



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.

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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.