



Richland County

Land & Zoning Standing Committee

February 27, 2024

NOTICE OF MEETING

AMENDED

Please be advised that the Richland County Land & Zoning Standing Committee will convene at 3:00 p.m., Monday, March 4, 2024 in the County Board Room, 181 W. Seminary Street.

<https://administrator.co.richland.wi.us/minutes/land-zoning/>

Agenda:

1. Call to order
2. Proof of notification
3. Agenda approval
4. Approval of February 5, 2024 meeting minutes
5. *Zoning petitions
 - a. Petition
 - b. Petition
6. Zoning Administrator/Sanitarian position
7. Catalis Data Transfer discussion
8. Discussion and possible action on hiring summer interns for data transfer
9. Short-term rental discussion and possible action
10. ** Joint DATCP/DNR Grant Application Approval
11. Zoning Administrators report
12. County Conservationist report
13. Public Comment
14. Future agenda items
15. Adjournment

*Meeting materials for items marked with an asterisk may be found the above site.

** Added agenda Item

A quorum may be present from other Committees, Boards, or Commissions. No committee, board or commission will exercise any responsibilities, authority or duties except for the Land and Zoning

CC: Committee Members, Richland Observer, WRCO, Courthouse Bulletin Board, Derek Kalish County Clerk, Candace Pesch County Administrator, Greg Cerven, Michael Windle

**Richland County
Land & Zoning Standing Committee
Meeting Minutes
February 5, 2024**

The February 5, 2024, Land & Zoning Standing Committee meeting was called to order 3:00 p.m. by Chair Melissa Luck in the County Board Room of the Richland County Courthouse. Present were Julie Fleming, Steve Carrow, Linda Gentes and Dan McGuire. Also present were Matthew Albright, Cathy Cooper, Barb Scott, Anna Schumacher, Greg Cerven, Dennis Hardy via Webex, Kori Rogers and Jenn Schrap. David Turk was absent.

#2 & #3 Proof of Notification and Agenda Approval- Julie Fleming moved to approve the amended agenda and proof of notification. Seconded by Steve Carrow. All said aye. Motion carried.

#4 Minutes- Linda Gentes moved to approve the minutes of the January 2, 2024 meeting. Seconded by Steve Carrow. All said aye. Motion approved.

#5a Hardy Petition- Dennis Hardy was present via Webex. Dennis has sold 2.5 acres to the adjoining Basswood Union Cemetery. He is keeping some land and selling a small parcel with the existing buildings and the rest to another person. Steve Carrow moved to approve rezoning 2 parcels in Eagle Township from Ag/Forestry with 7 acres going to Ag/Residential and 2.5 acres to Residential 2. Seconded by Julie Fleming. All said aye. Motion approved.

#6 New Land Conservation and Zoning Staff introductions- Cathy Cooper introduced the 2 new staff for Land Conservation and Zoning. Kori Rogers started January 15th as a conservation technician and Jenn Schrap started January 29th as the Office System Tech. They both talked a little bit about themselves.

#7 Wildlife Damage Claims- Greg Cerven presented the Wildlife Damage Claims. Parker Zane, an organic farmer, had an appraised loss of \$21,376.58 and will receive the maximum of \$10,000. Mike White has an appraised loss of \$3,817.17 and will receive \$3,317.17 after the \$500 deductible. Linda Gentes moved to approve the wildlife damage claims for Zane Parker, \$10,000.00 and Mike White, \$3,317.17. Seconded by Julie Fleming. All said aye. Motion carried.

#8 Land Conservation/Zoning departments reorganization discussion and possible action- Melissa Luck reported that Candace was adjusting the job description for the Zoning Administrator position to remove the supervisory role from the job description and advertise for the position soon. Melissa Luck will check with Candace as to when it will be advertised.

#9 Catalis Data Transfer Discussion- Matt Albright explained the issue with not having the current Access database information brought over to Catalis. Having to constantly look at both databases for years would be difficult and time consuming. The problem is that the Access database uses customer numbers and are sorted by year. Barb Scott suggested that maybe the county could hire a couple of interns to get

the Access Database permit information into the Catalis database. Matt Albright is going to look and the 2024 budget will talk with Candace about possibly hiring intern(s) this year to transfer the data.

#10 Discussion and Possible Action for Cemetery Zoning- Matt Albright had included the state statutes regarding cemeteries in the packet. At this time, the committee is not going to do anything with cemetery zoning.

#11 Short-term Rental Discussion and Possible Action- Matt Albright introduced Anna Schumacher from Vernon County. She is responsible for inspections of state licensed facilities including short-term rentals. Vernon County currently has 100 state licensed short-term rentals, but she knows there are many more. It has been a long process. She has sent out warning letters to at least 40 more. She inspects to make sure the rentals meet state license codes. Anna Schumacher said that Vernon County is an agent for the Department of Ag, Trade and Consumer Protection for licensing facilities. The Committee is interested in learning more about this. The county still can adopt an ordinance for those items not covered by the state license. This item will be kept on for further discussion.

#12 Zoning Administrative Report- Matt Albright will give a report on the 2024 budget at the next meeting. He has given Catalis the zoning and sanitation forms and is putting together a work flow chart for Catalis. There is a new FEMA map for the Middle Kickapoo. There are no rural structures in the new floodplain area, but there are some in Viola. He has given the new maps to the Village of Viola.

#13 Public Comments- None

#14 Future Agenda Items- Short-term rentals, Catalis data transfer and Zoning/sanitation position

#15 Adjournment-Julie Fleming moved to adjourn the meeting until February 5, 2024. Seconded made by Steve Carrow. All said aye. Motion carried. Meeting adjourned at 4:26 p.m.

Respectfully submitted,

Cathy Cooper

Cathy Cooper
Secretary pro temp
Land & Zoning Secretary

Customer #

Petition #

RZ2024-001

COUNTY OF RICHLAND ZONING COMMITTEE
NOTICE OF PETITION

Original Owner:

(I) (We) First Name(s) Janet Last Name Fuller Phone 608-604-0292

Address 32291 Smyth Hollow Rd City Cazenovia State WI Zip 53924

First Name(s) Last Name Phone

Address City State Zip

hereby petition the Richland County Zoning Committee for a:

Mail Report

☒ Rezone from A-F Ag-Forestry Rezone to AR-Ag Residential☐ CUP to permit☐ SUP to permit☐ Other

Authorized by Section(s) of the Richland County Zoning Ordinance.

Present description of the property involved in this petition is as follows: Parcel # 032-2332-0000

Qtr Qtr 23 Section 11 Town N Range 02 Township E # of acres 40

Lot Block Subdivision # of Acres Approved

Present Use Ag

Present Improvements House built and split off 5 acre parcel

Proposed Use Ag-Residential

Legal Description

Petition Filed Petitioner Notified Rezone Decision Ordinance #

Category Town Notified CUP Decision CB Date

Fee Amount ☐ Township Approval CUP Expires CB Decision

Meeting Date Decision Date SUP Decision Amendment #

Comments



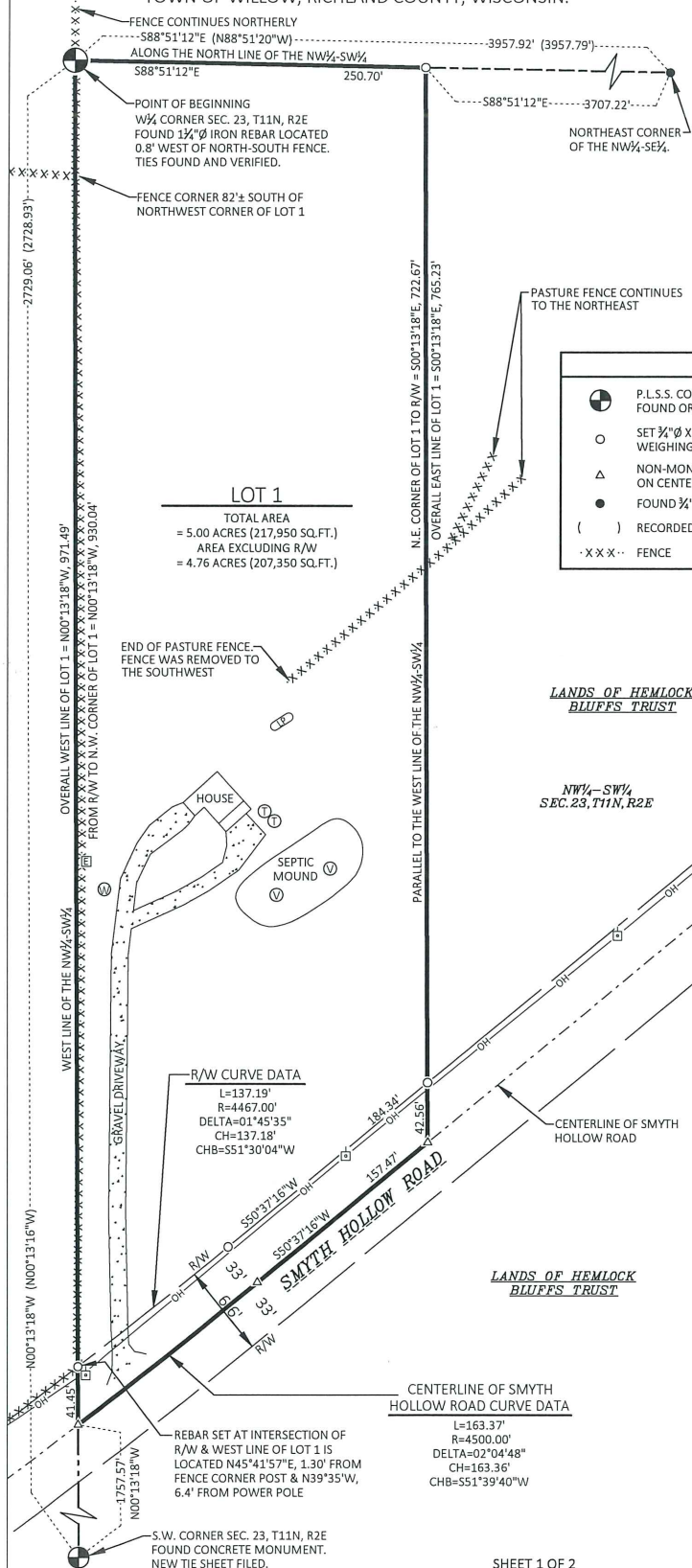
County Clerk Approval

(Signed) Appellant(s) or Agent(s)











Janet Fuller 1-10-24

PART OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER
(NW¼-SW¼) OF SECTION 23, TOWNSHIP 11 NORTH, RANGE 2 EAST,
TOWN OF WILLOW, RICHLAND COUNTY, WISCONSIN.


PART OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER
(NW¼-SW¼) OF SECTION 23, TOWNSHIP 11 NORTH, RANGE 2 EAST,
TOWN OF WILLOW, RICHLAND COUNTY, WISCONSIN.



SURVEYED BY: WESLEY L. KRAEMER, PLS
KRAEMER SURVEYING LLC
S10405 WILSON CREEK ROAD
SPRING GREEN, WI 53588
WWW.KRAEMERSURVEYING.COM

LEGEND			
	P.L.S.S. CORNER MONUMENT FOUND OR SET AS NOTED		SEPTIC TANK LID
	SET 3/4" X 18" LONG IRON REBAR WEIGHING 1.502 LB./FT.		SEPTIC VENT
	NON-MONUMENTED POINT ON CENTERLINE OF ROAD		WELL
	FOUND 3/4" IRON REBAR		ELECTRIC TRANSFORMER
()	RECORDED AS		UTILITY POLE
· X X ·	FENCE	—OH—	OVERHEAD UTILITY LINE
			LP TANK

SCALE: 1"=100'
AT 8.5"x14" SHEET SIZE



0 50' 100'

BEARINGS ARE REFERENCED TO
THE WEST LINE OF THE SW 1/4
SECTION 23, T11N, R2E, WHICH
BEARS N00°13'18"W ACCORDING
TO WISCRS, RICHLAND COUNTY
NAD 83(2011)



Certified Survey Map No. _____

PART OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER (NW¼-SW¼) OF SECTION 23,
TOWNSHIP 11 NORTH, RANGE 2 EAST, TOWN OF WILLOW, RICHLAND COUNTY, WISCONSIN.

Surveyor's Certificate

I, Wesley L. Kraemer, Professional Land Surveyor, hereby certify:

that I made this survey, division, and map of the land herein described by the direction of Janet Fuller;

that this map is a correct representation of all of the exterior boundaries of the land surveyed and the division of that land;

that I have fully complied with the provisions of Section 236.34 of the Wisconsin Statutes in surveying, dividing, and mapping the land described herein;

that this survey complies with the provisions of Chapter A-E 7 of the Wisconsin Administrative Code, and that this map is correct to the best of my knowledge and belief;

and that this land is part of the Northwest Quarter of the Southwest Quarter (NW¼-SW¼), of Section 23, Township 11 North, Range 2 East, Town of Willow, Richland County, Wisconsin, being more fully described as follows:

Beginning at the West Quarter (W¼) Corner of Section 23, Township 11 North, Range 2 East;

thence S88°51'12"E, 250.70 feet along the North Line of the Northwest Quarter of the Southwest Quarter (NW¼-SW¼) of said Section 23;

thence parallel to the west line of said Northwest Quarter of the Southwest Quarter (NW¼-SW¼), S00°13'18"E, 765.23 feet to the centerline of Smyth Hollow Road;

thence S50°37'16"W, 157.47 feet along the centerline of Smyth Hollow Road;

thence along said centerline, 163.37 feet along the arc of a curve to the right having a radius of 4500.00 feet, a delta angle of 02°04'48", a chord bearing S51°39'40"W, and a chord length of 163.36 feet to the West Line of said Northwest Quarter of the Southwest Quarter (NW¼-SW¼);

thence along the west line of said Northwest Quarter of the Southwest Quarter (NW¼-SW¼), N00°13'18"W, 971.49 feet to the Point of Beginning, containing a total of 5.00 acres (217,950 square feet) more or less and containing 4.76 acres (207,350 square feet) more or less excluding Smyth Hollow Road right of way.

Date: February 12, 2024

Wesley L. Kraemer

Wesley L. Kraemer
Professional Land Surveyor, S-3026



Richland County Approval

Resolved, that this Certified Survey Map, in the Town of Willow, is hereby approved for recording in accordance with the Richland County Land Division Ordinance.

Signature
Richland County Zoning Department Administrator

Print Name

Date

TOWN OF WILLOW
Wednesday, February 7th, 2024
6:00 PM

ATTENDANCE: Tim Willis, Dave Fry, Richard Wiedenfeld, Deb Dickey, Lauren Moe

CITIZENS PRESENT: Randy Moe, Janet Fuller, John McNurlin, Justin Stanek

CALL TO ORDER: Tim Willis at 6:00 pm.

READ & APPROVE AGENDA: Read by Willis. Motion by Fry, 2nd by Wiedenfeld. Motion carried.

READ & APPROVE MINUTES: Emailed and hard copy provided by Lauren Moe. Motion by Wiedenfeld, 2nd by Fry to accept. Motion carried.

ZONING: Janet Fuller was present and spoke with the board about her request to parcel off 5 acres of land and buildings along Smyth Hollow Road. Janet stated that in the process she would have to also rezone the property from Ag-Forestry to Ag-Residential. Motion by Dave Fry to allow Janet Fuller to parcel off the 5 acres with buildings and rezone the property from Ag-Forestry to Ag-Residential. 2nd by Wiedenfeld. Motion carried.

Willis informed the Board that Cary Norman has made mention of parceling off a few acres and buildings on Schaeffer Lane but has not committed to it yet.

BILL PAYING: Motion by Fry, 2nd by Wiedenfeld to approve orders 24001-24039. Motion carried.

MOE/MUELLER HOURLY PAY REVIEWS: Willis explained that the last time payroll reviews for Randy Moe and Clyde Mueller occurred was 4-4-2022 with Moe at \$22/hour and Mueller at \$25/hour. After discussion Willis made a motion to move hourly rate for Moe to \$25/hour effective immediately. 2nd by Fry. Motion carried. Mueller's pay rate would stay at \$25/hour.

6'-20' CULVERT PROGRAM I/V AND RATINGS: Willis explained that the government is offering a refund for conducting the culvert inventory/inspection. The township has the option to do its own inventory or hire a consulting company to do the inventory. It was explained that whoever would be conducting the inventory, would have to be determined by April. Willis mentioned that Delmore Consulting out of Wisconsin Dells was a possibility if they chose to hire someone to do the inventory. After discussion, Willis and Randy Moe agreed to conduct the inventory.

ROADS & BRIDGES: Randy Moe said that he would like to look into having Robin Hollow wedged and seal coated as it costs approximately \$100,000 per mile to blacktop roadways and Robin Hollow is not a high traffic area. Randy would also like to consider seal coating Spencer Hill Road since it has not been done since 2011. Randy said that they have a good amount of sand. Randy and Clyde are registered for mine training conducted by CRS/Compliance Regulatory Services, Inc. at the Phoenix Center on 4-3-2024.

ANNUAL MEETING & BOR TRAINING: Willis advised that the Board members could attend the Wisconsin Towns Association (WTA) Annual Meeting in Barneveld on 2-23-2024 or in Wisconsin Dells on

Property Address: 3226 Smyth Hollow Rd - Fuller - Hemlock Bluffs Trust

Name	Title	Address	City	State	Zip Code
Triple L Farm LLC		22598 County Hwy AA	Richland Center	WI	53581
Big Willow Acres LLC		28092 County Hwy N	Richland Center	WI	53581
Greene Acres LLC	c/o David Greene	33428 Pregal Hill Rd	Hillpoint	WI	53937
Tegan Sontic		335 5th St	Reedsburg	WI	53959
Konrath Living Trust		6690 Alpine Dr	West Bend	WI	53090
James & Ellen Backes		16936 State Hwy 58	Cazenovia	WI	53924
John & Joanna Laukant		E6256 Sunrise Rd	Reedsburg	WI	53959
Richard & Jeanne Schmidt		W236 N6533 Hillview Dr	Sussex	WI	53089
Kyle & Amanda Johnson		N10332 4th Ave	Camp Douglas	WI	54618
Donahue Tree Farm LLC		374 S Glassell St	Orange	CA	92866
Firari Revocable Trust		W2196 State Hwy 33	Mayville	WI	53050
Rainald Schurmann		32551 Horse Ln	Hillpoint	WI	53937
Lauren (Peterson) Moe		17798 State Hwy 58	Cazenovia	WI	53924
Richard & Kimberly Klepacz		339 Lionel Rd	Riverside	IL	60546
Elizabeth Fuller		30933 Rustic View Rd	Cazenovia	WI	53924
Fredrick Sole		19041 State Hwy 58	Cazenovia	WI	53924
Kenny & Valerie Mueller		24257 Mueller Ln	Hillpoint	WI	53937
Dwight McClure & Dennis Phillips		32301 Robin Hollow Rd	Cazenovia	WI	53924
Mary Foege		32485 Robin Hollow Rd	Cazenovia	WI	53924
Steven & Florence Yoder & Roy & Irene Yoder		33950 Lost Hollow Rd	Hillpoint	WI	53937
Joseph & Marlys Smyth		32584 Smyth Hollow Rd	Cazenovia	WI	53924
Darrell & Janice Ripley		32539 Smyth Hollow Rd	Cazenovia	WI	53924
State of WI DNR	Karl E Hansen	101 S Webster St PO Box 7921	Madison	WI	53707
Grimm Revocable Trust	c/o Philip & Dale Grimm	1026 Hillside Ave	Madison	WI	53705

Letters Sent 2/15/24

5814

Customer #
Petition # RZ2024-002
Original Owner:

COUNTY OF RICHLAND ZONING COMMITTEE
NOTICE OF PETITION

(I) (We) First Name(s) Last Name Phone

Address 18069 County Q City Richland Center State WI Zip 53581

First Name(s) Tyler Last Name Wilkinson Phone (608) 553-6500

Address 285 S. Winsted Street City Spring Green State WI Zip 53588

hereby petition the Richland County Zoning Committee for a:

Mail Report

☐ Rezone from Ag Forest Rezone to Rural Ag Residential

☐ CUP to permit

☐ SUP to permit

☐ Other

Authorized by Section(s) of the Richland County Zoning Ordinance.

Present description of the property involved in this petition is as follows: Parcel # 008-2834-2000 +

Qtr Qtr Section Town Range Township # of acres 008-3321-1000
Lot Block Subdivision # of Acres Approved

Present Use S 1/2 of SW/4, Sec. 28, 10N, 01W

Present Improvements And PT N 1/2 of NW 1/4, Sec. 33, 10N, 01W

Proposed Use

Legal Description Single family home split from larger parcel

Petition Filed	Petitioner Notified	Rezone Decision	Ordinance #
Category	Town Notified	CUP Decision	CB Date
Fee Amount	<input type="checkbox"/> Township Approval	CUP Expires	CB Decision
Meeting Date	Decision Date	SUP Decision	Amendment #

Comments



County Clerk Approval

(Signed) Appellant(s) or Agent(s)

Tyler Wilkinson

67 acres

608-604-5611

17 acres

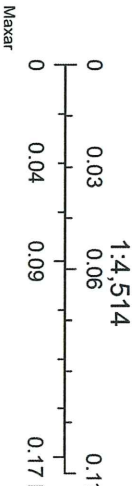
18069 County Q

Austin Engineering
Site visit on 2/18



1/22/2024, 1:27:45 PM

- Municipalities
- Sections
- Section Quarter Quarters
- Parcel Lines
- Roads
 - City Streets
 - Town Roads
- US Hwy
- County Highway
- State Highway



Name	Title	Address	City	State	Zip Code
John & Kim Annear		18066 County Highway Q	Richland Center	WI	53581
Bonnie Arbegust		220 E Union St	Richland Center	WI	53581
Timothy & Rene Stoltz		26750 Weisbrew Dr	Richland Center	WI	53581
Donald Rogers		18798 Chicken Ridge Rd	Richland Center	WI	53581
Tom Eiler		27096 Weisbrew Dr	Richland Center	WI	53581
Michael & Carolyn Milkie		18938 Chicken Ridge Rd	Richland Center	WI	53581

Letters sent - 2/15/24

Chapter ATCP 72

HOTELS, MOTELS, AND TOURIST ROOMING HOUSES

ATCP 72.01 Authority and purpose.
 ATCP 72.02 Scope of rules.
 ATCP 72.03 Definitions.
 ATCP 72.04 Licenses.
 ATCP 72.05 Department fees.
 ATCP 72.06 Enforcement.
 ATCP 72.07 Suspension or revocation of licenses.
 ATCP 72.08 Appeals of actions by the department.
 ATCP 72.09 Appeals of actions by agent health departments.

ATCP 72.10 Water supply and waste disposal.
 ATCP 72.11 Furnishings, equipment and utensils.
 ATCP 72.12 Food.
 ATCP 72.13 Employee health.
 ATCP 72.14 Building structure and safety.
 ATCP 72.145 Carbon monoxide detectors.
 ATCP 72.15 Maintenance.
 ATCP 72.16 Registration of guests.

Note: Chapter HSS 195 as it existed on June 30, 1985, was repealed and a new chapter HSS 195 was created effective July 1, 1985. Chapter HSS 195 was renumbered chapter HFS 195 under s. 13.93 (2m) (b) 1., Stats., corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., [Register, January, 1997, No. 493](#). Chapter HFS 195 was renumbered chapter DHS 195 effective February 1, 2009, under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., [Register January 2009 No. 637](#). Chapter DHS 195 was renumbered chapter ATCP 72 under s. 13.92 (4) (b) 1., Stats., [Register June 2016 No. 726](#).

ATCP 72.01 Authority and purpose. Section 97.625, Stats., gives the department authority to prescribe rules for hotels, including motels, and tourist rooming houses and to enforce these rules for the purpose of protecting public health and safety.

History: Cr. [Register, June, 1985, No. 354](#), eff. 7-1-85; correction made under s. 13.93 (2m) (b) 7., Stats., [Register, January, 1995, No. 469](#); CR 08-073: renum. from HFS 195.01 [Register January 2009 No. 637](#), eff. 2-1-09; renum. from DHS 195.01 [Register June 2016 No. 726](#); correction made under s. 13.92 (4) (b) 7., Stats., [Register June 2016 No. 726](#).

ATCP 72.02 Scope of rules. (1) **APPLICABILITY.** The provisions of this chapter apply to the operator of any hotel, motel, or tourist rooming house.

(2) **APPROVED COMPARABLE COMPLIANCE.** When it appears to the department that strict adherence to a provision of this chapter is impractical for a particular hotel, motel, or tourist rooming house, the department may approve a modification in that rule for that facility if the department is provided with satisfactory proof that the grant of a variance will not jeopardize the public's health, safety or welfare.

History: Cr. [Register, June, 1985, No. 354](#), eff. 7-1-85; CR 08-073: renum. from HFS 195.02 [Register January 2009 No. 637](#), eff. 2-1-09; renum. from DHS 195.02 [Register June 2016 No. 726](#).

ATCP 72.03 Definitions. In this chapter:

(1) "Agent" means the city or county designated by the department to issue licenses to and make investigations or inspections of hotels, motels, or tourist rooming houses.

(2) "Approved" means acceptable to the department, based on its determination of conformance with this chapter and good public health practices.

(3) "Communicable disease" has the meaning prescribed in s. DHS 145.03 (4).

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

(5) "Easily cleanable" means readily accessible and made of a kind of material and finish and so fabricated that residue may be completely removed by normal cleaning methods.

(6) "Employee" means any person working in a hotel, motel, or tourist rooming house.

(7) "Equipment" means, in connection with the operation of a hotel, motel, or tourist rooming house, stoves, ranges, hoods, counters, refrigerators, ice-making machines, sinks, and similar appliances and other items used to prepare or hold foods or to clean utensils.

(8) "Existing," in reference to a hotel, motel or tourist rooming house, means operating with a license from the department before the adoption of this chapter.

(9) "Facility" means a hotel, motel, or tourist rooming house.

(10) "Furnishings" means, in connection with the operation of a hotel, motel or tourist rooming house, linens, beds, bedding, chairs, tables, shelves, drapes, carpeting, curtains, decorations, fixtures, and similar items provided in the sleeping rooms and common areas of the facility.

(11) "Hotel" means a place where sleeping accommodations are offered for pay to transients, in 5 or more rooms, and all related rooms, buildings and areas.

(12) "Motel" means a hotel that furnishes on-premise parking for motor vehicles of guests as part of the room charge, without extra cost, and that is identified as a "motel" rather than a "hotel" at the request of the operator.

(13) "New," in reference to a hotel, motel, or tourist rooming house, means operating with a license from the department for the first time on or after the effective date of this chapter.

(14) "Operator" means the person legally responsible for the operation of the hotel, motel, or tourist rooming house.

(15) "Person" means an individual, partnership, association, firm, company, corporation, municipality, county, or town, whether tenant, owner, lessee, licensee, or the agent, heir, or assignee of any of these.

(16) "Premises" means the tract of land on which a hotel, motel or tourist rooming house is located and all associated buildings on that land.

(17) "Privy" means a structure not connected to a plumbing system, which is used by persons for the disposal of human body wastes.

(18) "Sleeping accommodations offered for pay" means all sleeping rooms on the premises including quarters occupied by permanent guests but excluding sleeping rooms occupied by the operator or owner or his or her immediate family.

(19) "Tourist or transient" means a person who travels to a location away from his or her permanent address for a short period of time for vacation, pleasure, recreation, culture, business, or employment.

(20) "Tourist rooming house" means all lodging places and tourist cabins and cottages, other than hotels and motels, in which sleeping accommodations are offered for pay to tourists or transients. It does not include private boarding or rooming houses not accommodating tourists or transients, or bed and breakfast establishments regulated under ch. ATCP 73.

(21) "Utensil" means any kitchenware, tableware, glassware, cutlery, container, or similar item with which food or drink comes into contact during storage, preparation or serving.

History: Cr. [Register, June, 1985, No. 354](#), eff. 7-1-85; am. (19), [Register, November, 1986, No. 371](#), eff. 12-1-86; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., [Register May 2002 No. 557](#); CR 08-073: renum. from HFS 195.03 and

am. (4) Register January 2009 No. 637, eff. 2-1-09; corrections in (3) and (20) made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637; renum. from DHS 195.03 Register June 2016 No. 726; correction in (4) made under s. 13.92 (4) (b) 6., correction in (20) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726; CR 18-019: am. (1), (8), (13) Register January 2020 No. 769, eff. 2-1-20.

ATCP 72.04 Licenses. (1) **LICENSE REQUIRED.** (a) No hotel, motel, or tourist rooming house may be opened to the public until the operator of the facility has obtained a license from the department or its agent by submitting an application under sub. (4) and paying the applicable fee specified in s. ATCP 72.05. A separate license is required for each hotel, motel, or tourist rooming house.

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

(2) **LICENSE DURATION AND RENEWAL.** (a) Each license issued under this chapter 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.

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

(3) **TRANSFERABILITY OF LICENSES** An individual may transfer a license to an immediate family member, as defined in s. 97.605 (4) (a) 2., Stats., if the individual is transferring operation of the hotel, motel, or tourist rooming house. A sole proprietorship that reorganizes as a business entity, as defined in s. 179.70 (1), Stats., or a business entity that reorganizes as a sole proprietorship or a different type of business entity may transfer a license to the newly formed business entity or sole proprietorship if the hotel, motel, or tourist rooming house 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 has an ownership interest in the newly formed sole proprietorship or business entity. Except as provided in this subsection, no license issued under this chapter is transferable from one premise to another or from one person or entity to another.

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

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

1. The applicable fees specified under s. ATCP 72.05 and any fees previously due to the department or its agent.

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

Note: To obtain a copy of the hotel, motel or tourist rooming house operator license application form, or to determine which agent to contact for an application form, call (608) 224-4923 or send an e-mail to datcpdfslicensing@wi.gov.

(b) **Renewal license.** To renew the license of a facility, the operator shall pay the department, the applicable establishment license fee specified under s. ATCP 72.05 before the license expires. If the payment to renew the license of an establishment is not made to the department before the expiration date of the establishment license, the late fee specified under s. ATCP 72.05 (2) (c) shall be paid in addition to the license fee.

Note: Local health department that are agents for the department have authority under s. 97.41 (4) (a), Stats., to establish and collect fees for licenses issued by the local health department. If the establishment was licensed by a local health department, contact the local health department for its license fee schedule.

(5) **DEPARTMENT OR AGENT ACTION ON LICENSE APPLICATION.**

(a) The department or its agent shall issue or deny a license within 30 days after receiving a complete application, all applicable fees, and the other information required under sub. (4).

(b) Except as provided in s. 93.135, Stats., the initial issuance, renewal, or continued validity of a license issued under this subsection may be conditioned upon the requirement that the license holder correct a violation of this chapter, s. 97.605, Stats., or ordinances adopted under s. 97.615 (2) (g), Stats., within a period of time specified. If the condition is not met within the specified time or after an extension of time as approved by the department, the license is void. No person may operate a hotel, motel, or tourist rooming house 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. An operator whose license is voided under this paragraph may appeal the decision under s. ATCP 72.08.

(c) The department or its agent may refuse to issue or renew a license to operate a hotel, motel or tourist rooming house under any of the following circumstances:

1. The department or its agent has not conducted a preinspection of a hotel, motel, or tourist rooming house for which an initial or new license is required under sub. (1).

2. The operator of a hotel, motel, or tourist rooming house has not corrected a condition for which the department or agent has issued a written a health or safety-related order.

3. All applicable fees under s. ATCP 72.05 have not been paid, including the license fee, preinspection fee, reinspection fee, or other applicable fees.

4. The operator has modified, repaired or maintained the hotel, motel, or tourist rooming house in a manner that is not in accordance with what the department recognizes as safe practice as outlined in this chapter.

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

6. The operator or applicant has violated ch. 97, Stats., this chapter, 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 hotel, motel, or tourist rooming house.

(d) If the department or its agent denies an application for a license, the applicant shall be given reasons, in writing, for the denial and information regarding appeal rights under s. ATCP 72.08.

(6) **VOIDED LICENSE FOR FAILURE TO PAY FEES.** If an applicant or operator fails to pay all applicable fees, late fees and processing charges under s. ATCP 72.05 within 15 days after the applicant or operator receives notice of an insufficiency under s. ATCP 72.05, or within 45 days after the expiration of the license, whichever occurs first, the license is void. An operator whose license is voided under this subsection may appeal the decision under s. ATCP 72.08. In an appeal concerning a voided license under this subsection, the burden is on the license applicant or operator to show that the entire applicable fees, late fees and processing charges have been paid. During any appeal process concerning a payment dispute, operation of the hotel, motel, or tourist rooming house is deemed to be operation without a license and is subject to the fees under s. ATCP 72.05 (2) (e) in addition to the fees otherwise due, unless the applicant or operator meets its burden of proof under this subsection.

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

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; emerg. am. (1), cr. (1m), eff. 9-1-94; am. (1), cr. (1m), Register, January, 1995, No. 469, eff. 2-1-95; emerg. r. (1m) (a) 2., renum. (1m) (a) 3. and am., am. (1m) (b) to (d), eff. 7-1-96; r. (1m) (a) 2., renum. (1m) (a) 3. to be (1m) (a) 2. and am., am. (1m) (b) to (d), Register, January, 1997, No. 493, eff. 2-1-97; am. (1m) (a) to (c), (1m) (d) 1., renum. (1m) (d) 1., cr. (1m) (d) 1. a. to c., 2. and (3), Register, August, 1998, No. 512, eff. 9-1-98; CR 01-016: am. (1m) (a) 2., (d) 1., r. (1m) (e) Register May 2002 No. 557, eff. 6-1-02; CR 08-073: renum. from HFS 195.04, r. and recr. Register January 2009 No. 637, eff. 2-1-09; corrections in (4) (b) and (6) made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637; renum. from DHS 195.04 Register June 2016 No. 726; correction in (1) (a), (3), (4) (a) 1., (b), (5) (b), (c) 3., 6., (d), (6) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726; CR 18-019: am. (1), (2), (3), (4) (title), (a) (intro.), (b), (5) (title), (a), (b), (c) (intro.), 1., 3., (d), (6), (7) Register January 2020 No. 769, eff. 2-1-20; corrections in (4) (b), (5) (c) 5. made under s. 35.17, Stats., Register January 2020 No. 769.

ATCP 72.05 Department fees. (1) FEE SCHEDULES. The fees listed in Table ATCP 72.05 A shall apply to licenses issued from April 1, 2009 through March 31, 2011. The fees listed in Table ATCP 72.05 B shall apply to licenses issued on or after April 1, 2011.

(2) TYPES OF FEES. (a) Preinspection fee. The operator of a hotel, motel or tourist rooming house shall, pursuant to sub. (1), pay the applicable preinspection fee listed in Table ATCP 72.05 A or B to the department before an initial or new license is issued under s. ATCP 72.04.

(b) License fee. The operator of a hotel, motel, or tourist rooming house shall, pursuant to sub. (1), pay the applicable license fee listed in Table ATCP 72.05 A or B to the department for each hotel, motel, or tourist rooming house that the operator applies for a license to operate under s. ATCP 72.04 (1) or (2).

(c) Late fee. If the license fee for a license renewal is not paid before the expiration date of the license, the operator of the hotel,

motel, or tourist rooming house shall pay to the department a late fee of \$85.00 in addition to the renewal license fee.

(d) Reinspection fee. If the department conducts a reinspection of a hotel, motel, or tourist rooming house under s. ATCP 72.06 (1) (b), the operator shall, pursuant to sub. (1), pay to the department the applicable reinspection fee listed in Table ATCP 72.05 A or B. The department shall assess an additional reinspection fee as listed in Table ATCP 72.05 A or B, whichever is applicable, for any additional reinspection conducted under s. ATCP 72.06 (1) (b) 4.

(e) Fees for operating without a license. Any hotel, motel, or tourist rooming house found to be operating without a license shall pay to the department an amount of \$749.00, in addition to all applicable fees and any processing charges under s. ATCP 72.04 (6).

Note: Anyone operating a hotel, motel, or tourist rooming house 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) Duplicate license. The department shall charge the operator of a hotel, motel, or tourist rooming house \$15 for a duplicate license.

(g) Fees for special condition inspections. For inspection or consultation activities that are not directly related to the department's licensing responsibilities, the department shall charge the operator or the entity requesting the inspection or consultation \$175.00.

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

Table ATCP 72.05 A
Fee Schedule — SFY 2010
For permits issued April 1, 2009 through March 31, 2011

Type of Facility	Permit Fee	Preinspection Fee	First Reinspection Fee	Second and Subsequent Reinspection Fee
Tourist Rooming House	\$100	\$280	\$120	\$160
Hotel / Motel Permit Fee 5-30 Rooms	\$165	\$380	\$173	\$230
Hotel / Motel Permit Fee 31-99 Rooms	\$260	\$615	\$274	\$365
Hotel / Motel Permit Fee 100-199 Rooms	\$330	\$795	\$353	\$470
Hotel / Motel Permit Fee 200+ Rooms	\$400	\$950	\$431	\$575

Table ATCP 72.05 B
Fee Schedule — SFY 2012
For permits issued on or after April 1, 2011

Type of Facility	Permit Fee	Preinspection Fee	First Reinspection Fee	Second and Subsequent Reinspection Fee
Tourist Rooming House	\$110	\$300	\$128	\$170
Hotel / Motel Permit Fee 5–30 Rooms	\$205	\$480	\$218	\$290
Hotel / Motel Permit Fee 31–99 Rooms	\$280	\$665	\$300	\$400
Hotel / Motel Permit Fee 100–199 Rooms	\$355	\$795	\$379	\$505
Hotel / Motel Permit Fee 200+ Rooms	\$490	\$1185	\$525	\$700

History: CR 08–073: cr. Register January 2009 No. 637, eff. 2–1–09; renum. from DHS 195.05 Register June 2016 No. 726; correction in (1), (2) (a), (b), (d), (e), Tables A, B made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726; CR 18–019: am. (1), (2) (a) to (c), (e) to (g), (3) Register January 2020 No. 769, eff. 2–1–20.

ATCP 72.06 Enforcement. (1) **INSPECTIONS AND ACCESS TO THE PREMISES.** (a) *Inspections.* Under ss. 97.615 (2) and 97.65 (1), Stats., an authorized employee or agent of the department, upon presenting proper identification, may enter any hotel, motel or tourist rooming house at any reasonable time, for any of the following purposes:

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

(b) *Reinspections.* 1. The department or its agent may reinspect a hotel, motel, or tourist rooming house 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 hotel, motel, or tourist rooming house.

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

3. The reinspection fee under Table ATCP 72.05 A or B or applicable charges as determined by an agent of the department shall be charged for the reinspection.

4. If an additional reinspection is required because a violation has not been corrected in the scheduled time, the department shall assess the operator an additional reinspection fee according to Table ATCP 72.05 and the department may order the operator to show just cause why the license should not be suspended or revoked under s. ATCP 72.07.

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

(b) If the order to correct violations is not carried out by the expiration of the time period stated in the order, or any extension

of time granted for compliance, the department or agent may issue an order under s. ATCP 72.07 to suspend or revoke the license to operate the hotel, motel, or tourist rooming house.

(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 that person. A forfeiture may be appealed under s. ATCP 72.08.

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

1. Prohibit the continued operation or method of operation of specific equipment.
2. Require the premises to cease operations and close until remedies are applied which eliminate the immediate danger to health or safety.

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

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

(c) If the analysis or examination shows that the construction, sanitary condition, operation or method of operation of the premises or equipment constitutes an immediate danger to health or safety, the department or agent, within the effective period of the temporary order specified in par. (b) 1., shall provide written notice of the findings to the owner, operator or responsible supervisor. Upon receipt of the notice, the temporary order remains in effect until a final decision is issued under s. ATCP 97.08. The notice shall include a statement that the facility has a right to

request a hearing under s. [ATCP 97.08](#) within 15 days after issuance of the notice.

(d) Under s. [97.65 \(5\) \(a\)](#), Stats., may be fined not more than \$10,000 or imprisoned not more than one year in the county jail, or both.

History: CR 08-073: cr. Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 195.06 Register June 2016 No. 726; correction in (1) (a) (intro.), 2., (b) 3., 4., (2) (b), (c), (3) (a), (c), (d) made under s. [13.92 \(4\) \(b\) 7.](#), Stats., Register June 2016 No. 726; correction in (3) (b) 1. made under s. [35.17](#), Stats., Register June 2016 No. 726; CR 18-019: am. (1) (b) 4., (2) (b) Register January 2020 No. 769, eff. 2-1-20.

ATCP 72.07 Suspension or revocation of licenses.

The department may, after a hearing under s. [ATCP 72.08](#), suspend or revoke a license for violation of subch. [III of ch. 97](#), Stats., this chapter or an order issued by the department. The suspension or revocation order shall take effect 15 days after the date of issuance unless a hearing is requested under s. [ATCP 72.08 \(1\)](#).

History: CR 08-073: cr. Register January 2009 No. 637, eff. 2-1-09; corrections made under s. [13.92 \(4\) \(b\) 7.](#), Stats., Register January 2009 No. 637; renum. from DHS 195.07 Register June 2016 No. 726; correction made under s. [13.92 \(4\) \(b\) 7.](#), Stats., Register June 2016 No. 726; CR 18-019: am. Register January 2020 No. 769, eff. 2-1-20.

ATCP 72.08 Appeals of actions by the department.

(1) (a) Except as provided in sub. (2) or (3), a request for a hearing for denial of a license, a voided license, suspension, revocation, forfeiture, or an order given under s. [ATCP 72.06 \(1\) \(b\) 4.](#) or (2) shall be submitted in writing to the department of administration's division of hearings and appeals within 15 days after receipt of the notice of the department's action.

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

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

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

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

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

(2) A request for hearing on a temporary order given by the department under s. [ATCP 72.06 \(3\)](#) shall be made in writing to the department within 15 days of receipt of the order. The department shall hold a hearing within 15 days after the department receives the written request for hearing, unless the department and the operator agree to a later date, the immediate danger to health is removed, the order is not contested or the operator and the department mutually agree that no purpose would be served by a hearing. A final decision shall be issued under s. [227.47](#), Stats., within 10 days following the conclusion of the hearing. The decision may order any of the following to remove the danger to health:

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

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

Note: A request for hearing, under sub. (2), shall be submitted to the DATCP Secretary via e-mail at datapappeals@wisconsin.gov, faxed to (608) 224-5034, mailed to PO Box 8911, Madison, Wisconsin 53708-8911, or hand delivered to 2811 Agri-

culture Drive, Madison, Wisconsin 53718. The hearing may be conducted by the department secretary or designee.

(3) If the department voids a license under s. [ATCP 72.04 \(6\)](#), the operator shall submit, within 15 days after receipt of the notice of the department's action, documentary evidence that all applicable fees, late fees and processing charges have been paid and that there are no outstanding payments due to the department.

History: CR 08-073: cr. Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 195.08 Register June 2016 No. 726; correction in (1) (a), (2), (3) made under s. [13.92 \(4\) \(b\) 7.](#), Stats., Register June 2016 No. 726; CR 18-019: am. (1) (a), (e), (3) Register January 2020 No. 769, eff. 2-1-20; correction in (1) (a), (e) Register January 2020 No. 769.

ATCP 72.09 Appeals of actions by agent health departments. If an agent issues a license under this chapter, the agent shall create enforcement and appeal procedures under ss. [66.0417](#) and [97.615 \(2\) \(g\)](#), Stats.

History: CR 08-073: cr. Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 195.09 Register June 2016 No. 726; correction made under s. [13.92 \(4\) \(b\) 7.](#), Stats., Register June 2016 No. 726; CR 18-019: am. Register January 2020 No. 769, eff. 2-1-20.

ATCP 72.10 Water supply and waste disposal.

(1) **SERVICE AVAILABILITY.** The requirements covering water supply and sewage disposal facilities for all hotels, motels, and tourist rooming houses are based upon the availability of public utilities as well as the practicability of connection to public utilities.

(2) **PUBLIC UTILITIES.** If an approved public water supply and approved public sewerage facilities are available to the premises of a hotel, motel, or tourist rooming house, connection and use are required.

(3) **PRIVATE WELLS.** A private well is permitted as a source of water when a public water facility is not available to the premises. The well shall be located on the premises and be constructed and the pump installed in accordance with ch. [NR 812](#), rules of the department of natural resources governing well drilling and pump installation. Whenever safe water cannot be obtained consistently from a well constructed in apparent compliance with ch. [NR 812](#), as evidenced by laboratory reports, the well shall be reconstructed or a new well constructed in accordance with ch. [NR 812](#) except that if the reconstruction or new construction is determined to be impractical or is found to be ineffective, the use of the well shall be discontinued and water shall be transported on a temporary basis from a source and in a manner approved by the department.

(4) **PLUMBING.** All plumbing and fixtures shall meet the requirements contained in ch. [SPS 382](#) and shall be maintained in good repair and in a sanitary condition.

(5) **PRIVATE SEWAGE DISPOSAL.** (a) A private sewage disposal system as defined in s. [145.01 \(12\)](#), Stats., is permitted when a public sewer facility is not available to the premises. The system shall be located on the premises and shall be designed, constructed and operated in accordance with chs. [SPS 382](#) and [383](#) and s. [145.245](#), Stats.

(b) Failed on-site private waste disposal systems shall be replaced or rehabilitated. A failed system has the meaning prescribed for "failing private sewage system" in s. [145.245 \(4\)](#), Stats.

(c) Plans and installation details covering the design and construction, alteration or extension of private sewage disposal systems shall receive the approval of the department of safety and professional services or its designated agent prior to the construction, alteration or extension of the systems.

(d) All plumbing fixtures shall be connected to the building drainage system with discharge to a public sewer or private sewage disposal system.

(e) Privies are only acceptable at existing hotels, motels, and tourist rooming houses. They shall be constructed in accordance with the applicable requirements of s. [SPS 362.2900](#) and ch. [SPS 391](#) and shall be approved by the department. When a new opera-

tor takes over the management of a hotel, motel, or tourist rooming house, privies, shall be eliminated.

(6) **TOILET FACILITIES.** (a) *Private fixtures.* All toilet facilities in conjunction with each guest room shall include a toilet, lavatory, and shower or bathtub.

(b) *Shared fixtures.* 1. All hotels and motels, all new tourist rooming houses and all existing tourist rooming houses changing ownership, which do not have a toilet, lavatory, and shower or bathtub in conjunction with each guest room, shall have separate toilet facilities for each sex, except that one toilet, lavatory, and shower or bathtub is acceptable in cabins or cottages rented to family units. One toilet, lavatory and shower or bathtub shall be provided for every 10 persons or fraction thereof of each sex accommodated.

2. Existing tourist rooming houses which are not undergoing a change in ownership and do not have toilet facilities in each guest room shall provide at least one toilet, lavatory, and shower or bathtub for use by guests.

(c) *Water.* Hot and cold water under pressure shall be available at all sinks and other washing facilities in all employee, public, and guest's toilet rooms.

(d) *Soap and towels.* Soap, single-service towels, or other approved means of drying hands shall be provided in each toilet room.

(e) *Room designations.* The door leading into each toilet room shall be marked to identify whether it is for men or women. Words such as "men" or "women" shall be in letters not less than one inch high. Symbols may be used in place of words.

(7) **DRINKING WATER.** All hotels, motels, and tourist rooming houses which do not provide drinking water in the guest rooms shall be equipped with at least one drinking fountain or water cooler of an approved type so placed that it is available at all times to the guests. If drinking cups are used, they shall be single-service items and shall be dispensed by means of an approved dispenser which protects the interior and lip contact surfaces from dust and handling.

(8) **GARBAGE AND REFUSE.** (a) All garbage not disposed of through a garbage disposal unit connected to the sewerage system shall be kept in separate, leakproof, nonabsorbent containers equipped with tightfitting covers, unless otherwise protected from rodents, flies and insects. The contents shall be disposed of as often as necessary to prevent decomposition or overflow.

(b) Soiled containers shall be cleaned at a frequency to prevent insect and rodent attraction. Each container shall be thoroughly cleaned on the inside and outside in a way that does not contaminate food, equipment, utensils, or food preparation areas.

(c) The use of wooden or paper containers for garbage is prohibited.

(d) Separate fly-tight containers with covers shall be provided for cans, bottles and other rubbish.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; corrections in (3) made under s. 13.93 (2m) (b) 7., Stats., Register, January, 1995, No. 469; correction in (5) (e) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1998, No. 512; corrections in (5) (c) and (e) made under s. 13.93 (2m) (b) 6. and 7., Stats., Register May 2002 No. 557; CR 08-073: renum. from HFS 195.05 Register January 2009 No. 637, eff. 2-1-09; corrections in (4), (5) (a), (c), (e) made under s. 13.92 (4) (b) 6., 7., Stats., Register January 2012 No. 673; renum. from DHS 195.10 Register June 2016 No. 726.

ATCP 72.11 Furnishings, equipment and utensils.

(1) **DESIGN.** All equipment, utensils and furnishings shall be designed, made of a kind of material and constructed to be easily cleanable and to be durable.

(2) **INSTALLATION.** All furnishings and equipment shall be installed in a way that facilitates the cleaning of the furnishings and equipment and all adjacent areas.

(3) **UTENSIL SANITATION.** (a) Whenever multi-use glasses, ice buckets or other utensils are provided for a guest, the items shall be washed, rinsed and sanitized in an approved manner before being provided for use by a different guest. Utensils, when fur-

nished, shall be free of cracks or chips. The food-content surfaces shall be smooth, nontoxic, corrosion-resistant, nonabsorbent, and easily accessible for cleaning.

(b) The reuse of single-service utensils is prohibited.

(4) **STORAGE.** (a) After cleaning and until use, all glasses and other utensils shall be stored and handled in a manner that protects them from contamination.

(b) Glasses in guest rooms shall be stored in single-service containers or dispensed by means of a dispenser approved by the department.

(5) **CLEANLINESS OF LINENS.** Pillowslips, sheets, towels and washcloths shall be washed as frequently as they are assigned to a different guest and at least once a week. Blankets, spreads, mattresses, and pillows shall be kept clean and free of insect infestation. The use of quilts and comforters which are not machine washable is not permitted. Sheets shall be of sufficient size to cover the bed and have a fold-back over the blanket of at least 12 inches (30.5 cm). Soiled linen shall be kept in washable containers used for this purpose exclusively. Every mattress shall be covered with a pad to protect the mattress, and the mattress and pad shall be maintained clean and in good repair.

(6) **CLEANLINESS AND REPAIR OF EQUIPMENT AND FURNISHINGS.** All equipment and furnishings shall be kept clean, free from odor, and in good repair.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; am. (5), Register, May, 1989, No. 401, eff. 6-1-89; CR 08-073: renum. from HFS 195.06 Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 195.11 Register June 2016 No. 726.

ATCP 72.12 Food. (1) **LICENSE.** Any hotel, motel, or tourist rooming house operator who prepares, sells or serves lunches or meals shall meet the requirements of subch. III of ch. ATCP 75 and obtain a retail food establishment – restaurant license.

Note: Effective 7-1-16, pursuant to 2015 Wis. Act 55, the restaurant permit referenced in this subsection is a retail food establishment license. To obtain a copy of the application form for the license, call (608) 224-4923 or send an e-mail to datcpdfslicensing@wi.gov.

(2) **ICE.** All ice used in a hotel, motel, or tourist rooming house for cooling drinks or food by direct contact shall be made from a public water supply or an approved private water supply. All ice-making machines shall have tight-fitting doors which are kept closed between service. New or replacement ice-making machines or bins shall be of the mechanical dispensing type unless ice is dispensed by an employee. Ice tongs or ice scoops shall be used in handling ice used for cooling beverages or food and shall be properly protected against contamination when stored. All ice shall be stored and served in a smooth-surfaced, easily-cleanable container. Packaged ice shall be stored in a clean area and protected against contamination.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; CR 08-073: renum. from HFS 195.07 Register January 2009 No. 637, eff. 2-1-09; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637; renum. from DHS 195.12, am. (1) Register June 2016 No. 726; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726; correction in (2) made under s. 35.17, Stats., Register June 2016 No. 726; CR 18-019: am. (1) Register January 2020 No. 769, eff. 2-1-20.

ATCP 72.13 Employee health. Persons who have a communicable disease shall refrain from working in a hotel, motel, or tourist rooming house. No operator may employ any person suspected of having a communicable disease.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; CR 08-073: renum. from HFS 195.08 Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 195.13 Register June 2016 No. 726.

ATCP 72.14 Building structure and safety. (1) **STATE BUILDING CODE.** All hotels, motels, and tourist rooming houses shall comply with the state commercial building code, chs. SPS 361 to 365. The department shall enforce the rules of chs. SPS 361 to 365 relating to fire safety, including but not limited to rules on isolation of fire hazards, fire escapes, fire exits, fire extinguishers, fire alarm systems, smoke detectors, exit lights, space heaters, ventilation, and directions of escape.

(2) **ADDITIONAL REQUIREMENTS.** (a) *Ventilation with gas space heaters.* Any room where a gas space heater is located shall have access to a constant supply of fresh air through a permanent opening which shall not be closed. The size of the opening shall be minimum of 10 square inches (65 square cm) and at least one square inch for each 1,000 BTU per hour of the rated heating capacity of the heater, or be so constructed that the air used in the combustion of the fuel is taken directly from the outside.

(b) *Size of sleeping rooms.* Every sleeping room shall be of sufficient size to afford at least 400 cubic feet (12 cu m) of air space for each occupant over 12 years of age and 200 cubic feet (6 cu m) for each occupant 12 years and under. Every sleeping room shall have a minimum ceiling height of 7 feet (2.13 m). No greater number of sleeping occupants than the number established by application of these standards is permitted in any sleeping room.

(c) *Smoke detection.* Each cabin or cottage shall be provided with at least one approved, listed and labeled smoke detector located in a manner consistent with the manufacturer's recommendations.

(d) *Door locks.* Doors to all sleeping rooms, cabins and cottages shall be provided with facilities for key locking from the outside and non-key locking from the inside.

(e) *Window screens.* All windows that can be opened in sleeping rooms shall be screened, using 16 mesh or finer material. If sleeping rooms are not effectively air-conditioned, doors opening to the outside shall be similarly screened.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; corrections in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1998, No. 512; corrections in (1) were made under s. 13.93 (2m) (b) 7., Stats., Register May 2002 No. 557; CR 08-073; renum. from HFS 195.09 Register January 2009 No. 637, eff. 2-1-09; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register January 2012 No. 673; renum. from DHS 195.14 Register June 2016 No. 726.

ATCP 72.145 Carbon monoxide detectors. (1) **PURPOSE.** The purpose of this section is to implement the requirements of s. 97.625 (1) (am) and (1g), Stats., with respect to facilities in a manner consistent with the standards in s. 101.149, Stats., and ss. SPS 321.097 and 362.0915.

Note: Section 97.625 (1) (am), Stats., was repealed by 2017 a. 330.

(2) **DEFINITIONS.** In this section:

(a) "Carbon monoxide detector" means an electronic or battery-operated device that sounds an alarm when an unsafe level of carbon monoxide is in the air. A carbon monoxide detector is referred to as a "carbon monoxide alarm" by the Underwriters Laboratories, Inc., standards and ss. SPS 320.24 (2), 321.097, and 362.0915.

(b) "Fuel-burning appliance" means a device that is used or intended to be used in a residential building and burns fossil fuel or carbon based fuel where carbon monoxide is a combustion by-product. "Fuel-burning appliance" includes stoves, ovens, grills, clothes dryers, furnaces, boilers, water heaters, heaters, and fireplaces.

(c) "Inspection agent" means an individual holding certification under s. SPS 305.71 as an HVAC qualifier, who has been retained by the department or its agent to conduct the inspections of sealed combustion units required under this section and ss. 97.625 (1) (am) and 101.149 (5) (c), Stats.

Note: Sections 97.625 (1) (am) and 101.149 (5) (c), Stats., were repealed by 2017 a. 330.

(d) "Listed" means equipment that is tested by an independent testing agency and accepted by the department of safety and professional services.

(e) "Residential building" means a facility's building, any part of which is offered for pay as sleeping or lodging accommodations to tourists or transients.

(f) "Sealed combustion appliance" means a listed fuel-burning appliance that acquires all air for combustion through a dedicated sealed passage from the outside to a sealed combustion

chamber and for which all combustion products are vented to the outside through a separate dedicated sealed vent.

(g) "Sleeping area" means the area of the unit in which the bedrooms or sleeping rooms are located. Bedrooms or sleeping rooms separated by another use area such as a kitchen or living room are separate sleeping areas but bedrooms or sleeping rooms separated by a bathroom are not separate sleeping areas.

(h) "Unit" means a part of a residential building that is offered for pay as a sleeping place or sleeping accommodations to an individual or a group of individuals maintaining a common household, to the exclusion of others. It includes, but is not limited to, an individually rented room or suite of rooms in a hotel or an individually rented tourist cabin or cottage.

(3) **INSTALLATION REQUIREMENTS.** The operator shall install carbon monoxide detectors in compliance with the requirements of s. 101.149 (2), Stats., and s. SPS 321.097 or 362.0915, as follows:

(a) Except as provided in par. (b) or in sub. (6), the operator shall install a carbon monoxide detector in each residential building in all of the following places not later than the date specified under par. (c):

1. In the basement of the building if the basement has a fuel-burning appliance.

2. Within 15 feet of each sleeping area of a unit that has a fuel-burning appliance.

3. Within 15 feet of each sleeping area of a unit that is immediately adjacent to a unit, located on the same floor level, that has a fuel-burning appliance.

4. In each room that has a fuel-burning appliance and that is not used as a sleeping area, not more than 75 feet from the fuel-burning appliance.

5. In each hallway leading from a unit that has a fuel-burning appliance, in a location that is within 75 feet from the unit, measured from the door of the unit along the hallway leading from the unit, except that, if there is no electrical outlet within this distance, the operator shall place the carbon monoxide detector at the closest available electrical outlet in the hallway.

(b) If a unit is not part of a multiunit building, the operator need not install more than one carbon monoxide detector in the unit.

(c) 1. Except as provided under subd. 2., the operator shall comply with the requirements of this subsection before a residential building is occupied.

2. The operator shall comply with the requirements of this subsection not later than April 1, 2010, if construction of the residential building was initiated before October 1, 2008, or if the department of safety and professional services approved the plans for the construction of the building under s. 101.12, Stats., before October 1, 2008.

(d) A carbon monoxide detector shall conform to UL 2034 and shall be listed and labeled identifying conformance to UL 2034. Carbon monoxide detectors and sensors as part of a gas detection or emergency signaling system shall conform to UL 2075 and shall be listed and labeled identifying conformance to UL 2075.

(e) The operator shall install every carbon monoxide detector required under this section according to the directions and specifications of the manufacturer of the carbon monoxide detector.

(f) Installation shall conform to the applicable requirements of s. SPS 321.097 or 362.0915.

(4) **MAINTENANCE REQUIREMENTS.** The operator shall maintain carbon monoxide detectors in compliance with the requirements of s. 101.149 (3), Stats., as follows:

(a) The operator shall reasonably maintain every carbon monoxide detector in the residential building in the manner specified in the instructions for the carbon monoxide detector.

(b) An occupant of a unit in a residential building may give the operator written notice that a carbon monoxide detector in the residential building is not functional or has been removed by a person

other than the occupant. The operator shall repair or replace the nonfunctional or missing carbon monoxide detector within 5 days after receipt of the notice.

(5) **TAMPERING PROHIBITED.** Pursuant to s. 101.149 (4), Stats., no person may tamper with, remove, destroy, disconnect, or remove batteries from an installed carbon monoxide detector, except in the course of inspection, maintenance, or replacement of the detector.

(6) **EXCEPTION TO INSTALLATION REQUIREMENTS.** The installation of carbon monoxide detectors is not required in a residential building if construction of the building was initiated before October 1, 2008, or if the department of safety and professional services approved the plans for the construction of the building under s. 101.12, Stats., and s. SPS 361.30, which were submitted before October 1, 2008, provided the building does not have an attached garage and any one of the following circumstances applies:

(a) The building does not have any fuel-burning appliances.

(b) All of the fuel-burning appliances in the building are of a sealed-combustion type and are covered by the manufacturers' warranties against defects.

(c) All the fuel-burning appliances in the building are of a sealed-combustion type and are inspected in accordance with sub. (7) or (8) (b).

(7) **INSPECTION OF SEALED COMBUSTION APPLIANCES.** (a) The operator shall arrange for the inspection of every sealed combustion appliance and the vents and chimneys serving the appliances in any residential building where a carbon monoxide detector has not been installed.

(b) The inspection of a sealed combustion appliance, vents, and chimneys shall satisfy all of the following requirements:

1. The inspection of the sealed combustion appliance, vents, and chimneys shall be for the purpose of determining carbon monoxide emission levels.

2. The inspection shall be performed at least once a year.

3. The inspection shall be performed by an individual who holds certification issued under s. SPS 305.71 as an HVAC qualifier.

4. If upon inspection the carbon monoxide emissions from a fuel burning appliance, vent or chimney are not within the manufacturer's specifications, the appliance may not be operated until it is repaired. If the appliance is repaired, it shall be inspected again before it is used.

5. The individual inspecting the sealed combustion appliance shall prepare a written, dated, and signed report identifying the level of carbon monoxide emissions and certifying whether or not carbon monoxide emissions are within the manufacturer's specifications, which the operator shall retain for review by the department or its agent.

(8) **INSPECTIONS AND ENFORCEMENT BY DEPARTMENT.** (a) The department or its agent shall conduct regular inspections of facilities to ensure compliance with s. 101.149 (2) and (3), Stats., and this section.

(b) If, upon inspection, the department or its agent determines that a sealed combustion appliance has not been inspected and certified as meeting the manufacturer's specifications for carbon monoxide emissions, as required under sub. (7), the department or agent shall order the operator to have an inspection conducted within 30 days. If the department or its agent has not received an

inspection report as required under sub. (7) (b) 5, within 30 days, the department or agent shall arrange for an inspection agent to conduct an inspection that satisfies the requirements under sub. (7) (b), and the operator shall pay all of the costs associated with the inspection.

(c) Pursuant to s. 101.149 (8) (a), Stats., if the department determines after an inspection of a residential building that the operator has violated the installation requirements under sub. (3) or the maintenance requirements under sub. (4), the department shall issue an order requiring the operator to correct the violation within 5 days or within such shorter period as the department determines is necessary to protect public health and safety. As required under s. 101.149 (8) (a), Stats., if the operator does not correct the violation within the time required, the operator shall forfeit \$50 for each day of violation occurring after the date on which the department finds that the violation was not corrected. Pursuant to s. 101.149 (8) (b), Stats., if a person is charged with more than one violation of sub. (3) or (4) arising out of an inspection of a single residential building, those violations shall be counted as a single violation for the purpose of determining the amount of a forfeiture.

(d) A person who violates sub. (5) is subject to criminal penalties under s. 101.149 (8) (c), Stats.

History: EmR1004: emerg. cr. eff. 4-1-10; CR 10-015: cr. Register August 2010 No. 656, eff. 9-1-10; corrections in (1), (2) (a), (c), (d), (3) (intro.), (c) 2., (f), (6) (intro.), (7) (b) 3. made under s. 13.92 (4) (b) 6., 7., Stats., Register January 2012 No. 673; renum. from DHS 195.145 Register June 2016 No. 726; correction in (1), (2) (c) made under s. 13.92 (4) (b) 6. Register June 2016 No. 726; correction in (1), (2) (a), (3) (intro.), (f) made under s. 13.92 (4) (b) 7., Stats., Register November 2018 No. 755.

ATCP 72.15 Maintenance. (1) **GENERAL.** Every hotel, motel and tourist rooming house shall be maintained and equipped in a manner conducive to the health, comfort, and safety of its guests.

(2) **ROOMS.** The floors, walls, and ceilings of all rooms shall be maintained in a clean and sanitary condition and in a good state of repair.

(3) **INSECT AND RODENT CONTROL.** Effective measures intended to minimize the presence of rodents, flies, cockroaches, and other insects on the premises shall be employed. The premises shall be kept in a condition which will prevent the harborage or feeding of insects or rodents.

(4) **PREMISES.** The premises shall be maintained in a clean, neat condition, free from refuse and other objectionable conditions or hazards. Land surfaces surrounding the hotel, motel, or tourist rooming house shall be well-drained. Parking areas shall be properly graded, drained and treated to minimize dust and dirt. The exterior of all buildings shall be well-maintained and kept in good repair.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; CR 08-073: renum. from HFS 195.10 Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 195.15 Register June 2016 No. 726.

ATCP 72.16 Registration of guests. Each hotel, motel, and tourist rooming house shall provide a register and require all guests to register their true names and addresses before being assigned sleeping quarters. The register shall be kept intact and available for inspection by representatives of the department for at least one year.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; CR 08-073: renum. from HFS 195.11 Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 195.16 Register June 2016 No. 726.

CHAPTER 97

FOOD, LODGING, AND RECREATION

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SUBCHAPTER I

DEFINITIONS

Cross-reference: See definitions in s. 93.01.

97.01 Definitions. In this chapter, unless inconsistent with context:

(1g) “Bed and breakfast establishment” means any place of lodging that satisfies all of the following:

(a) Provides 8 or fewer rooms for rent to no more than a total of 20 tourists or transients.

(b) Provides no meals other than breakfast and provides the breakfast only to renters of the place.

(c) Is the owner's personal residence.

(d) Is occupied by the owner at the time of rental.

(e) Was originally built and occupied as a single-family residence, or, prior to use as a place of lodging, was converted to use and occupied as a single-family residence.

(1r) “Butter” means the clean, nonrancid product made by gathering in any manner the fat of fresh or ripened cow's milk or cream into a mass, which also contains a small portion of the other milk constituents, with or without salt or added coloring matter, and contains not less than 80 percent of milk fat. Renovated or process butter is the product made by melting butter and reworking, without the addition or use of chemicals or any substances except milk, cream, or salt, and contains not more than 16 percent of water and at least 80 percent of milk fat.

(3) “Contaminated with filth” applies to any food not securely protected from dust, dirt and, as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.

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

(4m) “Distressed food” means food, or packages or containers of food, that may have been damaged, or rendered unsafe or unsuitable for sale or use as food while being transported, stored, handled or sold or the food the label of which has been lost, defaced or obliterated.

(5) “Federal act” means the federal food, drug and cosmetic act, as amended (Title 21 USC 301 et seq.) or the federal wholesome meat act, as amended (Title 21 USC 71 et seq.), or the federal poultry products inspection act, as amended (Title 21 USC 451 et seq.), or the federal fair packaging and labeling act (Title 15 USC 1451 et seq.) which may be applicable.

(6) “Food” means:

(a) Articles used for food or drink by persons.

(b) Chewing gum.

(c) Articles used for components of matters specified in pars. (a) and (b).

(7) “Hotel” means all places wherein sleeping accommodations are offered for pay to transients, in 5 or more rooms, and all places used in connection therewith. “Hotelkeeper”, “motel-keeper” and “innkeeper” are synonymous and “inn”, “motel” and “hotel” are synonymous.

(8) “Label” means a display of written, printed or graphic matter upon the immediate container of any article. A requirement made under this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement or other information also appears on the outside container or wrapper if any, of the retail package of such article, or is easily legible through the outside container or wrapper. “Immediate container” does not include package liners.

(9) “Labeling” means all labels and other written, printed or graphic matter upon an article or any of its containers or wrappers or accompanying the article.

(9m) “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 dispensing only candy, gum, nuts, nut meats, cookies, or crackers, or a device dispensing only prepackaged Grade A pasteurized milk or milk products.

(9q) “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.

(10) (a) “Milk” means the lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy cows, goats, or sheep. Milk from cows shall contain not less than 3 percent of milk fat, and not less than 8.25 percent of milk solids not fat. Milk from cows may be standardized by the addition or removal of cream or by the addition of concentrated milk, dry whole milk, skim milk, concentrated skim milk, or non-fat milk. Milk from cows may also be standardized by removing water through reverse osmosis or other nonthermal methods and adding potable water. When standardized, milk from cows sold in final package form shall contain not less than 3.25 percent of milk fat, and not less than 8.25 percent of milk solids not fat. Milk may be homogenized.

(b) “Lowfat milk” means cow’s milk from which sufficient milk fat has been removed to produce a food having a milk fat content of either 0.5 percent, 1 percent, 1.5 percent, or 2 percent and a milk solids not fat content of not less than 10 percent.

(c) “Skim milk” means cow’s milk from which sufficient milk fat has been removed to reduce its milk fat content to less than 0.5 percent and which has a milk solids not fat content of not less than 9 percent.

(11) “Nonfat dry milk” means the product resulting from the removal of fat and water from cow’s milk, and contains the lactose, milk proteins and milk minerals in the same relative proportions as in the fresh cow’s milk from which made. It contains not over 5 percent by weight of moisture. The fat content is not over 1 1/2 percent by weight unless otherwise indicated.

(12) “Package” means any container or wrapper in which any food is enclosed for use in the delivery or display of that food to retail purchasers, but does not include:

(a) Shipping containers or wrappings used solely for the transportation of any food in bulk or in quantity to manufacturers, packers or processors, or to wholesale or retail distributors.

(b) Shipping containers or outer wrappings used by retailers to ship or deliver any food to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity.

(13) “Pesticide chemical” means any substance which, alone, in chemical combination, or in formulation with one or more other substances is a “pesticide” within the meaning of s. 94.67 (25) and

which is used in the production, storage or transportation of raw agricultural commodities.

(13g) “Potluck event” means an event to which all of the following 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.

(13r) “Public health and safety” means the highest degree of protection against infection, contagion or disease and freedom from the danger of fire or accident that can be reasonably maintained in the operation of a hotel, tourist rooming house, bed and breakfast establishment, vending machine or vending machine commissary.

(14) “Raw agricultural commodity” means any food in its raw or natural state, including all fruits that are washed, colored or otherwise treated in their unpeeled natural form prior to marketing.

(14g) “Restaurant” means any building, room or place at which the predominant activity is the preparation, service, or sale of meals to transients or the general public, including all places used in connection with it and including any public or private school lunchroom for which food service is provided by contract. “Meals” does not include soft drinks, ice cream, milk, milk drinks, ices and confections. “Restaurant” does not include:

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

(b) Churches, religious, fraternal, youths’ or patriotic organizations, service clubs and civic organizations which 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, or a private individual selling foods from a movable or temporary stand at public farm sales.

(d) Any bed and breakfast establishment that serves breakfasts only to its lodgers.

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

(f) Any college campus, as defined in s. 36.05 (6m), institution as defined in s. 36.51 (1) (b) 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.

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

(h) A potluck event.

(i) The serving of food or beverage through a licensed micro market.

(14m) “Salvaging distressed food” means reconditioning or preparing distressed food for sale or use as food, including cleaning, culling, sorting, scouring, labeling, packaging, processing or treating the food.

(15) “Sell”, “sale” or “sold” includes delivering, shipping, consigning, exchanging, offering or exposing for sale, or having in possession with intent to sell.

(15b) “Temporary restaurant” means a restaurant that operates at a fixed location in conjunction with a single event such as

3 Updated 19–20 Wis. Stats.

a fair, carnival, circus, public exhibition, anniversary sale or occasional sales promotion.

(15f) “Tourist or transient” means a person who travels from place to place away from his or her permanent residence for vacation, pleasure, recreation, culture, business or employment.

(15k) “Tourist rooming house” means any lodging place or tourist cabin or cottage where sleeping accommodations are offered for pay to tourists or transients. “Tourist rooming house” does not include:

(a) A private boarding or rooming house, ordinarily conducted as such, not accommodating tourists or transients.

(b) A hotel.

(c) Bed and breakfast establishments.

(15p) “Vending machine” means any self-service device offered for public use which, upon insertion of a coin or token, or by other means, dispenses unit servings of food or beverage either in bulk or in package, without the necessity of replenishing the device between each vending operation. “Vending machine” does not include a 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.

(15s) “Vending machine commissary” means any building, room or place where the food, beverage, ingredients, containers, transport equipment or supplies for vending machines or micro markets are kept, handled, prepared or stored by a vending machine or micro market operator. “Vending machine commissary” does not mean any place at which the operator is licensed to manufacture, distribute or sell food products under this chapter.

(15w) “Vending machine location” means the room, enclosure, space or area where one or more vending machines are installed and operated.

(15y) “Vending machine operator” means the person maintaining a place of business in the state and responsible for the operation of one or more vending machines.

(16) “Whey cream” means that portion of whey rich in milk fat which is separated from whey by centrifugal force, is fresh and clean and contains not less than 30 percent of milk fat.

History: 1975 c. 94 s. 91 (10); 1975 c. 308; 1977 c. 29 s. 1650m (4); 1977 c. 106 s. 15; 1983 a. 189, 261; 1987 a. 276; 1995 a. 225; 2013 a. 374; 2015 a. 55 ss. 2643, 4065, 4067 to 4077; 2015 a. 242; 2017 a. 225.

97.02 Standards; adulterated food. For the purposes of this chapter, a food is adulterated if it is adulterated within the meaning of 21 USC 342, except that the department may not consider a food to be adulterated solely because it contains hemp, as defined in s. 94.67 (15c), or a hemp product.

History: 1971 c. 156; 1979 c. 89; 2005 a. 253; 2009 a. 177; 2013 a. 374; 2017 a. 100; 2019 a. 68.

Cross-reference: See also ch. ATCP 55, Wis. adm. code.

97.03 Standards; misbranding. For the purposes of this chapter, a food is misbranded if it is misbranded within the meaning of 21 USC 343.

History: 1971 c. 156 ss. 2, 3, 5; 1977 c. 216; 1991 a. 111; 1993 a. 492; 1995 a. 225; 2013 a. 374.

Cross-reference: See also ch. ATCP 55, Wis. adm. code.

97.07 Interpretation. If an article is alleged to be misbranded because the labeling is misleading, then in determining whether the labeling is misleading, there shall be taken into account not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the labeling fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling relates under the conditions of use prescribed in the labeling or under such conditions of use as are customary or usual.

97.09 Rules. (1) Definitions and standards of identity, composition, quality and fill of container for foods, and amendments

FOOD, LODGING, RECREATION**97.12**

thereto, now or hereafter adopted under the federal act or this chapter are definitions and standards of identity, composition, quality and fill of container under s. 97.03. However, when such action will promote honesty and fair dealing in the interest of consumers, the department may amend, stay or reject such federal regulations or make rules establishing definitions and standards of identity, composition, quality and fill of container for foods where no federal regulations exist, or which differ from federal regulations.

(2) Temporary permits granted under the federal act for interstate shipment of experimental packs of food varying from the requirements of federal definitions and standards of identity are automatically effective in this state under conditions set forth in such permits.

(3) The department may also issue temporary marketing permits upon a convincing showing of need to continue a market study where the interests of consumers are safeguarded. Such permits are subject to terms and conditions prescribed by departmental rules but may not be issued for a period exceeding 6 months plus one renewal period of 6 months after departmental review.

(4) The department may, by rule, establish and enforce standards governing the production, processing, packaging, labeling, transportation, storage, handling, display, sale, including retail sale, and distribution of foods that are needed to protect the public from the sale of adulterated or misbranded foods.

(5) The department shall promulgate rules establishing standards and procedures for the labeling of organic food. The rules may establish a process whereby organizations, businesses and firms certify that foods represented as organic foods comply with established standards. In this subsection, “organic food” means any food that is marketed using “organic” or any derivative of “organic” in its labeling or advertising.

History: 1971 c. 156; 1983 a. 261; 1987 a. 278; 2015 a. 242.

Cross-reference: See also ch. ATCP 55, Wis. adm. code.

97.10 Prohibited acts. (1) The sale of any food that is adulterated or misbranded is prohibited.

(2) It is unlawful to manufacture, prepare for sale, store, or sell food unless the food is protected from filth, flies, dust or other contamination or unclean, unhealthful or insanitary conditions.

(3) No person shall be subject to the penalties of s. 97.72 for having violated sub. (1), if he or she establishes a guaranty or undertaking signed by, and containing the name and address of the person residing in this state from whom the article was received in good faith, to the effect that such article is not adulterated or misbranded within the meaning of ss. 97.02 and 97.03.

History: 1971 c. 156; 1983 a. 261.

Cross-reference: See also ch. ATCP 55, Wis. adm. code.

SUBCHAPTER II**FOOD SAFETY AND REGULATION**

97.12 Enforcement. (1) 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.

(2) (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 not longer than 14 days from the time of its delivery, but 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 any such holding order so issued and delivered shall 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). 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 so notified in writing, and such holding order shall terminate upon such notification.

(c) 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 so 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. 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.

(d) 1. Any person violating an order issued under this section may be fined not more than the maximum amount under subd. 2. or imprisoned not more than one year in the county jail or both.

2. 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 section.

(3) (a) The department may issue a special order as provided under s. 93.18 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 fixed period of time for correction. 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.

(b) The department may, by summary order and without prior notice or hearing, suspend a license or permit 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, and is subject to right of hearing before the department, if requested within 10 days after date of service. Hearings, if requested, 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.

(4) Any person who does either of the following may be fined not more than \$5,000 or imprisoned not more than one year in the county jail or both:

(a) Assaults, restrains, threatens, intimidates, impedes, interferes with, or otherwise obstructs a department inspector, employee or agent in the performance of his or her duties.

(b) Gives false information to a department inspector, employee or agent with the intent to mislead the inspector, employee or agent in the performance of his or her duties.

(5) Any person who fails to comply with an order issued under this chapter may be required to forfeit \$50 for each day of non-compliance.

History: 1971 c. 156; 1983 a. 261; 2015 a. 55.

Cross-reference: See also ch. ATCP 55, Wis. adm. code.

A warrantless inspection of a dairy farm under authority of ss. 93.08, 93.15 (2), and 97.12 (1) and related administrative rules made without prior notice and without the owner being present was not unconstitutional. Because the administrative rules govern operations, equipment, and processes not typically conducted in residential areas, the rules and statutes sufficiently preclude making warrantless searches of residences. *Lundeen v. DATCP*, 189 Wis. 2d 255, 525 N.W.2d 758 (Ct. App. 1994).

97.13 Sale of fish flour regulated. No person shall sell any food product for human consumption within this state containing whole fish flour, except fish flour made from the normally edible portions of fish or fish protein concentrate. No package containing fish flour or fish protein concentrate shall be sold by any person unless it bears a statement declaring that the contents thereof are made only from the edible portions of fish.

97.17 Buttermaker and cheesemaker license. (1) In this section the terms “buttermaker” and “cheesemaker” mean a person employed or who may be employed in a butter or a cheese factory who has charge of and supervision over the actual process of manufacturing butter or cheese, and shall not include a person employed in a butter or cheese factory for the purpose of assisting in the manufacture of such product. This section shall not affect a person making up a product produced on the person’s farm, nor shall it be unlawful for a licensed cheesemaker employed in a licensed cheese factory to make butter or whey cream butter for the use or consumption only of the patrons thereof.

(2) No person shall engage as a buttermaker or cheesemaker unless the person has a license from the department. The license shall be issued by the department under regulations that the department shall prescribe relating to the qualifications of applicants for licenses. The qualifications shall include the applicant’s record in operating and keeping in sanitary condition the butter or cheese factory in which the applicant has been employed.

(3) Application for a buttermaker’s or cheesemaker’s license shall be made upon a form furnished by the department. Upon receipt of the application the department shall issue a permit to the applicant to carry on the work of a buttermaker or cheesemaker. The permit shall have the force and effect of a license to a buttermaker or cheesemaker until a license shall have been issued to the applicant or until the applicant shall have been notified of the denial of the application. At the time that the permit is issued, the department shall furnish the applicant with the regulations incident to securing a license and also suggestions relating to the proper method of operating butter or cheese factories.

(4) Each application for a license shall be accompanied by a fee that is \$50 unless otherwise established by department rule, except that an individual who is eligible for the veterans fee waiver program under s. 45.44 is not required to pay a fee.

(6) The license shall expire on the first day of January of the 2nd year commencing after the date of issuance or renewal. Renewal applications shall be submitted on department forms and be accompanied by the biennial license fee under sub. (4).

History: 1977 c. 216; 1979 c. 342; 1987 a. 27; 1989 a. 174; 1991 a. 39; 1993 a. 492; 1995 a. 225; 2011 a. 209.

Cross-reference: See also ch. ATCP 69, Wis. adm. code.

97.175 Butter and cheese grader license requirements. (1) In this section and ss. 97.176 and 97.177, “butter grader” or “cheese grader” means a person who grades butter or cheese.

(2) No person may act as a butter grader or a cheese grader without a license granted by the department. A person desiring a license shall apply on a form furnished by the department and shall pay to the department a fee that is \$50 unless otherwise established by department rule, except that an individual who is eligible for the veterans fee waiver program under s. 45.44 is not required to pay a fee. Before issuing a license, the department shall require the applicant to demonstrate his or her competence to act as a butter grader or a cheese grader in a manner determined by the department. A license expires on September 30 of the 2nd year commencing after the date of issuance.

(3) Butter graders and cheese graders must act in accordance with the standards and requirements established under ss. 93.07, 97.176 and 97.177.

(4) The department may deny, suspend or revoke a license under this section by an order if the department finds that the applicant or licensee is not qualified to act as a butter grader or cheese grader or that the applicant or licensee has applied inaccurate grades or has obtained the license by fraud, perjury or through error. The department shall notify the applicant or licensee of the order and shall follow the procedures for issuing a special order under s. 93.18.

History: 1983 a. 131; 1987 a. 27; 1991 a. 39; 2011 a. 209.

97.176 Butter; grading; label. (1) It is unlawful to sell, offer or expose for sale, or have in possession with intent to sell, any butter at retail unless it has been graded. Butter shall be graded as follows:

- (a) Grade, Wisconsin, AA — 93 score;
- (b) Grade, Wisconsin, A — 92 score;
- (c) Grade, Wisconsin, B — 91–90 score;
- (d) Grade, Wisconsin, undergrade — all butter below Wisconsin B.

(2) United States AA, A, and B grades shall be accepted in lieu of the corresponding Wisconsin AA, A, and B grades, but all United States grades below B shall, for the purpose of this section, correspond to Wisconsin undergrade.

(3) As used in this section, score or grade means the grading of butter by its examination for flavor and aroma, body and texture, color, salt, package and by the use of other tests or procedures approved by the department for ascertaining the quality of butter in whole or in part.

(4) Details for methods and procedures to be used for ascertaining quality, for labeling, and for arbitrating disputes with respect to grades, shall be developed by the department as a result of public hearings to be held at a convenient location in the state.

(5) Butter from outside of the state sold within the state shall be provided with a label which indicates that it complies with the state grade standards as provided in this section and which indicates the grade in a manner equivalent to the requirements for butter manufactured and sold within the state.

(6) Butter that carries the state grade labels shall be graded by butter graders licensed under s. 97.175.

(7) No person, for himself or herself, or as an agent, shall advertise the sale of any butter at a stated price, unless the grade of the butter is set forth in such advertisement in not less than 10–point type.

History: 1977 c. 29 s. 1650m (4); 1983 a. 131 s. 2; Stats. 1983 s. 97.176; 1991 a. 39; 1993 a. 492.

Cross-reference: See also ch. ATCP 85, Wis. adm. code.

Wisconsin’s butter–grading law does not violate the due process clause, the equal protection clause, or the dormant commerce clause. This section is rationally related to the state’s legitimate interest in consumer protection and does not discriminate against out-of-state businesses. *Minerva Dairy, Inc. v. Harsdorf*, 905 F.3d 1047 (2018).

97.177 Cheese; grading; labeling. (1) The department shall by rule adopt standards for grades of cheese manufactured in Wisconsin.

(2) Cheese which carries a state grade must be graded by a cheese grader licensed under s. 97.175 and must conform to the standards for the grade. Graded cheese must be plainly labeled to indicate the grade of the cheese and the license number of the cheese grader.

(3) Cheese manufactured in Wisconsin must be labeled on either the cheese itself or the container at the factory where it is manufactured. The label must remain on the cheese until the cheese is used in a different food manufacturing process or relabeled by the buyer for later sale. The label must contain all of the following:

- (a) The type or variety of cheese.
- (b) The word Wisconsin or the code number 55.
- (c) The factory number designated by the department.
- (d) The date of manufacture.
- (e) The number of the vat in which the cheese was manufactured if more than one vat of cheese was manufactured in the factory on the same day.

(4) The department may adopt rules for the administration of this section.

History: 1983 a. 131.

Cross-reference: See also ch. ATCP 81, Wis. adm. code.

97.18 Oleomargarine regulations. (1) (a) For the purposes of this section “oleomargarine” or “margarine” includes oleomargarine, margarine, butterine and other similar substances, fats and fat compounds sufficiently adaptable to the ordinary uses of butter, to lead readily to use as an alternative to butter, but this section shall not apply to lard, cream cheese, cheese food compounds, nor to any other dairy product made exclusively of cow’s milk or milk solids with or without added vitamins, if such product is sold or distributed in such manner and form as will clearly distinguish it from butter. Nor shall this section apply to shortenings not churned or emulsified in milk or cream or having a melting point of 112 degrees Fahrenheit or more as determined by the capillary tube method unless there is sold or given away with such shortening any compound which, when mixed with such shortening, makes oleomargarine, butterine or similar substances.

(b) “Colored oleomargarine” or “colored margarine” is oleomargarine or margarine having a tint or shade containing more than 1 6/10 degrees of yellow or of yellow and red collectively but with an excess of yellow over red, as measured in terms of Lovibond tintometer scales or its equivalent.

(3) No person shall sell, offer or expose for sale at retail any oleomargarine or margarine unless:

- (a) Such oleomargarine or margarine is packaged;
- (b) The net weight of the contents of any package sold in a retail establishment is one pound;

(c) There appears on the label of the package the word “oleomargarine” or “margarine” in type or lettering at least as large as any other type or lettering on the label in a color of print which clearly contrasts with its background, and a full accurate statement of the ingredients contained in the oleomargarine or margarine; and

(d) Each part of the contents of the package is contained in a wrapper or separate container which bears the word “oleomargarine” or “margarine” in type or lettering not smaller than 20–point type.

(4) The serving of colored oleomargarine or margarine at a public eating place as a substitute for table butter is prohibited unless it is ordered by the customer.

(5) The serving of oleomargarine or margarine to students, patients or inmates of any state institutions as a substitute for table butter is prohibited, except that such substitution may be ordered

by the institution superintendent when necessary for the health of a specific patient or inmate, if directed by the physician in charge of the patient or inmate.

(6) Any person who violates any provision of this section may be fined not less than \$100 nor more than \$500 or imprisoned not more than 3 months or both; and for each subsequent offense may be fined not less than \$500 nor more than \$1,000 or imprisoned in the county jail not less than 6 months nor more than one year.

History: 1971 c. 125; 1973 c. 90; 1975 c. 41; 1977 c. 289 ss. 3m, 11; Stats. 1977 s. 97.18; 1995 a. 27 s. 9126 (19); 1995 a. 225; 1997 a. 35; 2007 a. 20 s. 9121 (6) (a); 2013 a. 374; 2015 a. 55, 242.

97.20 Dairy plants. (1) DEFINITIONS. In this section:

(a) “Dairy plant” means a processing plant, receiving station, or transfer station.

(b) “Dairy product” means any of the following:

1. Milk or any product or by-product derived solely from milk.

2. Hooved or camelid mammals’ milk or any product or by-product derived solely from hooved or camelid mammals’ milk.

3. An item that meets a definition or standard of identity under 21 CFR 131, 133, 135.3 to 135.140, or 184.1979 or under 21 USC 321a or 321c.

4. An item that fails to meet a definition or standard of identity specified in subd. 3. solely because the item contains hooved or camelid mammals’ milk or milk from goats or sheep instead of or in addition to milk from cows.

5. A product that is ready to eat, sell, distribute, or market and that is made solely of 2 or more of the items under subds. 1. to 4.

(c) “Fluid milk product” has the meaning given under s. 97.24 (1) (ar).

(d) “Grade A dairy plant” means a dairy plant required to hold a permit under sub. (3).

(e) “Grade A milk” has the meaning given under s. 97.24 (1) (b).

(f) “Grade A milk product” has the meaning given under s. 97.24 (1) (c).

(fg) “Hooved or camelid mammal” includes water buffalo, yaks, and other bovine species; camels, llamas, alpacas, and other camelid species; and horses, donkeys, and other equine species.

(fm) “Hooved or camelid mammals’ milk” means the lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy hooved or camelid mammals.

(gm) “Milk producer” has the meaning given in s. 97.22 (1) (f).

(h) “Processing plant” means a facility engaged in pasteurizing or manufacturing dairy products, or processing dairy products into other dairy products, for sale or distribution.

(i) “Receiving station” means a facility which is designed for the receipt and bulk storage of milk, and which is used to receive or store milk in bulk. “Receiving station” does not include a processing plant or a facility used to distribute pasteurized milk in bottled or packaged form to consumers.

(j) “Transfer station” means a facility which is designed and used solely to transfer milk from one bulk transport vehicle to another without intervening storage.

(2) DAIRY PLANT LICENSE. (a) *License requirement.* Except as provided in par. (e), no person, including this state, may operate a dairy plant without a valid license issued by the department for that dairy plant. A dairy plant license expires on April 30 annually, except that a license issued for a new dairy plant on or after January 30 but before May 1 expires on April 30 of the following year. A dairy plant license is not transferable between persons or locations.

(b) *License application.* An application for a dairy plant license shall be made on a form provided by the department and shall be accompanied by each applicable fee required under subs. (2c) and (2n) to (2w). The application shall include all information reasonably required by the department for purposes of licens-

ing. The application shall state whether the dairy plant is a processing plant, receiving station or transfer station, and shall describe the nature of any processing operations conducted at the dairy plant.

(d) *Issuance or renewal of license.* The department may not issue or renew a dairy plant license unless all of the following conditions are met prior to licensing:

1. The license applicant pays all fees that are due and payable by the applicant under subs. (2c) to (2w), as set forth in a statement from the department. The department shall refund a fee paid under protest if the department determines that the fee was not due and payable as a condition of licensing under this subsection.

2. The license applicant has filed all financial information required under s. 126.44 and any security required under s. 126.47. If an applicant has not filed all financial information under s. 126.44 and any security required under s. 126.47, the department may issue a conditional dairy plant license under s. 93.06 (8) which prohibits the licensed operator from purchasing milk or fluid milk products from milk producers or their agents, but allows the operator to purchase milk or fluid milk products from other sources.

3. If the dairy plant is a new dairy plant, the department has inspected the dairy plant for compliance with this chapter and rules promulgated under this chapter.

(e) *License exemptions.* A dairy plant license under this section is not required for:

1. A farm manufacturing or processing dairy products solely for consumption by the owner or operator of the farm, or members of the household or nonpaying guests or employees.

2. The retail preparation and processing of meals for sale directly to consumers or through vending machines, if the preparation and processing is covered under a license issued under s. 97.605.

3. A retail food establishment licensed under s. 97.30 if the establishment processes dairy products solely for retail sale at the establishment.

4. A dairy plant that is exempted from licensing by department rule.

5. A food processing plant licensed under s. 97.29 that processes dairy products into a prepared food that is not a dairy product if the dairy products used by the food processing plant are manufactured at a dairy plant from ingredients that are pasteurized or are produced under other processes that eliminate or reduce to an acceptable level the food safety hazards associated with the dairy products, including aseptically processed foods, high acid foods, heat treated foods, aged foods, cold pack foods, and similarly processed foods.

(f) *Added operations.* No dairy plant may add a new category of dairy plant operations during the time period for which a dairy plant license was issued unless the dairy plant first notifies the department and obtains written authorization for the new category of operations. In this paragraph, “new category of operations” includes the manufacture or processing of any of the following which was not identified on the dairy plant’s most recent license application:

1. Fluid milk products.
2. Cheese and related cheese products.
3. Frozen dessert dairy products.

(2c) DAIRY PLANT LICENSE FEE. (a) *Annual license fee.* An applicant for a dairy plant license shall pay an annual license fee specified under par. (b) as follows:

1. An applicant for a license to operate a dairy plant that operated during the previous calendar year shall pay the basic annual license fee plus the supplementary dairy plant license fee based on the amount of milk that was delivered to the dairy plant from milk producers in the previous calendar year, whether or not that particular applicant operated the dairy plant during the previous calendar year.

2. An applicant for a license to operate a dairy plant that has not been operated in the previous calendar year shall pay the basic annual license fee plus the supplementary dairy plant license fee that is established by department rule.

(b) *License fee amounts.* Unless otherwise established by department rule, the annual license fees required under par. (a) are a basic annual license fee of \$80 for each dairy plant plus:

1. For a grade A processing plant, a supplementary annual license fee of \$650 if the plant received more than 2,000,000 pounds of milk from milk producers or of \$500 if the plant received 2,000,000 pounds or less of milk from milk producers.

2. For a processing plant that is not a grade A processing plant and that annually manufactures or processes more than 1,000,000 pounds of dairy products or more than 200,000 gallons of frozen dairy products, a supplementary annual license fee of \$270.

3. For a grade A receiving station, a supplementary annual license fee of \$250.

(c) *Surcharge for operating without license.* An applicant for a dairy plant license shall pay a license fee surcharge if the department determines that within one year before submitting the license application, the applicant operated the dairy plant without a license in violation of sub. (2). The amount of the surcharge is \$100, or \$500 if the dairy plant operator procures milk or fluid milk products from milk producers or their agents. Payment of this license fee surcharge does not relieve the applicant of any other civil or criminal liability that results from the unlicensed operation of the dairy plant, but does not constitute evidence of any violation of law.

(2g) *MILK PROCUREMENT FEE.* (a) *Monthly procurement fee.* A dairy plant operator shall pay a milk procurement fee on or before the 25th day of each month in the amount specified under par. (b) as follows:

1. The operator of a dairy plant that operated during the month preceding the month when the payment is due shall pay a milk procurement fee based on the amount of milk that was delivered to the dairy plant from milk producers in the month preceding the month when the payment is due, whether or not that particular dairy plant operator operated the dairy plant during the month preceding the month when the payment is due.

2. The operator of a dairy plant that has not been operated in the month preceding the month when the payment is due shall pay a milk procurement fee in the month when the payment is due that is established by department rule.

(b) *Amount of fees.* The department shall specify the amount of milk procurement fees by rule.

(c) *Out-of-state milk shipments.* A milk producer who ships milk to an out-of-state dairy plant shall pay a milk procurement fee, specified under par. (b), on that milk, unless the out-of-state dairy plant voluntarily pays that fee for the milk producer.

(2n) *DAIRY PLANT REINSPECTION FEE.* (a) *Reinspection fees.* If the department reinspects a dairy plant because the department has found a violation of this chapter or rules promulgated under this chapter, the department shall charge the dairy plant 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 the dairy plant operator.

(b) *Reinspection fee amounts.* Unless otherwise established by department rule, the fees for reinspection required under par. (a) are a basic fee of \$40 for each dairy plant reinspection, plus:

1. For a grade A processing plant, a supplementary reinspection fee of \$160 if the plant received more than 2,000,000 pounds of milk from milk producers or of \$125 if the plant received 2,000,000 pounds or less of milk from milk producers.

2. For a processing plant that is not a grade A processing plant, a supplementary reinspection fee of \$140.

3. For a grade A receiving station, a supplementary reinspection fee of \$60.

(2r) *MILK PRODUCER FEES.* A dairy plant operator shall pay milk producer license and reinspection fees on behalf of milk producers, subject to s. 97.22 (2) (c) and (4) (b). A milk producer reinspection fee is payable by a dairy plant operator when a dairy farm 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 dairy plant operator.

(2w) *DAIRY PRODUCT GRADING FEE.* An applicant for a license for a dairy plant that has been operated in the previous calendar year, that is not a grade A dairy plant and that produces butter or cheese shall pay a grading fee that, unless otherwise established by department rule, is 1.09 cents for each 100 pounds of butter or cheese that is gradable and produced by the dairy plant during the previous calendar year. An applicant for a license for a dairy plant that has not been operated in the previous calendar year, that is not a grade A dairy plant and that produces butter or cheese shall pay a grading fee that is established by the department by rule.

(3) *GRADE A DAIRY PLANT; PERMIT.* (a) *Permit requirement.* No person operating a dairy plant at which milk or fluid milk products are received, transferred, manufactured or processed may sell or distribute that milk or those fluid milk products as grade A milk or grade A milk products unless the person holds a valid grade A dairy plant permit issued by the department for that dairy plant. A grade A dairy plant permit expires on April 30 annually and is not transferable between persons or locations. A grade A dairy plant permit may be issued in the form of an endorsement on a dairy plant license under sub. (2). An application for a grade A dairy plant permit shall be made on a form provided by the department and shall be accompanied by each grade A dairy plant supplementary license fee required under sub. (2c).

(b) *Grade A standards.* A grade A dairy plant shall comply with standards applicable to the receipt, transfer, manufacture, processing and distribution of grade A milk and grade A milk products under this chapter or rules of the department. A grade A dairy plant may not receive, transfer or process milk that is not grade A milk unless the department provides written authorization. Except as provided by the department by rule, the department may not grant that authorization unless the grade A dairy plant maintains separate facilities for the receipt, transfer and processing of milk that is not grade A milk.

(d) *Surcharge for operating without a permit.* An applicant for a grade A dairy plant permit shall pay a grade A dairy plant permit surcharge of \$100 if the department determines that, within one year prior to submitting the permit application, the applicant operated the dairy plant as a grade A dairy plant without a grade A permit, in violation of par. (a). Payment of this surcharge does not relieve the applicant of any other civil or criminal liability which results from a violation of par. (a), but does not constitute evidence of a violation of any law.

(e) *Permit contingent on payment of fees.* The department may not issue or renew a grade A dairy plant permit until the permit applicant pays all applicable fees under this subsection or subs. (2c) to (2w). The department shall refund a fee paid under protest if the department determines that the fee was not required as a condition of the issuance of a grade A dairy plant permit under this subsection.

(3g) *CRISIS HOTLINE INFORMATION.* The department shall develop, and furnish to a dairy plant on request, a standard form containing information about the crisis hotline.

(3m) *CONFIDENTIALITY.* Any information kept by the department under this section or s. 97.24 that identifies individual milk producers who deliver milk to a dairy plant licensed under this section and that is a composite list for that dairy plant is not subject to inspection under s. 19.35 unless inspection is required under s.

126.70 or unless the department determines that inspection is necessary to protect the public health, safety or welfare.

(4) **RULE MAKING.** The department may promulgate rules to establish amounts of fees required under subs. (2c) to (2w) or to govern the operation of dairy plants. The rules may include standards for the safety, wholesomeness and quality of dairy products; the construction, maintenance and sanitary operation of dairy plants; the design, installation, cleaning and maintenance of equipment and utensils; personnel sanitation; storage and handling of milk and fluid milk products; pasteurization and processing procedures; sampling and testing; and reports and record keeping. The rules may also set forth the duties of dairy plants to inspect dairy farms, collect and test producer milk samples and make reports to the department.

History: 1971 c. 125, 156, 211; 1975 c. 39, 199; 1977 c. 203 s. 106; 1979 c. 257; 1983 a. 189, 203; 1987 a. 27, 399; 1989 a. 31, 174; 1991 a. 39, 269; 1993 a. 27; 2001 a. 16; 2011 a. 195; 2013 a. 302, 303; 2015 a. 55, 242.

Cross-reference: See also chs. ATCP 65 and 100, Wis. adm. code.

97.21 Milk haulers and milk distributors. (1) DEFINITIONS. In this section:

(a) “Bulk milk tanker” means a mobile bulk container used to transport milk, fluid milk products, whey or whey cream in bulk from a dairy farm, or to or from a dairy plant in this state. “Bulk milk tanker” includes a mobile bulk container which is permanently mounted on a motor vehicle or which is designed to be towed by a motor vehicle. “Bulk milk tanker” does not include a mobile bulk container which is used by a milk producer solely to transport that producer’s own milk.

(am) “Dairy plant” has the meaning given under s. 97.20 (1) (a).

(b) “Fluid milk product” has the meaning given under s. 97.24 (1) (ar).

(c) “Grade A milk” has the meaning given under s. 97.24 (1) (b).

(e) “Milk distributor” means a person who distributes milk or fluid milk products. “Milk distributor” does not include a dairy plant, a milk hauler, a milk producer, as defined in s. 97.22 (1) (f), or a retail food establishment, as defined in s. 97.30 (1) (c).

(2) **BULK MILK TANKER; GRADE A PERMIT.** No person may operate a bulk milk tanker to transport milk or fluid milk products in bulk for sale or distribution as grade A milk or grade A milk products without a valid grade A bulk milk tanker permit issued annually by the department or an equivalent regulatory agency in another state for that bulk milk tanker. A grade A bulk milk tanker permit is not transferable between persons or bulk milk tankers. An application for a permit shall be made on a form provided by the department. An applicant shall include with an application for a permit proof that the bulk milk tanker has passed an inspection conducted within the preceding year by the department or an individual certified by the department to conduct bulk milk tanker inspections. Except as provided in sub. (4), the department may not charge a fee for a grade A bulk milk tanker permit issued under this paragraph.

(3) **MILK DISTRIBUTORS; LICENSE.** No person may operate as a milk distributor without a valid license issued by the department. A milk distributor license expires on April 30 annually. An application for a license shall be made on a form provided by the department and shall be accompanied by applicable fees under sub. (4). The application shall include all information reasonably required by the department for purposes of issuing the license.

(4) **FEES.** (a) *License fee.* An applicant for a milk distributor license shall pay the license fee specified under sub. (4m).

(b) *Reinspection fee.* If the department reinspects a bulk milk tanker or the vehicle or facilities of a milk distributor because the department finds a violation of this chapter or rules promulgated under this chapter, the department shall charge the bulk milk tanker operator or milk distributor the reinspection fee specified under sub. (4m). The 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 permit renewal application to the bulk milk tanker operator or a license renewal application to the milk distributor.

(c) *Surcharge for operating without a license.* An applicant for a milk distributor license shall pay a license fee surcharge of \$100 or twice the amount of the annual license fee specified under sub. (4m), whichever is less, if the department determines that, within one year prior to submitting the license application, the applicant operated without a license in violation of this section. Payment of this license fee surcharge does not relieve the applicant of any other civil or criminal liability that results from a violation of sub. (3), but does not constitute evidence of any violation of law.

(4m) **FEE AMOUNTS.** The department shall establish the fees required under sub. (4) (a) and (b) by rule.

(5) **LICENSING AND PERMITTING CONTINGENT ON PAYMENT OF FEES.** The department may not issue or renew a grade A bulk milk tanker permit or milk distributor license unless the permit or license applicant pays all fees that are due and payable by the applicant under sub. (4), as set forth in a statement from the department. The department shall refund a fee paid under protest if the department determines that the fee was not due and payable as a condition of permitting or licensing under this section.

(6) **RULE MAKING.** The department may promulgate rules to establish amounts of fees required under sub. (4) or to regulate bulk milk tanker operators and milk distributors. The rules may include standards for the construction, maintenance and sanitary operation of bulk milk tankers, milk distribution vehicles and milk distribution facilities; the design, installation, cleaning and maintenance of equipment and utensils; personnel sanitation; storage and handling of milk and fluid milk products; identification of bulk milk tankers and milk distribution vehicles; and record keeping.

History: 1987 a. 399; 1989 a. 174; 1991 a. 39; 1995 a. 27; 2015 a. 55, 242.

Cross-reference: See also ch. ATCP 82, Wis. adm. code.

97.22 Milk producers. (1) DEFINITIONS. In this section:

(a) “Dairy farm” means any place where one or more cows, sheep or goats are kept for the production of milk.

(b) “Dairy plant” has the meaning given under s. 97.20 (1) (a).

(c) “Fluid milk product” has the meaning given under s. 97.24 (1) (ar).

(d) “Grade A milk” has the meaning given under s. 97.24 (1) (b).

(f) “Milk producer” means any person who owns or operates a dairy farm, and sells or distributes milk produced on that farm.

(2) **LICENSE.** (a) *License required.* No person may operate a dairy farm as a milk producer without a valid license issued by the department for that dairy farm. A license expires on April 30 annually and is not transferable between persons or dairy farms. Every milk producer shall comply with standards applicable to the production of milk and fluid milk products under this chapter and rules promulgated under this chapter.

(b) *License fee.* Unless otherwise established by department rule, the fee for a milk producer license under par. (a) is \$20, except that an individual who is eligible for the veterans fee waiver program under s. 45.44 is not required to pay a fee. The department also may establish by rule a reduced license fee for a producer who is properly inspected at least once annually by a special dairy farm inspector certified under sub. (7).

(c) *Dairy plant to pay license fee for milk producer.* The operator of a dairy plant licensed under s. 97.20 shall pay the milk producer license fee under this subsection for every dairy farm from which the dairy plant receives milk at the time the fee payment is due. An applicant for a dairy plant license shall submit that fee with the applicant’s dairy plant license application under s. 97.20. A dairy plant operator who pays a milk producer license fee may charge that fee back to the milk producer if the dairy plant operator notifies the milk producer in writing of the dairy plant operator’s intent to charge the fee to the milk producer. A dairy plant operator

may not discriminate between milk producers with respect to fees charged under this paragraph, but may charge back license fees to all milk producers who cease shipping milk to the dairy plant during the license year. A dairy plant operator who pays a milk producer license fee may not deduct the amount of the fee from any payment to the milk producer for milk that the dairy plant operator purchases from the milk producer.

(3) GRADE A DAIRY FARM PERMIT. No milk producer may sell or distribute milk from his or her dairy farm as grade A milk without a valid grade A dairy farm permit issued by the department for that dairy farm. A grade A dairy farm permit expires on April 30 annually and is not transferable between persons or dairy farms. A grade A dairy farm permit may be issued in the form of an endorsement on a milk producer license under sub. (2). Every milk producer holding a grade A dairy farm permit shall comply with standards applicable to the production of grade A milk under this chapter or rules promulgated under this chapter.

NOTE: Sub. (3) is shown as renumbered from sub. (3) (a) by the legislative reference bureau under s. 13.92 (1) (bm) 2. Par. (a) (title) was removed under s. 35.17 as unnecessary.

(4) REINSPECTION AND REINSTATEMENT FEES. (a) *Fee required.* 1. If the department or a special dairy inspector has found a violation of this chapter or rules promulgated under this chapter, and if the department has not lowered the grade of the milk that may be sold or distributed from the dairy farm because of the violation, the department shall charge the reinspection fee specified under par. (am) to reinspect the dairy farm.

2. If the department or a special dairy inspector has found a violation of this chapter or rules promulgated under this chapter, and if the department has lowered the grade of the milk that may be sold or distributed from the dairy farm because of the violation, the department shall charge the reinstatement fee specified under par. (am) to reinspect the dairy farm.

3. A reinspection or reinstatement fee is payable when the reinspection is completed, and is due upon written demand from the department.

(am) *Fee amounts.* The reinspection fee under par. (a) 1., unless otherwise established by department rule, is \$20. The reinstatement fee under par. (a) 2., unless otherwise established by department rule, is \$40.

(b) *Dairy plant to pay reinspection or reinstatement fee for milk producer.* The operator of a dairy plant licensed under s. 97.20 shall pay the dairy farm reinspection or reinstatement fee under this subsection for every milk producer who was shipping milk from the reinspected dairy farm to that dairy plant at the time the dairy farm was reinspected. The department may issue an annual statement of reinspection or reinstatement fees payable by the dairy plant, and may demand payment from the dairy plant on an annual basis, when it issues an application form for the renewal of the dairy plant's license under s. 97.20. A dairy plant operator who pays a dairy farm reinspection or reinstatement fee shall charge that fee back to the milk producer.

(5) FEES PAYABLE BY MILK PRODUCER IF NOT PAID BY DAIRY PLANT. If a milk producer ships milk to a dairy plant which is not subject to licensure under s. 97.20, the unlicensed dairy plant may voluntarily pay the fees required under this section on behalf of the milk producer if the dairy plant is authorized by the milk producer to pay the fees. If no dairy plant pays the fees required under this section on behalf of a milk producer, the milk producer shall pay the fees.

(6) DAIRY FARM INSPECTION; FREQUENCY. The department shall inspect every dairy farm other than a grade A dairy farm at least once every 2 years, and shall inspect every grade A dairy farm at the frequency required by the department by rule under s. 97.24.

(7) SPECIAL DAIRY FARM INSPECTORS. The department may certify a dairy plant employee or agent to inspect dairy farms on behalf of the department as a special dairy farm inspector. A special dairy farm inspector shall inspect dairy farms and make written reports to the department according to procedures prescribed by the department. The department may promulgate rules govern-

ing the certification of special dairy farm inspectors; defining the authority and responsibilities of those inspectors; establishing inspection and reporting requirements; and establishing procedures by which the department will review inspector performance.

(8) RULE MAKING. The department may promulgate rules to establish the fees required under sub. (2) (b) or (4) (a) or to govern the operation of dairy farms by milk producers. The rules may include standards for any of the following:

- (a) The safety, wholesomeness and quality of milk.
- (b) The sanitary construction and maintenance of dairy farm facilities used in milk production.
- (c) The availability of safe and adequate water supplies for milk production.
- (d) The sanitary construction, maintenance and cleaning of equipment and utensils used in milk production.
- (e) Personnel sanitation related to milk production.
- (f) Sanitary procedures for the production of milk, including but not limited to the handling, transfer and storage of milk on a dairy farm.

(10) CONFIDENTIALITY. Any information obtained and kept by the department under this section, under s. 97.24, or under rules promulgated under those sections, that pertains to individual milk producer production, milk fat and other component tests and quality records is not subject to inspection under s. 19.35 except as required under s. 126.70 or except as the department determines is necessary to protect the public health, safety or welfare.

History: 1975 c. 39; 1987 a. 27, 399; 1989 a. 31; 1991 a. 39; 1993 a. 114; 2001 a. 16; 2011 a. 209; 2013 a. 374; 2015 a. 242; s. 13.92 (1) (bm) 2.; s. 35.17 correction in (3).

Cross-reference: See also ch. ATCP 65, Wis. adm. code.

97.23 Drug residues in milk. (1) In this section:

- (a) "Dairy plant" has the meaning given in s. 97.20 (1) (a).
- (c) "Milk producer" has the meaning given in s. 97.22 (1) (f).
- (2) (a) If, in accordance with a rule promulgated by the department under s. 93.07 (1), 97.09 (4), 97.20 (4), 97.22 (8), or 97.24 (3), a dairy plant operator rejects a bulk milk shipment because it is adulterated with a drug residue and if the dairy plant operator incurs a monetary loss as a result of the rejection of the bulk milk shipment, the dairy plant operator may recover the amount of the monetary loss from the milk producer who caused the bulk shipment to be adulterated with the drug residue. A dairy plant operator may deduct the amounts recoverable by him or her under this paragraph from the proceeds of milk sold to or through the dairy plant operator by the milk producer who caused the adulteration.
- (b) 1. Except as provided in subd. 2., the department may, by rule, require a dairy plant operator who rejects a bulk milk shipment because it is adulterated with a drug residue and who suffers a monetary loss as a result of the rejection of the bulk milk shipment to recover all or part of the monetary loss from the milk producer who caused the adulteration by deducting from the proceeds of milk sold by the milk producer an amount that is specified by the department by rule.

2. The department may not require a dairy plant operator who rejects a bulk milk shipment because it is adulterated with a drug residue to recover an amount that exceeds the dairy plant operator's actual monetary loss.

History: 1991 a. 231; 2013 a. 374; 2015 a. 242.

97.24 Milk and milk products. (1) DEFINITIONS. In this section:

- (a) "Dairy farm" means any place where one or more cows, sheep or goats are kept for the production of milk.
- (am) "Dairy plant" has the meaning given in s. 97.20 (1) (a).
- (ar) "Fluid milk product" means cream, sour cream, half and half, whipped cream, concentrated milk, concentrated milk products, cottage cheese, skim milk, flavored milk, buttermilk, cultured buttermilk, cultured milk, yogurt, vitamin and mineral forti-

fied milk or milk products, and any other product made by adding any substance to milk or any of these products.

(b) “Grade A milk” means milk which is produced, processed and distributed in compliance with grade A standards established by the department by rule under this chapter.

(c) “Grade A milk product” means a fluid milk product which is produced, processed and distributed in compliance with grade A standards established by the department by rule under this chapter.

(d) “Milk distributor” has the meaning given under s. 97.21 (1) (e).

(e) “Milk hauler” means any person, other than a milk producer hauling his or her own milk only, who transports milk or fluid milk products to or from a dairy plant or a collecting point.

(f) “Milk producer” means any person who owns or operates a dairy farm, and sells or distributes milk produced on that dairy farm.

(2) REQUIREMENTS FOR MILK AND FLUID MILK PRODUCTS; GRADE A REQUIREMENT. (a) No person may sell or distribute any milk unless that milk is produced, processed and distributed in compliance with standards established by the department by rule under this chapter.

(b) No person may sell or distribute any milk or fluid milk products which are not grade A milk or grade A milk products to consumers, or to any restaurant, institution or retailer for consumption or resale to consumers. Grade A milk and grade A milk products shall be effectively pasteurized, and shall be produced, processed and distributed in compliance with standards established by the department by rule under this chapter.

(c) No person may sell or distribute milk or fluid milk products which are labeled or otherwise represented as grade A milk or grade A milk products unless the milk and fluid milk products comply with this chapter and with standards established by the department by rule under this chapter.

(d) This section does not prohibit:

1. The sale of milk or fluid milk products which are heat sterilized in hermetically sealed containers.

2. Incidental sales of milk directly to consumers at the dairy farm where the milk is produced.

3. Incidental sales of pasteurized milk at a dairy plant licensed under s. 97.20.

4. The sale of grade A milk or grade A milk products which are produced and processed under equivalent laws or rules of another state or a local governmental unit, as provided under sub. (4) (b).

(3) RULES. The department, in consultation with the department of health services, shall issue rules governing the production, transportation, processing, pasteurization, handling, identity, sampling, examination, labeling and sale of milk and fluid milk products; the inspection of dairy herds, dairy farms and dairy plants; the issuing and revocation of permits to milk producers and milk haulers, and of licenses to dairy plants and milk distributors. Insofar as permitted by the laws of this state, such rules shall be in reasonable accord with the minimum standards and requirements for milk and fluid milk products currently recommended and published by the U.S. public health service as a milk ordinance and code, except that the requirements for bottling and sterilization of bottles in such standards shall not apply to milk sold by a producer, selling only milk produced by the producer on the producer’s dairy farm under the producer’s own supervision, and selling such milk only in the producer’s own milk house, which milk meets the requirements of grade A standards as set forth by the department of agriculture, trade and consumer protection, to a purchaser who has provided his or her own container, which has been sanitized in a manner comparable to the sanitizing of the utensils used in the production of milk by the producer, if the purchaser is purchasing milk for his or her own consumption.

(4) LEGISLATIVE PURPOSE; UNIFORMITY; RECIPROCITY. (a) Regulation of the production, processing and distribution of milk and fluid milk products under minimum sanitary requirements which are uniform throughout this state and the United States is essential for the protection of consumers and the economic well-being of the dairy industry, and is therefore a matter of statewide concern; however, nothing in this section shall impair or abridge the power of any municipality or county to regulate milk or fluid milk products under sanitary requirements and standards which are in reasonable accord with those established under this section or the power to impose reasonable license permit and inspection fees which combined shall not exceed the cost of necessary inspection. A municipality or county may not impose any fee for its inspection of milk producers, dairy plant facilities or dairy products which are under the inspection supervision of another governmental unit within or without the state with a valid certification rating made or approved by the department. No governmental unit may impose or collect a fee directly from the producer. A license or permit fee not to exceed \$25 annually may be imposed on milk distributors licensed under s. 97.22 and on dairy plants under the inspection supervision of another governmental unit which are engaged in the distribution of milk within a municipality or county.

(b) No sanitary requirement or standard established under this section or contained in any ordinance may prohibit the sale of milk or fluid milk products which are produced and processed under laws or rules of any governmental unit, within or without this state, which are substantially equivalent to the requirements of the rules promulgated under this section, and which are enforced with equal effectiveness, as determined by a milk sanitation rating made or approved by the department, under rules promulgated under this section.

(5) CERTIFICATION OF GRADE A DAIRY OPERATIONS. The department shall conduct evaluation surveys of grade A dairy operations in this state to the extent necessary to certify to the federal food and drug administration, out-of-state markets, the federal public health service, and local health departments, the compliance rating of the grade A dairy operations based upon the sanitation and enforcement requirements of the grade A pasteurized milk ordinance of the federal public health service and its related documents. The department may promulgate rules establishing fees which may be charged to dairy plants to fund these activities.

History: 1971 c. 125, 156, 228; 1973 c. 333; 1975 c. 39, 199; 1977 c. 29; 1979 c. 221; 1981 c. 390 s. 252; 1983 a. 189 ss. 128, 329 (20); 1987 a. 27, 399; 1989 a. 56 s. 259; 1993 a. 114; 1995 a. 27 s. 9126 (19); 2003 a. 33 ss. 1757, 1758, 2454; 2007 a. 20 s. 9121 (6) (a); 2015 a. 242.

Cross-reference: See also ch. ATCP 65, Wis. adm. code.

97.25 Use of synthetic bovine growth hormone; labeling of dairy products. (1) DEFINITIONS. In this section:

(a) “Dairy plant” has the meaning given in s. 97.20 (1) (a).

(b) “Dairy product” means cow’s milk or any product or by-product derived solely from cow’s milk, or any item in which cow’s milk or any product or by-product derived solely from cow’s milk is a principal ingredient.

(c) “Milk producer” has the meaning given in s. 97.22 (1) (f).

(2) PROHIBITION. No person may place upon the label of a dairy product a statement indicating that the dairy product is not produced from herds being administered synthetic bovine growth hormone except as provided in sub. (3).

(3) RULES. The department shall promulgate rules authorizing the operator of a dairy plant licensed under s. 97.20 or a retail food establishment licensed under s. 97.30 who complies with the rules to place upon the label of a dairy product the statement “Farmer-certified rBGH free.” or an equivalent statement that is not false or misleading. The statement shall be based upon affidavits from milk producers stating that the milk producers do not use synthetic bovine growth hormone for the production of milk.

(3m) DURATION OF MILK PRODUCER AFFIDAVITS. (a) In this subsection, “milk producer affidavit” means a written, sworn, and notarized statement signed by a milk producer that certifies to the person receiving the affidavit that the milk producer does not use synthetic bovine growth hormone in the production of milk delivered to the person.

(b) The department may not promulgate a rule under sub. (3) that limits the duration that a milk producer affidavit may be used to substantiate a claim that a dairy product contains no synthetic bovine growth hormone or is made from milk produced without the use of synthetic bovine growth hormone.

(4) RECIPROCITY. A person may sell a dairy product that is labeled for retail sale in another state the label of which indicates that the dairy product is not produced from herds being administered synthetic bovine growth hormone only if the dairy product is from a state identified by the department as having laws comparable to this state’s laws on labeling dairy products not produced with synthetic bovine growth hormone and is labeled in compliance with the laws of that state.

History: 1993 a. 476; 1995 a. 225; 2015 a. 55, 242; 2019 a. 153.

Cross-reference: See also ch. ATCP 83, Wis. adm. code.

97.27 Food warehouses. (1) DEFINITIONS. In this section:

(a) “Cold-storage warehouse” means a warehouse in which food is to be stored at temperatures between zero and 50 degrees Fahrenheit.

(b) “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:

2. A warehouse used solely for the storage of grain or other raw agricultural commodities.

3. A retail food establishment or other retail facility at which food is stored on a temporary basis incidental to retail preparation or sale.

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

5. A warehouse operated by a milk distributor licensed under s. 97.21 (3), and used primarily for the storage and distribution of milk, as defined in s. 97.01 (10) (a), and fluid milk products, as defined in s. 97.24 (1) (ar).

6. A facility owned or operated by a consumer and used by that consumer to store food for the consumer’s use.

(c) “Frozen-food locker plant” means a warehouse in which individual locked compartments not exceeding 20 cubic feet in capacity are rented to consumers for the storage of food at temperatures at or below 5 degrees Fahrenheit.

(d) “Frozen-food warehouse” means a warehouse at which food is to be stored at temperatures at or below 5 degrees Fahrenheit.

(dm) “Potentially hazardous food” means any food that can support rapid and progressive growth of infectious or toxicogenic microorganisms.

(e) “Retail food establishment” has the meaning given under s. 97.30 (1) (c).

(f) “Warehouse” means any building, room, structure or facility used for the storage of property.

(2) LICENSE REQUIRED. No person may operate a food warehouse without a valid license issued by the department for the food warehouse. A food warehouse license expires on June 30 annually, except that a license issued for a new food warehouse on or after March 30 but before July 1 expires on June 30 of the following year. Every food warehouse shall have a separate license. A license is not transferable between persons or food warehouse locations. Application for a license shall be made on a form provided by the department and shall be accompanied by applicable

fees required under sub. (3). An application shall include information reasonably required by the department for licensing purposes.

(3) FEES. (a) *License fee.* An applicant for a food warehouse license shall pay the license fee specified under sub. (3m).

(b) *Reinspection fee.* If the department reinspects a food warehouse because the department finds a violation of this chapter or rules promulgated under this chapter on a regularly scheduled inspection, the department shall charge the food warehouse operator the reinspection fee specified under sub. (3m). A reinspection fee is payable by the food warehouse operator 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 food warehouse operator.

(c) *Surcharge for operating without a license.* An applicant for a food warehouse license shall pay a license fee surcharge of \$100 if the department determines that, within one year prior to submitting the license application, the applicant operated a food warehouse without a license in violation of this subsection. Payment of this license fee surcharge does not relieve the applicant of any other civil or criminal liability which results from the unlicensed operation of the food warehouse, but does not constitute evidence of a violation of law.

(3m) FEE AMOUNTS. Unless otherwise established by department rule, the fees required under sub. (3) are:

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

(am) For a food warehouse that stores potentially hazardous food, and that has 50,000 or more square feet of storage area, an annual license fee of \$100 and a reinspection fee of \$100.

(b) For a food warehouse that does not store potentially hazardous food, and that has fewer than 50,000 square feet of storage area, an annual license fee of \$25 and a reinspection fee of \$50.

(c) For a food warehouse that does not store potentially hazardous food, and that has 50,000 or more square feet of storage area, an annual license fee of \$50 and a reinspection fee of \$100.

(4) LICENSING CONTINGENT ON PAYMENT OF FEES. The department may not issue or renew a food warehouse license unless the license applicant pays all fees which are due and payable under sub. (3), as set forth in a statement from the department. The department shall refund a fee paid under protest if the department determines that the fee was not due and payable as a condition of licensing under this section.

(5) RULE MAKING. The department may promulgate rules to establish the fees required under sub. (3) or to govern the sanitary operation of food warehouses. Rules may include any of the following:

(a) Standards for the construction and maintenance of food storage facilities.

(b) Standards for the storage, identification and handling of food.

(c) Record-keeping requirements to show the length of time that food is kept in storage.

(d) Freezing and temperature requirements applicable to frozen-food warehouses, frozen-food locker plants and cold-storage warehouses.

History: 1987 a. 399; 1989 a. 174; 1991 a. 39, 210; 1999 a. 83; 2013 a. 302; 2015 a. 55, 242.

Cross-reference: See also ch. ATCP 71, Wis. adm. code.

97.28 Direct sale of eggs. (1) In this section:

(a) “Candling” means carefully examining, in a dark place, the interior and exterior of a whole egg that is placed in front of a strong light source.

(b) “Egg” means the shell egg of the domestic chicken, *Gallus gallus domesticus*, and of turkey, duck, goose, guinea, or other avian species whose eggs are used for human consumption.

(c) “Egg producer” means a person who sells eggs laid only by a bird or a flock of birds owned by that person.

(d) “Egg sales route” means one or more residences inhabited by consumers who regularly buy eggs from an egg producer who travels to the residences.

(e) “Farmer’s market” means a building, structure, or place where 2 or more individuals gather on a regular, recurring basis to sell, directly to the consumer, any of the following:

1. Raw agricultural commodities that are grown, harvested, or collected by the individual.
2. Food that is prepared by the individual.

(f) “Nest–run egg” means an egg that is not washed, graded, or subject to candling before sale.

(2) An egg producer who satisfies all of the following need not obtain a license under s. 97.29 to sell eggs, including nest–run eggs:

(a) The number of egg–laying birds in the egg producer’s flock does not exceed 150.

(b) The egg producer sells the eggs directly to a consumer through one of the following venues:

1. At the premises where the eggs were laid.
2. At a farmers’ market located in this state.
3. On an egg sales route.

(c) The egg producer packages the eggs in a carton that is labeled only with the following information:

1. The egg producer’s name and address.
2. The date on which the egg producer packed the eggs into the carton.
3. A date that falls no more than 30 days after the date on which the eggs were packed by which the eggs must be sold.
4. A statement indicating that the eggs in the package are ungraded and uninspected.

(d) The egg producer keeps the eggs, packaged as provided under par. (c) and held, as packaged, for sale at a venue identified under par. (b), at an ambient temperature of 41 degrees Fahrenheit or below at all times.

History: 2013 a. 245.

97.29 Food processing plants. (1) **DEFINITIONS.** In this section:

(a) “Alcohol beverage” has the meaning given under s. 125.02 (1).

(b) “Bakery” means any place where bread, crackers, pasta or pies, or any other food product for which flour or meal is the principal ingredient, are baked, cooked or dried, or prepared or mixed for baking, cooking or drying, for sale as food.

(c) “Bottling establishment” means any place where drinking water, soda water beverage or alcohol beverage is manufactured or bottled for sale. “Bottling establishment” does not include a retail establishment engaged in the preparation and sale of beverages under a license issued under s. 125.26 or 125.51 or a license issued under s. 97.30 for a restaurant or other license issued under s. 97.605.

(d) “Canning” means the preservation and packaging in hermetically sealed containers of low–acid or acidified foods.

(e) “Confectionary” means any place where candy, fruit, nutmeats or any other food product is manufactured, coated or filled with saccharine substances for sale as food.

(f) “Drinking water” means water used or intended for use for human consumption. “Drinking water” includes distilled water, artesian water, spring water and mineral water, whether carbonated or uncarbonated, if consumed by humans or intended for human consumption.

(g) “Food processing” means the manufacture or preparation of food for sale through the process of canning, extracting, fermenting, distilling, pickling, freezing, baking, drying, smoking, grinding, cutting, mixing, coating, stuffing, packing, bottling, or

packaging, or through any other treatment or preservation process. “Food processing” includes the activities of a bakery, confectionary, or bottling establishment, and also includes the receipt and salvaging of distressed food for sale or use as food.

(h) “Food processing plant” means any place used primarily for food processing, where the processed food is not intended to be sold or distributed directly to a consumer. “Food processing plant” does not include any of the following:

1. A retail food establishment if the food processing activities at that establishment are authorized by a license issued under s. 97.30.

2. A restaurant or other establishment where meals are prepared or processed for retail sale directly to consumers or through vending machines if the food processing activities at that establishment are authorized by a license issued under s. 97.605.

3. An establishment covered by a license or permit under ch. 125 to sell alcohol beverages if the food processing activities related to alcohol beverages at that establishment are limited to preparing individual servings of alcohol beverages that are sold on the premises in accordance with the terms of the establishment’s license or permit under ch. 125.

4. A dairy plant if the food processing activities at that plant are authorized by a license issued under s. 97.20.

5. A meat or poultry establishment if the food processing activities at that establishment are authorized by a license issued under s. 97.42 or are authorized under 21 USC 451 to 472 or 21 USC 601 to 695.

6. An egg products plant if the food processing activities at that establishment are inspected by the federal department of agriculture under 21 USC 1031 to 1056.

7. A dairy farm and milking operation licensed under s. 97.22 that produces milk for shipment to a dairy plant licensed under s. 97.20 or under the equivalent laws of another state.

8. A place used by a beekeeper solely for extracting honey from the comb or producing and selling raw honey or raw bee products.

9. A place used solely for washing or packaging fresh or otherwise unprocessed fruits or vegetables.

10. A place used by a nonprofit organization solely for receiving and salvaging distressed food pursuant to the organization’s purposes if the organization is described in section 501 (c) (3) of the Internal Revenue Code and is exempt from federal income tax under section 501 (a) of the Internal Revenue Code.

11. A place on a farm used by an egg producer solely for handling, cleaning, or packaging whole eggs, including nest–run eggs, that are produced as allowed under s. 97.28 (2).

12. A place used solely for producing and packaging maple syrup or concentrated maple sap for sale directly to consumers or to a food processing plant licensed under this section if those sales do not exceed \$5,000 in any 12–month period.

12m. A place used to process food for sale at a stand operated by a minor, as defined in s. 66.0416 (1) (b).

13. Any other place exempted by the department by rule.

(hm) “Potentially hazardous food” has the meaning given in s. 97.27 (1) (dm).

(i) “Soda water beverage” means all beverages commonly known as soft drinks or soda water, whether carbonated, uncarbonated, sweetened or flavored.

(2) **LICENSE.** (a) *Requirement.* Except as provided under par. (b) and s. 97.28, no person may operate a food processing plant without a valid license issued by the department for that food processing plant. A license expires on March 31 annually, except that a license issued for a new food processing plant on or after January 1 but before April 1 expires on March 31 of the following year. Each food processing plant shall have a separate license. A license is not transferable between persons or locations. Application for a license shall be made on a form provided by the department and be accompanied by the applicable fees required under

sub. (3). An applicant shall identify the categories of food processing activities which the applicant proposes to conduct at the food processing plant. An application shall include additional information which may reasonably be required by the department for licensing purposes.

(b) *Exemptions.* 1. If a dairy plant licensed under s. 97.20 or a meat establishment licensed under s. 97.42 is incidentally engaged in the operation of a food processing plant at the same location, the department may exempt by rule the dairy plant or meat establishment from licensing under this section.

2. A person is not required to obtain a license under this section to sell at retail food products that the person prepares and cans at home in this state if all of the following apply:

a. The food products are pickles or other processed vegetables or fruits with an equilibrium pH value of 4.6 or lower.

b. The person sells the food products at a community or social event or a farmers' market in this state.

c. The person receives less than \$5,000 per year from the sale of the food products.

d. The person displays a sign at the place of sale stating: "These canned goods are homemade and not subject to state inspection."

e. Each container of food product that is sold is labeled with the name and address of the person who prepared and canned the food product, the date on which the food product was canned, the statement "This product was made in a private home not subject to state licensing or inspection.", and a list of ingredients in descending order of prominence. If any ingredient originates from milk, eggs, fish, crustacean shellfish, tree nuts, wheat, peanuts, or soybeans, the list of ingredients shall include the common name of the ingredient.

(c) *Added operations.* No food processing plant may add a new category of food processing operations during the time period for which a food processing plant license was issued unless the operator of the food processing plant first notifies the department and obtains written authorization for the new category of operations. "New category of food processing operations" may include any of the following operations which were not identified on the most recent license application for the food processing plant:

1. Bakery operations.
2. Confectionary operations.
3. Bottling establishment operations.
4. Canning operations.

5. Freezing, smoking or other food preservation operations which constitute a significant departure from the operations described in the most recent license application.

6. Any other category of food processing operations which constitutes a significant departure from the operations described in the most recent license application.

(3) **FEES.** (a) *Annual license fee; all food processing plants.* An applicant for a food processing plant license shall pay the license fee specified under par. (am), based on the dollar volume of production by the food processing plant during the previous license year. The annual dollar volume of production shall be determined by gross sales of the product processed during the license year, plus the inventory value of any portion of the product not sold. If the food processing plant was not licensed during the previous license year, the license applicant shall pay an estimated license fee based on projected annual production in the license year for which application is made. At the end of the license year for which an estimated fee has been paid, the licensee shall report to the department the actual production during the license year, and the license fee for that year shall be recomputed based on the actual production. If the license fee based on actual production differs from the estimated license fee, the licensee shall pay the balance due or receive a credit from the department on the next year's license fee.

(am) *Fee amounts.* Unless otherwise required by department rule, the annual fees required under par. (a) are:

1. For a food processing plant that has an annual production of \$25,000 or more but less than \$250,000 and that is engaged in processing potentially hazardous food or in canning, an annual license fee of \$120.

2. For a food processing plant that has an annual production of \$250,000 or more and that is engaged in processing potentially hazardous food or in canning, an annual license fee of \$270.

3. For a food processing plant that has an annual production of \$25,000 or more but less than \$250,000 and that is not engaged in processing potentially hazardous food or in canning, an annual license fee of \$50.

4. For a food processing plant that has an annual production of \$250,000 or more and that is not engaged in processing potentially hazardous food or in canning, an annual license fee of \$110.

5. For a food processing plant that has an annual production of less than \$25,000, an annual license fee of \$40.

(b) *Canning operations; license fee surcharge.* If a food processing plant is engaged in canning operations, a license applicant shall pay a license fee surcharge of \$195, beginning with the license year which ends on March 31, 1989, which shall be added to the license fee under par. (a).

(c) *Reinspection fee.* If the department reinspects a food processing plant because the department finds a violation of this chapter or rules promulgated under this chapter, the department shall charge the food processing plant operator the reinspection fee specified under par. (cm). The reinspection fee shall be based on the dollar volume of production by the food processing plant during the previous license year, and may include a reinspection fee surcharge for a food processing plant engaged in canning operations. The 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 food processing plant operator.

(cm) *Fee amounts.* Unless otherwise required by department rule, the reinspection fee required under par. (c) is:

1. For a food processing plant that has an annual production of \$25,000 or more but less than \$250,000 and that is engaged in processing potentially hazardous food or in canning, the reinspection fee is \$80.

2. For a food processing plant that has an annual production of \$250,000 or more and that is engaged in processing potentially hazardous food or in canning, the reinspection fee is \$180.

3. For a food processing plant that has an annual production of \$25,000 or more but less than \$250,000 and that is not engaged in processing potentially hazardous food or in canning, the reinspection fee is \$50.

4. For a food processing plant that has an annual production of \$250,000 or more and that is not engaged in processing potentially hazardous food or in canning, the reinspection fee is \$110.

5. For a food processing plant that has an annual production of less than \$25,000, the reinspection fee is \$40.

(d) *Surcharge for operating without a license.* An applicant for a food processing plant license shall pay a license fee surcharge if the department determines that, within one year prior to submitting a license application, the applicant operated the food processing plant without a license in violation of this subsection. The amount of the surcharge is \$100. Payment of this license fee surcharge does not relieve the applicant of any other civil or criminal liability which results from the unlicensed operation of the food processing plant, but does not constitute evidence of a violation of any law.

(e) *Licensing contingent on payment of fees.* The department may not issue or renew a food processing plant license unless the license applicant pays all fees which are due and payable under

this subsection, as set forth in a statement from the department. The department shall refund a fee paid under protest if the department determines that the fee was not due and payable as a condition of licensing under this subsection.

(4) **FOOD PROCESSING PLANTS BUYING VEGETABLES FROM PRODUCERS.** The department may not issue or renew a license to operate a food processing plant to any applicant who is a vegetable contractor, as defined in s. 126.55 (14), unless the applicant has filed all financial information required under s. 126.58 and any security that is required under s. 126.61. If an applicant has not filed all financial information required under s. 126.58 and any security that is required under s. 126.61, the department may issue a conditional license under s. 93.06 (8) that prohibits the licensed operator from procuring vegetables from a producer or a producer's agent, but allows the operator to procure vegetables from other sources.

(5) **RULE MAKING.** The department may promulgate rules to establish the fees required under sub. (3) (a) or (c) or to govern the operation of food processing plants. Rules may include standards for the construction and maintenance of facilities; the design, installation, cleaning and maintenance of equipment and utensils; personnel sanitation; food handling and storage; sanitary production and processing; and food sources and food labeling.

(6) **INFORMATION ABOUT HOME CANNING.** (a) The department shall encourage persons to whom the exemption in sub. (2) (b) 2. applies to attend and complete training, that is approved by the department, concerning preparing and canning foods and to have their recipes and processes reviewed by a person who is knowledgeable about the food canning industry and who is recognized by the department as an authority on preparing and canning food.

(b) The department, in cooperation with the University of Wisconsin–Extension, shall attempt to maximize the availability of information and technical services and support for persons who wish to home prepare and home can low-acid and acidified food products.

History: 1987 a. 399; 1989 a. 31; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 27, 264; 1995 a. 460; 1997 a. 27; 2001 a. 16; 2009 a. 101; 2013 a. 245, 302; 2015 a. 55, 195, 242; 2017 a. 365; 2019 a. 60.

Cross-reference: See also ch. ATCP 70, Wis. adm. code.

97.30 Retail food establishments. (1) **DEFINITIONS.** In this section:

(a) “Agent city or county” means a city or county granted agent status by the department under s. 97.41.

(b) “Food processing” has the meaning given under s. 97.29 (1) (g).

(bm) Except as provided by the department by rule, “potentially hazardous food” means a food that requires temperature control because it is in a form capable of supporting any of the following:

1. Rapid and progressive growth of infectious or toxigenic microorganisms.
2. Growth and toxin production of *Clostridium botulinum*.
3. In raw shell eggs, growth of *Salmonella enteritidis*.

(c) “Retail food establishment” means a permanent or mobile food processing facility where food processing is conducted primarily for direct retail sale to consumers at the facility, a mobile facility from which potentially hazardous food is sold to consumers at retail or a permanent facility from which food is sold to consumers at retail, whether or not that facility sells potentially hazardous food or is engaged in food processing. “Retail food establishment” includes a restaurant or temporary restaurant. “Retail food establishment” does not include an establishment holding a license under s. 97.605, to the extent that the activities of the establishment are covered by that license, or a stand operated by a minor, as defined in s. 66.0416 (1) (b).

(2) **LICENSE.** (a) *Requirement.* Except as provided under par. (b), no person may operate a retail food establishment without a valid license issued by the department or an agent city or county. Except as provided in par. (am), licenses expire on June 30 annu-

ally, except that a license issued for a new retail food establishment on or after March 30 but before July 1 expires on June 30 of the following year. Each retail food establishment shall have a separate license. A license is not transferable between persons or establishments. Application for a license shall be made on a form provided by the department, or by the agent city or county, and be accompanied by the applicable fees required under sub. (3) or (3s) or s. 97.41. An application shall indicate whether food processing is conducted at the establishment and shall specify the nature of any food processing activities. An application shall include other information reasonably required by the department, or by the agent city or county, for licensing purposes.

(am) *License issuance for a retail food establishment located in a city of the 1st class.* 1. The local health department of a city of the 1st class that has entered into an agreement with the department under s. 97.41 (1m) may issue to a retail food establishment the license required under par. (a) at any time during the year. A license issued under this subdivision shall expire one year from the date of its issuance.

2. A retail food establishment may request an extension to the term of a license issued under par. (a) by the local health department of a city of the 1st class that has entered into an agreement with the department under s. 97.41 (1m) 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 local health department may require a retail food establishment 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) 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) *Exemptions.* 1. A license is not required under this section for any of the following:

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

b. A retail food establishment which is primarily engaged in selling fresh fruits and vegetables, honey, cider or maple syrup produced by the operator of the retail food establishment, if that retail food establishment is not engaged in other food processing activities.

c. A retail food establishment which is exempted from licensing by the department by rule. If an establishment for which a license has been issued under s. 97.605 is incidentally engaged in operating a retail food establishment at the same location, the department may exempt by rule the establishment from licensing under this section.

d. A retail food establishment where popcorn is popped, if the retail food establishment is not required to obtain a license under this section to sell or process any other food.

2. If a dairy plant licensed under s. 97.20, a food processing plant licensed under s. 97.29 or a meat establishment licensed under s. 97.42 is incidentally engaged in the operation of any retail food establishment at the same location, the department may exempt by rule that establishment from licensing under this section.

(c) *Pre-licensing inspection.* Except as provided under par. (d), the department or an agent city or county may not issue a license for a new retail food establishment until it inspects the new retail food establishment for compliance with this section and rules promulgated under this section. A licensed retail food establishment is not considered a new retail food establishment under this paragraph solely because of a change in ownership, or solely because of alterations in the retail food establishment.

(d) *Initial inspection of micro market.* The department or an agent city or county 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 section and rules promulgated under this section. Before one year after the date that the department or the agent city or county 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 section and rules promulgated under this section.

(3) FEES; RETAIL FOOD ESTABLISHMENTS LICENSED BY DEPARTMENT. (a) *License fee.* Except as provided under sub. (3s), an applicant for a retail food establishment license shall pay the license fee specified under sub. (3m), based on gross receipts from food sales at the retail food establishment during the previous license year. If a retail food establishment was not licensed during the previous license year, a license applicant shall pay an estimated license fee based on projected gross receipts from food sales in the license year for which application is made. At the end of the license year for which an estimated fee has been paid, the licensee shall submit a report to the department stating the actual gross receipts from food sales during the license year. The license fee for that year shall be recomputed based on actual gross receipts. If the license fee based on actual gross receipts differs from the estimated license fee which was paid, the licensee shall pay the balance due or receive a credit from the department on the next year's license fee.

(am) *Weights and measures inspection fee.* An applicant for a retail food establishment license shall pay the weights and measures inspection fee specified under sub. (3m), based on gross receipts from food sales at the retail food establishment during the previous license year. If a retail food establishment was not licensed during the previous license year, a license applicant shall pay an estimated weights and measures inspection fee based on projected gross receipts from food sales in the license year for which application is made. At the end of the license year for which an estimated fee has been paid, the licensee shall submit a report to the department stating the actual gross receipts from food sales during the license year. The weights and measures inspection fee for that year shall be recomputed based on actual gross receipts. If the weights and measures inspection fee based on actual gross receipts differs from the estimated weights and measures inspection fee which was paid, the licensee shall pay the balance due or receive a credit from the department on the next year's weights and measures inspection fee. This paragraph does not apply to a retail food establishment that is a micro market.

(b) *Reinspection fee.* If the department reinspects a retail food establishment because the department finds a violation of this chapter or rules promulgated under this chapter, the department shall charge the retail food establishment operator the reinspection fee specified under sub. (3m). 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. This paragraph does not apply to a retail food establishment that is a micro market.

(c) *Surcharge for operating without a license.* An applicant for a retail food establishment license shall pay a license fee surcharge of \$100 or twice the amount of the annual license fee specified under sub. (3m) whichever is less, or if the applicant operates a micro market a license fee surcharge of \$100 or twice the amount of the annual license fee specified under sub. (3s) whichever is less, if the department determines that, within one year prior to submitting a license application, the applicant operated the retail food establishment without a license in violation of this subsection. Payment of this license fee surcharge does not relieve the applicant of any other civil or criminal liability which results from the unlicensed operation of the retail food establishment, but does not constitute evidence of a violation of any law.

(d) *Licensing contingent on payment of fees.* The department may not issue or renew a retail food establishment license unless the license applicant pays all fees which are due and payable under this subsection and sub. (3m) or (3s), as set forth in a statement from the department. The department shall refund a fee paid

under protest if the department determines that the fee was not due and payable as a condition of licensing under this subsection.

(3m) FEE AMOUNTS. The department shall specify by rule the amount of the fees under sub. (3) for a restaurant. Unless otherwise required by department rule, the fees required under sub. (3) for a retail food establishment other than a restaurant are:

(a) For a retail food establishment, other than a restaurant, that has annual food sales of \$25,000 or more but less than \$1,000,000 and that processes potentially hazardous food, the following amounts:

1. An annual license fee of \$90.
2. A reinspection fee of \$60.
3. An annual weights and measures inspection fee of \$45, except that this fee does not apply to a retail food establishment that is located in a municipality that has established a municipal department of weights and measures under s. 98.04 (1) or that recovers fees from the retail food establishment under s. 98.04 (2) for the purpose of enforcement of the provisions of ch. 98.

(b) For a retail food establishment, other than a restaurant, that has annual food sales of \$1,000,000 or more and that processes potentially hazardous food, the following amounts:

1. An annual license fee of \$210.
2. A reinspection fee of \$140.
3. An annual weights and measures inspection fee of \$100, except that this fee does not apply to a retail food establishment that is located in a municipality that has established a municipal department of weights and measures under s. 98.04 (1) or that recovers fees from the retail food establishment under s. 98.04 (2) for the purpose of enforcement of the provisions of ch. 98.

(c) For a retail food establishment, other than a restaurant, that has annual food sales of \$25,000 or more and that is engaged in food processing, but that does not process potentially hazardous food, the following amounts:

1. An annual license fee of \$80.
2. A reinspection fee of \$80.
3. An annual weights and measures inspection fee of \$25, except that this fee does not apply to a retail food establishment that is located in a municipality that has established a municipal department of weights and measures under s. 98.04 (1) or that recovers fees from the retail food establishment under s. 98.04 (2) for the purpose of enforcement of the provisions of ch. 98.

(cm) For a retail food establishment, other than a restaurant, that has annual food sales of less than \$25,000 and that is engaged in food processing, an annual license fee of \$40 and a reinspection fee of \$40.

(d) For a retail food establishment, other than a restaurant, that is not engaged in food processing, an annual license fee of \$20 and a reinspection fee of \$50.

(3s) FEES; MICRO MARKETS. An applicant for a retail food establishment license to operate a micro market shall pay one of the following annual license fee amounts:

- (a) For one micro market located in a building, \$40.
- (b) For 2 or more micro markets located in the same building, \$60.

(4) FEES; RETAIL FOOD ESTABLISHMENT LICENSED BY AGENT CITY OR COUNTY. (a) Subsection (3) does not apply to any retail food establishment licensed by an agent city or county under s. 97.41. Except as provided under par. (b), an applicant for a retail food establishment license issued by an agent city or county shall pay fees established by the agent city or county under s. 97.41.

(b) An applicant for a retail food establishment license to be issued by an agent city or county shall pay the fee under sub. (3s) or s. 97.41 (4) (am) 1. b. if the application is for a micro market.

(5) RULE MAKING. The department may promulgate rules to establish the fees required under sub. (3) or to govern the operation of retail food establishments. Rules may include standards for the construction and maintenance of facilities; the design, installation, cleaning and maintenance of equipment and utensils;

personnel sanitation; food handling, display and storage; and food sources and food labeling. No rule promulgated under this subsection may prohibit dogs from the premises of a retail food establishment that sells only previously packaged food.

History: 1987 a. 399; 1989 a. 174; 1991 a. 39, 210; 1993 a. 16, 27, 264, 491; 1995 a. 27 ss. 3599, 9126 (19); 1997 a. 27; 1999 a. 9; 2007 a. 20 s. 9121 (6) (a); 2013 a. 298, 302; 2015 a. 55, 195; 2017 a. 225; 2019 a. 51, 60; 2021 a. 143.

Cross-reference: See also chs. [ATCP 55](#) and [75](#), Wis. adm. code.

97.305 Restaurants serving fish. (1) A restaurant or temporary restaurant may serve fish taken from the wild to the individual who caught the fish, or to his or her guests, without obtaining a permit under s. [29.541](#) (1) (b) if all of the following conditions are satisfied:

- (a) The fish are legally taken.
- (b) While the fish are at the restaurant and before the fish are prepared for eating, they are stored in a cooler, which may be a portable cooler, that does not contain any other food.
- (c) The area where the fish are prepared for eating is washed and sanitized before and after preparation of the fish.
- (d) All items used to prepare and serve the fish are washed in a dishwasher after such use.

(2) A restaurant or temporary restaurant may make a pecuniary profit from preparing and serving fish as provided under sub. (1).

History: 2007 a. 20; 2015 a. 55 s. 4088; 2015 Stats. s. 97.305.

97.307 Average annual surveys. The department or a local health department granted agent status under s. [97.41](#) shall annually make a number of inspections of restaurants in this state that shall equal the number of restaurants for which annual licenses are issued under s. [97.30](#).

History: 1987 a. 27; 1993 a. 27 s. 69; Stats. 1993 s. 254.66; 2015 a. 55 s. 4082; Stats. 2015 s. 97.307.

97.32 Special dairy and food inspectors. (1) Special dairy and food inspectors may be appointed by the department for any factory, plant, receiving station, or group thereof, which buys or receives milk or cream for the purpose of manufacturing, processing or any other purpose whatsoever, upon petition therefor signed by more than two-thirds of the regular patrons of such factory, plant, receiving station, or group thereof, or by the officers of such factory, plant, receiving station or group thereof, or of the officers of any association organized under ch. [185](#) or [193](#) representing patrons of such factory, plant, receiving station or group thereof, and upon receiving satisfactory proof that such special dairy and food inspectors will be compensated in full for all services rendered and traveling expenses incurred upon and pursuant to such appointment as provided in this section. If the inspector is appointed pursuant to petition signed by the officers of an organization, such compensation and expenses shall be paid by such organization; and any factory, plant, receiving station or group thereof shall pay to the association the checkoff as contracted for between the member and the association. If appointed pursuant to petition signed by patrons, each patron of the factory, plant, receiving station or group thereof shall pay such proportion of the total amount of such compensation and expenses as the amount of milk or cream delivered thereto by the patron bears to the total amount delivered thereto by all patrons. The state shall not be liable for any such compensation or expenses.

(3) Each such special dairy and food inspector shall have all powers conferred by law upon dairy and food inspectors, shall at all times be under the supervision of the department and shall make such reports to the department as the department may require. The special dairy and food inspector shall supervise and inspect the weighing and testing of and shall inspect all milk, cream, butter or cheese delivered to such factory, plant, receiving station or group thereof, except that if the special dairy and food inspector be appointed upon petition by an association organized under ch. [185](#) or [193](#), the special dairy and food inspector shall perform duties only for its members, and for such purpose the spe-

cial dairy and food inspector may use any or all weighing or testing apparatus in such factory, plant, receiving station or group thereof. In addition to the duties herein specifically prescribed, the special dairy and food inspector shall perform such duties as the patrons or organization compensating the special dairy and food inspector or the department may direct.

(4) An appointment of a special dairy and food inspector may be denied, suspended or revoked by the department as provided in s. [93.06](#) (7). Rehearing and judicial review shall be as provided in ch. [227](#).

History: 1975 c. 308; 1975 c. 414 s. 28; 1993 a. 492; 2005 a. 441.

97.33 Certificate of food protection practices. (1g) In this section:

(a) “Approved examination” means an examination that allows an individual to demonstrate basic knowledge of food protection practices and that is approved by the department as meeting the standards established under sub. (6) (b).

(b) “Certificate holder” means an individual who holds a valid certificate of food protection practices issued under this section.

(c) “Food handler” means an individual engaged in the preparation or processing of food at a restaurant and who is not a certificate holder.

(1m) No person may conduct, maintain, manage, or operate a school lunchroom that is in a school that is participating in the national school lunch program under [42 USC 1751](#) to [1769j](#) for which food service is directly provided by the school unless the operator or manager of the lunchroom, or his or her designee, is a certificate holder. For purposes of this subsection, the “operator or manager of the lunchroom” is the individual responsible for the administration of food services for a private school, charter school established under s. [118.40](#) (2r), or school district. A private school, charter school established under s. [118.40](#) (2r), or school district complies with the requirements of this subsection if the school or school district has one certificate holder.

(1r) After January 1, 1995, no person may conduct, maintain, manage or operate a restaurant unless the operator or manager of the restaurant is a certificate holder.

(2) Except as provided in s. [93.135](#), the department may issue a certificate of food protection practices to an individual who satisfactorily completes an approved examination or who has achieved comparable compliance.

(3) Each certificate is valid for 5 years from the date of issuance and, except as provided in s. [93.135](#), may be renewed by the certificate holder if he or she satisfactorily completes all of the following:

(a) If he or she operates or manages a restaurant employing more than 5 food handlers, an approved examination.

(b) If he or she operates or manages a restaurant employing 5 or fewer food handlers, one of the following:

- 1. A recertification training course approved by the department.
- 2. An approved examination.

(3g) (a) For a certificate issued under sub. (3) (b) 1., all of the following apply:

1. The certificate is called a “licensure of food safety training for small operators.”

2. The certificate applies only in a restaurant the certificate holder is operating or managing at the time of the renewal or in other restaurants employing 5 or fewer food handlers.

3. A licensure of food safety training for small operators may be renewed under sub. (3) (b) 1. every 5 years.

(b) The department shall approve recertification training courses that were approved by the department as of December 31, 2014, and substantially similar courses.

(c) The department may not adopt different regulatory and inspection standards based on the type of certificate issued under this section.

(3m) The department shall accept relevant education, training, instruction, or other experience that an applicant has obtained in connection with military service, as defined in s. 111.32 (12g), to count toward satisfying the education, training, instruction, or other experience that is required to obtain a certificate of food protection practices if the applicant demonstrates to the satisfaction of the department that the education, training, instruction, or other experience that the applicant obtained in connection with his or her military service is substantially equivalent to the education, training, instruction, or other experience that is required to obtain a certificate of food protection practices.

(5) The department shall conduct evaluations of the effect that the food protection practices certification program has on compliance by restaurants with requirements established under s. 97.30 (5).

(6) The department shall promulgate rules concerning all of the following:

(a) Establishing a fee for certification and recertification of food protection practices, except that a certification fee may not be imposed on an individual who is eligible for the veterans fee waiver program under s. 45.44.

(b) Specifying standards for approval of examinations and training courses for recertification of food protection practices required under this section.

(c) Establishing procedures for issuance, except as provided in s. 93.135, of certificates of food protection practices, including application submittal and review.

History: 1991 a. 39; 1993 a. 16; 1993 a. 27 s. 74; Stats. 1993 s. 254.71; 1997 a. 27, 191; 2011 a. 120, 209; 2013 a. 292; 2015 a. 9, 46; 2015 a. 55 s. 4087; Stats. 2015 s. 97.33; 2017 a. 366 s. 70.

Cross-reference: See also ch. ATPC 75, Wis. adm. code.

97.34 Bottled drinking water and soda water beverage; standards; sampling and analysis. (1) In this section:

(a) “Bottled drinking water” means all water packaged in bottles or similar containers and sold or distributed for drinking purposes. This term includes distilled water, artesian water, spring water and mineral water, whether carbonated or uncarbonated.

(b) “Soda water beverage” means and includes all beverages commonly known as soft drinks or soda water, whether carbonated, uncarbonated, sweetened or flavored. This term does not include alcohol beverages.

(2) (a) The department shall promulgate by rule standards of purity for all ingredients used in the manufacture or bottling of soda water beverages or bottled drinking water which ensure a pure and unadulterated product.

(b) No person may manufacture or bottle bottled drinking water for sale or distribution in this state unless the bottled drinking water complies with state drinking water standards adopted by the department of natural resources under s. 280.11, 281.15 or 281.17 (8) and with health-related enforcement standards adopted by the department of natural resources under ch. 160.

(c) The department may require testing of bottled drinking water for substances subject to any standard under par. (b) and for any other substance if the department determines that the water system used as the source of the bottled drinking water has a potential of being contaminated, based on contamination of other water systems or groundwater in the vicinity. The department shall adopt by rule requirements for periodic sampling and analysis for the purposes of this subsection. The department shall require all analyses to be conducted by a laboratory certified under s. 299.11.

(d) No person may manufacture or bottle bottled drinking water for sale or distribution in this state unless the water system used by the manufacturer or bottler complies with ch. 280 and

rules promulgated by the department of natural resources under that chapter.

(e) The department shall publish an annual report summarizing the results of bottled drinking water sampling and analysis.

History: 1973 c. 126; 1981 c. 79 s. 17; 1983 a. 410; 1987 a. 27, 399; 1995 a. 227, 378; 1997 a. 35.

97.41 Retail food: agent status for local health departments. (1) In this section:

(a) “Local board of health” has the meaning given in s. 250.01 (3).

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

(1m) In the administration of this chapter, the department may enter into a written agreement with a local health department, if the jurisdictional area of the local health department has a population greater than 5,000, which designates the local health department as the agent of the department of agriculture, trade and consumer protection for issuing licenses to and making investigations or inspections of retail food establishments, as defined in s. 97.30 (1) (c). When the designation is made, no license other than the license issued by the local health department under this section may be required by the department of agriculture, trade and consumer protection or the local health department for the same operations. The department of agriculture, trade and consumer protection shall oversee the designation of agents under this section to ensure that, to the extent feasible, the same local health department is granted agent status under this section and under s. 97.615 (2). Except as otherwise provided by the department of agriculture, trade and consumer protection, a local health department granted agent status shall regulate all types of establishments for which this subsection permits the department of agriculture, trade and consumer protection to delegate regulatory authority.

(2) A local health department granted agent status under this section shall meet standards adopted, by rule, by the department. The department shall annually evaluate the licensing, investigation and inspection program of each local health department granted agent status. If, at any time, a local health department granted agent status fails to meet the standards, the department may revoke its agent status.

(3) The department shall provide education and training to agents designated under this section to ensure uniformity in the enforcement of this chapter and rules adopted under this chapter.

(4) (a) Except as provided in par. (b), a local health department granted agent status under this section shall establish and collect the license fee for retail food establishments, as defined in s. 97.30 (1) (c). The local health department may establish separate fees for pre-licensing inspections of new establishments, for pre-licensing inspections of existing establishments for which a person intends to be the new operator or for the issuance of duplicate licenses. No fee may exceed the local health department’s reasonable costs of issuing licenses to, making investigations and inspections of, and providing education, training and technical assistance to the establishments, plus the state fee established under sub. (5). A local health department which is granted agent status under this section or under s. 97.615 may issue a single license and establish and collect a single fee which authorizes the operation on the same premises of more than one type of establishment with respect to which it is granted agent status under this section or under s. 97.615 (2). This paragraph does not apply to retail food establishments, as defined in s. 97.30 (1) (c), that are micro markets.

(am) 1. a. Within 2 business days after an applicant submits an application to a local health department granted agent status under this section for a license to operate a new retail food establishment, as defined in s. 97.30 (1) (c), that is a micro market, the local health department may inspect the applicant’s new retail food establishment that is a micro market for the purposes provided in s. 97.30 (2) (d).

b. If a local health department granted agent status under this section conducts under subd. 1. a. an inspection of a new retail food establishment, as defined in s. 97.30 (1) (c), before issuing a license, the local health department may establish and collect from the applicant a pre-licensing inspection fee of \$40 if the applicant will operate one micro market located within a single building or \$60 if the applicant will operate 2 or more micro markets located in the same building.

c. Notwithstanding subd. 2., a local health department that collects a fee from an applicant under this subdivision may not collect a fee under subd. 2. for an annual license from the applicant.

2. If a local health department granted agent status under this section does not under subd. 1. a. conduct a pre-licensing inspection of an applicant's new retail food establishment, as defined in s. 97.30 (1) (c), that is a micro market, the local health department shall issue a retail food establishment license to the applicant and before one year after the date that the license is issued the local health department shall inspect the applicant's new retail food establishment that is a micro market for the purposes provided in s. 97.30 (2) (d). A local health department granted agent status under this section shall collect the license fees under s. 97.30 (3s) for retail food establishments, as defined in s. 97.30 (1) (c), that are micro markets.

(b) A local health department granted agent status under this section may contract with the department for the department to collect fees and issue licenses. The department shall collect from the local health department the actual and reasonable cost of providing the services.

(5) The department shall establish state fees for its costs related to setting standards for retail food establishments, as defined in s. 97.30 (1) (c), setting standards for agents under this section and monitoring and evaluating the activities of, and providing education and training to, agent local health departments. Agent local health departments shall include the state fees in the license fees established under sub. (4) (a) or (am), collect the state fees, and reimburse the department for the state fees collected. The state fee may not exceed 20 percent of the license fee charged under s. 97.30 (3), or for a retail food establishment that is a micro market, 20 percent of the license fee charged under s. 97.30 (3s), for a license issued by the department.

(6) If, under this section, a local health department becomes an agent or its agent status is discontinued during a licensee's license year, the department and the local health department shall divide any license fee paid for that license year according to the proportions of the license year occurring before and after the local health department's agent status is granted or discontinued. No additional fee may be required during the license year due to the change in agent status.

(7) A local board of health may adopt and impose regulations on licensees and premises for which the local health department is the designated agent under this section, which are stricter than this chapter or rules promulgated by the department under this chapter. No such regulation may conflict with this chapter or rules promulgated by the department.

(8) This section does not limit the authority of the department to inspect establishments in jurisdictional areas of local health departments where agent status is granted if it inspects in response to an emergency, for the purpose of monitoring and evaluating the local health department's licensing, inspection and enforcement program or at the request of the local health department.

(9) The department shall hold a hearing under ch. 227 if any interested person, in lieu of proceeding under ch. 68, appeals to the department alleging any of the following:

(a) A permit fee established by a local health department granted agent status exceeds the reasonable costs described under sub. (4) (a).

(b) The person issuing, refusing to issue, suspending or revoking a permit or making an investigation or inspection of the appl-

lant has a financial interest in a regulated establishment which may interfere with his or her ability to properly take that action.

(c) That a license fee for a retail food establishment license issued by an agent local health department under this section exceeds the reasonable costs of that agent local health department for issuing the license, investigating and inspecting the establishment, and providing education, training and technical assistance to the establishment.

History: 1983 a. 203; 1985 a. 29 ss. 1643y to 1645, 3202 (3); 1987 a. 27 ss. 1693hL, 3200 (4); 1987 a. 399, 403; 1989 a. 56; 1993 a. 27; 1995 a. 27 s. 9126 (19); 2007 a. 20 s. 9121 (6) (a); 2015 a. 55; 2017 a. 225; 2019 a. 51.

97.42 Compulsory inspection of livestock or poultry, and meat or poultry products. (1) DEFINITIONS. In this section:

(b) "Capable of use as human food" applies to any meat or poultry product unless it is denatured, identified as unfit for human consumption as required by department rules, or is naturally inedible by humans.

(bg) "Captive game animal" means an animal of a normally wild type that is produced in captivity for slaughter and consumption. "Captive game animal" does not include a farm-raised deer, ratite, captive game bird, fish, or an animal that is kept solely for hunting purposes at a hunting preserve.

(br) "Captive game bird" means a bird of a normally wild type that is produced in captivity for slaughter and consumption, including a pheasant, quail, wild turkey, migratory wildfowl, or other bird that the department designates as a captive game bird by rule. "Captive game bird" does not include poultry, ratites, or birds kept solely for hunting purposes at a hunting preserve.

(cm) "Denature" means to intentionally make an item unfit for human consumption by adding a substance to it to alter the item's appearance or other natural characteristics.

(d) "Establishment" means a plant or premises, including retail premises, where livestock or poultry are slaughtered for human consumption, or where meat or poultry products are processed, but does not include any of the following:

1. Establishments subject to 21 USC 451 to 695.

3. Premises of a person who is the owner of the livestock or poultry to be slaughtered or of the meat or poultry products to be processed, if the resulting product is for exclusive use by the owner, members of the owner's household, or the owner's non-paying guests and employees.

(dm) "Farm-raised deer" has the meaning given in s. 95.001 (1) (ag).

(e) "Inspector" means any person employed or authorized by the department to do any work or perform any duty in connection with the department's meat and poultry inspection program.

(em) "Livestock" means cattle, sheep, swine, goats, farm-raised deer, alpacas, llamas, bison, ratites, rabbits, and other species that the department designates as livestock by rule.

(f) "Meat broker" means any person engaged in the business of buying or selling meat or poultry products on commission, or otherwise negotiating purchases or sales of meat or poultry products other than for the person's own account or as an employee of another person.

(fm) "Meat distributor" means a person who is engaged in the business of distributing in this state meat or poultry products at wholesale.

(h) "Meat or poultry products" means any parts, including the viscera, of slaughtered livestock or poultry that are capable of use as human food.

(i) "Mobile processor" means a person, other than the owner of the livestock or poultry being slaughtered or the meat or poultry products being processed, who slaughters livestock or poultry or processes meat or poultry products for the general public for compensation other than the trading of services on an exchange basis, and conducts the slaughtering or processing at the premises of the

owner of the livestock or poultry being slaughtered or the meat or poultry products being processed.

(k) “Official inspection mark” means the symbol formulated under the rules of the department to indicate that the meat or poultry product was inspected pursuant to the department’s rules.

(L) “Poultry” means any domesticated birds, including chickens, turkeys, geese, ducks, or guineas, but does not include captive game birds or ratites.

(n) “Veterinarian” means a graduate veterinarian of an accredited school of veterinary medicine who is qualified on the basis of training and experience, as determined by the department.

(2) LICENSE; CERTIFICATE OF REGISTRATION. (a) Subject to pars. (b) and (bg), no person may operate an establishment without a valid license issued by the department. That license expires on June 30 annually, except that a license issued for a new establishment on or after March 30 but before July 1 expires on June 30 of the following year. No license may be issued unless the applicant has complied with the requirements of this section. The department shall establish by rule the annual license fees for establishments, not to exceed \$200, based on the type of mandatory inspection required to be performed at the establishment. The department shall establish a reduced annual license fee for those establishments engaged only in slaughtering uninspected livestock or poultry or processing uninspected meat or poultry products as a custom service, but not for other operations for which a license under this section is required. No person may be required to obtain a license under s. 97.29 or 97.30 for activities licensed under this section or for establishments inspected under 21 USC 451 to 472 and 601 to 695.

(b) Paragraph (a) does not apply to any person operating an establishment that only processes meat or poultry products for sale directly to consumers at retail on the premises where the products were processed, if only inspected meat or poultry products are permitted on the premises and sales to hotels, restaurants, and institutions are restricted to 25 percent of the gross annual value of meat or poultry product sales or the adjusted dollar limitation published by the federal department of agriculture under 9 CFR 303.1 (d) (2) (iii) (b), whichever is less. No person exempt from licensure under this paragraph may sell any cured, smoked, canned, or cooked meat or poultry products produced by that person to hotels, restaurants, or institutions.

(bg) Paragraph (a) does not apply to any person operating an establishment that meets the requirements under 9 CFR 303.1 (d) (2) (iv) (c) or (e) (1), or 381.10 (d) (2) (iv) (c) or (e) (1).

(c) No person may operate as a mobile processor without an annual registration certificate issued by the department, except that no registration certificate is required for a mobile processor who holds a license issued under par. (a). A registration certificate expires on June 30, annually. An application for an annual registration certificate shall be submitted on a form provided by the department and shall include information reasonably required by the department for registration purposes. The department shall promulgate rules regulating mobile processors, including rules related to facilities, sanitation, identification of carcasses, and record keeping.

(d) No person may operate as a meat broker or meat distributor without an annual registration certificate issued by the department, except that no registration certificate is required for a meat broker or a meat distributor who holds a license issued under par. (a). A registration certificate expires on June 30, annually. An application for an annual registration certificate shall be made on a form provided by the department and shall include information reasonably required by the department for registration purposes.

(3) STATE INSPECTION. (a) *Examination before slaughter.* For the purpose of preventing the sale and use in this state of meat or poultry products that are adulterated or otherwise not capable of use as human food, the department shall cause to be made, by inspectors who may be veterinarians on either a full-time or part-time basis, under supervision of the department, an examination

and inspection of all livestock and poultry before they are slaughtered in any establishment, except as provided in pars. (d) and (em). All livestock and poultry found to show symptoms of disease shall be condemned or set apart and slaughtered separately from all other livestock and poultry, and when so slaughtered the meat or poultry products thereof shall be subject to careful examination, inspection, and disposition, in accordance with rules issued by the department.

(b) *Examination after slaughter.* For the purpose stated in par. (a), the department shall cause to be made, by inspectors who may be veterinarians on either a full-time or part-time basis, under supervision of the department, an examination and inspection of the meat or poultry products of all livestock and poultry slaughtered at any establishment, except as provided in pars. (d) and (em). Meat or poultry products found to be not adulterated and capable of use as human food shall be marked, stamped, tagged, or labeled by inspectors as “Wis. inspected and passed”. Inspectors shall mark, stamp, tag, or label as “Wis. inspected and condemned” all meat or poultry products found to be adulterated or otherwise not capable of use as human food, and all meat or poultry products so inspected and condemned shall be destroyed, in accordance with rules issued by the department. Inspection marks, stamps, tags, and labels shall be prescribed by the department and shall include thereon the identification number of the establishment assigned by the department.

(c) *Reexaminations.* Inspectors shall, when deemed advisable, reinspect meat or poultry products to determine whether they have become adulterated or otherwise not capable of use as human food. If any meat or poultry products, upon a reexamination, are found to be adulterated or otherwise not capable of use as human food, they shall be destroyed, in accordance with rules issued by the department.

(cm) *Voluntary reimbursable inspection services.* The department shall provide slaughter inspection services for licensed establishments for certain captive game animals and captive game birds, and shall designate by rule the species of captive game animals and captive game birds for which these services may be provided. The establishment requesting these services shall reimburse the department for the actual cost of providing the services at rates established by rule by the department.

(d) *Custom service slaughtering.* This subsection does not apply to livestock and poultry slaughtered as a custom service for the owner of the livestock or poultry exclusively for use by the owner, members of the owner’s household, and the owner’s non-paying guests and employees, unless department inspection is specifically requested and performed at establishments where examinations before and after slaughter are otherwise required. The rules of the department shall make provision for the furnishing of this inspection service, subject to availability of inspector personnel, and for the identification of all livestock and poultry custom slaughtered for the owners thereof without department inspection.

(e) *Periodic inspections.* The department shall make periodic inspections of construction, operation, facilities, equipment, labeling, sanitation, and practices for ensuring meat or poultry products are not adulterated, at establishments or any other premises, including vehicles engaged in transportation of meat or poultry products. Inspection of products and plant operations shall cover operations such as cutting and boning, curing and smoking, grinding and fabrication, manufacturing, packaging, labeling, storage and transportation. Periodic inspections of processing operations shall be conducted as uniformly as possible among establishments subject to overtime inspection under sub. (4) (f) to avoid the imposition of undue inspection fees against any establishment. Inspections at overtime rates shall only be held where necessary to assure the safety of products for human consumption and compliance with the requirements of this section and rules of the department.

(em) *Slaughter of farm-raised deer.* The requirements of pars. (a) and (b) do not apply to the slaughter of a farm-raised deer if its meat products are not sold by an operator of a retail food establishment, as defined under s. 97.30 (1) (c). The operator of an establishment in which farm-raised deer or their meat products are examined and inspected under this subsection shall pay the department for the cost of the department's examination and inspection.

(f) *Label requirements.* In addition to label requirements otherwise provided by law, meat or poultry products shall bear a label, stamp, mark or tag including thereon the official inspection mark and identification number of the establishment where processed. Meat or poultry products processed and sold at retail to household consumers on the premises do not require official inspection marks and identification numbers.

(4) **RULES.** The department may issue reasonable rules requiring or prescribing any of the following:

(a) The inspection before and after slaughter of all livestock and poultry killed or dressed for human consumption at any establishment.

(b) The inspection and marking of meat or poultry products intended for human consumption, and prohibiting the unauthorized use of any official inspection mark or simulation or counterfeit thereof.

(d) The seizure, retention, and destruction of any livestock or poultry or meat or poultry products which have not been inspected or passed or are adulterated or misbranded, for the purpose of preventing human consumption.

(e) The hours and days in each week when slaughtering or processing may be conducted in any establishment subject to a license under sub. (2). The schedules so fixed shall be as nearly as possible in accord with existing industry standards of establishments subject to inspection. However, in order to avoid excessive costs for inspection and stay within the limit of appropriations, the schedules may require that:

1. Slaughtering or processing be conducted continuously during successive days and hours of the regular workweek for state employees;

2. The rate of slaughter for the different classes of livestock and poultry conform to reasonable minimum levels per hour;

3. Inspection of livestock and poultry slaughtered as a custom service be restricted to the time of the regular slaughter schedule fixed for the establishment. When inspection is provided for custom slaughtering and custom processing the inspection shall be conducted in accordance with sub. (3) (a) to (c) and rules prescribed under this subsection; and

4. The department be notified a reasonable time in advance of any deviation from existing schedules or when slaughtering or processing is to be conducted at times other than those specified under regularly established schedules.

(em) The rate at which an operator of an establishment that slaughters farm-raised deer or processes the meat products of farm-raised deer shall pay the costs of examination and inspection under sub. (3) (em) and the manner in which the department shall collect those amounts.

(f) Overtime agreements with the department whereby the operator of any establishment subject to a license under sub. (2) agrees to pay the cost for salaries, at overtime rates, and other expenses of department inspectors whenever slaughtering, carcass preparation, or the processing of meat or poultry products is conducted beyond hours or days limited under par. (e), or on Saturdays, Sundays, or holidays for state employees under s. 230.35 (4), or before 6 a.m. or after 6 p.m., or in excess of 40 hours in any week. Overtime charges for periodic inspections under sub. (3) (e) shall, insofar as possible, be limited to the minimum number of hours reasonably required for conducting those inspections. The department may assess overtime charges under this paragraph even though the department provides compensatory time in lieu of overtime compensation under s. 103.025.

(g) Specifications and standards for location, construction, operation, facilities, equipment, and sanitation for any premises, establishment, or mobile facility where slaughter or processing is carried on, including custom slaughtering of livestock or poultry and custom or retail processing of meat or poultry products.

(h) Conditions of sanitation under which meat or poultry products shall be stored, transported, or otherwise handled by any person engaged in the business of buying, selling, freezing, storing, transporting, or processing meat or poultry products.

(i) Record-keeping requirements for persons engaged in slaughtering or processing operations, or in the storage or transportation of meat or poultry products, including record-keeping requirements for meat brokers and the registration of meat brokers with the department.

(j) Any other rules reasonably necessary to the administration and enforcement of this section.

(4m) **FEDERAL REQUIREMENTS.** The operator of an establishment that is required to be licensed under this section shall comply with federal requirements as provided in rules promulgated by the department.

(6) **PROHIBITIONS.** (a) No person may slaughter any livestock or poultry for the purpose of selling the meat or poultry products thereof for human food, or sell, offer for sale, or have in his or her possession with intent to sell any meat or poultry products for human food, unless the livestock or poultry and the meat or poultry products thereof have been first inspected and approved as provided by any of the following:

1. This section and the rules issued thereunder.

2. The federal meat inspection act.

3. The federal poultry products inspection act.

(b) No person may sell, offer for sale, or have in his or her possession with intent to sell any meat or poultry products unless those products have been processed in accordance with this section or the federal meat inspection act.

(c) No person may slaughter horses, mules, or other equines or process equine carcasses or meat at establishments where livestock or poultry are slaughtered or where meat or poultry products are processed.

(d) No county or municipality may prohibit the sale of any meat or poultry products if the meat or poultry products are inspected and passed by the department or by the federal department of agriculture, provided the meat or poultry products are not adulterated or misbranded at the time of sale.

(7) **RIGHT OF ACCESS.** No person may prevent or attempt to prevent an inspector or other officer or agent of the department from entering, at any time, any establishment or any other place where meat or poultry products are processed, sold, or held for sale, for the purpose of any examination, inquiry, or inspection in connection with the administration and enforcement of this section. The examination, inquiry, or inspection may include taking samples, pictures, and documentary and physical evidence pertinent to enforcement of this section.

(8) **INTERFERENCE WITH INSPECTION.** Any person who forcibly assaults, threatens, obstructs, impedes, intimidates or interferes with any person while engaged in the performance of his or her official duties under this section shall be fined not more than \$5,000 or imprisoned in the county jail not to exceed one year or both.

(9) **TAGGING OF FACILITIES, EQUIPMENT AND PRODUCT.** (a) When in the opinion of the department, the use of any equipment, utensil, container, compartment, room, or facility which is unclean or unsanitary or improperly constructed could lead to contamination of a meat or poultry product, the department may attach a "Rejected" tag to the item, room, or facility. No equipment, utensil, container, compartment, room, or facility so tagged may be used until made acceptable and released by a department representative, or until that item, room, or facility is replaced with an acceptable item, room, or facility.

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(b) 1. When in the opinion of the department any meat or poultry product, or supplies or ingredients used in the processing thereof, may be adulterated or misbranded, or otherwise fail to meet standards or requirements of this section or rules adopted under this section, the department may tag the product, supplies, or ingredients with a “Retained” tag to hold them for further inspection, analysis, or examination. No meat or poultry product, supplies, or ingredients so tagged may be used, removed from the premises, or otherwise disposed of unless released by a department representative. A tagged item may not be retained for more than 30 days without prior notice to the owner or custodian and the right to an immediate hearing.

2. When in the opinion of the department any meat or poultry product, or supplies or ingredients used in the processing thereof, is adulterated or misbranded, or otherwise fails to meet standards or requirements of this section or rules adopted under this section, the department may tag the product, supplies, or ingredients with a “Detained” tag to hold them for destruction or other disposition. No meat or poultry product, supplies, or ingredients so tagged may be used, removed from the premises, or otherwise disposed of unless released by a department representative. A tagged item may not be destroyed or detained for more than 30 days without prior notice to the owner or custodian and the right to an immediate hearing.

(c) No person may alter, deface or remove any tag from facilities, equipment, products or supplies to which it has been attached by a department inspector without the express consent or approval of the inspector or other department representative.

(10) SUSPENSION. The department may, upon written notice, summarily suspend the operations in whole or in part at any establishment for substantial violations of this section or rules issued hereunder when, in the opinion of the department, a continuation of the operation would constitute an imminent danger to public health. The department may, upon written notice, summarily suspend inspection at any establishment for acts punishable under sub. (8) where those acts substantially impair an inspector’s ability to conduct an orderly inspection. Upon suspension of operations or inspection, the operator of the establishment may demand a hearing to determine whether the suspension should be vacated. The department shall, within 5 days after receipt of the demand, hold a hearing and adjudicate the issues as provided in ch. 227. A demand for hearing does not operate to stay the suspension pending the hearing.

(11) EXEMPTION. This section does not apply to owners of poultry with respect to poultry produced on the owner’s farm, provided his or her sales do not exceed 1,000 birds annually, and the birds are labeled and tagged to identify the name and address of the producer and are marked “NOT INSPECTED”. Persons processing more than 1,000 birds but less than 20,000 birds shall be fully subject to the provisions of this section relating to licensing, sanitation, facilities, and practices for ensuring product is not adulterated, except that, if the department determines that the protection of consumers from adulterated poultry products will not be impaired, it may exempt these persons from sub. (3) (a) and (b) provided the birds are labeled or tagged to identify the name and address of the producer and are marked “NOT INSPECTED”.

(12) SUBSTANTIAL OR REPEATED VIOLATIONS. The department may deny, revoke or suspend the license of any person for substantial or repeated violations of this section.

History: 1971 c. 270 s. 104; 1973 c. 206; 1975 c. 308, 421; 1977 c. 196 s. 131; 1977 c. 216, 365; 1979 c. 110, 154; 1981 c. 314; 1983 a. 189, 261; 1983 a. 500 s. 44; 1985 a. 29; 1987 a. 399; 1989 a. 174; 1991 a. 39, 175, 269; 1993 a. 16, 27, 144, 492; 1995 a. 79, 225; 1999 a. 9, 185; 2001 a. 56; 2013 a. 302; 2015 a. 55, 243; 2017 a. 365.

Cross-reference: See also chs. ATCP 55 and 57, Wis. adm. code.

97.43 Meat from dead or diseased animals. (1) No meat from any diseased animal, or any dead animal as defined under s. 95.72 (1) (c), may be sold or used for human consumption, or dismembered or stored at premises where other food is sold or prepared for sale.

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(2) No carcass meat or other part of any animal shall be fed to food-producing animals or to animals used for human consumption unless it has been thoroughly rendered or cooked.

(3) Subsection (1) shall not apply to meat from animals affected by any disease which does not ordinarily render such meat unfit for human consumption, provided the animals so affected have been slaughtered in establishments where meat inspection is maintained under s. 97.42 or the federal meat inspection act.

(4) Whoever violates this section is guilty of a Class H felony.

History: 1971 c. 40 s. 93; 1979 c. 129 s. 6; Stats. 1979 s. 97.43; 1981 c. 66; 1985 a. 229; 1997 a. 283; 2001 a. 109.

Cross-reference: See also ch. ATCP 55, Wis. adm. code.

This section is not unconstitutionally vague. *State v. Ehlensfeldt*, 94 Wis. 2d 347, 288 N.W.2d 786 (1980).

97.44 Identification of meat for animal feed; registration and records of buyers. (1) No person shall buy, sell or transport any carcasses, parts thereof or meat or meat food products of any animals which are not intended for use as human food, unless they are denatured or otherwise identified as required by rules of the department or are naturally inedible by humans.

(2) Animal feed manufacturers and operators of fur farms, exempt from s. 95.72, shall register their names and business locations with the department if they engage in slaughtering animals or in buying dead animals or parts of the carcasses of such animals. The department, by rule, may require that they keep records of their purchase and disposition of such animals and carcass parts.

(3) As used in this section, “animals” means cattle, sheep, goats, swine, equines, farm-raised deer, as defined in s. 95.001 (1) (ag), and poultry, except in the phrase “animal feed manufacturers”.

History: 1975 c. 308; 1995 a. 79; 2001 a. 56.

Cross-reference: See also ch. ATCP 57, Wis. adm. code.

97.56 Kosher meat. (1) Under this section “kosher” means prepared in accordance with the Jewish ritual and sanctioned by Hebrew orthodox religious requirements.

(2) No person may, with intent to defraud, do any of the following:

(a) Sell or expose for sale any meat or meat preparation, whether raw or prepared for human consumption, and falsely represent the meat or meat preparation to be kosher, and as having been prepared under and of a product or products sanctioned by the orthodox Hebrew religious requirements.

(b) Falsely represent any food product or the contents of any package or container to be kosher and as having been prepared under and of a product or products sanctioned by the orthodox Hebrew religious requirements, by having or permitting to be inscribed on the package or container the word “kosher” in any language.

(c) Sell or expose for sale in the same place of business both kosher and nonkosher meat or meat preparations, either raw or prepared for human consumption, unless all of that person’s window signs and display advertising indicate, in block letters at least 4 inches in height, “Kosher and Nonkosher Meat Sold Here”.

(d) Expose for sale in any show window or place of business both kosher and nonkosher meat or meat preparations, either raw or prepared for human consumption, unless the person displays over each kind of meat or meat preparation so exposed a sign in block letters at least 4 inches in height reading “Kosher Meat”, or “Nonkosher Meat”, as the case may be.

(3) No person, with intent to defraud, may do any of the following:

(a) Sell or expose for sale in any such restaurant or other place where food products are sold for consumption on the premises, any article of food or food preparations that is falsely represented to be kosher and as having been prepared in accordance with the orthodox Hebrew religious requirements.

(b) Sell or expose for sale in any restaurant or other place both kosher and nonkosher food or food preparations for consumption on the premises when not prepared in accordance with the Jewish ritual and not sanctioned by the Hebrew orthodox religious requirements, unless the person's window signs and display advertising state, in block letters at least 4 inches in height, "Kosher and Nonkosher Food Served Here".

History: 1993 a. 492; 1997 a. 253.

97.57 Planted or cultivated rice. (1) In this section:

(a) "Paddy-grown rice" means rice which is mechanically planted, mechanically harvested or cultivated with the use of chemical fertilizers or herbicides.

(b) "Wild rice" means rice which is not mechanically harvested and which is cultivated without the use of any chemical fertilizer or herbicide.

(2) Any wholesaler or supplier who sells or offers for sale any paddy-grown rice which is not blended with any other rice may not label that paddy-grown rice "wild rice" unless he or she includes on the label, immediately before, after or above the largest words "wild rice", the word "paddy-grown" in legible, bold-face print or type which is in distinct contrast to all other printed or graphic material on the label and in a type or print size which is not less than one-half the size of the largest type or print used in the words "wild rice" with which the word "paddy-grown" appears.

(3) No wholesaler or supplier may sell or offer for sale any rice labeled "100 percent natural wild rice" unless that rice is wild rice which is not blended with any other rice.

History: 1987 a. 375.

97.59 Handling foods. No person in charge of any public eating place or other establishment where food products to be consumed by others are handled may knowingly employ any person handling food products who has a disease in a form that is communicable by food handling. If required by the local health officer or any officer of the department for the purposes of an investigation, any person who is employed in the handling of foods or is suspected of having a disease in a form that is communicable by food handling shall submit to an examination by the officer or by a physician, physician assistant, or advanced practice nurse prescriber designated by the officer. The expense of the examination, if any, shall be paid by the person examined. Any person knowingly infected with a disease in a form that is communicable by food handling who handles food products to be consumed by others and any persons knowingly employing or permitting such a person to handle food products to be consumed by others shall be punished as provided by s. 97.72.

History: 1981 c. 291; 1993 a. 27 s. 298; Stats. 1993 s. 252.18; 2005 a. 187; 2011 a. 161; 2015 a. 55 s. 4040; Stats. 2015 s. 97.59.

97.60 Coordination; certification. (1) The department shall enter into memoranda of understanding with other state agencies to establish food protection measures.

(2) The department shall promulgate rules that establish a food sanitation manager certification program.

(3) The department shall accept relevant education, training, instruction, or other experience that an applicant has obtained in connection with military service, as defined in s. 111.32 (12g), to count toward satisfying any education, training, instruction, or other experience requirement in the food sanitation manager certification program established under sub. (2) if the applicant demonstrates to the satisfaction of the department that the education, training, instruction, or other experience that the applicant obtained in connection with his or her military service is substantially equivalent to the education, training, instruction, or other experience that is required to obtain an initial certificate under the food sanitation manager certification program.

History: 1993 a. 27; 2011 a. 120; 2015 a. 55 s. 4078; Stats. 2015 s. 97.60.

SUBCHAPTER III

LODGING AND VENDING MACHINES

97.603 Motels. Upon the written request of the hotel operator made on forms furnished by the department, the department may classify a hotel as a "motel", if the operator of the hotel furnishes on-premises parking facilities for the motor vehicles of the hotel guests as a part of the room charge, without extra cost.

History: 1983 a. 203 ss. 3, 5; 1983 a. 538 s. 67; 1993 a. 27 s. 66; Stats. 1993 s. 254.63; 2015 a. 55 s. 4079; Stats. 2015 s. 97.603.

97.605 Lodging and vending licenses. (1) (a) No person may conduct, maintain, manage or operate a hotel, ~~tourist rooming~~ house, vending machine commissary or vending machine if the person has not been issued an annual license by the department or by a local health department that is granted agent status under s. 97.615 (2).

(b) No person may maintain, manage or operate a bed and breakfast establishment for more than 10 nights in a year without having first obtained an annual license from the department.

(c) Except as provided in s. 93.135, no license may be issued under this section until all applicable fees have been paid. If the payment is by check or other draft drawn upon an account containing insufficient funds, the license applicant shall, within 15 days after receipt of notice from the department of the insufficiency, pay by cashier's check or other certified draft, money order or cash the fees, late fees and processing charges that are specified by rules promulgated by the department. If the license applicant fails to pay all applicable fees, late fees and processing charges within 15 days after the applicant receives notice of the insufficiency, the license is void. In an appeal concerning voiding of a license under this paragraph, the burden is on the license applicant to show that the entire applicable fees, late fees and processing charges have been paid. During any appeal process concerning payment dispute, operation of the establishment in question is deemed to be operation without a license.

(d) If a person or establishment otherwise licensed under this chapter is incidentally engaged in an activity for which a license is required under this section, the department may, by rule, exempt the person or establishment from the license requirement under this section.

(1m) No county, city, village or town may require any license of, or impose any license or inspection fee on, a vending machine operator, vending machine commissary or vending machine licensed under this chapter.

(1p) Except as provided in s. 93.135, the department may condition the initial issuance, renewal or continued validity of a license issued under this section on correction by the licensee of a violation of this subchapter, rules promulgated by the department under this subchapter or ordinances or regulations adopted under s. 97.615 (2) (g), within a specified period of time. If the licensee fails to meet the condition within the specified period of time, the license is void.

(2) Except as provided in sub. (3), a separate license is required for each hotel, tourist rooming house, bed and breakfast establishment, or vending machine commissary.

(3) (a) A bulk milk dispenser may be operated in a restaurant without a vending machine or vending machine operator license.

(b) A restaurant may operate as a vending machine commissary without a vending machine commissary license.

(4) (a) In this subsection:

1. "Business entity" has the meaning given in s. 179.70 (1).

2. "Immediate family member" means a spouse, grandparent, parent, sibling, child, stepchild, or grandchild or the spouse of a grandparent, parent, sibling, child, stepchild, or grandchild.

(b) Except as provided in par. (d) or (e), no license is transferable from one premises to another or from one person to another.

(d) The holder of a license issued under this section may transfer the license to an individual who is an immediate family member if the holder is transferring operation of the hotel, tourist rooming house, bed and breakfast establishment, or vending machine to the immediate family member.

(e) A sole proprietorship that reorganizes as a business entity or a business entity that reorganizes as either a sole proprietorship or a different type of business entity may transfer a license issued under this section for operation of a hotel, tourist rooming house, bed and breakfast establishment, or vending machine commissary to the newly formed business entity or sole proprietorship if the following conditions are satisfied:

1. The hotel, tourist rooming house, bed and breakfast establishment, or vending machine commissary remains at the location for which the license was issued.

2. At least one individual who had an ownership interest in the sole proprietorship or business entity to which the license was issued has an ownership interest in the newly formed sole proprietorship or business entity.

(5) (a) Except as provided in par. (b), all licenses expire on June 30, except that licenses initially issued during the period beginning on April 1 and ending on June 30 expire on June 30 of the following year.

(b) 1. The local health department of a city of the 1st class that has entered into an agreement with the department under s. 97.615 (2) may issue a license for a bed and breakfast establishment required under this section at any time during the year. A license issued under this subdivision shall expire one year from the date of its issuance.

2. The holder of a license for a bed and breakfast establishment may request an extension to the term of a license issued under this section by the local health department of a city of the 1st class that has entered into an agreement with the department under s. 97.615 (2) for the purpose of aligning the annual term of any other license or permit issued to that license holder with the annual term of a license to be issued to that license holder under subd. 1. The local health department may require a 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. 97.615 (2) by 12 and multiplying the quotient by the number of months by which the license issued under this section is extended under this subdivision.

History: 1975 c. 413 ss. 13, 18; Stats. 1975 s. 50.51; 1983 a. 163, 203; 1987 a. 27, 81, 399; 1989 a. 31; 1993 a. 16 ss. 1491, 1492; 1993 a. 27 s. 67; Stats. 1993 s. 254.64; 1993 a. 183, 491; 1997 a. 191; 2001 a. 16; 2005 a. 302; 2013 a. 298; 2015 a. 55 s. 4080; Stats. 2015 s. 97.6705; 2015 a. 197 s. 51.

97.607 Pre-licensing inspection. (1) The department or a local health department granted agent status under s. 97.615 (2) may not grant a license to a person intending to operate a new hotel, tourist rooming house, bed and breakfast establishment, or vending machine commissary or to a person intending to be the new operator of an existing hotel, tourist rooming house, bed and breakfast establishment, or vending machine commissary without a pre-licensing inspection. This section does not apply when a license is transferred under s. 97.605 (4) (d) or (e).

(2) Agents designated by the department under s. 97.615 (1) shall make pre-licensing inspections of vending machine commissaries as required under this subsection and shall be reimbursed for those services at the rate of 80 percent of the pre-licensing inspection fee designated in this subsection. Agents designated by the department under s. 97.615 (2) shall make pre-licensing inspections of hotels and tourist rooming houses and establish and collect pre-licensing inspection fees under s. 97.615 (2) (d).

History: 1983 a. 203 ss. 10, 16, 19; 1983 a. 538; 1987 a. 27, 81; 1993 a. 27 s. 68; Stats. 1993 s. 254.65; 2005 a. 302; 2015 a. 55 s. 4081; Stats. 2015 s. 97.607.

97.61 Vending machine commissary outside the state. Foods, beverages and ingredients from commissaries outside the state may be sold within the state if such commissaries conform

to the provisions of the food establishment sanitation rules of this state or to substantially equivalent provisions. To determine the extent of compliance with such provisions, the department may accept reports from the responsible authority in the jurisdiction where the commissaries are located.

History: 1975 c. 413 s. 13; Stats. 1975 s. 50.52; 1993 a. 27 s. 70; Stats. 1993 s. 254.67; 2015 a. 55 s. 4083; Stats. 2015 s. 97.61.

97.613 Fees. Except as provided in s. 97.615 (2) (d) and (e), the department shall promulgate rules that establish, for licenses issued under s. 97.605, license fees, pre-licensing inspection fees, reinspection fees, fees for operating without a license, late fees for untimely renewal, fees for comparable compliance or variance requests, and fees for pre-license review of restaurant plans.

History: 1973 c. 333; 1975 c. 224; 1975 c. 413 s. 13; Stats. 1975 s. 50.53; 1977 c. 222; 1979 c. 34; 1981 c. 20; 1983 a. 27, 163, 203, 538; 1985 a. 135; 1987 a. 27, 399; 1991 a. 178; 1993 a. 16 s. 1493; 1993 a. 27 s. 71; Stats. 1993 s. 254.68; 1993 a. 183; 2001 a. 16; 2015 a. 55 s. 4084; Stats. 2015 s. 97.613.

97.615 Agent status for local health departments.

(1) **VENDING OPERATIONS.** In the administration and enforcement of this subchapter, the department may use local health departments as its agents in making inspections and investigations of vending machine commissaries, vending machine operators and vending machines if the jurisdictional area of the local health department has a population greater than 5,000. If the designation is made and the services are furnished, the department shall reimburse the local health department furnishing the service at the rate of 80 percent of the net license fee per license per year issued in the jurisdictional area.

(2) **HOTELS, TOURIST ROOMING HOUSES, AND OTHER ESTABLISHMENTS.** (am) In the administration of this subchapter or s. 97.67, the department may enter into a written agreement with a local health department with a jurisdictional area that has a population greater than 5,000, which designates the local health department as the department's agent in issuing licenses to and making investigations or inspections of hotels, tourist rooming houses, bed and breakfast establishments, campgrounds and camping resorts, recreational and educational camps, and public swimming pools. In a jurisdictional area of a local health department without agent status, the department may issue licenses, collect fees established by rule under s. 97.613 and make investigations or inspections of hotels, tourist rooming houses, bed and breakfast establishments, campgrounds and camping resorts, recreational and educational camps, and public swimming pools. If the department designates a local health department as its agent, the department or local health department may require no license for the same operations other than the license issued by the local health department under this subsection. The department shall oversee the designation of agents under this subsection to ensure that, to the extent feasible, the same local health department is granted agent status under this subsection and under s. 97.41.

(b) A local health department granted agent status under this subsection shall meet standards promulgated, by rule, by the department. The department shall annually evaluate the licensing, investigation and inspection program of each local health department granted agent status. If, at any time, a local health department granted agent status fails to meet the standards, the department of agriculture, trade and consumer protection may revoke its agent status.

(c) The department shall provide education and training to agents designated under this subsection to ensure uniformity in the enforcement of this subchapter, s. 97.67 and rules promulgated under this subchapter and s. 97.67.

(d) Except as provided in par. (dm), a local health department granted agent status under this subsection shall establish and collect the license fee for each type of establishment specified in par. (am). The local health department may establish separate fees for pre-licensing inspections of new establishments, for pre-licensing inspections of existing establishments for which a person intends to be the new operator or for the issuance of duplicate licenses. No fee may exceed the local health department's reason-

able costs of issuing licenses to, making investigations and inspections of, and providing education, training and technical assistance to the establishments, plus the state fee established under par. (e). A local health department granted agent status under this subsection or under s. 97.41 may issue a single license and establish and collect a single fee which authorizes the operation on the same premises of more than one type of establishment for which it is granted agent status under this subsection or under s. 97.41.

(dm) A local health department granted agent status under this subsection may contract with the department for the department to collect fees and issue licenses. The department shall collect from the local health department the actual and reasonable cost of providing the services.

(e) The department shall establish state fees for its costs related to setting standards under this subchapter and s. 97.67 and monitoring and evaluating the activities of, and providing education and training to, agent local health departments. Agent local health departments shall include the state fees in the license fees established under par. (d), collect the state fees and reimburse the department for the state fees collected. For each type of establishment specified in par. (am), the state fee may not exceed 20 percent of the license fees charged under ss. 97.67 and 97.613.

(f) If, under this subsection, a local health department becomes an agent or its agent status is discontinued during a licensee's license year, the department and the local health department shall divide any license fee paid by the licensee for that license year according to the proportions of the license year occurring before and after the local health department's agent status is granted or discontinued. No additional fee may be required during the license year due to the change in agent status.

(g) A village, city or county may adopt ordinances and a local board of health may adopt regulations regarding the licensees and premises for which the local health department is the designated agent under this subsection, which are stricter than this subchapter, s. 97.67, or rules promulgated by the department under this subchapter or s. 97.67. No such provision may conflict with this subchapter or with department rules.

(h) This subsection does not limit the authority of the department to inspect hotels, tourist rooming houses, bed and breakfast establishments, or vending machine commissaries in jurisdictional areas of local health departments where agent status is granted if it inspects in response to an emergency, for the purpose of monitoring and evaluating the local health department's licensing, inspection and enforcement program or at the request of the local health department.

(j) The department shall hold a hearing under ch. 227 if any interested person, in lieu of proceeding under ch. 68, appeals to the department alleging either of the following:

1. A license fee established by a local health department granted agent status exceeds the reasonable costs described under par. (d).

2. The person issuing, refusing to issue, suspending or revoking a license or making an investigation or inspection of the appellant has a financial interest in a regulated establishment specified in par. (am) which may interfere with his or her ability to properly take that action.

History: 1983 a. 203 ss. 15, 21; 1985 a. 29; 1985 a. 332 s. 251 (1); 1987 a. 27 ss. 1074m to 1076m, 3200 (24); 1987 a. 307; 1989 a. 31; 1991 a. 39, 315; 1993 a. 16; 1993 a. 27 s. 72; Stats. 1993 s. 254.69; 1993 a. 183; 1995 a. 27 s. 9126 (19); 2001 a. 16; 2007 a. 20 s. 9121 (6) (a); 2015 a. 55 s. 4085; Stats. 2015 s. 97.615

Cross-reference: See also ch. ATCP 74, Wis. adm. code.

97.617 Application; lodging and vending. (1) An applicant for a license under this subchapter shall complete the application prepared by the department or the local health department granted agent status under s. 97.615 (2) and provide, in writing, any additional information the department of agriculture, trade and consumer protection or local health department issuing the license requires.

(2) Upon receipt of an application for a vending machine operator license, the department may cause an investigation to be made of the applicant's commissary, servicing and transport facilities, if any, and representative machines and machine locations. The operator shall maintain at his or her place of business within this state a list of all vending machines operated by him or her and their location. This information shall be kept current and shall be made available to the department upon request. The operator shall notify the department of any change in operations involving new types of vending machines or conversion of existing machines to dispense products other than those for which such machine was originally designed and constructed.

History: 1975 c. 413 s. 13; Stats. 1975 s. 50.54; 1983 a. 163, 203, 538; 1987 a. 27 s. 3200 (24) (am); 1993 a. 27 s. 73; Stats. 1993 s. 254.70; 1995 a. 27 s. 9126 (19); 2007 a. 20 s. 9121 (6) (a); 2015 a. 55 s. 4086; Stats. 2015 s. 97.617.

97.62 Health and safety; standard. Every hotel, tourist rooming house, bed and breakfast establishment, vending machine commissary and vending machine shall be operated and maintained with a strict regard to the public health and safety and in conformity with this subchapter and the rules and orders of the department.

History: 1975 c. 413 s. 13; Stats. 1975 s. 50.55; 1983 a. 163, 203, 538; 1987 a. 27; 1993 a. 27 s. 75; Stats. 1993 s. 254.72; 2015 a. 55 s. 4089; 2015 Stats. s. 97.62

Cross-reference: See also chs. ATCP 72, 73, 74, and 75, Wis. adm. code.

97.623 Hotel safety. (1) Every hotel with sleeping accommodations with more than 12 bedrooms above the first story shall, between the hours of 12 midnight and 6 a.m. provide a system of security personnel patrol, or of mechanical and electrical devices, or both, adequate, according to standards established by the department of safety and professional services, to warn all guests and employees in time to permit their evacuation in case of fire.

(2) Every hotel shall offer to every guest, at the time of registration for accommodation and of making a reservation for accommodation, an opportunity to identify himself or herself as a person needing assistance in an emergency because of a physical condition and shall keep a record at the registration desk of where each person so identified is lodged. No hotel may lodge any person so identified in areas other than those designated by the local fire department as safe for persons so identified, based on the capabilities of apparatus normally available to the fire company or companies assigned the first alarm. A person who does not identify himself or herself as permitted in this subsection may be lodged in the same manner as any other guest. Violation of this subsection shall be punished by a forfeiture of not more than \$50 for the first violation and not more than \$100 for each subsequent violation.

History: 1975 c. 112, 199; 1975 c. 413 s. 13; Stats. 1975 s. 50.56; 1985 a. 135; 1993 a. 27 s. 76; Stats. 1993 s. 254.73; 1995 a. 27 ss. 6343, 9116 (5); 2011 a. 32; 2015 a. 55 s. 4090; 2015 Stats. s. 97.623.

97.625 Powers of the department and local health departments. (1) The department shall do all of the following:

- (a) Administer and enforce this subchapter, the rules promulgated under this subchapter and any other rules or laws relating to the public health and safety in hotels, tourist rooming houses, bed and breakfast establishments, vending machine commissaries, vending machines and vending machine locations.

- (b) Require hotels, tourist rooming houses, vending machine operators and vending machine commissaries to file reports and information the department deems necessary.

- (c) Ascertain and prescribe what alterations, improvements or other means or methods are necessary to protect the public health and safety on those premises.

- (d) Prescribe rules and fix standards, including rules covering the general sanitation and cleanliness of premises regulated under this subchapter, the proper handling and storing of food on such premises, the construction and sanitary condition of the premises and equipment to be used and the location and servicing of equipment. The rules relating to the public health and safety in bed and breakfast establishments may not be stricter than is reasonable for

the operation of a bed and breakfast establishment, shall be less stringent than rules relating to hotels, tourist rooming houses, and vending machine commissaries regulated by this subchapter and may not require 2nd exits for a bed and breakfast establishment on a floor above the first level.

(e) Hold a hearing under ch. 227 if, in lieu of proceeding under ch. 68, any interested person in the jurisdictional area of a local health department not granted agent status under s. 97.615 appeals to the department alleging that a license fee for a hotel, tourist rooming house, campground, camping resort, recreational or educational camp or public swimming pool exceeds the license issuer's reasonable costs of issuing licenses to, making investigations and inspections of, and providing education, training and technical assistance to the establishment.

(1g) The department may inspect hotels, tourist rooming houses, and bed and breakfast establishments to ensure compliance with s. 101.149 (2) and (3).

(1p) (a) The department may grant the holder of a license for a bed and breakfast establishment a waiver from the requirement specified under s. 97.01 (1g) (b) to allow the holder of a license for a bed and breakfast establishment to serve breakfast to other tourists or transients if all of the following conditions are met:

1. The department determines that the public health, safety or welfare would not be jeopardized.

2. The other tourists or transients are provided sleeping accommodations in a tourist rooming house for which the license holder for the bed and breakfast establishment is the license holder.

3. The tourist rooming house is located on the same property as the bed and breakfast establishment or on property contiguous to the property on which the bed and breakfast establishment is located.

4. The number of rooms offered for rent in the bed and breakfast establishment combined with the number of rooms offered for rent in the tourist rooming house does not exceed 8.

5. The number of tourists or transients who are provided sleeping accommodations in the bed and breakfast establishment combined with the number of tourists or transients who are provided sleeping accommodations in the tourist rooming house does not exceed 20.

(b) A waiver granted under par. (a) is valid for the period of validity of a license that is issued for the bed and breakfast establishment under s. 97.605 (1) (b).

(2) A local health department designated as an agent under s. 97.615 (2) may exercise the powers specified in sub. (1) (a) to (d), consistent with s. 97.615 (2) (g).

History: 1975 c. 413 s. 13; Stats. 1975 s. 50.57; 1983 a. 163, 203, 538; 1985 a. 29; 1985 a. 332 s. 251 (1); 1987 a. 27; 1991 a. 39; 1993 a. 27 s. 77; Stats. 1993 s. 254.74; 1995 a. 27 ss. 6343m, 9126 (19); 1995 a. 417; 1997 a. 43; 2007 a. 20 s. 9121 (6) (a); 2007 a. 205; 2011 a. 32, 78; 2015 a. 55 s. 4091; 2015 Stats. s. 97.625; 2017 a. 330.

Cross-reference: See also chs. *ATCP 72, 73, 74, and 75*, Wis. adm. code.

97.627 Causing fires by tobacco smoking. (1) Any person who, by smoking, or attempting to light or to smoke cigarettes, cigars, pipes or tobacco, in any manner in which lighters or matches are employed, shall, in a careless, reckless or negligent manner, set fire to any bedding, furniture, curtains, drapes, house or any household fittings, or any part of any building specified in sub. (2), so as to endanger life or property in any way or to any extent, shall be fined not less than \$50 nor more than \$250, together with costs, or imprisoned not less than 10 days nor more than 6 months or both.

(2) In each sleeping room of all hotels, rooming houses, lodging houses and other places of public abode, a plainly printed notice shall be kept posted in a conspicuous place advising tenants of the provisions of this section.

History: 1975 c. 413 s. 13; Stats. 1975 s. 50.58; 1993 a. 27 s. 79; Stats. 1993 s. 254.76; 2015 a. 55 s. 4092; 2015 Stats. s. 97.627.

97.633 Hotelkeeper's liability. (1) A hotelkeeper who complies with sub. (2) is not liable to a guest for loss of money, jewelry, precious metals or stones, personal ornaments or valuable papers which are not offered for safekeeping.

(2) To secure exemption from liability the hotelkeeper shall do all of the following:

(a) Have doors on sleeping rooms equipped with locks or bolts.

(b) Offer, by notice printed in large plain English type and kept conspicuously posted in each sleeping room, to receive valuable articles for safekeeping, and explain in the notice that the hotel is not liable for loss unless articles are tendered for safekeeping.

(c) Keep a safe or vault suitable for keeping the articles and receive them for safekeeping when tendered by a guest, except as provided in sub. (3).

(3) A hotelkeeper is liable for loss of articles accepted for safekeeping up to \$300. The hotelkeeper need not receive for safekeeping property over \$300 in value. This subsection may be varied by written agreement between the parties.

History: 1975 c. 413 s. 15; Stats. 1975 s. 50.80; 1991 a. 316; 1993 a. 27 s. 85; Stats. 1993 s. 254.80; 2015 a. 55 s. 4095; 2015 Stats. s. 97.633.

97.634 Hotelkeeper's liability for baggage; limitation.

Every guest and intended guest of any hotel upon delivering to the hotelkeeper any baggage or other property for safekeeping, elsewhere than in the room assigned to the guest, shall demand and the hotelkeeper shall give a check or receipt, to evidence the delivery. No hotelkeeper shall be liable for the loss of or injury to the baggage or other property of a hotel guest, unless it was delivered to the hotelkeeper for safekeeping or unless the loss or injury occurred through the negligence of the hotelkeeper.

History: 1975 c. 413 s. 15; Stats. 1975 s. 50.81; 1991 a. 316; 1993 a. 27 s. 86; Stats. 1993 s. 254.81; 2015 a. 55 s. 4096; 2015 Stats. s. 97.634.

97.635 Liability of hotelkeeper for loss of property by fire or theft; owner's risk.

A hotelkeeper is not liable for the loss of baggage or other property of a hotel guest by a fire unintentionally produced by the hotelkeeper. Every hotelkeeper is liable for loss of baggage or other property of a guest caused by theft or gross negligence of the hotelkeeper. The liability may not exceed \$200 for each trunk and its contents, \$75 for each valise and its contents and \$10 for each box, bundle or package and contents, so placed under the care of the hotelkeeper; and \$50 for all other effects including wearing apparel and personal belongings, unless the hotelkeeper has agreed in writing with the guest to assume a greater liability. When any person permits his or her baggage or property to remain in any hotel after the person's status as a guest has ceased, or forwards the baggage or property to a hotel before becoming a guest and the baggage or property is received into the hotel, the hotelkeeper holds the baggage or property at the risk of the owner.

History: 1975 c. 413 s. 15; Stats. 1975 s. 50.82; 1991 a. 316; 1993 a. 27 s. 87; Stats. 1993 s. 254.82; 2015 a. 55 s. 4097; 2015 Stats. s. 97.635.

97.638 Hotel rates posted; rate charges; special rates.

(1) Every hotelkeeper shall keep posted in a conspicuous place in each sleeping room in his or her hotel, in type not smaller than 12-point, the rates per day for each occupant. Such rates shall not be changed until notice to that effect has been posted, in a similar manner, for 10 days previous to each change. Any hotelkeeper who fails to have the rates so posted or who charges, collects or receives for the use of any room a sum different from the authorized charge shall be fined not less than \$50 nor more than \$100. A hotelkeeper may permit a room to be occupied at the rate of a lower priced room when all of the lower priced rooms are taken and until one of them becomes unoccupied. Special rates may be made for the use of sleeping rooms, either by the week, month or for longer periods or for use by families or other collective groups. The department or its representatives may enforce the posting of rates as provided in this subsection.

(2) (a) A hotelkeeper shall post, in each sleeping room in the hotel with a telephone, a notice of any fee imposed by the hotelkeeper for using the telephone.

(b) The notice required under par. (a) shall be all of the following:

1. In type not smaller than 12–point.
2. Conspicuously posted on the telephone or within 3 feet of the telephone's normal location.

(c) The department or its agents may inspect hotels to ensure compliance with pars. (a) and (b).

(d) A hotelkeeper who fails to post the notice required under par. (a) or who posts an inaccurate notice shall be fined not less than \$50 nor more than \$100.

History: 1975 c. 413 s. 15; Stats. 1975 s. 50.84; 1989 a. 31; 1993 a. 27 s. 89; Stats. 1993 s. 254.83; 2015 a. 55 s. 4098; 2015 Stats. s. 97.638.

97.639 Motel rates. (1) **DEFINITIONS.** (a) “Operator” includes a manager or any person in charge of the operation of motels and like establishments. “Operator” or “owner” includes natural persons, firms and corporations.

(b) “Outdoor sign” or “outside sign” means any sign visible to passersby, regardless of whether the sign is located in or outside of buildings.

(c) “Room rates” means the rates at which rooms or other accommodations are rented to occupants.

(2) **RENTAL POSTED.** No owner or operator of any establishment that is held out as a motel, motor court, tourist cabin or like accommodation may post or maintain posted on any outdoor or outside advertising sign for the establishment rates for accommodations in the establishment unless the sign has posted on it both the minimum and maximum room or other rental unit rates for accommodations offered for rental. All posted rates and descriptive data required by this section shall be in type and material of the same size and prominence as the minimum and maximum room or other rental unit rates. Signs that only state the rate per person or bear the legend “and up” do not comply with the requirements of this subsection.

(3) **ACCOMMODATIONS MUST EXIST.** No owner or operator of any motel, motor court, tourist cabin or like accommodation may post or maintain posted on outdoor or outside advertising signs rates for accommodations in the establishment unless there is available, when vacant, accommodations in the establishment for immediate occupancy to meet the posted rates on the advertising signs.

(4) **MISREPRESENTATION.** No owner or operator of any motel, motor court, tourist cabin or like accommodation may post or maintain outdoor or outside advertising signs in connection with the establishment relating to rates which have any untrue, misleading, false, or fraudulent representations.

(5) **CONSTRUCTION.** Nothing in this section may be construed to require motels, motor courts, tourist cabins, or like accommodations to have outdoor or outside signs. This section shall be liberally construed so as to prevent untrue, misleading, false, or fraudulent representations relating to rates placed on outdoor or outside signs of the establishments.

History: 1975 c. 413 s. 15; Stats. 1975 s. 50.85; 1983 a. 189; 1993 a. 27 s. 90; Stats. 1993 s. 254.84; 2015 a. 55 ss. 4099, 4100; 2015 Stats. s. 97.639.

97.65 Enforcement. (1) The department may enter, at reasonable hours, any premises for which a license is required under this subchapter or s. 97.67 or any restaurant or temporary restaurant for which a license is required under s. 97.30 to inspect the premises, secure samples or specimens, examine and copy relevant documents and records, or obtain photographic or other evidence needed to enforce this subchapter or s. 97.30 or 97.67. If samples of food are taken, the department shall pay or offer to pay the market value of the samples taken. The department shall examine the samples and specimens secured and shall conduct other inspections and examinations needed to determine whether there is a violation of this subchapter, s. 97.30 or 97.67, or rules

promulgated by the department under this subchapter or s. 97.30 or 97.67.

(2) (a) Whenever, as a result of an examination, the department has reasonable cause to believe that any examined food constitutes, or that any construction, sanitary condition, operation, or method of operation of the premises or equipment used on the premises creates, an immediate danger to health, the department may issue a temporary order and cause it to be delivered to the licensee, or to the owner or custodian of the food, or to both. The order may prohibit the sale or movement of the food for any purpose, prohibit the continued operation or method of operation of specific equipment, require the premises to cease other operations or methods of operation which create the immediate danger to health, or set forth any combination of these requirements. The department may order the cessation of all operations authorized by the license only if a more limited order does not remove the immediate danger to health. Except as provided in par. (c), no temporary order is effective for longer than 14 days from the time of its delivery, but a temporary order may be reissued for one additional 14–day period, if necessary to complete the analysis or examination of samples, specimens, or other evidence.

(b) No food described in a temporary order issued and delivered under par. (a) may be sold or moved and no operation or method of operation prohibited by the temporary order may be resumed without the approval of the department, until the order has terminated or the time period specified in par. (a) has run out, whichever occurs first. If the department, upon completed analysis and examination, determines that the food, construction, sanitary condition, operation or method of operation of the premises or equipment does not constitute an immediate danger to health, the licensee, owner, or custodian of the food or premises shall be promptly notified in writing and the temporary order shall terminate upon his or her receipt of the written notice.

(c) If the analysis or examination shows that the food, construction, sanitary condition, operation or method of operation of the premises or equipment constitutes an immediate danger to health, the licensee, owner, or custodian shall be notified within the effective period of the temporary order issued under par. (a). Upon receipt of the notice, the temporary order remains in effect until a final decision is issued under sub. (3), and no food described in the temporary order may be sold or moved and no operation or method of operation prohibited by the order may be resumed without the approval of the department.

(3) A notice issued under sub. (2) (c) shall be accompanied by a statement which informs the licensee, owner, or custodian that he or she has a right to request a hearing in writing within 15 days after issuance of the notice. The department shall hold a hearing no later than 15 days after the department receives the written request for a hearing, unless both parties agree to a later date. A final decision shall be issued under s. 227.47 within 10 days of the conclusion of the hearing. The decision may order the destruction of food, the diversion of food to uses which do not pose a danger to health, the modification of food so that it does not create a danger to health, changes to or replacement of equipment or construction, other changes in or cessations of any operation or method of operation of the equipment or premises, or any combination of these actions necessary to remove the danger to health. The decision may order the cessation of all operations authorized by the license only if a more limited order will not remove the immediate danger to health.

(4) A proceeding under this section, or the issuance of a license for the premises after notification of procedures under this section, does not constitute a waiver by the department of its authority to rely on a violation of this subchapter, s. 97.30 or 97.67, or any rule promulgated under this subchapter or s. 97.30 or 97.67 as the basis for any subsequent suspension or revocation of the license or any other enforcement action arising out of the violation.

(5) (a) Except as provided in par. (b), any person who violates this section or an order issued under this section may be fined not

more than \$10,000 plus the retail value of any food moved, sold or disposed of in violation of this section or the order, or imprisoned not more than one year in the county jail, or both.

(b) Any person who does either of the following may be fined not more than \$5,000 or imprisoned not more than one year in a county jail, or both:

1. Assaults, restrains, threatens, intimidates, impedes, interferes with or otherwise obstructs a department inspector, employee or agent in the performance of his or her duties under this section.

2. Gives false information to a department inspector, employee or agent engaged in the performance of his or her duties under this section, with the intent to mislead the inspector, employee or agent.

History: 1983 a. 203; 1985 a. 182 s. 57; 1985 a. 332 s. 251 (1); 1987 a. 307; 1993 a. 27 s. 78; Stats. 1993 s. 254.85; 2015 a. 55 s. 4102; 2015 Stats. s. 97.65.

SUBCHAPTER IV

RECREATIONAL SANITATION

97.67 Recreational licenses and fees. (1) Except as provided in sub. (1g) and s. 93.135, the department or a local health department granted agent status under s. 97.615 (2) shall issue licenses to and regulate campgrounds and camping resorts, recreational and educational camps and public swimming pools. No person or state or local government who has not been issued a license under this section may conduct, maintain, manage or operate a campground and camping resort, recreational camp and educational camp or public swimming pool, as defined by departmental rule.

(1g) A campground permit is not required for camping at county or district fairs at which 4-H Club members exhibit, for the 4 days preceding the county or district fair, the duration of the county or district fair, and the 4 days following the county or district fair.

(1m) The department or a local health department granted agent status under s. 97.615 (2) may not, without a pre-licensing inspection, grant a license to a person intending to operate a new public swimming pool, campground, or recreational or educational camp or to a person intending to be the new operator of an existing public swimming pool, campground, or recreational or educational camp.

(2) (a) A separate license is required for each campground, camping resort, recreational or educational camp, and public swimming pool. Except as provided in par. (b) or (c), no license issued under this section is transferable from one premises to another or from one person, state or local government to another.

(b) A license issued under this section may be transferred from an individual to an immediate family member, as defined in s. 97.605 (4) (a) 2., if the individual is transferring operation of the campground, camping resort, recreational or educational camp, or public swimming pool to the immediate family member.

(c) A sole proprietorship that reorganizes as a business entity, as defined in s. 179.70 (1), or a business entity that reorganizes as a sole proprietorship or a different type of business entity may transfer a license issued under this section for a campground, camping resort, recreational or educational camp, or public swimming pool to the newly formed business entity or sole proprietorship if all of the following conditions are satisfied:

1. The campground, camping resort, recreational or educational camp, or public swimming pool remains at the location for which the license was issued.

2. At least one individual who had an ownership interest in the sole proprietorship or business entity to which the license was issued has an ownership interest in the newly formed sole proprietorship or business entity.

(2m) Except as provided in s. 93.135, the initial issuance, renewal or continued validity of a license issued under this section

may be conditioned upon the requirement that the licensee correct a violation of this section, rules promulgated by the department under this section or ordinances adopted under s. 97.615 (2) (g), within a period of time that is specified. If the condition is not met within the specified period of time, the license is void.

(3) For a recreational or educational camp that is applying for a renewed license under this subchapter, the department or a local health department granted agent status under s. 97.615 (2) may waive, for not more than 2 out of every 3 license years, any routine inspection for those license years if the camp has exhibited effective managerial control of public health hazards, as defined by the department by rule. Annual license fees and all other applicable requirements shall apply to the camp.

(4) Licenses issued under this section expire on June 30, except that licenses initially issued during the period beginning on April 1 and ending on June 30 expire on June 30 of the following year. Except as provided in s. 97.615 (2) (d) and (e), the department shall promulgate rules that establish, for licenses issued under this section, amounts of license fees, pre-licensing inspection fees, reinspection fees, fees for operating without a license, and late fees for untimely license renewal.

(5) No license may be issued under this section until all applicable fees have been paid. If the payment is by check or other draft drawn upon an account containing insufficient funds, the license applicant shall, within 15 days after receipt of notice from the department of the insufficiency, pay by cashier's check or other certified draft, money order or cash the fees from the department, late fees and processing charges that are specified by rules promulgated by the department. If the license applicant fails to pay all applicable fees, late fees and the processing charges within 15 days after the applicant receives notice of the insufficiency, the license is void. In an appeal concerning voiding of a license under this subsection, the burden is on the license applicant to show that the entire applicable fees, late fees and processing charges have been paid. During any appeal process concerning payment dispute, operation of the establishment in question is considered to be operation without a license.

(5m) (a) In this subsection, "qualified health services staff" means any of the following:

1. A physician.
2. A registered nurse licensed under ch. 441.
3. A physician assistant licensed under subch. VIII of ch. 448.
4. A practical nurse licensed under ch. 441.
5. An athletic trainer certified by the national athletic trainers association.
6. An emergency medical services practitioner, as defined in s. 256.01 (5).
7. A person who is certified as completing the American Red Cross emergency response course.
8. A person who is certified as completing the American Red Cross responding to emergencies course or an equivalent course.

(b) For a camp that lasts longer than 3 days, the department shall allow qualified health services staff to designate an individual at the camp to administer to a camper, or staff member, who is under 18 years of age medications brought to the camp by that camper or staff member, other than medications that a camper or staff member may carry himself or herself.

(c) If the department requires health services staff to make a record of medication administered or treatment provided to a camper or staff member, the department shall allow such records to be made and maintained electronically, if done in a system that documents each change to the health record and that does not allow previous changes to the health record to be edited or deleted.

(6) Before serving as a lifeguard at a public swimming pool or a recreational and educational camp or as an on-site health services staff member at a recreational and educational camp, an individual shall have proficiency in the use of an automated external defibrillator, as defined in s. 256.15 (1) (cr), achieved through

instruction provided by an individual, organization, or institution of higher education achieved through instruction approved under s. 46.03 (38) to provide such instruction.

(7) The department may not require that a swimming pool be staffed by a lifeguard as a condition of receiving a license under this section if the swimming pool is less than 2,500 square feet, the swimming pool is located in a private club in the city of Milwaukee, and the club has a policy that prohibits a minor from using the swimming pool when not accompanied by an adult.

History: 1993 a. 16 ss. 2399 to 2401i; 1993 a. 27 ss. 182, 477; 1993 a. 183, 490; 1993 a. 491 s. 280; 1997 a. 191, 237; 2001 a. 16; 2005 a. 302; 2007 a. 104; 2009 a. 28, 180; 2013 a. 309; 2015 a. 55 ss. 4050 to 4055, 4057 to 4061; Stats. 2015 s. 254.47; 2017 a. 12; 2019 a. 131; 2021 a. 23, 45.

Cross-reference: See also chs. ATCP 76, 78, and 79, Wis. adm. code.

SUBCHAPTER V

GENERAL PROVISIONS

97.70 Authority of department of safety and professional services. Nothing in this chapter affects the authority of the department of safety and professional services relative to places of employment, elevators, boilers, fire escapes, fire protection, or the construction of public buildings.

History: 2015 a. 55.

97.703 Joint employment. The department and the department of safety and professional services may employ experts, inspectors, or other assistants jointly.

History: 2015 a. 55.

97.71 Suspension or revocation of license. The department or a local health department designated as an agent under s. 97.615 (2) or 97.41 (2) may refuse or withhold issuance of a license under this chapter or may suspend or revoke a license for violation of this chapter or any rule or order of the department, ordinance of the village, city or county or regulation of the local board of health.

History: 1975 c. 413 s. 14; Stats. 1975 s. 50.70; 1983 a. 203; 1987 a. 27; 1993 a. 27 s. 83; Stats. 1993 s. 254.86; 1995 a. 27 s. 9126 (19); 2007 a. 20 s. 9121 (6) (a); 2015 a. 55 s. 4103; 2015 Stats. s. 97.71.

97.72 Penalties. (1) Any person who violates any of the provisions of this chapter for which a specific penalty is not prescribed shall be fined not less than \$100 nor more than \$1,000 or imprisoned for not more than 6 months, for the first offense; and for each subsequent offense, fined not less than \$500 nor more than \$5,000, or imprisoned for not less than 30 days nor more than one year in the county jail or both.

(2) In lieu of any criminal penalty provided under this chapter, a person who violates this chapter may be required to forfeit not more than \$1,000 for each violation. If the prosecutor seeks to impose a forfeiture, he or she shall proceed under ch. 778.

History: 1977 c. 216; 1979 c. 129; 1983 a. 261; 1985 a. 229; 1987 a. 398.

97.73 Injunction. In addition to penalties applicable to this chapter, the department may apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating provisions of this chapter and rules or orders issued under this chapter.

History: 1971 c. 156 s. 10; Stats. 1971 s. 97.73; 1983 a. 261.



Ordinance #6-2022
City of Hillsboro

**AN ORDINANCE TO CREATE CHAPTER 7.12 OF THE CODE OF ORDINANCES OF
THE CITY OF HILLSBORO, WISCONSIN**

WHEREAS, the Common Council has determined that it is in the best interest of the City to issue permits and establish local regulations of short-term rental tourist rooming houses.

NOW, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF HILLSBORO, VERNON COUNTY, WISCONSIN, AS FOLLOWS:

Section 1. Chapter 7.12 of the Code of Ordinances of the City of Hillsboro, entitled “Short-Term Rental Regulations”, shall be created to read as follows:

Sec 7.12.01 Purpose

The purpose of this Chapter is to ensure the quality of tourist rooming houses operating within the City of Hillsboro to protect the public health, safety, and general welfare. The City has determined that it can serve this purpose by establishing minimum standards of space for human occupancy; by establishing standards for adequate maintenance of these properties; by determining the responsibilities of owners, operators, and property managers offering these properties to tourists; by protecting the character and stability of all areas within the City of Hillsboro; by providing minimum standards necessary for the health and safety of persons occupying or using buildings, structures, or premises; and by providing for the administration and enforcement of such regulations.

Sec 7.12.02 Definitions

A. For purposes of this Chapter, the following definitions shall apply:

- (1) “Bathroom” means an enclosed room with a toilet, washbasin, and shower or bathtub.
 - (2) “Clerk” means the City Clerk or its designee.
 - (3) “Owner” means the property owner of a tourist rooming house.
 - (4) “Resident operator” means a person who has been designated by the Owner to operate the tourist rooming house and who meets the qualifications within this Chapter.
 - (5) “Short-term rental” means the rental of a tourist rooming house for a period of twenty-nine (29) consecutive days or less.
 - (6) “Tourist rooming house” means all lodging places and tourist cabins and cottages, other than hotels and motels, in which sleeping accommodations are offered for pay to tourists or transients. It does not include private boarding or rooming houses not accommodating tourists or transients, or bed and breakfast establishments regulated under Ch. ATPCP 73, Wis. Admin. Code.
- B. Unless the context indicates otherwise, other terms used in this Chapter that are defined in Ch. ATPCP 72, Wis. Admin. Code shall have the meaning as defined therein.

Sec 7.12.03 Applicability; Exemptions

- A. This Chapter applies to “tourist rooming houses” as defined herein that are offered to the public for a rental period of twenty-nine (29) consecutive days or less.
- B. Exemptions. The following businesses and operations are exempt from the requirements of this Chapter:
- (1) Any hotel, motel, or resort licensed by the State of Wisconsin under sec. 97.605, Wis. Stat.
 - (2) Private boarding or rooming houses not accommodating tourists or transients.
 - (3) Bed and breakfast establishments licensed by the State of Wisconsin under Ch. ATPCP 73, Wis. Admin. Code.

Sec 7.12.04 Tourist Rooming House Permit

- A. Permit Required. No person may operate a tourist rooming house for more than ten (10) nights each year without a valid tourist rooming house permit issued by the City.
- B. Permit Duration. Each permit shall expire on June 30, except that licenses initially issued during the period beginning April 1 and ending on June 30 shall expire on June 30 of the following year.

Sec 7.12.05 Permit Application

- A. All applications for a tourist rooming house permit shall be filed with the Clerk on forms provided by the City. Each application shall be accompanied by payment of the required permit fee and shall include all the information and documentation required by this Chapter. The Clerk may refuse to accept any permit application that is incomplete or does not comply with the requirements of this Section.
- B. The tourist rooming house permit application shall include the following:
 - (1) The name, mailing address, and phone number of the owner(s).
 - (2) The name, mailing address, phone number, and email address of the resident operator.
 - (3) The address of the tourist rooming house sought to be permitted.
 - (4) Certification statement to the City signed by the owner (or at least one owner if there are multiple owners of the property) that states the tourist rooming house identified in the permit is in compliance with the regulations of this Chapter.
- C. The tourist rooming house permit application shall include the following documentation:
 - (1) State of Wisconsin tourist rooming house license issued under Wis. Stat. §97.605 by the Department of Agriculture, Trade and Consumer Protection.
 - (2) A copy of a completed State Lodging Establishment Inspection form dated within one (1) year of the date of application.
 - (3) A valid Wisconsin Department of Revenue Seller's Permit in the name of the property owner.

(4) Proof of insurance for the tourist rooming house that meets the standards set by this Chapter.

Sec 7.12.06 Resident Operator Qualifications

A. To qualify as a resident operator the person must meet the following requirements:

(1) Be a natural person residing in the City of Hillsboro or within twenty-five (25) miles of the City of Hillsboro; or be a corporate entity routinely engaged in the business of property management with offices located within the City of Hillsboro or within twenty-five (25) miles of the City of Hillsboro. An entity is “routinely engaged in the business of property management” if an owner, employee, or other contracted party is on-call to respond to property or occupancy emergencies twenty-four hours a day seven days a week.

(2) Not have a pending criminal charge involving and not have been convicted of a felony or misdemeanor of any offense involving dishonesty, fraud, deceit, robbery, the use or threatened use of force or violence upon the person of another, or sexual immorality under Wis. Stat. Ch. 944, as amended.

(3) Be authorized by the owner to accept service of process for all City notices, citations, orders, and other legal documents.

(4) Be authorized by the owner to enter upon the property and promptly and safely respond to complaints, correct any violations of this Chapter, or handle immediate issues concerning the tourist rooming house or its occupants.

Sec 7.12.07 Application Review Procedure

A. When a permit application is complete, the Clerk shall forward the completed application to the Common Council for review at the next meeting for which an agenda has not yet been posted. The Common Council shall consider the applications and supporting documents. The Common Council may approve, deny, or conditionally approve the application considering the proper factors that will help ensure the quality of tourist rooming houses operating within the City of Hillsboro to protect the public health, safety, and general welfare and the applicant’s compliance with the requirements of this Chapter.

B. If the Common Council approves the permit application, the City Clerk shall promptly issue the tourist rooming house permit.

- C. If the Common Council denies the permit application, the Common Council shall state its reasons for the denial and the City Clerk shall promptly notify the applicant in writing setting forth the reasons for the denial.
- D. If the Common Council conditionally approves a permit application, the Common Council shall state the conditions required for approval and the City Clerk shall promptly notify the applicant in writing stating the conditions required for approval. If the applicant has satisfied the conditions within thirty (30) days of the date of the notice, the City Clerk shall issue the tourist rooming house permit to the applicant. If the conditions for approval are ongoing requirements, the conditions shall be stated on the issued permit.

Sec 7.12.08 Permit Information and Display

- A. Each tourist rooming house permit issued shall contain the following information:
 - (1) Identity of the owner.
 - (2) Identity and phone number for the resident operator.
 - (3) The maximum occupancy for the licensed premises.
 - (4) The permit issuance date and date of expiration.
 - (5) State lodging license number.
 - (6) Contact information for the City.
 - (7) Conditions imposed by the City, if any.
- B. Permit Display. The current tourist rooming house permit shall be prominently displayed on the inside of the main entrance door of each tourist rooming house.

Sec 7.12.09 Regulations for Tourist Rooming Houses

- A. No tourist rooming house may be rented for a period of less than two consecutive nights.

- B. Each tourist rooming house shall comply with the applicable provisions of Chapter 97, Wis. Stats., and ATCP Ch. 72, Wis. Admin. Code., which are adopted herein and incorporated by reference.
- C. Each tourist rooming house shall comply with the following minimum requirements. If any these requirements conflict with state law, the more stringent requirement shall control.
 - (1) Has a safe, unobstructed means of egress leading to safe, open space at ground level.
 - (2) Has functional smoke detectors and carbon monoxide detectors in accordance with the requirements of Chapter SPS 362 of the Wisconsin Administrative Code.
 - (3) Quiet time. The owner shall notify each guest that no person shall make or cause to be made any unreasonably loud, disturbing, or unnecessary sounds or noises such as may tend to annoy or unreasonably disturb a person of ordinary sensibilities between the hours of 10:00 PM and 7:00AM.
 - (4) The owner or resident operator shall maintain a guest register and require all guests to register their true names and addresses and the rental time period before beginning each occupancy of the short-term rental. This register shall be maintained and available for inspection by City officials or their authorized representatives for at least one (1) year from the most recent rental date.
- D. Each tourist rooming house shall comply and be operated in accordance with all conditions required by any state or county licenses, permits, or orders, including orders issued by the City's building inspector or its designee.
- E. Each owner of a tourist rooming house and each property upon which a tourist rooming house is located shall have no delinquent fees, taxes, assessments, special charges, or forfeitures owed to the City, unless the owner and the City have entered into a written agreement for payment of the outstanding balances owed.

Sec 7.12.10 Non-transferability of Permit

A tourist rooming house permit is nontransferable and shall expire upon a transfer of legal control of the tourist rooming house property. The holder of any permit or license shall promptly notify the Clerk in writing of any transfer of the legal control of any property covered by the permit. A transfer of property to an entity or trustee shall not be considered a transfer of legal control as long as the owner(s) continue to have majority control of the entity or are trustees of the trust with control of the property;

however, such new form of ownership shall be identified on any permit renewal application after such transfer.

Sec 7.12.11 Fees

- A. The fees for a tourist rooming house permit application and issuance shall be determined by the Common Council.
- B. All other fees for licenses, permits, or inspections that may be required by this Chapter are the responsibility of the owner.

Sec 7.12.12 Enforcement and Penalties

- A. Any person, partnership, corporation, or other legal entity that violates Section 7.12.04 and operates a tourist rooming house without a valid permit shall be subject to a forfeiture of Five Hundred Dollars (\$500.00) Dollars, plus any applicable surcharges, assessments, and costs, for each violation. Each night a tourist rooming house is rented without a tourist rooming house permit in violation of this Chapter shall constitute a separate violation.
- B. Any person, partnership, corporation, or other legal entity that violates any other provision of this Chapter shall be subject to a forfeiture of not less than One Hundred Dollars (\$100.00) and no more than Five Hundred Dollars (\$500.00), plus any applicable surcharges, assessments, and costs, for each violation. Each day a violation exists or continues constitutes a separate violation under this Chapter.
- C. In addition to the issuance of citation(s) above, the Common Council may suspend or revoke a previously issued tourist rooming house permit.
- D. The Common Council may refuse to issue or renew a tourist rooming house permit for any property or owner-applicant that has violated this Chapter any time within a period of twelve (12) months prior to the date of the permit application or if the property has had three (3) or more calls for law enforcement services in a twelve (12) month period.

Section 2. This ordinance shall be effective when passed and published as required by law.

Passed by the Common Council of the City of Hillsboro on the ____ day of _____, 2022.

Approved by the City Mayor on the ____ day of _____, 2022.

APPROVED:

ATTEST:

Greg Kubarski, City Mayor

Sheila Schraufnagel, City Clerk

Short Term Rental Checklist To Get Started

1. REZONE

- ☐ Are you currently zoned as an R-3?
 - If no, you need to go through the Re-Zone Process and finishes section before moving onto section 2.
 - If yes, skip to section 2.
- ☐ Complete rezone petition for the Planning Commission including parcel number and a list of the owner's names and addresses within 100-foot radius of the area to be rezoned
- ☐ Submit rezoning petition to the Hillsboro City Hall
- ☐ Petition to rezone will be conducted at the next available City Council/ Planning Commission Meeting

2. STATE REQUIREMENTS

The State of WI Requires certain items such as: a Sellers Permit, Tourist Lodging License, and a Pre-Inspection

- ☐ Vernon County is an Agent of the State of Wisconsin. Go through them for the Pre-Inspection and License
- ☐ https://www.vernoncounty.org/departments/public_health_department/license_and_inspections/lodging_licensing.php
- ☐ State of Wisconsin Sellers Permit; <https://www.revenue.wi.gov/Pages/FAQS/pcs-seller.aspx#s1a>
- ☐ Each license issued under this chapter 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.

3. LOCAL LICENSE

- ☐ Proof of State of WI Tourism Lodging License
- ☐ Proof of State of WI Sellers Permit
- ☐ Proof of Inspection
- ☐ Proof of Insurance
- ☐ Zoned as an R-3

Room Tax forms filled out.

- ☐
 - Form A is required and submitted to municipality.
 - Form B is required only if you operate with a third party (Airbnb/ VRBO etc.). Form B is to be submitted to municipality
- ☐ Owner Operator/ Registered Operator within 25 miles of the City of Hillsboro Limits
- ☐ Room tax must be submitted quarterly
 - January-March: April 30th; April-June: July 31st; July-September: October 31st; October-December: January 31
- ☐ Yearly renewal fee is set by the Common Council

A GUIDE TO **RENTING OUT YOUR PROPERTY** FOR OVERNIGHT STAYS



***Protect yourself by knowing Wisconsin's
laws for short term rentals.***

February 2019
For a digital copy, visit
WisconsinLodging.org/ShortTermRentals

a collaboration of:
League of Wisconsin Municipalities
Wisconsin Counties Association
Wisconsin Department of Agriculture, Trade and Consumer Protection
Wisconsin Hotel & Lodging Association
Wisconsin Insurance Alliance

KNOWLEDGE IS THE KEY

Owners thinking of renting out a room, home, second home, investment property, cabin or basically any structure for overnight stays to the general public for a fee may not be aware of what they must do, by law, or what they may want to do to protect themselves, their property, and the guests paying to stay there. Each state is different in how such rentals are regulated, which makes it confusing for owners just wanting to start selling overnight stays at their property.

This guide offers the basics of what an owner needs to know before starting to rent out their property to the public, and the summaries are provided by a collaboration of experts in each facet of the rental operation, to ensure you know and can comply with various laws, and that you can take appropriate steps to avoid surprises for you or your guests that can have measurable safety or financial consequences. Each component provides references to further, more in depth information for you to explore. It is not intended as a comprehensive guide listing every consideration that may arise, but provides the highlights and entry level basics.

Every owner should review this guide when considering renting out their property for overnight stays, as knowledge is the key to protecting your investments.

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This compilation was possible thanks to submissions by experts at the state DATCP agency, the Wisconsin Hotel & Lodging Association, the League of Wisconsin Municipalities, the Wisconsin Insurance Alliance, and the Wisconsin Counties Association. Additional components may be added as more information is contributed.

Compilation by: Trisha Pugal, CAE
Wisconsin Hotel & Lodging Association
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Updated February 2019

COMPLYING WITH MUNICIPAL LAWS

So, you have decided to become a short term rental landlord. All you need to do now is clean up the place, advertise and wait for the rental requests to roll in right?

Wrong.

Before you start to do any of those things, you must first make sure your short-term rental idea is legal in your community and what you need to do to keep it legal. This requires getting some answers to some critical questions:

- Do you have the right zoning for short-term rental?
- Does your community have a room tax ordinance?
- Are there different building code requirements for a property engaged in commercial activity in your community?

These are just a few questions that must be asked and answered before you start renting. In some smaller communities, one person at the village or city hall, might be able to answer all of the relevant questions. In others, you may have to talk to several different officials. However, in most communities whether large or small, the best place to start is with your city or village clerk. If you live in an unincorporated area, you should check with your county land use department.

LICENSING FOR PUBLIC LODGING

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) requires all lodging facilities in Wisconsin to hold a current license.

What counts as a lodging facility?

DATCP has several definitions for types of lodging facilities. They include:

- Hotel - A hotel is defined as "a place where sleeping accommodations are offered for pay to transients, in 5 or more rooms, and all related rooms, buildings and areas."
- Motel - Means the same as a Hotel except that guest parking is provided on premise as part of the room charge.
- Tourist Rooming House (TRH) - A TRH is defined as "all lodging places and tourist cabins and cottages, other than hotels and motels, in which sleeping accommodations are offered for pay to tourists or transients."
- Bed and Breakfast (B&B) – A B&B is defined as "any place of lodging that provides 8 or fewer rooms for rent to no more than a total of 20 tourists or other transients for more than 10 nights in a 12 month period, is the owner's personal residence, is occupied by the owner at time of rental, and in which the only meal served to guests is breakfast."

These definitions mention tourists or transients. DATCP has defined a tourist or transient as "a person who travels to a location away from his or her permanent address for a short period of time for vacation, pleasure, recreation, culture, business or employment." Notice that in the definition for tourists or transients a person has to be away from his or her permanent address in order to meet the definition. It does not matter if the tourist or transient is there for the season, the month, a week, a day or less. If it is rented to a tourist or transient, it will require a license.

Lodging facilities come in many forms. Common examples of lodging facilities requiring a DATCP license include: hotels, motels, B&B's, row houses, cabins, cottages, lodges, homes, condos or rental rooms located above a business.

Where do I begin?

Begin the process by contacting a DATCP licensing specialist. They will walk you through the process and help you determine the best license for your lodging operation. They can provide you with an information packet that will guide you through the licensing process. You can contact them by sending an e-mail to datcpdfslicensing@wisconsin.gov or by calling 608/224-4923. After you submit a license application, a Sanitarian will be assigned to your business. The Sanitarian is the inspector responsible for approving your lodging license. They assure that the lodging operation meets health and safety requirements.

Once you know who your Sanitarian is, arrange a time to meet with the Sanitarian at your facility. This arranged meeting is called a Pre-Licensing Inspection. During this inspection your Sanitarian will share with you the applicable code requirements that your structure must meet.

Depending on the type of structure, some of the common items of public health concern may include:

Proper building exits/escapes	Directions of escape	Facility cleanliness
Door locks	Proper linen and towel handling	Size of sleeping rooms
Proper disposal of garbage/solid waste	Proper wastewater disposal (black and gray water)	A recent water test report for private wells (bacteriologically safe)
Fire extinguisher number and placement, fire alarm systems	Smoke/carbon monoxide detector number and placement	Ventilation and combustion air for fuel fired appliances like furnaces, boilers, fireplaces, water heaters & dryers

— COLLECTING & REMITTING STATE, COUNTY AND LOCAL TAXES —

If you are furnishing short-term lodging, you should apply for a seller's permit here: <http://tap.revenue.wi.gov/btr>.

The Wisconsin Department of Revenue (DOR) has issued public guidance on its website clarifying that the imposition of state and county sales tax, other special sales taxes, and local room tax on the rental of overnight lodging applies, with the exception of annual sales of less than \$2,000:

<https://www.revenue.wi.gov/Pages/SalesAndUse/2018/Homeowners-and-Individual-Providing-Short-Term-Lodging-Updated.aspx>

It specifically states "Homeowners or other individuals who make rooms or lodging available to the public for periods less than one month, must report and pay Wisconsin sales tax on such rentals. This includes the short-term rental of a home, room, apartment, cabin, inn, motel, or any other building in which accommodations are made available to the public." "One month" means a calendar month or 30 days, whichever is less, counting the first day of the rental and not counting the last day of rental.

The sales tax rate charged is based on the location where the lodging is furnished. A basic sales tax, an additional sales tax and a municipal room tax may also apply, depending on the location of the lodging. For example, lodging furnished in Milwaukee County is subject to 5.6% sales tax (5% state, .5% county, and .1% stadium) plus a 2.5% basic room tax. If the sale occurs in the City of Milwaukee, an additional 7.0% room tax applies.

Wisconsin Statute 66.0615 provides the authority and requirements for a **municipal room tax**. If a Wisconsin municipality has imposed a local room tax, it is imposed "on the privilege of **furnishing, at retail**, except sales for resale, **rooms or lodging to transients** by hotelkeepers, motel operators, lodging marketplaces, **owners of short-term rentals**, and other persons furnishing accommodations that are available to the public." View the complete statute here:

<https://docs.legis.wisconsin.gov/statutes/statutes/66/VI/0615>

Exception For Taxes Collected by Residential Short-Term Lodging Marketplaces: Effective September 23, 2017, a "lodging marketplace" is required to register with the Department of Revenue for a license to collect taxes imposed by the state related to a residential short-term rental and to collect room taxes imposed by a municipality. Therefore, if a lodging marketplace notifies the owner that it is collecting the taxes, the owner is not required to collect and remit taxes on those rentals.

NOTE: For more information from the DOR on what a "lodging marketplace" is, which ones are registered, and more visit <https://www.revenue.wi.gov/Pages/FAQS/Lodging-Marketplace-License-faq.aspx>

Federal Income Tax Implications

The Internal Revenue Service (IRS) provides guidance on Renting Residential & Vacation Property at <https://www.irs.gov/taxtopics/tc415.html>.

– PROPERTY RISKS, LIABILITY & OBTAINING INSURANCE COVERAGE –

If you are considering renting out your home, your guest room or even your couch your first step should be to **contact your insurance professional**. Online platforms for renting your property to the public for overnight stays, such as Airbnb, can be a great way to bring in extra money and are increasingly popular; however, they can also leave you financially vulnerable. If your renter starts a fire and damages your property or is hurt while renting your home, will you be protected?

Before embarking on a home or property rental financial arrangement, call your insurance professional and get their advice. In general, if you are only planning to rent your home out for a single occasion, many insurance companies will extend your coverage to the renter. **The one caveat is that the insurer must be notified ahead of time.**

It is not unusual for someone to rent out their home or part of it for a major event when there may not be enough hotel space available in the area. Many insurance companies take this situation into account when creating a homeowners or renters policy; other insurance companies may require the purchase of an endorsement to the policy to provide broader coverage for the renters in your home.

If you plan to rent out all or part of your home on a regular basis, many companies will consider this a business use. Standard homeowners and renters insurance policies are designed for personal risks, not commercial risks. In this case you will need to purchase a business policy—specifically either a hotel or a bed & breakfast policy. Some companies offer a home-sharing liability insurance policy that can be purchased on a month-to-month basis, but there may be exclusions and limitations, so read the policy carefully.

Chapter ATCP 72**HOTELS, MOTELS, AND TOURIST ROOMING HOUSES**

ATCP 72.01	Authority and purpose.
ATCP 72.02	Scope of rules.
ATCP 72.03	Definitions.
ATCP 72.04	Licenses.
ATCP 72.05	Department fees.
ATCP 72.06	Enforcement.
ATCP 72.07	Suspension or revocation of licenses.
ATCP 72.08	Appeals of actions by the department.
ATCP 72.09	Appeals of actions by agent health departments.
ATCP 72.10	Water supply and waste disposal.
ATCP 72.11	Furnishings, equipment and utensils.
ATCP 72.12	Food.
ATCP 72.13	Employee health.
ATCP 72.14	Building structure and safety.
ATCP 72.145	Carbon monoxide detectors.
ATCP 72.15	Maintenance.
ATCP 72.16	Registration of guests.

Note: Chapter HSS 195 as it existed on June 30, 1985, was repealed and a new chapter HSS 195 was created effective July 1, 1985. Chapter HSS 195 was renumbered chapter HFS 195 under s. 13.93 (2m) (b) 1., Stats., corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, January, 1997, No. 493. Chapter HFS 195 was renumbered chapter DHS 195 effective February 1, 2009, under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637. Chapter DHS 195 was renumbered chapter ATCP 72 under s. 13.92 (4) (b) 1., Stats., Register June 2016 No. 726.

ATCP 72.01 Authority and purpose. Section 97.625, Stats., gives the department authority to prescribe rules for hotels, including motels, and tourist rooming houses and to enforce these rules for the purpose of protecting public health and safety.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; correction made under s. 13.93 (2m) (b) 7., Stats., Register, January, 1995, No. 469; CR 08-073: renum. from HFS 195.01 Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 195.01 Register June 2016 No. 726; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 72.02 Scope of rules.

- (1) **APPLICABILITY.** The provisions of this chapter apply to the operator of any hotel, motel, or tourist rooming house.
- (2) **APPROVED COMPARABLE COMPLIANCE.** When it appears to the department that strict adherence to a provision of this chapter is impractical for a particular hotel, motel, or tourist rooming house, the department may approve a modification in that rule for that facility if the department is provided with satisfactory proof that the grant of a variance will not jeopardize the public's health, safety or welfare.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; CR 08-073: renum. from HFS 195.02 Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 195.02 Register June 2016 No. 726.

ATCP 72.03 Definitions. In this chapter:

- (1) "Agent" means the city or county designated by the department to issue licenses to and make investigations or inspections of hotels, motels, or tourist rooming houses.
- (2) "Approved" means acceptable to the department, based on its determination of conformance with this chapter and good public health practices.
- (3) "Communicable disease" has the meaning prescribed in s. DHS 145.03 (4).
- (4) "Department" means the department of agriculture, trade and consumer protection.
- (5) "Easily cleanable" means readily accessible and made of a kind of material and finish and so fabricated that residue may be completely removed by normal cleaning methods.
- (6) "Employee" means any person working in a hotel, motel, or tourist rooming house.
- (7) "Equipment" means, in connection with the operation of a hotel, motel, or tourist rooming house, stoves, ranges, hoods, counters, refrigerators, ice-making machines, sinks, and similar appliances and other items used to prepare or hold foods or to clean utensils.
- (8) "Existing," in reference to a hotel, motel or tourist rooming house, means operating with a license from the department before the adoption of this chapter.
- (9) "Facility" means a hotel, motel, or tourist rooming house.
- (10) "Furnishings" means, in connection with the operation of a hotel, motel or tourist rooming house, linens, beds, bedding, chairs, tables, shelves, drapes, carpeting, curtains, decorations, fixtures, and similar items provided in the sleeping rooms and common areas of the facility.
- (11) "Hotel" means a place where sleeping accommodations are offered for pay to transients, in 5 or more rooms, and all related rooms, buildings and areas.
- (12) "Motel" means a hotel that furnishes on-premise parking for motor vehicles of guests as part of the room charge, without extra cost, and that is identified as a "motel" rather than a "hotel" at the request of the operator.
- (13) "New," in reference to a hotel, motel, or tourist rooming house, means operating with a license from the department for the first time on or after the effective date of this chapter.
- (14) "Operator" means the person legally responsible for the operation of the hotel, motel, or tourist rooming house.
- (15) "Person" means an individual, partnership, association, firm, company, corporation, municipality, county, or town, whether tenant, owner, lessee, licensee, or the agent, heir, or assignee of any of these.

- (16) "Premises" means the tract of land on which a hotel, motel or tourist rooming house is located and all associated buildings on that land.
- (17) "Privy" means a structure not connected to a plumbing system, which is used by persons for the disposal of human body wastes.
- (18) "Sleeping accommodations offered for pay" means all sleeping rooms on the premises including quarters occupied by permanent guests but excluding sleeping rooms occupied by the operator or owner or his or her immediate family.
- (19) "Tourist or transient" means a person who travels to a location away from his or her permanent address for a short period of time for vacation, pleasure, recreation, culture, business, or employment.
- (20) "Tourist rooming house" means all lodging places and tourist cabins and cottages, other than hotels and motels, in which sleeping accommodations are offered for pay to tourists or transients. It does not include private boarding or rooming houses not accommodating tourists or transients, or bed and breakfast establishments regulated under ch. ATCP 73.
- (21) "Utensil" means any kitchenware, tableware, glassware, cutlery, container, or similar item with which food or drink comes into contact during storage, preparation or serving.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; am. (19), Register, November, 1986, No. 371, eff. 12-1-86; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register May 2002 No. 557; CR 08-073: renum. from HFS 195.03 and am. (4) Register January 2009 No. 637, eff. 2-1-09; corrections in (3) and (20) made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637; renum. from DHS 195.03 Register June 2016 No. 726; correction in (4) made under s. 13.92 (4) (b) 6., correction in (20) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726; **CR 18-019: am. (1), (8), (13) Register January 2020 No. 769, eff. 2-1-20.**

ATCP 72.04 Licenses.

(1) LICENSE REQUIRED.

- (a) No hotel, motel, or tourist rooming house may be opened to the public until the operator of the facility has obtained a license from the department or its agent by submitting an application under sub. (4) and paying the applicable fee specified in s. ATCP 72.05. A separate license is required for each hotel, motel, or tourist rooming house.
- (b) If any license holder sells or otherwise transfers ownership or operation of a hotel, motel, or tourist rooming house to another person, except as provided in sub. (3), a new initial license is required, and the hotel, motel, or tourist rooming house may not be opened to the public until the department has issued a new initial license.

(2) LICENSE DURATION AND RENEWAL.

- (a) Each license issued under this chapter 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.
- (b) Each license shall be renewed annually as provided in sub. (4) (b).

- (3) **TRANSFERABILITY OF LICENSES** An individual may transfer a license to an immediate family member, as defined in s. 97.605 (4) (a) 2., Stats., if the individual is transferring operation of the hotel, motel, or tourist rooming house. A sole proprietorship that reorganizes as a business entity, as defined in s. 179.70 (1), Stats., or a business entity that reorganizes as a sole proprietorship or a different type of business entity may transfer a license to the newly formed business entity or sole proprietorship if the hotel, motel, or tourist rooming house 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 has an ownership interest in the newly formed sole proprietorship or business entity. Except as provided in this subsection, no license issued under this chapter is transferable from one premise to another or from one person or entity to another.



Ordinance #6-2022
City of Hillsboro

**AN ORDINANCE TO CREATE CHAPTER 7.12 OF THE CODE OF ORDINANCES OF
THE CITY OF HILLSBORO, WISCONSIN**

WHEREAS, the Common Council has determined that it is in the best interest of the City to issue permits and establish local regulations of short-term rental tourist rooming houses.

NOW, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF HILLSBORO, VERNON COUNTY, WISCONSIN, AS FOLLOWS:

Section 1. Chapter 7.12 of the Code of Ordinances of the City of Hillsboro, entitled "Short-Term Rental Regulations", shall be created to read as follows:

Sec 7.12.01 Purpose

The purpose of this Chapter is to ensure the quality of tourist rooming houses operating within the City of Hillsboro to protect the public health, safety, and general welfare. The City has determined that it can serve this purpose by establishing minimum standards of space for human occupancy; by establishing standards for adequate maintenance of these properties; by determining the responsibilities of owners, operators, and property managers offering these properties to tourists; by protecting the character and stability of all areas within the City of Hillsboro; by providing minimum standards necessary for the health and safety of persons occupying or using buildings, structures, or premises; and by providing for the administration and enforcement of such regulations.

Sec 7.12.02 Definitions

- A. For purposes of this Chapter, the following definitions shall apply:

- (1) "Bathroom" means an enclosed room with a toilet, washbasin, and shower or bathtub.
- (2) "Clerk" means the City Clerk or its designee.
- (3) "Owner" means the property owner of a tourist rooming house.
- (4) "Resident operator" means a person who has been designated by the Owner to operate the tourist rooming house and who meets the qualifications within this Chapter.
- (5) "Short-term rental" means the rental of a tourist rooming house for a period of twenty-nine (29) consecutive days or less.
- (6) "Tourist rooming house" means all lodging places and tourist cabins and cottages, other than hotels and motels, in which sleeping accommodations are offered for pay to tourists or transients. It does not include private boarding or rooming houses not accommodating tourists or transients, or bed and breakfast establishments regulated under Ch. ATCP 73, Wis. Admin. Code.

- B. Unless the context indicates otherwise, other terms used in this Chapter that are defined in Ch. ATCP 72, Wis. Admin. Code shall have the meaning as defined therein.

Sec 7.12.03 Applicability; Exemptions

- A. This Chapter applies to "tourist rooming houses" as defined herein that are offered to the public for a rental period of twenty-nine (29) consecutive days or less.
- B. Exemptions. The following businesses and operations are exempt from the requirements of this Chapter:
 - (1) Any hotel, motel, or resort licensed by the State of Wisconsin under sec. 97.605, Wis. Stat.
 - (2) Private boarding or rooming houses not accommodating tourists or transients.
 - (3) Bed and breakfast establishments licensed by the State of Wisconsin under Ch. ATCP 73, Wis. Admin. Code.

Sec 7.12.04 Tourist Rooming House Permit

- A. Permit Required. No person may operate a tourist rooming house for more than ten (10) nights each year without a valid tourist rooming house permit issued by the City.
- B. Permit Duration. Each permit shall expire on June 30, except that licenses initially issued during the period beginning April 1 and ending on June 30 shall expire on June 30 of the following year.

Sec 7.12.05 Permit Application

- A. All applications for a tourist rooming house permit shall be filed with the Clerk on forms provided by the City. Each application shall be accompanied by payment of the required permit fee and shall include all the information and documentation required by this Chapter. The Clerk may refuse to accept any permit application that is incomplete or does not comply with the requirements of this Section.
- B. The tourist rooming house permit application shall include the following:
 - (1) The name, mailing address, and phone number of the owner(s).
 - (2) The name, mailing address, phone number, and email address of the resident operator.
 - (3) The address of the tourist rooming house sought to be permitted.
 - (4) Certification statement to the City signed by the owner (or at least one owner if there are multiple owners of the property) that states the tourist rooming house identified in the permit is in compliance with the regulations of this Chapter.
- C. The tourist rooming house permit application shall include the following documentation:
 - (1) State of Wisconsin tourist rooming house license issued under Wis. Stat. §97.605 by the Department of Agriculture, Trade and Consumer Protection.
 - (2) A copy of a completed State Lodging Establishment Inspection form dated within one (1) year of the date of application.
 - (3) A valid Wisconsin Department of Revenue Seller's Permit in the name of the property owner.

- (4) Proof of insurance for the tourist rooming house that meets the standards set by this Chapter.

Sec 7.12.06 Resident Operator Qualifications

- A. To qualify as a resident operator the person must meet the following requirements:
- (1) Be a natural person residing in the City of Hillsboro or within twenty-five (25) miles of the City of Hillsboro; or be a corporate entity routinely engaged in the business of property management with offices located within the City of Hillsboro or within twenty-five (25) miles of the City of Hillsboro. An entity is "routinely engaged in the business of property management" if an owner, employee, or other contracted party is on-call to respond to property or occupancy emergencies twenty-four hours a day seven days a week.
 - (2) Not have a pending criminal charge involving and not have been convicted of a felony or misdemeanor of any offense involving dishonesty, fraud, deceit, robbery, the use or threatened use of force or violence upon the person of another, or sexual immorality under Wis. Stat. Ch. 944, as amended.
 - (3) Be authorized by the owner to accept service of process for all City notices, citations, orders, and other legal documents.
 - (4) Be authorized by the owner to enter upon the property and promptly and safely respond to complaints, correct any violations of this Chapter, or handle immediate issues concerning the tourist rooming house or its occupants.

Sec 7.12.07 Application Review Procedure

- A. When a permit application is complete, the Clerk shall forward the completed application to the Common Council for review at the next meeting for which an agenda has not yet been posted. The Common Council shall consider the applications and supporting documents. The Common Council may approve, deny, or conditionally approve the application considering the proper factors that will help ensure the quality of tourist rooming houses operating within the City of Hillsboro to protect the public health, safety, and general welfare and the applicant's compliance with the requirements of this Chapter.
- B. If the Common Council approves the permit application, the City Clerk shall promptly issue the tourist rooming house permit.

- C. If the Common Council denies the permit application, the Common Council shall state its reasons for the denial and the City Clerk shall promptly notify the applicant in writing setting forth the reasons for the denial.
- D. If the Common Council conditionally approves a permit application, the Common Council shall state the conditions required for approval and the City Clerk shall promptly notify the applicant in writing stating the conditions required for approval. If the applicant has satisfied the conditions within thirty (30) days of the date of the notice, the City Clerk shall issue the tourist rooming house permit to the applicant. If the conditions for approval are ongoing requirements, the conditions shall be stated on the issued permit.

Sec 7.12.08 Permit Information and Display

- A. Each tourist rooming house permit issued shall contain the following information:
 - (1) Identity of the owner.
 - (2) Identity and phone number for the resident operator.
 - (3) The maximum occupancy for the licensed premises.
 - (4) The permit issuance date and date of expiration.
 - (5) State lodging license number.
 - (6) Contact information for the City.
 - (7) Conditions imposed by the City, if any.
- B. Permit Display. The current tourist rooming house permit shall be prominently displayed on the inside of the main entrance door of each tourist rooming house.

Sec 7.12.09 Regulations for Tourist Rooming Houses

- A. No tourist rooming house may be rented for a period of less than two consecutive nights.

- B. Each tourist rooming house shall comply with the applicable provisions of Chapter 97, Wis. Stats., and ATCP Ch. 72, Wis. Admin. Code., which are adopted herein and incorporated by reference.
- C. Each tourist rooming house shall comply with the following minimum requirements. If any these requirements conflict with state law, the more stringent requirement shall control.
 - (1) Has a safe, unobstructed means of egress leading to safe, open space at ground level.
 - (2) Has functional smoke detectors and carbon monoxide detectors in accordance with the requirements of Chapter SPS 362 of the Wisconsin Administrative Code.
 - (3) Quiet time. The owner shall notify each guest that no person shall make or cause to be made any unreasonably loud, disturbing, or unnecessary sounds or noises such as may tend to annoy or unreasonably disturb a person of ordinary sensibilities between the hours of 10:00 PM and 7:00AM.
 - (4) The owner or resident operator shall maintain a guest register and require all guests to register their true names, addresses, and license plate numbers and the rental time period before beginning each occupancy of the short-term rental. This register shall be maintained and available for inspection by City officials or their authorized representatives for at least one (1) year from the most recent rental date.
- D. Each tourist rooming house shall comply and be operated in accordance with all conditions required by any state or county licenses, permits, or orders, including orders issued by the City's building inspector or its designee.
- E. Each owner of a tourist rooming house and each property upon which a tourist rooming house is located shall have no delinquent fees, taxes, assessments, special charges, or forfeitures owed to the City, unless the owner and the City have entered into a written agreement for payment of the outstanding balances owed.

Sec 7.12.10 Non-transferability of Permit

A tourist rooming house permit is nontransferable and shall expire upon a transfer of legal control of the tourist rooming house property. The holder of any permit or license shall promptly notify the Clerk in writing of any transfer of the legal control of any property covered by the permit. A transfer of property to an entity or trustee shall not be considered a transfer of legal control as long as the owner(s) continue to have majority control of the entity or are trustees of the trust with control of the property;

however, such new form of ownership shall be identified on any permit renewal application after such transfer.

Sec 7.12.11 Fees

- A. The fees for a tourist rooming house permit application and issuance shall be determined by the Common Council.
- B. All other fees for licenses, permits, or inspections that may be required by this Chapter are the responsibility of the owner.

Sec 7.12.12 Enforcement and Penalties

- A. Any person, partnership, corporation, or other legal entity that violates Section 7.12.04 and operates a tourist rooming house without a valid permit shall be subject to a forfeiture of Five Hundred Dollars (\$500.00) Dollars, plus any applicable surcharges, assessments, and costs, for each violation. Each night a tourist rooming house is rented without a tourist rooming house permit in violation of this Chapter shall constitute a separate violation.
- B. Any person, partnership, corporation, or other legal entity that violates any other provision of this Chapter shall be subject to a forfeiture of not less than One Hundred Dollars (\$100.00) and no more than Five Hundred Dollars (\$500.00), plus any applicable surcharges, assessments, and costs, for each violation. Each day a violation exists or continues constitutes a separate violation under this Chapter.
- C. In addition to the issuance of citation(s) above, the Common Council may suspend or revoke a previously issued tourist rooming house permit.
- D. The Common Council may refuse to issue or renew a tourist rooming house permit for any property or owner-applicant that has violated this Chapter any time within a period of twelve (12) months prior to the date of the permit application or if the property has had three (3) or more calls for law enforcement services in a twelve (12) month period.

Section 2. This ordinance shall be effective when passed and published as required by law.

Passed by the Common Council of the City of Hillsboro on the 19th day of
September, 2022.

Approved by the City Mayor on the 19th day of September, 2022.

APPROVED:



Greg Kubarski, City Mayor

ATTEST:



Sheila Schraufnagel, City Clerk

Re-Zoning Procedure, City of Hillsboro, Section 13.1.154

Step 1: Re-zone petition form filed with City

At this step, the responsibility of City staff is to just make sure the form is filled out completely/accurately and that the applicant has submitted the documentation showing the required information with the form.

Step 2: Refer petition to Plan Commission for review

Place on the agenda for the plan commission to review the petition and make a recommendation to the Common Council on the re-zone petition.

Step 3: Schedule and publish notice of public hearing

Section 13.1.154 states that the public hearing occurs at the Common Council meeting. Best practice is to have the public hearing scheduled after the Plan Commission has reviewed the petition. Notice of the public hearing must be published as a Class Two notice, with the last insertion at least one week prior to the date of the public hearing. Notice must also be given to any person who has requested notice of any proposed zoning action under Wis. Stat. § 62.23(7)(d)4. All the above notices must describe the property (address is fine in this case) and must have a statement that map can be obtained at the City Hall (this map would be the scaled plot plan that must accompany the petition.)

Step 4: Hold Public Hearing at Common Council meeting

Step 5: Common Council votes on re-zoning ordinance

Either at the same meeting after the public hearing, or at the following meeting, the Council votes on the proposed re-zoning amendment. After the Plan Commission review, if passage is expected, our office can prepare the Ordinance to re-zone the parcels. Note that if the requisite number of property owners affected by the zoning amendment has submitted a protest petition under Wis. Stat. § 62.23(7)(d)2m (See also, Sec. 13.1.155), then passage requires three-fourths vote of the Council.

Step 6. Publication of ordinance

Our office can prepare the summary for publication when we prepare the ordinance.

CITY OF HILLSBORO

REZONING PETITION

(For Office Use only)

Amount Paid: _____

Receipt #: _____

Received By: _____

Filing Date: _____

Application Fee: _____

Please fill in the information requested on page 1 and attach the required information and documents as set forth on page 2. You must sign the petition.

Address of Subject Property: _____

Parcel #: _____ Legal Description: _____

Owner's Name & Address: _____

Daytime Phone No.: _____ Evening Phone No.: _____

Petitioner's Name & Address (if different from owner): _____

Daytime Phone No.: _____ Evening Phone No.: _____

Does Petitioner have an Offer to Purchase the Property: ☐ Yes ☐ No

Current Zoning: _____

Proposed Zoning: _____

Existing Land Use/Improvements on Property: _____

Proposed Land Use/Improvements on Property: _____

Reason for Request: _____

Describe highway access to the Property: _____

Describe how the rezoning will be compatible with surrounding land uses: _____

Please attach the additional documents, plans and information as outlined below:

- A. Plot plan drawn to scale which includes all the following: Area proposed to be rezoned, its location, dimensions, the location and classification of all adjacent zoning districts and the location and existing use of all properties within a three hundred foot radius of the are to be rezoned.
- B. A list of the owner's names and addresses of all properties lying within a one hundred foot radius of the area to be rezoned.
- C. Additional Information as required by the Common Council:_____

I ask that the Plan Commission and the City Council of Hillsboro consider this Rezoning Petition in accordance with the rules and regulations as set forth in the City of Hillsboro's Code of Ordinances.

Petitioner/Owner's Signature

Please note that this Rezoning Petition cannot be considered until all of the requested information, plans, drawings and other items have been submitted and any applicable fee payment is made.

(for Use of the City of Hillsboro)

_____	Plan Commission - Reviews Petition.
_____	Publication (Class 2 notice – insert for two weeks).
_____	Plan Commission – Makes advisory recommendation.
_____	Public Hearing at Common Council
_____	Council - Acts on Petition.

Date of Plan Commission approval and comments:_____

Date of Council approval and comments:_____



CITY OF Hillsboro
APPLICATION FOR
SHORT TERM RENTAL OF PROPERTY
(Form addresses Zoning, Room Tax, & a Health License)

Fee: _____
Receipt #: _____
Date: _____

Read all instructions before completing. Complete all fields and check appropriate boxes. Type or use black ink.

SECTION 1: Applicant / Authorized Representative Information

Applicant Name (Ind., Org. or Entity)	Authorized Representative (if any)	Title	
Mailing Address	City	State	ZIP Code
Email Address	Phone Number (incl. area code)	Fax Number (incl. area code)	

SECTION 2: Resident Owner Information (Complete fields when landowner is different than applicant)

Name (Ind. Org. or Entity)	Contact Person	Title	
Mailing Address	City	State	ZIP Code
Email Address	Phone Number (incl. area code)	Fax Number (incl. area code)	

SECTION 3: Site Location and Zoning Information

Property Address:	Parcel Number(s):	Zoning District (check one): <input type="checkbox"/> R-1 <input type="checkbox"/> R-2 <input type="checkbox"/> R-3 <input type="checkbox"/> R-4 <input type="checkbox"/> Other	Check one: <input type="checkbox"/> Property use is Residential <input type="checkbox"/> Property Use is Non-residential
-------------------	-------------------	--	--

A short term rental means renting to the same short term renter for up to 28 consecutive days. Short term rentals are only allowed in R-3 zones.

- ☐ Applicant understands
☐ Clarification needed

Has the applicant verified that short term rentals are allowed by the property restrictive covenants, Home Owner's Association (HOA), landowner, landlord, etc.?

- ☐ Applicant Verified
☐ Not Verified

SECTION 4: Room Tax Information

Number of rooms available for rent:	Current Rate Schedule: (Attach rate schedule if available)	When rooms are available for rent (check one): <input type="checkbox"/> Year Round <input type="checkbox"/> Seasonal	If seasonal, period of year available:
-------------------------------------	---	--	--

Please note, in the City of Hillsboro, you are responsible for collecting the **5% Room Tax** from the short term renter and you are responsible for forwarding the 5% Room Tax to the City of Hillsboro Treasurer at the address to the right. Most short term rental websites do not collect room tax as part of the booking process.

Lisa Johnson
City of Hillsboro Treasurer
123 Mechanic St. PO Box 447
Hillsboro, WI 54634 Phone:
(608)489-2521

CONTINUED ON BACK OF THIS FORM

SECTION 5: License Information

Application Information: Prior to permittance, a tourist rooming house license issued under Wis. Stat. §97605, proof of insurance, proof of state lodging establishment inspection, and proof of a valid Wisconsin Department of Revenue Sellers Permit is required.

Check one:

- ☐ Information included
- ☐ Information not included
- ☐ First year payment included
- ☐ Payment not included

An annual permitting fee for a Lodging – Tourist Rooming House is required with this form, and then due every calendar year by June 30.

In accordance with Chapter 7.12 of the Hillsboro Municipal Code, I the undersigned do hereby respectfully make application to the City of Hillsboro for a license. I hereby certify that I am familiar with the laws, ordinances, and regulations pertaining to the conditions of said establishment in the City of Hillsboro, and **I hereby agree, if granted said license, to obey all provisions of said laws, ordinances and regulations.**

- ☐ Applicant understands
- ☐ Clarification needed

A license is NOT transferable. You **must** have a **valid** license before operating. All licenses expire June 30th annually. A **late fee** will be added to all renewal applications post marked after June 30th. Closure of non-current licensed establishments will occur July 20th with additional reopening fees added for any operator requiring the above action.

- ☐ Applicant understands
- ☐ Clarification needed

SECTION 6: Certification and Permission

Certification: I hereby certify that I am the owner or authorized representative of the owner of the property which is the subject of this Permit Application. I certify that the information contained in this form and attachments is true and accurate. I certify that the project will be in compliance with all permit conditions. I understand that failure to comply with any or all of the provisions of the permit may result in permit revocation and a fine and/or forfeiture under the provisions of applicable laws.

Permission: I hereby give the City permission to enter and inspect the property at reasonable times, to evaluate this notice and application, and to determine compliance with any resulting permit coverage.

Applicant Name (<i>print</i>)	Applicant Signature	Date Signed
Property Owner Name (<i>print</i>)	Property Owner Signature	Date Signed

FOR OFFICE USE ONLY

Reviewing Agent	Application Data	Extra Needed Information	
City Clerk	<input type="checkbox"/> Complete <input type="checkbox"/> Incomplete		
Zoning Administrator	<input type="checkbox"/> Complete <input type="checkbox"/> Incomplete		
Treasurer	<input type="checkbox"/> Complete <input type="checkbox"/> Incomplete		
Inspection	<input type="checkbox"/> Complete <input type="checkbox"/> Incomplete		
Common Council	<input type="checkbox"/> Complete <input type="checkbox"/> Incomplete		
Other	<input type="checkbox"/> Complete <input type="checkbox"/> Incomplete		
REVIEW DECISION	<input type="checkbox"/> APPROVAL	<input type="checkbox"/> DENIAL	DATE:

How to apply to be a Short Term Rental Property In the City of Hillsboro

The short term rental of property is possible in the City of Hillsboro, per certain City of Hillsboro and Wisconsin Act 59 regulations. It looks easy when you go online and can quickly list your bedroom, loft, apartment, house, condo, etc., for rent on a multitude of private sites. However, you must also file a 'Short Term Rental of Property' application form with the City of Hillsboro.

This instruction summary will help you define if your property qualifies as a short term rental property. This summary will also remind you of some of the steps and rules that must be adhered to in order to remain a short term rental property in good standing with the City of Hillsboro.

Is this application for all land in the Hillsboro zip code (54634)?

No. This application applies only to properties within the Hillsboro City Limits. The Hillsboro zip code extends into many of our adjacent communities. When looking up your property parcel number, see if it begins with the numbers "236" to ensure that your property is in the City of Hillsboro.

What properties can qualify?

City of Hillsboro properties that are zoned Residential-3 (two family residential) can be a short term rental property. Residential dwellings in other zoning districts may also be eligible to be used as a short term rental property if properly re-zoned. If you are not sure what your zoning category is, go to the following City of Hillsboro mapping website and click on Zoning Map.

<https://www.hillsborowi.com/maps>

Short term rentals are allowed in the following residential zoning districts:

- R-3, for short term rentals of 0-28 consecutive days

Does my short term renter need to pay a room tax?

Yes! In the City of Hillsboro, you are responsible for collecting the 5% Room Tax from your short term renter and you are responsible for forwarding the 5% Room Tax to the City of Hillsboro Treasurer at the address identified on Section 4 of the application form. The 5% Room Tax CAN be paid at the City Hall office. Please note that most short term rental websites do not collect the 5% Room Tax for you as part of the online booking process. Failure to not pay room tax can result in fines and loss of short term rental license.

Do I need a property inspection before booking a short term rental?

Yes! The initial pre-inspection, referenced above, is performed by the Fire Department. The City strongly recommends that you review your property for the following safety features prior to the inspection:

- Working smoke alarms and carbon monoxide alarms
- Working fire extinguishers
- Two safe forms of emergency building exits
- Properly ventilated furnaces, water heaters, fire places, and stoves
- Proper exterior exhaust vents for bathrooms and showers
- Good working electrical, heating and air conditioning systems

Are there a maximum number of days that I can book my short term rental?

A short term rental means renting to the same short term renter for up to 28 consecutive days. There is no limit to the number of times a space can be rented, just a maximum duration.

Are there other things I need to check before applying?

Be sure to check that your property restrictive covenants, Home Owner's Association (HOA), landowner, landlord, etc., allow short term rentals. Some do not allow this type of use and you are responsible for confirming if it is allowed before applying with the City of Hillsboro as the City does not verify that for you. You are responsible for your property so be sure to double-check.

The Wisconsin Department of Agriculture, Trade and Consumer Protection website has a 4-page summary guide of Wisconsin laws for short term rentals. Below is a link to the document:

<https://datcp.wi.gov/Documents/ShortTermRentalGuidance.pdf>

If you feel you have addressed all of the above, you may qualify to have a short term rental property in the City of Hillsboro!

ROOM TAX

Form A. Required by municipality. Return to City Hall
This is a quarterly form to go along with your check

(1) If all income is from non-transient guests, check box, sign and return this form.

☐

(2) Enter Gross Receipts

(3) Subtract Deductions (from Reverse side Line F)

(4) Equals Taxable Room Rent

(5) Multiply by City of Hillsboro Room Tax at 5%

(6) Equals Tax Due "City of Hillsboro"

(7) Attach a copy of WDOR Sales and Use Tax Return

I hereby certify that the information supplied hereon is accurate to the best of my knowledge and belief.

Signature of Owner or Authorized Agent

Title:

Firm:

Date:

(Additional Instructions are on the reverse side)

This report and remittance due not later than 30 days from the end of each quarter. Delinquent payments shall be to a \$100 late fee in addition to interest at the legal rate.

Marketplace Provider Municipal Room Tax Return

(Marketplace providers must file this return with each Wisconsin municipality that imposes municipal room tax)

sec. 66.0615(1r), Wis. Stats.

This is the uniform municipal room tax return for use by marketplace providers. Contact the municipality for information on how to file the return and pay.

Marketplace provider name		FEIN
Marketplace provider's address		
Municipality		
Mailing address		
Period	Period ending	Year

1. Number of nights properties rented	1.	
2. Total sales	2.	
3. Exempt sales	3.	
4. Taxable sales (line 2 - line 3)	4.	
5. Room tax rate (see instructions)	5.	
6. Room tax due	6.	
7. Credits	7.	
8. Penalties and fees	8.	
9. Interest	9.	
10. Total due	10.	

Contact name		Signature	
Phone () -	Email		

Instructions

A marketplace provider that facilitates short-term lodging on behalf of others must complete all fields of this return if the property from which the lodging is furnished is located in a Wisconsin municipality that imposes municipal room tax. See the list of municipalities that impose a municipal room tax, their tax rate, and addresses at <https://www.revenue.wi.gov/Pages/slf/room-tax.aspx>.

"Marketplace provider" includes a person who facilitates a retail sale of short-term lodging on behalf of another seller by listing or advertising, in any manner, the short-term lodging and who, directly or indirectly, processes the payment from the purchaser.

- Line 1. Nights rented.** Enter total number of nights properties located in the municipality were rented.
- Line 2. Total sales.** Enter total sales for properties located in the municipality. Include sales which are exempt from tax.
- Line 3. Exempt sales.** Enter total of sales exempt from tax. This includes nontaxable sales and sales for which you received an exemption certificate, Certificate of Exempt Status number, or other documentation as outlined in the appendix of WI [DOR Pub 219](#).
- Line 4. Taxable sales.** Subtract line 3 from line 2.
- Line 5. Room tax rate.** Enter the appropriate room tax rate as a decimal. For example, if the rate is 5% enter .05 on line 5. See [Municipal Room Taxes](#) for room tax rate.
- Line 6. Room tax due.** Multiply line 4 by the room tax rate.
- Line 7. Credits.** Enter any credits or discounts allowed by the municipality against room tax due.
- Line 8. Penalties and fees.** Enter any penalty or fees imposed by the municipality.
- Line 9. Interest.** Interest is due at the rate of 1 percent per month of the unpaid balance.
- Line 10. Total due.** Subtract line 7 from line 6 and add lines 8 and 9, if applicable. Enter total due. Send payment and completed return to the municipality.



Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Agricultural Resource Management
P.O. Box 8911, Madison, WI 53708

DARM-BLWR-011.xlsm (rev. 01/23)

JOINT DATCP/DNR NONPOINT SOURCE GRANT APPLICATION FOR CALENDAR YEAR 2025

1. Read the instructions before completing this application.
2. Complete all yellow-highlighted items in the combined application and Table 1.
3. Sign the completed application electronically
4. Submit the signed Excel spreadsheet to: datcpswrn@wisconsin.gov
5. April 15, 2024 is the deadline for submission of this grant application.

_____ county, through its authorized representative, is applying for annual grant funds from the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) awarded under Sec. 92.14, Stats., and the Department of Natural Resources (DNR) awarded under Secs. 281.65 and 281.66, Stats. By signing and dating a completed application, the authorized representative certifies that (i) the Land Conservation Committee or other committee designated under Sec. 92.06(1), Stat., has authorized the representative to submit this application; (ii) the county has submitted an Annual Report and Annual Work Plan, and has complied with other grant requirements including Sec. ATCP 50.20, Wis. Admin. Code; and (iii) the information provided in this application (including Table 1) is true, complete and accurate to the best of his or her knowledge. (s. 92.14, Wis. Stats.) This is a mandatory form for applying for grant funds. Any personally identifiable information, as defined under s. 19.62(5), Stats., requested on this form may be used for purposes other than that for which it is originally being collected (s. 15.04 (1) (m), Wis. Stats.). Confidentiality of this information will be maintained to the extent authorized by law.

SIGNATURE OF AUTHORIZED REPRESENTATIVE

LCC CHAIR OR OTHER TITLE

DATE

The authorized representative may sign this application electronically by typing his or her name in the space provided for a signature, and inserting the person's title and the date. An electronic signature has the same force and effect, pursuant to chapter 137 of the Wisconsin statutes, as a non-electronic signature.

NOTICE: This application does not represent a commitment by DATCP or DNR to provide funding for any grant category at any specific level. If grant funds are awarded, the county must agree to comply with any resulting terms including those specified in a grant contract.

SECTION I. STAFFING/PLANNING GRANTS			Amount Requested of DATCP	Amount Requested of DNR
1	Soil and Water Resource Management (SWRM) Tier 1 A. Base Funding \$75,000 is automatically entered.		\$ 75,000.00	
2	SWRM Tier 2 A. Funding for three positions Automatically enters amounts from Table 1, column F, for first three positions <div>Amount from Table 1, column F</div>			
	i. First (100%) position	\$83,952	\$ 83,952.00	
	ii. Second (70%) position	\$63,475	\$ 44,433.00	
	iii. Third (50%) position	\$55,207	\$ 27,604.00	
	B. Funding for subsequent positions Automatically enters amount from Table 1, column G			
	iv. Fourth & more (50%) positions	\$51,459	\$ 25,730.00	
3	Urban NPS & Storm Water Management - Planning Projects (Complete separate application available on DNR website)			
TOTAL STAFFING REQUESTS ►			\$ 181,719.00	

SECTION II. COST-SHARING GRANTS			Amount Requested of DATCP	Amount Requested of DNR
1	Land and Water Resource Mgmt. (LWRM) Plan Implementation: Structural (Bond) Funds		\$ 75,000.00	
2	LWRM Plan Implementation: SEG Funds		\$ 20,000.00	
	Nutrient Management Programming in County (enter "yes" if True)		1	
	We employ a staff agronomist			



Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Agricultural Resource Management
P.O. Box 8911, Madison, WI 53708

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3	We employ a nutrient management specialist				
	NM planning and implementation strategy are in our 2024 Workplan		yes		
	We support NUE/MRTN projects in the county through grant funds or education.				
	We have programming to support outreach and education regarding NM planning, soil testing, plan renewal, soil health.				
	Other				
4	Targeted Runoff Management Projects (Complete separate application available on DNR website)				
5	Urban NPS & Storm Water Management - Construction Projects (Complete separate application on DNR website)				
TOTAL COST-SHARING REQUESTS ►				\$	95,000.00