

Chapter ATCP 72

HOTELS, MOTELS, AND TOURIST ROOMING HOUSES

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Note: Chapter HSS 195 as it existed on June 30, 1985, was repealed and a new chapter HSS 195 was created effective July 1, 1985. Chapter HSS 195 was renumbered chapter HFS 195 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 195 was renumbered chapter DHS 195 effective February 1, 2009, under s. 13.92 (4) (b) 1., Stats., and corrections made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637. Chapter DHS 195 was renumbered chapter ATCP 72 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 72.01 Authority and purpose. Section 97.625, Stats., gives the department authority to prescribe rules for hotels, including motels, and tourist rooming houses 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 195.01 Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 195.01 Register June 2016 No. 726; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 72.02 Scope of rules. (1) **APPLICABILITY.** The provisions of this chapter apply to the operator of any hotel, motel, or tourist rooming house.

(2) **APPROVED COMPARABLE COMPLIANCE.** When it appears to the department that strict adherence to a provision of this chapter is impractical for a particular hotel, motel, or tourist rooming house, 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 195.02 Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 195.02 Register June 2016 No. 726.

ATCP 72.03 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 hotels, motels, or tourist rooming houses.

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

(3) “Communicable disease” has the meaning prescribed in s. DHS 145.03 (4).

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

(5) “Easily cleanable” means readily accessible and made of a kind of material and finish and so fabricated that residue may be completely removed by normal cleaning methods.

(6) “Employee” means any person working in a hotel, motel, or tourist rooming house.

(7) “Equipment” means, in connection with the operation of a hotel, motel, or tourist rooming house, stoves, ranges, hoods, counters, refrigerators, ice-making machines, sinks, and similar

appliances and other items used to prepare or hold foods or to clean utensils.

(8) “Existing,” in reference to a hotel, motel or tourist rooming house, means operating with a permit from the department before the adoption of this chapter.

(9) “Facility” means a hotel, motel, or tourist rooming house.

(10) “Furnishings” means, in connection with the operation of a hotel, motel or tourist rooming house, 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.

(11) “Hotel” means a place where sleeping accommodations are offered for pay to transients, in 5 or more rooms, and all related rooms, buildings and areas.

(12) “Motel” means a hotel that furnishes on-premise parking for motor vehicles of guests as part of the room charge, without extra cost, and that is identified as a “motel” rather than a “hotel” at the request of the operator.

(13) “New,” in reference to a hotel, motel, or tourist rooming house, means operating with a permit from the department for the first time on or after the effective date of this chapter.

(14) “Operator” means the person legally responsible for the operation of the hotel, motel, or tourist rooming house.

(15) “Person” means an individual, partnership, association, firm, company, corporation, municipality, county, or town, whether tenant, owner, lessee, licensee, or the agent, heir, or assignee of any of these.

(16) “Premises” means the tract of land on which a hotel, motel or tourist rooming house is located and all associated buildings on that land.

(17) “Privy” means a structure not connected to a plumbing system, which is used by persons for the disposal of human body wastes.

(18) “Sleeping accommodations offered for pay” means all sleeping rooms on the premises including quarters occupied by permanent guests but excluding sleeping rooms occupied by the operator or owner or his or her immediate family.

(19) “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.

(20) “Tourist rooming house” means all lodging places and tourist cabins and cottages, other than hotels and motels, in which sleeping accommodations are offered for pay to tourists or transients. It does not include private boarding or rooming houses not accommodating tourists or transients, or bed and breakfast establishments regulated under ch. ATCP 73.

(21) “Utensil” means any kitchenware, tableware, glassware, cutlery, container, or similar item with which food or drink comes into contact during storage, preparation or serving.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; am. (19), Register, November, 1986, No. 371, eff. 12-1-86; correction in (3) made under s. 13.93 (2m) (b) 7., Stats., Register May 2002 No. 557; CR 08-073: renum. from HFS 195.03 and am. (4) Register January 2009 No. 637, eff. 2-1-09; corrections in (3) and (20) made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637; renum. from DHS 195.03 Register June 2016 No. 726; correction in (4) made under s. 13.92 (4) (b) 6., correction in (20) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 72.04 Permits. (1) PERMIT REQUIRED. (a) No hotel, motel, or tourist rooming house may be opened to the public until the operator of the facility 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 72.05. A separate permit is required for each hotel, motel, or tourist rooming house.

(b) If any permit holder sells or otherwise transfers ownership or operation of a hotel, motel, or tourist rooming house to another person, except as provided in sub. (3), a new initial permit is required, and the hotel, motel, or tourist rooming house may not be opened to the public until the department has issued a new initial permit.

(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 hotel, motel, or tourist rooming house. 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 hotel, motel, or tourist rooming house 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 72.05 and any fees previously due to the department or its agent.

2. Information, as determined by the department or its agent, indicating that the hotel, motel, and tourist rooming house will be maintained and operated in compliance with applicable federal and state laws and that rules have been implemented for the operation of the hotel, motel, and tourist rooming house that will protect the health, safety, and welfare of the public.

Note: To obtain a copy of the hotel, motel or tourist rooming house 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 license of a facility, the operator shall pay the department, the applicable establishment permit fee specified under s. ATCP 72.05 before the permit expires. If the

payment to renew the permit of an establishment is not made to the department before the expiration date of the establishment permit, the late fee specified under s. ATCP 72.05 (2) (c) shall be paid in addition to the license fee.

Note: Local health department that are agents for the department have authority under s. 97.41 (4) (a), Stats., to establish and collect fees for licenses issued by the local health department. If your the establishment was licensed by a local health department, contact the local health department for its license fee schedule.

(5) DEPARTMENT OR AGENT 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, s. 97.605, 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 hotel, motel, or tourist rooming house 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 operator whose permit is voided under this paragraph may appeal the decision under s. ATCP 72.08.

(c) The department or its agent may refuse to issue or renew a permit to operate a hotel, motel or tourist rooming house under any of the following circumstances:

1. The department or its agent has not conducted a preinspection of a hotel, motel, or tourist rooming house for which an initial or new permit is required under sub. (1).

2. The operator of a hotel, motel, or tourist rooming house has not corrected a condition for which the department or agent has issued a written a health or safety-related order.

3. All applicable fees under s. ATCP 72.05 have not been paid, including the permit fee, preinspection fee, reinspection fee, or other applicable fees.

4. The operator has modified, repaired or maintained the hotel, motel, or tourist rooming house in a manner that is not in accordance with what the department recognizes as safe practice as outlined in this chapter.

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

6. The operator 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 hotel, motel, or tourist rooming house.

(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 72.08.

(6) VOIDED PERMIT FOR FAILURE TO PAY FEES. If an applicant or operator fails to pay all applicable fees, late fees and processing charges under s. ATCP 72.05 within 15 days after the applicant or operator receives notice of an insufficiency under s. ATCP 72.05, or within 45 days after the expiration of the permit, whichever occurs first, the permit is void. An operator whose permit is voided under this subsection may appeal the decision under s. ATCP 72.08. In an appeal concerning a voided permit under this subsection, the burden is on the permit applicant or operator 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 hotel, motel, or tourist rooming house is deemed to be operation without a permit and is subject to the fees under s. ATCP 72.05 (2) (e) in addition to the fees otherwise due, unless the applicant or operator 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. 9-1-94; am. (1), cr. (1m), Register, January, 1995, No. 469, eff. 2-1-95; emerg. r. (1m) (a) 2., renum. (1m) (a) 3. and am., am. (1m) (b) to (d), eff. 7-1-96; r. (1m) (a) 2., renum. (1m) (a) 3. to be (1m) (a) 2. and am., am. (1m) (b) to (d), Register, January, 1997, No. 493, eff. 2-1-97; am. (1m) (a) to (c), (1m) (d) 1., renum. (1m) (d) 1., cr. (1m) (d) 1. a. to c., 2. and (3), Register, August, 1998, No. 512, eff. 9-1-98; CR 01-016: am. (1m) (a) 2., (d) 1., r. (1m) (e) Register May 2002 No. 557, eff. 6-1-02; CR 08-073: renum. from HFS 195.04, r. and recr. Register January 2009 No. 637, eff. 2-1-09; corrections in (4) (b) and (6) made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637; renum. from DHS 195.04 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 72.05 Department fees. (1) FEE SCHEDULES. The fees listed in Table ATCP 72.05 A shall apply to permits issued from April 1, 2009 through March 31, 2011. The fees listed in Table ATCP 72.05 B shall apply to permits issued on or after April 1, 2011.

(2) **TYPES OF FEES.** (a) *Preinspection fee.* The operator of a hotel, motel or tourist rooming house shall, pursuant to sub. (1), pay the applicable preinspection fee listed in Table ATCP 72.05 A or B to the department before an initial or new permit is issued under s. ATCP 72.04.

(b) *Permit fee.* The operator of a hotel, motel, or tourist rooming house shall, pursuant to sub. (1), pay the applicable permit fee listed in Table ATCP 72.05 A or B to the department for each hotel, motel, or tourist rooming house that the operator applies for a permit to operate under s. ATCP 72.04 (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 operator of the hotel, motel, or tourist rooming house 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 hotel, motel, or tourist rooming house under s. ATCP 72.06 (1) (b), the operator shall, pursuant to sub. (1), pay to the department the applicable reinspection fee listed in Table ATCP 72.05 A or B. The department shall assess an additional reinspection fee as listed in Table ATCP 72.05 A or B, whichever is applicable, for any additional reinspection conducted under s. ATCP 72.06 (1) (b) 4.

(e) *Fees for operating without a permit.* Any hotel, motel, or tourist rooming house 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 72.04 (6).

Note: Anyone operating a hotel, motel, or tourist rooming house 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 hotel, motel, or tourist rooming house \$15 for a duplicate permit.

(g) *Fees for special condition inspections.* For inspection or consultation activities that are not directly related to the department's permitting and licensing responsibilities, the department 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 operator 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 72.05 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
Tourist Rooming House	\$100	\$280	\$120	\$160
Hotel / Motel Permit Fee 5-30 Rooms	\$165	\$380	\$173	\$230
Hotel / Motel Permit Fee 31-99 Rooms	\$260	\$615	\$274	\$365
Hotel / Motel Permit Fee 100-199 Rooms	\$330	\$795	\$353	\$470
Hotel / Motel Permit Fee 200+ Rooms	\$400	\$950	\$431	\$575

**Table ATCP 72.05 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
Tourist Rooming House	\$110	\$300	\$128	\$170
Hotel / Motel Permit Fee 5-30 Rooms	\$205	\$480	\$218	\$290
Hotel / Motel Permit Fee 31-99 Rooms	\$280	\$665	\$300	\$400
Hotel / Motel Permit Fee 100-199 Rooms	\$355	\$795	\$379	\$505
Hotel / Motel Permit Fee 200+ Rooms	\$490	\$1185	\$525	\$700

History: CR 08-073: cr. Register January 2009 No. 637, eff. 2-1-09; renun. from DHS 195.05 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 72.06 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 hotel, motel or tourist rooming house at any reasonable time, for any of the following purposes:

1. To inspect the hotel, motel or tourist rooming house.
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 hotel, motel, or tourist rooming house.
6. To obtain photographic or other evidence needed to enforce this chapter.

(b) *Reinspections.* 1. The department or its agent may reinspect a hotel, motel, or tourist rooming house 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 hotel, motel, or tourist rooming house.

2. A reinspection shall be scheduled to allow the operator a reasonably sufficient time to correct the deficiencies.
3. The reinspection fee under Table ATCP 72.05 A or B or applicable charges as determined by an agent of the department shall be charged for the reinspection.
4. If an additional reinspection is required because a violation has not been corrected in the scheduled time, the department shall assess the operator an additional reinspection fee according to Table ATCP 72.05 and the department may order the operator to show just cause why the permit should not be suspended or revoked under s. ATCP 72.07.

(2) GENERAL ORDERS TO CORRECT VIOLATIONS. (a) If upon inspection of a hotel, motel, or tourist rooming house, the department or agent finds that the hotel, motel, or tourist rooming house 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 72.07 to suspend or revoke the permit to operate the hotel, motel, or tourist rooming house.

(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 that person. A forfeiture may be appealed under s. ATCP 72.08.

(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 97.08. The notice shall include a statement that the facility has a right to

request a hearing under s. ATCP 97.08 within 15 days after issuance of the notice.

(d) 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.

History: CR 08-073: cr. Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 195.06 Register June 2016 No. 726; correction in (1) (a) (intro.), 2., (b) 3., 4., (2) (b), (c), (3) (a), (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 72.07 Suspension or revocation of permit.

The department may, after a hearing under s. ATCP 72.08, suspend or revoke a permit for violation of subch. III of ch. 97, 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 72.08 (1).

History: CR 08-073: cr. Register January 2009 No. 637, eff. 2-1-09; corrections made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637; renum. from DHS 195.07 Register June 2016 No. 726; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 72.08 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 72.06 (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 operator shall comply with sub. (3). In an appeal concerning voiding a permit, the burden is on the applicant or operator 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 72.06 (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 operator agree to a later date, the immediate danger to health is removed, the order is not contested or the operator 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 72.04 (6), the operator 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 195.08 Register June 2016 No. 726; correction in (1) (a), (2), (3) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 72.09 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 195.09 Register June 2016 No. 726; correction made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726.

ATCP 72.10 Water supply and waste disposal.

(1) **SERVICE AVAILABILITY.** The requirements covering water supply and sewage disposal facilities for all hotels, motels, and tourist rooming houses are based upon 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 premises of a hotel, motel, or tourist rooming house, connection and use are required.

(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 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. 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 ch. NR 812 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 contained in ch. SPS 382 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 chs. SPS 382 and 383 and s. 145.245, Stats.

(b) Failed on-site private waste disposal systems shall be replaced or rehabilitated. A 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 receive the approval of the department of safety and professional services or its designated agent prior to the construction, alteration or extension of the systems.

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

(e) Privies are only acceptable at existing hotels, motels, and tourist rooming houses. They shall be constructed in accordance with the applicable requirements of s. SPS 362.2900 and ch. SPS 391 and shall be approved by the department. When a new operator takes over the management of a hotel, motel, or tourist rooming house, privies, shall be eliminated.

(6) **TOILET FACILITIES.** (a) *Private fixtures.* All toilet facilities in conjunction with each guest room shall include a toilet, lavatory, and shower or bathtub.

(b) *Shared fixtures.* 1. All hotels and motels, all new tourist rooming houses and all existing tourist rooming houses changing ownership, which do not have a toilet, lavatory, and shower or bathtub in conjunction with each guest room, shall have separate toilet facilities for each sex, except that one toilet, lavatory, and shower or bathtub is acceptable in cabins or cottages rented to family units. One toilet, lavatory and shower or bathtub shall be provided for every 10 persons or fraction thereof of each sex accommodated.

2. Existing tourist rooming houses which are not undergoing a change in ownership and do not have toilet facilities in each guest room shall provide at least one toilet, lavatory, and shower or bathtub for use by guests.

(c) *Water.* Hot and cold water under pressure shall be available at all sinks and other washing facilities in all employee, public, and guest's toilet rooms.

(d) *Soap and towels.* Soap, single-service towels, or other approved means of drying hands shall be provided in each toilet room.

(e) *Room designations.* The door leading into each toilet room shall be marked to identify whether it is for men or women. Words such as "men" or "women" shall be in letters not less than one inch high. Symbols may be used in place of words.

(7) **DRINKING WATER.** All hotels, motels, and tourist rooming houses which do not provide drinking water in the guest rooms shall be equipped with at least one drinking fountain or water cooler of an approved type so placed that it is available at all times to the guests. If drinking cups are used, they shall be single-service items and shall be dispensed by means of an approved dispenser which protects the interior and lip contact surfaces from dust and handling.

(8) **GARBAGE AND REFUSE.** (a) All garbage not disposed of through a garbage disposal unit connected to the sewerage system shall be kept in separate, leakproof, nonabsorbent containers equipped with tightfitting covers, unless otherwise protected from rodents, flies and insects. The contents shall be disposed of as often as necessary to prevent decomposition or overflow.

(b) Soiled containers shall be cleaned at a frequency to prevent insect and rodent attraction. Each container shall be thoroughly cleaned on the inside and outside in a way that does not contaminate food, equipment, utensils, or food preparation areas.

(c) The use of wooden or paper containers for garbage is prohibited.

(d) Separate fly-tight containers with covers shall be provided for cans, bottles and other rubbish.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; corrections in (3) made under s. 13.93 (2m) (b) 7., Stats., Register, January, 1995, No. 469; correction in (5) (e) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1998, No. 512; corrections in (5) (c) and (e) made under s. 13.93 (2m) (b) 6. and 7., Stats., Register May 2002 No. 557; CR 08-073: renum. from HFS 195.05 Register January 2009 No. 637, eff. 2-1-09; corrections in (4), (5) (a), (c), (e) made under s. 13.92 (4) (b) 6., 7., Stats., Register January 2012 No. 673; renum. from DHS 195.10 Register June 2016 No. 726.

ATCP 72.11 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.

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

(3) **UTENSIL SANITATION.** (a) Whenever multi-use glasses, ice buckets or other utensils are provided for a guest, the items shall be washed, rinsed and sanitized in an approved manner before being provided for use by a different guest. Utensils, when furnished, shall be free of cracks or chips. The food-content surfaces shall be smooth, nontoxic, corrosion-resistant, nonabsorbent, and easily accessible for cleaning.

(b) The reuse of single-service utensils is prohibited.

(4) **STORAGE.** (a) After cleaning and until use, all glasses and other utensils shall be stored and handled in a manner that protects them from contamination.

(b) Glasses in guest rooms shall be stored in single-service containers or dispensed by means of a dispenser approved by the department.

(5) **CLEANLINESS OF LINENS.** Pillowslips, sheets, towels and washcloths shall be washed as frequently as they are assigned to a different guest and at least once a week. Blankets, spreads, mattresses, and pillows shall be kept clean and free of insect infestation. The use of quilts and comforters which are not machine washable is not permitted. Sheets shall be of sufficient size to cover the bed and have a fold-back over the blanket of at least 12 inches (30.5 cm). Soiled linen shall be kept in washable containers used for this purpose exclusively. Every mattress shall be covered with a pad to protect the mattress, and the mattress and pad shall be maintained clean and in good repair.

(6) **CLEANLINESS AND REPAIR OF EQUIPMENT AND FURNISHINGS.** All equipment and furnishings shall be kept clean, free from odor, and in good repair.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; am. (5), Register, May, 1989, No. 401, eff. 6-1-89; CR 08-073: renum. from HFS 195.06 Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 195.11 Register June 2016 No. 726.

ATCP 72.12 Food. (1) **PERMIT.** Any hotel, motel, or tourist rooming house operator who prepares, sells or serves lunches or meals shall meet the requirements of subch. III of ch. ATCP 75 and obtain a restaurant permit.

Note: Effective 7-1-16, pursuant to 2015 Wis. Act 55, the restaurant permit referenced in this subsection is a retail food establishment license. To obtain a copy of the application form for the license, call (608) 224-4923 or send an e-mail to datcpd/slicensing@wi.gov.

(2) **ICE.** All ice used in a hotel, motel, or tourist rooming house for cooling drinks or food by direct contact shall be made from a public water supply or an approved private water supply. All ice-making machines shall have tight-fitting doors which are kept closed between service. New or replacement ice-making machines or bins shall be of the mechanical dispensing type unless ice is dispensed by an employee. Ice tongs or ice scoops shall be used in handling ice used for cooling beverages or food and shall be properly protected against contamination when stored. All ice shall be stored and served in a smooth-surfaced, easily-cleanable container. Packaged ice shall be stored in a clean area and protected against contamination.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; CR 08-073: renum. from HFS 195.07 Register January 2009 No. 637, eff. 2-1-09; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register January 2009 No. 637; renum. from DHS 195.12, am. (1) Register June 2016 No. 726; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register June 2016 No. 726; correction in (2) made under s. 35.17, Stats., Register June 2016 No. 726.

ATCP 72.13 Employee health. Persons who have a communicable disease shall refrain from working in a hotel, motel, or tourist rooming house. No operator may employ any person suspected of having a communicable disease.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; CR 08-073: renum. from HFS 195.08 Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 195.13 Register June 2016 No. 726.

ATCP 72.14 Building structure and safety. (1) **STATE BUILDING CODE.** All hotels, motels, and tourist rooming houses shall comply with the state commercial building code, chs. SPS 361 to 365. The department shall enforce the rules of chs. SPS 361 to 365 relating to fire safety, including but not limited to rules on isolation of fire hazards, fire escapes, fire exits, fire extinguishers, fire alarm systems, smoke detectors, exit lights, space heaters, ventilation, and directions of escape.

(2) **ADDITIONAL REQUIREMENTS.** (a) *Ventilation with gas space heaters.* Any room where a gas space heater is located shall have access to a constant supply of fresh air through a permanent opening which shall not be closed. The size of the opening shall be minimum of 10 square inches (65 square cm) and at least one square inch for each 1,000 BTU per hour of the rated heating

capacity of the heater, or be so constructed that the air used in the combustion of the fuel is taken directly from the outside.

(b) *Size of sleeping rooms.* Every sleeping room shall be of sufficient size to afford at least 400 cubic feet (12 cu m) of air space for each occupant over 12 years of age and 200 cubic feet (6 cu m) for each occupant 12 years and under. Every sleeping room shall have a minimum ceiling height of 7 feet (2.13 m). No greater number of sleeping occupants than the number established by application of these standards is permitted in any sleeping room.

(c) *Smoke detection.* Each cabin or cottage shall be provided with at least one approved, listed and labeled smoke detector located in a manner consistent with the manufacturer's recommendations.

(d) *Door locks.* Doors to all sleeping rooms, cabins and cottages shall be provided with facilities for key locking from the outside and non-key locking from the inside.

(e) *Window screens.* All windows that can be opened in sleeping rooms shall be screened, using 16 mesh or finer material. If sleeping rooms are not effectively air-conditioned, doors opening to the outside shall be similarly screened.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; corrections in (1) made under s. 13.93 (2m) (b) 7., Stats., Register, August, 1998, No. 512; corrections in (1) were made under s. 13.93 (2m) (b) 7., Stats., Register May 2002 No. 557; CR 08-073; renum. from HFS 195.09 Register January 2009 No. 637, eff. 2-1-09; correction in (1) made under s. 13.92 (4) (b) 7., Stats., Register January 2012 No. 673; renum. from DHS 195.14 Register June 2016 No. 726.

ATCP 72.145 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 facilities 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. 97.625 (1) (am) and 101.149 (5) (c), 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 facility's building, any part of which is offered for pay as sleeping or lodging accommodations to tourists or transients.

(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 indi-

vidual or a group of individuals maintaining a common household, to the exclusion of others. It includes, but is not limited to, an individually rented room or suite of rooms in a hotel or an individually rented tourist cabin or cottage.

(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, which were submitted before October 1, 2008, 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 all of 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 specifications, 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 195.145 Register June 2016 No. 726; correction in (1), (2) (c) made under s. 13.92 (4) (b) 6. Register June 2016 No. 726.

ATCP 72.15 Maintenance. (1) GENERAL. Every hotel, motel and tourist rooming house 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) 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.

(4) PREMISES. The premises shall be maintained in a clean, neat condition, free from refuse and other objectionable conditions or hazards. Land surfaces surrounding the hotel, motel, or tourist rooming house shall be well-drained. Parking areas shall be properly graded, drained and treated to minimize dust and dirt. The exterior of all buildings shall be well-maintained and kept in good repair.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; CR 08-073: renum. from HFS 195.10 Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 195.15 Register June 2016 No. 726.

ATCP 72.16 Registration of guests. Each hotel, motel, and tourist rooming house shall provide a register and require all guests to register their true names and addresses before being assigned sleeping quarters. The register shall be kept intact and available for inspection by representatives of the department for at least one year.

History: Cr. Register, June, 1985, No. 354, eff. 7-1-85; CR 08-073: renum. from HFS 195.11 Register January 2009 No. 637, eff. 2-1-09; renum. from DHS 195.16 Register June 2016 No. 726.