



Memorandum  
State of Wisconsin  
Department of Agriculture, Trade and Consumer  
Protection  
Division of Food and Recreational Safety

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**DATE:** May 9, 2017

**TO:** Staff and Local Health Department Agents.

**FROM:** Peter Haase, Director, Bureau of Food and Recreational Businesses

**SUBJECT:** Regulation of Not for Profit Operations

**ISSUE:** It has come to the attention of DATCP that there may be some confusion on what licensing or regulatory requirements can be enforced on “not-for-profit” operations located in local health department agent jurisdictions. Can agent-jurisdiction licenses be issued or regulatory training for a fee be mandated for a nonprofit group or organization that is identified as exempt under the definition of a “restaurant” that operates a *retail food establishment – meal* (restaurant) for 3 or fewer calendar days a year or a *retail food establishment – nonmeal* for 12 or fewer days during the licensing year?

**Discussion:** Wisconsin Food Code chapter 1-104.10 states that “this chapter applies to all food establishments, regardless of whether the food establishment is subject to licensing under this chapter or related statutes.”

As part of the provisions of the Wisconsin Food Code, chapter 2-201.11 requires that an individual who is in charge of or oversees the activities of employees working in a food service operation demonstrate knowledge of safe food production and practices. This knowledge may be acquired by attending an accepted food safety training course.

It has come to our attention that some agent programs are mandating attendance at a food safety training course for a fee, prior to operation.

**Resolution:** A county corporation counsel has made the determination that the requirement for mandatory food safety training for license-exempt not-for-profit food operations is unlawful and unallowable. Department legal counsel concurred with the determination of the county legal counsel and the following legal determination was rendered:

*County Agent Health Departments can offer food safety training to potential operators of not-for-profit food operations for a fee, however they cannot mandate the training be taken and operations contingent upon taking the training. No mandatory training or license fees can be charged to a group identified as exempt under ATCP 75 or 97 Stats.*

