

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 Chapter ATCP 75 as it existed on January 31, 2001 was repealed and a new chapter ATCP 75 was created effective February 1, 2001.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 I — Definitions and General Provisions

ATCP 75.01 Definitions. In this chapter:

(1) “Agent agreement” means a written agreement between the department and a local health department, under which the department authorizes the local health department to administer a retail food program as the department’s local agent.

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

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

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

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

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

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

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

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

History: CR 07-093: cr. Register December 2008 No. 636, eff. 1-1-09; correction in (3) made under s. 13.92 (4) (b) 7., Stats., and correction in (8) made under s. 35.17, Stats., Register June 2015 No. 714.

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

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

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

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

History: CR 07-093: cr. Register December 2008 No. 636, eff. 1-1-09.

Subchapter II — Retail Food Establishments; Licensing and Standards

ATCP 75.03 Retail food establishments; licensing.

(1) **LICENSE REQUIRED.** Except as provided under sub. (9), no person may operate a retail food establishment without a valid license issued by the department or an agent municipality or county. Licenses expire on June 30 annually. Each retail food establishment shall have a separate license, which shall be prominently displayed in the retail food establishment. A license is not transferable between persons or establishments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Grant the application.

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

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

(6) INTERIM LICENSE. The department or its agent municipality or county may issue an interim license, for a period not to exceed 40 business days, pending final action on an application for an annual retail food establishment license. The department or its agent shall grant or deny the annual license application before the interim license expires. If the department or its agent denies a license application before the applicant's interim license expires, the interim license is automatically terminated when the applicant receives written notice of the denial. The holder of an interim license acquires no license rights beyond those conferred by the interim license under this subsection. The department or its agent may not issue an interim license in response to a renewal application by the holder of an existing license.

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

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

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

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

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

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

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

(c) A retail food establishment operated by a person holding a restaurant permit issued under s. 254.64, Stats., if all of the following apply:

1. The person operates the retail food establishment at the same location as the restaurant for which the person holds a permit under s. 254.64, Stats.

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

(d) A restaurant, vending machine, vending machine commissary or other establishment for which a permit is issued under s. 254.64, Stats., to the extent that the activities of the establishment are covered by that permit.

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

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

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

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

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

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

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

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

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

History: Cr. Register, January, 2001, No. 541, eff. 2-1-01; CR 04-096: am. (3) Register June 2005 No. 594, eff. 7-1-05; CR 05-044: am. (2), (3) and (4) Register December 2005 No. 600, eff. 1-1-06; CR 07-037: am. (3) (a) to (e) and (4) (b) 1. to 5. Register April 2008 No. 628, eff. 5-1-08; CR 07-093: renum. from ATCP 75.02 Register December 2008 No. 636, eff. 1-1-09; CR 08-075: am. (1) and (9) (f) 1. Register April 2009 No. 640, eff. 5-1-09.

ATCP 75.04 Denial, suspension or revocation of license; conditional license. The department or its agent may deny, suspend or revoke a license, or impose conditions on a license as provided under s. 93.06 (7) and (8), Stats. Except as otherwise provided by statute, rule or local ordinance, the suspension or revocation of a license shall comply with the prior notice requirements of s. 227.51, Stats.

History: Cr. Register, January, 2001, No. 541, eff. 2-1-01; CR 07-093: renum. from ATCP 75.03 Register December 2008 No. 636, eff. 1-1-09.

ATCP 75.05 Standards for retail food establishments. A retail food establishment shall comply with the model food code appended to this chapter.

History: Cr. Register, January, 2001, No. 541, eff. 2-1-01; CR 07-093: renum. from ATCP 75.04 Register December 2008 No. 636, eff. 1-1-09.

Subchapter III — Local Regulation of Retail Food Establishments

ATCP 75.06 Retail food program; agent agreement.

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

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

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

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

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

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

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

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

- Enforce additional local ordinance requirements related to retail food establishments.
- Regulate restaurants, hotels or vending machine commissaries pursuant to an agreement with the Wisconsin department of health services under s. 254.69, Stats.

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

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

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

- (a) The proposed coverage of the program.
- (b) The functions that the local health department proposes to perform under the program.
- (c) Projected local staffing and budget for the program, including staffing and budget for inspection and enforcement.
- (d) The entities that the local health department proposes to license under the program, and the approximate license fees that the local health department proposes to charge.

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

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

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

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

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

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

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

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

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

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

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

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

(c) Retail food establishment license fees charged by a local agent may exceed the amounts specified in s. ATCP 75.03 (3), but the amount of license fees collected less the amount paid to the department under s. ATCP 75.11 (2) may not exceed an amount reasonably required to cover the local agent's program costs under s. ATCP 75.10 (2).

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

(5) REVIEW AND EVALUATION. The department shall periodically review and evaluate a local agent's implementation of an agent agreement, as provided in s. ATCP 75.12.

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

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

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

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

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

History: CR 07-093; cr. Register December 2008 No. 636, eff. 1-1-09; correction to numbering in (1) (a) 4. to 6. made under s. 13.92 (4) (b) 1., Stats., Register December 2008 No. 636.

ATCP 75.07 Local agent staff. (1) STAFF NUMBERS; QUALIFICATIONS AND EQUIPMENT. A local agent shall employ adequate staff to implement the retail food program described in the agent agreement. One or more registered public health sanitarians, employed by the local agent, shall perform or directly supervise all retail food establishment inspections under the program. The local agent shall provide appropriate equipment to inspection personnel, as provided in the agent agreement.

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

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

History: CR 07-093: cr. Register December 2008 No. 636, eff. 1-1-09.

ATCP 75.08 Inspections. (1) **GENERAL.** A local agent shall inspect retail food establishments for compliance with subch. II and other laws identified in the agent agreement. A local agent shall use standard inspection procedures that the department may, from time to time, prescribe.

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

- (a) License status and overall sanitation.
- (b) Food sources, transportation and storage.
- (c) Food preparation, holding and display, including temperature control if applicable.
- (d) Equipment and utensils, including storage procedures.
- (e) Cleaning and sanitizing procedures.
- (f) Waste disposal.
- (g) Insect and rodent control.
- (h) Personal hygiene.
- (i) Lighting, ventilation and water temperature.
- (j) Other matters identified in the agent agreement.

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

- (a) Collect food and water samples as necessary.
- (b) Prepare an inspection report that identifies law violations, if any, and specifies correction deadlines. The inspector shall use an inspection report form approved by the department. The inspector shall provide a copy of the inspection report to the operator of the retail food establishment. If possible, the inspector shall discuss the report with the operator and obtain a receipt acknowledgment from the operator.
- (c) Conduct timely re-inspections, as necessary, to determine whether violations have been corrected.

History: CR 07-093: cr. Register December 2008 No. 636, eff. 1-1-09.

ATCP 75.09 Complaint investigations. (1) **GENERAL.** Except as provided in sub. (2), a local agent shall investigate every food-related complaint that it receives against a retail food establishment under its jurisdiction. The local agent shall prioritize and investigate complaints according to established complaint handling and investigation procedures. The following types of complaints shall be treated in descending order of priority:

- (a) If a complaint alleges facts that indicate a serious or imminent public health hazard, the local agent shall investigate immediately.
- (b) If a complaint alleges facts that indicate a potential public health problem, but not a serious or imminent public health hazard, the local agent shall investigate as soon as practicable.
- (c) If a complaint has no public health significance, the local agent may investigate the complaint when time permits.

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

History: CR 07-093: cr. Register December 2008 No. 636, eff. 1-1-09.

ATCP 75.10 Records and reports. (1) **GENERAL.** (a) A local agent shall keep complete and accurate records of its activ-

ities under an agent agreement, including complete and accurate records of all licenses and license holders, license fee revenues, inspections, complaints, investigations, enforcement actions and program costs.

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

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

(2) **COST DOCUMENTATION.** A local agent shall document the cost of the retail food program that it administers under the agent agreement. The cost may include direct costs for licensing, inspection, complaint handling, investigation, enforcement, information management, reporting and other activities under the program, as well as indirect costs reasonably allocated to the program. Costs may include staff, equipment, facility, contract service and other costs reasonably allocated to the program.

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

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

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

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

History: CR 07-093: cr. Register December 2008 No. 636, eff. 1-1-09.

ATCP 75.11 Reimbursement of department costs.

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

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

(a) A fee equal to 10% of the license fee provided in s. ATCP 75.03 (3), regardless of the license fee actually charged by the local agent, if the local agent prepares and submits to the department by September 30 of that year an annual self-assessment as required by s. ATCP 75.12 (1).

(b) A fee equal to 20% of the license fee provided in s. ATCP 75.03 (3), regardless of the license fee actually charged by the local agent, if the local agent fails to submit to the department by September 30 of that year an annual self-assessment as required by s. ATCP 75.12 (1). A fee payment under this paragraph does not exempt the local agent from the duty to prepare and submit an annual self-assessment.

History: CR 07-093: cr. Register December 2008 No. 636, eff. 1-1-09.

ATCP 75.12 Review and evaluation. (1) **ANNUAL EVALUATION.** At least once each year, the department shall review and evaluate a local agent's implementation of its agent agreement with the department, and the local agent shall submit a self-assessment in a format determined by the department. The department's review and evaluation may be based, in part, upon the self-assessment and may include all of the following:

- (a) The terms of the agent agreement, and a renegotiation of terms if necessary.
- (b) Local agent compliance with the terms of the agreement.
- (c) Local agent records and reports under s. ATCP 75.10.
- (d) Local agent procedures, including licensing, inspection, complaint handling, investigation and enforcement procedures.
- (e) Local agent costs, license revenues, license fees and related accounting and financial management.

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

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

History: CR 07-093: cr. Register December 2008 No. 636, eff. 1-1-09.