



State of Wisconsin  
Governor Tony Evers

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**Department of Agriculture, Trade and Consumer Protection**

**DATE:** May 8, 2025

**TO:** Board of Agriculture, Trade and Consumer Protection

**FROM:** Randy J. Romanski, Interim Secretary  
Adam Brock, Administrator, Division of Food and Recreational Safety

**SUBJECT: ATCP 75, Retail Food Establishments**

**TO BE PRESENTED BY:** Kobby Antwi / James Kaplanek

**REQUESTED ACTION:**

At the May 8, 2025, Board meeting, the Department of Agriculture, Trade and Consumer Protection (Department) will ask the DATCP Board (Board) to approve scope statement SS 108-24 (copy attached) for potential changes to ch. ATCP 75 relating to Retail Food Establishments.

A scope statement spells out the general purpose and scope of a proposed rule. The Department may not begin drafting a proposed rule (including a proposal to amend or repeal an existing rule) until the Governor approves a scope statement for the proposed rule and the Board approves the scope statement. In accordance with Wis. Stat. § 227.135 (2), the Governor approved this scope statement for permanent rule changes on October 31, 2024, thereby allowing the Department to submit this scope statement for publication and to seek approval of the scope statement by the Board.

The scope statement was published in the November 11, 2024, *Wisconsin Administrative Register* and filed a copy with the Department of Administration at least 10 days before the Board could approve the scope statement.

On November 20, 2025, the Joint Committee for Review of Administrative Rules required a preliminary public hearing and comment period on the scope statement. Public hearings on the scope statement were announced in the administrative register on February 3, 2025. Public hearings were conducted from February 25 through the 28<sup>th</sup>, 2025 and the comment period was extended until March 14, 2025. Public hearings were conducted in the following locations: Green Bay, Stevens Point, Eau Claire, and Madison, a virtual option was also available during the Madison Public Hearing.

The Department received no comments during the public hearing process.

If the Board approves the scope statement, the Department will begin work to draft the permanent rule. Approval of a scope statement is an important initial step in a lengthy process

for enacting permanent rules. The Board will have at least two further opportunities to review the proposed rule. The Board must approve a hearing draft rule before the Department may hold public hearings on the rule proposal. The Board must also approve the final draft rule before the Department may adopt the rule. The permanent rule will be effective when the final draft has been approved by the Board and Governor, reviewed by the Legislature, and adopted by the Secretary.

# STATEMENT OF SCOPE

## Department of Agriculture, Trade and Consumer Protection

Rule No.: Chapter ATPC 75, Wis. Admin. Code

Relating to: Retail Food Establishments

Rule Type: Permanent

### 1. Finding/nature of emergency (Emergency Rule only):

Not applicable.

### 2. Detailed description of the objective of the proposed rule:

The Department of Agriculture, Trade and Consumer Protection (Department) plans to evaluate and consider modifying fees related to licensing of retail food establishments.

Fees in this rule were last modified in 2008. Over time, standard costs have continued to increase. The associated program revenue no longer has adequate revenue to recover costs. If the Department were to reduce expenditures to the level of current revenues it would result in a failure to fulfill statutory requirements under chs. 93 and 97, Stats.

### 3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

#### *Description of existing policies relevant to the rule*

The Wisconsin Department of Health Services (DHS) licensed and set standards for retail food establishments - serving meals (restaurants) starting with H 96 in 1956. In 2016, the restaurant program was transferred to the Department and incorporated into ch. 97, Stats.; and ch. ATPC 75 Retail Food Establishments. Currently, all restaurants, grocery, and convenience stores are considered retail food establishments by definition under s. 97.30 (1) (c), Stats.

Sections 93.21 (5), 97.30 (3), and 97.30 (3m), 97.30 (5), and 97.613, Stats., outlines fees for retail food establishments licensed by the Department, including a late filing fee, a license fee, a weights and measures inspection fee, a reinspection fee, and a surcharge for operating without a license.

The current retail food establishment fee schedule is established under s. ATPC 75.08, Table B, below:

Type of Retail Food Establishment	License Fee	Reinspection Fee	Additional Reinspection Fees	Late Fee	Operating Without a License Fee
<b>Retail Food Establishment – not serving meals (includes mobile retail food establishment – not serving meals)</b>					
Prepackaged TCS food	\$45.00	\$90.00	\$9.00	\$90.00	
Simple (final food product is Non-TCS)	\$60.00	\$90.00	\$12.00	\$100.00	
Simple (TCS)	\$190.00	\$190.00	\$38.00	\$100.00	
Moderate	\$265.00	\$190.00	\$53.00	\$100.00	
Complex	\$685.00	\$450.00	\$137.00	\$100.00	
<b>Retail Food Establishment – serving meals (includes Retail food establishment serving prepackaged meals and mobile retail food establishments – serving meals)</b>					
Prepackaged TCS	\$105.00	\$98.00	\$130.00	\$21.00	\$749.00
Simple	\$230.00	\$240.00	\$320.00	\$46.00	\$749.00
Moderate	\$330.00	\$353.00	\$470.00	\$66.00	\$749.00
Complex	\$540.00	\$578.00	\$770.00	\$108.00	\$749.00
<b>Transient Retail Food Establishment</b>					
Non-TCS food	\$75.00				
TCS Food	\$170.00				
Prepackaged TCS food only	\$45.00				
<b>Mobile Retail Food Establishment Base</b>					
No food preparation or processing activities	\$45.00	\$45.00	\$45.00	\$9.00	\$90.00
<b>Vending</b>					
Vending machine operator	\$125.00			\$25.00	\$749.00
Vending machine license	\$9.00 per machine				\$27.00 per machine
<b>Micro Markets</b>					
Single location	\$40.00			\$8.00	\$80.00
Multiple locations (on the same premises).	\$60.00			\$12.00	\$100.00

*New policies proposed to be included in the rule*

The Department, and DHS before it, have not modified licensing fees since 2008. Since 2008, the gap between program license revenue and the cost to the Department to perform its statutory duties has widened considerably.

Due to these factors, for a number of years the fees collected have been inadequate to fully support this program. The Department projects that the retail food establishment licensing program will have a

growing deficit even though process changes and technology improvements have been successfully implemented to improve efficiencies.

The proposed rule may consider aligning retail food establishment fees to reflect the cost more accurately to the Department for fulfilling its statutory requirements of providing inspections, investigations, education, compliance, and licensing.

#### *Policy alternatives*

The alternative to updating the rule would be to perform fewer education and inspection services to retail food establishments due to insufficient revenue generated by current fees. Without adequate funding, timely license issuance becomes more difficult leading to possible delays, potential loss of market share and other negative economic impacts on Wisconsin businesses.

#### **4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):**

The Department's authority to set fees for retail food establishments by rule is described under ss. 93.21 (5), 97.30 (3), 97.30 (3m), 97.30 (5), and 97.613, Stats.

##### Section 93.21(5), Stats. Late filing fee.

**(a)** In this subsection, "license" means a permit, certificate, registration, or license issued by the department under chs. 91 to 100, 126, or 173.

**(b)** A person who files an application for the renewal or reissuance of a license after the license has expired shall pay, in addition to the fee for the license, an additional fee equal to 20 percent of the license fee or \$5, whichever is greater. For purposes of this section, an application for a license shall not be considered an application for the renewal or reissuance of the license if the application is filed more than one year after the date of expiration of the original license.

##### Section 97.30 (3), Stats. Fees; retail food establishments licensed by department.

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

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

**(b) Reinspection fee.** If the department reinspects a retail food establishment because the department finds a violation of this chapter or rules promulgated under this chapter, the department shall charge the retail food establishment operator the reinspection fee specified under sub. (3m). A reinspection fee is payable when the reinspection is completed and is due upon written demand from the department. The department may issue a demand for payment when it issues a license renewal application form to the retail food establishment operator. This paragraph does not apply to a retail food establishment that is a micro market.

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

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

Section 97.30 (3m), Stats. FEE AMOUNTS. The department shall specify by rule the amount of the fees under sub. (3) for a restaurant. Unless otherwise required by department rule, the fees required under sub. (3) for a retail food establishment other than a restaurant are:

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

1. An annual license fee of \$90.

2. A reinspection fee of \$60.

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

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

1. An annual license fee of \$210.

2. A reinspection fee of \$140.

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

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

1. An annual license fee of \$80.

2. A reinspection fee of \$80.

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

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

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

Section 97.30 (5), Stats. RULE MAKING. The department may promulgate rules to establish the fees required under sub. (3) or to govern the operation of retail food establishments. Rules may include standards for the construction and maintenance of facilities; the design, installation, cleaning and maintenance of equipment and utensils; personnel sanitation; food handling, display and storage; and food sources and food labeling. No rule promulgated under this subsection may prohibit dogs from the premises of a retail food establishment that sells only previously packaged food.

Section 97.613, Stats. Fees. Except as provided in s. 97.615 (2) (d) and (e), the department shall promulgate rules that establish, for licenses issued under s. 97.605, license fees, pre-licensing inspection

fees, reinspection fees, fees for operating without a license, late fees for untimely renewal, fees for comparable compliance or variance requests, and fees for pre-license review of restaurant plans.

**5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:**

The Department estimates that the work associated with developing and promulgating the proposed rule, including conducting advisory group meetings, will require approximately 300 hours.

**6. List with description of all entities that may be affected by the proposed rule:**

Entities that may be affected include owners and operators associated with restaurants, grocery stores, convenience stores, mobile food establishments, retail food stores, micro markets, vending machines, transient food operations, and the general public that consumes food from retail food establishments. Local health department agent programs would also be affected by the proposed rule.

**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

The U.S. Food and Drug Administration (FDA) provides a model guidance to State retail food programs, called the FDA Model Food Code, which Wisconsin has adopted, it addresses food safety standards, but does not address license fees.

**8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):**

Since 2008, the gap between program license revenue and the cost to the Department to perform its statutory duties has widened considerably. Modifications to the rule may have a slight to moderate impact on all retail food establishments including owners and operators of restaurants, grocery stores, convenience stores, mobile food establishments, retail food stores, micro markets, vending machines, and transient food operations. Most affected entities are small businesses, pursuant to the definition under s. 227.485 (2) (c), Stats.

**Contact Person:** James Kaplanek, Division of Food and Recreational Safety; (608) 224-2735

Signed this 14 day of October 2024.



Randy J. Romanski  
Secretary  
State of Wisconsin Department of Agriculture, Trade and Consumer Protection