



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary Randy Romanski

DATE: December 12, 2024

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Randy Romanski, Secretary
Adam Brock, Administrator - Division Food and Recreational Safety

SUBJECT: ATCP 72, Hotels, Motels and Tourist Rooming Houses

PRESENTED BY: James Kaplanek

REQUESTED ACTION:

At the December 12, 2024, Board meeting, the department will ask the Board to authorize public hearings on the proposed rule Wis. Admin. Code ch. ATCP 72 (copies attached) related to Hotels, Motels and Tourist Rooming Houses.

SUMMARY:

The Department and its agent health departments license approximately 12,500 hotels, motels, and tourist rooming houses throughout the state. According to the 2023 Wisconsin Department of Tourism Economics Report, the lodging industry generated an estimated \$3.4 billion in direct business sales and \$1.2 billion in labor income. The lodging options available to tourists has drastically expanded beyond the typical hotel or motel room and occasional lakeside cabin that was available 40 years ago. The advent of online home rental services has added to the lodging market with new and unique overnight accommodations options for visitors inspired to experience Wisconsin.

The ATCP 72 Rule Revision Advisory Committee was created to assist the Department in the rule making process. The committee was tasked with vetting the objectives outlined in the Statement of Scope and for developing a revised rule from those discussions. The committee was comprised of a diverse group of individuals that represented various facets of the lodging industry. Membership included individuals from the Wisconsin Hotel and Lodging Association, Wisconsin Association of Campground Owners, Wisconsin Realtors Association, Wisconsin County Code Administrators, Wisconsin Association of Local Health Departments and Boards – Environmental Health, tourist rooming house owners and Department staff.

The Department is proposing to modernize the antiquated Wis. Admin. Code ch. ATCP 72 with a repeal and recreation that will significantly overhaul the definitions section, modernize smoke alarm, and carbon monoxide alarm placement, address slip, trip, and fall hazards, update the licensing and fee structure, and enhance existing provisions to ensure a safe lodging experience and environment.

Wisconsin - America's Dairyland

2811 Agriculture Drive • PO Box 8911 • Madison, WI 53708-8911 • Wisconsin.gov

An equal opportunity employer

The proposed updates to Wis. Admin. Code ch. ATCP 72 contain an overhaul of definitions that includes amendments, modernization and expansion of terms used in the rule for clarification. Expansion of the definitions section includes over 80 newly defined terms. This expansion is beneficial because it creates clarity, efficiency, and an opportunity for both small business and authorized representatives conducting inspections to speak the same language used within the rule.

The proposed fees and licensing structure for lodging establishments will address several critical issues. As the lodging industry evolves with new business models and technologies, the existing framework has become increasingly misaligned with current practices and economic realities. The licensing structure will include three license types: tourist rooming house, hotel or motel, and specialty lodging. Each lodging type will then have multiple fee options based on the number of individually keyed units being offered for overnight sleeping accommodations. A single tourist rooming house, or vacation rental, will take more time to inspect than a single hotel room which is reflected in the associated fee. The rule has also introduced a specialty lodging option to adapt to more primitive lodging experiences offered in other parts of the country. Updating these elements is essential to ensure a fair and effective regulatory environment, promote industry growth, and improve the overall quality of lodging services.

The Department and its agent health departments routinely observe potential slip, trip, and fall hazards at lodging facilities during pre-licensing inspections. Most often these hazards are observed at tourist rooming houses and the structures oftentimes predate any building code requirements. The proposed language will address very basic, but essential, safeguards to address the commonly observed slip, trip, and fall hazards. Items such as handrails for staircases, guards on elevated decks, balconies, lofts or other elevated surfaces, and the addition of slip-resistant materials or bathmats in bathtubs or showers that have smooth basins would be addressed in the proposed language.

The rule has proposed language to address waterborne outbreaks and additional requirements for those outbreaks involving the bacteria *Legionella spp.* If a lodging facility has a confirmed *Legionella* outbreak, then the operator would be required to develop a *Legionella* water management program to control and prevent future outbreaks.

The proposed language includes a new requirement for reporting death, injury, or food, waterborne or other communicable illnesses that requires an emergency medical service (EMS) response relating to the operation or maintenance of the lodging facility. This data will assist in designing effective outreach and meaningful interventions and the data collected may help support future rule development. This data will be mutually beneficial to both small business and the Department as they make continuous improvements in keeping guests safe and healthy.

The proposed language incorporates criticality methodology to create a risk-based inspection system. This risk-based methodology seeks to identify those provisions that are more critical for protecting public health and to designate a risk level of hazards. Each code provision will be assigned as a core item, priority foundation item or priority item. The criticality method provides clarity to industry by identifying those provisions which are more likely to cause illness or injury and supports a risk-based inspection approach.

These proposed rule adjustments are needed to address outdated regulatory practices, adapt to evolving industry standards, overall growth, and to ensure a continued fair and efficient oversight of the lodging industry. Current regulations do not fully reflect modern business models. The updated proposed rule will streamline processes, enhance compliance, and support industry growth by aligning regulations with current needs and practices.

Next Steps

If the Board authorizes public hearings on this rule, the Department will refer a copy to the Legislative Council Rules Clearinghouse which will publish a hearing notice in the Wisconsin Administrative Register. The Department will hold public hearings on the dates listed and at the several locations throughout the State that will be specified in the hearing notice. The hearing dates and locations have not yet been determined.

Following the public hearings, the Department will prepare the final draft rule which will be presented for the Board's consideration and, if approved by the Board, then transmitted to the Governor for his written approval. If approved, the Department will transmit that final draft rule to the Legislature for review by the appropriate legislative committees. If the Legislature takes no action to stop the rule, the Secretary will sign the final rulemaking order and transmit it for publication.

**THE DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER
PROTECTION'S PROPOSED ORDER TO ADOPT PERMANENT RULES**

PROPOSED ORDER

The Wisconsin Department of Agriculture, Trade and Consumer Protection proposes an order *to repeal* and *recreate* ATCP 72, *relating to* the regulation of hotels, motels, and tourist rooming houses.

**Analysis Prepared by the Department of
Agriculture, Trade and Consumer Protection**

The Wisconsin Department of Agriculture, Trade and Consumer Protection (department) proposes an order to repeal and recreate Wis. Admin. Code ch. ATCP 72 Hotels, Motels, and Tourist Rooming Houses, formerly Wis. Admin. Code ch. DHS 195. Wis. Admin. Code ch. DHS 195 had not been significantly modified by the Wisconsin Department of Health Services since 1985. Chapter ATCP 72 has also not been significantly modified since the program was brought to the Department on July 1, 2016. This new rule, if adopted, will bring Wisconsin into substantial accord with the current industry technology, innovations, and tourism experiences.

Statutes Interpreted

Statutes Interpreted: Sections 93.07(1) "Department of agriculture, trade and consumer protection;" 97.605 "Lodging and vending licenses;" 97.607 "Pre-licensing inspection;" 97.613 "Fees;" 97.615 "Agent status for local health departments;" 97.62 "Health and safety; standard;" 97.625 "Powers of the department and local health departments;" 97.638 "Hotel rates posted; rate charges; special rates;" 97.65 "Enforcement;" and 227.11 (2) (a) "Agency rule-making authority," Stats.

Statutory Authority

Statutory Authority: Sections 93.07 (1), 97.605, 97.607, 97.613, 97.615, 97.62, 97.625, 97.638, 97.65, and 227.11 (2) (a), Stats.

Explanation of Statutory Authority

The department has broad general authority, pursuant to s. 93.07 (1), Stats., to adopt rules to implement programs under its jurisdiction. The department has specific authority for the requirements to issue lodging and vending licenses, pursuant to s. 97.605, Stats. The department and agent health department have

specific authority to conduct pre-licensing inspections at lodging facilities, pursuant to s. 97.607, Stats. The department has specific authority to promulgate rules that establish fees, pursuant to s. 97.613, Stats. The department and agent health departments have specific authority to enter into a written agreement to inspect hotels and tourist rooming houses, pursuant to s. 97.615, Stats. The department has the authority to ensure that lodging facilities are operated and maintained with a strict regard to public health and safety, pursuant to 97.62, Stats. The department and agent health departments have the power to administer and enforce rules, pursuant to s. 97.625, Stats. The department may enforce the posting of hotel rates, pursuant to s. 97.638, Stats. The department has specific authority to enter any premises for which a license is required, pursuant to s. 97.65, Stats. The department has specific authority for rule making, pursuant to s. 227.11 (2) (a), Stats.

Related Statutes and Rules

The department has regulated hotels, motels, and tourist rooming houses since the transfer of several programs from the Wisconsin department of health services to the department on July 1, 2016. Lodging facilities are regulated, pursuant to ch. 97, Stats., as well as, interwoven with other Wisconsin department administrative rules.

Wisconsin Admin. Code chs. NR 140, 149, 809, 812 rules relating to water supply and drinking water standards as enforced by the Wisconsin department of natural resources are referenced in Wis. Admin. Code ch. ATCP 72.

References to the Wisconsin department of safety and professional services rules are present in Wis. Admin. Code ch. ATCP 72 for construction standards of buildings, plumbing, and private onsite wastewater treatment systems per ss. 101 and 145, Stats., and Wis. Admin. Code chs. SPS 300-399 as enforced by the Wisconsin department of safety and professional services.

Provisions for the installation and maintenance of carbon monoxide and smoke alarms are closely modeled after ss. 101.145 and 101.149, Stats., to ensure basic life safety protection in public buildings and structures with fuel-burning appliances.

Plain Language Analysis

The department and its agent health departments license approximately 12,500 hotels, motels, and tourist rooming houses throughout the state. According to the 2023 Wisconsin Department of Tourism Economics Report, the lodging industry generated an estimated \$3.4 billion in direct business sales and \$1.2 billion in labor income. The lodging options available to tourists has drastically expanded beyond the typical hotel or motel room and occasional lakeside cabin that was available 40 years ago. The advent of online home rental services has added to the lodging market with new and unique overnight accommodations options for visitors inspired to experience Wisconsin.

The department is proposing to modernize the antiquated Wis. Admin. Code ch. ATCP 72 with a repeal and recreation that will significantly overhaul the definitions section, modernize smoke alarm, and carbon monoxide alarm placement, address slip, trip, and fall hazards, update the licensing and fee structure, and enhance existing provisions to ensure a safe lodging experience and environment. Modernization also reflects gender inclusion considerations with the proposed revised language using the term “per person” in place of “male” or “female.”

The proposed updates to Wis. Admin. Code ch. ATPC 72 contain an overhaul of definitions that includes amendments, modernization and expansion of terms used in the rule for clarification. Expansion of the definitions section includes over 80 newly defined terms. This expansion is beneficial because it creates clarity, efficiency, and an opportunity for both small business and authorized representatives conducting inspections to speak the same language used within the rule.

The proposed fees and licensing structure for lodging establishments will address several critical issues. As the lodging industry evolves with new business models and technologies, the existing framework has become increasingly misaligned with current practices and economic realities. The current fees do not accurately reflect the costs of regulatory oversight needed to inspect the growing industry which can create inefficiencies and delays, impacting both regulators and businesses. The licensing structure will include three license types: tourist rooming house, hotel or motel, and specialty lodging. Each lodging type will then have multiple fee options based on the number of individually keyed units being offered for overnight sleeping accommodations. A single tourist rooming house, or vacation rental, will take more time to inspect than a single hotel room which is reflected in the associated fee. In addition, the draft rule addresses facilities that expand after receiving their initial lodging license. The rule will allow for these expanded areas to be inspected for compliance and allow for the costs to complete the work to be recouped. Lastly, the rule has introduced the specialty lodging option to adapt to more primitive lodging experiences offered in other parts of the country. Updating these elements is essential to ensure a fair and effective regulatory environment, promote industry growth, and improve the overall quality of lodging services.

The proposed rule will add an annual sampling frequency for bacteriological testing of private wells which is consistent with public water systems found at other lodging facilities. The annual testing of private wells for bacteria, such as total coliform and *Escherichia coli*, is also consistent with other recreational programs regulated by the department. In addition to bacteria, the proposed rule is also intending to include an annual sampling frequency for nitrate testing of private wells which is also consistent with public water systems at other lodging facilities. According to the Wisconsin department of health services, nitrate is one of the most common groundwater contaminants in Wisconsin and studies estimate that at least 10% of private wells in Wisconsin have high levels of nitrate. The Wisconsin department of health services also indicates high nitrates in drinking water can affect infants, pregnant individuals, and may increase the risk of thyroid disease and may increase the risk of colon cancer in all individuals.

The proposed regulation includes the current installation and maintenance requirements for carbon monoxide alarms as reflected in s. 101.149, Stats., and most recently updated in 2017 Wisconsin Act 330. The updated statute language replaced the prior requirements for carbon monoxide alarms in residential buildings with standards which are similar to those in International Building Codes. The installation focus changed to put an emphasis on sleeping areas.

The proposed rule includes installation and maintenance requirements for smoke alarms consistent with s. 101.145, Stats. The areas of installation will include every floor, at the top of any stairway, outside of each sleeping area and within each sleeping room.

The department and its agent health departments have routinely observed potential slip, trip, and fall hazards at lodging facilities during pre-licensing inspections. Most often these hazards are observed at tourist rooming houses and the structures oftentimes predate any building code requirements. The proposed language will address very basic, but essential, safeguards to address the commonly observed slip, trip, and fall hazards. Items such as handrails for staircases, guards on elevated decks, balconies, lofts or other elevated surfaces, and the addition of slip-resistant materials or bathmats in bathtubs or showers that have smooth basins would be addressed in the proposed language.

The rule has proposed language to address waterborne outbreaks and additional requirements for those outbreaks involving the bacteria *Legionella spp.* The department has been involved in 14 suspected outbreaks over the course of eight years at lodging facilities involving *Legionella* bacteria which has resulted in 33 illnesses and one death. According to the United States centers for disease control and prevention, *Legionella* bacteria cause Legionnaires' disease and Pontiac fever which are spread to people through building water systems. Legionnaires' disease is a severe type of pneumonia that can lead to lung failure and even death. If a lodging facility has a confirmed *Legionella* outbreak, then the operator will be required to develop a *Legionella* water management program to control and prevent future outbreaks. The United States centers for disease control and prevention has free online resources and a toolkit to assist operators in the development of a *Legionella* water management program.

The proposed rule text has incorporated similar language that is currently used in the Minnesota Lodging Code which may require a lodging operator to hire or consult with a licensed pest control operator in cases of an extensive infestation. The proposed rule still preserves current methods of allowing an operator to self-treat using non-restricted use pesticides for more manageable infestations.

The proposed language includes a new requirement for reporting death, injury, or food, waterborne or other communicable illnesses that requires an emergency medical service (EMS) response relating to the operation or maintenance of the lodging facility. For example, an EMS response for a guest that tripped and fell down the stairs would be reported to the department. However, an EMS response for a guest that suffers a heart attack would not be required to be reported. This data will assist in designing effective outreach and meaningful interventions and the data collected may help support future rule development. This data will be mutually beneficial to both small business and the department as they make continuous improvements in keeping guests safe and healthy.

The proposed language incorporates criticality methodology initially developed by the United States food and drug administration for their model food code to create a risk-based inspection system. This risk-based methodology seeks to identify those provisions that are more critical for protecting public health and to designate a risk level of hazards. Each code provision will be assigned as a core item, priority foundation item or priority item. Core items are typically designated for cleanliness or maintenance procedures. Priority foundation items, if left uncorrected over time, or in conjunction with other priority foundation items, may lead to illness or injury. Lastly, priority items, if uncorrected or are missing at the time of inspection, could significantly contribute to an increased risk for injury or illness; a nonfunctional or absent smoke alarm as an example. The criticality method provides clarity to industry by identifying those provisions which are more likely to cause illness or injury and supports a risk-based inspection approach. The criticality method has been adopted and is used in Wis. Admin. Code ch. ATCP 75, Wisconsin food code, Wis. Admin. Code ch. ATCP 76, Wisconsin pool code, and Wis. Admin. Code ch. ATCP 78 Wisconsin recreational education camp code.

The above-mentioned rule adjustments are needed to address outdated regulatory practices, adapt to evolving industry standards, overall growth, and to ensure a continued fair and efficient oversight of the lodging industry. Current regulations do not fully reflect modern business models or accurately cover the costs for enforcement of the rule. The updated proposed rule will streamline processes, enhance compliance, and support industry growth by aligning regulations with current needs and practices.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations

There are no existing or proposed federal regulations that address the sanitation and maintenance of operational activities at lodging facilities to be regulated by this proposed rule.

Summary of Comments Received during Preliminary Comment Period and at Public Hearing on Statement of Scope

The department held a preliminary hearing on the statement of scope (SS 010-23) on March 29, 2023 in Eau Claire, March 30, 2023 in Stevens Point, and April 4, 2023 in Madison, with an online comment period open until April 18, 2023. The department received two oral comments during the preliminary hearings and one written comment.

The oral comments requested the department to address occupancy at tourist rooming houses.

The written comment identified areas of concern in regards to the following proposals: expanding the definitions of terms used in rule; an alternative inspection frequency for tourist rooming houses; department specific language for health and safety features related to slip, trip and fall hazards; addressing emerging communicable diseases; addressing pests of public health significance; and adding requirements of reporting illnesses, injuries, and accidents that require emergency medical service response.

Comparison with Rules in Adjacent States

Illinois

The State of Illinois does not have a standardized state sanitation code for regulating lodging facilities.

Local municipalities may regulate lodging facilities within their jurisdiction through their locally adopted ordinances. The ordinances vary from one municipality to the next.

Indiana

The State of Indiana does not have a standardized state sanitation code for regulating lodging facilities.

Local municipalities may regulate lodging facilities within their jurisdiction through their locally adopted ordinances. The ordinances vary from one municipality to the next.

Iowa

The State of Iowa standardized state sanitation code for regulating lodging facilities is Iowa Code Title IV, Public Health, Chapter 137C - Hotel Sanitation Code.

The Iowa Hotel Sanitation Code Subchapter III Health and Safety requirements only address four sections: plumbing, toilet and lavatory facilities, fire safety, and the prohibition of employment of persons with communicable diseases.

Michigan

The State of Michigan does not have a standardized state sanitation code for regulating lodging facilities.

Local municipalities may regulate lodging facilities within their jurisdiction through their locally adopted ordinances. The ordinances vary from one municipality to the next.

Minnesota

The State of Minnesota standardized state sanitation code for regulating lodging facilities is Minnesota Rules ch. 4625, Lodging Establishments, promulgated pursuant to Minnesota Statutes, ch. 157.

Of the five neighboring states, the Minnesota lodging sanitation rule most closely resembles the Wis. Admin. Code ch. ATPC 72. The Minnesota department of health has recently begun the process to revise the Minnesota Lodging Code.

Chapter 4625 applies to all establishments that provide overnight sleeping accommodations, such as hotels, motels, lodging establishments and resorts as defined in Minnesota Statutes.

The proposed Minnesota Lodging Code similarly addresses maintenance and cleanliness of equipment, furnishings, buildings and premises, fall hazard prevention with handrails and guardrails, safe water supplies, sanitization of reusable dishware and utensils, waste disposal, pest control, and fire protection and safety.

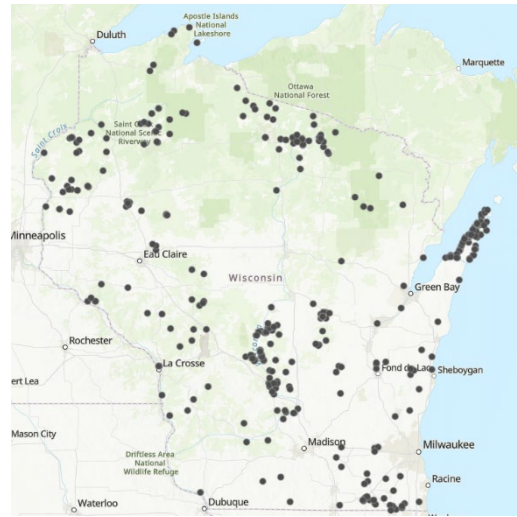
Summary of Factual Data and Analytical Methodologies

The ATPC 72 Rule Revision Advisory Committee was created to assist the department in the repeal and recreation process of Wis. Admin. Code. ch. ATPC 72. The committee was tasked with vetting the objectives outlined in the SS 010-23 Scope Statement and for developing a revised rule from those discussions. The committee was comprised of a diverse group of individuals that represented various facets of the lodging industry. Membership included individuals from the Wisconsin Hotel and Lodging Association, Wisconsin Association of Campground Owners, Wisconsin Realtors Association, Wisconsin County Code Administrators, Wisconsin Association of Local Health Departments and Boards – Environmental Health, tourist rooming house owners and department staff. Public meetings were held on the last Tuesday of the month from September 2023 until the rule language drafting process completed in July 2024.

Analysis and Supporting Documents used to Determine Effect on Small Business Or in Preparation of an Economic Impact Analysis.

Annual Private Well Water Testing

As of early 2024, data available to the department suggests approximately 388 private wells located at licensed lodging facilities in the state. The Wisconsin department of natural resources matched the physical addresses of licensed lodging establishments against the physical addresses of registered private wells. This is an underestimate of the total number of statewide private wells serving lodging facilities, as Dane, Milwaukee, and Taylor counties were not included. Nonetheless, the financial burden of annual water testing of private wells is a fractional impact on the industry. The Wisconsin department of natural resources lists 143 laboratories certified for coliform bacteria testing and 123 laboratories certified for nitrate testing. The current water testing prices for bacteria and nitrate water tests are \$35 each at the Wisconsin state laboratory of hygiene. This would result in an annual financial burden of \$70 for this small subset of licensed lodging facilities.



Private Wells at Licensed Lodging Facilities.

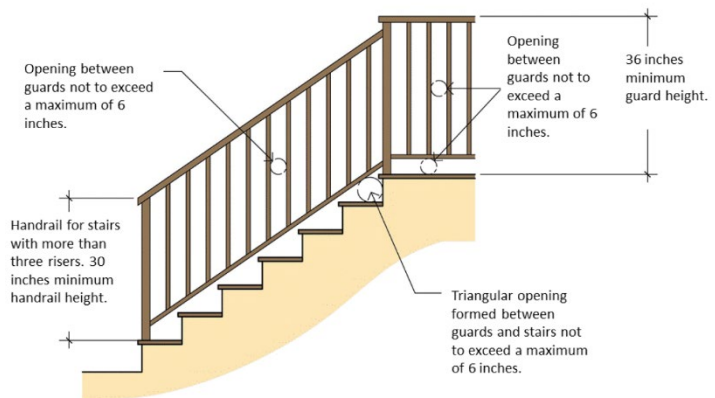
Legionella Outbreak Response and Remediation

The cost to remediate a lodging facility for a *Legionella* contamination can vary widely depending on several factors, including the size and location of the facility, the extent of the contamination, and the specific measures required for remediation. The costs can range from a few thousand dollars to tens of thousands of dollars or more and include an assessment, cleaning, disinfection, and any necessary modifications to the building or plumbing systems. The overall financial impact on the industry is minimal with less than two suspected outbreaks per year.

Slip, Trip, and Fall Hazards

The cost to modify a stair handrail, or to protect an elevated surface, will vary based on factors such as the type or materials used, the quantity of materials needed for modification, and the location of the repair. Estimates can range from a few hundred dollars to thousands of dollars or more depending on materials and complexity.

The methods chosen to address a slip hazard in a bathtub or shower will vary greatly in costs. A roll of slip resistant tape designed for indoor bathtub and shower use costs around \$12 for 15 feet compared to bathtub refinishing which has an estimated cost of around \$480.



Pictorial Summary of Proposed Requirements for Stairs and Elevated Surfaces

Smoke Alarm Installation

The cost of a 10-year “worry-free” smoke alarm is approximately \$20 per alarm and can be installed by the lodging operator without any special equipment. A 3-bedroom vacation home with 2 sleeping rooms on the first floor and 1 sleeping room in the basement may require 6 smoke alarms in the proposed language. The

hypothetical vacation home would equate to \$120 to protect, or \$12 per year. Oftentimes, smoke alarms can be purchased in bundled quantities which will reduce the individual estimated cost per alarm.

Pest Control

The cost to rid a lodging facility of pests can vary widely depending on several factors, including the size and location of the facility, the extent of the infestation, and the specific treatment methods used. The costs can range from a few hundred dollars to thousands of dollars or more and include an assessment, treatment, and any necessary modifications to the building to prevent further infestations.

Fees

The department presented three various fee models to the ATCP 72 Rule Revision Advisory Committee. All three models generated nearly the same targeted revenue. Model 1 had higher fees for preinspections compared to the other models. Model 2 had higher fees for annual licenses compared to the other models. Lastly, model 3 was a blend between the other models. The committee ultimately selected model 1 as the desired fee structure.

The proposed fee structure has been expanded to offer more license options which will assist in capturing the costs of the inspection services more accurately and will distribute fees more fairly. The licenses will increase from five license options to 22 license options across the tourist rooming house, hotel and motel, and specialty lodging licensing fee categories.

The department believes the fee changes proposed will have minimal effect on small businesses. The current fees have not been modified in 14 years and the proposed fees are calculated to have a three percent increase per year for hotel and motel licenses and a six percent increase per year for tourist rooming house licenses during that timeframe. The higher fee increase for tourist rooming houses reflects the increased inspection complexity, and increased time demand for scheduling and traveling compared to a traditional hotel room.

The financial impact of the modernized license and fee model is low and maintains the current association between an increased fee based on the number of individually keyed units offered, through a tiered model. A lodging facility would be placed into one of three license types: tourist rooming house, hotel and motel, or specialty lodging unit. Within each license type is a range of individually keyed units with an associated fee that increases as the number of units increases. The ranges of individually keyed units have also been increased to an upper limit of 1,000 or more hotel rooms compared to the current maximum of 200 or more hotel rooms. In addition, first reinspection fees and second reinspection fees have been reduced to a flat rate fee for all 22 license options.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on Small Business

See analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis section, above.

The Department's Regulatory Review Coordinator may be contacted by:

Bradford Steine, Program and Policy Analyst

Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Email: Bradford.Steinel@wisconsin.gov
Telephone: (608) 224-5024

Department Contact Person

James Kaplanek, Section Manager for Retail Food and Recreational Programs
Department of Agriculture, Trade and Consumer Protection
Division of Food and Recreational Safety
P.O. Box 8911
Madison, WI 53708-8911
Telephone: (608) 224-4735
Email: James.Kaplanek@wisconsin.gov

Where and When Comments May Be Submitted

Questions and comments related to this this rule may be directed to:

James Kaplanek, Section Manager for Retail Food and Recreational Programs
Department of Agriculture, Trade and Consumer Protection
Division of Food and Recreational Safety
P.O. Box 8911
Madison, WI 53708-8911
Telephone: (608) 224-4735
Email: James.Kaplanek@wisconsin.gov

Comments will be accepted up to two weeks after the last public hearing is held on this rule. Hearing dates will be scheduled after this hearing draft rule is approved by the board of agriculture, trade and consumer protection.

RULE TEXT

SECTION 1. ATCP 72 is repealed and recreated to read:

1
2
3
4
5
6
7

**Chapter ATCP 72
HOTELS, MOTELS, AND TOURIST ROOMING HOUSE**

Subchapter I

Definitions, Authority and Purpose

8 **ATCP 72.01 Authority and purpose.** This chapter is promulgated under the authority of ss. 97.605,
9 97.607, 97.613, 97.615, 97.62, 97.625, 97.638, 97.65, and 227.11 (2) (a), Stats., for the department and its
10 agents to prescribe rules for lodging facilities and to enforce these rules to protect public health and safety.

11 **ATCP 72.02 Scope. (1) APPLICABILITY.** This chapter applies to the license holder of any lodging
12 facility and to the department and its agents.

13 **(2) VARIANCES.** When it appears to the department that strict adherence to a provision of this chapter
14 is impractical for a particular lodging facility, the department may approve a variance from that provision
15 requested by that operator if the operator provides the department with satisfactory proof that the approval
16 of the variance will not jeopardize the public's health, safety, or welfare.

17 **(3) PROCEDURE FOR A VARIANCE REQUEST. (a) Application.** A request for modification or
18 waiver of a requirement of this chapter shall be submitted in writing to the department or its agent having
19 jurisdiction along with documentation specified in par. (d).

20 **(b) Local review.** A local inspector shall review the request and forward it to the department with
21 recommendations for approval or disapproval.

22 **(c) Department action on a variance.** On receipt of a complete variance request as specified in this
23 section, the department shall review the request and grant or deny the request in writing within 30 business
24 days. A variance approved by the department shall be for any of the following:

- 25 1. A defined period of time or shall expire a maximum of 5 years from the date of issuance.
- 26 2. An experimental or trial purpose.

27 **(d) Records.** The department or its agent shall maintain a copy of the variance in the establishment's
28 inspection history file.

29 **(e) Application contents.** Documentation requesting a proposed variance from the requirements of this
30 chapter shall include the following:

- 31 1. A statement of the proposed variance from this chapter requirement citing relevant chapter section
32 numbers.

33 2. The rationale for how the potential public health hazards and nuisances addressed by the relevant
34 chapter section will be alternatively addressed by the proposed variance.

35 (4) CONFORMANCE WITH AN APPROVED VARIANCE. If the department grants a variance as
36 specified in sub. (2), the license holder shall meet all of the following requirements:

37 (a) *Conditions*. Comply with the department’s conditions for the variance approval.

38 (b) *Records*. Maintain a copy of the approved variance at the lodging facility.

39 (5) TRANSFERABILITY. Except as specified under s. ATCP 72.07 (1) (d), an approved variance is
40 not transferable to any other lodging facility, entity, or licensee.

41 (6) REISSUANCE. (a) *Request*. A license holder who wishes to continue a variance after its expiration
42 shall file a written request with the department for reissuance of the variance at least 30 calendar days prior
43 to its expiration, unless permission for a later expiration date has been granted by the department.

44 (b) *Status of existing variance*. When a license holder has made timely and sufficient application for
45 the reissuance of a variance in reference to any activity of a continuing nature, the existing variance does
46 not expire until the application has been finally acted upon by the department.

47 **Note:** To obtain a form for requesting a variance, e-mail datcpdfsrec@wisconsin.gov or contact the bureau
48 of food and recreational businesses at (608) 224–4700 or PO Box 8911, Madison, Wisconsin 53708–8911.

49 **ATCP 72.03 Definitions.** In this chapter:

50 (1) “Active managerial control” means the purposeful incorporation of systems in a lodging facility
51 that proactively reduce the risk of illness or a hazard through monitoring and verification.

52 (2) “Administrative follow-up” means a type of reinspection to validate a corrective action of a
53 violation without the need for a physical visit, through electronic or other effective means.

54 (3) “Agent” means a local health department as defined in s. 250.01 (4), Stats., that has entered into a
55 contract with the department and is authorized under the terms of that contract to administer a retail food
56 establishment, lodging, and recreational safety regulatory program, pursuant to ss. 97.41 and 97.615 (2),
57 Stats., in the health department’s area of jurisdiction.

58 (4) “Air gap” means all of the following:

59 (a) In a wastewater system, air gap has the meaning given in s. SPS 381.01 (6).

60 (b) In a water supply system, air gap has the meaning given in s. SPS 381.01 (7).

61 (5) “Alarm signal” means a fire alarm control unit condition indicating that there is an immediate
62 threat to life, property, or mission.

63 **Note:** Alarm conditions can result due to the presence of fire, chemicals, freezing temperatures or other
64 circumstances.

65 (6) “Approved” means acceptable to the department or its agent, based on its determination of
66 conformance with this chapter and good public health practices.

67 (7) “Basement” means the portion of the lodging facility below the first floor or ground floor with its
68 entire floor below grade.

69 (8) “Bed” means a piece of furniture for sleep or rest including, a framework with a mattress and
70 coverings, cot, bunk bed, futon, sleeper sofa, sleeping pad, or air mattress placed on the floor.

71 (9) “Boarding house” means a rooming house as defined in sub. (79).

72 (10) “Boat” means every description of watercraft as defined pursuant to s. 30.01 (7), Stats., used or
73 capable of being used as a means of transportation on water.

74 (11) “Bunk bed” means a piece of furniture consisting of a platform-like bed in which the underside is
75 elevated over 30-inches from the floor.

76 (12) “Camping cabin” has the meaning given in s. ATCP 79.03 (4).

77 (13) “Carbon monoxide alarm” means an electronic or battery-operated device or system that sounds
78 an alarm when an unsafe level of carbon monoxide is in the air. Carbon monoxide alarms conform to
79 Underwriters Laboratories standard 2034, Standard for Single and Multiple Station Carbon Monoxide
80 Alarms.

81 (14) “Carbon monoxide detector” means an electronic device or sensor that monitors for carbon
82 monoxide and is connected to a whole building fire alarm and detection system. Carbon monoxide detectors
83 conform to Underwriters Laboratories standard 2075, Gas and Vapor Detectors and Sensors.

84 (15) “Ceiling height” means the clear vertical distance from the finished floor to the finished ceiling.

85 (16) “Certified laboratory” means for:

86 (a) Coliform and *Escherichia coli*, a lab certified under ch. ATCP 77.

87 (b) Nitrates, a lab accredited under ch. NR 149.

88 (17) “Clean” means the absence of dirt, grease, rubbish, garbage, and other offensive, unsanitary, or
89 extraneous matter.

90 (18) “Communicable disease” means an infectious disease that is transmissible by contact with infected
91 individuals or their bodily discharges or fluids, by contact with contaminated surfaces or objects, by
92 ingestion of contaminated food or water, or by direct or indirect contact with disease vectors.

93 (19) “Communicating opening” means a door, window, or any other opening, which allows air to be
94 exchanged between a fuel-burning appliance or garage and an individually keyed unit.

95 (20) “Contiguous” means a property sharing a common border with another property, excluding private
96 roadways.

97 (21) “Core item” means all of the following:

98 (a) A provision in this chapter that is not designated as a priority item or a priority foundation item.

99 (b) An item that relates to general sanitation, operational controls, sanitation standard operating
100 procedures, facilities or structures, equipment design, or general maintenance.

101 (22) “Death, injury or illness report” means the written record of all facts regarding an incident resulting
102 in bodily harm that requires assistance from emergency medical personnel for a lodging facility or its
103 associated buildings and structures.

104 (23) “Deck” means an unenclosed exterior structure, attached or adjacent to the exterior wall of a
105 building, which has a floor, but no roof.

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

107 (25) “Easily cleanable” means a material or finish of a surface that allows effective removal of soil by
108 manual or mechanical cleaning methods.

109 (26) “Emergency medical service” means an emergency medical service that provides ambulance
110 service response in a geographic area and is staffed by certified rescue professionals such as an emergency
111 medical technician or emergency medical responder.

112 (27) “Employee” means any person working in a lodging facility.

113 (28) “Equipment” means an article used in a lodging facility other than land and building structures,
114 including furnishings, decorative materials, fireplaces, heating units, and appliances.

115 (29) “Exclude” means to prevent a person from working or entering a lodging facility as an employee.

116 (30) “Existing hotel, motel or tourist rooming house,” means a lodging facility operating with a license
117 first issued by the department or its agent before the effective date of the rule.

118 (31) “Exit” means a direct, continuous, unobstructed means of egress to the exterior of the building.

119 (32) “Failing private on-site wastewater treatment system” has the meaning given in s. 145.01 (4m),
120 Stats.

121 (33) “Fire alarm control panel” means a unit that monitors all inputs and controls all outputs of the fire
122 alarm system.

123 **Note:** The different types of conditions that can be seen at the fire alarm control panel are “alarm”,
124 “supervisory,” and “trouble”.

125 (34) “First floor” means the first floor level above any basement or in the absence of a basement means
126 the lowest floor level in the lodging facility.

127 (35) “Food-contact surface” has the meaning given in s. ATCP 75 Appendix 1-201.10 (B).

128 (36) “Fuel-burning appliance” means a device that burns fossil fuel or carbon-based fuel and produces
129 carbon monoxide as a combustion by-product.

130 (37) “Furnishings” means in connection with the operation of a lodging facility, all of the following:
131 linens, beds, bedding, chairs, tables, shelves, drapes, carpeting, curtains, decorations, fixtures, and
132 similar items provided in the sleeping rooms and common areas of the lodging facility.

133 (38) “Good repair” means free of corrosion, breaks, cracks, chips, pitting, excessive wear and tear,
134 leaks, obstructions, and similar defects to constitute a good and sound condition.

135 (39) “Guard” means:

136 (a) A building component or system of building components located at or near the open sides of
137 elevated walking surfaces that minimizes the possibility of a fall from the walking surface to a lower
138 level.

139 (b) A barrier erected on the top bunk bed to prevent a person from falling or rolling off the sleeping
140 surface.

141 (40) “Handrail” means a horizontal or sloping rail intended for grasping by a hand, for guidance or
142 support or preventing a fall down a stair or ramp.

143 (41) “Hostel” means a type of lodging facility that offers dormitory style sleeping arrangements
144 with shared toilet facilities.

145 (42) “Hotel” means all places wherein sleeping accommodations are offered for pay to transients, in 5
146 or more rooms, and all places used within the building or structure.

147 (43) “Immediate family member” has the meaning given in s.97.605 (4) (a) 2., Stats.

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

150 (45) “Individually keyed unit” means a lodging unit that is accessed by the use of a key or other
151 electronic device that is occupied by a tourist, transient or rental group for sleeping accommodations.

152 **Note:** Examples include a motel or hotel room, hotel suite, or a tourist rooming house.

153 (46) “Ladder” means a structure for climbing up or down that consists of 2 long sidepieces joined at
154 intervals by crosspieces on which one may step.

155 (47) “*Legionella*” means a common aquatic bacteria found in natural waterways, building water
156 systems, and in some soils. This genus of bacteria can cause a pneumonia called Legionnaires' disease or
157 a flu-like illness called Pontiac fever when inhaled, aspirated, or directly introduced into the lungs of a
158 susceptible individual.

159 (48) “Legionellosis” means the term used to describe Legionnaires' disease, Pontiac fever and any
160 illness caused by exposure to *Legionella* bacteria.

161 (49) "License holder" means the person that is legally responsible for the operation of a lodging
162 facility.

163 (50) "Lodging facility" means a hotel, motel, tourist rooming house, or specialty lodging unit that
164 provides sleeping accommodations offered for pay to tourist or transients.

165 (51) "Lodging place" means a lodging facility as defined in sub. (50).

166 (52) "Loft" means an upper room or floor that has at least 50 percent of the common wall open to
167 the floor below.

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

171 (54) "New hotel, motel or tourist rooming house," means a lodging facility under new ownership
172 operating with a license first issued by the department or its agent on or after the effective date of the rule.

173 (55) "Operator" means the license holder of a lodging facility or the person in charge responsible to
174 the owner for the operation of the lodging facility.

175 (56) "Person" means an individual, partnership, cooperative association, firm, limited liability
176 company, corporation, trust, other legal organization or entity, municipality, county, town or state
177 agency, whether tenant, owner, lessee, licensee, or the agent, heir, or assignee of any of these.

178 (57) "Person in charge" means the designated individual present at a lodging facility who is
179 responsible for the operation at the time of inspection.

180 (58) "Pest" means an animal or insect of public health significance that is a nuisance and may or
181 may not transmit disease to the general public. Pest in this definition includes cockroaches, bed bugs,
182 bats, rodents, and ticks.

183 (59) "Plumbing" has the meaning given in s. 145.01 (10), Stats.

184 (60) "Pool or water attraction" has the meaning given in s. ATCP 76.03 (61).

185 (61) "Porch" means an exterior structure at or near grade, attached or adjacent to the exterior wall of
186 a lodging facility and having a roof and floor and is not used for overnight sleeping accommodations.

187 (62) “Potable” has the meaning given in s. NR 812.07 (75).

188 (63) “Preinspection” means an inspection of a lodging facility, prior to the issuance of a license to
189 operate, to determine compliance with the requirements of this chapter.

190 (64) “Premises” means the contiguous land or property where the lodging facility is located and all
191 associated buildings or structures under the control of the license holder. A premises in this chapter
192 includes one or more county or municipal tax parcels of land or property that share a common border.

193 (65) “Priority foundation item” means all of the following: (a) A provision in this rule whose
194 application supports, facilitates, or enables one or more priority items.

195 (b) An item that requires the purposeful incorporation of specific actions, equipment or procedures
196 by the operator such as personnel training, infrastructure, documentation or record keeping.

197 (c) An item that is denoted in this rule with a superscript Pf^{Pf}.

198 (66) “Priority item” means all of the following: (a) A provision in this rule directly related to health
199 and safety that if not met or is missing could significantly contribute to an increased risk for injury or
200 illness.

201 (b) An item that is denoted in this rule with a superscript P^P.

202 (67) “Private on-site wastewater treatment system” or “POWTS” has the meaning given in s. 145.01
203 (12), Stats.

204 (68) “Private water system” has the meaning given in s. NR 812.07 (78).

205 (69) “Public sewer” has the meaning given in s. SPS 381.01 (198).

206 (70) “Public water system” has the meaning given in s. NR 809.04 (67).

207 (71) “Recreational vehicle” has the meaning given in s. ATCP 79.03 (32).

208 (72) “Reinspection” means a mandatory or administrative follow-up inspection to ensure that a
209 priority or recurring violation has been corrected.

210 (73) “Remediation plan” means a specific plan on details to identify the potential source, location
211 and removal of a waterborne pathogen.

212 (74) “Rental group” means 2 or more tourist or transients occupying an individually keyed unit that
213 is inaccessible to all others at the time of rental.

214 (75) “Restrict” means to limit the activities of an employee to minimize the risk of transmitting a
215 communicable disease and the employee does not work with exposed food, clean equipment, utensils,
216 linens; or unwrapped single-service or single-use articles.

217 (76) “Retail food establishment” has the meaning given in s. ATCP 75.04 (33).

218 (77) “Riser” means the vertical surface of a stair to include the vertical surface from the ground or
219 landing to the adjacent tread.

220 (78) “Room” means an individually keyed unit as defined in sub. (45).

221 (79) “Rooming house” means a one- and 2-family dwelling that offers overnight sleeping
222 accommodation to an individual that is not a tourist or transient.

223 (80) “Sanitize” means to apply cumulative heat or chemicals on a cleaned food-contact surface that,
224 when evaluated for efficacy, is sufficient to yield a reduction of 5 logs, which is equal to a 99.999 percent
225 reduction, of representative disease microorganisms of public health importance.

226 (81) “Sealed combustion appliance” means a fuel-burning appliance with a pipe used to supply
227 outdoor air to the appliance for the combustion process and a second pipe is used to return exhaust
228 products to the outdoors.

229 (82) “Single-service articles” has the meaning given in s. ATCP 75 Appendix 1-201.10 (B).

230 (83) “Sleeping accommodations offered for pay” means all sleeping rooms on the premises offered
231 for pay to a tourist or transient, excluding areas occupied by a tenant for more than 60 days or by the
232 operator, owner or their immediate family.

233 (84) “Sleeping area” means any area of an individually keyed unit in which a sleeping room is
234 located. Sleeping rooms separated by another area such as a kitchen or living room are considered
235 separate sleeping areas but sleeping rooms only separated by a bathroom are not considered separate
236 sleeping areas.

237 (85) “Sleeping room” means a room where beds are located.

238 **(86)** “Smoke alarm” means an electronic or battery-operated device or system that sounds an alarm
239 when particles or products of combustion, other than heat, are detected. Smoke alarms conform to
240 Underwriters Laboratories standard 217 Smoke Alarms.

241 **(87)** “Smoke detector” means an electronic device or sensor that monitors for smoke and is
242 connected to a whole building fire alarm and detection system. Smoke detectors conform to
243 Underwriters Laboratories standard 268 Smoke Detectors for Fire Alarm Systems.

244 **(88)** “Specialty lodging” or “SL” means a type of tourist rooming house with greater than 400 square
245 feet in area but less than 1,500 square feet, typically located in rural or natural settings, and provides an
246 unconventional lodging experience with no liquid or water carried waste plumbing fixtures.

247 **Note:** Yurts greater than 400 square feet, eco-lodges and primitive cabins are some examples of specialty
248 lodging.

249 **(89)** “Stair or stairway” means one or more risers that form a continuous passage from one elevation
250 to another.

251 **(90)** “Supervisory condition” means a fire alarm control unit condition indicating there is an issue
252 with a system, process, or equipment that is monitored by the fire alarm control unit.

253 **Note:** Common causes of supervisory conditions include sprinkler system issues, suppression system
254 problems, water flow alarms, low battery voltage, fire pumps, or system malfunctions.

255 **(91)** “Temperature measuring device” has the meaning given in s. ATCP 75 Appendix 1-201.10 (B).

256 **(92)** “Time/temperature control for safety food” or “TCS” has the meaning given in s. ATCP 75
257 Appendix 1-201.10 (B).

258 **(93)** “Tourist or transient” means a person who travels to a location away from their permanent address
259 for vacation, pleasure, recreation, culture, business, or employment and occupies an individually keyed unit
260 for less than 60 consecutive days.

261 **(94)** “Tourist rooming house” or “TRH” (a) means any lodging place where sleeping
262 accommodations are offered for pay to tourists or transients and includes:

263 1. A lodging place with 4 or less individually keyed units.

264 2. A one- or 2-family dwelling or condominium unit where the entire residence is rented to a tourist
265 or transient, family or rental group.

266 3. A tourist cabin or cottage.

267 4. A specialty lodging facility defined in sub. (88).

268 **Note:** A short-term rental and vacation home rental are examples of a tourist rooming house.

269 (b) A tourist rooming house does not include:

270 1. A hotel or motel as defined in subs. (42) and (53).

271 2. A bed and breakfast establishments regulated under ch. ATCP 73.

272 3. A private boarding or rooming house as defined in subs. (9) and (79).

273 4. A boat used for overnight sleeping accommodation.

274 **(95)** “Trouble condition” means a fire alarm control unit condition indicating there is an issue or
275 fault with the fire alarm system.

276 **Note:** Common causes of a trouble conditions include power issues, communication errors, faulty
277 wiring, faulty devices, tampering or vandalism, system programming errors, or components nearing end-
278 of-life.

279 **(96)** “Utensil” has the meaning given in s. ATCP 75 Appendix 1-201.10 (B).

280 **(97)** “Waterborne outbreak” means 2 or more people that experience a similar illness after exposure,
281 ingestion or inhalation of water that epidemiologic evidence implicates as the probable source of the
282 illness or meets other exposure criteria for that specific disease.

283 **(98)** “Water distribution system” has the meaning given in s. SPS 381.01 (280).

284 **(99)** “Water management program” means the risk management plan for the prevention and control
285 of legionellosis associated with building water systems, including documentation of the plan’s
286 implementation and operation.

287 **(100)** “Water service” has the meaning given in s. SPS 381.01 (282).

288 **(101)** “Water service disruption” means a planned or unplanned event that reduces the water delivery
289 pressure below 20 pounds per square inch, to include new construction tie-ins; replacement of valves,

290 hydrants, or meters; pumping failures; pipeline breaks; and other system repairs or emergency conditions.

291 (102) “Water system” has the meaning given in s. NR 812.07 (118).

292 (103) “Water-use end point” means the point at which water exits from all potable and nonpotable
293 building water systems, fixtures, and equipment.

294 Subchapter II

295 Licensing and Fees

296 **ATCP 72.04 License holder qualifications.** To qualify for a license, an applicant shall do all of the
297 following:

298 (1) LICENSE HOLDER. Be the person that is legally responsible for the operation of a lodging facility.

299 (2) PAYMENT OF FEES. Pay the applicable license fees at the time the application is submitted.

300 **Note:** A person should consult with other local governmental authorities that may also require a license or
301 permit to operate a lodging facility before submitting an application to the department or its agent.

302 **ATCP 72.05 License holder responsibilities.** Upon acceptance of the license issued by the department
303 or its agent, the license holder shall do all of the following in order to retain the license:

304 (1) ACCESS. Allow an authorized representative of the department or its agent access to the lodging
305 facility and provide any required information to that authorized representative.

306 (2) COMPLIANCE. Comply with the provisions of this chapter.

307 (3) REPORTING. Follow reporting requirements to the department or its agent, as applicable, as
308 outlined in this chapter.

309 (4) OPERATIONS. Immediately discontinue operations directly related to an imminent health hazard
310 and notify the department or its agent.

311 (5) REPLACEMENT. Replace or repair existing facilities and equipment that no longer comply with
312 the criteria set forth in this chapter.

313 (6) CORRECTIVE ACTIONS. Comply with lawful directives of the department or its agent including
314 meeting deadlines for taking corrective actions specified in inspection reports, notices, orders, warnings,

315 and other directives issued by the department or its agent for the license holder's lodging facility or in
316 response to community emergencies.

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

318 (8) PENALTIES. Be subject to the administrative, civil, injunctive, and criminal remedies authorized
319 in law for failure to comply with this chapter.

320 **ATCP 72.06 Plan review.** The department or its agent may require a plan review for an operator that
321 has submitted an application for a license or has made alterations to an existing lodging facility.

322 **Note:** In addition, an operator should consult with other agencies that may also require prior plan or
323 construction approval, such as the Wisconsin department of safety and professional services, the Wisconsin
324 department of natural resources, or local government authorities before commencing construction or
325 modification of a lodging facility.

326 **ATCP 72.07 Licenses. (1) LICENSE REQUIRED.** (a) *General.* No person may provide sleeping
327 accommodations offered for pay to a tourist or transient or operate a hotel, tourist rooming house, or
328 specialty lodging facility on a premises without holding a license from the department or its agent. A
329 lodging facility does not include:

330 1. A boat with sleeping accommodations located on any waterway where it is possible to float a canoe
331 or small watercraft.

332 2. Overnight sleeping accommodations on a frozen waterway.

333 3. A camping cabin or yurt less than 400 square feet in area located in a licensed campground.

334 4. A recreational vehicle.

335 (b) *Change of operator.* Except as provided under par. (d), if a license holder sells or otherwise
336 transfers ownership or operation of a lodging facility to another person, a new license is required pursuant
337 to s. 97.605 (1) (a), Stats., and the lodging facility may not be opened to the public until the department or
338 its agent issues a new license.

339 (c) *Licensing determination* 1. A single premises includes all of the following:

340 a. One or more county or municipal tax parcels of land or property that share a common border.

341 b. The lodging facility and associated buildings that are located on the land or property identified in
342 subdpar. a.

343 c. The lodging facility identified in subdpar. b. is under control of the license holder.

344 **Note:** For questions regarding tax parcels contact the local land information department.

345 2. A separate license is required for each hotel, tourist rooming house, or specialty lodging type located
346 on a single premises pursuant to par. (a).

347 3. A condominium association may be the license holder of a lodging facility by meeting all of the
348 following:

349 a. The condominium association is responsible for all maintenance of the facilities to include the interior
350 and exterior of the buildings and the premises.

351 b. The condominium association is responsible for the payment of all department or agent issued fees.

352 c. The condominium association shall have detailed in their bylaws or documented in a legal contract
353 signed by both the association and the owner of the condominium unit, that the condominium association
354 is responsible for complying with ch. ATCP 72.

355 (d) *Transferability of a license.* A licensee can transfer ownership of the lodging facility under any of
356 the following:

357 1. Pursuant to s. 97.605 (4) (d), Stats., an individual may transfer a license to an immediate family
358 member.

359 2. Pursuant to s. 97.605 (4) (e), Stats., a sole proprietorship that reorganizes as a business entity, as
360 defined in s. 179.70 (1), Stats., or a business entity that reorganizes as a sole proprietorship or a different
361 type of business entity may transfer a license to the newly formed business entity or sole proprietorship if
362 the lodging facility remains at the location for which the license was issued and at least one individual who
363 had an ownership interest in the sole proprietorship or business entity to which the license was issued has
364 an ownership interest in the newly formed sole proprietorship or business entity.

365 3. No license issued under this chapter is transferable from one premises to another.

366 (e) *Notification*. A person who wishes to transfer a license shall notify the department or its agent prior
367 to operation of the lodging facility.

368 **Note:** To notify the department of a transfer of ownership, call (608) 224-4923 or send an email to
369 datcpdfslicensing@wi.gov, or mail request to PO Box 8911, Madison, Wisconsin 53708–8911, or contact
370 the department’s agent.

371 (f) *Preinspection required*. 1. Before the department or its agent may issue a license to operate a
372 lodging facility pursuant to par. (a) and s. 97.607 (1) Stats., the department or agent shall conduct a
373 preinspection.

374 2. If an individually keyed unit is added to a premises of a lodging facility after the initial issuance of
375 a license, an additional preinspection fee that corresponds to the number of units added shall be paid to the
376 department or its agent pursuant to s. ATCP 72.08 Table A or B.

377 **Note:** For example, hotel A is licensed for 100 rooms and expands to add 50 rooms. Hotel A would be
378 subject to the preinspection fee for 31 to 99 rooms.

379 3. A preinspection is not required for a transfer of a license under par. (d).

380 **Note:** To arrange a preinspection from the department contact the bureau of food and recreational
381 businesses at (608) 224–4700, or send an email to datcpdfslicensing@wi.gov, or mail request to PO Box
382 8911, Madison, Wisconsin 53708–8911, or contact the department’s agent.

383 **(2) LICENSE DURATION AND RENEWAL.** (a) *Expiration*. Each license issued under this chapter
384 expires on June 30, except that a license initially issued during the period beginning on April 1 and ending on
385 June 30 expires on June 30 of the following year.

386 (b) *Annual renewal*. Each license shall be renewed annually as provided in sub.(4) (a).

387 **(3) NEW LICENSE.** (a) *Application*. The applicant shall apply on an application form provided by the
388 department or its agent. The completed application form shall be accompanied by all of the following:

389 1. The applicable fees pursuant to s. ATCP 72.08 Table A or B and any fees previously due to the
390 department or its agent under this chapter.

391 2. Information, as determined by the department or its agent, that indicates the lodging facility will be
392 maintained and operated in compliance with this chapter, and applicable local, federal and state laws, as it
393 relates to the health, safety, and welfare of the public.

394 **Note:** As provided pursuant to s. 97.615 (2) (d), Stats., a local health department granted agent status can
395 establish and collect fees for licenses. To obtain a license application for an agent licensed lodging facility,
396 contact the local health department.

397 **Note:** To obtain a copy of the department's lodging license application form, call (608) 224-4923 or send
398 an email to datcpdfslicensing@wi.gov, or mail request to PO Box 8911, Madison, Wisconsin 53708-8911.

399 **Note:** An operator should consult with local government authorities that may also require a license or permit
400 to operate a lodging facility including the local building and zoning agency.

401 (b) *Requests for preinspection.* The operator shall contact the department or its agent and arrange a time
402 for the preinspection required pursuant to sub. (1) (f), before operating a lodging facility.

403 (4) LICENSE RENEWAL. (a) *Payment.* To renew a license, the operator shall pay the department the
404 applicable license fee specified pursuant to s. ATCP 72.08 Table A or B, before the license expires. If
405 payment to renew a license fee is not filed on or before the expiration date of the license, the late fee
406 specified pursuant to s. ATCP 72.08 Table A or B, shall be paid in addition to the license fee. Submission
407 of an application for a renewal license is not required.

408 (b) *Department or agent action on a license renewal.* 1. The department or its agent may refuse to
409 renew a license pursuant to ss. 93.06 (7) and 97.71, Stats., and under sub. (5) (a).

410 2. The department or its agent shall refuse to renew a license as provided pursuant to ss. 93.06 (7) and
411 97.71, Stats., and under sub. (5) (b).

412 (5) DEPARTMENT OR AGENT ACTION ON A LICENSE APPLICATION. (a) *Department or*
413 *agent discretion on a license.* The department or its agent may not issue a new license or renew an existing
414 license for lodging facility unless all of the following conditions are met:

415 1. The operator has corrected a condition for which the department or agent has issued a written health
416 or safety-related order.

417 2. The operator, applicant, or license holder has provided the department or its agent with the
418 information required under sub. (3) (a) 2. or documentation indicating that the lodging facility is designed
419 and constructed in accordance with state law and regulations stated in this chapter.

420 3. The department or its agent has determined that the operator, applicant or license holder is not in
421 violation of ch. 97, Stats., or has only a minor violation as defined in s. 227.04 (1) (a), Stats.

422 (b) *License prohibited.* The department or its agent shall refuse to issue a new license or renew an
423 existing license to operate a lodging facility under any of the following circumstances:

424 1. A fully and accurately completed, signed, and dated application has not been received by the
425 department or its agent.

426 2. The operator is not in compliance with s. 93.135 (3) – (5), Stats.

427 3. The department or its agent has not conducted the preinspection required pursuant to s. ATCP
428 72.07 (1) (f).

429 4. The department or its agent has not approved the plan for the lodging facility pursuant to s. ATCP
430 72.06, for which a plan was requested for review.

431 5. The operator has not paid all of the applicable fees pursuant to s. ATCP 72.08 Table A or B.

432 6. The operator has modified, repaired, or maintained the lodging facility in a manner that is not in
433 accordance with this chapter.

434 (c) *Conditional license.* Except as provided in s. 93.135, Stats., the initial issuance, renewal, or
435 continued validity of a license may be conditioned pursuant to ss. 93.06(8) and 97.605 (1p), Stats., upon
436 the requirement that the license holder correct a violation of this chapter, s. 97.625, Stats., within a
437 specified period of time. If the condition is not satisfied within the specified time or after an extension of
438 time approved by the department or its agent, the license is void. No person may operate a lodging
439 facility after a license has been voided. Any person who does so shall be subject to the penalties
440 pursuant to s. 97.72, Stats., an injunction pursuant to 97.73, Stats., and payment of fees pursuant to s.
441 ATCP 72.08 (2) (e). An operator whose license is voided under this paragraph may appeal the decision

442 pursuant to s. ATCP 72.11. If the decision was made by the department's agent, the applicant may
443 appeal the decision pursuant to s. ATCP 72.12.

444 (d) *Granting or denial of a license.* 1. The department or its agent shall issue or deny a new license
445 or shall renew an existing license for a lodging facility within 30 calendar days after the applicant meets
446 all of the requirements pursuant to subs. (3) or (4), as applicable.

447 2. If the department or its agent denies an application for a license, the applicant shall be given the
448 decision and reason, in writing, for the denial and information regarding appeal rights pursuant to s.
449 ATCP 72.11. If the decision is issued by the department's agent, the applicant may appeal the decision
450 pursuant to s. ATCP 72.12.

451 **(6) VOIDED LICENSE FOR FAILURE TO PAY FEES.** (a) *Payment deadline.* If an applicant or
452 operator fails to pay all applicable fees, late fees and processing charges under s. ATCP 72.08, within 45
453 calendar days after the expiration of the license, the license is void.

454 (b) *Appeal rights.* An operator whose license is voided by the department under this subsection may
455 appeal the decision as provided pursuant to s. ATCP 72.11 or if the license is voided by the department's
456 agent, the operator may appeal the decision pursuant to s. ATCP 72.12. Pursuant to s. 97.605 (1) (c),
457 Stats., in an appeal concerning voiding of a license under this subsection, the burden is on the license
458 applicant to show that the entire applicable fees, late fees, and processing charges have been paid.
459 During any appeal process concerning a payment dispute, the operation of the lodging facility in
460 question is considered to be in operation without a license.

461 **(7) LICENSE POSTING.** A current license issued by the department or its agent shall be posted on the
462 premises in a place visible to the public. A license may not be altered or defaced.

463 **ATCP 72.08 Department fees.** (1) FEE SCHEDULE. Pursuant to s. 97.605 (1) (c), Stats., no license
464 may be issued until all applicable fees have been paid. Fee amounts listed in s. ATCP 72.08 Table A or B
465 apply to lodging facility licenses issued by the department under this chapter.

466 **Note:** Local health departments that are agents for the department have authority pursuant to s. 97.615
467 (2) (d), Stats., to establish and collect fees for licenses issued by the local health department. If the

468 establishment is under the jurisdiction of a local health department, contact the local health department for
469 its license fee schedule.

470 (2) TYPES OF FEES. (a) *Preinspection fee*. 1. For a new license, the operator shall, pay the applicable
471 preinspection fee listed in s. ATCP 72.08 Table A or B to the department before the license is issued
472 pursuant to s. ATCP 72.07 (3).

473 2. If an individually keyed unit is added to a premises of a lodging facility after the initial issuance of
474 a license, an additional preinspection fee that corresponds to the number of units added shall be paid to the
475 department pursuant to s. ATCP 72.08 Table A or B.

476 **Note:** For example, hotel A is licensed for 100 rooms. They later expand to add 50 rooms, the operator of
477 the hotel would pay a preinspection fee for the corresponding category at 31 to 99 rooms.

478 (b) *License fee*. The operator shall pay the applicable license fee listed in s. ATCP 72.08 Table A or B
479 to the department for each lodging facility type for which the operator applies for a new or renewal license.

480 (c) *Late fee*. If the license fee for a license renewal is not paid on or filed before the expiration date of
481 the license, the operator shall pay to the department a late fee as specified in s. ATCP 72.08 Table A or B
482 pursuant to s. 93.21 (5) (b), Stats., in addition to the renewal license fee.

483 (d) *Reinspection or administrative follow-up fee*. If the department conducts a reinspection or an
484 administrative follow-up of a lodging facility pursuant to s. ATCP 72.09 (1) (b) 1., the operator shall pay
485 to the department the applicable reinspection or administrative follow-up fee listed in s. ATCP 72.08 Table
486 A or B. The department shall assess an additional fee as listed in s. ATCP 72.08 Table A or B, whichever
487 is applicable, for any second or subsequent reinspection or administrative follow-up conducted pursuant to
488 s. ATCP 72.09 (1) (b) 4.

489 (e) *Fees for operating without a license*. If a lodging facility is found to be operating without a license,
490 the operator shall pay to the department an amount of \$749.00, in addition to all applicable fees and any
491 processing charges pursuant to sub. (3).

492 **Note:** A person operating a lodging facility without a license is also subject to the penalties in ss. 97.72 and
493 97.73, Stats.

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

497 **Note:** An example includes a buyer that wants an inspection or consultation prior to a real estate
 498 transaction.

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

504
 505 **ATCP 72.08 Table A**
 506 **For licenses issued April 1, XXXX through March 31, XXXX**
 507

508	509	510	511	512	513	514
	Hotel, Motel, Specialty Lodging, And Tourist Rooming House License Fee Category	License Fee	Preinspection Fee	First Reinspection or Administrative Follow-Up Fee	Second and Subsequent Reinspection or Administrative Follow-Up Fee	Late Fee
515	Tourist Rooming House (TRH) (Lodging unit is based on individually keyed units)					
516	1 TRH	\$296.00	\$592.00	\$150.00	\$200.00	\$85.00
517	2 to 4 TRH's	\$450.00	\$900.00	\$150.00	\$200.00	\$85.00
518	5 to 9 TRH's	\$550.00	\$1,100.00	\$150.00	\$200.00	\$85.00
519	10 to 19 TRH's	\$600.00	\$1,200.00	\$150.00	\$200.00	\$85.00
520	20 to 39 TRH's	\$700.00	\$1,400.00	\$150.00	\$200.00	\$85.00
521	40 to 99 TRH's	\$800.00	\$1,600.00	\$150.00	\$200.00	\$85.00
522	100 to 299 TRH's	\$900.00	\$1,800.00	\$150.00	\$200.00	\$85.00
523	300 to 599 TRH's	\$1,000.00	\$2,000.00	\$150.00	\$200.00	\$85.00
524	600+ TRH's	\$1,100.00	\$2,200.00	\$150.00	\$200.00	\$85.00
525						
526	Hotel and Motel (rooms are based on individually keyed units)					
527	5 to 30 Rooms	\$350.00	\$700.00	\$150.00	\$200.00	\$85.00
528	31 to 99 Rooms	\$450.00	\$900.00	\$150.00	\$200.00	\$85.00
529	100 to 249 Rooms	\$550.00	\$1,100.00	\$150.00	\$200.00	\$85.00
530	250 to 499 Rooms	\$650.00	\$1,300.00	\$150.00	\$200.00	\$85.00
531	500 to 749 Rooms	\$750.00	\$1,500.00	\$150.00	\$200.00	\$85.00
532	750 to 1000 Rooms	\$850.00	\$1,700.00	\$150.00	\$200.00	\$85.00
533	1000+ Rooms	\$950.00	\$1,900.00	\$150.00	\$200.00	\$85.00

535						
536	Specialty Lodging (SL) (Lodging unit is based on an individually keyed units)					
537	1 SL	\$296.00	\$592.00	\$150.00	\$200.00	\$85.00
538	2 to 4 SL's	\$450.00	\$900.00	\$150.00	\$200.00	\$85.00
539	5 to 9 SL's	\$550.00	\$1,100.00	\$150.00	\$200.00	\$85.00
540	10 to 19 SL's	\$600.00	\$1,200.00	\$150.00	\$200.00	\$85.00
541	20 to 39 SL's	\$700.00	\$1,400.00	\$150.00	\$200.00	\$85.00
542	40 to 99 SL's	\$800.00	\$1,600.00	\$150.00	\$200.00	\$85.00

543

544 **ATCP 72.08 Table B**

545 **For licenses issued on or after April 1, XXXX**

546						
547	Hotel, Motel,	License	Preinspection	First	Second and	Late
548	Specialty Lodging,	Fee	Fee	Reinspection	Subsequent	Fee
549	And Tourist			or	Reinspection or	
550	Rooming House			Administrative	Administrative	
551	License Fee			Follow-Up Fee	Follow-Up Fee	
552	Category					

553						
554	Tourist Rooming House (TRH) (Lodging unit is based on individually keyed units)					
555	1 TRH	\$311.00	\$621.50	\$150.00	\$200.00	\$85.00
556	2 to 4 TRH's	\$472.50	\$945.00	\$150.00	\$200.00	\$85.00
557	5 to 9 TRH's	\$577.50	\$1,155.00	\$150.00	\$200.00	\$85.00
558	10 to 19 TRH's	\$630.00	\$1,260.00	\$150.00	\$200.00	\$85.00
559	20 to 39 TRH's	\$735.00	\$1,470.00	\$150.00	\$200.00	\$85.00
560	40 to 99 TRH's	\$840.00	\$1,680.00	\$150.00	\$200.00	\$85.00
561	100 to 299 TRH's	\$945.00	\$1,890.00	\$150.00	\$200.00	\$85.00
562	300 to 599 TRH's	\$1,050.00	\$2,100.00	\$150.00	\$200.00	\$85.00
563	600+ TRH's	\$1,155.00	\$2,310.00	\$150.00	\$200.00	\$85.00

564						
565	Hotel and Motel (rooms are based on individually keyed units)					
566	5 to 30 Rooms	\$367.50	\$735.00	\$150.00	\$200.00	\$85.00
567	31 to 99 Rooms	\$472.50	\$945.00	\$150.00	\$200.00	\$85.00
568	100 to 249 Rooms	\$577.50	\$1,155.00	\$150.00	\$200.00	\$85.00
569	250 to 499 Rooms	\$682.50	\$1,365.00	\$150.00	\$200.00	\$85.00
570	500 to 749 Rooms	\$787.50	\$1,575.00	\$150.00	\$200.00	\$85.00
571	750 to 1000 Rooms	\$892.50	\$1,785.00	\$150.00	\$200.00	\$85.00
572	1000+ Rooms	\$997.50	\$1,995.00	\$150.00	\$200.00	\$85.00

573						
574	Specialty Lodging (SL) (Lodging unit is based on an individually keyed units)					
575	1 SL	\$311.00	\$621.50	\$150.00	\$200.00	\$85.00
576	2 to 4 SL's	\$472.50	\$945.00	\$150.00	\$200.00	\$85.00
577	5 to 9 SL's	\$577.50	\$1,155.00	\$150.00	\$200.00	\$85.00
578	10 to 19 SL's	\$630.00	\$1,260.00	\$150.00	\$200.00	\$85.00
579	20 to 39 SL's	\$735.00	\$1,470.00	\$150.00	\$200.00	\$85.00
580	40 to 99 SL's	\$840.00	\$1,680.00	\$150.00	\$200.00	\$85.00

581

582

583 **Subchapter III**

584 **Enforcement and Appeals**

585 **ATCP 72.09 Enforcement. (1) INSPECTIONS AND ACCESS TO THE PREMISES. (a)**

586 *Inspections.* Pursuant to ss. 93.07 (24) (e), 93.08, and 97.65, Stats., an authorized employee or agent of the
587 department, upon presenting proper identification, may enter any lodging facility or premises at any
588 reasonable time, for any of the following purposes:

- 589 1. To inspect the lodging facility.
- 590 2. To determine if there has been a violation of this chapter or ss. 97.605 to 97.65, Stats.
- 591 3. To determine compliance with previously written orders to correct violations.
- 592 4. To secure samples or specimens.
- 593 5. To examine and copy relevant documents and records related to the operation of the lodging facility.
- 594 6. To obtain photographic or other evidence needed to enforce this chapter.

595 *(b) Reinspection or administrative follow-up.* 1. The department or its agent may perform a reinspection
596 or an administrative follow-up at a lodging facility whenever an inspection or the investigation of a
597 complaint reveals any of the following conditions:

- 598 a. Presence of an imminent hazard that cannot be corrected during the inspection.
- 599 b. An inspection reveals 6 or more priority violations, regardless if they have been corrected during the
600 inspection.
- 601 c. Repeat violations, whether corrected during the inspection or not, are documented on 3 consecutive
602 inspections regardless of inspection type.
- 603 d. The department's authorized representative and that representative's supervisor determine there is a
604 lack of active managerial control at the lodging facility, based on the quantity and the criticality of the
605 violations observed on the most recent inspection.

606 2. A reinspection or administrative follow-up shall be scheduled to allow the operator a reasonably
607 sufficient time to correct the violations.

608 3. A reinspection or administrative follow-up fee shall be charged for the reinspection or
609 administrative follow-up in the amount listed in s. ATCP 72.08 Table A or B or applicable amount as
610 determined by an agent of the department.

611 4. If an additional reinspection or administrative follow-up is required because a violation has not been
612 corrected in the scheduled time, the department or its agent shall assess a second or subsequent reinspection
613 or administrative follow-up fee in the amount listed in s. ATCP 72.08 Table A or B, pursuant to s. ATCP
614 72.08 (2) (d), and the department or its agent may order the operator to show just cause why the license
615 should not be suspended or revoked, pursuant to s. ATCP 72.10.

616 (2) GENERAL ORDERS TO CORRECT VIOLATIONS. (a) *Written orders.* If upon inspection of a
617 lodging facility, the department or agent finds that the lodging facility is not designed, constructed,
618 equipped, or operated as required under this chapter, the department or its agent shall issue a written order
619 to correct the violation. The order shall specify the correction needed for compliance and the time period
620 within which the correction shall be made. The time period specified in the order may be extended at the
621 discretion of the department or its agent as specified in par. (c).

622 (b) *Failure to correct a violation.* 1. If a violation is not corrected by the expiration of the time period
623 stated in the order given pursuant to par. (a), or any extension of time granted pursuant to par. (c), the
624 department or its agent may issue a special order pursuant to s. ATCP 72.10 to suspend or revoke the
625 license to operate the lodging facility. An order for suspension or revocation shall take effect as provided
626 pursuant to s. ATCP 72.10.

627 2. Pursuant to ss. 97.12 (5), 97.65 (5), and 97.72, Stats., any person who fails to comply with an order
628 of the department or its agent may be subject to a forfeiture or criminal penalties. A person may appeal a
629 forfeiture pursuant to s. ATCP 72.11.

630 (c) *Requests for an extension to correct a violation.* 1. The department or its agent may extend the
631 time to correct a violation based on a determination of the seriousness of the violation, the operator's
632 progress towards correcting the violation, and the operator's previous history of compliance.

633 2. To request an extension to correct a violation, the operator shall contact the department or its
634 agent before the time specified in the written order to correct the violation expires. The operator shall
635 provide information that demonstrates to the department or its agent that corrective action has been
636 initiated, but additional time is needed to fully correct the violation.

637 (3) TEMPORARY ORDERS. (a) *Conditions for a temporary order.* As provided in s. 97.65 (2) (a),
638 Stats., whenever, as a result of an inspection pursuant to sub. (1), the department or its agent has reasonable
639 cause to believe that any construction, sanitary condition, operation, or method of operation of the
640 premises or equipment used on the premises creates, an immediate danger to health, the department or its
641 agent may issue a temporary order and cause it to be delivered to the licensee, or to the owner or custodian,
642 or to both. The order may prohibit the continued operation or method of operation of specific equipment,
643 or require the premises to cease other operations, or methods of operation which create the immediate
644 danger to health or set forth any combination of these requirements. The department or its agent may order
645 the cessation of all operations authorized by the license only if a more limited order does not remove the
646 immediate danger to health.

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

652 2. No operation or method of operation prohibited by the temporary order may be resumed without the
653 approval of the department or its agent until the order has terminated or the time period specified in subd.
654 1., has expired, whichever occurs first, unless as provided pursuant to par. (c), the department or its agent
655 provides notice that an immediate danger to health or safety is present. If, upon completed analysis or
656 examination, the department or agent determines that construction, sanitary condition, operation, or method
657 of operation of the premises or equipment does not constitute an immediate danger to health or safety, the
658 department or its agent shall immediately notify the owner, operator or responsible supervisor in writing
659 and the temporary order shall terminate upon receipt of the written notice.

660 (c) *Notice of findings upon analysis or examination.* If the analysis or examination under sub. (1),
661 shows that the construction, sanitary condition, operation or method of operation of the premises or
662 equipment constitutes an immediate danger to health or safety, the department or its agent, within the

663 effective period of the temporary order specified in par. (b) 1., shall provide written notice of the findings
664 to the owner, operator or responsible supervisor. Upon receipt of the notice, the temporary order remains
665 in effect until a final decision is issued pursuant to s. ATCP 72.10. The notice shall include a statement
666 that the facility has a right to request a hearing pursuant to s. ATCP 72.11, within 15 calendar days after
667 issuance of the notice.

668 (d) *Failure to comply with temporary order; forfeitures and penalties.* 1. Pursuant to s. 97.65 (5) (a),
669 Stats., any person who fails to comply with a temporary order issued by the department or its agent may
670 be fined not more than \$10,000 or imprisoned not more than one year in the county jail, or both.

671 2. Pursuant to s. 97.72 (2), in lieu of any criminal penalty, a person who violates provisions in ATCP
672 72 may be required to forfeit not more than \$1,000 for each violation.

673 (4) ACTION PLANS. (a) *Required components.* When required by the department, its agent, or this
674 chapter, the operator shall develop, on a form provided by the department, an action plan for compliance
675 and the license is conditioned. The action plan shall include all of the following:

- 676 1. A description of the violation and code citation.
- 677 2. The steps the operator will take to correct the violation.
- 678 3. The date compliance will be achieved.

679 (b) *Licensed conditioned.* Pursuant to s. ATCP 72.07 (5) (c), the operator's license shall be placed in a
680 conditional status.

681 (c) *Continued noncompliance.* The department or its agent shall void the lodging facility license
682 pursuant to s. ATCP 72.07 (5) (c), if the operator continues to be out of compliance or fails to meet the
683 objectives outlined in the action plan past the date provided in the action plan.

684 **ATCP 72.10 Suspension or revocation of license.** Pursuant to ss. 97.12 (3) (b), 93.06 (7), and 97.71,
685 Stats., the department or its agent may, by summary order and without prior notice or hearing, suspend a
686 license issued under this chapter if the department or its agent finds that there has been a substantial failure
687 to comply with the applicable requirements of ch. 97, Stats., and this chapter and that the continuation of
688 the violations constitutes a serious danger to public health. The order shall be in writing, have the force and

689 effect of an order issued pursuant to s. 93.18, Stats., and is subject to the right of hearing before the
690 department or its agent, if requested within 10 calendar days after the date of service.

691 **ATCP 72.11 Appeals of actions by the department. (1) APPEALS TO DEPARTMENT ACTIONS.**

692 A request for a contested case hearing shall be filed with the DATCP Secretary pursuant to s. ATCP 1.06.

693 A request for hearing on a department action does not automatically stay or modify that action.

694 **(2) APPEALS TO DEPARTMENT ORDERS.** If requested in writing within 15 calendar days after

695 date of the service of an order, a hearing shall be conducted as pursuant to s. 227.42, Stats. and ch. ATCP

696 1. Enforcement of the order shall not be stayed pending action on the hearing. A request for hearing does

697 not automatically stay or modify a summary special order.

698 **Note:** A request for hearing shall be submitted to the DATCP Secretary via e-mail at

699 datcpappeals@wisconsin.gov, faxed to (608) 224-5034, mailed to PO Box 8911, Madison, Wisconsin

700 53708-8911, or hand delivered to 2811 Agriculture Drive, Madison, Wisconsin 53718. The hearing may

701 be conducted by the department secretary or designee.

702 **ATCP 72.12 Appeals of actions by agent health departments.** If an agent issues a license under this

703 chapter, the operator shall appeal an enforcement action to the agent health department.

704 **Subchapter IV**

705 **Standards for Lodging Facilities.**

706

707 **ATCP 72.13 Qualifications of an authorized representative conducting inspections.** An authorized

708 representative of the department or its agent who inspects a lodging facility or conducts a plan review for

709 compliance with ch. ATCP 72, shall meet the staffing qualification requirements set forth in s. ATCP 74.08

710 or as specified by the department.

711 **ATCP 72.14 Inspections (1) REFUSED INSPECTION; PROCESS.** If a person denies access to the

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

713 (a) *Access.* The license holder is required to allow access to the department or its agent as specified

714 pursuant to ss. 93.08 and 97.65 (1), Stats.

715 (b) *License conditions.* Access is a condition of the acceptance and retention of a license to operate a
716 lodging facility as specified pursuant to s. ATCP 72.05 (1).

717 (c) *Special inspection warrant.* If the lodging facility license holder denies access to an authorized
718 representative of the department or its agent, the department or its agent may apply for a special inspection
719 warrant to allow access pursuant to s. 66.0119, Stats.

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

724 (3) FREQUENCY OF INSPECTION. The department or its agent shall inspect a lodging facility at
725 least once during the licensing period or an alternative inspection frequency approved in writing by the
726 department.

727 (4) INSPECTION DOCUMENTATION. The department or its agent shall document all of the
728 following on an inspection report form: (a) *Facility information.* Administrative information about the
729 lodging facility's legal identity, street and mailing addresses, type of establishment and operation,
730 inspection date, and other information such as type of water supply, sewage disposal, and status of the
731 license at the lodging facility.

732 (b) *Violation documentation.* The conditions or other violations from this chapter or applicable chapters
733 shall be documented to include the required corrective action by the license holder. An accompanying
734 narrative shall contain all of the following:

- 735 1. A factual description of the violation observed, including location of the observed violation.
- 736 2. Citation and a brief description of the statute or administrative rule that was observed to be violated.
- 737 3. A statement indicating what corrective action the license holder has taken, or shall take, to regain
738 compliance with the administrative rule or statute.
- 739 4. Unless otherwise indicated on the inspection report, each violation shall have a corrective action
740 deadline. The corrective action deadline shall be based on the following criteria:

741 a. A priority violation shall be corrected immediately. Depending on the nature of the potential hazard
742 involved and the complexity of the corrective action needed, the department or its agent may agree to or
743 specify additional time, for the license holder to correct violations of a priority item as defined in this
744 chapter. The additional time shall not exceed 3 calendar days after the inspection.

745 b. The license holder has a maximum time of 10 calendar days after the inspection for the license holder
746 to correct violations of a priority foundation item as defined in this chapter.

747 c. The license holder shall correct core items, as defined in this chapter, by a deadline agreed to or
748 specified by the department or its agent, but no later than 90 calendar days after the inspection. The
749 department or its agent may approve an action plan pursuant to s. ATCP 72.09 (4) if no health hazard will
750 result from allowing an extended schedule for compliance.

751 **(5) ISSUING A REPORT AND OBTAINING ACKNOWLEDGMENT OF RECEIPT.** (a) *Signature.*

752 At the conclusion of the inspection, an authorized representative of the department or its agent shall sign
753 the completed inspection report. Except as provided in par. (b), the department or its agent shall review the
754 inspection findings with the person in charge and obtain a signature on the inspection report from the license
755 holder's designated person in charge.

756 (b) *Availability.* If the license holder's designated person in charge is not available to sign the completed
757 inspection report, the department or its agent shall document the unavailability of a person in charge in the
758 inspection report.

759 (c) *Receipt.* A copy of the inspection report shall be provided to the designated person in charge at the
760 completion of the inspection, emailed or otherwise delivered within 2 business days after completion of the
761 inspection.

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

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

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

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

771 (7) POSTING OF INSPECTION REPORTS. The department and its agents shall make inspection
772 report information available to the public on the internet.

773 **Subchapter V.**

774 **General Provisions**

775 **ATCP 72.15 Health and safety standard.** Pursuant to s. 97.62, Stats., every lodging facility shall be
776 operated and maintained with a strict regard to public health and safety. ^P

777 **ATCP 72.16 Water supply; water systems and plumbing.**

778 (1) WATER SYSTEMS. (a) *General.* The water source used to supply a lodging facility shall be a
779 public or a private water system.

780 (b) *Well construction.* The operation, construction, installation, materials, and maintenance of the
781 water system used to supply water to the lodging facility shall comply with well construction standards,
782 as enforced by the Wisconsin department of natural resources.

783 **Note:** For more information regarding well construction standards, see ch. NR 812.

784 (c) *Location.* Except as provided under par. (d), the private well shall be located on the premises.

785 (d) *Shared private wells.* If the operator shares a well that is not located on the premises, the operator
786 shall provide a signed written agreement detailing the physical location of the well and the parties
787 responsible for maintaining the system. ^{Pf}

788 (2) POTABLE WATER SUPPLY. (a) *Drinking water standards.* A lodging facility's potable water
789 supply shall: 1. For a public water system, meet the groundwater quality standards in ch. NR 809, as
790 enforced by the Wisconsin department of natural resources. ^P

791 2. For a private water system, meet the groundwater quality standards in subs. (e) and (f). ^P

792 **Note:** For public drinking water well data visit, <https://dnr.wisconsin.gov/topic/Groundwater/GRN.html>.

793 (b) *Availability*. Except as specified under par. (d), each lodging facility shall be provided with a potable
794 water supply under pressure.

795 (c) *Water temperature*. Handwashing sinks and fixtures used for bathing shall be equipped to provide
796 water at a temperature of at least 85°F through a mixing valve or combination faucet. ^{Pf}

797 (d) *Temporary water service disruptions*. The operator shall inform guests of any water service
798 disruptions to the water supply and shall provide potable water using any one of the following methods ^P:

- 799 1. Commercially bottled drinking water.
- 800 2. An enclosed vehicular water tank;
- 801 3. Other methods approved by the department or its agent.

802 (e) *Private well water testing; bacteriological*. 1. The operator shall have bacteriological analysis
803 performed for total coliform and *Escherichia coli* consistent with approved testing methods pursuant to s.
804 ATCP 77.02 (3). ^{Pf}

805 2. Total coliform and *Escherichia coli* analysis shall not exceed zero colony forming units pursuant to
806 s. NR 140.10. ^P

807 (f) *Private well water testing; nitrates*. 1. The operator shall conduct nitrate analysis consistent with
808 approved testing methods pursuant to s. NR 149.41. ^{Pf}

809 2. The analysis of the nitrate concentration in the well water shall not exceed 10 milligrams per liter
810 (mg/L) pursuant to s. NR 140.10. ^P

811 3. If the analysis of the nitrate concentration in the well water is between 10 and 20 mg/L, the operator
812 shall post ^P:

- 813 a. Drinking water advisory signage, as provided by the department or its agent.
- 814 b. In all areas where drinking water can normally be obtained.

815 4. If the analysis of the nitrate concentration in the well water exceeds 20 mg/L, it is considered an
816 unsafe potable water source and shall follow the requirements under par. (h) 3. ^P

817 (g) *Private well water testing; frequency, location, approved methods, and notification*.

818 1. The operator shall test the water from a private well at least once every 12 months. ^{Pf}

819 2. The water sample shall be obtained from a faucet regularly used by tourists or transients.

820 3. Private well water testing shall be performed by a Wisconsin department of natural resources
821 drinking water certified laboratory.

822 4. The department or its agent shall be notified when:

823 a. The bacteriological test results for *Escherichia coli* or total coliform exceed zero colony forming
824 units as specified in par. (e) 2. ^P

825 b. The nitrate test results exceed 10 mg/L as specified in par. (f) 2. ^P

826 **Note:** Bottles for collection of water samples may be obtained by writing to the Wisconsin state laboratory
827 of hygiene, 2601 Agriculture Drive, Madison, WI 53708 or by calling (800) 442-4618.

828 **Note:** To find a list of Wisconsin department of natural resources drinking water certified laboratories visit
829 <https://dnr.wisconsin.gov/topic/labCert/certified-lab-lists>.

830 (h) *Unsafe potable water.* The operator shall:

831 1. Discontinue the use of a private water system when bacteriological analysis under par. (e) 2. confirms
832 the presence of *Escherichia coli*. ^P

833 2. Restrict the use of a private water system for drinking water when bacteriological analysis under par.
834 (e) 2., is total coliform is positive on 3 consecutive well water samples and provide an approved water
835 source as required under par. (i). ^P

836 3. Restrict the use of a private water system for drinking water and food preparation when nitrate levels
837 exceed the requirements under par. (f) 4. and provide an approved water source as required under par. (i).
838 ^P

839 4. If required to restrict the use of the private water system under subd 2. or 3., the operator shall post
840 signage indicating the water is unsafe for human consumption. ^{Pf}

841 (i) *Alternatives to a restricted-use water supply.* As required under subd. 2. and 3., potable drinking
842 water shall be provided from any of the following sources:

843 1. Commercially sealed water jugs or commercially sealed bottled water provided to the guest upon
844 check-in. ^P

845 2. Obtained from or contracted with a licensed water distribution service pursuant to ch. ATCP 70. ^P

846 (3) WATERBORNE DISEASES. (a) *Department notification*. The operator shall contact the
847 department or its agent for operational and testing guidance when notified of a suspected waterborne
848 illness.

849 (b) *Suspected waterborne outbreak investigation*. Pursuant to s. ATCP 72.09 (1) (a), as part of the
850 investigation or inspection, the department or its agent may secure water samples for analysis.

851 (c) *Confirmed waterborne outbreak*. A lodging facility that has waterborne illness outbreak, as
852 confirmed through laboratory analysis, shall complete all of the following:

853 1. Prevent continued exposure by implementing any of the following methods:

854 a. Immediately discontinue public access to affected fixtures, equipment, and areas. ^P

855 b. Install point of use water treatment filters. ^P

856 c. Other safeguards approved by the department. ^P

857 d. A combination of subdpar a., b., or c. ^P

858 2. Develop a written remediation plan that includes all of the following ^P:

859 a. Identify the source of the waterborne pathogen. ^{Pf}

860 b. Identify the locations affected by the waterborne pathogen. ^{Pf}

861 c. The method that will be used to remove the pathogen from locations identified in subdpar. a. and

862 b. ^{Pf}

863 3. Execute the remediation plan. ^P

864 4. Collect post-remediation samples at least 48 hours after the execution of the remediation plan for
865 locations identified under subd 2. a. and b. ^P

866 5. Obtain approval from the department or its agent to resume normal operations in affected areas. ^P

867 6. If the confirmed waterborne outbreak is associated with *Legionella spp.*, the operator, in addition
868 to the requirements in par. (c), shall complete all of the following:

869 a. Notify incoming guests and staff about possible exposure to *Legionella* and symptoms of
870 legionellosis until the operator has received approval from the department or its agent to resume normal
871 operations. ^{Pf}

872 b. Notify guests from the previous 14 calendar days of the confirmed waterborne outbreak in writing
873 as approved by the department about possible exposure to *Legionella* and symptoms of legionellosis. ^{Pf}

874 c. Develop and implement a water management program as approved by the department. ^P

875 **Note:** Resources for developing a water management plan include ANSI/ASHRAE standard 188
876 Legionellosis: Risk Management for Building Water Systems or the United States centers for disease
877 control and prevention toolkit: Developing a *Legionella* Water Management Program.

878 d. Sampling validation shall be conducted at an Environmental *Legionella* Isolation Techniques
879 Evaluation certified laboratory in accordance with the frequency established for sampling under subpar.
880 c. ^{Pf}

881 **Note:** Laboratories can test their *Legionella* isolation techniques against standardized samples through the
882 Environmental *Legionella* Isolation Techniques Evaluation Program. Participating labs receive a panel of
883 lyophilized test samples twice each year from the Wisconsin State Laboratory of Hygiene. Some of the
884 test samples are *Legionella* positive and some are *Legionella* negative. The test samples may also include
885 other organisms commonly found in water. Participating labs process the test samples and report their
886 results. Those labs that correctly identify *Legionella* in 2 consecutive panels receive documentation for
887 passing the proficiency test.

888 **(4) PLUMBING.** (a) *General.* All lodging facilities shall meet Wisconsin building code pursuant to
889 chs. 101 and 145, Stats., and chs. SPS 300-399 as enforced by the Wisconsin department of safety and
890 professional services.

891 (b) *Backflow prevention.* A backflow or backsiphonage prevention device shall be installed on
892 plumbing fixtures where the potential for contamination of the potable water supply exists. ^P

893 **Note:** Examples include mop sinks and chemical dispensing devices.

894 (c) *Air gap*. When an air gap is required, the distance of the air gap shall be at least twice the diameter
895 of the water or waste piping. ^P

896 **Note:** An example includes a hotel ice dispenser where the required air gap is between the ice making water
897 drain line or ice bin drain line and the floor drain.

898 **ATCP 72.17 Sewage disposal system. (1) SEWAGE.** All lodging facilities shall meet Wisconsin
899 building code pursuant to chs. 101 and 145, Stats., and chs. SPS 300-399 as enforced by the Wisconsin
900 department of safety and professional services.

901 **(2) DISCHARGE.** Sewage, including all liquid and water-carried wastes from plumbing fixtures shall
902 discharge into a public sewer or POWTS. ^P

903 **(3) POWTS DISPOSAL. (a) *Designed, constructed and operated.*** Any POWTS system used by a
904 lodging facility under this chapter shall be located, designed, constructed and operated in accordance with
905 state uniform plumbing code as enforced by the Wisconsin department of safety and professional services.

906 **(b) *POWTS access cover.*** The operator shall ensure that an access opening cover to a POWTS is
907 locked or secured to prevent general access by the public, except for inspection, evaluation, maintenance,
908 or servicing purposes. ^P

909 **(4) FAILED SEWAGE DISPOSAL SYSTEM.** A non-functional public sewer or a failing POWTS,
910 as determined by the Wisconsin department of safety and professional services or the local government
911 authority, shall be brought into compliance, replaced or its use discontinued. ^P

912 **(5) TOILET FACILITIES. (a) *Private fixtures.*** Except as specified in par. (b), an individually keyed
913 unit shall provide a minimum of one toilet, one sink located in or adjacent to the toilet room, and a
914 shower or bathtub.

915 **(b) *Shared fixtures.*** 1. A hostel or an existing lodging facility that does not meet the requirements under
916 par. (a) shall provide a minimum of one toilet, one sink located in or adjacent to the toilet room, and a
917 shower or bathtub for every 10 tourist or transients or fraction thereof.

918 2. All toilet stalls or rooms shall be provided with a privacy lock.

919 3. In an owner-occupied lodging facility, the owner or operator shall have their own toilet facility
920 separate from a toilet facility provided to the tourist or transient.

921 (c) *Alternatives to water-carried waste.* Portable toilets, composting toilet systems, incinerating toilets,
922 and privies, shall comply with the requirements for alternatives to water-carried waste plumbing fixtures
923 as enforced by the Wisconsin department of safety and professional services or the local government
924 authority.

925 **Note:** For more information regarding alternatives to water-carried waste plumbing fixtures, see ch. SPS
926 391.

927 (d) *Soap and towels.* Each toilet room shall be provided with soap, hand towels, or other approved
928 means of drying hands, and an adequate supply of toilet paper, upon guest arrival. ^{Pf}

929 (e) *Waste receptacle.* Each toilet room shall be provided with a waste receptacle.

930 (f) *Slip-resistant flooring in showers and bathtubs.* Slip-resistant flooring or materials shall be provided
931 in all shower and bathtub basins. ^P

932 **Note:** Examples of slip-resistant flooring or materials include, grouted tile, anti-slip tape, bathmat, or
933 textured surface.

934

935 **ATCP 72.18 Building structure and safety. (1) GENERAL** a. *Wisconsin building code.* All lodging
936 facilities shall meet the Wisconsin building code pursuant to chs. 101 and 145, Stats., and chs. SPS 300-
937 399 as enforced by the Wisconsin department of safety and professional services.

938 b. *Department specific health and safety standards for lodging facilities.* All lodging facilities shall
939 meet the minimum health and safety standards in subs. (2) to (11).

940 **Note:** Sub. (b) refers to the minimum health and safety standards that need to be met to operate a lodging
941 facility. Please consult with other local or State government agencies as additional or stricter requirements
942 may apply.

943 **(2) SLIPS, TRIPS AND FALLS.** Except as specified under par. (c), lodging facilities shall meet all of
944 the following:

945 (a) *Handrails.*

946 1. At least one handrail shall be provided for a flight of stairs with more than 3 risers. ^{Pf}

947 2. The height of the handrail shall be between 30 to 38 inches measured vertically from the nose of
948 the tread to the top of the handrail. ^{Pf}

949 (b) *Guards.*

950 1. Guards shall be provided on all open sides of stairs consisting of more than 3 risers. ^{Pf}

951 2. All elevated surfaces in interior and exterior areas of a lodging facility shall be provided with guards
952 on all open sides that are elevated more than 30 inches above the floor or grade, including lofts, open sides
953 of landings, platforms, decks, balconies or porches that are attached to the lodging facility. ^{Pf}

954 3. The space between guards shall be equal to or less than 6 inches. ^{Pf}

955 4. Guard height shall be equal to or greater than 36 inches, except that guards may be less than 36
956 inches when terminating at the underside of the stair handrail under par. (a) 2. ^{Pf}

957 (c) *Exemptions.* Requirements under par. (a) and (b), do not apply to window wells, egress wells,
958 retaining walls, other landscaping features or detached walkways or stairs, landings, platforms, decks,
959 balconies or porches that are not attached to the lodging facility.

960 (3) SLEEPING ROOMS. (a) *Ceiling height.* 1. Except as specified under subd. 2., every sleeping
961 room shall have a minimum ceiling height of 7 feet (2.13 m).

962 2. Sleeping rooms may have a ceiling height of less than 7 feet provided at least 50 percent of the room's
963 floor area has a ceiling height of at least 7 feet. Any area with a ceiling height of less than 5 feet may be
964 ignored in this calculation.

965 (b) *Spacing and number of occupants in a sleeping room.* 1. Beds shall be arranged to provide an aisle
966 at least 3 feet in width from one side of each bed to create a clear path for emergency egress. ^{Pf}

967 2. The number of occupants per bed shall not exceed the following:

968 a. No more than one occupant for a mattress width of 50 inches or less. ^{Pf}

969 b. No more than 2 occupants for a mattress width of more than 50 inches. ^{Pf}

970 3. The number of individuals in a sleeping room shall not exceed the requirements established under
971 subd. 1. and 2. or the posted occupancy limit established and enforced by a local government agency,
972 whichever is less. ^{Pf}

973 (c) *Bed placement.* Bed placement shall afford the occupant with maximum ceiling height clearance for
974 emergency egress. ^{Pf}

975 (d) *Bunk beds.* If a bunk bed is provided in a lodging facility, the operator shall ensure all of the
976 following requirements are met:

977 1. No more than 2 beds may be stacked vertically. ^P

978 2. There shall be a vertical separation of at least 2.5 feet measured from the top of the lower mattress
979 to the bottom of the frame of the upper bunk bed. ^{Pf}

980 3. A free space of at least 2.5 feet shall be provided above the mattress of the upper bunk bed. ^{Pf}

981 4. The upper bunk bed shall be provided with guards and shall meet all of the following: ^P

982 a. The top of the guard shall be at least 5 inches above the top of the mattress. ^{Pf}

983 b. The bottom of the guard shall be no more than 3.5 inches above the top of the upper bunk bed frame.

984 ^{Pf}

985 5. Bunk beds shall be located away from potential hazards, including heat sources, ceiling fans, or other
986 ceiling protrusions. ^{Pf}

987 (4) EXITS FROM SLEEPING ROOMS IN TOURIST ROOMING HOUSES. (a) *Basements used for*
988 *sleeping.*

989 1. Basements used for sleeping shall be provided with at least 2 separate exits. ^P

990 a. At least one of the exits shall be a door to the exterior of the dwelling or a stairway or ramp that leads
991 to the floor above. ^{Pf}

992 b. The second exit shall be a door to the exterior of the dwelling, a stairway or ramp that leads to the
993 floor above, a stairway that leads to a garage provided the garage has an exit door other than the overhead
994 door, or an egress window located in each sleeping room that complies with par. (g). ^{Pf}

995 (b) *Exits from the first floor.* 1. First floors shall be provided with at least 2 exit doors. ^P

996 a. At least one of the exits shall discharge to grade and may not go through a garage. This exit may
997 include interior or exterior stairs. ^{Pf}

998 b. The second exit may discharge into an attached garage provided the garage has an exit door other
999 than the overhead door that discharges to grade. ^{Pf}

1000 c. Any exit that does not comply with sub. (b) 1. a. may discharge to an outside balcony that complies
1001 with par. (f). ^{Pf}

1002 d. One of the exit doors required in sub. (b) 1. may be omitted for a tourist rooming house that has one
1003 or more egress windows on the first floor. If there are first floor sleeping rooms, each must have a window
1004 that complies with par. (g). ^{Pf}

1005 (c) *Exits from the second floor.* 1. At least 2 exits shall be provided from the second floor. ^P

1006 a. At least one of the exits shall be a stairway or ramp and lead to the first floor or discharge to grade.
1007 ^{Pf}

1008 b. The second exit may be via a stairway or ramp that discharges to grade, or to a balcony which
1009 complies with par. (f), or to a deck that complies with sub. 2 (a) and (b) and that is no more than 15 feet
1010 above the grade below. ^{Pf}

1011 2. Windows that comply with par. (g) may be provided in each second floor sleeping room or in another
1012 location on the second floor if there are no sleeping rooms on that floor in lieu of the second exit. ^{Pf}

1013 (d) *Exits above the second floor.* 1. At least 2 exits shall be provided for sleeping rooms above the
1014 second floor. ^P Sleeping areas above the second floor shall be provided with all of the following:

1015 a. The exits shall be stairways or ramps that lead to the second floor or discharge to grade. ^{Pf}

1016 b. The exits shall be located such that an exit is accessible to the second floor if another exit is blocked.
1017 ^{Pf}

1018 (e) *Exits from lofts.* 1. At least one stairway exit shall be provided, to the floor below, for a loft
1019 exceeding 400 square feet in area. ^P

1020 2. At least one stairway or ladder exit shall be provided to the floor below for a loft, 400 square feet or
1021 less, in area. ^P

1022 (f) *Balconies*. 1. Shall be provided with guards in accordance with sub. (2) (b).^{Pf}

1023 2. Located no more than 15 feet above grade.^{Pf}

1024 (g) *Windows used for exiting*. 1. The window shall be openable from the inside without the use of tools
1025 or the removal of a sash. If equipped with a storm window or screen, it shall be openable from the inside.

1026 ^{Pf}

1027 2. The size of the window opening shall be at least 20 inches by 24 inches irrespective of height or
1028 width.^P

1029 3. No portion of the window, including stops, stools, meeting rails and operator arms, shall infringe on
1030 the required opening.^{Pf}

1031 4. For any window used for exiting, the lowest point of opening shall be no more than 60 inches above
1032 the floor.^{Pf}

1033 5. If the lowest point of opening is more than 46 inches above the floor, a permanent platform or fixture
1034 shall be installed such that a flat surface at least 20 inches wide and 9 inches deep is located no more than
1035 46 inches directly below the clear opening.^{Pf}

1036 6. An egress window under a deck or porch shall discharge through a clear path of at least 36 inches in
1037 height and 36 inches in width, and no more than 15 feet in length, to a yard or open space.^{Pf}

1038 **(5) DOOR LOCKS.** (a) *General*. Except as specified in (b) doors to all individually keyed units shall
1039 be provided with a key or other electronic locking mechanism from the outside and a non-key locking
1040 mechanism from the inside.^P

1041 (b) *Sliding exterior door*. A sliding exterior door is not required to be provided with a key or other
1042 electronic locking mechanism from the outside but shall be provided with a non-key locking mechanism
1043 from the inside.

1044 **(6) BUILDING EVACUATION DIAGRAM.** (a) *Hotel, motel and condominium*. Except for an
1045 individually keyed unit that exits immediately to grade, an individually keyed unit in a hotel, motel, or
1046 condominium shall be provided with a building evacuation diagram and meet all of the following:

1047 1. Be conspicuously posted.^{Pf}

1048 2. Indicate the viewer's location. ^{Pf}

1049 3. Indicate a minimum of 2 evacuation routes to emergency exit doors. ^{Pf}

1050 (b) *Tourist rooming house.* A tourist rooming house shall be provided with a building evacuation
1051 diagram and meet all of the following:

1052 1. Be conspicuously posted in each sleeping room or provided in the check-in materials given to the
1053 guest. ^{Pf}

1054 2. Indicate a minimum of 2 evacuation routes that lead to the exterior pursuant to sub. (4). ^{Pf}

1055 **(7) EMERGENCY EGRESS.**

1056 (a) *Emergency lights.* If provided, all emergency lights located in designated stairwells, aisles,
1057 corridors, and passageways leading to an exit shall be operational and maintained in good repair. ^{Pf}

1058 (b) *Exit signs.* If provided, all exit signs shall be:

1059 1. Illuminated and visible from any direction of exit access. ^{Pf}

1060 2. Maintained in good repair. ^{Pf}

1061 3. Provided with a directional indicator showing the direction of travel when the nearest exit is not
1062 apparent. ^{Pf}

1063 4. Displayed to read "EXIT." ^{Pf}

1064 (c) *Emergency exit doors.* Emergency exit doors shall:

1065 1. Not be blocked to prevent use. ^P

1066 2. Be provided with a knob, panic bar, or other simple type of releasing device having a method of
1067 operation that is obvious under all lighting conditions. ^{Pf}

1068 3. Open in the direction of egress. ^{Pf}

1069 **(8) EMERGENCY ASSISTANCE.** Pursuant to s. 97.623, Stats., every hotel shall offer to every guest,
1070 at the time of registration an opportunity to identify oneself as a person needing assistance in an emergency
1071 and shall keep a record at the registration desk of where each person so identified is lodged. ^{Pf}

1072 **(9) FIRE PREVENTION.** (a) *Fire alarm and detection systems.* If provided, the operator shall maintain
1073 the fire alarm system and shall meet all of the following:

- 1074 1. The fire alarm system shall be operational at all times that the building is occupied. ^P
- 1075 2. The operator shall immediately notify the fire alarm system service company or other qualified
1076 personnel per national fire protection association 72 National Fire Alarm and Signaling Code, in response
1077 to any illuminated indicator for alarm, trouble or supervisory signals on the fire alarm control panel. ^{Pf}
- 1078 3. The operator shall maintain documentation that verifies the fire alarm system, to include any smoke
1079 detectors and carbon monoxide detectors, has been inspected and tested annually by a fire alarm system
1080 service company or other qualified personnel per national fire protection association 72. ^{Pf}
- 1081 4. Documentation required in subd. 3. shall be provided to the department or its agent upon request. ^{Pf}
- 1082 **Note:** Documentation can include the fire alarm and emergency communication system inspection and
1083 testing form provided by the fire alarm system service company, other qualified personnel per national fire
1084 protection association 72, or the fire inspection report provided by the local fire department.

1085 (b) *Fire Extinguishers.*

- 1086 1. If provided, fire extinguishers in a tourist rooming house that is a one- or 2-family dwelling, cabin,
1087 cottage or specialty lodging unit must be located in a readily accessible conspicuous area, and the
1088 extinguisher must be maintained according to the manufacturer's instructions.

1089 **Note:** A fire extinguisher may need to comply with local fire code occupancy requirements; the local fire
1090 prevention authorities may require annual maintenance examinations. Contact the local fire department or
1091 fire marshal's office for requirements.

- 1092 2. In a motel, hotel or condominium fire extinguishers shall be:

- 1093 a. Labeled to identify the class type of extinguisher. ^{Pf}
- 1094 b. Provided with label instructions on the use of the extinguisher. ^{Pf}
- 1095 c. Provided with a tag to identify last date of service. ^{Pf}
- 1096 d. Serviced or tested every 12 months. ^{Pf}
- 1097 e. Provided with a pressure gauge. ^{Pf}
- 1098 f. Maintained in working order and proper pressure. ^{Pf}

- 1099 (c) *Fire rated doors.* If provided, fire rated doors shall be:

- 1100 1. Labeled with a visible fire rating.
- 1101 2. Self-closing.
- 1102 3. Closed unless interconnected with fire alarm system. ^{Pf}

1103 **(10) VENTILATION**

1104 (a) *Discharge of combustion pollutants.* 1. Fuel-burning appliances shall vent outdoors in accordance
1105 with the manufacturer's installation specifications. ^P

1106 2. The piping used for ventilation shall be maintained in good repair. ^P

1107 (b) *Unvented fuel-burning appliances.* 1. Except as provided under subd. 2., the use of unvented fuel-
1108 burning appliances, furnaces, and space heaters shall be prohibited. ^P

1109 2. A fuel-burning range or oven is not required to vent to the outdoors unless specified by the
1110 manufacturer's installation specifications.

1111 **(11) SMOKE ALARMS** (a) *Smoke alarms required.* The operator shall provide smoke alarms within
1112 each individually keyed unit at the locations specified in par. (b). ^P

1113 (b) *Locations.* A functional smoke alarm shall be located:

1114 1. On each floor level to include a basement and at the top of any stairway but excluding crawl spaces
1115 and unfinished attics. ^{Pf}

1116 2. Outside of each separate sleeping area, within 21 feet of any door to a sleeping room, with the
1117 distance measured along a path of travel. ^{Pf}

1118 3. Within each sleeping room. ^{Pf}

1119 (c) *Certification.* Smoke alarms shall conform to Underwriters Laboratories, Inc. standard 217 smoke
1120 alarms and bear the UL listing mark or a similar mark from an independent product safety certification
1121 organization.

1122 **Note:** The UL listing mark typically consists of 4 elements: UL in a circle symbol, the word "Listed",
1123 product name, and control number. ^P

1124 (d) *Manufacturer directions and specifications.* The operator shall install every smoke alarm required
1125 by this subsection according to the directions and specifications of the manufacturer of the smoke alarm. ^{Pf}

1126 (e) *Maintenance requirements.* A smoke alarm shall be maintained in working order and replaced in
1127 accordance with the manufacturer's date of expiration. When notified by the department or its agent of a
1128 non-functional or expired smoke alarm, the operator shall notify the department or its agent within 5
1129 calendar days that a smoke alarm has been repaired or replaced. ^P

1130 (12) CARBON MONOXIDE ALARMS. (a) *Carbon monoxide alarms required.* Except as provided in
1131 par. (i), the operator shall provide carbon monoxide alarms as required under pars. (b) to (d). ^P

1132 (b) *Fuel-burning appliances within an individually keyed unit.* A carbon monoxide alarm shall be
1133 provided in the locations as specified under par. (e), for in each individually keyed unit that contains a fuel-
1134 burning appliance. ^P

1135 (c) *Fuel-burning appliances outside of an individually keyed unit.* A carbon monoxide alarm shall be
1136 provided in the locations as specified under par. (e), for each individually keyed unit located in a lodging
1137 facility that contains a fuel-burning appliance, except as follows:

1138 1. A carbon monoxide alarm is not required in each individually keyed unit where there is not a
1139 communicating opening between the fuel-burning appliance and the individually keyed unit. ^P

1140 2. A carbon monoxide alarm is not required in each individually keyed unit where a carbon monoxide
1141 alarm is provided in one of the following locations:

1142 a. Between the fuel-burning appliance and the individually keyed unit. ^P

1143 b. On the ceiling of the room containing the fuel-burning appliance. ^P

1144 (d) *Private garages.* A carbon monoxide alarm shall be provided in the locations as specified under
1145 par. (e), for each individually keyed unit with an attached private garage, except as follows:

1146 1. A carbon monoxide alarm is not required in each individually keyed unit where there is not a
1147 communicating opening between the private garage and the individually keyed unit. ^P

1148 2. A carbon monoxide alarm is not required in each individually keyed unit located more than one story
1149 above or below the private garage. ^P

1150 3. A carbon monoxide alarm is not required where the private garage connects to the building through
1151 an open-ended corridor. ^P

1152 4. A carbon monoxide alarm is not required in each individually keyed unit when a carbon monoxide
1153 alarm is provided between the opening to the private garage and an individually keyed unit. ^P

1154 5. A carbon monoxide alarm is not required where the private garage has an opening designed to
1155 provide natural ventilation or is mechanically ventilated. ^P

1156 (e) *Locations*. If required under pars. (b) to (d), a carbon monoxide alarm shall be installed in the
1157 following locations:

1158 1. In an individually keyed unit, outside of each separate sleeping area within 21 feet of any door to a
1159 sleeping room, with the distance measured along a path of travel. ^{Pf}

1160 2. In a sleeping room, if a fuel-burning appliance is located within the sleeping room or its attached
1161 bathroom. ^{Pf}

1162 (f) *Certification*. A carbon monoxide alarm shall conform to Underwriters Laboratories, Inc. standard
1163 2034 single and multiple station carbon monoxide alarms and bear the UL listing mark or a similar mark
1164 from an independent product safety certification organization.

1165 **Note:** The UL listing mark typically consists of 4 elements: UL in a circle symbol, the word “Listed”,
1166 product name, and control number.

1167 (g) *Manufacturer directions and specifications*. The operator shall install every carbon monoxide alarm
1168 required by this subsection according to the directions and specifications of the manufacturer of the carbon
1169 monoxide alarm. ^{Pf}

1170 (h) *Maintenance requirements*. A carbon monoxide alarm shall be maintained in working order and
1171 replaced in accordance with the manufacturer’s date of expiration. When notified by the department or its
1172 agent of a non-functional or expired carbon monoxide alarm, the operator shall notify the department or its
1173 agent within 5 calendar days that a carbon monoxide alarm has been repaired or replaced. ^P

1174 (i) *Exception*. Subsections (a) to (h) do not apply to the operator if all of the fuel-burning appliances in
1175 the lodging facility are a sealed combustion appliance that is covered by the manufacturer's warranty against
1176 defects.

1177 **ATCP 72.19 Building and premises maintenance. (1) MAINTAINED CLEAN AND IN GOOD**
1178 **REPAIR.**

1179 (a) *Sleeping rooms.* The floors, walls, and ceiling, in a sleeping room shall meet all of the following:

1180 1. Maintained in a clean condition.

1181 2. Maintained in good repair.

1182 (b) *Common areas.* 1. The floors, walls, and ceilings in areas other than sleeping rooms shall meet all
1183 of the following:

1184 1. Maintained in a clean condition.

1185 2. Maintained in good repair.

1186 (c) *Exterior premises.* 1. The roof, exterior walls, doors and windows shall be maintained in good
1187 repair.

1188 2. Parking areas and roadways shall be properly graded, drained, and maintained.

1189 **(2) PEST CONTROL.** Every lodging facility shall be maintained to prevent the entrance, harborage, or
1190 infestation of pests, vermin, or wildlife.

1191 (a) *Effective measures.* 1. Effective measures to minimize the presence of pests shall be utilized. The
1192 department or its agent may order the operator to hire a licensed pest control operator to exterminate the
1193 pests under the following conditions:

1194 a. The infestation is so extensive that it is unlikely that a nonprofessional can eradicate the pests
1195 effectively. ^P

1196 b. Upon a reinspection from the department or its agent pursuant to s. ATCP 72.09 (1) (b), the
1197 establishment continues to be in noncompliance with a prior order to rid the establishment of pests. ^P

1198 2. In the event the operator is unable to secure a licensed pest control operator, the temporary order
1199 issued pursuant to ATCP 72.26 (2) may be extended pursuant to ATCP 72.09 (3) (b).

1200 3. a. Openings to the outside shall be protected from the entrance of pests. ^{Pf}

1201 b. All windows that can be opened in each individually keyed unit shall be screened, using 16 mesh or
1202 finer material.

1203 4. Pest control measures shall be used in a safe manner and applied according to label instructions. ^P

1204 (b) *Restricted use pesticides.* A restricted use pesticide shall be applied only by an applicator certified
1205 and licensed in accordance with ss. 94.704 and 94.705, Stats., and ss. ATCP 29.25, 29.26 and 29.40. ^{Pf}

1206 **Note:** For bed bugs, when the presence of live or dead bed bugs, eggs, skin casts, or fecal spotting are
1207 identified in an individually keyed unit, it is recommended to perform an investigation in the rooms adjacent
1208 to the identified room and the rooms above and below the identified room.

1209 (4) **HAZARDOUS SUBSTANCES.** (a) *Use.* Chemicals, flammable materials, and other hazardous
1210 substances shall be used for their intended purpose and according to the manufacturer's directions stated
1211 on the container label. ^P

1212 (b) *Storage.* 1. Chemicals, flammable materials, and other hazardous substances shall meet all of the
1213 following:

1214 a. Except as specified under subdpar. d., stored in their original, covered and labeled containers
1215 following safety data sheet storage instructions. ^P

1216 b. Stored in a separate, secure area accessible only to staff, except for chemicals used for utensil
1217 sanitization under s. ATCP 72.20 (6). ^P

1218 c. Stored in a secure location in an area that cannot contaminate food, utensils, linens, and single-service
1219 or single-use articles.

1220 d. Working containers used for storing chemicals and other hazardous substances taken from bulk
1221 supplies shall be clearly and individually identified with the common name of the material. ^{Pf}

1222 (c) *Disposal.* Hazardous substances shall be disposed of in a manner and location as directed on the
1223 manufacturer's label, the safety data sheet or the local agency having jurisdiction over handling hazardous
1224 substances and the applicable sections of chs. NR 660 to 670, as enforced by the Wisconsin department of
1225 natural resources. ^{Pf}

1226 **ATCP 72.20 Furnishings, equipment and utensils. (1) DESIGN.** All equipment and furnishings
1227 shall be designed, constructed, and made of a material that can be easily cleanable.

1228 (2) INSTALLATION. All furnishings and equipment shall be installed in a way that facilitates the
1229 cleaning of the furnishings and equipment and all adjacent areas.

1230 (3) MAINTENANCE. All furnishings, equipment, and utensils shall be maintained in good repair.

1231 (4) CLEAN CONDITION. (a) *General*. All furnishings and equipment and shall be kept clean.

1232 (b) *Jetted, fill and drain bathtubs*. If a lodging facility is equipped with a jetted, fill and drain bathtub,
1233 then the operator shall demonstrate knowledge regarding the cleaning and sanitization procedures used
1234 between guests. ^{Pf}

1235 (5) FOOD-CONTACT UTENSIL SURFACES. Food-contact utensil surfaces shall be:

1236 (a) Free of cracks or chips.

1237 (b) Smooth and easily cleanable.

1238 (c) Nontoxic. ^P

1239 (d) Corrosion-resistant.

1240 (e) Durable.

1241 (f) Nonabsorbent.

1242 (6) UTENSIL WASHING AND SANITIZATION. (a) *Methods*. Except as provided under par. (e), all
1243 utensils shall be washed, rinsed, and sanitized on the premises before being provided to a different guest.

1244 ^P

1245 (b) *Equipment*. Utensil washing and sanitization shall occur using any of the following:

1246 1. A 2 or 3 compartment sink.

1247 2. An NSF/ANSI 184 certified residential dishwashers.

1248 3. A non-certified residential dishwasher with a separate sanitization step performed in accordance with
1249 subd. (c) 3.

1250 4. An NSF/ANSI 3 certified commercial dishwasher.

1251 (c) *Procedure*. Utensils shall be:

1252 1. Washed using a dish detergent. ^{Pf}

1253 2. Rinsed after washing and before sanitization. ^{Pf}

1254 3. Sanitized using any one of the following methods:

1255 a. Manual chemical sanitization using chlorine (bleach), iodine, quaternary ammonia or another United

1256 States environmental protection agency approved sanitizer. ^P

1257 b. Mechanical hot water or chemical sanitization following the manufacturer's directions for use. ^P

1258 c. Any other method approved by the department. ^P

1259 4. Utensils shall be air-dried before storage.

1260 (d) *Operator-provided sanitization.* 1. Except as provided in par. (e) and (f), an individually keyed

1261 unit shall be provided with clean and sanitized multi-use food and beverage utensils, including

1262 kitchenware, tableware, drinking containers, ice trays, ice buckets, or automatic ice making storage bin. ^P

1263 2. The person in charge shall be able to demonstrate full knowledge of their utensil washing, rinsing

1264 and sanitizing procedures. ^{Pf}

1265 3. Testing devices for a chemical used under par. (c) 3. a. shall be used to monitor sanitizer

1266 concentration. ^{Pf}

1267 4. Testing methods for mechanical hot water dishwashers for monitoring sanitization effectiveness are

1268 as follows:

1269 a. NSF/ANSI 184 certified residential dishwasher shall follow the manufacturer's directions for

1270 use for utensil sanitization. ^{Pf}

1271 b. NSF/ANSI 3 commercial dishwashers shall use a thermal label or other approved temperature

1272 measuring device. ^{Pf}

1273 (e) *Guest-provided sanitization.* If an individually keyed unit is not supplied with sanitized

1274 multiuse food and beverage utensils, the operator shall perform all of the following: ^{Pf}

1275 1. Any visibly soiled utensil shall be washed and rinsed pursuant to subd. (c) 1. and 2.

1276 2. a. The operator shall provide a sign with the following message: "Food and beverage utensils

1277 have been provided in this lodging facility as a guest convenience. They have not been sanitized. It is

1278 recommended that you wash with a detergent, rinse with clean water and sanitize utensils before their

1279 use. ^{Pf}

1280 b. The signage shall also include the directions on proper utensil sanitization using an approved
1281 sanitizer pursuant to par. (c) 3. ^{Pf}

1282 **Note:** For example, to sanitize using bleach, “after rinsing, add 1 teaspoon of unscented bleach per
1283 gallon of clean water and immerse utensils for a minimum of 30 seconds, then air dry”.

1284 3. The sign shall be legible and posted in a conspicuous location or provided with the check-in materials.

1285 4. The operator shall provide the means for sanitizing utensils on the premises. Chemical sanitizers
1286 shall be stored along with other cleaning products in the original, labeled container and out of reach of
1287 young children. Chemical sanitizers may be stored at the office or other central location but must be made
1288 available to the guest upon request. ^{Pf}

1289 (f) If an ice bucket is provided with single-use disposable liner, the ice bucket may be cleaned with a
1290 spray sanitizer.

1291 (g) The reuse of unwrapped or unprotected single-service utensils is prohibited. ^P

1292 (7) STORAGE. All clean food and beverage utensils shall be stored and handled in a manner that protects
1293 them from contamination.

1294 (8) CLEANLINESS OF LINENS. (a) *Cleaned between guests.* If provided, pillowslips, sheets,
1295 duvet covers, towels, washcloths, bathrobes or slippers shall be laundered as frequently as they are
1296 assigned to a different guest and at least once a week for extended guest stays.

1297 (b) *General.* Blankets, bedspreads, comforters, mattresses, mattress coverings, pillows and decorative
1298 pillows shall be maintained clean.

1299 (c) *Restrictions.* All bed coverings shall be washable.

1300 (d) *Mattress coverings.* Mattresses shall be provided with a nonabsorbent mattress protector that
1301 covers the entire sleeping surface or have an easily cleanable nonabsorbent mattress surface.

1302 (e) *Separation of clean and soiled linen.* Laundry carts, bins, or baskets shall be designated for
1303 either soiled or clean linen and shall only be used for that purpose.

1304 (f) *Storage of clean linen.* Clean linen shall be stored in a clean, dry location, and not exposed to
1305 contamination.

1306 **ATCP 72.21 Food. (1) LICENSE.** (a) *Retail food establishment activities.* Except as provided under
1307 par. (b), any operator who conducts food preparation activities or conducts retail food sales of TCS foods
1308 shall meet the requirements under ch. ATCP 75 and obtain a retail food establishment license.

1309 (b) *Allowable food items offered to guests.* The operator may provide any of the following without
1310 obtaining a retail food establishment license: ^P

1311 1. Non-TCS prepackaged food items including cookies, crackers, popcorn, pretzels, coffee and other
1312 food items that do not require hot or cold holding for food safety.

1313 2. Dry bulk spices such as salt and pepper.

1314 3. Grocery shopping as requested by the guest. a. All TCS food items shall be delivered and placed
1315 under refrigeration in the individually keyed unit or stored in commercial refrigeration unit at the lodging
1316 facility within 2-hours after purchase. ^P

1317 b. Before food is placed in a guest refrigerator, the temperature of the refrigerator shall be 41° F. or
1318 below and verified by using an approved temperature measuring device. ^P

1319 4. TCS foods and opened non-TCS food items including ice, shall be removed from the individually
1320 keyed unit after guest check out and before assigned to another guest. ^{Pf}

1321 **Note:** Contact the municipal clerk in regard to providing alcoholic beverages.

1322 **(2) ICE.** (a) *Source.* All ice used in a lodging facility for cooling drinks or food by direct contact shall
1323 be made from a potable water supply pursuant to s. ATCP 72.16 (2). ^P

1324 (b) *Self-service commercial ice makers.* All self-service commercial ice makers shall be of the
1325 mechanical dispensing type unless ice is dispensed by an employee.

1326 (c) *Utensils used for ice.* Ice tongs or ice scoops used by employees shall be properly stored on a clean
1327 surface protected against contamination. If stored directly in ice, ice scoops and tongs shall be stored with
1328 their handles above the top of the ice.

1329 **ATCP 72.22 Employee health. (1) PERSON IN CHARGE DUTIES.** The person in charge shall inform
1330 employees of their duty to report symptoms of vomiting, diarrhea, or diagnosis of a food or waterborne
1331 communicable disease to the person in charge. ^{Pf}

1332 (2) EMPLOYEES. Employees shall report to the person in charge if they have symptoms of vomiting or
1333 diarrhea or have been diagnosed with a food or waterborne communicable disease. ^P

1334 (3) EXCLUSION OR RESTRICTION. The person in charge shall exclude or restrict an employee from
1335 working in a lodging facility that has symptoms of vomiting or diarrhea or has been diagnosed with a food or
1336 waterborne communicable disease. ^P

1337 **Note:** For guidance on exclusion or restriction of employees with a food or waterborne communicable
1338 disease, please contact the local health department.

1339 (4) CLEAN-UP OF VOMITING AND DIARRHEAL EVENTS. The operator shall have procedures
1340 for responding to vomiting or diarrheal events. The procedures shall include clean-up methods and actions
1341 employees must take to minimize the spread of contamination and the exposure of employees, consumers,
1342 food, and surfaces to vomitus or fecal matter. ^{Pf}

1343 **ATCP 72.23 Garbage and refuse. (1) GENERAL.** The operator shall provide a sufficient number of
1344 containers to hold garbage and refuse until disposal.

1345 (2) CONTAINER. (a) *Design.* Garbage and refuse shall be kept in a durable, easily cleanable, pest
1346 resistant, leak-proof and nonabsorbent container.

1347 (b) *Covered and emptied.* 1. A container shall be provided with a tight-fitting lid, door, or cover that is
1348 kept covered or closed when not in use.

1349 2. A container for holding garbage and refuse shall be emptied at a frequency that minimizes the
1350 development of objectionable odors and other conditions that attract or harbor pests.

1351 **ATCP 72.24 Registration of guests. (1) REGISTER.** The operator shall provide a written or electronic
1352 register and include all of the following:

1353 (a) The full name of the registered guest.

1354 (b) The registered guest's contact information including phone number, mailing address or email.

1355 (c) Arrival and departure dates.

1356 (d) Number of guests in the party.

1357 (2) RECORD RETENTION. The register shall be kept intact and available for inspection by

1358 representatives of the department or its agent for at least 3 years.

1359 **ATCP 72.25 Death, injury or illness reports.** The licensee or their designee shall report an incident
1360 that results in death, injury, or food, waterborne or other communicable illness where an emergency medical
1361 service response is initiated by or reported to the lodging operator relating to any provision in ch. ATCP
1362 72. The report shall be filed with the department or its agent within 2 business days following the incident
1363 by phone or email.

1364 **Note:** Report deaths, injuries, or illnesses to the bureau of food and recreational businesses by calling (608)
1365 224-4682 or emailing datcpdfsrec@wisconsin.gov; or if licensed by an agent, by contacting the agent
1366 health department.

1367 **ATCP 72.26 Closing Criteria.**

1368 **(1) REASONS FOR CLOSURE.** The operator shall close the applicable individually keyed unit,
1369 lodging facility, or affected areas of a lodging facility where an imminent health hazard is present,
1370 including:

1371 (a) *Potable water.* Unsafe water supply as pursuant to s. ATCP 72.16 (2) (h) 1. ^P

1372 (b) *Waterborne outbreak.* Confirmed waterborne outbreak pursuant to s. ATCP 72.16 (3) (c). ^P

1373 (c) *Sewage disposal system.* Pursuant to s. ATCP 72.17 (3) a lodging facility with a sewage disposal
1374 system that is determined to be unusable by the Wisconsin department of safety and professional services,
1375 their agent, or local zoning authority. ^P

1376 (d) *Fire alarm system.* A nonoperational fire alarm system pursuant to s. ATCP 72.18 (9) (a) 1., as
1377 determined by the fire department, building inspection personnel, State fire marshal, or the Wisconsin
1378 department of safety and professional services. ^P

1379 (e) *Smoke alarm.* Absence of a required smoke alarm in designated areas pursuant to s. ATCP 72.18
1380 (11) (a). ^P

1381 (f) *Carbon monoxide alarm.* Absence of a required carbon monoxide alarm in designated areas pursuant
1382 to ATCP 72.18 (12) (a). ^P

1383 (g) *Lack of pest control.* 1. Except as specified under subd 2., evidence of an infestation with an

1384 observation of numerous live pests. ^P

1385 2. Evidence of a bed bug infestation to include, live or dead bed bugs, eggs, skin casts, or fecal spotting.

1386 ^P

1387 (h) *Other hazards*. The existence of any condition creating any immediate danger to health or safety. ^P

1388 (2) ACTIONS BY THE DEPARTMENT OR ITS AGENT. If the conditions in sub. (1) are present the
1389 department or its agent shall issue a temporary order pursuant to s. ATCP 72.09 (3).

1390 **Subchapter VI**

1391 **Specialty Lodging**

1392 **ATCP 72.27. Exemptions.** In addition to the requirements under this subchapter, all the requirements
1393 under ch. ATCP 72 apply to specialty lodging except as follows:

1394 (1) WATER SYSTEMS. A specialty lodging facility with an outside water supply system approved
1395 pursuant to s. ACTP 72.16 (1) with no plumbing fixtures provided within the structure is exempt from s.
1396 ATCP 72.16 (2) (c).

1397 (2) SEWAGE DISPOSAL SYSTEM. (a) *Liquid or water carried waste*. A specialty lodging facility
1398 with no liquid or water-carried waste plumbing fixtures is exempt from s. ATCP 72.17 (1) and (2).

1399 (b) *Approved*. A specialty lodging facility with an outside toilet shall be approved pursuant to s. ATCP
1400 72.17 (5) (c).

1401 (c) *Outside toilet exemptions*. Outside toilet facilities are exempt from s. ATCP 72.17 (5) (a) (b), (d),
1402 and (e).

1403 **ATCP 72.28 Prohibitions. (1) FOOD EQUIPMENT AND SINKS.** Specialty lodging facilities shall
1404 not be provided with food contact utensils, sinks for handwashing, utensil washing, and sanitization, or
1405 cooking equipment, except for a microwave oven. ^P

1406 (2) SIZE. Specialty lodging facilities shall not exceed 1,500 square feet by measuring the exterior
1407 footprint formed by the exterior walls. The exterior footprint does not include porches or decks not used
1408 for overnight sleeping accommodations.

1409 **ATCP 72.29. General provisions. (1) WATER SUPPLY.** An outdoor potable water supply shall be

1410 available within 400 walking distance feet. ^{Pf}

1411 (2) TOILET FACILITIES. If the toilet facility is located outside the specialty lodging unit the toilet
1412 shall be available within 400 walking distance feet. ^{Pf}

1413 (3) COMMUNICATION TO GUESTS. Guests shall be clearly informed during the reservation process
1414 what amenities are provided in the lodging facility including:

1415 (a) Type and location of water supply.

1416 (b) Type and location of toilet facility.

1417 (c) No provision for cooking utensils or equipment, except for microwave oven.

1418 (d) No sinks are provided.

1419 (e) Electricity.

1420 (f) Heating or air conditioning.

1421 (g) Bedding and linens.

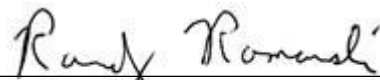
1422 SECTION 2. EFFECTIVE DATE. This rule shall take effect 90 days following publication in
1423 the Wisconsin administrative register, as provided pursuant to s. 227,22 (2) (intro), Stats.

1424

(END OF RULE TEXT)

Dated this 4 day of December, 2024

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION



By: Randy Romanski, Secretary

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date October 3, 2024
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Wis. Admin. Code. ch. ATCP 72, Hotel, Motel, and Tourist Rooming Houses	
4. Subject Hotel, Motel, and Tourist Rooming Houses	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected Wis. Stat. s. 20.115(1)(gb) Food, lodging, and recreation
7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input checked="" type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$196 - \$ 20,000	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule The department and its agent health departments license approximately 12,500 hotels, motels, and tourist rooming houses throughout the state. According to the 2023 Wisconsin department of tourism Economics Report, the lodging industry generated an estimated \$3.4 billion in direct business sales and \$1.2 billion in labor income. The lodging options available to tourists has drastically expanded beyond the typical hotel or motel room and occasional lakeside cabin that was available 40 years ago. The advent of online home rental services has added to the lodging market with new and unique overnight accommodations options for visitors inspired to experience Wisconsin. The department is proposing to modernize the antiquated Wis. Admin. Code ch. ATCP 72 with a repeal and recreation that will significantly overhaul the definitions section, modernize smoke alarm, and carbon monoxide alarm placement, address slip, trip, and fall hazards, update the licensing and fee structure, and enhance existing provisions to ensure a safe lodging experience and environment. Modernization also reflects gender inclusion considerations with the proposed revised language using the term "per person" in place of "male" or "female." The proposed updates to Wis. Admin. Code ch. ATCP 72 contain an overhaul of definitions that includes amendments, modernization and expansion of terms used in the rule for clarification. Expansion of the definitions section includes over 80 newly defined terms. This expansion is beneficial because it creates clarity, efficiency, and an opportunity for both small business and authorized representatives conducting inspections to speak the same language used within the rule. The proposed fees and licensing structure for lodging establishments will address several critical issues. As the lodging industry evolves with new business models and technologies, the existing framework has become increasingly misaligned with current practices and economic realities. The current fees do not accurately reflect the costs of regulatory oversight needed to inspect the growing industry which can create inefficiencies and delays, impacting both regulators and businesses. The licensing structure will include three license types: tourist rooming house, hotel or motel,	

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

and specialty lodging. Each lodging type will then have multiple fee options based on the number of individually keyed units being offered for overnight sleeping accommodations. A single tourist rooming house, or vacation rental, will take more time to inspect than a single hotel room which is reflected in the associated fee. In addition, the draft rule addresses facilities that expand after receiving their initial lodging license. The rule will allow for these expanded areas to be inspected for compliance and allow for the costs to complete the work to be recouped. Lastly, the rule has introduced the specialty lodging option to adapt to more primitive lodging experiences offered in other parts of the country. Updating these elements is essential to ensure a fair and effective regulatory environment, promote industry growth, and improve the overall quality of lodging services.

The proposed rule will add an annual sampling frequency for bacteriological testing of private wells which is consistent with public water systems found at other lodging facilities. The annual testing of private wells for bacteria, such as total coliform and *Escherichia coli*, is also consistent with other recreational programs regulated by the department. In addition to bacteria, the proposed rule is also intending to include an annual sampling frequency for nitrate testing of private wells which is also consistent with public water systems at other lodging facilities. According to the Wisconsin department of health services, nitrate is one of the most common groundwater contaminants in Wisconsin and studies estimate that at least 10% of private wells in Wisconsin have high levels of nitrate. The Wisconsin department of health services also indicates high nitrates in drinking water can affect infants, pregnant individuals, and may increase the risk of thyroid disease and may increase the risk of colon cancer in all individuals.

The proposed regulation includes the current installation and maintenance requirements for carbon monoxide alarms as reflected in s. 101.149, Stats., and most recently updated in 2017 Wisconsin Act 330. The updated statute language replaced the prior requirements for carbon monoxide alarms in residential buildings with standards which are similar to those in International Building Codes. The installation focus changed to put an emphasis on sleeping areas.

The proposed rule includes installation and maintenance requirements for smoke alarms consistent with s. 101.145, Stats. The areas of installation will include every floor, at the top of any stairway, outside of each sleeping area and within each sleeping room.

The department and its agent health departments have routinely observed potential slip, trip, and fall hazards at lodging facilities during pre-licensing inspections. Most often these hazards are observed at tourist rooming houses and the structures oftentimes predate any building code requirements. The proposed language will address very basic, but essential, safeguards to address the commonly observed slip, trip, and fall hazards. Items such as handrails for staircases, guards on elevated decks, balconies, lofts or other elevated surfaces, and the addition of slip-resistant materials or bathmats in bathtubs or showers that have smooth basins would be addressed in the proposed language.

The rule has proposed language to address waterborne outbreaks and additional requirements for those outbreaks involving the bacteria *Legionella* spp. The department has been involved in 14 suspected outbreaks over the course of eight years at lodging facilities involving *Legionella* bacteria which has resulted in 33 illnesses and one death. According to the United States centers for disease control and prevention, *Legionella* bacteria cause Legionnaires' disease and Pontiac fever which are spread to people through building water systems. Legionnaires' disease is a severe type of pneumonia that can lead to lung failure and even death. If a lodging facility has a confirmed *Legionella* outbreak, then the operator will be required to develop a *Legionella* water management program to control and prevent future outbreaks. The United States centers for disease control and prevention has free online resources and a toolkit to assist operators in the development of a *Legionella* water management program.

The proposed rule text has incorporated similar language that is currently used in the Minnesota Lodging Code which may require a lodging operator to hire or consult with a licensed pest control operator in cases of an extensive

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

infestation. The proposed rule still preserves current methods of allowing an operator to self-treat using non-restricted use pesticides for more manageable infestations.

The proposed language includes a new requirement for reporting death, injury, or food, waterborne or other communicable illnesses that requires an emergency medical service (EMS) response relating to the operation or maintenance of the lodging facility. For example, an EMS response for a guest that tripped and fell down the stairs would be reported to the department. However, an EMS response for a guest that suffers a heart attack would not be required to be reported. This data will assist in designing effective outreach and meaningful interventions and the data collected may help support future rule development. This data will be mutually beneficial to both small business and the department as they make continuous improvements in keeping guests safe and healthy.

The proposed language incorporates criticality methodology initially developed by the United States food and drug administration for their model food code to create a risk-based inspection system. This risk-based methodology seeks to identify those provisions that are more critical for protecting public health and to designate a risk level of hazards. Each code provision will be assigned as a core item, priority foundation item or priority item. Core items are typically designated for cleanliness or maintenance procedures. Priority foundation items, if left uncorrected over time, or in conjunction with other priority foundation items, may lead to illness or injury. Lastly, priority items, if uncorrected or are missing at the time of inspection, could significantly contribute to an increased risk for injury or illness; a nonfunctional or absent smoke alarm as an example. The criticality method provides clarity to industry by identifying those provisions which are more likely to cause illness or injury and supports a risk-based inspection approach. The criticality method has been adopted and is used in Wis. Admin. Code ch. ATPC 75, Wisconsin food code, Wis. Admin. Code ch. ATPC 76, Wisconsin pool code, and Wis. Admin. Code ch. ATPC 78, Wisconsin recreational education camp code.

The above-mentioned rule adjustments are needed to address outdated regulatory practices, adapt to evolving industry standards, overall growth, and to ensure a continued fair and efficient oversight of the lodging industry. Current regulations do not fully reflect modern business models or accurately cover the costs for enforcement of the rule. The updated proposed rule will streamline processes, enhance compliance, and support industry growth by aligning regulations with current needs and practices.

12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.

The ATPC 72 Rule Revision Advisory Committee was created to assist the department in the repeal and recreation process of Wis. Admin. Code. ch. ATPC 72. The committee was tasked with vetting the objectives outlined in the SS 010-23 Scope Statement and for developing a revised rule from those discussions. The committee was comprised of a diverse group of individuals that represented various facets of the lodging industry. Membership included individuals from the Wisconsin Hotel and Lodging Association, Wisconsin Association of Campground Owners, Wisconsin Realtors Association, Wisconsin County Code Administrators, Wisconsin Association of Local Health Departments and Boards – Environmental Health, tourist rooming house owners and department staff. Public meetings were held on the last Tuesday of the month from September 2023 until the rule language drafting process had completed in July 2024.

13. Identify the Local Governmental Units that Participated in the Development of this EIA.

NA

14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

As of early 2024, there were approximately 388 private wells located at licensed lodging facilities in the state. The Wisconsin department of natural resources matched the physical addresses of licensed lodging establishments against the physical addresses of registered private wells. This is an underestimate of the total number of statewide private wells serving lodging facilities as Dane, Milwaukee, and Taylor counties were not included. Nonetheless, the financial burden of annual water testing of private wells is a fractional impact on the industry. The Wisconsin department of natural

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

resources lists 143 laboratories certified for coliform bacteria testing and 123 laboratories certified for nitrate testing. The current water testing prices for bacteria and nitrate water tests are \$35 each at the Wisconsin state laboratory of hygiene. This would result in an annual financial burden of \$70 for this small subset of licensed lodging facilities.

The cost to remediate a lodging facility for a Legionella contamination can vary widely depending on several factors, including the size and location of the facility, the extent of the contamination, and the specific measures required for remediation. The costs can range from a few thousand dollars to tens of thousands of dollars or more and include an assessment, cleaning, disinfection, and any necessary modifications to the building or plumbing systems. The overall financial impact on the industry is minimal with less than two suspected outbreaks per year.

The cost to modify a stair handrail, or to protect an elevated surface, will vary based on factors such as the type or materials used, the quantity of materials needed for modification, and the location of the repair. Estimates can range from a few hundred dollars to thousands of dollars or more depending on materials and complexity.

The methods chose to address a slip hazard in a bathtub or shower will vary greatly in costs. A roll of slip resistant tape designed for indoor bathtub and shower use costs around \$12 for 15 feet compared to bathtub refinishing which has an estimated cost of around \$480.

The cost of a 10-year “worry-free” smoke alarm is approximately \$20 per alarm and can be installed by the lodging operator without any special equipment. A three-bedroom vacation home with two sleeping rooms on the first floor and one sleeping room in the basement may require six smoke alarms in the proposed language. The hypothetical vacation home would equate to \$120 to protect, or \$12 per year. Oftentimes, smoke alarms can be purchased in bundled quantities which will reduce the individual estimated cost per alarm.

The cost to rid a lodging facility of pests can vary widely depending on several factors, including the size and location of the facility, the extent of the infestation, and the specific treatment methods used. The costs can range from a few hundred dollars to thousands of dollars or more and include an assessment, treatment, and any necessary modifications to the building to prevent further infestations.

The department presented three various fee models to the ATCP 72 Rule Revision Advisory Committee. All three models generated nearly the same targeted revenue. Model 1 had higher fees for preinspections compared to the other models. Model 2 had higher fees for annual licenses compared to the other models. Lastly, model 3 was a blend between the other models. The committee ultimately selected model 1 as the desired fee structure.

The proposed fee structure has been expanded to offer more license options which will assist in capturing the costs of the inspection services more accurately and will distribute fees more fairly. The licenses will increase from five license options to 22 license options across the tourist rooming house, hotel and motel, and specialty lodging licensing fee categories.

The department believes the fee changes proposed will have minimal effect on small businesses. The current fees have not been modified in 14 years and the proposed fees were calculated to have a three percent increase per year for hotel and motel licenses and a six percent increase per year for tourist rooming house licenses during that timeframe. The higher fee increase for tourist rooming houses reflects the increased inspection complexity, and increased time demand for scheduling and traveling compared to a traditional hotel room.

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

The financial impact of the modernized license and fee model is low and maintains the current association between an increased fee based on the number of individually keyed units offered, through a tiered model. A lodging facility would be placed into one of three license types: tourist rooming house, hotel and motel, or specialty lodging unit. Within each license type is a range of individually keyed units with an associated fee that increases as the number of units increases. The ranges of individually keyed units have also been increased to an upper limit of 1000 or more hotel rooms compared to the current maximum of 200 or more hotel rooms. In addition, first reinspection fees and second reinspection fees have been reduced to a flat rate fee for all 22 license options.

The following tiered lodging license fee model is proposed in the revision:

Tourist Rooming House (TRH)

1 TRH \$296.00
2 to 4 TRH's \$450.00
5 to 9 TRH's \$550.00
10 to 19 TRH's \$600.00
20 to 39 TRH's \$700.00
40 to 99 TRH's \$800.00
100 to 299 TRH's \$900.00
300 to 599 TRH's \$1000.00
600+ TRH's \$1100.00

Hotel and Motel

5 to 30 Rooms \$350.00
31 to 99 Rooms \$450.00
100 to 249 Rooms \$550.00
250 to 499 Rooms \$650.00
500 to 749 Rooms \$750.00
750 to 1000 Rooms \$850.00
1000+ Rooms \$950.00

Specialty Lodging (SL)

1 SL \$296.00
2 to 4 SL's \$450.00
5 to 9 SL's \$550.00
10 to 19 SL's \$600.00
20 to 39 SL's \$700.00
40 to 99 SL's \$800.00

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

For benefits of implementing the rule, see #16 below. The alternative to implementing the rule would be to continue as is, attempting to continue to apply the existing rule to new methods, innovations, and trends not currently addressed or

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

permitted under the existing rule. Industry groups and associations would find this alternative undesirable as they are eager for the rule be updated to reflect current industry best practices and trends. Furthermore, the department would need to devote additional time and resources towards resolving the confusion that impedes implementation of the existing code (consultation, staff training and special workshops for industry).

16. Long Range Implications of Implementing the Rule

The department expects the proposed rule to have a positive long range impact on all stakeholders. The proposed rule will provide more flexibility to businesses complying with rule requirements that are consistent with recognized industry best practices. The proposed rule will allocate regulatory requirements in proportion to risk, and will support risk-based inspection methods. The proposed rule modifies the criteria for assigning license fees and uses a clearer and simpler licensing model.

The proposed rule is written to be more accommodating of new technologies, trends and methods.

The proposed rule supports expeditious investigation and resolution of any waterborne outbreaks. The revised rule clearly states requirements for operators in the event of a suspected or confirmed outbreak so that it supports efficient and effective investigation of potential waterborne illnesses.

17. Compare With Approaches Being Used by Federal Government

There are no existing or proposed federal regulations that address the activities to be regulated by this proposed rule as a whole. However, federal rules and guidance documents are cited as these documents provide industry-accepted standards for certain aspects of lodging.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois

The State of Illinois does not have a standardized state sanitation code for regulating lodging facilities. Local municipalities may regulate lodging facilities within their jurisdiction through their locally adopted ordinances. The ordinances vary from one municipality to the next.

Indiana

The State of Indiana does not have a standardized state sanitation code for regulating lodging facilities. Local municipalities may regulate lodging facilities within their jurisdiction through their locally adopted ordinances. The ordinances vary from one municipality to the next.

Iowa

The State of Iowa standardized state sanitation code for regulating lodging facilities is Iowa Code Title IV, Public Health, Chapter 137C - Hotel Sanitation Code. The Iowa Hotel Sanitation Code Subchapter III Health and Safety requirements only address four sections: plumbing, toilet and lavatory facilities, fire safety and the prohibition of employment of persons with communicable diseases.

Michigan

The State of Michigan does not have a standardized state sanitation code for regulating lodging facilities. Local municipalities may regulate lodging facilities within their jurisdiction through their locally adopted ordinances. The ordinances vary from one municipality to the next.

Minnesota

The State of Minnesota standardized state sanitation code for regulating lodging facilities is Minnesota Rules ch. 4625, Lodging Establishments, promulgated pursuant to Minnesota Statutes, ch. 157. Of the five neighboring states, the Minnesota lodging sanitation rule most closely resembles the Wis. Admin. Code ch. ATPC 72. The Minnesota department of health has recently begun the process to revise the Minnesota Lodging Code. Chapter 4625 applies to all establishments that provide overnight sleeping accommodations, such as hotels, motels, lodging establishments and resorts as defined in Minnesota Statutes.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

The proposed Minnesota Lodging Code similarly addresses maintenance and cleanliness of equipment, furnishings, buildings and premises, fall hazard prevention with handrails and guardrails, safe water supplies, sanitization of reusable dishware and utensils, waste disposal, pest control, and fire protection and safety.

19. Contact Name

James Kaplanek

20. Contact Phone Number

608-224-4735

james.kaplanek@wisconsin.gov

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The department and its agent health departments license approximately 12,500 hotels, motels, and tourist rooming houses throughout the state. According to the 2023 Wisconsin department of tourism Economics Report, the lodging industry generated an estimated \$3.4 billion in direct business sales and \$1.2 billion in labor income. The lodging options available to tourists has drastically expanded beyond the typical hotel or motel room and occasional lakeside cabin that was available 40 years ago. The advent of online home rental services has added to the lodging market with new and unique overnight accommodations options for visitors inspired to experience Wisconsin.

As of early 2024, there were approximately 388 private wells located at licensed lodging facilities in the state. The Wisconsin department of natural resources matched the physical addresses of licensed lodging establishments against the physical addresses of registered private wells. This is an underestimate of the total number of statewide private wells serving lodging facilities as Dane, Milwaukee, and Taylor counties were not included. Nonetheless, the financial burden of annual water testing of private wells is a fractional impact on the industry. The Wisconsin department of natural resources lists 143 laboratories certified for coliform bacteria testing and 123 laboratories certified for nitrate testing. The current water testing prices for bacteria and nitrate water tests are \$35 each at the Wisconsin state laboratory of hygiene. This would result in an annual financial burden of \$70 for this small subset of licensed lodging facilities.

The cost to remediate a lodging facility for a Legionella contamination can vary widely depending on several factors, including the size and location of the facility, the extent of the contamination, and the specific measures required for remediation. The costs can range from a few thousand dollars to tens of thousands of dollars or more and include an assessment, cleaning, disinfection, and any necessary modifications to the building or plumbing systems. The overall financial impact on the industry is minimal with less than two suspected outbreaks per year.

The cost to modify a stair handrail, or to protect an elevated surface, will vary based on factors such as the type or materials used, the quantity of materials needed for modification, and the location of the repair. Estimates can range from a few hundred dollars to thousands of dollars or more depending on materials and complexity.

The methods chose to address a slip hazard in a bathtub or shower will vary greatly in costs. A roll of slip resistant tape designed for indoor bathtub and shower use costs around \$12 for 15 feet compared to bathtub refinishing which has an estimated cost of around \$480.

The cost of a 10-year "worry-free" smoke alarm is approximately \$20 per alarm and can be installed by the lodging operator without any special equipment. A three-bedroom vacation home with two sleeping rooms on the first floor and one sleeping room in the basement may require six smoke alarms in the proposed language. The hypothetical vacation home would equate to \$120 to protect, or \$12 per year. Oftentimes, smoke alarms can be purchased in bundled quantities which will reduce the individual estimated cost per alarm.

The cost to rid a lodging facility of pests can vary widely depending on several factors, including the size and location of the facility, the extent of the infestation, and the specific treatment methods used. The costs can range from a few hundred dollars to thousands of dollars or more and include an assessment, treatment, and any necessary modifications to the building to prevent further infestations.

The department presented three various fee models to the ATCP 72 Rule Revision Advisory Committee. All three models generated nearly the same targeted revenue. Model 1 had higher fees for preinspections compared to the other models. Model 2 had higher fees for annual licenses compared to the other models. Lastly, model 3 was a blend between the other models. The committee ultimately selected model 1 as the desired fee structure.

The proposed fee structure has been expanded to offer more license options which will assist in capturing the costs of the inspection services more accurately and will distribute fees more fairly. The licenses will increase from five license

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

options to 22 license options across the tourist rooming house, hotel and motel, and specialty lodging licensing fee categories.

The department believes the fee changes proposed will have minimal effect on small businesses. The current fees have not been modified in 14 years and the proposed fees were calculated to have a three percent increase per year for hotel and motel licenses and a six percent increase per year for tourist rooming house licenses during that timeframe. The higher fee increase for tourist rooming houses reflects the increased inspection complexity, and increased time demand for scheduling and traveling compared to a traditional hotel room.

The financial impact of the modernized license and fee model is low and maintains the current association between an increased fee based on the number of individually keyed units offered, through a tiered model. A lodging facility would be placed into one of three license types: tourist rooming house, hotel and motel, or specialty lodging unit. Within each license type is a range of individually keyed units with an associated fee that increases as the number of units increases. The ranges of individually keyed units have also been increased to an upper limit of 1,000 or more hotel rooms compared to the current maximum of 200 or more hotel rooms. In addition, first reinspection fees and second reinspection fees have been reduced to a flat rate fee for all 22 license options.

The following tiered lodging license fee model is proposed in the revision:

Tourist Rooming House (TRH)

1 TRH \$296.00
2 to 4 TRH's \$450.00
5 to 9 TRH's \$550.00
10 to 19 TRH's \$600.00
20 to 39 TRH's \$700.00
40 to 99 TRH's \$800.00
100 to 299 TRH's \$900.00
300 to 599 TRH's \$1000.00
600+ TRH's \$1100.00

Hotel and Motel

5 to 30 Rooms \$350.00
31 to 99 Rooms \$450.00
100 to 249 Rooms \$550.00
250 to 499 Rooms \$650.00
500 to 749 Rooms \$750.00
750 to 1000 Rooms \$850.00
1000+ Rooms \$950.00

Specialty Lodging (SL)

1 SL \$296.00
2 to 4 SL's \$450.00

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

5 to 9 SL's \$550.00
10 to 19 SL's \$600.00
20 to 39 SL's \$700.00
40 to 99 SL's \$800.00

2. Summary of the data sources used to measure the Rule's impact on Small Businesses
Consultation with Wisconsin department of natural resources, Wisconsin department of health services, ATCP 72 Rule Revision Committee members, and online searches.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
 - Less Stringent Schedules or Deadlines for Compliance or Reporting
 - Consolidation or Simplification of Reporting Requirements
 - Establishment of performance standards in lieu of Design or Operational Standards
 - Exemption of Small Businesses from some or all requirements
 - Other, describe:
-

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

The proposed rule will provide more flexibility to businesses in complying with rule requirements that are consistent with recognized industry best practices. The proposed rule will allocate regulatory requirements in proportion to risk, and will support risk-based inspection methods. The proposed rule modifies the criteria for assigning license fees and uses a clearer and simpler licensing model. The current rule requires tourist rooming houses in excess of four keyed units to be licensed as a hotel which created confusion for operators and local zoning authorities. The proposed rule will allow for tourist rooming houses in excess of four keyed units to be licensed as tourist rooming houses instead of a hotel. The proposed rule will also introduce a new licensing category - speciality lodging unit. A speciality lodging unit will allow for more rustic structures or cabins as are available in other parts of the country.

The proposed first reinspection and administrative follow-up fees have been reduced to a flat rate \$150.00 and \$200.00 for a second, or subsequent, reinspection or administrative follow-up fee for all license types. Current reinspection fees range from \$120.00 to \$700.00.

The proposed rule is written to be more accommodating of new technologies, trends and methods. Lodging operators will be allowed more sanitization options for re-usable dishes and utensils. The operator will also have the option to post a consumer notice to allow the guest to sanitize dishware.

The proposed rule supports expeditious investigation and resolution of any waterborne outbreaks. The revised rule clearly states requirements for operators in the event of a suspected or confirmed outbreak so that it supports efficient and effective investigation of potential waterborne illnesses.

5. Describe the Rule's Enforcement Provisions

The department has broad general authority, pursuant to s. 93.07 (1), Stats., to adopt rules to implement programs under its jurisdiction. The department has specific authority for the requirements to issue lodging and vending licenses, pursuant to s. 97.605, Stats. The department and agent health department have specific authority to conduct pre-licensing inspections at lodging facilities, pursuant to s. 97.607, Stats. The department has specific authority to promulgate rules that establish fees, pursuant to s. 97.613, Stats. The Department and agent health departments have specific authority to enter into a written agreement to inspect hotels and tourist rooming houses, pursuant to s. 97.615, Stats. The Department has the authority to ensure that lodging facilities are operated and maintained with a strict regard to public health and safety, pursuant to 97.62, Stats. The Department and agent health departments have the power to administer and enforce

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

rules, pursuant to s. 97.625, Stats. The Department may enforce the posting of hotel rates, pursuant to s. 97.638, Stats. The Department has specific authority to enter any premises for which a license is required, pursuant to s. 97.65, Stats. The Department has specific authority for rule making, pursuant to s. 227.11 (2) (a), Stats.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

Yes No

Wisconsin Department of Agriculture, Trade and Consumer Protection

Regulatory Flexibility Analysis

Rule Subject: Hotels, Motels, and Tourist Rooming Houses
Adm. Code Reference: ATCP 72
Rules Clearinghouse #: Not assigned
DATCP Docket #: 22-R-08

Rule Summary

The department is proposing to modernize the antiquated ch. Wis. Admin. Code ATCP 72 with a repeal and recreation that will significantly overhaul the definitions section, modernize smoke alarm, and carbon monoxide alarm placement, address slip, trip, and fall hazards, update the licensing and fee structure, and enhance existing provisions to ensure a safe lodging experience and environment. Modernization also reflects gender inclusion considerations with the proposed revised language using the term “per person” in place of “male” or “female.”

The proposed updates to ch. Wis. Admin. Code ATCP 72 contain an overhaul of definitions that includes amendments, modernization and expansion of terms used in the rule for clarification. Expansion of the definitions section includes over 80 newly defined terms. This expansion is beneficial because it creates clarity, efficiency, and an opportunity for both small business and authorized representatives conducting inspections to speak the same language used within the rule.

The proposed fees and licensing structure for lodging establishments will address several critical issues. As the lodging industry evolves with new business models and technologies, the existing framework has become increasingly misaligned with current practices and economic realities. The current fees do not accurately reflect the costs of regulatory oversight needed to inspect the growing industry which can create inefficiencies and delays, impacting both regulators and businesses. The licensing structure will include three license types: tourist rooming house, hotel or motel, and specialty lodging. Each lodging type will then have multiple fee options based on the number of individually keyed units being offered for overnight sleeping accommodations. A single tourist rooming house, or vacation rental, will take more time to inspect than a single hotel room which is reflected in the associated fee. In addition, the draft rule addresses facilities that expand after receiving their initial lodging license. The rule will allow for these expanded areas to be inspected for compliance and allow for the costs to complete the work to be recouped. Lastly, the rule has introduced the specialty lodging option to adapt to more primitive lodging experiences offered in other parts of the country. Updating these elements is essential to ensure a fair and effective regulatory environment, promote industry growth, and improve the overall quality of lodging services.

The proposed rule will add an annual sampling frequency for bacteriological testing of private wells which is consistent with public water systems found at other lodging facilities. The annual testing of private wells for bacteria, such as total coliform and *Escherichia coli*, is also consistent with other recreational programs regulated by the department. In addition to bacteria, the proposed rule is also intending to include an annual sampling frequency for nitrate testing of private wells which is also consistent with public water systems at other lodging facilities. According to the Wisconsin department of health services, nitrate is one of the most common groundwater contaminants in Wisconsin and studies estimate that at least 10% of private wells in Wisconsin have high levels of nitrate. The Wisconsin department of health services also indicates high nitrates in drinking water can affect infants, pregnant individuals, and may increase the risk of thyroid disease and may increase the risk of colon cancer in all individuals.

The proposed regulation includes the current installation and maintenance requirements for carbon monoxide alarms as reflected in s. 101.149, Stats., and most recently updated in 2017 Wisconsin Act 330. The updated statute language replaced the prior requirements for carbon monoxide alarms in residential buildings with standards which are similar to those in International Building Codes. The installation focus changed to put an emphasis on sleeping areas.

The proposed rule includes installation and maintenance requirements for smoke alarms consistent with s. 101.145, Stats. The areas of installation will include every floor, at the top of any stairway, outside of each sleeping area and within each sleeping room.

The department and its agent health departments have routinely observed potential slip, trip, and fall hazards at lodging facilities during pre-licensing inspections. Most often these hazards are observed at tourist rooming houses and the structures oftentimes predate any building code requirements. The proposed language will address very basic, but essential, safeguards to address the commonly observed slip, trip, and fall hazards. Items such as handrails for staircases, guards on elevated decks, balconies, lofts or other elevated surfaces, and the addition of slip-resistant materials or bathmats in bathtubs or showers that have smooth basins would be addressed in the proposed language.

The rule has proposed language to address waterborne outbreaks and additional requirements for those outbreaks involving the bacteria *Legionella* spp. The department has been involved in 14 suspected outbreaks over the course of eight years at lodging facilities involving *Legionella* bacteria which has resulted in 33 illnesses and one death. According to the United States centers for disease control and prevention, *Legionella* bacteria cause Legionnaires' disease and Pontiac fever which are spread to people through building water systems. Legionnaires' disease is a severe type of pneumonia that can lead to lung failure and even death. If a lodging facility has a confirmed *Legionella* outbreak, then the operator will be required to develop a *Legionella* water management program to control and prevent future outbreaks. The United States centers for disease control and prevention has free online resources and a toolkit to assist operators in the development of a *Legionella* water management program.

The proposed rule text has incorporated similar language that is currently used in the Minnesota Lodging Code which may require a lodging operator to hire or consult with a licensed pest control operator in cases of an extensive infestation. The proposed rule still preserves current methods of allowing an operator to self-treat using non-restricted use pesticides for more manageable infestations.

The proposed language includes a new requirement for reporting death, injury, or food, waterborne or other communicable illnesses that requires an emergency medical service (EMS) response relating to the operation or maintenance of the lodging facility. For example, an EMS response for a guest that tripped and fell down the stairs would be reported to the department. However, an EMS response for a guest that suffers a heart attack would not be required to be reported. This data will assist in designing effective outreach and meaningful interventions and the data collected may help support future rule development. This data will be mutually beneficial to both small business and the department as they make continuous improvements in keeping guests safe and healthy.

The proposed language incorporates criticality methodology initially developed by the United States food and drug administration for their model food code to create a risk-based inspection system. This risk-based methodology seeks to identify those provisions that are more critical for protecting public health and to designate a risk level of hazards. Each code provision will be assigned as a core item, priority foundation item or priority item. Core items are typically designated for cleanliness or maintenance procedures. Priority foundation items, if left uncorrected over time, or in conjunction with other priority foundation items, may lead to illness or injury. Lastly, priority items, if uncorrected or are missing at the time of inspection, could significantly contribute to an increased risk for injury or illness; a nonfunctional or absent smoke alarm as an example. The criticality method provides clarity to industry by identifying those provisions which are more likely to cause illness or injury and supports a risk-based inspection approach. The criticality method has been adopted and is used in ch. Wis. Admin. Code ch. ATCP 75, Wisconsin food code, ch. Wis. Admin. Code ATCP 76, Wisconsin pool code, and ch. Wis. Admin. Code ATCP 78 Wisconsin recreational education camp code.

The above-mentioned rule adjustments are needed to address outdated regulatory practices, adapt to evolving industry standards, overall growth, and to ensure a continued fair and efficient oversight of the lodging industry. Current regulations do not fully reflect modern business models or accurately cover the costs for enforcement of the rule. The updated proposed rule will streamline processes, enhance compliance, and support industry growth by aligning regulations with current needs and practices.

Small Businesses Affected

The department presented three various fee models to the ATCP 72 Rule Revision Advisory Committee. All three models generated nearly the same targeted revenue. Model 1 had higher fees for preinspections compared to the other models. Model 2 had higher fees for annual licenses compared to the other models. Lastly, model 3 was a blend between the other models. The committee ultimately selected model 1 as the desired fee structure.

The proposed fee structure has been expanded to offer more license options which will assist in capturing the costs of the inspection services more accurately and will distribute fees more fairly. The licenses will increase from five license options to 22 license options across the tourist rooming house, hotel and motel, and specialty lodging licensing fee categories.

The department believes the fee changes proposed will have minimal effect on small businesses. The current fees have not been modified in 14 years and the proposed fees were calculated to have a three percent increase per year for hotel and motel licenses and a six percent increase per year for tourist rooming house licenses during that timeframe. The higher fee increase for tourist rooming houses reflects the increased inspection complexity, and increased time demand for scheduling and traveling compared to a traditional hotel room.

The financial impact of the modernized license and fee model is low and maintains the current association between an increased fee based on the number of individually keyed units offered, through a tiered model. A lodging facility would be placed into one of three license types: tourist rooming house, hotel and motel, or specialty lodging unit. Within each license type is a range of individually keyed units with an associated fee that increases as the number of units increases. The ranges of individually keyed units have also been increased to an upper limit of 1,000 or more hotel rooms compared to the current maximum of 200 or more hotel rooms. In addition, first reinspection fees and second reinspection fees have been reduced to a flat rate fee for all 22 license options.

Reporting, Bookkeeping and other Procedures

The proposed rule would require a registration of guests to be retained for at least three years. The information is used by department and agent staff to assist in the event of a disease outbreak investigation and allows staff to confirm where case patients stayed during their possible exposure period.

Professional Skills Required

The proposed rule does not require any professional skills or the associated costs on small businesses.

Accommodation for Small Business

The proposed rule will provide more flexibility to businesses in complying with rule requirements that are consistent with recognized industry best practices. The proposed rule will allocate regulatory requirements in proportion to risk and will support risk-based inspection methods. The proposed rule modifies the criteria for assigning license fees and uses a clearer and simpler licensing model. The current rule requires tourist rooming houses in excess of four keyed units to be licensed as a hotel which created confusion for operators and local zoning authorities. The proposed rule will allow for tourist rooming houses in excess of four keyed units to be licensed as tourist rooming houses instead of a hotel. The proposed rule will also introduce a new licensing category - specialty lodging unit. A specialty lodging unit will allow for more rustic structures or cabins as are available in other parts of the country.

The proposed first reinspection and administrative follow-up fees have been reduced to a flat rate \$150.00 and \$200.00 for a second, or subsequent, reinspection or administrative follow-up fee for all license types. Current reinspection fees range from \$120.00 to \$700.00.

The proposed rule is written to be more accommodating of new technologies, trends and methods. Lodging operators will be allowed more sanitization options for re-usable dishes and utensils. The operator will also have the option to post a consumer notice to allow the guest to sanitize dishware.

The proposed rule supports expeditious investigation and resolution of any waterborne outbreaks. The revised rule clearly states requirements for operators in the event of a suspected or confirmed outbreak so that it supports efficient and effective investigation of potential waterborne illnesses.

Conclusion

The department believes that the provisions in this proposed rule will benefit Wisconsin's lodging industry and is expected to impose a minimal impact on additional costs. The department expects stakeholders may favorably view consideration of rule provisions that allow industry more flexibility in meeting standards and more fairly allocate regulatory requirements.

This rule will not have a significant adverse effect on "small business" and is not subject to the delayed "small business" effective date provided in s. 227.22 (2) (e), Stats.

The department will, to the maximum extent feasible, seek voluntary compliance with this rule.

Dated this 3rd day of December 2024.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By *Adam Brock*

Adam Brock, Administrator
Division of Food and Recreational Safety



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary Randy Romanski

State of Wisconsin
Department of Agriculture, Trade and Consumer Protection
NOTICE OF PUBLIC HEARING AND COMMENT PERIOD

The Wisconsin Department of Agriculture, Trade and Consumer Protection (Department) announces that it will hold public hearings on the proposed permanent rule relating to Wis. Admin. Code ch. ATCP 72, Hotel, Motels and Tourist Rooming Houses.

The Department will hold four public hearings at the times and places shown below.

Hearing Dates and Locations:

Date: **DATE**, 2025
Time: Commencing at **TIME**
Location: **Green Bay - TBD**

Date: **DATE**, 2025
Time: Commencing at **TIME**
Location: **Wausau - TBD**

Date: **DATE**, 2025
Time: Commencing at **TIME**
Location: **Eau Claire - TBD**

Date: **DATE**, 2025
Time: Commencing at **TIME**
Location: Madison
Board Room 106, Prairie Oaks State Office Building
Department of Agriculture, Trade and Consumer Protection
2811 Agriculture Drive
Madison, WI 53718

This meeting will also be held virtually – **Enter TEAMS Information**

The Department invites the public to attend the hearings and comment on the proposed rule. Following the public hearings, the hearing record will remain open until **DATE (for 14-days after last public hearing date)**, for additional public comments. Comments may be sent to the Department at the address below, to james.kaplanek@wisconsin.gov, or to <http://docs.legis.wisconsin.gov/code/comment>

You can obtain a free copy of the hearing draft and related documents, including the economic impact analysis, by contacting the Department using the information below. Copies will also be available at the hearing. To view the hearing draft rules online, go to <http://docs.legis.wisconsin.gov/code/comment>.

Wisconsin - America's Dairyland

2811 Agriculture Drive • PO Box 8911 • Madison, WI 53708-8911 • Wisconsin.gov

An equal opportunity employer

Accessibility:

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by **DATE**, by writing to james.kaplanek@wisconsin.gov, (608) 224-4735. Alternatively, you may contact the Wisconsin Department of Agriculture, Trade and Consumer Protection TDD at (608) 224-5058. Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call James Kaplanek at (608) 224-4735 or e-mail at james.kaplanek@wisconsin.gov with specific information on your request at least 10 days before the date of the scheduled hearing. Access for individuals with disabilities is available at the hearing location.

Initial Regulatory Flexibility Analysis

The Department believes that the provisions in this proposed rule will benefit Wisconsin’s lodging industry and is expected to impose a minimal impact on additional costs. The Department expects stakeholders may favorably view consideration of rule provisions that allow industry more flexibility in meeting standards and more fairly allocate regulatory requirements.

This rule will not have a significant adverse effect on “small business” and is not subject to the delayed “small business” effective date provided in s. 227.22(2)(e), Stats.

The Department’s Regulatory Review Coordinator may be contacted by email: Bradford.Steinel@wisconsin.gov or by phone at (608) 224-5024

Department Contact:

James Kaplanek
Bureau of Food and Recreational Businesses
Department of Agriculture, Trade, and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
(608) 224-4735
james.kaplanek@wisconsin.gov

Dated this _____ day of MONTH, 2025

STATE OF WISCONSIN,
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

By _____
Randy Romanski, Secretary