

ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis

Original Updated Corrected

Administrative Rule Chapter, Title and Number

ATCP 70, Food Processing Plants

Subject

Wisconsin's Shellfish Shippers and Processors

Fund Sources Affected

Chapter 20 , Stats. Appropriations Affected

GPR FED PRO PRS SEG SEG-S

Fiscal Effect of Implementing the Rule

No Fiscal Effect
 Indeterminate

Increase Existing Revenues
 Decrease Existing Revenues

Increase Costs
 Could Absorb Within Agency's Budget
 Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

State's Economy

Local Government Units

Specific Businesses/Sectors

Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

Policy Problem Addressed by the Rule

This proposed rule would modify ch. ATCP 70, Food Processing Plants, to incorporate changes that apply to processing molluscan shellfish (e.g., oysters, clams, mussels and certain forms of scallops). Under current rules, food processing plants in Wisconsin that perform fish processing may receive molluscan shellfish from another state and process the shellfish for final sale only within Wisconsin. The proposed rule would establish a program that allows Wisconsin food processing plants, that choose to participate in the program, to process and repack molluscan shellfish for sale in other states and internationally. In general, the proposed rule adopts portions of the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish (2009), which sets the sanitary control standards for molluscan shellfish for human consumption.

The proposed rule would allow Wisconsin to become a member of the Interstate Shellfish Sanitation Conference (ISSC). ISSC is the primary voluntary national organization of state shellfish regulatory officials. ISSC provides guidance and counsel on matters for the sanitary control of shellfish. ISSC entered into a Memorandum of Understanding with the United States Food and Drug Administration (FDA) to create a federal and state cooperative program called the National Shellfish Sanitation Program (NSSP). NSSP promotes uniformity and improves the sanitation of shellfish movement in interstate commerce. Participating states codify this guidance to regulate the processing of molluscan shellfish in their jurisdictions for interstate commerce and FDA recognizes regulations based on the guidance as suitable for ensuring compliance with the Federal Food, Drug and Cosmetic Act. Under the rule, Wisconsin food processing businesses that meet the standard would then be certified to process and ship shellfish in interstate commerce. Thirty-eight other states currently participate in ISSC. The rule does all of the following:

- Defines terms related to activities associated with the receipt, processing, labeling, storage, and shipping of molluscan shellfish.
- Modifies current rules to include provisions of NSSP and the guidelines of ISSC related to receiving, processing, repacking, labeling, storage, and shipping molluscan shellfish for wholesale interstate and

intrastate trade.

- Applies existing standards for facilities, sanitation, and personal hygiene in food processing plants to molluscan shellfish shippers and reprocessors.
- Sets standards for critical control points, critical limits, record-keeping, and traceability consistent with NSSP guidelines.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Businesses and Business Sectors

The rule was requested by businesses that expressed an interest in processing and repackaging molluscan shellfish for sale in other states. This rule will primarily benefit large businesses that provide wholesale food products to retail food establishments, restaurants, and other wholesale food industries nationwide. The rule will provide businesses with the option, under a food processing plant license, of processing and repackaging shipments of molluscan shellfish in Wisconsin to meet the needs of their customers in other states.

Small businesses are unlikely to participate in this program, with current regulations allowing them to receive and sell molluscan shellfish in their local market areas. A small business licensed as a food processor and who chooses to participate in the program is expected to be able to easily meet program requirements.

The provisions of this rule are consistent with general facility and sanitation standards that food processors must already meet. Businesses that choose to participate in the program would not need to extensively modify existing facilities or implement unusually burdensome recordkeeping. Participation in the program is voluntary and only businesses that choose to sell molluscan shellfish in interstate commerce would be required to meet the requirements. There will be no additional licensing fees beyond those already required for a food processing license.

State's Economy

Wisconsin does not produce molluscan shellfish, but some businesses bring shellfish in from other states and package and reprocess it for sale within the state. This rule will allow Wisconsin businesses to expand their markets for shellfish by allowing them to process and sell molluscan shellfish in interstate commerce. The proposed rule would establish a program that allows Wisconsin food processing plants, that choose to participate in the program, to process and repack molluscan shellfish for sale in other states and internationally. Thirty-eight other states participate in ISSC. For example, the rule will put Wisconsin on an equal footing with molluscan shellfish shippers and processors in Illinois, specifically in the Chicago area. The rule will also provide an incentive to large wholesalers that operate in Iowa, Minnesota and the Dakotas to locate molluscan shellfish processing operations in Wisconsin.

Local Governmental Units and Public Utility Rate Payers

The rule will have no impact on local governmental units or public utility rate payers.

Economic Impact Analysis Comments

DATCP posted the proposed hearing draft rule online as required under s. 227.137, Stats., and contacted appropriate organizations to solicit information and advice from businesses, business sectors, associations, local governmental units and individuals that may be affected by the proposed rule. The department did not receive any comments on the economic impact of the rule.

Fiscal Impact

This rule will not have a significant fiscal impact on state government and DATCP will absorb any costs with current budget and staff since food processing plants are already regulated by DATCP. This rule will have no fiscal effect on local governments.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

This rule will have a positive impact on business in Wisconsin. Currently, Wisconsin businesses may receive and process molluscan shellfish from out of state, but may only sell these products within Wisconsin. This rule will also allow Wisconsin businesses to expand their markets for shellfish by allowing them to process and sell molluscan shellfish in interstate commerce. If the rule is not adopted, Wisconsin will continue to have an economic disadvantage relative to other states, such as Illinois and Michigan, that have adopted the standards and allow interstate sales of processed and repackaged molluscan shellfish.

Long Range Implications of Implementing the Rule

There are no long range negative implications of implementing the rule. The rule will allow certain Wisconsin businesses to increase sales of molluscan shellfish in interstate commerce, while also helping to protect the public health of consumers who purchase molluscan shellfish.

Compare With Approaches Being Used by Federal Government

There are no federal laws related to the transportation and processing of molluscan shellfish. However, FDA administers the National Shellfish Sanitation Program (NSSP), which developed a model ordinance that states may use to develop uniform shellfish regulations. Compliance with the model ordinance is deemed consistent with meeting applicable provisions in the Federal Food, Drug and Cosmetic Act.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois and Michigan currently participate in NSSP. Unlike this proposed rule, Illinois and Michigan require molluscan shellfish processors to pay additional fees to participate in the program. Iowa and Minnesota do not participate. These states may be potential customers for molluscan shellfish sold by Wisconsin businesses.

Name and Phone Number of Contact Person

Tim Anderson
Chief, Regulatory and Technical Services
Department of Agriculture, Trade and Consumer Protection-Division of Food Safety
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-4716
E-Mail: Timothy.Anderson@wisconsin.gov