

2015 DRAFTING REQUEST

Bill

Received: 11/11/2014 Received By: swalkenh
Wanted: As time permits Same as LRB:
For: Administration-Budget By/Representing: Byrnes
May Contact: Drafter: swalkenh
Subject: Agriculture - food safety Addl. Drafters: btradewe
Health - public health tdodge

Extra Copies:

Submit via email: YES
Requester's email:
Carbon copy (CC) to: sarah.walkenhorstbarber@legis.wisconsin.gov
tamara.dodge@legis.wisconsin.gov
sbostatlanguage@webapps.wi.gov

Pre Topic:

DOA:.....Byrnes, BB0213 -

Topic:

Transfer food safety and recreational license regulation authority from DHS to DATCP

Instructions:

See attached

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Handwritten notes:
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jfrantze
1/27

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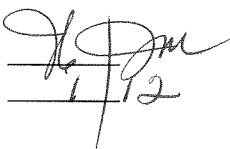
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<END>

Dodge, Tamara

From: Hanaman, Cathlene
Sent: Tuesday, November 11, 2014 9:45 AM
To: Dodge, Tamara; Walkenhorst Barber, Sarah; Shea, Elisabeth; Tradewell, Becky; Pfothenauer, Mary
Subject: FW: Statutory Language Drafting Request - BB0213
Attachments: One Food Safety Memo.pdf; Required changes to statutes for DHS transfer to DATCP.docx

From: Tyler.Byrnes@Wisconsin.gov [mailto:Tyler.Byrnes@Wisconsin.gov]
Sent: Tuesday, November 11, 2014 9:41 AM
To: Hanaman, Cathlene
Cc: Frederick, Caitlin - DOA; Byrnes, Tyler - DOA; Connor, Christopher B - DOA
Subject: Statutory Language Drafting Request - BB0213

Biennial Budget: 2015-17

Topic: Transfer Food Regulation Authority from DHS to DATCP

Tracking Code: BB0213

SBO Team: AEJ

SBO Analyst: Byrnes, Tyler - DOA
Phone: (608) 266-1103
E-mail: Tyler.Byrnes@Wisconsin.gov

Agency Acronym: DATCP

Agency Number: 115

Priority: High

Intent:

Please prepare a draft that transfers authority to regulate all retail food establishments and recreational establishments from DHS to DATCP.

See attached files for detailed intent.

Additionally, please modify s.20.115(1)(gb) to accommodate expenditures on the newly transferred responsibilities. Fee revenue from fees transferred from DHS should also be deposited in this PR appropriation.

Changes should take effect 1 year after signing of the bill.

Attachments: True

Please send completed drafts to SBOSatlanguage@webapps.wi.gov

2015-2016 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0602/P1ins
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SECTION 1. 100.36 of the statutes is amended to read:

100.36 Frauds; substitute for butter; advertisement. No person may use the word “butter” in any way in connection or association with the sale or exposure for sale or advertisement of any substance designed to be used as a substitute for butter. No person may use terms such as “cream”, “creamery” or “dairy”, or the name or representation of any breed of dairy cattle, or any combination of such words and representation, or any other words or symbols or combinations thereof commonly used in the sale of butter unless at least 40% of the substitute is butterfat. If the term “butter” is used in connection with the name of any such product, it shall be qualified so as to distinguish it from butter as defined in s. 97.01 ~~(1)~~ (1r).

END INSERT



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary

Required Changes to Current Statutes

The primary chapters in the Wisconsin Statutes requiring amendment are chs. 93 (Department of Agriculture, Trade and Consumer Protection), 97 (“Food Regulation”), 250 (“Health: Administration and Supervision”), 252 (“Communicable Diseases”) and 254 (“Environmental Health”).

I. Authorizing DATCP to Enforce Laws and Make Regulations Relating to the Transferred Programs

Changes necessary to provide DATCP with sufficient oversight and rule-making authority over the subject areas currently under DHS jurisdiction include the following:

- Create DATCP Wis. Stat. s. 93.07(24)(e), which shall provide, “To enforce the laws for the sanitary care of campgrounds and camping resorts, recreational and educational camps, public swimming pools, hotels, tourist rooming houses, vending machine commissaries, vending machines, tattoo establishments, body-piercing establishments, and other persons or entities subject to regulation by the department.” This authority should be transferred from Wis. Stat. s. 252.02 (4) address DATCP’s current absence of authority to regulate sanitation of persons or entities that are not related to food safety, *e.g.*, swimming pools, campgrounds, tattooists and body piercing establishments.
- DATCP currently lacks a section that authorizes the department to collaborate with “federally recognized American Indian tribes” or the “federal Indian health service.” Wis. Stat. s. 93.06 (titled “Department powers”) must be amended by creating a new subsection: “COOPERATION AND COLLABORATIVE AGREEMENTS. Promote cooperation and formal collaborative agreements among any of the following with regard to enforcement of the department’s laws and regulations, planning, priority setting, information and data sharing, reporting, resource allocation, funding, service delivery, and jurisdiction:
 1. The state
 2. Local health departments.
 3. Federally recognized American Indian tribes or bands located in this state.
 4. The federal Indian health service.”
- The following DHS statutes must be repealed and then created in Wis. Stat. ch. 97: Wis. Stat. ss. 252.23 (“Regulation of tattooists”), 252.24 (“Regulation of body piercing and body piercing establishments”), 252.245 (“Agent status for local health departments”), 254.47 (“Recreational permits and fees,” which includes regulatory oversight of campgrounds, camping resorts, recreational and educational camps, and public swimming pools), and 254.61 to 254.88 (Subchapter VII: “Lodging and Food Protection,”).

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Moving these statutes will make DATCP the “department” authorized to enforce laws under Wis. Stat. s. 93.07(24) and to make and enforce regulations under Wis. Stat. s. 93.07(1).

II. Licenses Requiring Applicants’ Social Security Numbers

Applicants for certain licenses or permits issued by state agencies are required by statute to provide a social security number as a condition of issuance or renewal. Generally, these applicants’ social security numbers may be used to track non-payment of child support, taxes or unemployment insurance contributions. In their respective statutes DATCP and DHS currently list license types for which applicants must provide social security numbers.

The statutory requirement for applicants to provide a social security number for several current DHS licenses or permits must be repealed and integrated with the statutory list of DATCP licenses. The following sections in DHS statutes should be repealed or amended and corresponding new paragraphs should be created in DATCP’s Wis. Stat. s. 93.135:

- Wis. Stat. s. 250.041 (b), part of (e), and (f) (from section titled “Denial, nonrenewal and suspension of registration, license, certification, approval, permit and certificate based on certain delinquency in payment”):
 - Par. (b) - tattooists and body piercing permits.
 - Par. (e) - recreational permits, hotels, bed and breakfast establishments; no change required for the section pertaining to tanning facilities, which will not be moved to DATCP.
 - Par. (f) - certificate of food protection practices.
- Wis. Stat. s. 252.241 (titled “Denial, nonrenewal and revocation of license based on delinquent taxes or unemployment insurance contributions”) - body piercing.

III. Regulation of Tattoos and Body Piercing

Statutes relating to regulation of tattoos and body piercing are in DHS’s Chapter 252. Wisconsin Statutes ss. 252.23, 252.24, 252.241, and 252.245 must be repealed and created in Wis. Stat. ch. 97:

Tattooists and Tattoo Establishments

DHS regulates “tattooists” and “tattoo establishments” pursuant to Wis. Stat. s. 252.23. This section must be repealed and created in Wis. Stat. ch. 97, except that any internal references to “ss. 250.041 and 252.241” must be replaced with references to amendments made to Wis. Stat. s. 93.135. (See no. II, above.) Also, the new title of what is currently s. 252.23 should be amended to

“Regulation of tattooists and tattoo establishments” (underline added) to be structurally consistent with the title of s. 252.24 regulating “Body piercing and body-piercing establishments.”

Body Piercing and Body-Piercing Establishments

DHS regulates “body piercing” and “body-piercing establishments” pursuant to Wis. Stat. s. 252.24. This section must be repealed and newly created in Wis. Stat. ch. 97, except that any internal references to “ss. 250.041 and 252.241” must be replaced with references to amendments made to s. 93.135. (See no. II, above.)

Agent Status for Local Health Departments

Wis. Stat. s. 97.41(1m), must be amended to indicate that local health departments may act as agents for DATCP in the enforcement and issuance of licenses to the tattoo and body-piercing establishments. In addition, Wis. Stat. s. 252.45 must be repealed, and the sections containing internal references to sections within Wis. Stat. chs. 252 and 253 must be replaced with new section references in ch. 97. These three sections related to tattoo and body-piercing establishments should be consecutively numbered in ch. 97, e.g., ss. 97.581 to 97.583.

The penalty provision for these transferred programs will be Wis. Stat. s. 97.72 (the comprehensive penalties provision in Wis. Stat. ch. 97).

IV. Recreational Permits and Fees

Wis. Stat. s. 254.47, which is part of DHS’s Chapter 254, provides statutory authority to regulate “campgrounds and camping resorts, recreational and educational camps and public swimming pools.” See Wis. Stat. s. 254.47(1). DHS’s Wis. Stat. s. 254.47 must be repealed, and except for Wis. Stat. s. 254.47(3), be created in DATCP’s Wis. Stat. ch. 97. The internal reference to Wis. Stat. s. 254.69(2) must be amended because that subsection will be created in Wis. Stat. ch. 97. Wis. Stat. s. 254.47(3) shall be repealed and not moved because it is a penalties section. The penalty provision will be Wis. Stat. s. 97.72.

V. Lodging and Food Protection, Including Restaurants

Statutorily, DHS regulates restaurants as part of a larger “Lodging and Food Protection” program, which is contained in Subchapter VII of Wis. Stat. ch. 254. The Lodging and Food Protection program encompasses the regulations relating to various commercial operations, authorizing the issuance of a permit of any person who operates “a hotel, restaurant, temporary restaurant, tourist rooming house, vending machine commissary or vending machine...[or] ‘bed and breakfast establishment for more than 10 nights in a year.’” See Wis. Stat. s. 254.64(1)(a) and (b).

For DATCP to regulate all these programs, Subchapter VII of Wis. Stat. ch. 254 (Wis. Stat. ss. 254.61 to 254.88) must be repealed. Those sections will generally be created in Wis. Stat. ch. 97. Restaurants will be removed from the current Lodging and Food Protection program to Wis. Stat. s. 97.30 (“Retail food establishments”), and revised statutory definitions will make clear that a

“restaurant” and a “temporary restaurant” are types of retail food establishments. The following changes must be made to Wis. Stat. chs. 97 and 254:

- DHS’s Wis. Stat. s. 254.61 (“Definitions” section for “Lodging and Food Protection”) must be repealed and all definitions listed will be moved and created by amending Wis. Stat. s. 97.01 (“Definitions” section for Wis. Stat. ch. 97).
- The definition for “restaurant” must be amended to indicate that a restaurant is a retail food establishment at which the predominant activity is the preparation, service, or sale of meals.
- The definition of “temporary restaurant” must be amended to indicate that a temporary restaurant is a retail food establishment operating as a restaurant.
- Wis. Stat. 97.30 (3) must be amended to indicate that restaurant license fees shall be set by department rule. License fees for other types of retail food establishments are already set by statute in Wis. Stat. s. 97.30 (3m), although this section already allows retail food establishment license fees to differ from the amounts in statute if allowed under department rule.
- The last line of Wis. Stat. s. 97.30(1)(c) defining “retail food establishment” must be amended to state that the definition of “Retail food establishment” includes a restaurant or temporary restaurant.
- The existing statute relating to application for a retail food establishment license, Wis. Stat. s. 97.30 (2) (a), must be amended to indicate that the applicant must indicate whether their establishment serves meals, whether the establishment conducts food processing, and the nature of any food processing activities.
- References to Wis. Stat. s. 254.64 must be deleted in Wis. Stat. ss. 97.20 (2) (e)2. – dairy plants, 97.29 (1) (g) and (h) – food processing plants, and 97.30 (2) (b)1. – retail food establishments.
- Wis. Stat. ss. 254.62 to 254.88 (the remainder of subch. VII titled “Lodging and Food Protection”) shall be repealed. Most of these sections will be moved and created in Wis. Stat. ch. 97, preferably between open numbers ss. 97.59 to 97.71 so that we do not have to move current ss. 97.72 and 97.73 (the comprehensive penalties and injunction sections for the chapter). Although there are more sections to be moved than there are open section numbers (approximately 26 section numbers between Wis. Stat. ss. 254.62 to 254.88 and approximately 12 open section numbers between Wis. Stat. ss. 97.59 and 97.71), the sections will fit if some of the decimal numbers are extended to a third place to make room for all current sections.
- In all the “Lodging and Food Protection” sections (from subch. VII of Wis. Stat. ch. 254) that are moved and created in Wis. Stat. ss. 97.59 to 97.71:

- The term “permit” must be changed to “license.” (as described in no. VI, below).
- The term “this subchapter” must be changed to “ss. 97.59 to 97.71, Stats.”
- Internal references to sections in Wis. Stat. ch. 254 must be renumbered to applicable new sections in Wis. Stat. ch. 97.
- Wis. Stat. s. 254.02 provides that DATCP, among other listed agencies, shall enter into a MOU with DHS to establish protocols for DHS to review proposed rules of those state agencies relating to various subjects, including air and water quality, institutional sanitation, and food protection. “Food protection” should be deleted from DHS’s statutes.
- Wis. Stat. s. 254.715 (titled “Restaurants serving fish”) should be repealed and created in Wis. Stat. ch. 97 (e.g., Wis. Stat. s. 97.305, which follows the section relating to retail food establishments, Wis. Stat. s. 97.30), instead of leaving it between newly created Wis. Stat. ss. 97.59 to 97.71, since it relates exclusively to restaurants.
- The “Penalties” section for “Lodging and Food Protection” in Wis. Stat. s. 254.88 must be repealed and not moved, so that the comprehensive penalty provision in Wis. Stat. s. 97.72 will apply.

VI. Global Changes to DHS Provisions Transferred to DATCP

- Currently, ch. 97 does not contain subchapters. Subchapters would be helpful in reading this chapter, due to the inclusion of these additional licenses which are not related to food safety.
- The term “permit” in any of the DHS statutes moved to DATCP statutes must be changed to “license,” to conform to DATCP usage.
- All programs from DHS will have the current associated penalty provisions removed, to be replaced by the comprehensive penalty provision in Wis. Stat. s. 97.72, per decision by DATCP.

VII. Additional Changes to Chapter 97

- The title of Wis. Stat. ch. 97 must be changed from “Food Regulation” to “Food, Lodging and Recreational Safety.”
- Wis. Stat. s. 252.18 titled “Handling foods” must be repealed and moved to a newly created section in Wis. Stat. ch. 97. Amend the reference to “s. 252.25” to “s. 97.72.”
- Wis. Stat. s. 97.12, which covers the agency’s authority to enter and inspect various areas, must be amended to include the following (underlined):

- (1) For the purpose of enforcing this chapter, the department and its agents may, at reasonable hours, enter and inspect any premises for which a license is required under this chapter, or any farm, factory, warehouse, building, room, establishment or place at or in which foods are manufactured, processed, packed, packaged, stored or held for sale, and may enter any vehicle, including vehicles used to transport or hold foods in commerce. The department and its agents may also secure samples or specimens, including samples or specimens of food and any product or substance that may affect food, and examine and copy relevant documents and records and obtain photographic and other evidence needed to enforce this chapter. The department shall examine any samples secured and shall conduct other inspections and examinations needed to determine whether there is a violation of this chapter, or any rules promulgated by the department under this chapter. The department shall pay or offer to pay the market value of samples taken.

A provision now provided in Wis. Stat. s. 254.88, should be repealed and created in Wis. Stat. S. 97.12: “Anyone who fails to comply with an order of the department under this subchapter may forfeit \$50 for each day of noncompliance after the order is served upon or directed to him or her.”

Wis. Stat. s. 97.12(2) (d) 1.and 2, which only contemplate criminal fines for violating an order related to adulterated or misbranded food, must be amended to include a civil forfeiture option.

- Wis. Stat. s. 254.71 titled “Certificate of food protection practices” must be repealed and moved to newly created Wis. Stat. s. 97.33. Change reference to “s. 250.041” to “s. 93.135.”

VIII. Nonstatutory Provisions

Nonstatutory provisions must be drafted to complete the transfer of programs from DHS to DATCP. These will include provisions relating to:

- *Assets and liabilities.* On the effective date of this paragraph, the assets and liabilities of the department of health services that are determined by the secretary of administration to relate to the [DHS programs to be transferred] under [list current statutes authorizing DHS programs set to be transferred] become the assets and liabilities of the department of agriculture, trade and consumer protection.
- *Employee transfer.* All incumbent employees who hold positions in the department of health services that the secretary of administration determines relate to the [DHS programs to be transferred] under [list current statutes authorizing DHS programs set to be transferred], are transferred to the department of agriculture, trade and consumer protection on the effective date of this paragraph.

- *Employee status.* Employees transferred in par. [insert paragraph no. for “Employee transfer,” above] have all the rights and the same status under subchapter V of chapter 111 and chapter 230 of the statutes in the department of agriculture, trade and consumer protection that they enjoyed in the department of health services immediately before the transfer. Notwithstanding section 230.28 (4) of the statutes, no employee so transferred who has attained permanent status in class is required to serve a probationary period.
- *Tangible personal property.* On the effective date of this paragraph, all tangible personal property, including records, of the department of health services that the secretary of administration determines relate to the [DHS programs to be transferred] under [list current statutes authorizing DHS programs set to be transferred], is transferred to the department of agriculture, trade and consumer protection.
- *Contracts or Memoranda of Understanding.* All contracts or memoranda of understanding that were entered into by the department of health services that the secretary of administration determines to relate to the [DHS programs to be transferred] under [list current statutes authorizing DHS programs set to be transferred], and that are in effect on the effective date of this paragraph remain in effect and are transferred to the department of agriculture, trade and consumer protection. The department of agriculture, trade and consumer protection shall carry out any obligations under such contracts or memoranda until the contract is modified or rescinded by the department of agriculture, trade and consumer protection to the extent allowed under the contract or memorandum.
- *Rules and orders.* All rules promulgated, and all orders issued, by the department of health services that are determined by the secretary of administration to relate to the [DHS programs to be transferred] under [list current statutes authorizing DHS programs set to be transferred], and that are in effect on the effective date of this paragraph shall remain in effect until their specified expiration date or until amended or repealed by the department of agriculture, trade and consumer protection.
- *Pending matters.* Any matter pending with the department of health services on the effective date of this paragraph that is determined by the secretary of administration to relate to the [DHS programs to be transferred] under [list current statutes authorizing DHS programs set to be transferred], is transferred to the department of agriculture, trade and consumer protection, and all materials submitted to or actions taken by the department of health services with respect to the pending matter are considered as having been submitted to or taken by the department of agriculture, trade and consumer protection.



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: September 3, 2014

TO: Secretary Mary K. Rhoades
Department of Health Services

Secretary Ben Brancel
Department of Agriculture, Trade and Consumer Protection

FROM: Steve Ingham, Administrator
Division of Food Safety
Wisconsin Department of Agriculture, Trade and Consumer Protection

Chuck Warzecha, Deputy Administrator
Division of Public Health
Wisconsin Department of Health Services

RE: Creating a Single Food Safety and Recreational License Agency:
Effective, Efficient Service for a Rapidly Changing Industry

Recommendation

At your request, staff representing the Department of Health Services (DHS) and the Department of Agriculture, Trade and Consumer Protection (DATCP) recently completed a study to identify potential improvements in the efficiency and effectiveness of Wisconsin's food safety and recreational license regulatory program. After careful analysis, the group respectfully recommends that DHS and DATCP pursue consolidation of the DHS's Food Safety and Recreational Licensing Section with DATCP's Division of Food Safety. This consolidation would transfer 35 Full-Time Equivalent (FTE) positions, along with a Program Revenue budget of \$3,977,400, from DHS to DATCP. The new Bureau of Food Safety and Recreational Licenses would employ 116 FTE positions with a budget of \$12,819,900 to provide a full range of inspection services to approximately 26,000 Wisconsin food, dairy, and recreational establishments.

Under the new organizational structure, staff work areas would be reduced and travel time decreased. Staff would receive specialized cross-training to provide thorough inspections to the unique mix of businesses located in their work areas. The new Bureau of Food Safety and Recreational Licenses could provide more frequent and comprehensive inspections without raising industry fees or changing the overall fee structure. The proposed transfer has been favorably received in preliminary discussions with constituent groups.

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Background

Protecting public health is an essential role played by government. Wisconsin's food safety and recreational license regulators work to protect the public from foodborne illness, water contamination, and other hazards that could be associated with a wide variety of businesses. These regulators are currently either employees of DHS, DATCP, or a growing number of local health departments which serve as agents for the state. Proper oversight of the local agent programs, which is necessary to ensure consistently effective service to consumers and industry across the state, is an increasingly important responsibility for DHS and DATCP personnel. The food and recreational business sector is rapidly changing, such that jurisdictional boundaries between business types may no longer be clear or sensible. An interagency workgroup evaluated these factors in determining an organizational structure that would provide the most efficient and effective service.

Food Safety and Recreational License Regulators Play an Important Public Health Role

Each year, an estimated 47 million Americans (about 1 in every 7) are stricken by foodborne illness, resulting in approximately 125,000 hospitalizations and 3,000 deaths. Foodborne illness most severely afflicts vulnerable members of our society: the very old, the very young, pregnant women, and those with impaired immune systems. A January 2012 article in the *Journal of Food Protection* estimated that the annual economic impact of foodborne illness in the U.S. is \$51 to 78 billion for medical care, pain and suffering, and lost productivity. Consumers and food business operators alike bear these costs and seek to reduce them. Food safety regulators work in concert with industry to reduce the prevalence and impact of foodborne illness.

To effectively play their role, Wisconsin's food safety regulatory community must be flexible enough to understand and oversee a rapidly diversifying industry. The structure should be streamlined so that jurisdictional and statutory boundaries do not result in inefficiencies or mixed messages for industry. Food safety regulators in Wisconsin educate food business operators about proper sanitation, controlling critical points in food processing systems, and proper food handling and storage techniques. Regulators also verify, through regular inspection and surveillance sampling, that food business operators are taking appropriate food safety measures. When necessary to protect public health, food safety regulators undertake administrative or civil actions to bring food businesses into compliance.

Similar roles are played by regulators of the state's recreational businesses. Tourism and recreation are key parts of Wisconsin's economy, and public health problems related to recreational businesses could have a significant negative economic impact. Sanitarians perform education, oversight, and compliance roles to prevent public health problems related to water quality, inadequate fire prevention, hygiene deficiencies, and insect pests, such as bed bugs. Collectively, sanitarians overseeing the state's food and recreational licenses perform a valuable economic service.

Wisconsin Currently Has a Two-Agency Food Safety and Recreational Business Regulatory System

Wisconsin has a strong food safety regulatory system, which is closely linked to the regulation of recreational businesses. However, the system involves multiple state and local agencies. Food safety regulatory programs are operated by two cabinet-level agencies. The Division of Food Safety at DATCP regulates all dairy, food and state-inspected meat businesses in Wisconsin except for certain categories of

retail food establishments, primarily restaurants and vending machines, which are regulated by DHS. DATCP food sanitarians currently oversee more than 5,000 retail food establishments, food processing plants, and food warehouses.

Historically, the regulatory oversight of restaurants has been combined with oversight of recreational businesses. Under Wisconsin law, DHS sanitarians not only inspect restaurants, but also inspect hotels, motels, tourist rooming houses, bed and breakfast establishments, water parks and swimming pools, tattoo and body art establishments, recreational and educational camps, and campgrounds. As with food safety inspections, public health inspections of these recreational businesses are conducted by sanitarians who must have a solid knowledge of public health hazards and the regulatory requirements designed to protect public health. Food and recreational activities are often co-located within a single business and so industry has strongly supported combined oversight within a single inspection program. Approximately 9,500 licensed businesses are overseen by DHS sanitarians.

Oversight of Local Health Agents is an Increasingly Important Responsibility for State Regulators

In addition to providing public health inspections of establishments, both DHS and DFS also oversee county- or city-based health departments which act as agents of the state in regulating restaurants, retail food and recreational establishments. State law allows local health departments in jurisdictions with a population of more than 5,000 to contract with the state to inspect retail food establishments and recreational businesses within their jurisdictions requiring health inspections. Section 254.69, Stats., allows these "local agents" to contract with DHS to license and inspect local restaurants and other retail food and recreational businesses regulated by DHS. Similarly, s. 97.41, Stats., authorizes local agents to contract with DATCP to license and inspect all other types of local retail food establishments. DHS contracts with 53 local health departments and DATCP contracts with 43 local agents. Many local agents hold two contracts (one each with DATCP and DHS) so they can inspect the full range of retail food establishments, but 12 agencies contract only with DHS and one holds a contract with DATCP only.

The number of local health departments operating as local agents has grown over time, such that approximately 60 percent of restaurant and retail food establishment licensees are now under local agent jurisdiction. While state agencies have overseen fewer retail food businesses over time, they have assumed new and complex duties in overseeing the local agent programs: contract management, training, standardization of inspections conducted by local agent personnel, and evaluation of overall program effectiveness. These functions are most likely to be completed efficiently and consistently if they are done by one state-level agency. The increasing proportion of retail food and recreational establishments inspected by local agents has also created logistical challenges for DATCP and DHS efficiently scheduling inspections, as a "checkerboard" of agent and state jurisdictions has been created. Combining inspection staffs for retail food establishment and recreational business inspections, combined with appropriate specialized training to ensure that each sanitarian is skilled at inspecting the business types in their work area, will mitigate this effect. This approach would produce smaller sanitarian work-areas, adding food processing plant inspection work in jurisdictions otherwise covered by local agents, and thereby reducing the travel needed to conduct inspections.

Wisconsin's Food and Recreational Industries are Complex and Changing – Regulatory Programs Must Change, Too

The food industry has become more complex over time, and the already-blurred delineation between restaurants, grocery stores, and food processing plants will become even less distinct. Grocery stores and other retail food establishments often serve restaurant-type meals. Many restaurant and grocery store operators hope to engage in food processing activities such as processing meats, making cheese, sushi or baked goods, or canning signature sauces and other food items intended for retail and wholesale markets. DHS and DATCP have worked together over the years to provide seamless non-duplicative inspection of these various food-related activities but notable inefficiencies, related to the involvement of two state agencies, remain. In 1998, DHS and DATCP signed a Memorandum of Understanding (MOU) agreeing that establishments engaged in both restaurant and retail food establishment activities need only hold one license. Since 2000, the agencies have worked together three times to update the Wisconsin Food Code, identical versions of which are adopted and used by DHS and DATCP sanitarians. Over the last four years, DHS and DATCP have recognized each other's evaluations of local agent health departments. While these efforts have helped to reduce duplicative and potentially contradictory food regulatory systems, future improvements resulting from consolidation would reduce confusion for growing businesses while protecting public health. Maintaining separate regulatory systems for restaurants and all other food establishments no longer makes sense.

As entrepreneurs meet evolving consumer recreational interests, a wide array of food businesses are co-located with recreational businesses. For example, water attractions have adjoining restaurant or snack bar operations, catered meals are served at recreational or educational camps, and hotels may operate an onsite bakery. Because food safety and recreational license programs are distributed among DHS and DATCP, confusion or inconsistency may occur in communication between state agencies and county/local health departments operating as DATCP and/or DHS agents. This inconsistency may also negatively affect business operators. Food and recreational businesses, although generally quite satisfied with services provided by state regulatory agencies, would prefer dealing with a single agency. Business operators under the oversight of local health agents are best served if the local health agent receives clear, consistent communication from the state.

Methodology and Analysis

In March 2014, DHS and DATCP formed a workgroup to review the current food safety and recreational license regulatory system and identify potential improvements to the system. Workgroup members included administrators and staff from DHS and DATCP's food safety and recreational license programs, DATCP's legislative liaison, as well as budget and policy analysts. Attachment A lists workgroup members. The workgroup met six times between March 20 and August 15, 2014.

To complete its charge, the workgroup identified desired outcomes and guiding principles for an effective food safety and recreational license regulatory system. The guiding principles included 1) promoting food safety and recreational license oversight as a vital public health function of government, 2) offering consistent, fair, and effective oversight of businesses by well-trained staff, and 3) providing a supportive work environment to regulatory personnel. Based on the desired outcomes and guiding principles, the workgroup developed recommendations for changing the organizational structure of this system. Attachment B presents the workgroup's statement of desired outcomes and principles.

The workgroup then identified and evaluated three options for organizing Wisconsin's food safety and recreational license regulatory system:

- Consolidating DHS's food safety and recreational license functions within DATCP's Bureau of Food Safety and Inspection;
- Transferring DATCP sanitarians responsible for inspecting retail food establishments to DHS's Food Safety and Recreational Licensing Section; or
- Maintaining the current organizational structure.

Workgroup Findings and Recommendation

The workgroup recommends consolidating DHS's food safety and recreational license functions within DATCP's Bureau of Food Safety and Inspection for the following reasons:

- Increased travel efficiencies and inspection coverage, without raising fees. Potential travel savings from consolidation would be maximized by consolidating DHS's food safety and recreational license programs within DATCP's Bureau of Food Safety and Inspection. Two different GIS-based evaluations indicated that this consolidation could make as many as 3,200 person-hours available for additional inspections, and thereby allow time for necessary specialized training and the reduction of an existing inspection backlog in both agencies. On the other hand, transferring retail food establishment sanitarian positions to DHS could increase travel time for remaining DFS staff by up to 500 person-hours. These analyses were conducted using current staff locations. Positions would not be moved as a result of consolidation, but, as normal staff turnover occurs over time, positions could be relocated to improve travel efficiencies even more. DHS and DATCP currently report a total of 3,500 overdue inspections. It is anticipated that through increased travel efficiency the recommended consolidation would substantially reduce this number. These benefits would be gained without raising industry fees.
- Single point-of- contact for industry. The consolidation would provide a one-stop contact for a rapidly diversifying industry. A single food agency would allow all sanitarians to be trained in all aspects of the retail food establishment, restaurant, food processing plant, and recreational licenses in their territory. This training would thereby eliminate the need for interagency agreements and cooperative efforts to deliver comprehensive food safety and recreational license inspection services at the state level. As the differences between restaurants, grocery stores, and food processing plants becomes increasingly less distinct, maintaining two programs (DATCP and DHS) responsible for different parts of the food system creates unnecessary confusion for industry.
- Eliminate duplication and inefficiencies in the local health agent program. Consolidation will also provide a one-stop contact for oversight of local agents and thereby reduce duplication and inefficiencies in the local health agent program. Although DHS and DATCP have coordinated contracting and oversight efforts in the past, combining the programs will eliminate any remaining inefficiencies and duplication. For example, under the proposed consolidation, local agents will only need to negotiate one contract related to food and recreational licenses rather than two contracts with two agencies.

Based on its analysis, the workgroup determined that significant reductions in the number of overdue inspections could **not** be achieved under the current system without raising fees to hire additional sanitarians. Although the workgroup found that both options for consolidating the programs had potential benefits, and either option was preferable to maintaining the current system, the workgroup consensus was that consolidating food safety and recreational licensing at DATCP presented the greatest potential for achieving workload efficiencies. Moving DATCP sanitarians responsible for retail food establishments to DHS would increase travel times for remaining DATCP sanitarians and thereby reduce the effectiveness of DATCP's nationally-recognized food processing plant and dairy plant oversight programs.

Stakeholder Support

In addition to the workgroup's activities, Secretary Brancel met with leaders from several industry stakeholder groups to make them aware that the consolidation concept was being explored. Secretary Brancel met with representatives from the following groups:

- Wisconsin Restaurant Association
- Wisconsin Grocer's Association
- Tavern League of Wisconsin
- Wisconsin Petroleum Marketers and Convenience Store Association
- Wisconsin Hotel and Lodging Association
- Wisconsin Association of Campground Owners
- Wisconsin Bed and Breakfast Association
- Midwest Food Processors Association
- Wisconsin Manufacturers and Commerce
- Wisconsin Cooperative Network
- Wisconsin Cheese Makers Association
- Wisconsin Dairy Products Association
- Wisconsin Association of Local Health Departments and Boards
- Wisconsin Department of Public Instruction School, Nutrition Program

Throughout the meetings, no group identified any concern with the consolidation idea. The representatives agreed that industry business models have continued to evolve and that there is more frequent overlap in their businesses with food service, food manufacturing or recreational businesses often all under one roof. The representatives felt that consolidating licensing within one agency would be beneficial to their businesses. The primary apprehension that many of the groups mentioned was a fear of losing regulatory resources due to consolidation. Nearly all of the industry representatives cited a desire to have more effective and efficient state oversight of local agent programs.

Proposed Organizational Structure

The workgroup also developed a proposed organizational structure to be established under the recommended consolidation. Under the structure, 35 FTE would be transferred from DHS to DATCP. DATCP plans to create a separate section to provide agent oversight and evaluation for the retail food and

recreational license regulatory program. The Food Safety and Inspection Bureau would be renamed as the Bureau of Food Safety and Recreational Licenses. It would be comprised of four sections:

- Field Services – oversight of inspection and compliance activities
- Regulatory and Technical Services – support of policy development, food process/equipment evaluations, and sanitarian standardization
- Agent Program – oversight and support of the 50+ contracted local health department agent programs
- Program Evaluation and Emergency Preparedness – recall and emergency response; product grading, laboratory certification, and Grade “A” dairy program evaluation

Attachment C displays the organizational chart for DATCP’s proposed new Bureau of Food Safety and Recreational Licenses.

Consolidation would not alter the current fee structure, with restaurant and recreational license oversight financed through fees and other retail food establishment activities financed through a combination of fees and General Purpose Revenue (GPR). Consolidation will require statutory changes, as well as subsequent changes in administrative rules. The primary chapters in the Wisconsin Statutes that would be impacted by consolidation are: chs. 93 (“Department of Agriculture, Trade and Consumer Protection”), 97 (“Food Regulation”), 250 (“Health: Administration and Supervision”), 252 (“Communicable Diseases”) and 254 (“Environmental Health”). DATCP and DHS legal counsel will prepare a separate analysis addressing statutory changes necessary to accomplish this consolidation.

Strategies for Successful Implementation

As with any change in organizational structure, there are issues that must be addressed for the proposed consolidation to be successful. The workgroup identified the following implementation issues and recommended strategies for successful implementation:

1. Maintaining or enhancing DHS electronic inspection data systems. DHS uses an electronic inspection that has not yet been adopted by DATCP. This system is also used by a large majority of the local health departments contracted as agents by DHS and DATCP. The system has the ability to display inspection records on the internet for interested members of the public to view. DATCP is committed to continue creating a seamless electronic inspection data system that includes all food safety recreational license programs.
2. Maintaining effective communication with stakeholders. Frequent, open communication with industry, other stakeholders, and the public will be essential to the success of the consolidation. This communication must:
 - a. *Keep the focus on public health.* The general public may not be aware that DATCP, along with DHS, plays an important public health role. DATCP must consistently and clearly publicize its public health role, so that there is no perception formed that moving food safety and recreational business inspection functions to DATCP constitutes a removal of these programs from the public health arena.

- b. *Manage expectations during the transition.* In addition to the anticipated gains in efficiency, the primary long-term benefit of the consolidation will be increased consistency in policy, training, and oversight. Visible improvements in consistency may be delayed during the short term as the “growing pains” of consolidation are felt. Both DHS and DATCP should set reasonable and publicly transparent expectations for gains in efficiency and consistency; Planning for early and visible improvements will set the correct tone as the consolidation begins.
 - c. *Maintain contact with the local agents in remaining DHS-directed programs.* Since the primary point of contact between DHS and local agents has often been through the restaurant and recreational license programs, new points of contact must be established through other program areas.
3. Maintaining excellence in recreational license programs. A concerted effort in program design and stakeholder communication must be made to ensure that oversight programs for recreational businesses such as lodging, water attractions, and campgrounds receive the resources and attention needed for success.
 4. Adjustment of contract-level criteria for local health department environmental health capacity. Administrative rule DHS 140 establishes three categories for local health department contracts with DHS, based on the number and extent of services offered. A reevaluation of the contract-level criteria must be made to account for the transfer of restaurant and recreational license functions from DHS to DATCP.
 5. Continuing emphases on risk-based surveillance, foodborne outbreak response, and epidemiology collaborations. Successful public health programs are well-supported by risk-based surveillance, outbreak response, and epidemiological work that is collaborative in nature. After the consolidation, epidemiological expertise, in particular, will remain in DHS. Strong communication, following the principles of an existing MOU between DHS and DATCP, will be essential to maintaining collaboration between the newly created Bureau of Food Safety and Recreational Licenses and public health functions remaining at DHS.

Conclusion

The proposed consolidation would be an essential first step in creating a nimble state food safety regulatory structure which will ensure that the rapidly diversifying industry is producing safe food today and in the future. A single state food safety program will be the keystone of a focused, streamlined food safety and recreational license program that will provide better service to Wisconsin businesses, local agent programs, and ultimately to consumers. Consumers and business owners will know who to contact with food safety or recreational business public health concerns or licensing questions. Local agents who wish to inspect the full range of local retail establishments will be able to negotiate a single contract with one agency, rather than two contracts with two separate agencies. Consolidation will eliminate duplicative infrastructure costs associated with licensing, administrative support, and FDA standards development. It will also provide the continuity of service for establishments holding multiple licenses for different business activities at one location.

Consolidating sanitarian staff in one program will allow the state to more efficiently schedule retail food and recreational license inspections in jurisdictions not under a local agent contract. Our analytical modelling indicated that smaller work areas and reduced travel time will allow these sanitarians to reduce backlogged inspections and improve response times for businesses, without the program seeking new fees from businesses to meet inspection requirements. Multi-license businesses would interact with one agency and that agency's sanitarian rather than multiple agencies and sanitarians. Use of the same food code has allowed for more cross-training between DATCP and DHS over the past several years and provides a strong foundation for a successful consolidation. Cross-training sanitarians to conduct public health inspections of recreational businesses will be done in the same way.

Although we have identified potential efficiencies to be gained through consolidation, it is important that those efficiencies not be perceived as budget or staffing reduction opportunities. Neither agency is currently able to fully meet inspection goals. Gains in efficiency achieved through this consolidation are expected to narrow, but not totally alleviate, this gap. Industry stakeholders have also made it clear that they do not want public health inspection resources for food and recreational businesses reduced as part of any consolidation. Any cut in resources could negatively impact current relationships with industry partners.

Given these benefits, the workgroup requests that you consider the analysis and recommendation of the workgroup to consolidate food safety and recreational license functions at the Department of Agriculture, Trade and Consumer Protection. We believe this consolidation provides a unique opportunity to improve services to Wisconsin industry.

**Attachment A. Streamlining Food Safety and Recreational Licensing Regulatory Services
Workgroup Members**

Co-Chairs

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Chuck Warzecha, Deputy Administrator
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**Attachment B. Streamlining Food Safety and Recreational Licensing Regulatory Services
Statement of Desired Outcomes and Principles
DHS-DPH and DATCP-DFS**

A streamlined food safety and recreational licensing regulatory program will build on the existing strengths of DHS - DPH and DATCP - DFS to do the following:

Provide a clear message to the public that oversight of licensed consumer-level food and recreational establishments remains a high-priority government service

- The public will have little or no awareness of the streamlining process. Changes noticed by the public will be viewed as improvements.
- The public will receive a clear message on how to interact with regulators, *e.g.*, filing a complaint or obtaining public records such as inspection reports.
- The public will sense that oversight of consumer-level food and recreational establishments is conducted consistently across the state by well-trained personnel.
- The public will benefit from prompt, thorough, and consistent responses to emergencies.

Provide fair, effective, and efficient service to the regulated industry

- Industry will be able to easily obtain the license which is appropriate for their activities.
- Industry will be able to easily locate the regulations they must follow.
- Industry will receive consistent interpretations of regulatory requirements from state and agent personnel.
- Industry will receive prompt, consistent technical interpretations, equipment evaluations, and variance reviews.
- Industry will be able to depend on regulatory staff participation in outreach / education activities involving industry.

Provide a supportive efficient environment for regulatory personnel

- Communication between and among field and office staff will be organized and technologically efficient.
- Staff will receive consistent interpretations of program directions and policy.
- Staff will be a resource for innovation and will be provided ample opportunity to contribute to the development of programs and policies.
- Training and supervision of staff will be organized and consistent, and will adequately equip staff for the breadth of tasks they encounter in their work.
- Communication between regulators, laboratory services and epidemiologists will be organized, prompt and efficient.
- Standards for agent regulatory programs will be clearly communicated and upheld.
- An electronic inspection and data management system shall be maintained.

Attachment C. Proposed Organizational Structure DATCP Bureau of Food Safety and Recreational Licenses

