

Wisconsin Department of Agriculture, Trade and Consumer Protection

Final Regulatory Flexibility Analysis

Rule Subject: Food Warehouses
Adm. Code Reference: ATCP 70 and 71
Rules Clearinghouse #: 15-093
DATCP Docket #: 14-R-11

Rule Summary

This proposed rule modifies current food warehouse rules to clarify which types of food processing activities in a food warehouse do not obligate a licensed food warehouse operator to obtain a separate food processing plant license. The proposed rule harmonizes the food warehouse refrigeration temperature requirements for eggs, dairy products, fish, and fishery products in reduced-oxygen packaging, and molluscan shellfish with the requirements found in other rules. To reduce confusion about which federal food safety regulations must be followed by food warehouse operators, the proposed rule adopts federal regulations by reference for certain types of food warehouses, and indicates that other food warehouses can qualify for an exemption from most requirements of the new federal Preventive Controls–Human Food rule.

Small Businesses Affected

The rule will impact food warehouses of all sizes, including many small ones. Of the more than 800 active food warehouse licenses, about 600 are “small” food warehouses, defined by the Department of Agriculture, Trade and Consumer Protection (“Department”) as having less than 50,000 square feet of storage area.

The rule will benefit operators of small food warehouse businesses who wish to do minimal repacking of pre-packaged products in a licensed food warehouse by exempting the operators from the requirement to acquire a separate food processing plant license.

Operators of some small food warehouses may be unaware that they are subject to Federal Hazard Analysis and Critical Control Point (HACCP) requirements for ensuring food safety. Storage of fish, fishery products, and molluscan shellfish is defined in federal regulations as a form of processing of these products. Small businesses processing these items are thereby subject to HACCP requirements. These HACCP requirements are already adopted and applied to Wisconsin-licensed food processing plant operators who process fish and fishery products in ways more commonly recognized as processing, e.g., smoking, filleting. The proposed rule will clarify that warehouse operators who are storing fish, fishery products, or molluscan shellfish must meet the existing federal HACCP requirements, which will be enforced during Department inspections. The majority of food warehouse operators that currently store fish, fishery products, or molluscan shellfish have already implemented HACCP systems.

In addition to the HACCP requirements, warehouse-based shippers, shucker-packers, repackers, or reshippers of molluscan shellfish for interstate commerce must hold a no-fee licensee dealer certification and meet existing state regulatory requirements under the federal-state Interstate Shellfish Sanitation Conference program. The rule will clarify this requirement.

Federal requirements in the Preventive Controls–Human Food rule, which are adopted in the proposed rule, will vary with the size and customers of the food warehouse operation.

Reporting, Bookkeeping and other Procedures

Food warehouses that hold fish, fishery products, and molluscan shellfish will be required to conduct a hazard analysis, if they have not already done so, and if significant hazards are identified, to develop and implement a HACCP plan, i.e. implement a HACCP system. HACCP regulations, and thus the proposed rule, require documentation of several tasks conducted under the HACCP system. Based on our experience with food processing plant operators who process fish, fishery products, and molluscan shellfish, and warehouse operators who have already implemented the HACCP system, we believe it is unlikely that the additional time and cost of these efforts will have a significant negative impact on business.

Professional Skills Required

The proposed rule will effectively require operators of food warehouses storing fish, fishery products, or molluscan shellfish to complete HACCP training required in the federal regulations. The two-segment training is presented by internet / learner's manual (Segment One) and face-to-face (Segment Two) instruction. The Seafood HACCP Alliance, which oversees the training, ensures that training is affordable for small business operators. The Department offers the Segment Two training to industry at a low cost. Many food warehouse operators who currently store fish, fishery products, or molluscan shellfish have already completed the training.

Accommodation for Small Business

The HACCP system requirements for food warehouses that hold fish, fishery products, and molluscan shellfish are mandated by federal regulations. No accommodation for small business is possible, other than the HACCP training offered by the Department.

Conclusion

The provisions in this proposed rule will benefit Wisconsin's food warehouse industry, including small food warehouses, by creating exemptions from food processing plant licensing. The rule will help ensure that small food warehouses storing fish, fishery products, or molluscan shellfish meet federal requirements to ensure they have minimized the unique risks associated with these products.

This rule will not have a significant adverse effect on “small business” and is not subject to the delayed “small business” effective date provided in s. 227.22(2)(e), Stats.

The Department will, to the maximum extent feasible, seek voluntary compliance with this rule.

Dated this _____ day of _____, 2016.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
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Division of Food Safety