



State of Wisconsin  
Governor Tony Evers

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**Department of Agriculture, Trade and Consumer Protection**  
Secretary Randy Romanski

**DATE:** May 11, 2023

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

**FROM:** Randy J. Romanski, Secretary  
Amy Millard, Deputy Administrator, Division of Food and Recreational Safety

**SUBJECT: ATCP 72, Hotels, Motels and Tourist Rooming Houses**

**TO BE PRESENTED BY:** Andrea Northwood, Program & Policy Analyst, Division of Food and Recreational Safety

**REQUESTED ACTION:**

At the May 11, 2023, Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board (Board) to approve the Statement of Scope for potential changes to ch. ATCP 72 relating to Hotels, Motels and Tourist Rooming Houses.

**SUMMARY:**

DATCP licenses hotel, motel, and tourist rooming house operators under the authority of ch. 97.613 of the Wisconsin Statutes. ACTP 72 Hotels, Motels and Tourist Rooming Houses has not been substantially updated since 1978. At the request of industry stakeholders, the department proposes to update the rule to reflect current industry standards and address emerging health and safety issues. At this time, the department also proposes to re-evaluate its licensing fee structure to reflect the department's responsibilities for conducting inspections and investigations. The department has not increased license fees since 2008. The current program revenue received from license fees has not kept pace with the increased costs for maintaining the lodging program, which includes internal and external education, licensing, inspections, and compliance.

On January 26, 2023, the Governor approved the Statement of Scope allowing consideration of revising ATCP 72. The Department held three preliminary public hearings on the Statement of Scope, March 29<sup>th</sup>, March 30<sup>th</sup>, and April 4<sup>th</sup>, 2023, and had an open comment period from March 6<sup>th</sup> to April 18<sup>th</sup>, 2023. A total of sixteen people attended the three hearings. We had one comment submitted. The comment primarily expressed opinions on several issues identified in the Statement of Scope as worthy of consideration during the rule revision. The commenter expressed interest in working with the DATCP on its revision efforts.

Board approval of the Statement of Scope will allow the Division of Food and Recreational Safety to begin preparing a hearing draft of ATCP 72.

# STATEMENT OF SCOPE

## Department of Agriculture, Trade and Consumer Protection

Rule No.: Wis. Admin. Code Chapter ATCP 72

Relating to: Hotels, Motels, and Tourist Rooming Houses

Rule Type: Permanent

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

Not Applicable

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

The objectives of the proposed rule under consideration include:

- a) Consider expanding definitions of terms used in Wis. Admin. Code ch. ATCP 72 to provide clarity, removing definitions not used, and adding new definitions.
- b) Consider further clarification of the differences between a tourist rooming house and a hotel or motel.
- c) Consider adding additional licensing categories and modifying requirements for specialty lodging where basic amenities are not typically provided and special considerations for temporary special event lodging opportunities.
- d) Consider an alternate inspection frequency for tourist rooming houses.
- e) Consider including a testing frequency for safe potable water at facilities served by a private well.
- f) Consider adding nitrate testing as part of the annual water sampling for private wells.
- g) Consider removing outdated carbon monoxide alarm installation and maintenance requirements and update to reflect current standards as set forth in Wis. Stat. § 101.149.
- h) Consider removing outdated smoke alarm installation and maintenance requirements and update to reflect current standards as set forth in Wis. Stat. § 101.145.
- i) Consider determining department responsibility with respect to the department of safety and professional services in regards to building construction and fire detection, protection, and suppression.
- j) Consider addressing department specific language for health and safety features related to slip, trip, and fall hazards commonly found in hotels, motels, and tourist rooming houses.
- k) Consider modeling International Building Code standards or other state regulations impacting hotels, motels, and tourist rooming houses, to provide greater clarity on non-gender specific toilet rooms.

- l) Consider addressing emerging communicable diseases and other threats to safety. The department will consider including appropriate definitions and provisions to support lodging facilities in addressing emerging pathogens and other new threats.
- m) Consider addressing pests of public health significance, such as bed bugs. Consider including action steps and enforcement procedures to be followed when pests are found.
- n) Consider addressing an alternative licensing fee schedule based on the program risks, facilities, and activities that more fairly aligns the lodging complexity with the appropriate licensing fee.
- o) Consider adjusting fees to incorporate the additional costs of the department to perform inspections, licensing, and investigations.
- p) Consider adding requirements for reporting illnesses, injuries, and accidents that require an emergency medical service response. This data will assist in designing effective outreach and meaningful interventions and the data collected may help support future rule development.
- q) Consider incorporating criticality methodology throughout the rule. This risk based methodology seeks to identify those provisions that are more critical for protecting public health and to designate the risk level of hazards. This method provides clarity to industry by identifying those provisions which are more likely to cause illness or injury, and supports a risk-based inspection approach.

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

**Existing policies relevant to the rule:**

Consider incorporating the department's interpretations and clarifications into rule:

- Lodging inspection guidance for inspection staff related to building issues
- Licensing of rental units in condos
- Dead end hallways in pre-1942 structures
- Determining how sleeping rooms are calculated for licensing
- Hot water requirements at sinks
- Sanitizing ice buckets
- License requirements
- Response to complaints or discovery of bed bugs in lodging enforcement
- Water sampling
- Well construction violations at tourist rooming houses
- Sanitizing utensils at licensed lodging establishments
- Jetted tub cleaning procedures

**Policy alternatives**

The alternative to updating the rule would be to continue as is, attempting to continue to apply the existing rule to new methods, innovations, and trends not currently addressed or permitted under the existing rule. Industry groups and associations would find this alternative undesirable as they are eager for the rule be updated to reflect current industry best practices and trends. Furthermore, the department would need to devote the additional time and resources towards resolving the confusion that impedes implementation of the existing code (consultation, staff training and special workshops for industry).

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

Section 93.07 (1), Stats., gives the department the ability to promulgate regulations.

Section 97.605, Stats., lodging and vending license requirements.

Section 97.613, Stats., fees for lodging establishments.

Section 97.625, Stats., powers of the department and local health departments.

Section 227.11 (2) (a), Stats., agency rule-making authority for lodging establishments.

Consider incorporating the following statutory references into the rule to provide greater clarity:

Section 93.07 (24) (e), Stats., gives the department the ability to enforce the laws for the sanitary care of lodging facilities.

Section 97.607, Stats., pre-licensing inspections for lodging establishments.

Section 97.615 (2), Stats., written agreements with local health departments.

Section 97.617, Stats., application; lodging and vending.

Section 97.62, Stats., health and safety standard for lodging establishments.

Section 97.623, Stats., hotel safety.

Section 97.627, Stats., causing fires by tobacco smoking.

Section 97.633, Stats., hotelkeeper's liability.

Section 97.634, Stats., hotelkeeper's liability for baggage; limitation.

Section 97.635, Stats., liability of hotelkeeper for loss of property by fire or theft; owner's risk.

Section 97.638, Stats., hotel rates posted; rate changes; special rates.

Section 97.639, Stats., motel rates.

Section 97.65, Stats., enforcement for lodging establishments.

Section 97.71, Stats., suspension or revocation of license.

Section 97.72, Stats., penalties.

Section 97.73, Stats., injunction

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

The department estimates that the work associated with developing and promulgating the proposed rule, including conducting advisory group meetings, will require approximately 600 hours of staff time.

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

Entities that may be affected by the new rule include: Wisconsin Hotel & Lodging Association, Wisconsin Association of Campground Owners, Wisconsin Realtors Association, Wisconsin County Code Administrators, owners and operators of hotels, motels, and tourist rooming houses.

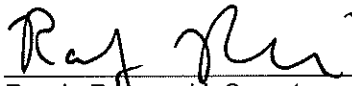
**7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

There are no federal regulations for lodging.

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

The department anticipates the proposed rule may give more flexibility for businesses in complying with the rule requirements, allocate regulatory requirements more fairly, and be based on risk-based inspection methods. There may be an increase in licensing and inspection fees, which have not been adjusted since 2010. Creating a licensing fee based on risk and activity and modifying the licensing structure should help to moderate the impact of a fee increase. The rule is not anticipated to have a significant economic impact on small businesses.

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Randy Romanowski, Secretary

12-21-2022

Date Submitted