

# ☞ **05hr\_CRule\_04-096\_AC-PH\_pt02**



Details:

(FORM UPDATED: 07/12/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2005-06

(session year)

### Assembly

(Assembly, Senate or Joint)

### Committee on ... Public Health (AC-PH)

#### COMMITTEE NOTICES ...

- Committee Reports ... CR
- Executive Sessions ... ES
- Public Hearings ... PH
- Record of Comm. Proceedings ... RCP

#### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... Appt
- Clearinghouse Rules ... CRule
- Hearing Records ... bills and resolutions  
(ab = Assembly Bill)                      (ar = Assembly Resolution)                      (ajr = Assembly Joint Resolution)  
(sb = Senate Bill)                      (sr = Senate Resolution)                      (sfr = Senate Joint Resolution)
- Miscellaneous ... Misc



State of Wisconsin  
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection  
Rod Nilsestuen, Secretary

## PUBLIC NOTICE

### FINAL DRAFT RULE TO LEGISLATURE

The Department of Agriculture, Trade and Consumer Protection announces that it is submitting the following rule for legislative committee review, pursuant to s. 227.19, Stats.:

CLEARINGHOUSE RULE #:           **04-096**

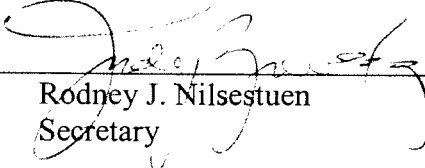
SUBJECT:                               **Retail Food Establishments: Final Draft Rule**

ADM. CODE REFERENCE:           **ATCP 75**

DATCP DOCKET #:                   **02-R-09**

Dated this 17<sup>th</sup> day of February, 2005.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE AND  
CONSUMER PROTECTION

By   
Rodney J. Nilsestuen  
Secretary

*Agriculture generates \$51.5 billion for Wisconsin*

2811 Agriculture Drive • PO Box 8911 • Madison, WI 53708-8911 • Wisconsin.gov



State of Wisconsin  
Jim Doyle, Governor

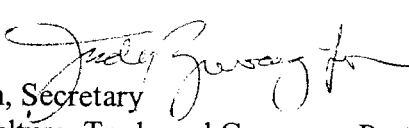
---

**Department of Agriculture, Trade and Consumer Protection**  
Rod Nilsestuen, Secretary

DATE: February 17, 2005

TO: The Honorable Alan J. Lasee  
President, Wisconsin State Senate  
Room 219 South, State Capitol  
P.O. Box 7882  
Madison 53707-7882

The Honorable John Gard  
Speaker, Wisconsin State Assembly  
Room 211 West, State Capitol  
P.O. Box 8952  
Madison 53708-8952

FROM: Rodney J. Nilsestuen, Secretary   
Department of Agriculture, Trade and Consumer Protection

SUBJECT: **Retail Food Establishments; Final Draft Rule (*Clearinghouse Rule #04-096*)**

The Department of Agriculture, Trade and Consumer Protection (DATCP) is transmitting this rule for legislative committee review, as provided in ss. 227.19(2) and (3), Stats. DATCP will publish a notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19(2), Stats.

### ***Background***

DATCP currently licenses and inspects retail food establishments, such as grocery stores. DATCP has adopted food safety rules for retail food establishments. The current rules are based on the federal model food code. This rule updates Wisconsin rules, based on recent changes to the federal model food code. This rule also makes minor changes to clarify current rules. The Wisconsin Department of Health and Family Services ("DHFS") is proposing nearly identical rules for restaurants.

This rulemaking is a joint effort by DATCP and DHFS to maintain consistent and up-to-date standards for all retail food operations. Some grocery stores include restaurants, and vice-versa. DATCP and DHFS coordinate their licensing and inspection activities so there is no regulatory duplication.

*Agriculture generates \$51.5 billion for Wisconsin*

The United States Food and Drug Administration (“FDA”) publishes the federal model food code. The model code is not federal law, but it serves as a model for state and local regulation. The model code provides practical, science-based food safety standards for grocery stores, restaurants and other retail food establishments.

Many states base their retail food regulations on the federal model food code. Over 44 U.S. states and territories have adopted some version of the federal model food code, and 9 states or territories are in process of doing so. FDA periodically updates the federal model food code, based on new scientific information and industry practices.

Current DATCP and DHFS rules are based on the 1999 version of the federal model food code. This rule (and the companion DHFS rule) update Wisconsin rule provisions, based largely on changes contained in the 2001 federal model food code (and 2003 supplement). This rule will help ensure fair, consistent and up-to-date regulation of retail food establishments.

DATCP licenses grocery stores and other retail food establishments under s. 97.30, Stats. DATCP may adopt rules for retail food establishments, pursuant to ss. 93.07(1) and 97.30(5), Stats. Rules may include standards for the construction and maintenance of facilities; the design, installation, cleaning and maintenance of equipment and utensils; personnel sanitation; food handling, display and storage; and food sources and food labeling. DHFS has comparable regulatory authority over restaurants.

### *Rule Contents*

This rule makes a large number of updates and technical changes to current DATCP rules. The following are the more significant changes:

#### **Food Temperatures**

Under current rules, “potentially hazardous foods” must be kept sufficiently hot (or sufficiently cold) to prevent the rapid and progressive growth of infectious or toxigenic microorganisms. This rule changes the required minimum temperature of hot “potentially hazardous” foods from 140° F. to 135° F. This rule also allows cold “potentially hazardous” foods (which are normally refrigerated at 41° F. or lower) to remain unrefrigerated for up to 6 hours if certain procedures are followed. The changes are based on current scientific information and federal model food code recommendations.

#### **Definitions**

A restaurant is a place that prepares or serves “meals.” This rule modifies the definition of “meal” so that it no longer includes individual pastry items served with a beverage. For example, a grocery store will no longer be subject to potential regulation as a “restaurant” merely because it serves doughnuts and coffee. This rule also makes a number of other technical changes to current definitions.

### **Food Employees**

This rule reflects current standard recommendations by the state epidemiologist relating to food employee health and sanitation. Among other things, this rule does the following:

- Allows employees to contact ready-to-eat food with bare hands under certain limited conditions (special requirements apply).
- Clarifies current provisions limiting food contact by employees affected with certain illnesses or symptoms.
- Clarifies current requirements related to food employee hand-washing, and requires employees to wash hands before putting on gloves to work with food.

### **Food Safety and Labeling**

This rule clarifies current standards related to the safety and labeling of food offered for sale in a retail food establishment. Among other things, this rule does the following:

- Clarifies current requirements related to food sources.
- Clarifies provisions related to the handling and sale of raw eggs and shellfish.
- Requires hazard control (HACCP) procedures or warning labels for unpasteurized juice.
- Clarifies date-marking requirements for ready-to-eat “potentially hazardous” foods.
- Requires warning disclosures related to the sale of certain uncooked ready-to-eat foods, including uncooked meat, fish, eggs and shellfish.

### **Food Equipment and Utensils**

This rule makes minor clarifications related to current standards for food equipment and utensils.

### **Water, Plumbing and Waste**

This rule makes minor technical changes suggested by the Department of Commerce, Wisconsin’s plumbing code agency. It also makes minor technical changes related to handwash sinks and temporary food establishments.

### **Buildings and Facilities**

This rule does the following:

- Prohibits facility configurations that cause the general public to enter or exit a retail food establishment through a food processing area.
- Requires food establishments to comply with applicable provisions of the Wisconsin commercial building code.
- Makes other minor technical changes related to standards for retail food buildings and facilities.

### **License Fee Correction**

Current rules incorrectly set an annual license fee of \$60 for retail food establishments with annual food sales of less than \$25,000. This rule corrects (reduces) the license fee to \$40, which is the fee established by s. 97.30(3m)(cm), Stats.

### ***Public Hearings***

DATCP held simultaneous public hearings at 6 locations via video conferencing on October 7, 2004. Hearing sites included Waukesha, Madison, Wisconsin Rapids, Eau Claire, Spooner and Appleton. A total of 10 people attended the hearings. One person registered in support of the proposed rule, 4 persons registered in support with modifications, and 5 persons attended for informational purposes only. Five persons submitted written testimony. Comments included:

- Three local health departments suggested that DATCP and DHFS delete a provision to allow cold foods to warm up to 70° F without refrigeration for up to 6 hours. However, DATCP and DHFS believe that the provision is scientifically justified (no change made).
- Several persons commented for and against provisions related to bare hand contact with ready-to-eat food. DATCP and DHFS believe that the final draft rule addresses all of the concerns, but that more and better training materials are needed.
- Several persons urged DATCP and DHFS to provide additional training. The departments will provide as much training as possible, subject to budget and staffing constraints.

A complete summary of hearing testimony is attached.

### ***Changes After Public Hearing***

DATCP made the following rule draft changes following the public hearings (DHFS made parallel changes to its draft rule):

- After discussions with the Wisconsin Restaurant Association, DATCP modified the language in 3-603.11 to state that consumption of raw or uncooked animal foods at home is also a hazard.
- Public Hearing comment suggested eliminating Chapter 11 “Special Organizations,” because it is a licensing issue. DATCP and DHFS agreed to eliminate the chapter and place the licensing component in HFS 196 “Restaurants.” This change included deleting the definition of “Special Organization Serving Meals.” The final draft rule eliminates the chapter contents, but keeps the chapter heading as a placeholder.
- Based on hearing comments, DATCP made several minor changes for clarification and readability. The final draft modifies the definition of “Mobile Food Establishment,” adds a definition of “Risk Factor,” and clarifies provisions related to the DHFS sanitizer approval program.
- The final draft rule makes minor editorial changes in response to comments from the Legislative Council Rules Clearinghouse.

### ***Response to Rules Clearinghouse Comments***

The Legislative Council Rules Clearinghouse made a number of technical and editorial comments on the hearing draft rule. DATCP made changes to address all of the Rules Clearinghouse comments.

### ***Business Impact***

This rule will affect retail food establishments such as grocery stores, bakeries and convenience stores. This rule will affect approximately 4,500 retail food establishments licensed by the DATCP and approximately 3,000 retail food establishments licensed by 27 agent counties and municipalities.

Many of these businesses are small businesses. This rule will benefit affected businesses by clarifying existing regulatory requirements. In some cases, this rule will give affected businesses wider latitude to choose a preferred method of compliance. This rule will not have a significant adverse impact on small business.

The rule adds some minor new requirements for some retail food establishments, but these requirements are not expected to impose any significant burdens. This rule will benefit businesses that have combined grocery and restaurant operations because it will maintain consistency with DHFS restaurant rules.

This rule will not have a significant adverse economic impact on small business, and it is not subject to the delayed small business effective date provision in s. 227.22(2)(e), Stats. A small business analysis ("final regulatory flexibility analysis") is attached.

### ***Fiscal Estimate***

DATCP licenses and inspects retail food establishments, including grocery stores. DHFS licenses and inspects restaurants. Many counties and municipalities license and inspect retail food establishments as agents of DATCP and DHFS. DATCP and DHFS train and evaluate these agent counties and municipalities.

DATCP and DHFS have adopted uniform rules for all retail food establishments, including grocery stores and restaurants. This rule, and a nearly identical rule proposed by DHFS, will update the current rules. This rule will not have a significant fiscal effect on state or local government, and will not change current state or local workload. A complete fiscal estimate is attached.

### ***Federal Regulations***

Federal law, like state law, generally prohibits the sale of adulterated or misbranded food. There are no federal regulations that specifically address retail food operations. However, FDA publishes a model food code that is based on the best available science and information related to retail food safety.

FDA, the United States Department of Health and Human Services, and the United States Department of Agriculture encourage state and local governments to adopt retail food safety regulations that are consistent with the federal model food code. The current Wisconsin Food Code is based on the 1999 edition of the federal model food code. This rule updates the Wisconsin Food Code to incorporate changes contained in the 2001 (most recent) edition of the federal model food code.

### ***Adjacent State Regulations***

The states adjacent to Wisconsin have all adopted retail food regulations based on some version of the federal model food code:



Honorable Alan J. Lasee  
Honorable John Gard  
February 17, 2005  
Page 7

**Minnesota**

Minnesota's current regulations are based on the 1997 edition of the federal model food code.

**Iowa**

Iowa's current regulations are based on the 1997 edition of the federal model food code.

**Illinois**

Illinois' current regulations are based on the 1995 edition of the federal model food code. Like Wisconsin, Illinois is proposing to update its regulations based on the 2001 edition of the federal model food code.

**Michigan**

Michigan's current regulations, like Wisconsin's, are based on the 1999 edition of the federal model food code.

**Wisconsin Department of Agriculture, Trade  
and Consumer Protection**

**Final Regulatory Flexibility Analysis**

**Rule Subject:** Retail Food Establishments  
**Adm. Code Reference:** ATCP 75  
**Rules Clearinghouse #:** 04-096  
**DATCP Docket #:** 02-R-09

**Rule Description**

The Department of Agriculture, Trade and Consumer Protection (“DATCP” or “department”) licenses and inspects groceries, convenience stores, and other retail food establishments. The department has adopted food safety rules for these establishments in ch. ATCP 75. This rule generally does the following:

- Incorporates updates from the 2001 federal model food code and the concepts of the 2005 federal model food code issued by the United States Food and Drug Administration into the Wisconsin Food Code to reflect current food science standards and to clarify existing rules.
- Makes technical and other minor changes to correct or clarify the current rules relating to retail food establishments and the Wisconsin Food Code.
- Coordinates DATCP’s licensing requirements for food establishments with the licensing requirements for restaurants, which are regulated by the Department of Health and Family Services (DHFS). The agencies have collaborated to modify their food codes and make the two codes consistent.

More specifically, the rule makes a large number of updates and minor changes to current rules. These changes include:

- Altering the temperature of hot holding foods from 140° F. to 135° F.
- Specifying the amount of time and the procedures that must be followed by retail food establishments when potentially hazardous food is removed from refrigeration.
- Removing doughnut shops and other food establishments that might sell individual pastry items generally sold with a beverage from the regulatory jurisdiction of DHFS.

- Clarifying that foods prepared and held in a food establishment for more than 24 hours must be clearly marked and refrigerated for a maximum period of 7 days (if not frozen).
- Limiting food employees' contact with food if those employees are affected with certain symptoms or illnesses as per state epidemiologist standard practices, specifying that food employees must wash hands before putting on gloves prior to working with foods, and clarifying the circumstances during which a food employee may have bare hand contact with food.
- Establishing that juice packaged for sale must be treated as specified by the federal Hazard Analysis and Critical Control Point (HACCP) standard or must be labeled as not pasteurized.
- Correcting the license fee requirement in the rule by changing the annual licensing fee for certain retail establishments from \$60 to \$40, which is consistent with the required statutory amount.
- Making minor clarifications related to current standards for food equipment and utensils.
- Making minor technical changes suggested by the Department of Commerce, which regulates Wisconsin's plumbing code, relating to handwash sinks and temporary food establishments.
- Prohibiting facility configurations that cause the general public to enter or exit a retail food establishment through a food processing area and requiring compliance with applicable provisions of the Wisconsin commercial building code.

### **Small Businesses Affected by This Rule**

This rule affects all retail food establishments licensed by the department or its contracted agents in Wisconsin, including many businesses that would be considered a "small business" as defined in s. 227.114(1)(a), Stats, or under the definition of "small business" as defined in s. 227.114(1), Stats. as amended by 2003 Act 145.

This rule affects the following businesses, among others:

- Groceries
- Bakeries
- Convenience stores
- Coffee shops
- Convenience food stores

## Effects on Small Business

This rule is not expected to have a major impact on small businesses. The rule benefits businesses by defining previously undefined terms and clarifying rules to reduce error in interpretation.

The rule will assist small businesses that have combined operations. Under this rule change, a grocery store that contains a restaurant section will no longer be subjected to different rule requirements due to differences in the food code regulating retail food establishments and the food code regulating restaurants.

The rule clarifies but does not substantially alter current rules related to the regulation and licensing of retail food establishments. Retail food establishments can implement this rule with existing personnel, and it is likely that many establishments will have already implemented the requirements contained in this rule.

## Steps to Assist Small Business

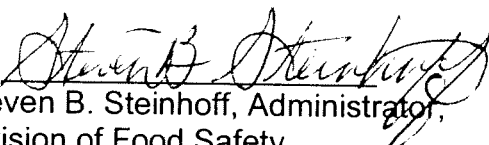
The department will provide training, fact sheets, and handouts to Wisconsin retail food establishments and our regulatory partners to help implement the modified requirements contained in this rule. DATCP will review and update current training materials and create new materials where needed.

## Conclusion

This rule will not have a major impact on small business because the rule clarifies but does not substantially alter the existing licensing and inspection requirements of retail food establishments. The department will provide assistance to implement the updated requirements.

Dated this 16<sup>th</sup> day of February, 2005

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By   
Steven B. Steinhoff, Administrator,  
Division of Food Safety

**FISCAL ESTIMATE**

DOA-2048 (R 10/94)

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

LRB or Bill No. / Adm. Rule No.  
 ATCP 75 and Appendix  
 Amendment No. (If Applicable)

**Subject:**

Revision to ATCP 75 and the appended Wisconsin Food Code

**Fiscal Effect**

State:  No State Fiscal Effect

Check below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 Create New Appropriation

Increase Costs --

May be possible to absorb within agency's budget?  Yes  No

Decrease Costs

**Local:**

- No local government costs  
 1.  Increase Costs       Increase Revenues  
      Permissive  Mandatory       Permissive  Mandatory  
 2.  Decrease Costs      4.  Decrease Revenues  
      Permissive  Mandatory       Permissive  Mandatory

**5. Types of Local Gov. Unit Affected:**

- Towns       Villages  
 Counties       Cities  
 Other:  
 School Districts  
 WTCS Districts

**Fund Source Affected:**

- GPR     FED     PRO     PRS     SEG     SEG-S

Affected Ch. 20 Appropriations:  
20.115(1)(a) and 20.115(1)(gb)

**Assumptions Used in Arriving at Fiscal Estimate**

Revisions to ATCP 75 and the Wisconsin Food Code will have no ongoing fiscal effect on state or local government. Proposed revisions will not significantly alter state or local retail food enforcement activities.

Staff time for developing and drafting the rule revisions, conducting public hearings and finalizing the rule, followed by delivery of limited training on the revisions, should be no more than 1000 hours.

Cost to local government agencies would be limited to staff time to attend training.

**Long - Range Fiscal Implications**

None

**Agency/prepared by: (Name & Phone No.)**

DATCP  
Wayne Kopp      ph. 608-224-4718

**Authorized Signature/Telephone No.**

*Barbara Knapp*  
Barbara Knapp, ph. 608-224-4746

**Date**

May 18, 2004

**Public Hearing Comments ATCP 75 Retail Food Establishments  
(Clearinghouse Rule #04-096)**

*Oral Testimony*

The following persons gave oral testimony at the hearing:

Ron Hermes - Consumer

3-602.11 – He recommends that labeling suggested in the note to this provision include identification of the oils in the allergen products by adding to the first note "or the unrefined oils of this products".

Loyce Robinson - City of Milwaukee Health Department

1. 3-301.11 "Preventing Contamination from Hands" - The drafted change is not an improvement over the current rule. It is confusing to the public and difficult to enforce. She would prefer a previous version of the rule that simply provides "bare hand contact should be minimized".
2. 3-501.16(C): "Potentially Hazardous Food, Hot and Cold Holding" – She recommends this provision that allows cold food to be removed from refrigeration for up to 6 hours be removed from the proposed code.

Susan Quam - Wisconsin Restaurant Association Industry Association (WRA)

1. 3-301.11 "Preventing Contamination from Hands" - WRA feels the changes to this section of the code, which removes the formal approval process for touching ready-to-eat foods with bare hands and clarifies the requirements that must be met for bare-hand contact to occur, is a step in the right direction. However, we do feel that a mandatory hand-washing training program in place of the current and proposed provision is a more pro-active approach.
2. 3-603.11 "Consumption of Animal Foods that are Raw, Undercooked, or Not Otherwise Processed to Eliminate Pathogens." - Proposed changes to this section requires operators to inform customers of the increased risks of consuming raw or undercooked meats, poultry, seafood, shellfish or eggs. We feel that the current provision that requires operators to disclose the use or availability of raw or undercooked animal foods is sufficient. Consumers do not want to be "lectured" when dining out and most are usually aware of the risks associated with eating animal foods in raw or undercooked forms. Compliance with this requirement will be difficult for catering, banquet, and operators with posted menu boards. In order for these operations to comply, many would have to post the reminder in the establishment.
3. 2-2 "Employee Health" - WRA supports the changes to section 2-2, in which food employees with symptoms of vomiting and diarrhea are to be excluded from working in food establishments until 24-hours after their symptoms cease. We request that the departments develop training and/or fact sheets for their inspectors and agent health departments which clearly explain this change and how they are to enforce the new requirement.

*Written Testimony*

The following persons submitted written comments for the hearing record:

Kathi Kilgore - Wisconsin Innkeepers Association (WIA)

3-603.11 "Consumption of Animal Foods that are Raw, Undercooked, or Not Otherwise Processed to Eliminate Pathogens." – The Wisconsin Innkeepers Association supports the position on this section presented by the Wisconsin Restaurant Association.

**Public Hearing Comments ATCP 75 Retail Food Establishments  
(Clearinghouse Rule #04-096)**

Elizabeth Temple - Consumer

1. Allergy information 3-101.11 "Safe, Unadulterated, and Honestly Presented" and 3-602.11 "Food Labels" - She wonders what was the impetus for including the FFDCA language for labeling for food allergies and adverse reactions? Please keep it out of the Wisconsin food code.
2. 7-204.11 "Sanitizers, Criteria" - Remove the verbiage: "and other chemical antimicrobials" as DHFS does not test general antimicrobial detergents/soaps/hand sanitizers, etc.
3. 3-201.11(B) "Compliance with Food Law" - Remove the exemption from the code in paragraph (B) for not-for-profit bake sales.
4. 3-501.17 "Ready-to-Eat, Potentially Hazardous Food, Date Marking" - Under paragraph (B)(2) an operator will not be able to determine if the use by date placed on an item from a wholesale food processor is for food safety reasons or food quality purposes. This would make it difficult for an operator to know determine a discard date opened for a food item from a wholesale food processor.
5. Where does this code discuss exemptions for foods that are irradiated?
6. Remove all references to "Limited".
7. 1-201.10 "Listing of Terms" -
  - a. Define "Prepackaged", "Food Spills", "Frozen", "New", "Private Gathering", and "Risk Factor".
  - b. Modify the definition of "Mobile food establishment" so that it applies only when food is served or sold directly from the unit.
  - c. Remove the definition of "vending machine". WAC HFS 198 addresses food vending, and remove the definition of "Special Organizations Serving Meals" since this is a licensing issue.
8. Add a section on Ice Making, Storage, Dispensing and Handling.
9. 2-2 "Employee Health" Retain "or other pathogens, which can be transmitted through food"
10. "Enforcement" - There should be an enforcement section in the code applicable to both agencies.
11. The code needs a topical word index with page and section reference to make it easy to find provisions.
12. To avoid conflict or duplication, research other agencies' laws regarding a particular referenced provision before placing a provision in this administrative code.
13. Consider removing Chapter 8, "Public Toilet Rooms" as it is unused or otherwise redundant and Chapter 11 which is essentially a licensing chapter
14. Examine the code for what is intended to be "grandfathered" and what is not.
15. Modify your MOU with DHFS to reflect your new code inclusions of "Meal".
16. I am concerned that the code is becoming an ever expanding best practices-SOP handbook rather than just enforceable regulations.
17. Allow comparable substitutes for ANSI equipment.
18. The industry must look to other sources of good business practices and research all the other federal and state laws pertaining to their businesses, practices, and protection of food.
19. DHFS and DATCP need to make the regulations as simple and in as plain language as possible in order to best serve the needs of the targeted persons directly affected by them.
20. There needs to be a combined effort with State agencies and Industry groups to conduct training to Certified Food Managers. I recommend CD-ROM or DHFS/DATCP's website training.

**Public Hearing Comments ATCP 75 Retail Food Establishments  
(Clearinghouse Rule #04-096)**

21. 5-202.12 "Handsink, Water Temperature, and Flow" – I suggest the following language:change: “At a newly constructed establishment, additional handsink installations at existing establishments, or when faucet/activation assemblies are replaced, the activation means shall be non-hand operated.”
22. 3-404.11 "Treating Juice" - The warning label language is too strong. I suggest: “UNPASTEURIZED: May Contain Harmful Bacteria”.
23. Chapter 9 "Mobile Food Establishments" - Remove automatic waivers, especially those in Chapter 9 Mobile Food Establishments. Appropriate regulatory officials should only grant waivers.
24. 4-301.16 " Food Preparation Sinks" - Paragraph (B) should read “Existing food establishments, not undergoing a change of operator”.
25. 4-502.11 "Good Repair and Calibration" – The provision should mention various methods of calibration.
26. Chapter 11 "Special Organizations" - Remove Chapter 11, It is essentially a licensing chapter and needs to be eliminated from the code.
27. 5-101.11 "Approved System" – I suggest the following language change of paragraph (B): “Water, intended for human consumption, derived from private wells, shall be sampled at least annually by competent staff and samples analyzed by state approved laboratories for the presence of coliform and level of nitrates. Records of the analysis results shall be maintained on the licensed premises and available to all appropriate regulatory authorities. Levels exceeding the drinking water quality standards of the Department of Natural Resources shall be acted upon immediately and the protocols of the Department of Natural Resources shall be followed. Operators shall provide potable water (for all ingestion purposes and to all persons) from another approved and tested source upon notification of drinking water MCL exceedance.”
28. 5-101.12 "System Flushing and Disinfection" - Please check this reference to make sure it is DCOMM and not the DNR WAC Chapter NR 812.41 that you intend.
29. There is an existing regulation on Food Vending in WI, WAC Chapter HFS 198 Vending of Food. Remove all other references in the code regarding vending machines.
30. 3-201.17 Game Animals
  - a. In paragraph (B)(2) This section is confusing: The statute (29.541) that is referenced in this section needs to be stated verbatim.
  - b. Return to the previous code language for this provision.
31. 3-304.14 "Wiping Cloths and Working Containers, Use Limitation" - Cloths used to clean tables and miscellaneous surfaces ar not food spill cloths. The code needs to distinguish these separate functions.

Erin Nutter - State Division of Food Safety

3-303.12 "Storage or Display of Food in Contact with Water or Ice" - Paragraph (E) states that canned beverages displayed in ice water must not have their tops submerged even though there also must be a 50 ppm chlorine residual. Delete this section as it is not bases on science.

Natalie Vanderveald - Outagamie County Health Department

1. 3-301.11 "Preventing Contamination from Hands" - A note is present, in the proposed changes, stating that availability of a template for food establishments to use to develop a bare hand contact program. The current template is cumbersome and it has been proven to be challenging for some food establishments. As a result, I am recommend the template be reviewed.



**Public Hearing Comments ATCP 75 Retail Food Establishments  
(Clearinghouse Rule #04-096)**

Randy Wilson - Wood County Health Department

1. 3-301.11 "Preventing Contamination from Hands" - The proposed change related to bare hand contact with food appears to be more complicated than previously. We should be working harder on preventing bare hand contact instead of looking to expand the use of bare hands,
2. 3-501.16: "Potentially Hazardous Food, Hot and Cold Holding" - Wonders how the provision that allows cold food to be removed from refrigeration for up to 6 hours will be enforced and monitored. Would like paragraph (C) to be eliminated.
3. 5-202.12 "Handsink, Water Temperature, and Flow" - The proposed language changes when a hands-free handsink is required and says only at newly constructed food establishments or when a handsink is replaced or installed. A hands-free operated handsink should be required in all new establishments, all new and replacement sinks, all replacement faucets, and at change of operator.
4. 1-201.10 (B)(53m) "Mobile food establishment" - What is the difference between mobile food establishment (retail food establishment from a movable vehicle) and a traveling retail food establishment? This definition seems unclear and possibly even contradictory to the service base requirements in Chapter 9 "Mobile Food Establishment"
5. 10-104.11 "Manual Warewashing" - Paragraph (C) permits a temporary food establishment to return equipment and utensils to an approved facility at the end of the day for warewashing. How will this be enforced considering one day events, or events close to another jurisdiction.

Steve Steinhoff - State Division of Food Safety

3-201.11(B) "Compliance with Food Law" - Delete the paragraph (B) exception for not for profit bake sales.

Tommye Schneider - City of Madison Health Department

1. 3-301.11 "Preventing Contamination from Hands" - This section continues to be difficult to understand and enforce.
2. 3-501.16(C): "Potentially Hazardous Food, Hot and Cold Holding" - She wonders how to monitor and enforce this provision that allows cold food to be removed from refrigeration for up to 6 hours
3. 3-603.11 "Consumption of Animal Foods that are Raw, Undercooked, or Not Otherwise Processed to Eliminate Pathogens." Does the new language mean each menu item that is under-cooked or made with raw eggs, etc. has to be stated so on the menu?
4. 3-306.13 "Consumer Self-Service Operations" - Is consumer self-service of raw shellfish only allowed at salad bars or is it also allowed at retail stores for bulk self-service?
5. 1-201.10(B) (51m) "Meal" We do not understand the need to change the definition by removing "individual pastry items generally sold with a beverage". This would cause establishments that were required to have Certified Food Manager to no longer have one. We want to see as many Certified Operators out there as possible, not fewer.
6. 6-201.19 "Public Entrances and Exits" - Can an establishment have a reach-in cooler by a back door that is frequently used by the public? Isn't this a food storage area? A number of restaurants have refrigerators in hallways leading to back door. Some of these are public entrances.
7. 3-203.11 "Molluscan Shellfish, Original Container" - Paragraph (D) states that shucked shellfish may be removed from the container in which they were received and repacked in consumer self-service containers. Was this meant to be a consumer self-service operation or is the intent to say single service container?
8. 4-204.117 "Warewashing Machines, Automatic Dispensing of Detergents and Sanitizers" - Paragraph (B) seems to omit any grandfather exemption for the manual dispensing of detergents or sanitizers. A lot of our establishment's hand-feed detergent into the dish machine. Can all machines be modified to dispense powder or liquid detergents? How much time would we give them to convert machine?

**Public Hearing Comments ATCP 75 Retail Food Establishments  
(Clearinghouse Rule #04-096)**

People Who Attended For Information Only  
(Did not testify)

Amy Springer - Wood County Health Department  
Larry Hanke - Division of Food Safety, DATCP  
Laurie Thomas – Division of Food Safety, DATCP  
Robert Harris – UW Health Services  
Richard Johnson – UW Health Services  
Jim Blackmore – City of Madison Department of Public Health