

# STATEMENT OF SCOPE

## Department of Agriculture, Trade and Consumer Protection (DATCP)

**Rule No:** ATCP 75 (Retail Food Establishments) and ATCP 75 Appendix (Wisconsin Food Code), ATCP 55 (Meat and Meat Products), ATCP 70 (Food Processing Plants), and ATCP 88 (Eggs)

**Relating to:** Retail Food Establishments

### 1. Description of the objective of the rule:

The primary objective of this rule revision is to amend ch. ATCP 75 Appendix, “Wisconsin Food Code” to conform to the 2013 Federal Model Food Code, with policies and procedures used by both the Department of Health Services (DHS) and the Department of Agriculture, Trade and Consumer Protection (DATCP) in current food safety practice, and to reflect additional modifications proposed by the National Conference on Food Protection (NCFP).

This proposed rule revision is part of the transfer of food safety and recreational licensing regulations from DHS to DATCP. 2015 Wisconsin Act 55 authorized the transfer of the DHS’s Food Safety and Recreational Licensing Section to DATCP’s Division of Food Safety, effective July 1, 2016. On July 1, 2016, DHS 196 will be renumbered as subch. III of ATCP 75. Both DATCP and DHS adopt identical versions of the Wisconsin Food Code and only one version of the amended Wisconsin Food Code will be needed as an appendix to the amended version of ATCP 75 after the effective date of the transfer. In addition, on July 1, 2016, subch. III of ATCP 75 (Local Regulation of Retail Food Establishments) will be renumbered and become a subchapter of a newly created ATCP 74. DHS 198 (Vending of Food) will be renumbered as a newly created subch. IV of ATCP 75.

DATCP will work cooperatively with DHS to establish a Food Code Advisory Committee consisting of stakeholders to provide advice on the content of rule amendments and best approaches for consolidating rules.

Adopting this scope statement will allow DHS and DATCP to begin work amending chs. DHS 196 and DHS 196 Appendix and identifying approaches for consolidating portions of ch. DHS 196 in ch. ATCP 75 and ATCP 75 Appendix in preparation for the upcoming consolidation. It will also allow DHS and DATCP staff to review and revise, if necessary, retail food exemption provisions found in other DATCP rules, specifically ATCP 55, 70, and 80. Approval of companion scope statements will also allow DHS and DATCP staff to identify approaches for consolidating and amending other DHS rules related to the consolidation.

**2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:**

History and Background. Under current law, DHS and DATCP divide regulatory authority over food safety. Under ch. DHS 196, DHS regulates food safety in restaurants. Under ch. ATCP 75, DATCP regulates food safety in retail food establishments such as grocery stores, supermarkets and most convenience stores. 2015 Wisconsin Act 55 transfers regulatory authority over food safety in restaurants from DHS to DATCP on July 1, 2016. From a regulatory perspective, restaurants will be categorized as a type of retail food establishment.

The Federal Model Food Code is fully updated every four years to provide practical, science-based guidance and enforceable provisions for mitigating risk factors known to cause foodborne illness. The 2013 Federal Model Food Code is the most recent full edition published by the FDA. However, the current Wisconsin Food Code, appended to ch. ATCP 75 for retail food establishments and to ch. DHS 196 for restaurants, is based on the 2009 version of the Federal Model Food Code.

Consolidation with DATCP Division of Food Safety. The transfer of the DHS's Food Safety and Recreational Licensing Section to DATCP's Division of Food Safety will improve services for Wisconsin's food and recreational industries. It will create a "one-stop" contact point for restaurants and retail food establishments, making it much easier for them to quickly get licensed and have their questions answered. Most significantly for this proposed rule revision, it will continue consistent oversight of restaurants and other retail food establishments in Wisconsin. Both restaurants and retail food establishments (grocery stores, etc.) are already regulated under the same Wisconsin Food Code. Having one agency interpret the Wisconsin Food Code using one set of regulations will encourage consistency. Amending ATCP 75 Appendix, the Wisconsin Food Code, will ensure that industry and government have a rule that is based on the most updated guidance.

Proposed Policies. The proposed rule aims to revise the Wisconsin Food Code to incorporate changes in the 2013 Federal Model Food Code, while retaining certain regulations that are unique to Wisconsin. This rule will ensure that the Wisconsin Food Code is in step with the latest model food safety regulations, which will reduce confusion and increase efficiency for concerned stakeholders in the retail food and restaurant industries.

The proposed rule will also explore approaches for reconciling any differences between chs. ATCP 75 and DHS 196 in order to facilitate the transfer of regulatory authority over food safety in restaurants from DHS to DATCP. Reconciling any differences between chs. ATCP 75 and DHS 196 will bring consistency to the Wisconsin Food Code and associated regulations and provide clarity to operators of retail food and restaurant businesses.

Proposed rulemaking activities will also focus on integrating provisions from ch. DHS 198 related to vending machines, which are scheduled to be transferred to DATCP on July 1, 2016, with ATCP 75.

Finally, rulemaking activities will also examine whether and to what extent the consolidation will require revisions related specifically to retail food exemption provisions in DATCP rules, including ATCP 55 (Meat and Meat Products), ATCP 70 (Food Processing Plants), and ATCP 88 (Eggs).

### Related Rulemaking Activities

In addition to this scope statement, DHS has prepared three scope statements to facilitate the transfer of the Food Safety and Recreational Licensing Section regulations to DATCP's Division of Food Safety. First, they prepared a scope statement for DHS 196 (Restaurants) and DHS 196 Appendix (Wisconsin Food Code), which will be consolidated with ATCP 75 on July 1, 2016. The goal of this rulemaking activity will be to begin working with restaurant owners and other stakeholders to update the Wisconsin Food Code and to seek approaches for consolidating DHS 196 with ATCP 75 on July 1, 2016.

DHS has also prepared a scope statement for revising DHS 192. Regulatory authority for DHS 192 (Cities, Counties, and Villages Designated as Agents of the Department for Public Health) will also be transferred to DATCP on July 1, 2016 and DHS 192 will be renumbered as a newly created ATCP 74 (Local Agents and Regulation.) At that time, subch. III of ATCP 75 (Local Regulation of Retail Food Establishments) will also become a subchapter of ATCP 74. The goal of this rulemaking activity will be to work with local health agents and other stakeholders to develop rules that integrate DHS and DATCP approaches for regulating local health agents and developing one integrated set of rules to ensure a single, consistent approach for regulating local health agents.

Finally, DHS has prepared a scope statement for DHS 198 (Vending of Food). DHS 198 will be renumbered as a newly created subch. IV of ATCP 75 on July 1, 2016. Under this proposed rulemaking activity, DHS and DATCP staff will work with stakeholders to evaluate the content of DHS 198 and determine how to streamline these regulations, transferring relevant provisions into ATCP 75 and ATCP 75 Appendix (Wisconsin Food Code), and eliminating any duplicative provisions.

Adopting this scope statement, along with the companion scope statements from DHS, will allow DHS and DATCP to begin work amending and consolidating rules. It will minimize the amount of time between when DHS rules are transferred to DATCP in their current form and adoption of streamlined rules that will be easier for industry to use.

Policy Alternatives. Do nothing. If DATCP does nothing, then the Wisconsin Food Code will be out of step with the current Federal Model Food Code. In addition, food business operators will have to meet requirements for sous vide processing and reduced oxygen packaging that are more onerous than those now accepted as sufficient for safety. The Wisconsin Food Code's provisions may no longer be based on the latest science and food customers may be protected less effectively and efficiently. Furthermore, if DATCP does not reconcile differences between chs. ATCP 75 and DHS 196 in light of the transfer of regulatory authority over food safety in restaurants, then concerned stakeholders may be faced with

conflicting rules across the range of retail food establishment activities. If DATCP and DHS do not begin identifying approaches for integrating rules that are scheduled to be transferred, it will delay implementation of a simplified, streamlined regulatory system for Wisconsin's retail food industry.

### **3. Statutory authority for the rule (including the statutory citation and language):**

Statutory Authority: ss. 93.07 (1), 97.09 (4), 97.30 (5), and 227.14 (1s), Stats.

**93.07 Department duties.** It shall be the duty of the department:

(1) REGULATIONS. To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of chs. 93 to 100, Stats., which regulations shall have the force of law.

**97.09 Rules.**

(4) The department may, by rule, establish and enforce standards governing the production, processing, packaging, labeling, transportation, storage, handling, display, sale, including retail sale, and distribution of foods that are needed to protect the public from the sale of adulterated or misbranded foods.

**97.30 Retail food establishments.**

(5) RULE MAKING. The department may promulgate rules to establish the fees required under sub. (3) or to govern the operation of retail food establishments. 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.

227.14 Preparation of proposed rules.

(1s) Exception; preparation of certain rules based on federal food code. Notwithstanding sub. (1), if the department of agriculture, trade and consumer protection or the department of health services prepares a proposed rule based on the model food code published by the federal food and drug administration, the proposed rule may be in the format of the model food code.

### **4. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:**

There is no federal law related to retail food establishments, including restaurants. The FDA publishes the Federal Model Food Code as a model for states to use in developing its food safety regulations for retail food establishments.

### **5. Description of all entities that may be impacted by the rule:**

This rule will revise regulations for restaurants currently licensed and inspected by DHS or its local city and county agents.

**6. Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:**

DATCP estimates that it will use approximately .50 FTE staff time to develop this rule. This includes research, drafting, preparing related documents, holding public hearings, and communication with affected persons and groups. DATCP will assign existing staff to develop this rule. DATCP will work jointly with DHS staff to facilitate seamless consolidation of DHS regulations with ch. ATCP 75.

**7. Anticipated economic impact:**

The proposed rule is not expected to have any negative economic impact and will positively affect operators of food service operations, state and local food safety inspectors and the public health. By adopting the most current practices in food safety, the proposed rule revision will ensure Wisconsin's food regulations reflect best practice for protecting public health. If adopted, the proposed rule will include less onerous provisions for sous vide processing and reduced oxygen packaging. As part of the larger initiative to consolidate and streamline Wisconsin's food safety programs, it will remove unnecessary duplication of regulations and ensure consistent interpretation of retail food regulations. It will make it easier for retail food establishment operators, including restaurant owners, to know who to contact for information with licensing and regulatory questions. Both DATCP and DHS will work closely with stakeholders to ensure the rule revisions protect public health without imposing an undue economic burden. The rule will not raise fees.

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