

Chapter ATCP 71

FOOD WAREHOUSES AND MILK DISTRIBUTORS

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Note: Chapter Ag 42 was renumbered ch. ATCP 71 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448.

Note: Chapter ATCP 71 as it existed on June 30, 1994, was repealed and a new chapter ATCP 71 was created effective July 1, 1994.

ATCP 71.01 Definitions. As used in this chapter:

(1) "Cold storage warehouse" has the meaning specified in s. 97.27 (1) (a), Stats.

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

(3) "Food" has the meaning specified in s. 97.01 (6), Stats.

(4) "Food warehouse" means a warehouse used for the storage of food, and includes a cold storage warehouse, frozen food warehouse and frozen food locker plant. "Food warehouse" does not include:

(a) A warehouse used solely for the storage of grain or other raw agricultural commodities.

(b) A retail food establishment, restaurant or other retail facility at which food is stored on a temporary basis incidental to retail preparation or sale.

(c) A warehouse located in a dairy plant licensed under s. 97.20, Stats., a food processing plant licensed under s. 97.29, Stats., or a meat establishment licensed under s. 97.42, Stats., and used primarily for the storage of food ingredients or food products manufactured or processed at the licensed establishment.

(d) A warehouse operated by a milk distributor licensed under s. 97.21 (3), Stats., and used primarily for the storage and distribution of milk and fluid milk products, as defined in s. 97.20 (1) (c) and (g), Stats.

(e) A facility owned or operated by a consumer and used by that consumer to store food for the consumer's use.

(5) "Frozen food locker plant" has the meaning specified in s. 97.27 (1) (c), Stats.

(6) "Frozen food warehouse" has the meaning specified in s. 97.27 (1) (d), Stats.

(6m) "Milk distributor" has the meaning given in s. 97.21 (1) (e), Stats.

(7) "Potentially hazardous food" means any food that can support the rapid and progressive growth of infectious or toxicogenic microorganisms.

(8) "Regularly scheduled inspection" means a routine inspection, other than an inspection scheduled in response to a finding of a violation of ch. 97, Stats., or this chapter.

(8m) "Storage facility" means each location where a milk distributor stores milk.

(9) "Warehouse" means any building, room, structure or facility used for the storage of property.

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94; CR 05-044: cr. (6m) and (8m) Register December 2005 No. 600, eff. 1-1-06.

ATCP 71.02 Food warehouse license; fees.

(1) LICENSE REQUIRED. No person may operate a food warehouse without a valid license issued by the department under s. 97.27, Stats., for that food warehouse. A food warehouse license expires on June 30 annually. A separate license is required for every food

warehouse location. A license is not transferable between persons or food warehouses.

Note: If a food warehouse is operated as a public storage warehouse, the food warehouse must also be licensed under ch. 99, Stats.

(2) LICENSE APPLICATION. Application for an annual food warehouse license shall be made on a form provided by the department. The application shall include applicable fees and surcharges required under this section. An application shall include all of the information required under this section for licensing purposes.

Note: A license application form may be obtained from the State of Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, P. O. Box 8911, Madison, WI 53708-8911.

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

(a) For a warehouse that stores potentially hazardous food, and has fewer than 50,000 square feet of storage area, \$120.

(b) For a warehouse that stores potentially hazardous food, and has at least 50,000 square feet of storage area, \$320.

(c) For a warehouse that does not store potentially hazardous food, and has fewer than 50,000 square feet of storage area, \$80.

(d) For a warehouse that does not store potentially hazardous food, and has at least 50,000 square feet of storage area, \$160.

(4) SURCHARGE AND PAST FEES FOR OPERATING WITHOUT A LICENSE. (a) An applicant for a food warehouse license shall pay a license fee surcharge of \$100 if the department determines that, within 365 days prior to submitting the license application, the applicant operated the food warehouse without a license in violation of sub. (1).

(b) In addition to paying the license fee surcharge under par. (a), an applicant who violated sub. (1) shall pay all fees, set forth in a statement from the department, that are due for the license year in which the applicant violated sub. (1).

(c) Payment of the license fee surcharge and past fees under pars. (a) and (b) does not relieve the applicant of any other civil or criminal liability that results from the unlicensed operation of a food warehouse, but does not constitute evidence of any violation of law.

(5) REINSPECTION FEE. (a) If the department reinspects a food warehouse because the department has found a violation of ch. 97, Stats., or this chapter on a regularly scheduled inspection, the department shall charge the food warehouse operator the reinspection fee specified under 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 a food warehouse operator.

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

1. For a food warehouse that stores potentially hazardous food and has fewer than 50,000 square feet of storage area, \$115.

2. For a food warehouse that stores potentially hazardous food and has at least 50,000 square feet of storage area, \$300.

3. For a food warehouse that does not store potentially hazardous food and has fewer than 50,000 square feet of storage area, \$150.

4. For a food warehouse that does not store potentially hazardous food and has at least 50,000 square feet of storage area, \$300.

(6) ACTION ON LICENSE APPLICATION; DEADLINE. The department shall grant or deny a license application under sub. (2) within 20 business days after the department receives a complete application, or before the expiration date of any temporary license issued under sub. (8). If the license application is denied, the department shall notify the applicant, in writing, of the reasons for the denial.

(7) PREREQUISITES FOR LICENSING. The department shall not issue or renew a food warehouse license, or issue a temporary license under sub. (8), unless all of the following conditions are met:

(a) The applicant has paid all fees and surcharges, set forth in a statement from the department, that are due and payable by the applicant under this section. The department shall refund a license fee surcharge paid under protest if, upon review, the department determines that the surcharge is not due and payable.

(b) If the food warehouse is a new food warehouse, the department has inspected the food warehouse under sub. (9).

(8) TEMPORARY LICENSE. (a) The department may issue a temporary license to an applicant under sub. (2) pending the department's final action on that license application. A temporary license may be issued for a period not to exceed 40 business days.

(b) The holder of a temporary license acquires no rights as a licensee beyond those conferred by the temporary license. If the department denies an annual license application before the applicant's temporary license expires, the temporary license is automatically terminated when the applicant receives written notice of the denial.

(c) The department may not issue a temporary license under par. (a) in response to a license renewal application by the holder of an existing license.

(d) The department may not issue a temporary license under par. (a) for a food warehouse that is not currently licensed unless the department first inspects that food warehouse under sub. (9).

(9) PRE-LICENSE INSPECTION. The department may inspect a food warehouse, as the department deems necessary, before issuing a license for the food warehouse. The department may not issue a license or temporary license for a food warehouse that is not currently licensed unless the department first inspects that food warehouse for compliance with this chapter.

(10) DENIAL, SUSPENSION OR REVOCATION OF LICENSE; CONDITIONAL LICENSE. The department may deny, suspend or revoke a license, or impose conditions on a license, as provided under s. 93.06 (7) and (8), Stats.

Note: The procedure for suspending or revoking a license is set forth in ch. ATCP 1.

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94; am. (3) and (5) (b), Register, January, 1998, No. 505, eff. 2-1-98; CR 05-044: am. (2), (3), (5) (b), and (7) (a) Register December 2005 No. 600, eff. 1-1-06; CR 07-037: am. (3) (a) to (d) and (5) (b) 1. to 4. Register April 2008 No. 628, eff. 5-1-08.

ATCP 71.03 Construction and sanitary maintenance. (1) GENERAL. A food warehouse shall be constructed and maintained in compliance with this chapter. Buildings, facilities and equipment used in the operation of a food warehouse shall be soundly constructed, and shall be capable of being maintained in a clean and sanitary condition. A food warehouse shall be kept in good repair, and in a clean and sanitary condition.

(2) EXTERIOR PREMISES. (a) The premises immediately adjacent to a food warehouse shall be all of the following:

1. Well-drained, so that water does not accumulate around the food warehouse.
2. Kept in a neat and orderly condition.
3. Free of conditions that may contaminate food while the food is being received at, stored in or shipped from the warehouse.
4. Free of conditions that may attract or harbor pests.

(b) Shipping and receiving areas, truck aprons, rail sidings, driveways, and parking areas adjoining a food warehouse shall be surfaced and maintained to facilitate good drainage. The areas shall be kept clean to minimize the entry of airborne dust and tracked dirt into a food warehouse.

(3) FLOORS, WALLS AND CEILINGS. Floors, walls and ceilings in a food warehouse shall be of sound construction, and shall be kept clean and in good repair. Floors, walls and ceilings in cold storage areas, frozen food storage areas, toilet rooms, and areas used for the cleaning or storage of equipment shall be constructed of smooth, impervious and easily cleanable materials.

(4) DOORS AND WINDOWS. Doors, windows, skylights, and other openings to the outside shall be tight-fitting, free of breaks, and effectively screened or protected against the entry of rodents, insects, birds and other animals. External doors, other than overhead doors in receiving and shipping areas, shall be self-closing. External doors shall be kept closed when not in use.

(5) LIGHTING. Lighting in every part of a food warehouse shall provide easy visibility for every function performed in that part of the food warehouse. Lighting shall provide easy visibility for cleaning, inspection, identification of food, and visual evaluation of food condition. Artificial lights, skylights, and other glass fixtures over exposed food shall be equipped with protective shields or shatter-resistant bulbs.

(6) VENTILATION. (a) A food warehouse, including food storage and handling areas, locker rooms, toilet rooms, employee break rooms, and garbage or rubbish storage areas, shall be adequately ventilated. Ventilation shall be adequate to keep the food warehouse free of excessive heat, condensation, vapors, obnoxious odors, smoke and fumes.

(b) Heating, cooling and ventilating systems, including ducts and pipes over food storage and handling areas, shall be designed or located to prevent conditions whereby drip or condensate may contaminate food or food packages. Intake fans shall be equipped with filters that are readily removable for cleaning and replacement. Intake fans, exhaust fans, and ventilation ducts shall be kept clean and in good repair and shall be screened or louvered to exclude dust and insects.

(7) REFRIGERATED AND FROZEN FOOD STORAGE FACILITIES. (a) Refrigerated and frozen food storage facilities shall be mechanically refrigerated.

(b) If a refrigerated food storage facility is used to store potentially hazardous food, the refrigerating capacity of that facility shall be adequate to maintain air temperatures at or below 40° F. (5° C.) at all times when the facility is loaded to maximum capacity, regardless of reasonably foreseeable external temperatures.

(c) If a frozen food storage facility is used to store potentially hazardous frozen food, the refrigerating capacity of that facility shall be adequate to maintain air temperatures at or below 5° F. (-15° C.) at all times when the facility is loaded to maximum capacity, regardless of reasonably foreseeable external temperatures.

(d) Every facility used to store refrigerated or frozen food shall be equipped with one or more temperature measuring devices. Measuring devices shall be accurate, and shall be installed to measure the warmest air temperature in the refrigerated or frozen food storage facility.

(8) RECEIVING AND SHIPPING DOCKS. Loading docks, truck bays, driveways, and rail sidings for receiving and shipping food products at a food warehouse shall be kept free of accumulated debris and spillage, and free of any foreign materials which may contaminate food or damage food packages.

(9) TOILET FACILITIES. (a) A food warehouse shall have a sufficient number of toilet rooms to accommodate all warehouse personnel, according to chs. Comm 61 to 65 and applicable local regulations. Toilet rooms shall be conveniently located, completely enclosed, well-lighted, and equipped with tight-fitting, self-

closing doors. Toilet rooms and fixtures shall be easily cleanable, and shall be kept clean and in good repair.

(b) Handwashing facilities shall be located in or adjacent to every toilet room. Handwashing facilities shall include hot and cold running water, soap in a soap dispenser, and a sanitary single-service means of drying the hands. A sign directing warehouse personnel to wash their hands shall be prominently posted in every toilet room used by warehouse personnel.

(10) LOCKER AND OTHER PERSONNEL FACILITIES. A food warehouse shall have lockers or similar facilities in which food warehouse personnel can store street clothing and other personal items while working at the warehouse. Locker areas, dressing areas, lunch and break areas, and similar personnel areas shall be maintained in a clean and sanitary condition, so that the areas are free of trash, food scraps and litter which may attract or harbor pests.

(11) GARBAGE AND REFUSE DISPOSAL. (a) Garbage and refuse shall not be allowed to accumulate in a food warehouse or on the grounds surrounding a food warehouse which are under the control of the warehouse operator. Garbage and refuse shall be removed regularly, and as often as needed, to keep the premises in a clean and sanitary condition.

(b) Garbage and refuse storage areas shall be well-drained, and shall be constructed and maintained so that they do not attract or harbor pests. Garbage and refuse shall be held in durable, leak-proof, easily cleanable and pest-resistant containers. Containers shall be kept covered with tight-fitting lids, and shall be cleaned regularly to prevent unsanitary conditions.

(c) Garbage and refuse shall not be burned on the premises except in compliance with state and local laws. Garbage and refuse shall not be burned on the premises if burning may contaminate food.

(12) CONTROL OF PESTS. (a) A food warehouse operator shall take effective measures to prevent and, if necessary, control insects, rodents and other pests in and around a food warehouse. A food warehouse shall be free of evidence of pest infestation, and shall be free of garbage, litter and other conditions that may attract or harbor pests.

(b) Pesticides and other hazardous substances shall not be stored in food storage areas, and shall not be used in a manner which may contaminate food. Pesticides shall not be stored, handled or used in a manner inconsistent with label directions, or in a negligent manner.

Note: Pesticide storage and use must comply with ss. 94.67 to 94.71, Stats., and ch. ATCP 29. Pesticides must be registered for use by the U. S. environmental protection agency or by the department.

(13) CLEANING. (a) A food warehouse shall be neat and orderly, and shall be kept clean at all times. Storage facilities, equipment and stored food shall be arranged so that all parts of the food warehouse can be effectively cleaned and inspected.

(b) A food warehouse operator shall keep the warehouse in a clean and sanitary condition. Cleaning operations shall not contaminate food or food packages. Detergents, sanitizers and other cleaning materials shall be safe and effective for their intended uses.

(c) Equipment and utensils used to handle or store food in a food warehouse shall be kept clean, and shall be sanitized if necessary to prevent the contamination of food.

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94; correction in (9) (a) made under s. 13.93 (2m) (b) 7., Stats., Register October 2004 No. 586.

ATCP 71.04 Personnel standards. (1) CLEANLINESS. Every person who handles food at a food warehouse shall observe good hygienic practices during all working periods. Food handlers shall wash their hands before beginning work and upon returning to work after using toilet facilities, eating, smoking, or engaging in other activities which may contaminate their hands.

(2) COMMUNICABLE DISEASE. No person infected with a disease that is communicable by food handling may work in a food

warehouse in any capacity that may result in the contamination of food.

(3) CONSUMPTION OF FOOD, BEVERAGES AND TOBACCO. No person may consume food or beverages or use tobacco in any part of a food warehouse where food is handled or stored. Consumption of food or beverages, and the use of tobacco shall be confined to clearly designated areas that are separated from food storage and handling areas.

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94.

ATCP 71.05 Food storage and handling. (1) GENERAL. (a) A food warehouse operator shall handle and store food in a safe and sanitary manner, and under sanitary conditions, to protect the safety and wholesomeness of the food.

(b) A food warehouse operator shall store food in a neat and orderly manner, so that the food is readily accessible for inspection and movement, and so that the food warehouse can be readily inspected and cleaned.

(c) The amount of food stored in a food warehouse shall not exceed the reasonable capacity of that warehouse.

(2) FOOD DELIVERED TO WAREHOUSE; INSPECTION. (a) A food warehouse operator shall inspect all food delivered for storage at the food warehouse. The operator shall inspect the food before it is unloaded, unless the delivery vehicle is too fully loaded to permit inspection. The operator shall inspect for damage to food or food packages, insect or rodent infestation, objectionable odors, and other indications of contamination.

(b) If a food warehouse operator rejects any portion of a food delivery because the food is contaminated, the operator shall promptly notify both the food carrier and the food shipper or owner.

(c) If a warehouse operator has reason to believe that an unloaded delivery of food may be contaminated, the warehouse operator shall segregate that food for prompt inspection, sorting and disposition before the food is stored in the food warehouse.

(3) FOOD ACCEPTED FOR STORAGE; IDENTIFICATION. (a) A food warehouse operator shall mark each lot of food accepted for storage with all of the following:

1. The name and address of the food warehouse.

2. The word "Received," or a recognizable abbreviation of that word, and a numeric designation of the month, day and year when the food was received in the food warehouse.

Note: For example, an acceptable marking of an incoming shipment of a food product under this subsection is "Rec'd. 7-1-93".

(b) The information required to be marked on a lot of food under par. (a) may be contained on a tag securely fastened to the packaging material enclosing that lot of food. The tag shall be affixed so that it cannot be readily detached, mutilated or made illegible.

(c) No person may remove, alter, mutilate or conceal a marking required under par. (a). No person may divide any lot of food marked under par. (a) unless each portion of the divided lot bears the same marking.

(4) CONTAMINATED FOOD. A food warehouse operator shall promptly destroy, or shall exclude or promptly remove from the food warehouse, any food which threatens to contaminate other food in storage, which may cause a pest infestation, or which may contaminate the food warehouse.

(5) FIRE, FLOOD OR CASUALTY DAMAGE. Food which has been subjected to possible contamination in a fire, flood or other casualty shall not be removed from the warehouse for use as human food unless the department has inspected the food and authorized its removal or disposition. A food warehouse owner or operator shall notify the department whenever food in the warehouse has been subjected to possible damage or contamination because of fire, flood or other casualty.

(6) STOCK ROTATION. A food warehouse operator shall adopt and implement effective stock rotation procedures, appropriate to

each type of food, to preclude spoilage of any food in storage. The warehouse operator shall keep adequate records to permit the effective rotation of food in storage.

(7) REFRIGERATED AND FROZEN FOOD. (a) Potentially hazardous refrigerated food stored at a food warehouse shall at all times be kept refrigerated at a temperature of 40° F. (5° C.) or below. Potentially hazardous frozen food shall at all times be kept frozen at a temperature of 5° F. (-15° C.) or below.

(b) Frozen food shall not be refrozen after having thawed.

(c) The operator of a food storage warehouse shall record, on a daily basis, the air temperature in each facility in which potentially hazardous food is stored. The operator shall record the temperature shown by each measuring device installed in the facility under s. ATCP 71.03 (7), together with the date on which the temperature reading was taken. The operator shall retain the temperature record for at least 2 years.

(d) The amount of food stored in a refrigerated or frozen food storage facility shall not exceed the designed capacity of that facility. Refrigerated and frozen food shall be marked as required under s. ATCP 71.05 (3), and shall be stored in an orderly manner, so that the contents of a refrigerated or frozen food storage facility can be readily inspected and identified.

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94.

ATCP 71.06 Records. (1) A food warehouse operator shall keep accurate records of warehouse operations, including all of the following:

(a) A record of each lot of food received for storage at the food warehouse, including all of the following:

1. The name and address of the person who shipped the lot, and the carrier who delivered the lot to the warehouse.
2. A description of the lot, including the identity of the food, the number of individual units, and the total quantity included in the lot.
3. The date on which the lot was received.

(b) A record of each lot of food in storage, including:

1. The name and address of the owner, if other than the warehouse operator.

2. A description of the lot, including the identity of the food, the number of individual units, and the total quantity included in the lot.

3. The date on which the lot was received.

(c) A record of each lot of food removed from the food warehouse, including all of the following:

1. The destination of the lot, including the name and address of the recipient if any.

2. A description of the lot, including the identity of the food, the number of individual units, and the total quantity included in the lot.

3. The date on which the lot was removed from the warehouse.

(2) A food warehouse operator shall retain records made under sub. (1) for at least 2 years.

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94.

ATCP 71.10 Milk distributors; license and fees.

(1) LICENSE REQUIRED. No person may operate as a milk distributor without an annual license from the department, as provided in s. 97.21, Stats. A license expires on April 30 annually.

(2) LICENSE APPLICATION. Application for an annual milk distributor license shall be made on a form provided by the department. The application shall be accompanied by each applicable fee and surcharge required under sub. (3). An application shall include all of the information required under this section for licensing purposes.

(3) LICENSE FEES. A milk distributor shall pay the following fees:

- (a) An annual license fee. The license fee is \$75 for each storage facility operated by the milk distributor.

- (b) A reinspection fee, if required under s. 97.21 (4) (b), Stats., for each reinspection of a storage facility operated by the milk distributor. The reinspection fee is \$30 for each reinspected storage facility.

- (c) A surcharge, in the amount specified by s. 97.21 (4) (c), Stats., if required by s. 97.21 (4) (c), Stats.

History: CR 05-044: cr. Register December 2005 No. 600, eff. 1-1-06; CR 07-037: am. (3) (a) and (b) Register April 2008 No. 628, eff. 5-1-08.