

Wisconsin Department of Agriculture, Trade and Consumer Protection

Initial Regulatory Flexibility Analysis

Rule Subject: Retail Food Establishment, Lodging, and Recreational Safety Agent Program

Adm. Code Reference: ATCP 74

Rules Clearinghouse #: TBD

DATCP Docket #: 15-R-19

Rule Summary

On July 1, 2016, ch. DHS 192 and part of ch. ATCP 75, both dealing with agent programs, were combined into a new ATCP 74, involving the relationship of the new Division of Food and Recreational Safety (DFRS) and its agent programs. Under the authority of an approved DHS scope statement, the Department is now revising ch. ATCP 74.

The new rule standardizes language from ATCP 75 and DHS 192. It also standardizes, expands, and clarifies definitions of agent program terms. In doing so, it spells out Department expectations for persons hired by agent programs to hold, or be eligible to work toward holding, the Registered Sanitarian (RS) certification. The RS certification is the preferable credential to be held by agent-program sanitarians doing food inspections; the revised rule clarifies the Department's expectations regarding inspection done by those sanitarians who have not yet earned the RS certification, as well as the staffing procedures to be followed by agent programs if certified RS staff leave the program.

The revised ATCP 74 also clarifies the Department's expectations for agent program inspection systems and databases, and spells out the terms to be covered by the forthcoming Department - agent contracts. It adds a mandatory expiration date after which the contract may be renewed. The rule clarifies the expectations of the Department for agent programs seeking to enter into a contractual relationship, the procedures to follow to enter into that agreement, and it clarifies the procedures for either or both entities to end the contractual relationship. The rule also updates and clarifies the roles that both the Department and the agent program shall play under the contractual relationship and the types of support, levels of training, and information that are to be shared by each of the partners in the contractual relationship.

This new rule clarifies the responsibilities of the agent programs to enforce the Wisconsin Food Code, to inform the Department of their enforcement activities, and do such

sampling as is required by the Department. It also clarifies the financial responsibilities of the agent programs for that sampling.

In addition, the new rule clarifies the responsibilities of the Department to provide general and specialized training, and laboratory support for the agent programs.

ATCP 74 further clarifies reimbursements owed to the Department, the payments-for-services that the agent program may be required to make to the Department, and the types of financial records that the agent program must make available to the Department upon request. In particular, it spells out the responsibility of agent programs to demonstrate that the fees charged by the local program are reasonable and used only for maintaining the local program.

Small Businesses Affected

This rule change is anticipated to have no impact on small business, as local agents were already handling the licensing, investigation, and inspection for many of these businesses, when the programs were in two agencies, this Department and the Department of Health Services.

Accommodation for Small Business

A primary focus of this new rule is the clarification of the contractual relationship and responsibilities for the inspection of retail food, lodging, and recreational facilities between the Department and the local agent programs. No accommodation for small business can reasonably be expected since the rules enforced by the state and its agent programs deal with fundamental food safety issues that must be followed by any retail food establishment wishing to produce, process, and sell food to the consuming public, regardless of the size or scope of the regulated business.

Conclusion

The provisions in this proposed rule will have minimal effect on Wisconsin's retail food, lodging, or recreational communities since it is a rule for the relationship between the State and the agent program Health Departments and does not change any of the rules under which the businesses in the agent program areas operate. This new rule does spell out the mutual responsibilities under the contract between the State and the local agent programs more clearly and this should aid the agent programs develop plans for their programs by clarifying the expectations of the state.

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.

The Department will, to the maximum extent feasible, seek voluntary compliance with this rule when dealing with agent programs.

