues a license under this chapter, the agent shall create and follow enforcement and appeal procedures under s. 66.0417 Stats.

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20.

Subchapter IV — Standards for Retail Food Establishments

ATCP 75.18 Qualifications of an authorized representative conducting inspections. An authorized representative of the department or its agent who inspects a retail food establishment or conducts a plan review for compliance with ch. ATCP 75 and its Appendix shall meet the staffing qualification requirements set forth in s. ATCP 74.08.

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20.

ATCP 75.20 Inspections. (1) REFUSED INSPECTION; PROCESS. If a person denies access to the department or its agent,

the department or its agent shall inform the person of all the following:

(a) The license holder is required to allow access to the department or its agent as specified under s. ATCP 75.10 (1).

(b) Access is a condition of the acceptance and retention of a retail food establishment license to operate as specified under s. ATCP 75.06 (3) (c).

(c) If the license holder denies access to a retail food establishment to an authorized representative of the department or its agent, the department or its agent may apply for an inspection warrant to allow access as provided in law under s. 66.0119, Stats.

(2) REPORTING OF REFUSED ACCESS. If the person in charge continues to refuse access after the department or its agent presents credentials, provides the explanation in sub. (1), and makes a final request for access, the department or its agent shall document details of the denial of access on an inspection report form.

(3) FREQUENCY OF INSPECTION. (a) The department or its agent shall inspect a retail food establishment at least once during the licensing period.

(b) The department may approve, upon request, an increase in the interval between inspections beyond 12 months if any of the following conditions exist:

1. The retail food establishment is fully complying with a department-approved HACCP plan as specified in ch. ATCP 75 Appendix part 1-106.14.

2. The agent submits a plan to the department, requesting an inspection frequency based on the risk of food establishment operations using criteria under s. ATCP 75.08 (1) (a) and (b). The total number of inspections performed shall equal the number of licenses issued.

Note: The intent of this provision is to allow greater inspection frequency for high-risk retail food establishments by decreasing inspection frequency for low-risk retail food establishments.

(4) INSPECTION DOCUMENTATION. The department or its agent shall document all of the following on an inspection report form:

(a) Administrative information about the retail food establishment's legal identity, street and mailing addresses, type of establishment and operation, inspection date, and other information such as type of water supply and sewage disposal, status of the license, and personnel certificates that may be required at the retail food establishment.

(b) The conditions or other violations from this chapter and ch. ATCP 75 Appendix, that require corrective action by the license holder. An accompanying narrative shall contain all of the following:

1. A factual description of the violation observed, including location of the observed violation.

2. Citation and a brief description of the statute, administrative rule, or local ordinance for the observed violation.

3. A statement indicating what corrective action the license holder has taken, or shall take, to regain compliance with the administrative rule, statute, or local ordinance.

4. Unless otherwise indicated on the inspection report, each violation shall have a corrective action deadline. The corrective action deadline shall be based on the following criteria:

a. The nature of the potential hazard involved and the complexity of the corrective action needed. The department or its agent may agree to or specify additional time, not to exceed 72 hours after the inspection, for the license holder to correct violations of a priority item.

b. The license holder has a maximum time of 10 calendar days after the inspection for the license holder to correct violations of a priority foundation item or HACCP Plan deviation as defined in ch. ATCP 75 Appendix.

c. The license holder shall correct core items, as defined in ch. ATCP 75 Appendix, by a deadline agreed to or specified by the department or its agent, but no later than 90 calendar days after the inspection. The department or its agent may approve a written compliance schedule that extends beyond 90 calendar days, if the license holder submits a written schedule of compliance and no health hazard exists, or will result, from allowing an extended schedule for compliance.

(5) **ISSUING A REPORT AND OBTAINING ACKNOWLEDGMENT OF RECEIPT.** At the conclusion of the inspection, an authorized representative of the department shall sign the completed inspection report. The department or its agent shall then perform an exit interview and obtain a signature on the inspection report from the license holder's designated person in charge, as that term is used in ch. ATCP 75 Appendix part 2-101.11(A). A copy of the inspection report shall be left with the person in charge at the completion of the inspection or emailed or otherwise presented within 2 business days after completion of the inspection.

(6) **REFUSAL TO SIGN INSPECTION REPORT.** If the license holder's designated person in charge refuses to sign the inspection report, the department or its agent shall do all of the following:

(a) Inform the person who declines to sign the inspection report that a written acknowledgment of receipt is not an agreement with findings.

(b) Inform the person that refusal to sign the inspection report will not affect the license holder's obligation to correct the violations noted in the inspection report by the deadlines specified.

(c) Document the refusal to sign in the inspection report.

(7) **POSTING OF INSPECTION REPORTS.** The department and its agents shall make inspection reports available to the public on the internet.

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20; correction in (2), (4) (b) 2. made under s. 35.17, Stats., Register July 2020 No. 775.

Subchapter V — Vending Machines

ATCP 75.30 Applicability. (1) In addition to the specific requirements of ch. ATCP 75, vending machines shall meet applicable requirements in chapters 1 to 7 in ch. ATCP 75 Appendix.

(2) The provisions of this chapter apply to any vending machine offered for public use, except a vending machine which dispenses only pastry items, which have a pH level of 4.6 or below or a water activity (aw) value of 0.85 or less under standard conditions or are otherwise not time/temperature control for safety foods, or prepackaged Grade A pasteurized milk or milk products.

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20.

ATCP 75.32 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 the department, using construction criteria developed by the National Sanitation Foundation (NSF) or the National Automatic Merchandising Association (NAMA).

(2) **INSPECTION FOR EVIDENCE OF APPROVAL.** Whenever an authorized representative or agent of the department inspects a vending machine and finds that the vending machine does not contain an identifiable license as required under s. ATCP 75.06,

the authorized representative or agent of the department shall place the vending machine in a non-vend position by sealing the money or credit card insert slot, as applicable. Failure of the operator to maintain a non-vend condition until an authorized representative or agent of the department is satisfied that the vending machine is properly licensed and identified shall be cause for an action under ss. 97.65, 97.72, and 97.73, Stats.

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20.

ATCP 75.34 Vending machine records. (1) A vending machine location record shall be maintained on file at the license holder's place of business within the State. That record shall include all of the following location information for each machine:

- (a) Complete street address of the building.
- (b) The floor level in the building.
- (c) The room or area on the floor.

(2) The entry under each machine in the vending machine location record shall include the machine serial number and model number, the department's license number, and a designation of the machine by primary vending purpose. Primary vending purposes are:

- (a) Heated.
- (b) Refrigerated.
- (c) Beverages.
- (d) Food other than beverages.
- (e) A combination of any 2 of pars. (a) to (d).

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20.

ATCP 75.36 Maintenance and service connections.

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

(2) **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) *Miscellaneous openings.* Miscellaneous openings into the cabinet and through the cabinet wall, other than coin entrance, money or credit card slots, 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.

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

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20.

ATCP 75.38 Sanitization. (1) **CLEANING AND SANITIZING FACILITIES.** Approved facilities for cleaning and sanitizing equipment shall be available for each vending machine location or at a central location. At a central location, product contact surfaces shall be protected from contamination during storage, transportation, and installation. Facilities for cleaning and sanitizing shall include either a permanently fixed three-compartment sink large enough to accommodate the immersion of the largest equipment and utensil or portable washing facilities such as a service wagon, metal or plastic pails, or another mobile device which can be moved from one location to another.

(2) **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 all of the following conditions are met:

(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.

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

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20.

ATCP 75.40 Waste disposal. (1) **REMOVAL.** All trash and other food product waste material shall be removed from the vending machine location as frequently as may be necessary to prevent attracting vermin, or creating a nuisance and unsightliness, and shall be disposed of in a manner that will not attract insects or rodents.

(2) **CONTAINERS.** Self-closing, leak-proof 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.

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20.

ATCP 75.42 Delivery of foods. Foods, including beverages and ingredients, in transit to vending machine locations shall be protected from contamination with dirt, dust, insects, rodents, and other foreign material. Similar protection shall be provided for single-service containers, as defined in ch. ATCP 75 Appendix part 1-201.10, and for the product contact surfaces of equipment, containers, and devices in transit to machine locations.

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20.

Subchapter VI — Micro Markets

ATCP 75.44 Applicability of rules. This chapter and chapters 1 to 7 in ch. ATCP 75 Appendix, except for Part 2-1, apply to a micro market, as defined in s. ATCP 75.04 (22).

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20.

ATCP 75.46 Location. A micro market shall be located in the interior of a building that is not accessible to the general public. Access to the micro market shall be limited to a defined population of employees, guests, or occupants of the building where the establishment is located.

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20.

ATCP 75.48 License holder responsibilities. (1) **REQUIREMENTS.** The license holder shall assure that all of the following conditions are met:

(a) Food is from sources that comply with law.

(b) Packaged food is provided in tamper-evident packaging.

(c) Food is protected from potential sources of cross contamination.

(d) Food is maintained at safe temperatures during storage, transport and display.

(2) **MICRO MARKET OVERSIGHT.** Each micro market shall have a sign readily visible at the automated payment station stating all of the following:

(a) The name and mailing address of the license holder responsible for the establishment and to whom complaints and comments should be addressed.

(b) The telephone, email, or web information for the responsible license holder, when applicable.

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20.

ATCP 75.50 Nature and source of food and beverages offered for sale. All of the following requirements apply to a micro market:

(1) A license holder shall offer only commercially packaged foods properly labeled for individual retail sale.

(2) Food preparation by consumers is limited to heating or reheating food in a microwave oven.

(3) Dispensing of bulk food is prohibited.

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20.

ATCP 75.52 Equipment. (1) **REFRIGERATED DISPLAY EQUIPMENT FEATURES.** A micro market offering refrigerated or frozen foods shall be equipped with refrigeration or freezer units that have all of the following features:

(a) Self-closing doors that allow food to be viewed without opening the door to the refrigerated cooler or freezer.

(b) An automatic self-locking mechanism that prevents the consumer from accessing the unit upon failure of the refrigeration unit to maintain the appropriate temperature.

(2) **REFRIGERATED DISPLAY EQUIPMENT MAINTENANCE.** Automatic self-locking mechanisms that have been activated shall require an onsite visit by the license holder or designee to evaluate and restore access to the refrigeration equipment.

(3) **FOOD SERVICE EQUIPMENT LIMITATIONS.** Beverages shall be dispensed in amounts intended for a single serving size. Beverage dispensers connected to the building water supply shall be equipped with backflow prevention.

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20.

ATCP 75.54 Security. A micro market license holder shall provide and maintain continuous video surveillance of areas where consumers view, select, handle, and purchase products. The surveillance shall provide sufficient resolution to identify situations that may compromise food safety or result in food tampering. Video surveillance recordings shall meet all of the following requirements:

(1) The license holder shall retain video surveillance recordings for at least 14 days after the date of the surveillance.

(2) The license holder shall make retained video surveillance recordings available for inspection upon request by the department or its agent within 24 hours of a request.

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20.

ATCP 75.56 Routine maintenance at a micro market. The license holder shall maintain the micro market, food, equipment and utensils in a clean, sanitary and unadulterated condition. This includes the following activities:

(1) Checking food supplies and equipment for signs of product damage or tampering, and discarding damaged or tampered-with food.

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(2) Verifying refrigeration equipment is operating properly including any temperature display and self-locking mechanism.

(3) Cleaning food service dispensing and merchandising equipment and food display areas.

(4) Stocking food and disposable single-use and single-service supplies.

(5) Checking inventory for recalled foods.

(6) Performing any other reasonable actions to maintain a clean, sanitary and unadulterated condition in the micro market.

History: CR 17-074: cr. Register July 2020 No. 775, eff. 10-25-20.