



State of Wisconsin
Governor Tony Evers

Department of Agriculture, Trade and Consumer Protection
Bradley M. Pfaff, Secretary

October 1, 2019

The Honorable Chris Kapenga
Chair, Senate Committee on Public Benefits,
Licensing and State-Federal Relations
Room 15S, State Capitol
P.O. Box 7882
Madison, WI 53707

The Honorable Representative Gary Tauchen
Chair, Assembly Committee on Agriculture
Room 13W, State Capitol
P.O. Box 8953
Madison, WI 53708

Dear Senator Kapenga and Representative Tauchen,

This letter and the attached revised Clearinghouse Rule 17-073 respond to the Senate Committee on Public Benefits, Licensing and State-Federal Relations' May 29, 2019, executive session motion requesting the Department consider modifications to this rule related to food processing plants and affecting small business. Of concern to the were previously proposed provisions to: 1) end "grandfather" exemptions from several food processing plant facility requirements, 2) charge a license fee surcharge for all sizes of food processing plants that can foods (instead of only those with annual production of \$25,000 or more), and 3) mandate automatic expiration of waivers granted to food processing plants from construction, maintenance, equipment, utensil, process, or procedure requirements. The Committee also requested that the Department conduct a revised economic impact analysis.

As agreed to in its May 30, 2019, letter to the Senate Committee on Public Benefits, Licensing and State-Federal Relations, the Department has considered the Committee's request and prepared a modification to the rule that addresses each of this Committee's concerns. In addition, the Department clarified when toilet rooms serving a food processing plant must be contiguous to the food processing plant. The modification allows existing non-contiguous toilet rooms provided applicable local and state requirements are met. Toilet rooms installed after the rule's effective date or in a plant initially licensed or licensed to a new operator after the effective date must be contiguous to the food processing plant. The modification was approved by the Department of Agriculture, Trade and Consumer Protection Board at its September 19, 2019, meeting. These actions comply with the requirements in Wis. Stat. § 227.19 (4) (b) 2.

Grandfather exemptions related to several construction and facility requirements have been retained with the same effective dates as in the current ch. ATCP 70. Consistent with the statutory prohibition on license transfer, under the revised rule the grandfather exemptions will be lost when a new license-holder assumes operation of the food processing plant after the date indicated in the rule. Any other license-holder actions, e.g., significant construction or alterations, negating the grandfather exemptions have been clearly described.

The Department retained language in the current ch. ATCP 70 indicating that the canning surcharge will only be applied to food processing plants engaged in canning with annual production of \$25,000 or more. In consideration of the economic impact on very small businesses, the Department agreed with the committee to retain the original sales-volume floor.

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The Department carefully considered the Committee on Public Benefits, Licensing and State-Federal Relations concerns about inconsistency for businesses resulting from a hard-stop expiration (after five years) for waivers from requirements related to construction, equipment, utensils, processes, and procedures, along with waivers for alternative cleaning and sanitizing schedules. The Department revised the rule so that waivers related to construction and maintenance would not expire as long as no changes in construction or maintenance had jeopardized the clean and sanitary condition of the facility or would result in food adulteration. For the other types of waivers and the approval of alternative cleaning and sanitizing schedules, the Department expiration will not be automatic provided the food processing plant operator submits an application for reissuance at least 180 days before the expiration date. The waiver / approval will remain in place until the Department completes its review and makes a decision. The Department will approve renewal as long as the requested variance continues to allow safe and sanitary food processing operations.

Finally, the Department conducted a revised economic impact analysis that estimated an impact of not more than \$656,000 across 40 or fewer food processing plants. A survey of all 1909 license-holders, with a 12% response rate, corroborated this estimate.

The proposed rule reflects the Department's ongoing efforts to keep pace with industry best practices and federal requirements for wholesale food manufacturing, while safeguarding the health of all Wisconsinites.

Thank you for the opportunity to refine the proposed administrative rule and further advance these goals.

Sincerely,

Bradley M. Pfaff
Secretary