

Wisconsin Department of Agriculture, Trade and Consumer Protection

Business Impact Analysis¹

Rule Subject: Retail Food Establishments
Adm. Code Reference: Appendix to ATCP 75
Rules Clearinghouse #: 12-033
DATCP Docket #: 09-R-01

Rule Summary

The Department of Agriculture, Trade and Consumer Protection (“DATCP” or “department”) licenses retail food establishments under s. 97.30, Stats. Generally, “retail food establishments” are food processing facilities that sell food requiring temperature control (refrigeration or cooking) where food is sold to consumers at retail. Businesses that usually require licensure as retail food establishments include grocery stores, bakeries, coffee shops, doughnut shops, and convenience food stores.

The department has adopted food safety rules for these establishments in ch. ATCP 75. DATCP licenses and inspects approximately 3,400 of these retail food establishments, and contracts with cities and counties that act as DATCP’s agents to license and inspect approximately an additional 6,600 retail food establishments. The department is working with the Department of Health Services (DHS) to propose an identical Wisconsin Food Code to apply to restaurants.

This rule generally does the following:

- Incorporates updates from the 2009 FDA Model Food Code issued by the United States Food and Drug Administration (FDA) 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 update 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 DHS. The agencies have collaborated so that a grocery store that contains a restaurant can be licensed by one agency under identical food code standards.

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

¹ This analysis includes, but is not limited to, a small business a small business analysis (“regulatory flexibility analysis”) under ss. 227.114 and 227.19(3)(e), Stats.

- Each provision is now designated as a “Priority Item”, a “Priority Foundation Item”, or a “Core Item”, to assist the industry and regulatory community in prioritizing their food safety inspections and interventions, as necessary. (These terms replace the former system using the terms “Critical” and “Non-Critical” in pre-2009 editions of the FDA Model Food Code.)
- Cut leafy greens and cut tomatoes are included among foods that require time and temperature control (and will require refrigeration).
- Food allergy awareness has been added as part of the food safety training required to be provided to employees by the person in charge.
- Food establishment managers are required to inform food employees of their responsibility to report certain symptoms of illness as they relate to diseases that are transmissible through food. Certain symptoms or diseases may temporarily limit activities that a food employee can do.
- Food employees’ bare hand contact with ready-to-eat food is now only allowed under certain limited conditions.
- Serving ground meats in an undercooked form is no longer an option for items ordered from a children’s menu.
- Certain requirements related to methods of reduced oxygen packaging are clarified in the rule.
- Criteria for non-continuous cooking have been added.

Effect on Businesses, Including Small Businesses

This rule is expected to help all retail food establishments by providing the most current methods identified by FDA to protect public health. A foodborne illness outbreak has the potential to decrease sales and threaten the economic viability of an industry.

The rule clarifies but does not substantially alter current rules related to the regulation of retail food establishments. Consequently, this rule is not expected to have a major impact on large or small businesses. It is likely that many establishments have already implemented the requirements contained in the rule and will incur no additional costs. For those that have not yet implemented the rules, DATCP will provide training, fact sheets, and handouts to Wisconsin retail food establishments and our regulatory partners to assist in implementation of the new rules. Retail food establishments can implement this rule with existing personnel.

In addition to the extensive collaboration between DATCP and DHS, input and support have been obtained from key stakeholders. This rule was developed in consultation with an advisory group that included local health agencies, the Wisconsin Grocer’s Association, the Wisconsin Restaurant Association, the Tavern League of Wisconsin, Wisconsin Technical Colleges, the

Wisconsin Department of Public Instruction, and the University of Wisconsin-Madison Department of Food Science. These stakeholders have indicated support for this rule.

Accommodation for Small Business

The FDA develops and publishes the FDA Model Food Code based on the best available science and information related to food safety. The FDA Model Food Code encourages consistent state and local regulation of food establishments. Numerous states have adopted food regulations based on the FDA Model Food Code.

Because the FDA Model Food Code establishes minimum requirements for safe food handling, DATCP is unable to lessen those requirements in the Wisconsin Food Code. However, the department may grant a variance in cases where it is impractical for a food establishment to achieve strict adherence to the Wisconsin Food Code if the variance does not jeopardize the public's health, safety or welfare.

The department will provide training, fact sheets, and handouts to 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 retail food establishment businesses 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 business, including small business, to implement the updated requirements.

Dated this _____ day of _____, 2012

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Steve Ingham, Administrator
Division of Food Safety