



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Secretary Randy Romanski

April 22, 2022

STEVEN CORBEILLE FINANCE DIR
CITY OF MANITOWOC
900 QUAY ST
MANITOWOC WI 54220-4543

Dear Steven Corbeille:

The City of Manitowoc has a contract with the Department of Agriculture, Trade and Consumer Protection for weights and measures inspection services. The contract is renewable each July 1st.

State law requires that the Department charge municipalities fees sufficient to cover the cost of services rendered. The Bureau of Weights and Measures recently conducted an analysis of its inspection program. This review identified disparities in inspection intervals which resulted in inconsistent inspection frequencies statewide. As a result, the Bureau has determined that a decrease in the number of contract days is warranted.

The City of Manitowoc will be charged for 16 days in FY23 (July 1, 2022 through June 30, 2023), at \$400 per day. If the city intends to continue to contract with the State for its weights and measures inspection program, please sign and return the enclosed contract by June 15, 2022 to:

Holly Wing
DATCP
PO Box 8911
Madison, WI 53708-8911

A completed copy of the contract will be returned to you for your records. The municipality will be billed for this service in April 2023.

Sincerely,

Stephen Peter
Manager, Field Operations Section
Bureau of Weights and Measures
Phone: 608-224-4954
Stephen.peter@wisconsin.gov

Enclosures: Wis. Stat. Ch 98, Inspection Frequency Change Memo, FY23 Contract

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April 22, 2022

Subject: Inspection Frequency Change

This memo is to inform you of some upcoming changes with the Department of Agriculture, Trade and Consumer Protection's weights and measures inspection program that will commence July 1, 2022.

The Bureau of Weights and Measures recently conducted an analysis of its inspection program. This review identified some disparity in inspection intervals which resulted in inconsistent inspection frequencies statewide. In order to ensure that businesses inspected by the State are equally served and regulated, the Bureau is moving to a two-year inspection interval for most inspection types, and 'a complaint' inspection basis for some other business types. In most cases, this will mean that businesses in a municipality will be inspected every other year.

What this change in inspection frequency means for municipalities that contract with the Department is that the number of inspection days in the contract will be reduced, and consequently, the annual contract cost for inspection services.

As you are likely aware, State law requires that a municipality with a population over 5,000 either establish their own weights and measures inspection program with enough staff and equipment to ensure compliance with Wisconsin Statute Chapter 98, or contract with the State to provide those services. Should it be available in your area, you also have the option to contract with other municipal weights and measures programs for services. State law also allows a municipality to assess fees to businesses that receive weights and measures services. Those fees may not exceed the actual cost of fees paid to the Department for the same services. Ordinances and fees should be reviewed and adjusted as needed if your municipality recovers weights and measures inspection costs from regulated businesses.

The Bureau has scheduled a Microsoft Teams meeting on May 12, 2022 at 11:00 AM to speak directly with municipalities receiving weights and measures services from the Department. A link can be sent to you if you would like to participate virtually. Otherwise you can call in using the call in number below.

Conference call in number: 608-571-2209

Phone Conference ID: 959 982 573#

Please notify the Bureau by June 15, 2022 if you intend to renew your contract with the Department (sign and return the enclosed contract), establish your own program, or contract with another municipality.

If you have any questions in advance of the meeting on May 12, please contact Stephen Peter at 608-224-4954.

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MEMORANDUM OF AGREEMENT WEIGHTS AND MEASURES INSPECTION

THIS AGREEMENT is entered into by and between the STATE OF WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION, hereinafter referred to as the Department, and the MUNICIPALITY OF MANITOWOC, hereinafter referred to as the Municipality.

Pursuant to Wis. Stat. § 98.04(2), the Department agrees to furnish the services and perform the duties required to enforce the provisions of Wis. Stat. ch. 98 in the Municipality. The Department further agrees to report to the Municipality at least annually on the extent and nature of the services performed. It is understood and agreed that the Municipality shall not be required to maintain a department of weights and measures or appoint sealers of weights and measures while this agreement is in effect.

Pursuant to Wis. Stat. §§ 66.0301 and 98.04(2), the Municipality agrees to pay to the Department fees sufficient to cover the Department's annual costs of providing such services on a fiscal year basis that starts on July 1 and continues through the following June 30, with payment to be made not later than May 1 of the fiscal year of this agreement. Payment for services performed by the Department for less than any contract period shall be prorated accordingly.

This agreement shall be self-renewing for succeeding fiscal year periods, except that the sum to be paid to the Department for services rendered shall be subject to renegotiation for each succeeding contract period based on the cost of providing services. This agreement may be terminated at the end of any fiscal year by either party giving the other party written notice at least 60 days prior to July 1 of the following fiscal year. Annual fees payable to the Department shall be in the amount of **\$6,400.00**, except as otherwise agreed upon for succeeding contract periods. Under Wis. Stat. § 98.04(2), a municipality may recover an amount not to exceed the cost of fees paid to the Department by assessing fees on the persons who receive services under the weights and measures program.

The parties have entered into this agreement effective the **1st day of July 2022**.

WISCONSIN DEPARTMENT OF
AGRICULTURE, TRADE AND CONSUMER
PROTECTION

By _____
Signature Date

Administrator
Division of Trade & Consumer Protection
(608) 224-4929

MUNICIPALITY OF _____

By _____
Signature Date

Title Telephone Number

CHAPTER 98

WEIGHTS AND MEASURES

98.01	Definitions.	98.146	Licensing milk weighers and samplers.
98.02	Systems of weights and measures; special units.	98.15	False testing.
98.03	State standards; specifications and tolerances.	98.16	Vehicle scale operators; scale installation and testing.
98.04	Municipalities.	98.18	Installing and servicing weights and measures.
98.05	Enforcement authority; measurement center laboratory.	98.21	Sale of bread.
98.06	Method of sale of commodities.	98.22	Bulk deliveries sold in terms of weight and delivered by vehicle.
98.07	Declaration of quantity.	98.224	Vehicle tank meters.
98.08	Price refunds; price information.	98.225	Deliveries of certain liquid fuels.
98.12	Sale of ice cream and similar frozen products.	98.245	Liquefied petroleum gas sales.
98.13	Milk or cream tests; samples; patrons' statement.	98.246	Petroleum product sales.
98.14	Standardization of Babcock pipettes.	98.255	Reinspection; fee.
98.145	Licensing of milk and cream testers.	98.26	Prohibited acts; penalty; injunction.

Cross-reference: See definitions in s. 93.01.

98.01 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Incorrect" as applied to weights and measures and commodities includes any failure to comply with the requirements of this chapter or rules issued thereunder.

(2) "Inspector" means a state inspector of weights and measures.

(3) "Municipality" means a city or village.

(4) "Sealer" and "deputy sealer" means a sealer of weights and measures and deputy sealer of weights and measures of a municipality, respectively.

(5) "Sell", "sale" and "sold" include barter or exchange, and any offering or exposing for sale or possession with intent to sell.

(6) "Weight" means net weight when used in reference to a commodity.

(7) "Weights and measures" means weights and measures of every kind, instruments and devices for weighing and measuring, and any appliances and accessories used with any or all such instruments and devices, except meters for the measurement of electricity, gas (natural and manufactured) or water when the same are operated in a public utility system.

History: 1983 a. 189.

98.02 Systems of weights and measures; special units. (1) The system of weights and measures in customary use in the United States or the metric system of weights and measures shall be the only systems used for commercial purposes in this state. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents, published by the national institute of standards and technology, shall govern weighing and measuring equipment and transactions in this state.

(2) "Barrel," when used in connection with fermented malt beverages, means a unit of 31 gallons. "Ton" means a unit of 2,000 pounds avoirdupois weight. "Cord," when used in connection with wood intended for fuel purposes, means the amount of wood that is contained in a space of 128 cubic feet when the wood is raked and well stowed.

History: 1981 c. 79; 1989 a. 165; 2015 a. 196.

98.03 State standards; specifications and tolerances.

(1) Weights and measures obtained by the state as standards and certified for use as such by the national institute of standards and technology shall be the state standards of weight and measure. They shall be in the custody of the department and shall be used only for verification of other standards.

(2) The department may issue rules governing the construction, installation, and use of commercial weights and measures

and prescribing tolerances therefor. The specifications, tolerances, and regulations for commercial weighing and measuring devices issued by the national institute of standards and technology shall apply in this state except as modified by such rules or by statute.

History: 1989 a. 165; 2017 a. 22.

Cross-reference: See also ch. ATCP 92, Wis. adm. code.

98.04 Municipalities. (1) Except as provided in sub. (2), a municipality having a population of more than 5,000, according to the most recent population estimate made by the department of administration under s. 16.96, shall enforce the provisions of this chapter within its jurisdiction. For this purpose, a municipality shall establish a municipal department of weights and measures. Each municipal department of weights and measures shall have such number of qualified sealers or inspectors as will ensure compliance with this chapter. Municipal sealers or inspectors shall have the same authority as sealers or inspectors of the department of agriculture, trade and consumer protection. The selection of municipal sealers or inspectors shall be from a list of applicants whose qualifications have been certified by the state or local civil service agency under the rules of the agency. The municipality shall procure and keep at all times a complete set of standards of weight and measure conforming to the state standards and shall submit the standards for certification at regular intervals as required by the department of agriculture, trade and consumer protection. The municipality shall keep a complete record of its work and annually shall file a report thereof with the department of agriculture, trade and consumer protection. The municipality may enact ordinances that regulate weights and measures and that are not in conflict with this chapter or the rules of the department of agriculture, trade and consumer protection. The municipality may assess fees that do not exceed the actual cost of its weights and measures program.

(2) A municipality that is required to establish a department of weights and measures under sub. (1) may contract with the department of agriculture, trade, and consumer protection to enforce the provisions of this chapter within the municipality's jurisdiction instead of establishing its own department if the department of agriculture, trade and consumer protection agrees to enter into such a contract. The department of agriculture, trade and consumer protection may charge the municipality fees sufficient to cover the department's costs under the contract. A municipality may recover an amount not to exceed the cost of these fees by assessing fees on the persons who receive services under the weights and measures program.

History: 1983 a. 230; 1997 a. 27; 1999 a. 9.

98.05 Enforcement authority; measurement center laboratory. (1) There is hereby conferred upon sealers and inspectors of weights and measures, police power; such sealers and inspectors shall be provided with suitable badges or insignia

nating number, and to whom furnished, shall be kept in the office of the department.

(2) Any manufacturer who sells Babcock milk, cream or butter test bottles or milk pipettes, for use in this state, that do not comply with the provisions of this section shall be subject to a penalty of \$500 to be recovered by the attorney general in an action brought in the name of the people of the state against the offender's bondsmen. No dealer shall use, for the purpose of determining the percent of milk fat in milk or milk products, any bottles or pipettes that do not comply with the provisions of this section.

(3) The department shall prescribe specifications with which the glassware described in this section shall comply. The unit of graduation for all Babcock glassware shall be the true cubic centimeter or the weight of one gram of distilled water at 4 degrees centigrade.

(4) Sealers of weights and measures are not required to seal Babcock milk, cream or butter test bottles or milk pipettes marked as in this section provided, but they shall from time to time make tests of individual bottles used by the various firms in the territory over which they have jurisdiction in order to ascertain whether the above provisions are being complied with and they shall report immediately to the department violations found.

History: 1993 a. 492; 1997 a. 253.

98.145 Licensing of milk and cream testers. (1) To secure fair and accurate tests to producers and manufacturers for the determination of the basis of payment or for settlement for such milk or cream, or for the purpose of official inspection, or for the making of records of dairy production, persons making such milk fat tests shall be licensed by the department as herein provided.

(2) No person may engage as a tester of milk or cream to determine its value for payment or for the purpose of official inspection or for records of dairy production for the purposes described above unless the person holds a license issued by the department; but no such license is required of a licensed cheesemaker or butter-maker. The license shall expire biennially on October 31 of the 2nd year commencing after the date of issuance or renewal. Each application for milk tester license or renewal thereof shall be accompanied by a fee of \$50, except that an individual who is eligible for the veterans fee waiver program under s. 45.44 is not required to pay the fee. Each application shall be made upon forms provided by the department. If the department conducts a reinspection of any milk or cream tested by a person licensed under this subsection due to any violation of any federal or state law which the department determines in a regularly scheduled inspection of milk or cream tested by that person, the department shall charge that person \$25 for that reinspection.

(3) To qualify for a milk and cream tester's license the applicant shall not have an arrest or conviction record, subject to ss. 111.321, 111.322 and 111.335, shall furnish 2 references who have known the applicant for at least one year and shall give proof of ability to perform the necessary duties to the satisfaction of the department by satisfactorily passing a written examination pertaining to milk and cream sampling and care of samples and use of the Babcock test or other test method approved by the department; and by actual demonstration in the laboratory of his or her ability to determine accurately the milk fat content of milk and cream including special emphasis on the handling and testing of composite samples of milk and cream.

(4) Unless provision is made for the testing of milk or cream by a duly licensed tester as provided herein, no dairy plant shall receive any milk or cream unless at least one employee is a milk and cream tester licensee who shall be responsible for the care of samples and the testing of milk and cream and who shall be regularly assigned to the duty of making such tests.

(5) This section shall not be construed to require the licensing of city or village sanitary or dairy inspectors.

History: 1977 c. 216; 1981 c. 380; 1981 c. 391 s. 211; 1987 a. 27; 2011 a. 209.

98.146 Licensing milk weighers and samplers. (1) All persons except licensed cheesemakers and buttermakers taking weights and samples of milk in bulk tanks or measuring milk in bulk tanks to determine weight, on the farm premises where such milk is produced, shall be licensed by the department under this section or by an equivalent regulatory agency in another state, and no person who is not so licensed shall engage in such activities.

(2) (a) Each application for a license under this section or license renewal shall be made on forms provided by the department and shall be accompanied by the license fee required under sub. (4), except that an individual who is eligible for the veterans fee waiver program under s. 45.44 is not required to pay the fee. The license shall expire biennially on September 30 of the 2nd year commencing after the date of issuance or renewal. The applicant shall not have an arrest or conviction record, subject to ss. 111.321, 111.322 and 111.335, and shall give proof of ability to engage in such weighing and sampling to the satisfaction of the department by satisfactorily passing a written examination pertaining to such activities.

(b) If the department conducts a reinspection of any measurement by a person authorized to take weights and samples or to measure under sub. (1) due to any violation of any federal or state law which the department determines in a regularly scheduled inspection of that measurement, the department shall charge the person the reinspection fee required under sub. (4) for that reinspection.

(3) No dairy plant shall receive any milk required to be weighed and sampled by a person authorized to take weights and samples under sub. (1) unless it has been so weighed and sampled.

(4) The department may establish by rule the amount of license or reinspection fees required under sub. (2). Unless otherwise established by department rule, a license fee under sub. (2) is \$40 and a reinspection fee under sub. (2) is \$40.

History: 1977 c. 216; 1981 c. 380; 1981 c. 391 s. 211; 1987 a. 27; 1991 a. 39; 2011 a. 209; 2019 a. 152.

98.15 False testing. (1) No person shall manipulate, under-read or over-read or make any false determination by the Babcock test or any other test used for determining the value of milk or cream. No person shall make any false record or report of the results of any such test.

(2) A district attorney to whom any violation of this section is reported shall cause appropriate actions or proceedings to be instituted for the collection of a forfeiture or fine or for the enforcement of other remedies. In any enforcement action the court may, in addition to any other penalty provided, order restitution to any party injured by violation of this section. If the violator is convicted of a crime, restitution shall be in accordance with s. 973.20.

History: 1979 c. 264; 1987 a. 398.

Sub. (1) did not preclude prosecution for felony fraud under s. 943.20 (1) (d) when the state alleged that the defendant misrepresented the quality of milk sold. State v. Plocekelman, 2007 WI App 31, 299 Wis. 2d 251, 729 N.W.2d 784, 06–1180.

98.16 Vehicle scale operators; scale installation and testing. (1) **DEFINITIONS.** In this section "vehicle scale" means a commercial scale that is designed to weigh loaded or unloaded highway, farm or industrial vehicles, except that it does not include a scale that is operated exclusively by this state.

(2) **LICENSE FOR OPERATOR.** (am) Except as provided in par. (dm), no person may operate a vehicle scale without an annual license from the department. A separate license is required for each scale. A license is not transferable between persons or scales. A license expires on March 31 annually.

(bm) The department shall provide a license application form for persons applying for a license. The form shall require all of the following:

1. The applicant's correct legal name and business address and any trade name under which the applicant proposes to operate the vehicle scale.

2. A description of the nature and location of the vehicle scale.

ing, testing and certification of weights and measures. The rules may include record-keeping and reporting requirements.

(3) PROHIBITED PRACTICES. A person who installs, services, tests or calibrates weights and measures may not do any of the following:

(a) Install or adjust a weight or measure to make the weight or measure incorrect or to cause the weight or measure to violate this chapter or rules promulgated under this chapter.

(b) Misrepresent that a weight or measure is correct.

(c) Use any test weight or measure that has not been inspected, tested and approved by the department or by a laboratory certified by the national institute of standards and technology.

History: 1993 a. 16; 1997 a. 27; 2011 a. 209.

98.21 Sale of bread. (1) Except as provided in sub. (2), no person may manufacture for sale in this state, offer to sell or sell bread unless the bread is sold by weight.

(2) Subsection (1) does not apply to stale bread if the bread is conspicuously marked "stale bread" or is placed in a container conspicuously marked "stale bread" and sold as and for stale bread.

History: 1971 c. 113; 1983 a. 14, 329; 1993 a. 492; 1999 a. 9.

98.22 Bulk deliveries sold in terms of weight and delivered by vehicle. (1) When a commodity in bulk is delivered by vehicle to an individual purchaser and the commodity is sold in terms of weight units, the delivery shall be accompanied by a duplicate delivery ticket with the following information clearly stated in ink or by means of other indelible marking equipment:

(a) The name and address of the vendor.

(b) The name and address of the purchaser.

(c) The net weight of the delivery expressed in pounds.

(d) The gross and tare weights of the delivery if the net weight of the delivery is derived from determination of gross and tare weights.

(2) Where milk is picked up at farms, only the identity of the vendor and the net weight need be stated.

(3) One of the duplicate delivery tickets required under sub. (1) shall be retained by the vendor, and the other shall be delivered to the purchaser at the time of delivery of the commodity, or shall be surrendered, on demand to the inspector or sealer, who may retain it as evidence and issue a weight slip in lieu thereof for delivery to the purchaser. If the purchaser carries away the purchase, the vendor shall be required only to give to the purchaser at the time of sale a delivery ticket stating the number of pounds of commodity delivered to the purchaser. If the commodity is to be weighed by the purchaser, the purchaser shall furnish the vendor the duplicate delivery ticket provided for in this section.

History: 1993 a. 492; 1995 a. 225.

98.224 Vehicle tank meters. (1) **DEFINITION.** In this section, "vehicle tank meter" means a commercial meter used to measure liquid fuel, as defined in s. 98.225 (1).

(2) **OPERATOR LICENSED.** (a) Except as provided in par. (e), no person may operate a vehicle tank meter without an annual license from the department. An annual license expires on October 31. A separate license is required for each vehicle tank meter. A license is not transferable between persons or vehicle tank meters.

(b) To obtain a license under par. (a), a person shall submit an application on a form provided by the department. The application shall include all of the following:

1. The applicant's correct legal name and business address, and any trade name under which the applicant proposes to operate the vehicle tank meter.

2. A description of the vehicle tank meter, including the serial number or other identifying marks that appear on the meter and the vehicle on which the meter is mounted.

3. The fees and surcharges required under par. (c).

4. Other relevant information reasonably required by the department for licensing purposes.

(c) An application under par. (b) shall include all of the following fees and surcharges:

1. A license fee established by the department by rule.

2. A surcharge established by the department by rule, if the department determines that within one year prior to submitting the application, the applicant operated the vehicle tank meter without a license required under par. (a). The department may not issue a license under this subsection to an operator if the operator has failed to pay a surcharge under this subdivision assessed against the operator.

3. A surcharge established by department rule if the department determines that, within one year prior to submitting the application, the applicant failed to comply with the reporting requirement under sub. (3). The department may not issue a license under this subsection to an operator if the operator has failed to pay a surcharge under this subdivision assessed against the operator.

4. Reinspection fees, if any, required under s. 98.255.

(d) Payment of a surcharge under par. (c) 2. or 3. does not relieve the applicant of any other civil or criminal liability for a law violation, but is not evidence of a violation of this section.

(e) Paragraph (a) does not apply to an individual who operates a vehicle tank meter only as an employee of a person who is required to hold a license under par. (a) to operate that vehicle tank meter.

(3) TESTING AND REPORTING. The operator of a vehicle tank meter shall have the meter tested for accuracy at least annually by a person who is licensed under s. 98.18 (1) to perform the testing. The operator, or the tester on behalf of the operator, shall report the results of each test to the department within 30 days after the testing is completed. The operator shall retain a test report for at least 3 years.

(4) RULES. (a) The department shall promulgate rules that establish all of the following:

1. License fee and surcharge amounts under sub. (2) (c).

2. Standards for the testing, reporting, and record keeping required under sub. (3).

(b) The department may promulgate rules that establish standards for the construction, operation, and maintenance of vehicle tank meters.

History: 2009 a. 28.

98.225 Deliveries of certain liquid fuels. (1) In this section, "liquid fuel" means gasoline, kerosene, fuel oil, diesel fuel or alternate fuels, as defined in s. 78.39 (1).

(2) No person may sell liquid fuel by liquid measure and deliver it by a vehicle equipped with a pump and metering device unless the pump and metering device is equipped with a delivery ticket printer. Except as provided in sub. (3), the seller shall, at the time of delivery, either provide a copy of the delivery ticket printed by the delivery ticket printer to the purchaser or leave a copy at the place of delivery. The delivery ticket shall contain all of the following information:

(a) The name and address of the seller.

(b) The name and address of the purchaser.

(c) A description of the liquid fuel delivered.

(d) The meter reading showing the volume of liquid fuel delivered.

(3) If there is a malfunction with the delivery ticket printer, the seller shall, at the time of delivery, either provide the purchaser or leave at the place of delivery the information required under sub. (2) in written form.

History: 1993 a. 234.

98.245 Liquefied petroleum gas sales. (1) **SALES EXCEPT BY UNITS OF MEASUREMENT PROHIBITED.** It is unlawful to sell or

98.246 Petroleum product sales. (1) In this section, “petroleum products” has the meaning given under s. 168.01 (3).

(2) Petroleum products may not be sold from a terminal or storage facility in this state on any basis other than gross volume without correction for temperature.

History: 1983 a. 251; 2013 a. 20.

98.255 Reinspection; fee. (1) If the department reinspects a weight or measure because the department has found a violation of this chapter or a rule promulgated under this chapter, the department may charge the operator of the weight or measure a reinspection fee.

(2) The department shall establish the amount of the reinspection fee under sub. (1) by rule and may establish different reinspection fees for different types of weights and measures. The amount of a reinspection fee for a weight or measure may not exceed the department’s average cost to reinspect that type of weight or measure.

(3) A reinspection fee under sub. (1) is payable after the reinspection is completed and is due upon written demand from the department. The department may issue a demand for payment when it issues an annual license application form to the operator of the weighing or measuring device.

History: 2009 a. 28.

98.26 Prohibited acts; penalty; injunction. (1) A person

who does any of the following acts shall forfeit not less than \$100 nor more than \$500 for the first offense and not less than \$200 nor more than \$1,000 for a subsequent offense. A person who intentionally does any of the following acts shall be fined not more than \$10,000 or imprisoned not more than 9 months or both:

(a) Hinders, obstructs or impersonates a sealer or inspector.

(b) Uses or has in possession for use in buying or selling any commodity or service, or sells, any incorrect weight or measure or causes a weight or measure to be incorrect.

(c) Represents in any manner a false quantity or price in connection with the purchase or sale, or any advertising thereof, of any commodity, thing or service.

(d) Uses or disposes of any rejected weight or measure, or commodity, or removes therefrom any official tag, seal, stamp or mark, without written authority from a sealer or inspector.

(e) Violates s. 98.15 (1).

(f) Violates any other provision of this chapter or any rules promulgated under this chapter for which no specific penalty is prescribed.

(2) Upon application of the department or a municipality, a circuit court may grant a temporary or permanent injunction restraining any person from violating any provision of this chapter.

History: 1979 c. 264; 1987 a. 250; 1995 a. 319.

Cross-reference: See also chs. ATCP 91 and 92, Wis. adm. code.