



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: July 7, 2017

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary *Ben Brancel*
Dr. Steve Ingham, Division of Food and Recreational Safety Administrator *Steve Ingham*

SUBJECT: Ch. ATCP 74—Local Agents and Regulation; Final Draft

PRESENTED BY: Dr. Steve Ingham

REQUESTED ACTION:

At the July 20, 2017, Board meeting, the Department of Agriculture, Trade and Consumer Protection (“Department”), will ask the Board to approve the final rule (copy attached) clarifying and detailing the contractual relationship between the Department and agent health programs.

SUMMARY:

Background

On July 1, 2016, Wis. Admin. Code Ch. DHS 192 and the section of Wis. Admin. Code Ch. ATCP 75 related to agent programs were combined to create a new Wis. Admin. Code Ch. ATCP 74, relating specifically to the relationship of the Department’s new Division of Food and Recreational Safety (“DFRS”) and its local health department agent programs. The proposed Wis. Admin. Code Ch. ATCP 74 final rule clarifies the Department’s expectations for agent program licensing, investigation, and inspection systems related to retail food, vending, lodging, and recreational establishments, aligning those expectations with statutory requirements.

Rule Content

The rule specifically includes the following:

- This rule merges, expands, and clarifies definitions used by both agencies in the past.
- This rule clarifies the requirements for the qualifications and certification required for persons doing food inspection work and for persons supervising inspectors who have not achieved that qualification.
- This rule updates the contract language and requirements for the contracts between the Department and local health departments wishing to work as agents for the Department.
- This rule sets a time limit before renewal on the contracts between the Department and agent programs.
- This rule sets out procedures and requirements for becoming an agent of the Department.

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- This rule sets out procedures for termination of the contract between the Department and an agent program by either the agent program or the Department.
- This rule sets out requirements for inspection protocols, the recording and storage of inspection results, and for sampling and enforcement actions to be taken.
- This rule clarifies the financial relationship between the Department and the agent program as well as between the agent program and the businesses it regulates. It also clarifies the responsibility for accountability for financial records for the agent programs.

Fiscal Impact

Additional staff will not be required for the Department to enforce the proposed rule. The Department will train staff on the new requirements, and the new requirements will be enforced as part of the agent program oversight and evaluation.

Business Impact

The Small Business Regulatory Review Board did not issue a report on this rule. This rule change is anticipated to have no impact on small business. The focus of this rule is on the administration of the local agent programs and has no overall impact on small businesses. The rule was posted for general comment including any potential economic impact. The Department received comments from organizations that represent businesses, including small businesses, inspected by local health agents. The Wisconsin Grocers Association submitted public hearing comments in support of the rule, and the Wisconsin Association of Local Health Departments and Boards and the Wisconsin Restaurant Association indicated they neither supported nor opposed the rule.

Environmental Impact

This rule delineates contractual obligations and will have essentially no environmental impact.

Federal and Surrounding State Programs

Wis. Admin. Code Ch. ATPC 74 clarifies the unique relationship between the Department and any local health department in Wisconsin that requests to act as an agent of the Department. Local jurisdictions in each state provide state-specific and unique levels of service, so comparison of rules adopted in surrounding states with Wisconsin's rules, related to local health department agents, is of limited benefit.

Minnesota currently has only seven local health department agent programs that perform retail food establishment inspections under the oversight of the Minnesota Department of Agriculture ("MDA"). All other food-related inspections are completed under the oversight of the Minnesota Department of Health ("MDH"). The agent programs have their own fee structure and issue their own licenses. The MDA has taken parts of the 2005 FDA model Food Code and incorporated them into their administrative rules. They require a Registered Environmental Health Sanitarian ("REHS") certification for inspection staff or a degree-equivalent in order to perform food

inspections. They also require new hires without the REHS to earn that credential within two years and to operate under the supervision of a credentialed inspector until they earn the credential. The MDH has similar requirements.

Iowa also has agent-program food inspectors regulating retail food establishments. The agent programs perform only retail food inspections, follow Iowa's state rules, and must use Iowa's inspection program. They must also use Iowa's fee structure for licenses. An RS or REHS certification or supervision by a certified person for food inspections is not required, but Iowa is working toward meeting Standard 2 (Trained Regulatory Staff) in the FDA's National Voluntary Program Standards. Iowa's policies and program expectations may change as the Iowa program meets FDA's retail food inspection regulatory standards.

Michigan allows local jurisdictions to perform only restaurant inspection. All other retail food establishment inspection is done by the state. Michigan does not require restaurant inspectors to hold an RS or an REHS credential, but does have state accreditation standards that are roughly similar, and requires twenty Continuing Education Units ("CEUs") of on-going education per year as well as the successful completion of an audit. The agent programs are allowed to issue licenses and set fees.

Illinois does not perform any retail food inspection on a state level. Local programs perform all the retail and restaurant inspection. They do not issue licenses locally, but are funded by a state grant-the Local Health Program Grant. The state requires a Licensed Health Professional certification, which is Illinois' version of Wisconsin's RS or the national REHS. This certification requires five CEUs per year. The state evaluates the local programs at the same frequency Wisconsin does, and continuation of local programs depends on passing an evaluation.

Changes from the Hearing Draft

The Department incorporated the technical corrections suggested by the Rules Clearinghouse. Changes based on the public hearings and comments sent to the Department are listed in **Appendix A**.

Next Steps

If the Board and the Governor approve this rule, the Department will transmit the final 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.

Appendix A.

Public Hearings

The Department held four public hearings. Following the public hearings and the hearing record remained open until February 3, 2017. The following is a summary of the hearing attendees, including those who submitted written comments.

Public Hearing Summary

Date and Time	Location
Tuesday, January 17, 2017 10:00 a.m. to 1:30 p.m.	Room 106 (Board Room), Department of Agriculture, Trade and Consumer Protection 2811 Agriculture Drive Madison, Wisconsin 53718
Wednesday, January 18, 2017 10:00 a.m. to 1:30 p.m.	Portage County Court House 1516 Church Street Conf. Room D Stevens Point, Wisconsin 54481
Tuesday, January 31, 2017 10:00 a.m. to 1:30 p.m.	Wisconsin State Office Building, Room 129 718 West Clairemont Avenue Eau Claire, Wisconsin 54701
Wednesday, February 1, 2017 10:00 a.m. to 1:30 p.m.	Lake Michigan Room DNR Service Center 2984 Shawano Avenue Green Bay, Wisconsin 54313

List of Public Hearing Attendees and Commenters

The following is a complete list of the persons who attended the public hearing or submitted comments on the proposed rule during the public comment period, the position taken by the commenter and whether or not the individual provided written or oral comments.

Commenter #	Name and Address	Position Taken (Support or Opposed)	Method of Commenting (Oral or Written)
1.	Claire Evers 841 N. Broadway Milwaukee, WI 53202	Oppose	Written
2.	Beth Cleary 2300 S. Park Street, Room 2010 Madison, WI 53713	Oppose in part, Support in part.	Oral
3.	Michelle Kussow Wisconsin's Grocers Association 33 E Main Street, Suite 701 Madison, WI 53703	Support	Written and Oral

Commenter #	Name and Address	Position Taken (Support or Opposed)	Method of Commenting (Oral or Written)
4.	Alicia Schweitzer WI Public Health Association (WPHA)/ WI Association of Local Health Departments and Boards (WALHDAB)	None	Observe
5.	Mark Melotik Kenosha Co. Division of Health 8600 Sheridan Road Kenosha, WI 53143	Support	Oral
6.	Kristen Walters Rusk Co. Public Health Dept.	Oppose part, support part	Oral
7.	Dave Roettger Representing himself as a Registered Sanitarian	Oppose part Support part	Oral
8.	Mike Lika, Chairperson Lincoln County Board of Health	None	Written
9.	Shelley Hersil, Health Officer/Director Lincoln County Health Department	None	Written
10.	Susan Quam, Executive Vice President Wisconsin Restaurant Association	None	Written
11.	Sue Galoff, Co-President John Smith, Co-President Wisconsin Association of Local Health Departments and Boards (WALHDAB)	None	Written
12.	Nancy Eggleston, President Wisconsin Public Health Association	None	Written
13.	Gloria Wall Crawford County Public Health	None	Written
14.	Laura Temke Wauwatosa, WI	None	Written
15.	Shane Sanderson	Supports in part	Oral
16.	KT Gallagher Eau Claire City-County health Department	Support with conditions	Written and Oral
17.	Jay Ellingson Kwik Trip	None	Written and Oral

Commenter #	Name and Address	Position Taken (Support or Opposed)	Method of Commenting (Oral or Written)
18.	Jamie Michael Wisconsin Public Health Association/Wisconsin Association of Local Health Departments and Boards	None	Written
19.	Todd Troskey Oneida County Health Department	None	Written
20.	Carol Drury	Support in part Oppose in part	Written

Summary of Public Comments Resulting in Department Changes to Proposed Final Rule

The number(s) following each comment corresponds to the number assigned to the individual listed in the Public Hearing Attendees and Commenters section of this document.

Rule Provision	Public Comment Resulting in Change	Department Response
ATCP 74.18	Would like to have notification of at least one full licensing year before any policy or procedural changes that have a fiscal impact are made. (1, 2, 6, 8, 9, 11, 12, 14, 16, 18, 20)	The department agrees and included language under ATCP 74.18 and included facilitating language under ATCP 74.06 (7).
ATCP 74.04 (2)	The Wisconsin Grocers Association would like more stakeholder input in the process for initiating a contract with a local agent and also in fee increases. (3, 17)	The department agrees and included language under ATCP 74.04 (2).

**PROPOSED ORDER
OF THE WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

1 The Wisconsin department of agriculture, trade and consumer protection hereby proposes the
2 following rule *to repeal and recreate* ATCP 74, *relating to* agent status for local health
3 departments to license, investigate, and inspect retail food, vending, lodging, and recreational
4 establishments and ensure public health.

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

This rule repeals and recreates Wis. Admin. Code Ch. ATCP 74 (Retail Food Establishments; Local Government Regulation) as “Local Agents and Regulation.”

Statutes Interpreted

Statutes Interpreted: Wis. Stat. § 97.41, “Retail food: agent status for local health departments,” Wis. Stat. § 97.615, “Agent status for local health departments,” and Wis. Stat. § 97.625, “Powers of the department and local health departments.”

Statutory Authority

Statutory Authority: Wis. Stat. §§ 93.07 (1), 97.41 (2) and (5), and 97.615 (2) (b) and (e).

Explanation of Statutory Authority

The Department has specific authority, under Wis. Stat. §§ 97.41 (2) and (5) and 97.615 (2) (b) and (e), to promulgate rules to establish standards and fees for local health departments granted agent status to license, investigate, and inspect the operations of retail food, lodging, and recreational establishments within a designated jurisdiction. The Department of Agriculture, Trade and Consumer Protection (“Department”) has broad general authority, under Wis. Stat. § 93.07 (1), to adopt rules to implement programs under its jurisdiction.

Related Statutes and Rules

Wisconsin's retail food establishments, vending, lodging, and recreational establishments (including pools and water attractions, recreational and educational camps, and campgrounds) are governed by Wis. Stat. § Ch. 97, Section 97.30, "Retail food establishments," contains requirements related to retail food establishments (including restaurants) for licensing, fees, and inspection. Subchapter III, Wis. Stat. § Ch. 97, "LODGING AND VENDING MACHINES," contains requirements related to these establishments for licensing, fees, and inspection. Finally, Subchapter IV, Wis. Stat. § Ch. 97, "RECREATIONAL SANITATION," contains recreational establishment requirements for licensing, fees, and inspection.

Plain Language Analysis

On July 1, 2016, Wis. Admin. Code Ch. DHS 192 and the section of Wis. Admin. Code Ch. ATCP 75 related to agent programs were combined to create a new Wis. Admin. Code Ch. ATCP 74, dealing with the relationship of the Department's new Division of Food and Recreational Safety ("DFRS") and its local health department agent programs. Under the authority of an approved DHS scope statement, the new DFRS is now revising Wis. Admin. Code Ch. ATCP 74.

The new rule standardizes language from Wis. Admin. Code Ch. ATCP 75 and Wis. Admin. Code Ch. DHS 192. It also standardizes, expands, and clarifies definitions of agent program terms. In doing so, it clarifies Department expectations for persons hired by an agent program to hold, or be eligible to work toward holding, the Registered Sanitarian ("RS") certification. The RS certification is the preferable credential to be held by agent-program sanitarians doing food inspections and the revised rule clarifies the Department's expectations regarding inspections done by those sanitarians who have not yet earned the RS certification, as well as the staffing procedures to be followed by an agent program, if certified RS staff leave the program.

The revised Wis. Admin. Code Ch. ATCP 74 also clarifies the Department's expectations for agent program inspection systems and databases, and spells out the terms to be covered by forthcoming Department-agent contracts. It adds a mandatory expiration date, after which the contract may be renewed. The rule clarifies the Department's expectations for an agent program seeking to enter into a contractual relationship and the procedures to enter into that agreement, and it clarifies the procedures for either or both entities to end the contractual relationship. The rule also updates and clarifies the roles that both the Department and the agent program shall play under the contractual relationship and the types of support, levels of training, and information that are to be shared by each of the partners in the contractual relationship.

This new rule clarifies the responsibilities of an agent program to enforce the Wisconsin Food Code, to inform the Department of its enforcement activities, and do such sampling as is required by the Department. It also clarifies the financial responsibilities of the agent program for that sampling. In addition, the new rule clarifies the responsibilities of the Department to provide general and specialized training, and laboratory support for the agent programs.

Wis. Admin. Code Ch. ATCP 74 further clarifies statutory requirements, including reimbursements owed to the Department, the payments for services the agent program may be

required to make to the Department, and the types of financial records that the agent program shall make available to the Department upon request. In particular, it spells out the responsibility of the agent program to demonstrate that the fees charged by the local program are reasonable and used only for maintaining the local program.

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

The Federal Food and Drug Administration (“FDA”) does not have jurisdiction over retail food establishments. The Department uses the FDA’s model Food Code as the basis for its Wisconsin Food Code (ATCP 75 Appendix) that spells out retail food establishment requirements. The Department expects its agent local health department programs to enforce the same standards in the Wisconsin Food Code.

Comparison with Rules in Adjacent States

This chapter clarifies the unique relationship between the department and any local health department in Wisconsin that requests to act as an agent of the Department. Local jurisdictions in each state provide state-specific and unique levels of service, so comparison of rules adopted in surrounding states with Wisconsin’s rules, related to local health department agents, is of limited benefit.

Minnesota currently has only seven local health department agent programs that perform retail food establishment inspections under the oversight of the Minnesota Department of Agriculture (“MDA”). All other food-related inspections are completed under the oversight of the Minnesota Department of Health (“MDH”). The agent programs have their own fee structure and issue their own licenses. The MDA has taken parts of the 2005 FDA model Food Code and incorporated them into their administrative rules. They require a Registered Environmental Health Sanitarian (“REHS”) certification for inspection staff or a degree-equivalent in order to perform food inspections. They also require new hires without the REHS to earn that credential within two years and to operate under the supervision of a credentialed inspector until they earn the credential. The MDH has similar requirements.

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Summary of Factual Data and Analytical Methodologies

This rule was developed using Wis. Admin. Code Ch. DHS 192 and Wis. Admin. Code Ch. ATCP 75 and the Department's new contract with agent programs. Inquiries were also made to surrounding states in an effort to ascertain their requirements and practices for similar programs.

Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis

This rule relates to the administration of the local health department agent program and has no direct impact on small businesses. However, the rule was posted for comment on the potential economic impact and the Department received comments from organizations that represent businesses, some of which may be small businesses, who are inspected by local health department agents.

Effect on Small Business

The rule is primarily directed at local governmental units that enter into a contractual relationship with the State to do retail food, lodging, and recreational safety inspections. Since the rule clarifies contractual language, merges the language and expectations of two programs, and clarifies expectations for credentialing of staff, it should have a positive impact by allowing local governmental units to do better planning.

This rule change is anticipated to have no impact on small business. All economic impact comments were taken into account, but fiscal issues raised by business (such as capping license fees charged by agent programs) were beyond the scope of this rule.

DATCP Contact

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

Peter Haase, Director
Bureau of Food and Recreational Businesses
Division of Food and Recreational Safety
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
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Telephone: (608) 224-4711
Email: Peter.Haase@Wisconsin.gov

1 (2) “Agent program” means the retail food establishment, lodging, and recreational safety
2 regulatory program operated by an agent.

3 (3) “Contract” means a signed, written agreement between a local health department and the
4 department setting forth the obligations of each party in the operation of an agent program.

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

7 (5) “Establishment” means a retail food establishment, hotel or motel, tourist rooming house,
8 bed and breakfast establishment, vending machine, vending machine commissary, camping
9 resort or other campground, recreational camp, educational camp, public pool, or water attraction
10 licensed pursuant to ch. 97, Stats.

11 (6) “Fiscal year” means July 1 of one year through June 30 of the next year.

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

13 (8) “Inspection fee” means a fee charged by the agent program, the amount of which is
14 reasonably related to the cost of performing an assessment of an establishment’s compliance
15 with the statutes and rules, under which a license is granted.

16 (9) “Inspector” means any employee inspecting establishments for the department or the
17 agent under the jurisdiction of an agent program.

18 (10) “License” means the legal authority granted by the department or its agent to operate an
19 establishment.

20 (11) “Licensee” means the person or entity licensed to operate an establishment as defined in
21 sub. (5).

1 (12) “New agent” means an agent that has entered into its first contract with the department
2 or an agent that has applied to re-enter into a contract with the department after termination of a
3 previous contract.

4 (13) “Registered environmental health specialist/registered sanitarian” or “REHS/RS” means
5 a person who holds a REHS/RS credential awarded by the National Environmental Health
6 Association.

7 (14) “Registered sanitarian” or “RS” means an individual who is a Wisconsin-registered
8 sanitarian, pursuant to s. 440.98, Stats., and chs. DHS 174 – 177, or is recognized as a registered
9 environmental health specialist/registered sanitarian.

10 (15) “Restaurant” means a retail food establishment as defined in s. 97.01 (14g), Stats.

11 (16) “Retail food establishment” has the meaning defined in s. 97.30 (1) (c), Stats.

12 (17) “Sanitarian” means a person who is qualified to conduct inspections as an agent of the
13 department and meets the requirements under s. ATCP 74.08 (2).

14 (18) “Standard” means a department or agent employee who is certified as correctly
15 interpreting and enforcing chs. ATCP 72, 73, 75, 75 Appendix, 76, 78, and 79.

16 (19) “Standardization exercise” means an evaluation conducted by a standard to determine if
17 a sanitarian is correctly interpreting and enforcing chs. ATCP 72, 73, 75, 75 Appendix, 76, 78,
18 and 79.

19 **ATCP 74.02 Scope. (1)** This chapter applies to agent program inspection and regulatory
20 oversight of licensees and establishments, as defined in this chapter.

21 (2) An agent program shall ensure that licensees operating retail food establishments under
22 its jurisdiction comply with ch. ATCP 75 Appendix.

1 **NOTE:** Pursuant to s. 227.14 (1s), Stats., the department has published ch. ATCP 75
2 Appendix in the format of the model food code published by the United States food and drug
3 administration.

4 **(3)** An agent program shall enforce applicable provisions in ch. ATCP 70, at retail food
5 establishments conducting food processing operations but exempt from the requirement to hold a
6 food processing plant license, pursuant to s. ATCP 70.03 (7) (a), Wis. Adm. Code.

7 **ATCP 74.04 Agent status. (1) AGENT PROPOSED PROGRAM PLAN.** To become a new agent, a
8 local health department shall submit a written proposed program plan to the department, in a
9 form specified by the department, describing the proposed agent program. The proposed program
10 plan shall describe all of the following:

11 (a) Employee positions that will issue licenses or conduct investigations and inspections.

12 (b) Staffing and budget plans for issuing licenses, making investigations and inspections,
13 providing technical assistance, and enforcing applicable state statutes and rules and local
14 ordinances.

15 (c) A list of the licenses that may be issued by the agent. A local ordinance may combine and
16 expand license categories, so long as those categories include all of the types of establishments
17 that shall be licensed under the agent contract.

18 (d) A list of the fees to be charged by the agent to licensees. A local ordinance may establish
19 local license fees that differ from fees charged under chs. ATCP 72, 73, 75, 75 Appendix, 76, 78,
20 and 79 for licenses issued by the department. All license fees shall be based on the agent's
21 reasonable program costs, pursuant to s. 97.41 (4), Stats.

22 (e) A description of the inspection and enforcement program to be implemented by the agent
23 including a copy of applicable village, city, or county ordinances or regulations.

24 (f) Procedures to ensure cooperation between the agent and appropriate federal, state, local,
25 and tribal agencies in the event of a natural disaster or other emergency.

1 (g) Procedures for investigating complaints concerning licensees under the contract and
2 unlicensed activity that may require licensing and inspection.

3 (h) Procedures for notifying the department when the agent receives information or a
4 complaint concerning an establishment that may need to be licensed or inspected within the
5 agent's geographical area but under the department's jurisdiction.

6 (i) Procedures for investigating reports of suspected foodborne illness, including cooperation
7 with the department.

8 (j) Procedures to ensure the time period, within which the agent will make a determination on
9 an application for a license, does not exceed 30 days following receipt of a complete application.

10 (k) Any other information that the department may reasonably require for its review of the
11 agent's program plan.

12 **(2) LOCAL HEALTH DEPARTMENT OUTREACH TO AFFECTED LICENSE HOLDERS.** The local health
13 department shall provide opportunities for affected licensees to review the proposed program
14 plan and provide comments and feedback to the local health agency and the department.

15 **(3) DEPARTMENT ACTION ON PROPOSED PLAN.** The department shall review the proposed
16 program plan and accept or deny the application, pursuant to sub. (1), within 60 days after the
17 department receives it.

18 **ATCP 74.06 Terms of the contract. (1)** If the department accepts the proposed program
19 plan from the local health department, the department shall prepare a contract to be signed by
20 both parties, whereby the agent agrees to comply with this chapter and chs. ATCP 72, 73, 75, 75
21 Appendix, 76, 78, and 79 and has met all the conditions in the accepted program plan, including
22 enactment of local ordinances that adopt the department's rules, by reference, or are at least as
23 stringent and do not conflict with the department's rules.

1 (2) The contract shall be in effect for three fiscal years unless otherwise specified, and shall
2 remain in effect during the three fiscal years unless specifically terminated, revoked, or
3 suspended, as provided in the contract. The department shall issue contracts for future contract
4 periods to the agent by January 1 of the last fiscal year of the current contract. The agent shall
5 commit to continue as the department's agent for the future contract period, by signing and
6 returning the contract by March 1 of the last fiscal year of the current contract.

7 (3) Either party may terminate the contract by providing written notice of termination to the
8 other party at least 90 days before the termination is to take effect.

9 (4) When the contract is signed by both parties, the local health department shall assume
10 authority and the responsibility to enforce the provisions of ss. 97.30, 97.617, and 97.67, Stats.,
11 and chs. ATCP 72, 73, 74, 75, 75 Appendix, 76, 78, and 79. The agent program shall issue
12 licenses and perform all inspections necessary to enforce these statutes and rules.

13 (5) Upon execution of the contract, the department shall discontinue all licensing and
14 enforcement activities in the agent's jurisdiction, for the period of time the contract is in effect,
15 pursuant to ss. 97.30 and 97.65, Stats.

16 (6) Notwithstanding subs. (4) and (5), the department may act, pursuant to ss. 97.41 (8) and
17 97.615 (2) (h), Stats., to take appropriate inspection or enforcement action or both if the
18 department has determined that the agent program has not acted expeditiously or appropriately to
19 take such action.

20 (7) Whenever feasible, the department shall provide notice to an agent program at least one
21 fiscal year before making any changes to department policies and procedures not specified in the
22 contract that would adversely affect the budget of an agent program.

1 **ATCP 74.08 Staffing. (1)** The agent program shall have sufficient employees to implement
2 the program according to the terms of the agent program's contract with the department.

3 **(2)** Sanitarians employed by agent programs shall meet one of the following requirements:

4 **(a)** Is RS-eligible, which means having met one of the following criteria:

5 1. Holding a baccalaureate or higher degree in environmental health from an accredited
6 college or university and completing at least 30 semester or 45-quarter hour academic credits in
7 environmental, physical, biological, chemical, or environmental health courses.

8 2. Holding a baccalaureate or higher degree in physical or biological sciences from an
9 accredited college or university and completing at least 30 semester or 45 quarter hour academic
10 credits in environmental, physical, biological, chemical, or environmental health courses.

11 3. Holding a baccalaureate or higher degree from an accredited college or university.

12 4. Holding an associate degree from an accredited college, community college or technical
13 institute in environmental, physical, biological or chemical sciences.

14 **(b)** Is a RS in training.

15 **(c)** Holds a valid Wisconsin registered sanitarian or REHS/RS credential. **(3)** The agent
16 program shall employ at least one registered sanitarian to conduct inspections and supervise any
17 inspectors or sanitarians who are not registered sanitarians. The agent shall only hire sanitarians
18 who are registered sanitarians or will become registered sanitarians within 5 years after the date
19 of hire. Inspectors or sanitarians who were employed by the agent program prior to July 1, 2018,
20 and are not eligible to become registered sanitarians within 5 years, shall perform inspections
21 under the supervision of a registered sanitarian and shall be deemed competent to perform
22 inspections by passing standardization exercises.

1 **(4)** If an agent loses its only registered sanitarian, the agent shall hire a registered sanitarian
2 replacement within 120 days or, upon the agent's written request, the department may allow the
3 agent additional time to hire a qualified replacement. A replacement who is not a registered
4 sanitarian may be hired, if approved by the department, if the agent has a signed agreement with
5 another agent for a registered sanitarian to provide supervisory oversight and the replacement
6 hire shall become a registered sanitarian within six months of being hired. A copy of the
7 supervisory oversight contract shall be provided to the department and shall include the amount
8 of time allotted for oversight activities and what specific duties the supervising registered
9 sanitarian will provide.

10 **(5)** The agent shall designate a sanitarian or registered sanitarian, as required by the
11 department, to undergo the standardization exercise evaluating enforcement of ATCP 75 and its
12 Appendix. After successfully completing the exercises, the staff person shall be designated as
13 the agent standard.

14 **(6)** The agent standard shall perform department-required exercises with the department to
15 maintain his or her status as the agent standard.

16 **(7)** The agent standard shall perform standardization and maintenance exercises with other
17 sanitarians in their jurisdiction, using procedures specified by the department.

18 **(8)** The agent is required to send at least one sanitarian or registered sanitarian to attend
19 training provided by the department.

20 **(9)** An employee of the agent shall participate on department rulemaking and policy advisory
21 committees when requested.

22 **(10)** The agent may not permit an employee to conduct an inspection in a situation in which
23 the employee, a member of his or her family, or an organization with which the employee is

1 associated or has a financial interest or where the employee's relationship with any person at the
2 inspected facility could cause the employee not to be able to conduct an objective, unbiased
3 inspection.

4 (11) The agent program is solely responsible for all employment-related issues involving the
5 persons it employs in the program and for the actions or omissions of the agent program's
6 employees, except as otherwise provided by law.

7 (12) Upon the agent's request, the department shall provide technical assistance and training
8 to staff.

9 (13) The agent shall report to the department in writing any change in the assignment of a
10 supervisor of sanitarians and any change in the organization of the staff including authority line
11 changes within 10 days after the date on which it takes place. For those agents employing one or
12 two sanitarians, the agent shall also report any change in assignment of inspection staff who are
13 providing services under the contract.

14 **ATCP 74.10 Inspections.** (1) Agent program sanitarians shall inspect all establishments
15 covered in the contract for compliance with s. 97.30, Stats., subchs. III and IV of ch. 97, Stats.,
16 and chs. ATCP 72, 73, 75 and Appendix, 76, 78 and 79, Wis. Adm. Code.

17 (2) The agent program shall follow standard inspection methods and procedures prescribed
18 by the department.

19 (3) Each fiscal year the agent shall conduct one routine inspection of each licensed
20 establishment under its jurisdiction, except for vending machines and temporary retail food
21 establishments. The agent may propose a different inspection frequency to the department which
22 may only be implemented if approved by the department in writing.

1 (4) The agent program shall collect food and water samples as necessary or as requested by
2 the department.

3 (5) The agent program shall perform a pre-licensing inspection of a license applicant's
4 establishment for compliance with all applicable ordinances, rules, and statutes. The pre-
5 licensing inspection shall be conducted before the applicant is issued a license and conducts
6 business.

7 (6) The department may conduct inspections at an establishment in an agent program's
8 jurisdiction for all of the following purposes:

9 (a) Training or standardization of department staff or agent program staff.

10 (b) In response to an emergency.

11 (c) For monitoring and evaluating the agent program's licensing, inspection, and enforcement
12 program.

13 (d) At the request of the agent program.

14 (7) Whenever feasible, the department shall notify the agent program of the department's
15 intent to inspect an establishment in the agent program's jurisdiction.

16 **ATCP 74.12 Complaint Investigations. (1)** An agent program shall investigate every
17 complaint that it receives against any licensee under its jurisdiction. The agent shall prioritize
18 and investigate complaints according to the procedures in this section and procedures adopted by
19 the agent program under the contract with the department. The complaints shall be addressed in
20 decreasing order of priority as follows:

21 (a) An allegation indicating a serious or imminent public health hazard is associated with a
22 licensee or establishment under the agent program's jurisdiction.

1 (b) An allegation indicating a potential public health problem, that is neither a serious or
2 imminent public health hazard, is associated with a licensee or establishment under the agent
3 program's jurisdiction.

4 (c) An allegation of a violation, not indicating a public health hazard, associated with a
5 licensee or establishment under the agent program's jurisdiction.

6 (2) Agent programs shall notify and consult with the department and other affected agencies
7 having jurisdiction, as necessary, about complaints or foodborne or waterborne illnesses that may
8 be of significant concern to those agencies. An agent program shall coordinate complaint
9 investigations, as necessary, with other agencies having jurisdiction.

10 **ATCP 74.14 Evaluation and training.** (1) At least once each year, the agent program shall
11 submit a self-assessment in a format determined by the department. The department shall
12 evaluate the agent program based on the following required information in the self-assessment:

13 (a) The agent program's compliance with the contract terms.

14 (b) The agent program's progress in meeting program standards adopted by the department.

15 (c) The agent program's records and reports required pursuant to s. ATCP 74.20.

16 (2) At least once every three years, the department shall conduct an on-site evaluation of the
17 agent's program.

18 (3) The department shall provide the agent program with the department's written findings
19 based on the review of the self-assessment or an on-site evaluation. The department may, as
20 deemed necessary, increase the evaluation frequency.

21 (4) The agent shall submit to the department any required corrective action plan detailing
22 how the agent will meet contract requirements.

1 (5) The department shall review the corrective action plan and may make additional
2 comments or approve the corrective action plan if deemed acceptable.

3 (6) If the agent fails to meet the conditions specified in the corrective action plan, the
4 department shall:

5 (a) Notify the agent, in writing, of the deficiencies in meeting the corrective action plan and
6 place the contract in a conditional status with a deadline for the agent to meet the corrective
7 action plan conditions.

8 (b) Remove conditional status of the contract if deficiencies are corrected within the
9 conditional time period.

10 (c) Notify the agent of its intent to terminate the contract and revoke agent status, as provided
11 pursuant to ATCP 74.26, if deficiencies remain uncorrected after a conditional deadline has
12 passed.

13 (7) Notwithstanding these provisions, the department may exercise its right to immediately
14 suspend a contract, pursuant to s. ATCP 74.26 (3), to protect public health or safety.

15 **ATCP 74.16 Enforcement and sampling. (1)** The agent program shall take necessary
16 actions to enforce the provisions of s. 97.30, Stats., and subchs. III and IV of ch. 97, Stats., and
17 related administrative rules in chs. ATCP 70, 72, 73, 75, 75 Appendix, 76, 78, and 79, Wis.
18 Adm. Code, and any local ordinances or regulations, adopted pursuant to ss. 97.41 (7) and
19 97.615 (2) (g), Stats., for establishments over which the agent program has been delegated
20 authority under the contract between the department and the agent program.

21 (2) Enforcement actions may include license revocation; license suspension; fines or civil
22 forfeitures; orders to close; temporary or final hold orders on equipment, food, processes, or
23 establishments; and the placement of conditions on licenses.

1 **(3)** The agent program shall maintain a written enforcement policy that is distributed to its
2 inspection staff and shall make it available to the department during evaluations, whenever it is
3 substantively changed, or upon request.

4 **(4)** The agent program shall notify the department, in writing within 10 days, after taking any
5 enforcement action against an establishment involving license suspension, license revocation, or
6 court or administrative actions.

7 **(5)** The agent program shall be responsible for costs incurred in enforcement actions taken in
8 the agent program's jurisdiction.

9 **(6)** The agent program shall take samples requested by the department.

10 **(7)** The agent program may conduct any requested sample analyses in a laboratory certified
11 by the department, pursuant to ch. ATCP 77 for those analyses. All costs associated with
12 collecting and testing these samples shall be assumed by the agent program.

13 **(8)** The agent program shall share laboratory results with the department.

14 **(9)** Agent programs that do not have the laboratory capability to perform required analyses,
15 or choose not to perform those analyses, shall submit samples to the department's bureau of
16 laboratory services for analysis. The agent program shall assume the cost of collecting samples
17 and shipping them to the department's laboratory. The department shall assume the cost of the
18 laboratory analysis of those samples.

19 **(10)** If the department has notified an agent program of deficiencies by any licensee, in
20 complying with the enforcement provisions of this chapter or any other rules or statutes
21 applicable under the contract, and that agent program does not act expeditiously or take effective
22 action with the licensee, the department may act, pursuant to ss. 97.12, and 97.65, Stats., to
23 enforce compliance with this chapter.

1 (11) The agent, if requested by the department, shall conduct effectiveness checks after
2 product recalls or other situations in which a license holder is required to remove food from sale
3 or service.

4 **ATCP 74.18 Reimbursement and other payments for services. (1) DEPARTMENT**
5 **REIMBURSEMENT TO AGENTS.** By September 30 of each fiscal year, the department shall
6 reimburse agent programs for inspecting vending machines during the previous fiscal year under
7 terms and conditions specified in the contract. The department shall, upon written request,
8 provide any agent with information on how to request reimbursement.

9 (a) Fee reimbursements for the inspection of vending machines that have moved from one
10 agent program's jurisdiction to another shall be credited to the agent program making the first
11 inspection during the fiscal year.

12 (b) The reimbursement rate may not exceed 20% of the state license fees the department sets
13 by administrative rule for the types of establishments that the agent issues licenses. The
14 calculation of the state fees is based on state license fees only, not pre-inspection and
15 reinspection fees. The current reimbursement rate is set within these limits by the contract.

16 **(2) AGENT REIMBURSEMENT TO THE DEPARTMENT.** By September 30 of each fiscal year, agent
17 programs shall reimburse the department for each license issued by the agent program during the
18 preceding fiscal year as a fee for agent training, support, and oversight costs under terms and
19 conditions specified in the contract. The reimbursement rate may not exceed 20% of the state
20 license fees the department sets by administrative rule for the types of establishments that the
21 agent issues licenses. The department shall provide at least one fiscal year notice before an
22 increase in reimbursement occurs.

23 (a) Retail food and recreational establishment license fee reimbursement shall be:

1 1. A fee equal to 10% of the applicable state license fee, regardless of the license fee actually
2 charged by the local agent, if the local agent prepares and submits to the department, by
3 September 30 of that year, an annual self-assessment as required by ss. 97.41 and 97.615, Stats.

4 2. A fee equal to 20% of the applicable state license, regardless of the license fee actually
5 charged by the local agent, if the local agent fails to submit the annual self-assessment in par. (a)
6 to the department by September 30 of that year. A fee payment under this paragraph does not
7 exempt the agent from the duty to prepare and submit an annual self-assessment.

8 **(3) ADDITIONAL DEPARTMENT COSTS.** If an agent program has contracted with the
9 department, pursuant to s. 97.41, Stats., and s. ATCP 74.06, for the department to collect fees
10 and issue licenses, the agent program shall pay the department for the actual cost of providing
11 these services.

12 **ATCP 74.20 Reports and records. (1)** An agent program shall retain complete and accurate
13 records including, but not limited to, copies of all reports and inspections, follow-up inspections,
14 sampling, and all orders, for a minimum of 3 years after completion, and longer if required by
15 applicable statutes, rules, or local ordinances. The records shall include accurate records of all
16 licenses and license holders, license fee revenues, inspection charges, complaints, complaint
17 investigations, and all program costs.

18 **(2)** The agent program shall accurately and completely document the cost of the agent's
19 program that is administered under the contract with the department. The cost may include direct
20 costs for licensing, inspection, complaint handling and investigation, enforcement, information
21 management, reporting, and any other activities carried out within the limits of the contract with
22 the department. The costs may also include documented indirect costs normally associated with

1 the program. These costs may include staff, equipment, facilities, contract service, and other
2 documented costs allocated to the program.

3 (3) The agent program shall provide upon the department's written request all information
4 necessary to monitor the agent program's detailed costs and revenues as specified in s. ATCP
5 74.20 (2), agent program performance and activities, and the status of regulated facilities.

6 (4) The agent program shall submit to the department by the 10th of each month the
7 following specific information:

8 (a) All new licensees under the contract within the preceding month.

9 (b) All changes in the license status of existing establishments during the previous month.

10 (5) By September 1 of each fiscal year, the agent program shall provide the department with
11 a complete list of the names and addresses of persons licensed by the agent program during the
12 previous fiscal year.

13 (6) The agent shall maintain records to demonstrate that license and other program-related
14 fees collected by an agent program do not exceed the reasonable costs incurred by the agent
15 program for enforcing and administering the provisions of the contract.

16 **ATCP 74.22 Licensing and standards.** (1) The agent program shall issue licenses in its
17 jurisdiction, in accordance with s. 97.30, Stats., and subchs. III and IV of ch. 97, Stats., and shall
18 ensure that no person in its jurisdiction, subject to regulation under those statutes, operates an
19 establishment without a valid license except:

20 (a) Mobile retail food establishments, operating in more than one jurisdiction, shall be
21 licensed by the department, pursuant to s. 97.30 (2) (a), Stats.

1 1. If the mobile retail food establishment has a service base, as defined in ch. ATCP 75
2 Appendix Part 1-201.10 (B), located within an agent's jurisdictional boundary, the agent shall
3 issue the service base license.

4 2. The agent may charge an inspection fee for any inspection of a department-licensed
5 mobile retail food establishment.

6 (b) Temporary retail food establishments that operate in more than one jurisdiction shall be
7 licensed by the department pursuant to s. 97.30 (2) (a), Stats.

8 1. The department shall provide a guidance document for the agent to use to determine which
9 temporary retail food establishment license applies.

10 2. The agent may charge an inspection fee for any inspection of a department-licensed
11 temporary retail food establishment.

12 (c) Any establishment that is selling, holding, or distributing food and exempt from the
13 requirement to hold a retail food establishment license, pursuant to s. 97.30 (2) (b), Stats., is
14 under the regulatory authority of the department and may not be licensed, charged a fee, or
15 inspected in any manner related to food, dairy or meat processing, or wholesale or retail food
16 operations by the agent.

17 (2) An annual license issued by the agent program shall include:

18 (a) The individual, married couple or legal entity who will hold the license and a complete
19 street address. A website address or post office box number do not meet this requirement.

20 (b) Doing business as (DBA) name and complete address of the establishment.

21 (c) License number and expiration date.

22 (d) Type of establishment, for licensing purposes.

23 (e) Numbers of units, rooms, or sites and complexity, if applicable.

1 (3) Each license issued by the agent program shall expire on June 30, except for the
2 following:

3 (a) New licenses issued during the period beginning on April 1 and ending on June 30 shall
4 expire on June 30 of the next calendar year.

5 (b) A local health department of a city of the 1st class that has contracted with the department
6 may issue a license for a retail food establishment or a bed and breakfast establishment, pursuant
7 to ss. 97.30 (2) (am) or 97.605 (5) (b), Stats., at any time during the year. That license shall
8 expire one year after the date it was issued.

9 (4) The agent program shall notify the department when, in the performance of its duties, it
10 encounters an unlicensed establishment that falls under the department's licensing and inspection
11 authority.

12 (5) The department shall notify an agent program when, in the performance of its duties, it
13 encounters an unlicensed establishment that falls under the agent program's licensing and
14 inspection authority.

15 (6) The agent program may, pursuant to the provisions of and subject to s. ATP 75.03 (6),
16 issue an interim license.

17 (7) The agent program may not issue an interim license in response to a renewal application
18 by the holder of an existing license.

19 **ATCP 77.24 License denial, suspension, or revocation.** The agent program may deny,
20 suspend, or revoke a license or impose conditions on a license, as provided in s. 93.06 (7) and
21 (8), Stats. Except as otherwise provided by statute, rule, or local ordinance, the suspension or
22 revocation of a license shall comply with the prior notice requirements of s. 227.51, Stats.

23 **ATCP 74.26 Contract termination, revocation, refusal to renew, or suspension.**

1 **(1)** An agent program may terminate the contract upon 90 days written notice to the
2 department. The notice shall specify the reason or reasons for the termination and the last day,
3 not to exceed the term of the current contract, that the agent program will maintain its agent
4 status.

5 **(2)** If the department finds that the agent program has failed to comply with this chapter, with
6 the conditions in ss. 97.30, 97.41, Stats., or subch. III or IV of ch. 97, Stats., or with the terms
7 and conditions of the contract, the department may revoke the agent program's agent status as
8 provided in s. 97.41 (2), Stats., upon 90 days written notice to the agent program, or refuse to
9 renew a contract for the next contract period. The notice shall specify the reason or reasons the
10 agent program has had its agent status revoked or refused to renew, and shall specify the last day
11 in which the local health department may operate an agent program.

12 **(3)** If the department determines that it is necessary to suspend an agent program's contract
13 to protect public health or safety, the department may immediately suspend the contract upon
14 written notice to the agent program.

15 **(4)** The agent program, following a revocation, refusal to renew, or suspension, may request
16 a hearing if it is requested in writing by the agent program within 10 days of the department's
17 written notice. A final decision, after hearing, on a revocation or refusal to renew shall be issued
18 by the department before the last day of the contract, specified in the department's written notice.
19 If a hearing on a suspension is requested, the department shall hold it within 15 days after the
20 department receives that request, unless the parties agree to an extension. Any suspension shall
21 continue until such time as the department has issued a final decision.

1 **SECTION 2. EFFECTIVE DATE:** This rule shall take effect 90 days from the date of
2 publication in the Wisconsin administrative register, as provided under s. 227.22 (2) (b), to assist
3 local agents in complying with the proposed rule.
4

Dated this _____ day of _____, _____.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, 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. Administrative Rule Chapter, Title and Number ATCP 74, Local Agents and Regulations	
3. Subject To merge, revise, and clarify the rule, merging portions of Wis. Admin. Code Ch. ATCP 75 and Wis. Admin. Code Ch. DHS 192, setting forth the contractual relationship between the Department and local agent programs after the merger of DHS's Food and Recreational Licenses Unit with Department's Division of Food and Recreational Safety.	
4. Fund Sources Affected <input checked="" 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	5. Chapter 20, Stats. Appropriations Affected 20.115(1)(gb)
6. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget <input type="checkbox"/> Decrease Cost	
7. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input checked="" type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
8. Would Implementation and Compliance Costs Be Greater Than \$20 million? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
9. Policy Problem Addressed by the Rule The rule was not promulgated to correct a policy issue. It was promulgated to merge and clarify two existing rules from separate Departments (DATCP and DHS) following the merger of the units in these Departments that inspect food and recreational businesses.	
10. 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. This rule does not focus on business but, rather, on local health departments and their relationship with the Department.	
11. Identify the local governmental units that participated in the development of this EIA. The rule was posted for comment and many business entities provided feedback. The scope of this rule had very minimal fiscal impact on business. All comments were taken into account, but fiscal issues raised by business (such as capping license fees charged by agent programs) were beyond the scope of this rule.	
12. 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) The proposed rule change neither eliminates a fee nor creates one. The rule is primarily directed at local governmental units that enter into a contractual relationship with the State to do retail food, lodging, and recreational safety inspections. Since the rule clarifies contractual language, merges the language and expectations of two programs, and clarifies expectations for credentialing of staff, it should have a positive impact by allowing local governmental units to do better planning.	
13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefit to the implementation of this rule is that it will clarify the rules for all the local agent programs that will now work as agents of one state agency instead of two.	
14. Long Range Implications of Implementing the Rule The new rule sets out the expectations for the local agent food safety and recreational programs. It will promote statewide consistency in many areas, which will be good for businesses, consumers, and the Department.	

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

15. Compare With Approaches Being Used by Federal Government

The federal government has similar relationships with state programs that do contract inspection work for both the FDA and the USDA.

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

This chapter clarifies the unique relationship between the Department and any local health department in Wisconsin that requests to act as an agent of the Department. Local jurisdictions in each state provide state-specific and unique levels of service, so comparison of rules adopted in surrounding states with Wisconsin's rules, related to local health department agents, is of limited benefit.

Minnesota currently has only seven local health department agent programs that perform retail food establishment inspections under the oversight of the Minnesota Department of Agriculture ("MDA"). All other food-related inspections are completed under the oversight of the Minnesota Department of Health ("MDH"). The agent programs have their own fee structure and issue their own licenses. The MDA has taken parts of the 2005 FDA model Food Code and incorporated them into their administrative rules. They require a Registered Environmental Health Sanitarian ("REHS") certification for inspection staff or a degree-equivalent in order to perform food inspections. They also require new hires without the REHS to earn that credential within two years and to operate under the supervision of a credentialed inspector until they earn the credential. The MDH has similar requirements.

Iowa also has agent program food inspectors regulating retail food establishments. The agent programs perform only retail food inspections, follow Iowa's state rules, and must use Iowa's inspection program. They must also use Iowa's fee structure for licenses. An RS or REHS certification or supervision by a certified person for food inspections is not required, but Iowa is working toward meeting Standard 2 (Trained Regulatory Staff) in the FDA's National Voluntary Program Standards. Iowa's policies and program expectations may change as the Iowa program meets FDA's retail food inspection regulatory standards.

Michigan allows local jurisdictions to perform only restaurant inspection. All other retail food establishment inspection is done by the state. Michigan does not require restaurant inspectors to hold an RS or an REHS credential, but does have state accreditation standards that are roughly similar, and requires twenty Continuing Education Units ("CEUs") of on-going education per year as well as the successful completion of an audit. The agent programs are allowed to issue licenses and set fees.

Illinois does not perform any retail food inspection on a state level. Local programs perform all the retail and restaurant inspection. They do not issue licenses locally, but are funded by a state grant, the Local Health Program Grant. The state requires a Licensed Health Professional certification, which is Illinois' version of Wisconsin's RS or the national REHS. This certification requires five CEUs per year. Illinois evaluates the local programs at the same frequency Wisconsin does, and continuation of local programs depends on passing an evaluation.

17. Contact Name	18. Contact Phone Number
Pete Haase, Director-Bureau of Food Safety and Inspection	(608) 224-4711

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)

This rule is expected to have a minimal effect on businesses since they are already regulated by either DATCP or Local Agent Programs. The focus of this rule is the relationship between the Local Agent Programs and the Department (DATCP).

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

The focus of this rule is on the relationship between DATCP and agent local health departments, not businesses.

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:

This rule does not focus on business but, rather, on agent local health departments and their relationship with the Department.

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

This rule does not focus on business but, rather, on agent local health departments and their relationship with Department.

5. Describe the Rule's Enforcement Provisions

The Department is empowered to enter into contractual relationships with agent local health departments to allow them to do retail inspections and follow-up work under Wis. Stat. 97.41. Agent programs are evaluated to determine compliance with the provisions of the contract, and any failure of the evaluation or breach of contract will be a violation of Wis. Admin. Code Ch. ATCP 74. This will improve accountability of agent programs and promote consistency across the State.

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

- Yes No
-

Wisconsin Department of Agriculture, Trade and Consumer Protection

Final Regulatory Flexibility Analysis

Rule Subject: Local Agents and Regulation
Adm. Code Reference: ATCP 74
Rules Clearinghouse #: 15-R-19
DATCP Docket #: 16-082

Rule Summary

On July 1, 2016, Wis. Admin. Code Ch. DHS 192 and the section of Wis. Admin. Code Ch. ATCP 75 related to agent programs were combined to create a new Wis. Admin. Code Ch. ATCP 74 relating specifically to the relationship of the Department's new Division of Food and Recreational Safety ("DFRS") and its local health department agent programs. The proposed Wis. Admin. Code Ch. ATCP 74 clarifies the Department's expectations for agent program inspection systems, aligning those expectations with statutory requirements.

The new rule standardizes language from Wis. Admin. Code Ch. ATCP 75 and Wis. Admin. Code Ch. DHS 192. It also standardizes, expands, and clarifies definitions of agent program terms. In doing so, it spells out Department expectations for persons hired by agent programs to hold, or be eligible to obtain and to work toward holding, the Registered Sanitarian ("RS") certification. The RS certification is the preferred credential for all sanitarians doing food and recreation inspections. The revised rule clarifies the Department's expectations regarding inspection done by those sanitarians who have not yet earned the RS certification, as well as the staffing procedures to be followed by agent programs if certified RS staff leave the program.

The revised Wis. Admin. Code Ch. ATCP 74 also clarifies the Department's expectations for agent program inspection systems and databases, and spells out the terms to be covered by forthcoming Department-agent contracts. It adds a mandatory expiration date after which the contract may be renewed. The rule clarifies the Department's expectations for agent programs seeking to enter into a contractual relationship and the procedures to enter into that agreement, and it clarifies the procedures for either or both entities to end the contractual relationship. The rule also updates and clarifies the roles that both the Department and the agent program shall play under the contractual relationship and the types of support, levels of training, and information that are to be shared by each of the partners in the contractual relationship.

This new rule clarifies the responsibilities of the agent programs to enforce Department statutes, rules, and policies; to inform the Department of their enforcement activities; and do such sampling as is required by the Department. It also clarifies the financial responsibilities of the agent programs for that sampling. In addition, the new rule clarifies the responsibilities of the

Department to provide general and specialized training and laboratory support for the agent programs.

Wis. Admin. Code Ch. ATCP 74 further clarifies statutory requirements, including reimbursements owed to the Department, the payments-for-services that the agent program may be required to make to the Department, and the types of financial records that the agent program must make available to the Department upon request. In particular, it spells out the responsibility of agent programs to demonstrate that the fees charged by the local program are reasonable and used only for maintaining the local program.

Small Businesses Affected

The Small Business Regulatory Review Board did not issue a report on this rule since this rule change is anticipated to have no impact on small business. The focus of this rule is on the administration of the local agent programs and has no overall impact on small businesses. The rule was, however, posted for general comment including any potential economic impact. The Department did receive comments from organizations that represent businesses, including small businesses, inspected by local health agents. The Wisconsin Grocers Association submitted public hearing comments in support of the rule, and the Wisconsin Association of Local Health Departments and Boards and the Wisconsin Restaurant Association indicated they neither supported nor opposed the rule.

Accommodation for Small Business

The rule's impact is on governmental units and their interaction with other governmental units. There is only minimal, incidental effect on small business.

Conclusion

The revised rule brings clarity, consistency, and transparency to the relationships between the Department and agent local health departments. In particular, the transparency required of local health departments in their assessment of fees charged to cover the costs of their programs could be very helpful to small businesses.

The revised rule also clarifies the contractual obligations between the Department and the local health department agents as well as setting up a sunset clause on any contracts creating those agencies. This clarification will be helpful in promoting state-wide uniformity and baseline standards.

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 Wis. Stat § 227.22(2)(e).

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

Dated this _____ day of _____, 2017.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Steven C. Ingham, Administrator,
Division of Food and Recreational Safety