

Wisconsin Department of Agriculture, Trade and Consumer Protection

Initial Regulatory Flexibility Analysis

Rule Subject: Food Warehouses

Adm. Code Reference: ATCP 70 and 71

Rules Clearinghouse #: Not assigned

DATCP Docket #: 14-R-11

Rule Summary

This proposed rule revision will ensure Wisconsin's requirements are consistent with federal regulations and expectations for minimizing food safety hazards, while reducing the regulatory burden on some food warehouse operations. The proposed rule modifies current food warehouse rules to clarify which types of food processing activities in a food warehouse must be done under a separate food processing plant license. The rule clarifies requirements for food warehouses that hold fish, fishery products, and molluscan shellfish. The proposed rule harmonizes the food warehouse refrigeration temperature requirement for eggs with the requirement found in ch. ATCP 88 (Eggs). Finally, the proposed rule reduces confusion about which new 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 860 active food warehouse licenses, 609 (over 70%) are "small" food warehouses, defined by the 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 already-packaged products in a licensed food warehouse by exempting the operators from acquiring 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 type of processing of these products. Small businesses processing in this way are thereby subject to federal HACCP requirements. These federal 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 federal 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 proposed rule will clarify this requirement.

Many small food warehouse businesses may be classified as a “qualified facility” under the Preventive Controls – Human Food rule which was recently published by the US Food and Drug Administration (FDA) under the mandate of the FDA Food Safety Modernization Act (FSMA). Under FSMA and the new rule, a qualified facility is exempt from requirements to write and implement a food safety plan and supply chain management controls. The proposed rule refers to this exemption.

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 follow a HACCP plan. Federal HACCP regulations, and thus the proposed rule, require documentation of several tasks conducted under the HACCP plan. Based on our experience with food processing plant operators who process fish, fishery products, and molluscan shellfish; and warehouse operators who are already following a HACCP plan, 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. Many food warehouse operators who currently store fish, fishery products, or molluscan shellfish have already completed the training. The department offers the Segment Two training annually.

Accommodation for Small Business

The HACCP requirements for all food warehouses that hold fish, fishery products, and molluscan shellfish are mandated by federal regulations and therefore an accommodation for small business is not possible. The FSMA Preventive Controls – Human Food rule,

cited by the proposed rule contains an exemption which will apply to many small food warehouse businesses.

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 intended to minimize 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.

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