

STATEMENT OF SCOPE

Department of Health Services

(DHS)

Rule No.: DHS 198 (Vending of Food)

Relating to: Transfer of Vending of Food Regulations to DATCP

1. Description of the objective of the rule:

The objectives of this rule revision are to amend and modernize ch. DHS 198, consolidate the rule with the Wisconsin Food Code and facilitate the transfer of the rule to the Department of Agriculture, Trade and Consumer Protection (DATCP).

This proposed rule revision is part of an initiative to transfer food safety and recreational licensing regulations from the Department of Health Services (DHS) to DATCP. 2015 Wisconsin Act 55 authorized the transfer of DHS's Food Safety and Recreational Licensing Section to DATCP's Division of Food Safety, effective July 1, 2016. As part of that consolidation, DHS 198 will be renumbered as subch. IV of ch. ATCP 75 on the effective date of the transfer.

Although the rule will be transferred and incorporated into DATCP's ATCP 75 on July 1, 2016, revisions to the rule will be necessary to modernize it. In addition, if this scope statement is approved, certain provisions of DHS 198 will be incorporated into ATCP 75 Appendix (Wisconsin Food Code).

DHS will collaborate with DATCP to establish a Food Code Advisory Committee consisting of stakeholders who will 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 DHS 198 and identifying approaches for consolidating the rule into ATCP 75 and ATCP 75 Appendix in preparation for the upcoming consolidation. To avoid delay in modernizing the regulations so that they reflect current industry practice, providing improved service and providing consistent oversight of retail food establishments the rulemaking process will begin with this statement of scope from DHS and will continue and be completed by DATCP so that a rule will be in effect as soon after the transfer date as possible.

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. Section 254.74, Stats., gives the department authority to develop rules for vending machine commissaries and vending machines and their location and servicing.

Vending machines are described as “any self-service device offered for public use which, upon insertion of a coin or token, or by other means, dispenses unit servings of food or beverage either in bulk or in package, without the necessity of replenishing the device between each vending operation.” It does not include devices which dispense only bottled, prepackaged or canned soft drinks or items such as candy, gum, nuts, nut meats, cookies or crackers or prepackaged grade A pasteurized milk or milk products.

Vending commissaries, on the other hand, means “any building, room or place in the state at which foods, containers, transport equipment or supplies for vending machines are kept, handled, prepared or stored by a vending machine operator.”

Vending machine location means the room, enclosure, space or area where one or more vending machines are installed and operated.

Vending machine operator means the person maintaining a place of business in the state and responsible for the operation of one or more vending machines.

Consolidation with DATCP Division of Food Safety. The transfer of 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 retail food establishments, including vending machine and vending commissary operators, making it easier to quickly get licensing and other regulatory information. It will continue consistent oversight of retail food establishments in Wisconsin, by having one agency interpret the Wisconsin Food Code using one set of regulations. Consolidating DHS 198 into existing retail food establishment regulations will further promote the goals of the transfer by streamlining and consolidating Wisconsin’s food safety regulations.

Proposed Policies. If adopted, the proposed rule will update and modernize specific provisions of DHS 198 to reflect current best practice, including updating temperature requirements and addressing the newly emerging business of “micro-markets”, which have operational features of a convenience store and a vending machine.

Working with stakeholders, DHS and DATCP staff will review DHS 198 to identify the best approach for consolidating its provisions with ch. ATCP 75 and ATCP 75 Appendix after DHS's food safety and recreational license program is transferred to DATCP on July 1, 2016. At that time, DHS 198 will be renumbered as subch. IV of ch. ATCP 75. Additional rulemaking activities will evaluate whether and to what extent to incorporate food safety provisions from DHS 198 into ATCP 75 Appendix (Wisconsin Food Code) to further streamline the rule and remove duplication. The Wisconsin Food Code already includes several provisions related to ensuring the safety of food dispensed from vending machines, which may allow certain provisions from DHS 198 to either be removed or incorporated into existing provisions and streamlined. The rulemaking workgroup will assess whether to establish a separate chapter in the Wisconsin Food Code dedicated specifically to vending machines and vending commissaries.

Related Rulemaking Activities. This scope statement is one of three scope statements prepared by DHS to facilitate the transfer of the Food Safety and Recreational Licensing Section to DATCP's Division of Food Safety. The other scope statements are for chs. DHS 192 and DHS 196 and its appendix.

After July 1, 2016, regulatory authority for DHS 192 (Cities, Counties, and Villages Designated as Agents of the Department for Public Health) will be transferred to DATCP 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 become a subchapter of ATCP 74.

The department has also prepared a scope statement for DHS 196 (Restaurants) and DHS 196 Appendix (Wisconsin Food Code). The goal of that rule revision is to update the food code to reflect the most recent version of the FDA model food code and to consolidate DHS 196 with the DATCP's ATCP 75.

In addition to the three scope statements prepared by DHS, DATCP has also prepared a scope statement for ATCP 75 and ATCP 75 Appendix to amend regulations related to retail food establishments and to consolidate DHS restaurant and vending regulations transferred to DATCP on July 1, 2016.

Policy Alternatives. Do nothing. DHS 198 will be transferred to DATCP on July 1, 2016 and incorporated into a newly created subch. IV of ATCP 75. If DHS and DATCP do nothing further, ch. ATCP 75 will include provisions that are duplicative and contrary to provisions in the Wisconsin Food Code related to vending machines and commissaries. If DHS and DATCP 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: Sections 227.14 and 254.74 (1), Stats.

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.

254.74 Powers of the department and local health departments.

(1) The department shall do all of the following: (a) Administer and enforce this subchapter, the rules promulgated under this subchapter and any other rules or laws relating to the public health and safety in hotels, tourist rooming houses, bed and breakfast establishments, restaurants, vending machine commissaries, vending machines and vending machine locations.

(am) Promulgate rules, in consultation with the department of safety and professional services, under which the department of health services shall conduct regular inspections of sealed combustion units, as required under s. 101.149 (5) (c), for carbon monoxide emissions in hotels, tourist rooming houses, and bed and breakfast establishments. The rules shall specify conditions under which it may issue orders as specified under s. 101.149 (8) (a). The rules may not require the department of health services to inspect sealed combustion units during the period in which the sealed combustion units are covered by a manufacturer's warranty against defects.

(b) Require hotels, tourist rooming houses, restaurants, vending machine operators and vending machine commissaries to file reports and information the department deems necessary.

(c) Ascertain and prescribe what alterations, improvements or other means or methods are necessary to protect the public health and safety on those premises.

(d) Prescribe rules and fix standards, including rules covering the general sanitation and cleanliness of premises regulated under this subchapter, the proper handling and storing of food on such premises, the construction and sanitary condition of the premises and equipment to be used and the location and servicing of equipment. The rules relating to the public health and safety in bed and breakfast establishments may not be stricter than is reasonable for the operation of a bed and breakfast establishment, shall be less stringent than rules relating to other establishments regulated by this subchapter and may not require 2nd exits for a bed and breakfast establishment on a floor above the first level.

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 regulation of vending machines and vending commissaries. The FDA publishes the federal Model Food Code, which includes provisions related to vending machines, as a model for states to use in developing its food safety regulations for retail food establishments. Wisconsin has adopted most of the provisions of the FDA Model Food Code, including provisions related to vending machines.

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

This rule will revise regulations for vending machine and vending commissary operators 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 :

DHS estimates that it will use approximately 0.25 FTE staff time to develop this rule. This includes research, drafting, preparing related documents, holding public hearings, and communication with affected persons and groups. DHS will assign existing staff to develop this rule. DHS will work jointly with DATCP staff, who are separately proposing to revise chs. ATCP 75 and ATCP 75 Appendix, to facilitate seamless consolidation of chs. DHS 198 and ATCP 75.

7. Anticipated economic impact:

The proposed rule is not expected to have any negative economic impact and will positively affect operators of vending machines and vending commissaries, state and local sanitarians. By adopting the most current practices in food safety, the proposed rule revision will ensure Wisconsin's regulations reflect best practice for protecting public health. 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 vending machine and vending commissary regulations.

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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