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Chapter ATCP 75

RETAIL FOOD ESTABLISHMENTS

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Note: Chapter Ag 32 was renumbered ch. ATCP 75 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448. Chapter ATCP 75 as it existed on January 31, 2001 was repealed and a new chapter ATCP 75 was created effective February 1, 2001.

ATCP 75.01 Authority and purpose. (1) AUTHORITY. The department of agriculture, trade and consumer protection licenses and regulates retail food establishments under s. 97.30, Stats. The department has adopted this chapter, and the appended model food code, under authority provided in ss. 93.07 (1), 97.30 (5) and 227.14 (1s), Stats. Pursuant to s. 227.14 (1s), Stats., the department has adopted the model food code in the format published by the federal food and drug administration.

(2) SCOPE AND PURPOSE. This chapter applies to retail food establishments as defined in s. 97.30 (1) (c), Stats. This chapter establishes licensing requirements for retail food establishments. It also establishes standards for the construction and operation of retail food establishments. A retail food establishment must comply with the model food code appended to this chapter.

History: Cr. Register, January, 2001, No. 541, eff. 2-1-01.

ATCP 75.02 Retail food establishments; licensing. (1) LICENSE REQUIRED. Except as provided under sub. (7), no person may operate a retail food establishment without a valid license issued by the department or an agent municipality or county. Licenses expire on June 30 annually. Each retail food establishment shall have a separate license, which shall be prominently displayed in the retail food establishment. A license is not transferable between persons or establishments.

(2) LICENSE APPLICATION. A person applying for a retail food establishment license shall apply on a form provided by the department, or by the agent municipality or county. The application shall include the fees under sub. (3).

(3) ANNUAL LICENSE FEE. An applicant for a retail food establishment license shall pay an annual license fee as follows:

(a) For a retail food establishment that has annual sales of at least \$25,000 but less than \$1,000,000 and processes potentially hazardous food, an annual license fee of \$175.

(b) For a retail food establishment that has annual food sales of at least \$1,000,000 and processes potentially hazardous food, an annual license fee of \$450.

(c) For a retail food establishment that has annual food sales of at least \$25,000 and is engaged in food processing, but does not process potentially hazardous food, an annual license fee of \$125.

(d) For a retail food establishment that has annual food sales of less than \$25,000, and is engaged in food processing, but does not process potentially hazardous food, an annual license fee of \$40.

(e) For a retail food establishment that is not engaged in food processing, an annual license fee of \$30.

(4) REINSPECTION FEE. (a) If the department reinspects a retail food establishment because the department has found a violation of ch. 97, Stats., or this chapter on a regularly scheduled inspection, the department shall charge the retail food establishment operator the reinspection fee specified in par. (b). A reinspection fee is payable when the reinspection is completed, and is due upon written demand from the department. The department may issue

a demand for payment when it issues a license renewal application form to the retail food establishment operator.

(b) The reinspection fee required under par. (a) is as follows:

1. For a retail food establishment that has annual food sales of at least \$25,000 but less than \$1,000,000, and processes potentially hazardous food, the reinspection fee is \$125.

2. For a retail food establishment that has annual food sales of at least \$1,000,000 and processes potentially hazardous food, the reinspection fee is \$300.

3. For a retail food establishment that has annual food sales of at least \$25,000, and is engaged in food processing but does not process potentially hazardous food, the reinspection fee is \$125.

4. For a retail food establishment that has annual food sales of less than \$25,000 and is engaged in food processing, the reinspection fee is \$60.

5. For a retail food establishment that is not engaged in food processing, the reinspection fee is \$60.

(5) ACTION ON LICENSE APPLICATION. Within 15 business days after the department or its agent municipality or county receives a complete license application, the department or its agent shall do one of the following:

(a) Grant the application.

(b) Deny the application. If the department or its agent denies the application it shall give the applicant written notice specifying the reasons for the denial.

(c) Issue an interim license under sub. (6).

(6) INTERIM LICENSE. The department or its agent municipality or county may issue an interim license, for a period not to exceed 40 business days, pending final action on an application for an annual retail food establishment license. The department or its agent shall grant or deny the annual license application before the interim license expires. If the department or its agent denies a license application before the applicant's interim license expires, the interim license is automatically terminated when the applicant receives written notice of the denial. The holder of an interim license acquires no license rights beyond those conferred by the interim license under this subsection. The department or its agent may not issue an interim license in response to a renewal application by the holder of an existing license.

(7) PRE-LICENSE INSPECTION. The department or its agent municipality or county may inspect a retail food establishment, as the department or agent deems necessary, before issuing a license to the retail food establishment. The department or its agent may not issue a license or interim license for a new retail food establishment until it inspects the new retail food establishment for compliance with this chapter. A previously licensed retail food establishment is not considered a new retail food establishment under this subsection solely because of a change of ownership, or solely because of alterations in the retail food establishment.

(8) PLAN REVIEW. A person may ask the department or its agent to review plans for the construction, reconstruction or alteration of a retail food establishment before the person constructs, reconstructs or alters the retail food establishment, or converts an existing structure for use as a retail food establishment.

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(9) LICENSE EXEMPTIONS. A retail food establishment license is not required under s. 97.30, Stats., or this section for any of the following:

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

(b) A retail food establishment operated by a person holding a food processing plant license under s. 97.29, Stats., if all the following apply:

1. The person operates the retail food establishment at the same location as the licensed food processing plant.

2. Sales from the retail food establishment are included in the computation of the food processing plant license fee under s. 97.29 (3), Stats.

(c) A retail food establishment operated by a person holding a restaurant permit issued under s. 254.64, Stats., if all of the following apply:

1. The person operates the retail food establishment at the same location as the restaurant for which the person holds a permit under s. 254.64, Stats.

2. Non-meal food sales from that location comprise no more than 50% by dollar volume of all meal and non-meal food sales from that location. Sales of alcohol beverages and vitamin supplements shall be excluded from the calculation of food sales under this subdivision.

(d) A restaurant, vending machine, vending machine commissary or other establishment for which a permit is issued under s. 254.64, Stats., to the extent that the activities of the establishment are covered by that permit.

(e) A retail food establishment operated by a person holding a dairy plant license under s. 97.20, Stats., if all the following apply:

1. The person operates the retail food establishment at the same location as the licensed dairy plant.

2. Food sales from that location, other than sales of dairy products produced at that location, comprise no more than 25% by

dollar volume of all dairy and non-dairy food sales from that location.

(f) A retail food establishment operated in conjunction with a state licensed or federally inspected meat establishment if all the following apply:

1. The meat establishment is licensed under s. 97.42, Stats., or inspected under 21 USC 71 et seq. or 21 USC 451 et seq.

2. The person operating the meat establishment operates the retail food establishment at the same location.

3. Food sales from that location, other than sales of inspected meat or meat products produced at that location, comprise no more than 25% by dollar volume of all meat and non-meat food sales from that location.

(g) A retail food establishment primarily engaged in selling fresh fruits and vegetables, honey, cider, sorghum or maple syrup produced by the operator of the retail food establishment if no other food processing activities are conducted at that retail food establishment.

(h) A temporary retail food establishment operated by a religious, charitable or non-profit organization for no more than 12 days in any license year.

History: Cr. Register, January, 2001, No. 541, eff. 2-1-01; **CR 04-096: am.** (3) **(d) Register June 2005 No. 594, eff. 7-1-05.**

ATCP 75.03 Denial, suspension or revocation of license; conditional license. The department or its agent may deny, suspend or revoke a license, or impose conditions on a license as provided under s. 93.06 (7) and (8), Stats. Except as otherwise provided by statute, rule or local ordinance, the suspension or revocation of a license shall comply with the prior notice requirements of s. 227.51, Stats.

History: Cr. Register, January, 2001, No. 541, eff. 2-1-01.

ATCP 75.04 Standards for retail food establishments. A retail food establishment shall comply with the model food code appended to this chapter.

History: Cr. Register, January, 2001, No. 541, eff. 2-1-01.