

ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis

Original Updated Corrected

Administrative Rule Chapter, Title and Number

Appendix to ATCP 75, Retail Food Establishments

Subject

Revision to ATCP 75 appended Wisconsin Food Code

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Chapter 20, Stats. Appropriations Affected

20.115(1)(1a) and 20.115(1)(gb)

Fiscal Effect of Implementing the Rule

No Fiscal Effect
 Indeterminate

Increase Existing Revenues
 Decrease Existing Revenues

Increase Costs
 Could Absorb Within Agency's Budget
 Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

State's Economy

Local Government Units

Specific Businesses/Sectors

Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

Policy Problem Addressed by the Rule

This rule will update the Wisconsin Food Code for retail food establishments, which is included as an appendix to ATCP 75, Retail Food Establishments. The United States Food and Drug Administration (FDA) publishes the federal model food code to provide practical, science-based guidance and enforceable provisions for mitigating risk factors known to cause foodborne illness. FDA updates the food code every four years. The Wisconsin Food Code for retail food establishments was last updated in 2006 and is based on the 2005 federal model food code.

This rule generally does the following:

- Incorporates the 2009 federal model food code into the Wisconsin Food Code for retail food establishments to reflect current food science standards. The revised rule clarifies previously undefined terms and will reduce error in interpreting the 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 the Department of Health Services (DHS) under DHS's Admin. Code DHS 196, Restaurants. The agencies have collaborated to consistently modify their food codes.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Businesses and Business Sectors

This rule applies to retail food establishments regulated by DATCP under Admin. Code ATCP 75, Retail Food

Establishments. Specific businesses affected include groceries, bakeries, and convenience stores. DATCP licenses 3,667 of these retail food establishments. In addition, s. 97.41, Stats., allows cities and counties to choose to contract with DATCP as local agents to inspect retail food establishments in their jurisdiction. Currently, 44 local agents contract with DATCP to inspect 6,127 retail food establishments. The rule will also apply to these establishments. The Department of Health Services (DHS) is proposing identical rules for the restaurants they inspect, as well as restaurants inspected under their local agent program.

DATCP worked with DHS and sought advice about the content and potential impact of the rule from an advisory group that included local health agencies, the Wisconsin Grocers Association, the Wisconsin Restaurant Association, the Tavern League of Wisconsin, Wisconsin Technical Colleges, the Wisconsin Department of Public Instruction, and the UW-Madison Department of Food Science.

Although DATCP worked with an advisory group to determine the impact of the rule, it is unable to specifically quantify the compliance costs to businesses of this rule due to unavailability of specific data. But DATCP does not expect the proposed rule to have a significant economic or fiscal impact on large or small retail food establishments licensed by DATCP. It is likely that many establishments have already implemented the requirements contained in the rule and will incur no additional compliance costs. The department also expects that retail food establishments will be able to implement this rule with their existing personnel. DATCP will assist with providing training materials to businesses. Finally, the rule will not increase licensing fees for retail food establishments.

Local Governmental Units

Revisions to the Wisconsin Food Code will have no ongoing fiscal effect on state or local government. Proposed revisions will not significantly alter state or local retail food enforcement activities. Cost to local government agencies would be limited to staff time to attend training offered by the department. This training will be incorporated into annual training the department already provides to local food enforcement officials.

Public Utility Rate Payers

The rule will have no impact on public utility rate payers as a group.

State's Economy

This rule will not adversely affect the economy, productivity, jobs or the economic competitiveness of the state. Adopting this rule, as other states across the country also adopt rules based on the 2009 federal model food code, may help Wisconsin retail food companies operate more efficiently if they have locations in multiple states.

General Implementation Costs

The department will provide training, fact sheets, and handouts to Wisconsin retail food establishments and our regulatory partners to help implement the modified requirements contained in this rule. The cost for these outreach activities is estimated to be \$2,500 or less and will be covered by the department's existing budget. Staff time for developing and drafting the rule revisions, conducting public hearings and finalizing the rule, followed by delivery of limited training on the revisions, should be no more than 1,000 hours.

Economic Impact Analysis Comments

DATCP posted the proposed rule online as required under Wis. Stat. § 227.137 and solicited comments from businesses, local government units, and the public about the potential economic impact of the rule. The department did not receive any comments about the potential economic impact of the rule.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Benefits of Implementing the Rule

This rule will benefit retail food establishments and the general public.

Retail Food Establishments

This rule will help small businesses maintain public confidence in the retail food supply by adopting the most current, generally accepted practices for reducing risk associated with foodborne illness. A foodborne illness outbreak has the potential to decrease sales and threaten the economic viability of an industry. The rule will also clarify certain requirements. For example, requirements related to methods of reduced oxygen packaging are described in the rule and criteria for non-continuous cooking have been added, making it easier for businesses to safely prepare food using these methods. Also, the revised rule has been directly compared and altered along with DHS's proposed rule to change its version of the food code, which will also help prevent inconsistent regulation of retail food establishments and restaurants.

General Public

Retail establishments that implement the 2009 model food code will be using the most current methods identified by FDA as effective for protecting public health and ensuring food provided to consumers at retail food establishments is safe.

Alternative to Implementing the Rule

If the rule is not adopted, retail food establishments will continue to be regulated under the version of the Wisconsin Food Code which is based on the 2005 edition of the federal model food code and Wisconsin's regulations will not be consistent with current best practice. As other states adopt the 2009 version of the food code, Wisconsin's code could become outdated and inconsistent with national standards. In order to be a full partner in an integrated national food safety system, Wisconsin must comply with the FDA Retail Food Regulatory Program Standards, which require Wisconsin to have an up-to-date regulatory foundation for its program activities. Failure to adopt this rule may jeopardize Wisconsin's ability to integrate into the national food safety system and obtain technical and funding assistance from FDA.

Long Range Implications of Implementing the Rule

There are no long range fiscal implications of implementing the rule. In the long run, the rule changes will benefit businesses and the general public by better protecting public health through use of current practices for preventing foodborne illness.

Compare With Approaches Being Used by Federal Government

Federal law, like state law, generally prohibits the sale of adulterated or misbranded food. There are no federal regulations that specifically address retail food operations. However, FDA publishes a model food code that is based on the best available science and information related to retail food safety. FDA and the United States Department of Agriculture encourage state and local governments to adopt retail food safety regulations that are consistent with the federal model food code. The current Wisconsin Food Code is based on the 2005 edition of the federal model food code. This rule updates the Wisconsin Food Code to incorporate changes contained in the 2009 edition of the federal model food code.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Minnesota-Minnesota's current regulations are based on the 1997 edition of the federal model food code.
Iowa- Iowa's current regulations are based on the 2005 edition of the federal model food code. Iowa reported plans to update their food code to the 2009 version soon.
Illinois-Illinois' current regulations are based on the 2005 edition of the federal model food code.
Michigan- Michigan's current regulations are based on the 2005 edition of the federal model food code.

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