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Clearinghouse Rule 10-106

DATCP Docket No. 09-R-17
Rules Clearinghouse No. _____

Proposed Hearing Draft
August 31, 2010

**PROPOSED ORDER OF THE WISCONSIN DEPARTMENT OF
AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

3 The Wisconsin department of agriculture, trade and consumer protection proposes the following
4 order *to create* ATCP 69.01(3)(e) and (f) *relating to* buttermaker license qualifications.

**Analysis Prepared by the Department
of Agriculture, Trade and Consumer Protection**

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) currently licenses buttermakers under s. 97.17, Stats. This rule provides more ways for an individual to qualify for licensing as a buttermaker.

Statutes Interpreted

Statutes Interpreted: s. 97.17(2), Stats.

Statutory Authority

Statutory Authority: ss. 93.07(1) and 97.17(2) and 227.24, Stats.

Explanation of Statutory Authority

DATCP has broad general authority under s. 93.07(1), Stats., to interpret laws under its jurisdiction. DATCP has specific authority under s. 97.17(2), Stats., to establish license qualifications for buttermakers.

Plain Language Analysis

DATCP licenses individuals as buttermakers under s. 97.17, Stats. DATCP has adopted licensing rules under ch. ATCP 69, Wis. Adm. Code. Currently, an applicant for a 2-year buttermaker license must pass an examination (required only for initial license) and must show that he or she has done at least one of the following (required for initial and renewal license):

- Been licensed as a buttermaker for at least 10 years.
- Worked directly under a licensed buttermaker for at least 24 months.

- Worked directly under a licensed buttermaker for at least 18 months and completed a DATCP-approved training course from an accredited post-secondary institution.
- Obtained a 4-year degree in food science (or an equivalent major) from an accredited post-secondary educational institution, and worked directly under a licensed buttermaker for at least 12 months.

Under this rule, an applicant may also qualify for licensing if either of the following apply (the applicant must also pass an examination for an *initial* license):

- The applicant holds a Wisconsin *cheesemaker* license and has done all of the following:
 - Completed a DATCP-approved buttermaker training course.
 - Worked in buttermaking operations for at least 40 hours under the direct personal supervision of a licensed buttermaker.
- The applicant has done all of the following:
 - Worked in the complete process of buttermaking for at least 120 hours under the direct personal supervision of a licensed buttermaker.
 - Completed DATCP-approved courses in all of the following:
 - Buttermaking.
 - Production of safe dairy foods.
 - Hazard analysis - critical control point (HACCP) process control.
 - Principles of milk pasteurization.
 - Dairy sanitation.

Fiscal Impact

This rule will have no significant fiscal impact on Wisconsin state or local government. This rule does not increase buttermaker license fees. This rule may increase the number of buttermaker licenses, but the increase is not expected to have a significant impact on DATCP license revenues or administrative costs. DATCP expects to absorb any increased costs with current budget and staff. A complete *fiscal estimate* is attached.

Business Impact

This rule will have a positive impact on the Wisconsin dairy industry, including Wisconsin's butter industry. The rule will promote the development and diversification of the dairy industry, and will not have any negative impact on business. The rule will:

- Provide more options for individuals who wish to be licensed as buttermakers.
- Help relieve a current acute shortage of licensed buttermakers, which is putting the state's butter industry at risk.

- Allow more people to enter the industry as licensed buttermakers, including makers of artisan and farmstead butter.
- Help ensure the safety and quality of Wisconsin butter, by ensuring that buttermakers are adequately trained and qualified.
- Make it easier for licensed *cheesemakers* to obtain a buttermaker license. That may give them more job flexibility, and provide more opportunities for value-added dairy enterprise.

This rule does not increase license fees, add new recordkeeping requirements, or require businesses to pay for additional professional services. Small businesses will benefit from this rule, and will not be adversely affected in any way. A complete *business impact analysis* is attached.

Federal Regulation

The United States food and drug administration has adopted food safety and labeling standards for butter, including a butter “standard of identity” (a product such as margarine may not be sold as “butter”). The United States department of agriculture has also adopted grading standards for butter. Neither FDA nor USDA licenses buttermakers.

This rule is not affected by current federal rules. However, buttermakers licensed under this rule must be aware of the relevant federal rules.

Surrounding State Regulation

Buttermakers are not required to hold an individual professional license any of the surrounding states (dairy plant operators must be licensed, as in Wisconsin).

Data and Analytical Methodologies

This rule does not rely on any special data or analytical methodologies.

Agency Contact for Submitting Comments

Questions or comments related to this rule may be sent to the following address:

Wisconsin Department of Agriculture, Trade and Consumer Protection
Trade and Consumer Protection Division
Division of Food Safety
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1 **SECTION 1.** ATCP 69.01(3)(e) and (f) are created to read:

2 ATCP 69.01(3)(e) The applicant holds a cheesemakers license in this state and has done
3 all of the following:

4 1. Completed a department-approved buttermaking course.

5 2. Completed 40 hours of work in buttermaking operations under the direct supervision
6 of a licensed buttermaker.

7 (f) Within 5 years prior to the current license application, the applicant has completed at
8 least 120 hours of on-the-job training in the complete process of buttermaking under the direct
9 supervision of a licensed buttermaker, and has completed department-approved courses in all of
10 the following subjects:

11 1. Buttermaking.

12 2. Production of safe dairy foods.

13 3. Hazard analysis critical control point (HACCP) process control.

14 4. Principles of milk pasteurization.

15 5. Dairy sanitation.

16 **SECTION 2. EFFECTIVE DATE.** This rule takes effect on the first day of the month
17 following publication in the Wisconsin administrative register, as provided under s.
18 227.22(2)(intro.), Stats.

Dated this _____ day of _____, 2010.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____

Randy Romanski, Secretary