

Chapter ATCP 73

BED AND BREAKFAST ESTABLISHMENTS

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Note: Chapter HSS 197 was renumbered chapter HFS 197 under s. 13.93 (2m) (b) 1., Stats., corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, January, 1997, No. 493. Chapter HFS 197 was renumbered chapter DHS 197 effective February 1, 2009, and corrections made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637. Chapter DHS 197 was renumbered chapter ATCP 73 under s. 13.92 (4) (b) 1., Stats., Register June 2016 No. 726.

Note: Effective 7-1-16, 2015 Wis. Act 55 amended the word "permit" in ch. 254, stats., to become "license" in ch. 97, stats., and all references in this chapter to "permit" mean "license" for the purpose of licensing, regulation, and enforcement of this chapter by the department.

ATCP 73.01 Authority and purpose. Section 97.625, Stats., gives the department authority to prescribe rules for bed and breakfast establishments and to enforce these rules for the purpose of protecting public health and safety.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; correction made under s. 13.93 (2m) (b) 7., Stats., Register, January, 1995, No. 469; CR 08-073; renum. from HFS 197.01 Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 197.01 Register June 2016 No. 726; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 73.02 Scope. (1) APPLICABILITY. The provisions of this chapter apply to the operator of any bed and breakfast establishment.

(2) APPROVED COMPARABLE COMPLIANCE. When it appears to the department that strict adherence to a provision of this chapter is impractical for a particular bed and breakfast establishment, the department may approve a modification in that rule for that facility if the department is provided with satisfactory proof that the grant of a variance will not jeopardize the public's health, safety, or welfare.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; CR 08-073; renum. from HFS 197.02 Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 197.02 Register June 2016 No. 726.

ATCP 73.03 Definitions. In this chapter:

(1) "Agent" means the city or county designated by the department to issue permits to and make investigations or inspections of bed and breakfast establishments.

(2) "Approved" means acceptable to the department, based on its determination of conformance to this chapter and good public health practices.

(3) "Bed and breakfast establishment" means any place of lodging that provides 8 or fewer rooms for rent to no more than a total of 20 tourists or other transients for more than 10 nights in a 12-month period, is the owner's personal residence, is occupied by the owner at the time of rental, and in which the only meal served to guests is breakfast.

(4) "Department" means the department of agriculture, trade and consumer protection.

(5) "Furnishings" means, in connection with the operation of a bed and breakfast establishment, linens, beds, bedding, chairs, tables, shelves, drapes, carpeting, curtains, decorations, fixtures, and similar items provided in the sleeping rooms and common areas of the facility.

(6) "Potentially hazardous food" means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry,

fish, shellfish, edible crustacea, or other ingredients, including synthetic ingredients, in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms. "Potentially hazardous food" does not include clean, whole, uncracked, and odor-free shell eggs or foods which have a pH level of 4.6 or below or a water activity (a_w) value of 0.85 or less.

(7) "Premises" means the tract of land on which the bed and breakfast establishment is located.

(7m) "Tourist or transient" means a person who travels to a location away from his or her permanent address for a short period of time for vacation, pleasure, recreation, culture, business, or employment.

(8) "Utensil" means any kitchenware, tableware, glassware, cutlery, container, or similar item with which food or drink comes in contact during storage, preparation or serving.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; am. (3), cr. (7m), Register, November, 1986, No. 371, eff. 12-1-86; CR 08-073; renum. from HFS 197.03 and am. (4) Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 197.03 Register June 2016 No. 726; correction in (4) made under s. 13.92 (4) (b) 6., Stats., Register June 2016 No. 726.

ATCP 73.04 Permits. (1) PERMIT REQUIRED. (a) No bed and breakfast establishment may be opened to the public until the operator of the bed and breakfast establishment has obtained a permit from the department or its agent by submitting an application under sub. (4) and paying the applicable fee specified in s. ATCP 73.05. A separate permit is required for each bed and breakfast establishment.

(b) A new initial permit is required if a permit holder sells or otherwise transfers ownership or operation of a bed and breakfast establishment to another person, except as provided in sub. (3).

(2) PERMIT DURATION AND RENEWAL. (a) Each permit issued under this chapter expires on June 30, except that a permit initially issued during the period beginning on April 1 and ending on June 30 expires on June 30 of the following year.

(b) Each permit shall be renewed annually as provided in sub. (4) (b).

(3) TRANSFERABILITY OF PERMITS. An individual may transfer a permit to an immediate family member, as defined in s. 97.605 (4) (a) 2., Stats., if the individual is transferring operation of the bed and breakfast establishment. A sole proprietorship that reorganizes as a business entity, as defined in s. 179.70 (1), Stats., or a business entity that reorganizes as a sole proprietorship or a different type of business entity may transfer a permit to the newly formed business entity or sole proprietorship if the bed and breakfast establishment remains at the location for which the permit was issued and at least one individual who had an ownership interest in the sole proprietorship or business entity to which the permit was issued has an ownership interest in the newly formed sole proprietorship or business entity. Except as provided in this subsection, no permit issued under this chapter is transferable from one premise to another or from one person or entity to another.

Note: Under s. 97.605 (4) (a) 2., Stats., "immediate family member" means a spouse, grandparent, parent, sibling, child, stepchild, or grandchild or the spouse of a grandparent, parent, sibling, child, stepchild, or grandchild. Under ss. 97.605 (4)

(a) 1. and 179.70 (1), Stats., a “business entity” means: a corporation, as defined in s. 180.0103 (5), Stats., a limited liability company, as defined in s. 183.0102 (10), Stats., a limited partnership, or a corporation, as defined in s. 181.0103 (5), Stats., a foreign limited liability company, as defined in s. 183.0102 (8), Stats., a foreign limited partnership, a foreign corporation, as defined in s. 180.0103 (9), Stats., or a foreign corporation, as defined in s. 181.0103 (13), Stats.

(4) PERMIT APPLICATION. (a) *Initial permit.* Application for an initial or new permit shall be made on an application form furnished by the department or its agent and shall be accompanied by all of the following:

1. The applicable fees specified under s. ATCP 73.05 and any fees previously due to the department or its agent.

2. Documentation that the department of safety and professional services has approved plans and specifications for the bed and breakfast, if required.

3. Information, as determined by the department or its agent, indicating that the bed and breakfast establishment will be maintained and operated in compliance with applicable federal and state laws and that rules have been implemented for the operation of the bed and breakfast establishment that will protect the health, safety, and welfare of the public.

Note: To obtain a copy of the a bed and breakfast establishment operator license application form, or to determine which agent to contact for an application form, call (608) 224-4923 or send an e-mail to datcpdfslicensing@wi.gov.

(b) *Renewal permit.* To renew the permit of the bed and breakfast establishment, the operator shall pay the department, the applicable establishment permit fee specified under s. ATCP 73.05 before the permit expires. If the payment to renew the permit of a bread and breakfast establishment is not made to the department before the expiration date of the establishment permit, the late fee specified under s. ATCP 73.05 shall be paid in addition to the permit fee.

Note: Local health departments that are agents for the department have authority under s. 97.615 (2) (d), Stats., to establish and collect fees for permits issued by the local health department. If your establishment was permitted by a local health department, contact the local health department for its permit fee schedule.

(5) DEPARTMENT ACTION ON PERMIT APPLICATION. (a) The department or its agent shall issue or deny a permit within 30 days after receiving a complete application, all applicable fees, and the other information required under sub. (4).

(b) Except as provided in s. 93.135, Stats., the initial issuance, renewal, or continued validity of a permit issued under this subsection may be conditioned upon the requirement that the permit holder correct a violation of this chapter, ss. 97.603 to 97.65, Stats., or ordinances adopted under s. 97.615 (2) (g), Stats., within a period of time specified. If the condition is not met within the specified time or after an extension of time as approved by the department, the permit is void. No person may operate a bed and breakfast establishment after a permit has been voided under this paragraph, and any person who does so shall be subject to the penalties under ss. 97.72 and 97.73, Stats. An owner whose permit is voided under this paragraph may appeal the decision under s. ATCP 73.08.

(c) The department or its agent may refuse to issue or renew a permit to operate a bed and breakfast establishment under any of the following circumstances:

1. The department or its agent has not conducted a preinspection of the bed and breakfast establishment for which an initial or new permit is required under sub. (1).

2. The owner of a bed and breakfast establishment has not corrected a condition for which the department or agent has issued a written health or safety-related order.

3. All applicable fees under s. ATCP 73.05 have not been paid, including the permit fee, preinspection fee, reinspection fee, or other applicable fees.

4. The owner has modified, repaired or maintained the bed and breakfast establishment in a manner that is not in accordance with what the department recognizes as safe practice as outlined in this chapter.

5. The owner, applicant, or permit holder has failed to provide the department or its agent with information required under sub. (4).

6. The owner or applicant has violated ch. 97, Stats., this chapter, or any order, ordinance, or regulation created by a village, city, county, or local board of health having jurisdiction, provided such violation is related to the operation of the bed and breakfast establishment.

(d) If the department or its agent denies an application for a permit, the applicant shall be given reasons, in writing, for the denial and information regarding appeal rights under s. ATCP 73.08.

(6) VOIDED PERMIT FOR FAILURE TO PAY FEES. If an applicant or owner fails to pay all applicable fees, late fees and processing charges under s. ATCP 73.05 within 15 days after the applicant or owner receives notice of an insufficiency under s. ATCP 73.05, or within 45 days after the expiration of the permit, whichever occurs first, the permit is void. An owner whose permit is voided under this subsection may appeal the decision under s. ATCP 73.08. In an appeal concerning a voided permit under this subsection, the burden is on the permit applicant or owner to show that the entire applicable fees, late fees and processing charges have been paid. During any appeal process concerning a payment dispute, operation of the bed and breakfast establishment is deemed to be operation without a permit and is subject to the fees under s. ATCP 73.05 (2) in addition to the fees otherwise due, unless the applicant or owner meets its burden of proof under this subsection.

(7) PERMIT POSTING. A current permit issued by the department shall be posted in a place visible to the public. A permit may not be altered or defaced.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; emerg. am. (1), cr. (1m), eff. 7-1-94; am. (1), cr. (1m), Register, January, 1995, No. 469; emerg. am. (1m), eff. 7-1-96; am. (1m), Register, January, 1997, No. 493, eff. 2-1-97; am. (1m), cr. (1m) (e), Register, August, 1998, No. 512, eff. 9-1-98; CR 01-016: am. (1m) (a) and (d) and r. (1m) (e) Register May 2002 No. 557, eff. 6-1-02; CR 08-073: renum. from HFS 197.04, r. and rec. Register January 2009 No. 637, eff. 2-1-09; correction in (4) (a) 2. made under s. 13.92 (4) (b) 6., Stats., Register January 2012 No. 673; renum. from DHS 197.04 Register June 2016 No. 726; correction in (1) (a), (3), (4) (a) 1., (b), (5) (b), (c) 3., 6., (d), (6) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 73.05 Department fees. (1) FEE SCHEDULES. The fees listed in Table ATCP 73.05 A shall apply to permits issued from April 1, 2009 through March 31, 2011. The fees listed in Table ATCP 73.05 B shall apply to permits issued on or after April 1, 2011.

Note: Local health departments that are agents for the department have authority under s. 97.615 (2) (d), Stats., to establish and collect fees for permits issued by the local health department. If your establishment was permitted by a local health department, contact the local health department for its permit fee schedule.

(2) TYPES OF FEES. (a) *Preinspection fee.* The owner of a bed and breakfast establishment shall, pursuant to sub. (1), pay the applicable preinspection fee listed in Table ATCP 73.05 A or B to the department before an initial or new permit is issued under s. ATCP 73.04.

(b) *Permit fee.* The owner of a bed and breakfast establishment shall, pursuant to sub. (1), pay the applicable permit fee listed in Table ATCP 73.05 A or B to the department for each bed and breakfast establishment that the operator applies for a permit to operate under s. ATCP 73.04 (1) or (2).

(c) *Late fee.* If the permit fee for a permit renewal is not paid before the expiration date of the permit, the owner of the bed and breakfast establishment shall pay to the department a late fee of \$85.00 in addition to the renewal permit fee.

(d) *Reinspection fee.* If the department conducts a reinspection of a bed and breakfast establishment under s. ATCP 73.06 (1) (b) 1. and 2., the owner shall, pursuant to s. sub. (1), pay to the department the applicable reinspection fee listed in Table ATCP 73.05 A or B. The department shall assess an additional fee as specified in Table ATCP 73.05 A or B, whichever is applicable, for any additional reinspection conducted under s. ATCP 73.06 (1) (b) 4.

(e) *Fees for operating without a permit.* Any bed and breakfast establishment found to be operating without a permit shall pay to the department an amount of \$749.00, in addition to all applicable fees and any processing charges under s. ATCP 73.04 (6).

Note: Anyone operating a bed and breakfast establishment without a permit is also subject to a fine of not less than \$100 nor more than \$1,000 under s. 97.72, Stats.

(f) *Duplicate permit.* The department shall charge the operator of a bed and breakfast establishment \$15 for a duplicate permit.

(g) *Fees for special condition inspections.* For inspection or consultation activities that are not directly related to the depart-

ment's permitting and licensing responsibilities, the departments shall charge the operator or the entity requesting the inspection or consultation \$175.00.

(3) **METHOD OF PAYMENT.** If the payment for an initial or renewal permit is by check or other draft drawn upon an account containing insufficient funds, the applicant or owner shall, within 15 days after receipt of notice from the department of the insufficiency, pay all applicable fees under sub. (1) and the financial institution's processing charges by cashier's check or other certified draft, money order, or cash.

Table ATCP 73.05 A
Fee Schedule — SFY 2010
For permits issued April 1, 2009 through March 31, 2011

Type of Facility	Permit Fee	Preinspection Fee	First Reinspection Fee	Second and Subsequent Reinspection Fee
Bed and breakfast establishment	\$100	\$280	\$120	\$160

Table ATCP 73.05 B
Fee Schedule — SFY 2012
For permits issued on or after April 1, 2011

Type of Facility	Permit Fee	Preinspection Fee	First Reinspection Fee	Second and Subsequent Reinspection Fee
Bed and breakfast establishment	\$110	\$300	\$128	\$170

History: CR 08-073: cr. Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 197.05 Register June 2016 No. 726; correction in (1), (2) (a), (b), (d), (e) Tables A, B made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 73.06 Enforcement. (1) INSPECTIONS AND ACCESS TO THE PREMISES. (a) *Inspections.* Under ss. 97.615 (2) and 97.65 (1), Stats., an authorized employee or agent of the department, upon presenting proper identification, may enter any bed and breakfast establishment at any reasonable time, for any of the following purposes:

1. To inspect the bed and breakfast establishment.
2. To determine if there has been a violation of this chapter or ss. 97.603 to 97.65, Stats.
3. To determine compliance with previously written violation orders.
4. To secure samples or specimens.
5. To examine and copy relevant documents and records provided such information is related to the operation of the bed and breakfast establishment.
6. To obtain photographic or other evidence needed to enforce this chapter.

(b) *Reinspections.* 1. The department or its agent may inspect a bed and breakfast establishment whenever an inspection or the investigation of a complaint reveals the existence of a violation that is potentially hazardous to the health and welfare of patrons or employees of the bed and breakfast establishment.

2. A reinspection shall be scheduled to allow the owner a reasonably sufficient time to correct the deficiencies.

3. A reinspection fee shall be charged for the reinspection according to Table ATCP 73.05 A or B, or applicable charges as determined by an agent of the department.

4. If an additional reinspection is required because a violation has not been corrected in the scheduled time, the department shall assess the owner an additional fee as specified in Table ATCP 73.05 A or B as authorized under s. ATCP 73.05 (2) (d), and the department may order the owner to show just cause why the permit should not be suspended or revoked under s. ATCP 73.07.

(2) **GENERAL ORDERS TO CORRECT VIOLATIONS.** (a) If upon inspection of a bed and breakfast establishment, the department or agent finds that the bed and breakfast establishment is not designed, constructed, equipped, or operated as required under this chapter, the department or agent shall issue a written order to correct the violation. The order shall specify the correction needed for compliance and the time period within which the correction should be made. The time period specified in the order may be extended at the discretion of the department or agent.

(b) If the order to correct violations is not carried out by the expiration of the time period stated in the order, or any extension of time granted for compliance, the department or agent may issue an order under s. ATCP 73.07 to suspend or revoke the permit to operate the bed and breakfast establishment.

(c) Under s. 97.12 (5), Stats., any person who fails to comply with an order of the department shall forfeit \$50 for each day of noncompliance after the order is served upon or directed to him or her. A person may appeal a forfeiture under s. ATCP 73.08.

(3) **TEMPORARY ORDERS.** (a) As provided in s. 97.65, Stats., whenever the department or agent has reasonable cause to believe that an immediate danger to health or safety exists as a result of an inspection under sub. (1), the department or agent may issue a temporary order without advance notice or hearing to do any of the following:

1. Prohibit the continued operation or method of operation of specific equipment.
2. Require the premises to cease operations and close until remedies are applied which eliminate the immediate danger to health or safety.

(b) 1. A temporary order shall take effect upon delivery to the operator or responsible supervisor. Except as provided in par. (c), the temporary order shall remain in effect for 14 days from the date of delivery, but a temporary order may be reissued for one

additional 14-day period if necessary to complete any analysis or examination of samples, specimens, or other evidence.

2. No operation or method of operation prohibited by the temporary order may be resumed without the approval of the department or agent until the order has terminated or the time period specified in subd. 1. has expired, whichever occurs first. If, upon completed analysis or examination, the department or agent determines that construction, sanitary condition, operation, or method of operation of the premises or equipment does not constitute an immediate danger to health or safety, the department or agent shall immediately notify the owner, operator or responsible supervisor in writing and the temporary order shall terminate upon receipt of the written notice.

(c) If the analysis or examination shows that the construction, sanitary condition, operation or method of operation of the premises or equipment constitutes an immediate danger to health or safety, the department or agent, within the effective period of the temporary order specified in par. (b) 1., shall provide written notice of the findings to the owner, operator or responsible supervisor. Upon receipt of the notice, the temporary order remains in effect until a final decision is issued under s. ATCP 73.08. The notice shall include a statement that the facility has a right to request a hearing under s. ATCP 73.08 within 15 days after issuance of the notice.

(d) Any person who fails to comply with a temporary order issued by the department shall forfeit \$10 for each day of noncompliance after the order is served upon or directed to him or her and, under s. 97.65 (5) (a), Stats., may be fined not more than \$10,000 or imprisoned not more than one year in the county jail, or both. A person may appeal a forfeiture under s. ATCP 73.08.

History: CR 08-073: cr. Register January 2009 No. 637, eff. 2-1-09; **renum.** from DHS 197.06 Register June 2016 No. 726; correction in (1) (a) (intro.), (b) 3., 4., (2) (b), (c), (3) (a) (intro.), (c), (d) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726; correction in (3) (b) 1. made under s. 35.17, Stats., Register June 2016 No. 726.

ATCP 73.07 Suspension or revocation of permit.

The department may, after a hearing under s. ATCP 73.08, suspend or revoke a permit for violation of ss. 97.603 to 97.65, Stats., this chapter or an order issued by the department. The suspension or revocation order shall take effect 15 days after the date of issuance unless a hearing is requested under s. ATCP 73.08 (1).

History: CR 08-073: cr. Register January 2009 No. 637, eff. 2-1-09; **renum.** from DHS 197.07 Register June 2016 No. 726; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 73.08 Appeals of actions by the department.

(1) (a) Except as provided in sub. (2) or (3), a request for a hearing for denial of a permit, a voided permit, suspension, revocation, forfeiture, or an order given under s. ATCP 73.06 (1) (b) 4. or (2) shall be submitted in writing to the department of administration's division of hearings and appeals within 15 days after receipt of the notice of the department's action.

(b) A request for hearing that is mailed to the division of hearings and appeals shall be considered filed with the division on the date of the postmark.

(c) A request for hearing that is hand-delivered to the division of hearings and appeals shall be considered filed on the date the request is received by the division of hearings and appeals.

(d) A request for hearing transmitted by facsimile to the division of hearings and appeals shall be considered filed on the date and time imprinted by the division's facsimile machine on the transaction report that accompanies the document. Documents received by facsimile after midnight local time shall be deemed filed on the first following business day.

Note: Effective 7-1-16, pursuant to 2015 Wis. Act 55 and s. 227.43 (1m), Stats., a request for hearing shall be submitted to the DATCP Secretary via e-mail at datcpappeals@wisconsin.gov, faxed to (608) 224-5034, mailed to PO Box 8911, Madison, Wisconsin 53708-8911, or hand delivered to 2811 Agriculture Drive, Madison, Wisconsin 53718.

(e) As a condition for requesting a hearing under this subsection to appeal the voiding of a permit, an applicant or owner shall comply with sub. (3). In an appeal concerning voiding a permit, the burden is on the applicant or owner to show that the entire applicable fees, late fees and processing charges have been paid.

(2) A request for hearing on a temporary order given by the department under s. ATCP 73.06 (3) shall be made in writing to the department within 15 days of receipt of the order. The department shall hold a hearing within 15 days after the department receives the written request for hearing, unless the department and the owner agree to a later date, the immediate danger to health is removed, the order is not contested or the owner and the department mutually agree that no purpose would be served by a hearing. A final decision shall be issued under s. 227.47, Stats., within 10 days following the conclusion of the hearing. The decision may order any of the following to remove the danger to health:

(a) Changes to or replacement of equipment or construction.

(b) Changes in or cessations of any operation or method of operation of the equipment or premises.

Note: A request for hearing, under sub. (2), shall be submitted to the DATCP Secretary via e-mail at datcpappeals@wisconsin.gov, faxed to (608) 224-5034, mailed to PO Box 8911, Madison, Wisconsin 53708-8911, or hand delivered to 2811 Agriculture Drive, Madison, Wisconsin 53718. The hearing may be conducted by the department secretary or designee.

(3) If the department voids a permit under s. ATCP 73.04 (6), the owner shall submit, within 15 days after receipt of the notice of the department's action, documentary evidence that all applicable fees, late fees and processing charges have been paid and that there are no outstanding payments due to the department.

History: CR 08-073: cr. Register January 2009 No. 637, eff. 2-1-09; **renum.** from DHS 197.08 Register June 2016 No. 726; correction in (1) (a), (2) (intro.), (3) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726; correction in (1) (c) made under s. 35.17, Stats., Register June 2016 No. 726.

ATCP 73.09 Appeals of actions by agent health departments. If an agent issues a permit under this chapter, the agent shall create enforcement and appeal procedures under ss. 66.0417 and 97.615 (2) (g), Stats.

History: CR 08-073: cr. Register January 2009 No. 637, eff. 2-1-09; **renum.** from DHS 197.09 Register June 2016 No. 726; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 73.10 Water supply and waste disposal.

(1) **SERVICE AVAILABILITY.** The requirements covering water supply and sewage disposal facilities for all bed and breakfast establishments are based on the availability of public utilities as well as the practicability of connection to public utilities.

(2) **PUBLIC UTILITIES.** If an approved public water supply and approved public sewerage facilities are available to the bed and breakfast establishment, connection and use are required, as specified in chs. SPS 382 and 383, rules of the department of safety and professional services and ch. NR 812, rules of the department of natural resources.

(3) **PRIVATE WELLS.** A private well is permitted as a source of water when a public water facility is not available to the premises. The well shall be located on the premises and shall be constructed and the pump installed in accordance with ch. NR 812, rules of the department of natural resources governing well drilling and pump installation. A water sample shall be submitted annually to a certified laboratory for bacterial analysis, and a copy of the report giving the results of the analysis shall be made available to the department or its agent upon request. Whenever safe water cannot be obtained consistently from a well constructed in apparent compliance with ch. NR 812, as evidenced by laboratory reports, the well shall be reconstructed or a new well constructed in accordance with the requirements of the department of natural resources except that if the reconstruction or new construction is determined to be impractical or is found to be ineffective, the use of the well shall be discontinued and water shall be transported on a temporary basis from a source and in a manner approved by the department.

(4) **PLUMBING.** All plumbing and fixtures shall meet the requirements for one-family and two-family dwellings contained in chs. SPS 382 and 384, the applicable state plumbing codes, and shall be maintained in good repair and in a sanitary condition.

(5) **PRIVATE SEWAGE DISPOSAL.** (a) A private sewage disposal system, as defined in s. 145.01 (12), Stats., is permitted when a public sewer facility is not available to the premises. The system shall be located on the premises and shall be designed, constructed and operated in accordance with s. 145.245, Stats., and the applicable state plumbing codes, chs. SPS 382 and 383.

(b) Failed on-site private waste disposal systems shall be replaced or rehabilitated. In this paragraph, "failed system" has the meaning prescribed for "failing private sewage system" in s. 145.245 (4), Stats.

(c) Plans and installation details covering the design and construction, alteration or extension of private sewage disposal systems shall have the approval of the department of safety and professional services or its designated agent.

(d) All plumbing fixtures shall be connected to the building drainage system, with discharge to a public sewer or private sewage disposal system.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; corrections in (2) and (3) made under s. 13.93 (2m) (b) 7., Stats., Register, January, 1995, No. 469; corrections in (2) and (3) made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, August, 1998, No. 512; CR 08-073; renum. from HFS 197.05 Register January 2009 No. 637, eff. 2-1-09; corrections in (2), (4), (5) (a) and (c) made under s. 13.92 (4) (b) 6., 7., Stats., Register January 2012 No. 673; renum. from DHS 197.10 Register June 2016 No. 726.

ATCP 73.11 Toilet, handwashing and bathing facilities. (1) **GENERAL.** Bed and breakfast establishments shall be provided with clean and sanitary toilet, handwashing, and bathing facilities. These facilities, and laundry facilities used in conjunction with bed and breakfast establishments, shall be cleaned at least daily, if used, and maintained in good repair.

(2) **FIXTURES.** One toilet, lavatory, and shower or bathtub shall be provided for every 10 guests or fraction thereof.

(3) **HOT AND COLD WATER.** All lavatories and baths shall be supplied with hot and cold running water. Each person who is provided accommodations shall be provided individual soap and clean, individual bath cloths, and towels.

(4) **LINENS.** Clean towels and bath cloths shall be stored and handled in a manner which avoids contamination.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; CR 08-073; renum. from HFS 197.06 Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 197.11 Register June 2016 No. 726.

ATCP 73.12 Furnishings, equipment and utensils.

(1) **DESIGN.** All equipment, utensils and furnishings shall be designed, made of a kind of material and constructed to be easily cleanable and to be durable. Surfaces with which food or drink comes into contact shall be easily accessible for cleaning and shall be nontoxic, corrosion-resistant, nonabsorbent, and free of defects. Disposable articles shall be made from nontoxic materials.

(2) **INSTALLATION OF FURNISHINGS AND EQUIPMENT.** All furnishings and equipment shall be installed in a way that facilitates the cleaning of the furnishings and equipment and all adjacent areas.

(3) **CONDITION OF FURNISHINGS AND EQUIPMENT.** Furnishings and equipment shall be kept clean and in good repair.

(4) **UTENSIL SANITATION.** (a) Utensils shall be kept clean and in good repair.

(b) Multi-use eating and drinking utensils shall be thoroughly cleaned after each use. Facilities needed for the operations of washing, rinsing and sanitizing shall be provided.

(c) Pots, pans and other utensils used in the preparation or serving of food or drink and all food storage utensils shall be thoroughly cleaned after each use. Cooking surfaces of equipment, if any, shall be cleaned at least once each day. Nonfood contact sur-

faces of equipment shall be cleaned at intervals that will keep them in a clean and sanitary condition.

(d) Residential sinks and home-style mechanical dishwashing machines are acceptable facilities for washing multi-use eating and drinking utensils, and pots, pans and other cooking utensils.

(e) Immediately following either manual or mechanical washing of eating and drinking utensils, and pots, pans, and other cooking utensils, these utensils shall be effectively sanitized by being submerged in a hypochlorite solution with a chlorine concentration continuously maintained at 100 parts per million, or another approved sanitizing solution which shall be used at the concentration at which tested and approved by the department. Dishpans may be used to accomplish the final sanitizing rinse.

(5) **SINGLE-SERVICE UTENSILS.** The reuse of single-service utensils is prohibited.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; CR 08-073; renum. from HFS 197.07 Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 197.12 Register June 2016 No. 726; correction in (4) (c) made under s. 35.17, Stats., Register June 2016 No. 726

ATCP 73.13 Food. (1) **STORAGE.** All food storage facilities shall be kept clean and free of vermin. Residential kitchen cabinets are acceptable storage facilities.

(2) **FOOD SUPPLIES.** Food, including milk and milk products, shall be clean, wholesome, free from spoilage, free from adulteration and misbranding, and safe for human consumption. Milk of only pasteurized Grade A quality may be used. Use of home-canned food is prohibited except for jams and jellies.

(3) **FOOD PROTECTION.** (a) Foods shall be protected from contamination while being stored, prepared and served, and during transportation. Perishable foods shall be stored at temperatures that will protect them against spoilage. Potentially hazardous food shall be maintained at safe temperatures of 40°F. (4°C.) or below, or 150°F. (66°C.) or above, as appropriate, except during necessary periods of preparation and serving. Frozen food shall be kept at temperatures that will keep them frozen, except when being thawed for preparation or use. Potentially hazardous frozen food shall be thawed at refrigerator temperatures of 40°F. (4°C.) or below, quick-thawed as part of the cooking process, or thawed by another method approved by the department. An indicating thermometer shall be located in each refrigerator. Raw fruits and vegetables shall be washed thoroughly before use. Stuffings, poultry, stuffed meats and poultry, and pork and pork products shall be cooked to heat all parts of the food to at least 165°F. (74°C.) before being served. Salads made of meat, poultry, potatoes, fish, shellfish, or eggs, and other potentially hazardous prepared food, shall be prepared from chilled products, with a minimum of manual contact. Portions of food once served to an individual may not be served again.

(b) Refrigeration facilities, hot food storage facilities and effective insulated facilities shall be provided as needed to ensure that all food is maintained at safe temperatures of 40°F. (4°C.) or below, or 150°F. (66°C.) or above, as appropriate, during storage, preparation and serving.

(c) Containers of food shall be stored above the floor, on clean racks, shelves, or other clean surfaces, in such a manner as to be protected from splash and other contamination.

(4) **EMPLOYEE HEALTH.** (a) No person knowingly infected with a communicable disease that may be transmitted by food handling may work in a bed and breakfast establishment.

(b) If the bed and breakfast operator suspects that any employee, family member, or the operator himself or herself has a communicable disease that may be transmitted by food handling, that person shall be immediately excluded from working in the bed and breakfast establishment and, in the case of a reportable communicable disease under s. DHS 145.03 (2), the operator shall notify the local health authority immediately.

(c) Persons while preparing or serving food or washing equipment or utensils shall wear clean outer garments, maintain a high

degree of personal cleanliness and conform to hygienic practices. They shall wash their hands thoroughly before starting work and as often as necessary while working, in order to remove soil and contamination. After visiting a toilet room, these persons shall wash their hands thoroughly in a lavatory but never in the kitchen sink. No one while preparing or serving food may use tobacco in any form.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; CR 08-073: renum. from HFS 197.08 Register January 2009 No. 637, eff. 2-1-09; correction in (4) (b) made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637; renum. from DHS 197.13 Register June 2016 No. 726.

ATCP 73.14 Building safety. (1) VENTILATION WITH SPACE HEATERS. (a) Any room where a gas space heater is located shall have a constant supply of fresh air through a permanent opening which shall not be closed. The size of the opening shall be at least one square inch for each 1,000 BTU per hour of the rated heating capacity of the heater, with a minimum of 10 square inches (65 square cm), or be so constructed that the air used in the combustion of the fuel is taken directly from the outside.

(b) The use of unvented gas, kerosene, oil or other fossil fuel space heaters is prohibited.

(2) SMOKE DETECTION. Each bed and breakfast establishment shall be provided with an approved, listed, labeled, and operable smoke detector located inside each sleeping room and at the top of each stairway in a manner consistent with the manufacturer's recommendations.

(3) WINDOW SCREENS. All windows that can be opened in sleeping rooms shall be screened, using 16 mesh or finer material. Unless sleeping rooms are effectively air-conditioned, doors opening to the outside shall be similarly screened.

(4) FIRE EXTINGUISHERS. Each bed and breakfast establishment shall be provided with at least one approved, listed and labeled fire extinguisher located near the sleeping rooms.

(5) VENTILATION AND LIGHTING. Rooms and areas used in conjunction with bed and breakfast establishments shall be ventilated and lighted as needed. The ventilation and lighting shall be effective under actual use conditions. Ventilating equipment and lighting fixtures shall be kept clean and in good repair.

(6) COOKING IN SLEEPING ROOMS. Cooking in sleeping rooms is prohibited.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; CR 08-073: renum. from HFS 197.09 Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 197.14 Register June 2016 No. 726.

ATCP 73.145 Carbon monoxide detectors. (1) PURPOSE. The purpose of this section is to implement the requirements of s. 97.625 (1) (am) and (1g), Stats., with respect to bed and breakfast establishments in a manner consistent with the standards in s. 101.149, Stats., and ss. SPS 321.097 and 362.1200.

(2) DEFINITIONS. In this section:

(a) "Carbon monoxide detector" means an electronic or battery-operated device that sounds an alarm when an unsafe level of carbon monoxide is in the air. A carbon monoxide detector is referred to as a "carbon monoxide alarm" by the Underwriters Laboratories, Inc., standards and ss. SPS 320.24 (2), 321.097 and 362.1200.

(b) "Fuel-burning appliance" means a device that is used or intended to be used in a residential building and burns fossil fuel or carbon based fuel where carbon monoxide is a combustion by-product. "Fuel-burning appliance" includes stoves, ovens, grills, clothes dryers, furnaces, boilers, water heaters, heaters, and fireplaces.

(c) "Inspection agent" means an individual holding certification under s. SPS 305.71 as an HVAC qualifier, who has been retained by the department or its agent to conduct the inspections of sealed combustion units required under this section and ss. 101.149 (5) (c) and 97.625 (1) (am), Stats.

(d) "Listed" means equipment that is tested by an independent testing agency and accepted by the department of safety and professional services.

(e) "Residential building" means a bed and breakfast establishment.

(f) "Sealed combustion appliance" means a listed fuel-burning appliance that acquires all air for combustion through a dedicated sealed passage from the outside to a sealed combustion chamber and for which all combustion products are vented to the outside through a separate dedicated sealed vent.

(g) "Sleeping area" means the area of the unit in which the bedrooms or sleeping rooms are located. Bedrooms or sleeping rooms separated by another use area such as a kitchen or living room are separate sleeping areas but bedrooms or sleeping rooms separated by a bathroom are not separate sleeping areas.

(h) "Unit" means a part of a residential building that is offered for pay as a sleeping place or sleeping accommodations to an individual or a group of individuals maintaining a common household to the exclusion of others. Every room or set of rooms that is rented out separately is a "unit."

(3) INSTALLATION REQUIREMENTS. The operator shall install carbon monoxide detectors in compliance with the requirements of s. 101.149 (2), Stats., and s. SPS 321.097 or 362.1200, as follows:

(a) Except as provided in par. (b) or in sub. (6), the operator shall install a carbon monoxide detector in each residential building in all of the following places not later than the date specified under par. (c):

1. In the basement of the building if the basement has a fuel-burning appliance.

2. Within 15 feet of each sleeping area of a unit that has a fuel-burning appliance.

3. Within 15 feet of each sleeping area of a unit that is immediately adjacent to a unit, located on the same floor level, that has a fuel-burning appliance.

4. In each room that has a fuel-burning appliance and that is not used as a sleeping area, not more than 75 feet from the fuel-burning appliance.

5. In each hallway leading from a unit that has a fuel-burning appliance, in a location that is within 75 feet from the unit, measured from the door of the unit along the hallway leading from the unit, except that, if there is no electrical outlet within this distance, the operator shall place the carbon monoxide detector at the closest available electrical outlet in the hallway.

(b) If a unit is not part of a multiunit building, the operator need not install more than one carbon monoxide detector in the unit.

(c) 1. Except as provided under subd. 2., the operator shall comply with the requirements of this subsection before a residential building is occupied.

2. The operator shall comply with the requirements of this subsection not later than April 1, 2010, if construction of the residential building was initiated before October 1, 2008, or if the department of safety and professional services approved the plans for the construction of the building under s. 101.12, Stats., before October 1, 2008.

(d) A carbon monoxide detector shall conform to UL 2034 and shall be listed and labeled identifying conformance to UL 2034. Carbon monoxide detectors and sensors as part of a gas detection or emergency signaling system shall conform to UL 2075 and shall be listed and labeled identifying conformance to UL 2075.

(e) The operator shall install every carbon monoxide detector required under this section according to the directions and specifications of the manufacturer of the carbon monoxide detector.

(f) Installation shall conform to the applicable requirements of s. SPS 321.097 or 362.1200.

(4) MAINTENANCE REQUIREMENTS. The operator shall maintain carbon monoxide detectors in compliance with the requirements of s. 101.149 (3), Stats., as follows:

(a) The operator shall reasonably maintain every carbon monoxide detector in the residential building in the manner specified in the instructions for the carbon monoxide detector.

(b) An occupant of a unit in a residential building may give the operator written notice that a carbon monoxide detector in the residential building is not functional or has been removed by a person other than the occupant. The operator shall repair or replace the nonfunctional or missing carbon monoxide detector within 5 days after receipt of the notice.

(5) TAMPERING PROHIBITED. Pursuant to s. 101.149 (4), Stats., no person may tamper with, remove, destroy, disconnect, or remove batteries from an installed carbon monoxide detector, except in the course of inspection, maintenance, or replacement of the detector.

(6) EXCEPTION TO INSTALLATION REQUIREMENTS. The installation of carbon monoxide detectors is not required in a residential building if construction of the building was initiated before October 1, 2008, or if the department of safety and professional services approved the plans for the construction of the building under s. 101.12, Stats., and s. SPS 361.30, provided the building does not have an attached garage and any one of the following circumstances applies:

(a) The building does not have any fuel-burning appliances.

(b) All of the fuel-burning appliances in the building are of a sealed-combustion type and are covered by the manufacturers' warranties against defects.

(c) All the fuel-burning appliances in the building are of a sealed-combustion type and are inspected in accordance with sub. (7) or (8) (b).

(7) INSPECTION OF SEALED COMBUSTION APPLIANCES. (a) The operator shall arrange for the inspection of every sealed combustion appliance and the vents and chimneys serving the appliances in any residential building where a carbon monoxide detector has not been installed.

(b) The inspection of a sealed combustion appliance, vents and chimneys shall satisfy the following requirements:

1. The inspection of the sealed combustion appliance, vents and chimneys shall be for the purpose of determining carbon monoxide emission levels.

2. The inspection shall be performed at least once a year.

3. The inspection shall be performed by an individual who holds certification issued under s. SPS 305.71 as an HVAC qualifier.

4. If upon inspection the carbon monoxide emissions from a fuel burning appliance, vent or chimney are not within the manufacturer's specifications, the appliance may not be operated until it is repaired. If the appliance is repaired, it shall be inspected again before it is used.

5. The individual inspecting the sealed combustion appliance shall prepare a written, dated, and signed report identifying the level of carbon monoxide emissions and certifying whether or not carbon monoxide emissions are within the manufacturer's speci-

fications, which the operator shall retain for review by the department or its agent.

(8) INSPECTIONS AND ENFORCEMENT BY DEPARTMENT. (a) The department or its agent shall conduct regular inspections of facilities to ensure compliance with s. 101.149 (2) and (3), Stats., and this section.

(b) If, upon inspection, the department or its agent determines that a sealed combustion appliance has not been inspected and certified as meeting the manufacturer's specifications for carbon monoxide emissions, as required under sub. (7), the department or agent shall order the operator to have an inspection conducted within 30 days. If the department or its agent has not received an inspection report as required under sub. (7) (b) 5. within 30 days, the department or agent shall arrange for an inspection agent to conduct an inspection that satisfies the requirements under sub. (7) (b), and the operator shall pay all of the costs associated with the inspection.

(c) Pursuant to s. 101.149 (8) (a), Stats., if the department determines after an inspection of a residential building that the operator has violated the installation requirements under sub. (3) or the maintenance requirements under sub. (4), the department shall issue an order requiring the operator to correct the violation within 5 days or within such shorter period as the department determines is necessary to protect public health and safety. As required under s. 101.149 (8) (a), Stats., if the operator does not correct the violation within the time required, the operator shall forfeit \$50 for each day of violation occurring after the date on which the department finds that the violation was not corrected. Pursuant to s. 101.149 (8) (b), Stats., if a person is charged with more than one violation of sub. (3) or (4) arising out of an inspection of a single residential building, those violations shall be counted as a single violation for the purpose of determining the amount of a forfeiture.

(d) A person who violates sub. (5) is subject to criminal penalties under s. 101.149 (8) (c), Stats.

History: EmR1004: emerg. cr. eff. 4-1-10; CR 10-015: cr. Register August 2010 No. 656, eff. 9-1-10; corrections in (1), (2) (a), (c), (d), (3) (intro.), (c) 2., (f), (6) (intro.), (7) (b) 3. made under s. 13.92 (4) (b) 6., 7., Stats., Register January 2012 No. 673; renum. from DHS 197.145 Register June 2016 No. 726; correction in (1), (2) (c) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 73.15 Maintenance. (1) GENERAL. Every bed and breakfast establishment shall be maintained and equipped in a manner conducive to the health, comfort, and safety of its guests.

(2) ROOMS. The floors, walls and ceilings of all rooms shall be maintained in a clean and sanitary condition and in a good state of repair.

(3) BUILDINGS AND GROUNDS. Buildings and grounds shall be maintained in a clean, neat condition, free from refuse and other objectionable conditions or hazards. The exterior of all buildings shall be well-maintained and kept in good repair.

(4) INSECT AND RODENT CONTROL. Effective measures intended to minimize the presence of rodents, flies, cockroaches, and other insects on the premises shall be employed. The premises shall be kept in a condition which will prevent the harborage or feeding of insects or rodents.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; CR 08-073: renum. from HFS 197.10 Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 197.15 Register June 2016 No. 726.