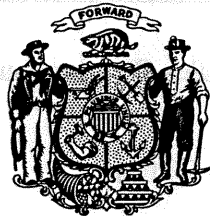


WISCONSIN LEGISLATIVE COUNCIL STAFF

APR 18 2000  
LCRC  
FORM

**RULES CLEARINGHOUSE**

**Ronald Sklansky**  
Director  
(608) 266-1946



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**CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 00-060**

AN ORDER to repeal and recreate chapter ATPCP 75, relating to retail food establishments.

Submitted by **DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION**

03-17-00 RECEIVED BY LEGISLATIVE COUNCIL.

04-13-00 REPORT SENT TO AGENCY.

RNS:MCP:jal;rv

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

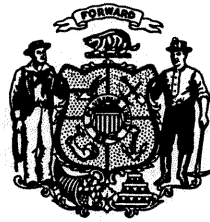
Comment Attached      YES       NO

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 00-060

### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### 4. Adequacy of References to Related Statutes, Rules and Forms

The statutory cross-reference in appendix 1-201.10 (B) (33) (b) (i) should refer to "Stats." instead of "of the Wisconsin Statutes."

#### 5. Clarity, Grammar, Punctuation and Use of Plain Language

a. A number of terms are used in the rule that are defined in current ch. ATCP 75, but are not defined in the rule. These terms include "department," "agent municipality or county," "retail food establishment" and "potentially hazardous food." Other potential sources of confusion include the definition of "agent city or county" in s. 97.30, Stats., and the definition of "food establishment" rather than "retail food establishment" in the appendix. It should be noted that definitions are included in the companion rule, ch. HFS 196.

b. Section ATCP 75.02 (3) establishes license fees under a number of different scenarios. However, it appears that a fee is not established where food sales are less than \$25,000 and the establishment processes potentially hazardous food. This could be corrected by drafting s. ATCP 75.02 (3) (d) in a manner similar to s. ATCP 75.02 (4) (b) 4.

SEP 01 2000

Docket No. 99-R-8

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

NOTICE OF SUBMISSION OF PROPOSED RULES TO  
PRESIDING OFFICERS OF EACH HOUSE OF THE LEGISLATURE

NOTICE IS HEREBY GIVEN, pursuant to Wis. Stat. § 227.19(2), that the State of Wisconsin Department of Agriculture, Trade and Consumer Protection is submitting a final draft of proposed Clearinghouse Rule Number 00-060 to the presiding officer of each house of the legislature for standing committee review. The proposed rule to repeal and recreate Chapter ATCP 75, relating to retail food establishments.

Dated this 31 day of August, 2000.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE  
AND CONSUMER PROTECTION

By Ben Brancel  
Ben Brancel, Secretary





State of Wisconsin  
Tommy G. Thompson, Governor

**Department of Agriculture, Trade and Consumer Protection**

Ben Brancel, Secretary

DATE: August 30, 2000

TO: The Honorable Fred A. Risser  
President, Wisconsin State Senate  
220 South, State Capitol  
P. O. Box 7882  
Madison, WI 53707-7882

The Honorable Scott Jensen  
Speaker, Wisconsin State Assembly  
211 West, State Capitol  
P. O. Box 8952  
Madison, WI 53708-8952

FROM: Ben Brancel, Secretary *Ben Brancel*  
Department of Agriculture, Trade and Consumer Protection

SUBJECT: **Proposed Rules Relating to Retail Food Establishments**  
**(Clearinghouse Rule # 00-060)**

The Department of Agriculture, Trade and Consumer Protection (DATCP) hereby transmits the above rule for legislative committee review, pursuant to ss. 227.19(2) and (3), Stats. We are enclosing 3 copies of the final draft rule, together with the following report. We will publish a notice of this referral in the Wisconsin Administrative Register, as required by s. 227.19(2), Stats.

**Introduction**

This rule repeals and recreates DATCP's current rules for retail food establishments, such as grocery stores. This rule is based on the federal model food code, published by the United States Food and Drug Administration. The model food code is based on the best science currently available to FDA.

The Wisconsin Department of Health and Family Services is proposing nearly identical rules for restaurants. This is a joint effort by DATCP and DHFS to establish consistent and up-to-date standards for all retail food operations. DATCP and DHFS are already coordinating their licensing and inspection activities, to provide effective regulation without unnecessary overlap.

## **Background**

DATCP licenses and inspects retail food establishments, such as grocery stores, under s. 97.30, Stats. DHFS licenses and inspects restaurants under s. 254.64, Stats. In metropolitan areas, agent counties and municipalities often license and inspect grocery stores and restaurants as agents of DATCP and DHFS.

Many grocery stores include restaurants, and vice-versa. DATCP and DHFS now coordinate their activities so that a grocery store–restaurant combination is licensed and inspected by DATCP or DHFS, but not both.

Although DATCP and DHFS have coordinated their activities to avoid duplicate licensing and inspection, they still enforce somewhat different rules. This makes it harder for the agencies to coordinate their programs, and harder for food businesses to comply. The current rules of both agencies are also outdated in certain respects.

DATCP and DHFS have therefore worked together to develop uniform rules for retail food establishments and restaurants. DATCP is proposing this rule for retail food establishments, while DHFS is proposing a nearly identical rule for restaurants. Both agency rule proposals are based on the 1999 model food code published by the United States Food and Drug Administration (FDA).

The model food code is applicable to retail food establishments as well as restaurants. The FDA has recommended that state and local governments adopt the model food code. The model food code is based on the best science currently available to FDA. Retail food operations throughout the nation are familiar with the model food code.

## **Rule Format**

The format of the model food code differs from that of state administrative rules. Under s. 227.14(1s), Stats., created by 1999 Wis. Act 9, DATCP and DHFS are authorized to adopt administrative rules in the format of the model food code. This rule, like the DHFS rule, has two parts:

- The first part contains DATCP licensing and administrative procedures related to retail food establishments. This part is drafted in the normal state format. This rule does not change current licensing or administrative procedures for retail food establishments. Nor does it change current license fees.
- The second part, attached as an appendix, is the model food code. The model food code is written in the federal format, as authorized by the Wisconsin legislature. The food industry is familiar with the model food code format. DATCP and DHFS have jointly reviewed the model food code, and made minor modifications to adapt it for use in Wisconsin.

## **Rule Coverage**

This rule applies to retail food establishments licensed under s. 97.30, Stats., including grocery stores and retail food processing operations. It does not apply to activities conducted under a dairy plant license (s. 97.20, Stats.), a meat or poultry establishment license (s. 97.42, Stats.) or a food processing plant license (s. 97.29, Stats.).

## **Licensing and Fees**

DATCP currently licenses retail food establishments under s. 97.30, Stats. A retail food establishment operator must pay fees specified by statute and rule. This rule incorporates current statutory licensing requirements and fees without change. This rule includes current provisions that eliminate overlapping license requirements between DATCP and DHFS.

## **Food Safety Standards**

This rule establishes food safety standards for retail food establishments. Many of these standards are similar or identical to current standards, but others are different. Among other things, this rule addresses the following:

- Potentially hazardous foods, including heating and cooling requirements.
- Construction and maintenance.
- Equipment and utensils.
- Management and personnel standards.
- Food sources.
- Receiving, handling, storing and displaying food.
- Delicatessen operations.
- Cleaning and sanitizing procedures.
- Food safety labels and consumer warnings.
- Mobile food establishments.
- Records and reports.

The final draft rule will affect approximately 4,500 retail food establishments licensed by DATCP. It will also affect approximately 3,000 retail food establishments licensed by the 23 counties and municipalities that license and inspect retail food establishments as DATCP agents. In this rule, DATCP incorporated many suggestions from grocery store operators, restaurant operators, city and county health officials and trade associations. DATCP has attempted to develop a consensus document based on the federal model food code.

## Hearing Comments

DATCP and DHFS held 5 joint hearings on this rule. Teleconferencing made it possible for interested persons to participate from 8 separate locations. Individual hearings were held in Eau Claire (April 25), Appleton (April 27), Milwaukee (April 28) and Madison (May 5). On May 2, DATCP and DHFS conducted a joint videoconference hearing that included videoconference sites in Madison, La Crosse, Superior, Rhinelander and Wisconsin Rapids.

A total of 54 people attended the hearings (including the video conference hearings). Ten registered in support of the proposed rule; 23 registered in support with certain modifications; and 2 registered in opposition. The hearing record remained open for written comments until May 15, 2000. DATCP received 13 written comments. A hearing summary and list of participants is attached as *Appendix A*.

## Changes from Hearing Draft

DATCP modified this rule in response to hearing comments. The final draft rule:

- Removes the requirement that an individual designated as the “person in charge” be present in the food establishment during all hours of operation.
- Removes a provision requiring the “person in charge” to correctly answer questions demonstrating the person’s knowledge of food safety.
- Modifies language regarding “employee illness reporting” to clarify that an employee must inform the “person in charge” when the employee has contracted or is showing signs of a communicable disease that could cause a food-borne illness
- Removes language requiring an employee to report to the “person in charge” whenever the employee has been exposed to a food-borne illness or organism suspected of causing a food-borne illness.
- Increases the length of time that an employee jaundiced from Hepatitis A must be excluded from a retail food establishment.
- Allows a retail food establishment to serve an undercooked beefsteak without a consumer advisory statement if the processing plant providing the beefsteak labels it as a whole muscle intact beefsteak or issues a letter of guarantee to that effect.
- Allows a retail food establishment to sell or serve wild mushrooms if the operator obtains appropriate written mushroom identification from the mushroom supplier. The operator must keep the written identification for 90 days. The identification must meet criteria specified in the rule.

- Prohibits employees from touching prepared ready-to-eat food with their bare hands unless the food establishment has an approved food handling system.
- Clarifies that certain date marking and disposition requirements are for the food establishment's internal use, and are not expiration dates for consumer use.
- Requires approved written procedures before a food establishment may implement "time as a public health control" measures.
- Removes language specifying the exact method by which the "person in charge" must inform consumers of the hazards of eating raw or undercooked ready-to-eat foods.
- Prohibits the use of a food preparation sink to wash wiping cloths.
- Requires public toilet rooms to be "readily available" rather than "contiguous to the dining or serving areas."
- Requires at least 5 gallons of water for employee handwashing in temporary food establishments (the hearing draft required 2 gallons).
- Incorporates minor editorial and drafting changes suggested by the Legislative Council Rules Clearinghouse.

### **Response to Rules Clearinghouse Comments**

The Legislative Council Rules Clearinghouse suggested minor changes in the hearing draft rule. DATCP has incorporated all of these changes in the final draft rule.

### **Fiscal Estimate**

This rule will involve approximately \$11,000 in initial printing costs for DATCP, as well as ongoing costs for training and administration. The rule will have no other significant fiscal impact on the department or on local units of government. A fiscal estimate is attached as *Appendix B*.

### **Small Business Analysis**

This rule will not have a major impact on small businesses, because the food sanitation requirements contained in this rule are similar to those that currently apply. However, this rule will require some additional training of retail food establishment personnel. It should not be necessary for retail food establishments to hire additional professional services to comply with this rule.

This rule will assist small business by maintaining public confidence in the retail food supply, and by eliminating inconsistent regulation of retail food establishments and restaurants (many of which are combined at the same location). A small business analysis ("final regulatory flexibility analysis") is attached as *Appendix C*.

**SUMMARY OF ORAL TESTIMONY  
PROPOSED AMENDMENTS TO ATCP 75**

**INTRODUCTION**

DATCP and DHFS held 5 joint hearings on this rule. Teleconferencing made it possible for interested persons to participate from 8 separate locations. Individual hearing was held in Eau Claire, Appleton, Milwaukee and Madison, on April 25, 27, and 28, and May 5, 2000, respectively. On May 2, 2000, DATCP and DHFS jointly conducted a videoconference hearing with 5 sites that included Madison, La Crosse, Superior, Rhinelander, and Wisconsin Rapids.

A combined total of 52 people registered at the hearings, of these 20 provided oral testimony. Fourteen other people provided written comments on the proposed rule during the public comment period ending May 15, 2000. Many of the people attending the hearing did not offer testimony, but simply were there for observation of the proceedings.

**TABLE 1. PUBLIC HEARING ATTENDANCE ATTENTDENCE ON ATCP 75**

	<b>Eau Claire 4/25/00</b>	<b>Appleton 4/27/00</b>	<b>Milwaukee 4/28/00</b>	<b>Video Conference 5/2/00</b>	<b>Madison 5/8/00</b>
<b>Wish to Speak</b>	3	1	5	3	8
<b>Informational</b>	0	6	7	5	0
<b>Support</b>	2	3	1	2	1
<b>Support with Modifications</b>	0	2	5	3	8
<b>Opposed</b>	2	1	1	2	1
<b>Switched to Support with Modifications</b>	2	0	1	2	0
<b>Submitted Written Comments</b>	1	2	3	4	4

**SUMMARY OF ORAL TESTIMONY**

**Eau Claire Site 4/25/00**

<b>Speaker # ,Name And Address</b>	<b>Position</b>	<b>Action</b>
1. Timothy Weigner Eau Claire, WI. Food Marketing Institute	Support with changes	Spoke at hearing and provided written comments.
2. Peggy Loken Eau Claire Health Dept.	Support with changes	Spoke at hearing
3. Darryl Farmer Eau Claire Health Dept.	Support no changes	Spoke at hearing
4. Rick Lambrect Eau Claire, WI Pick 'N Save.	Support with changes	Spoke at hearing

**Appleton Site 4/27/00**

5. Lance Johanneson Appleton, WI Pick 'N Save.	Support with changes	Observed at hearing
6. Richard Tucker Appleton, WI FDA Official	Support no changes	Spoke at hearing and provided written comments
7. Dale Schmit Appleton, WI. Brown Co. Health Dept.	Support with changes	Observed at hearing and provided written comments
8. Mike Kniffin Appleton, WI. Roundy's Inc.	Support with changes	Observed at hearing
9. Kris Murphy Appleton, WI. Winnebago Co. Health	No position	Observed at hearings
10. Michelle Stanton Appleton, WI. Appleton Health Dept	No position	Observed at hearing
11. Steve Kihl Appleton, WI. Appleton Health Dept.	No position	Observed at hearing
12. Craig Kratcha Appleton, WI. Appleton Health Dept.	No position	Observed at hearing
13. Tim Mirkes Appleton, WI. Appleton Health Dept.	Support no changes	Observed at hearing
14. Dave Flora Appleton, WI. Piggly Wiggly, Inc.	No position	Observed at hearing
15. Jeff Phillips Appleton, WI. Outagamie Co. Health	Support no changes	Observed at hearings
16. Natalie Little Appleton, WI. Outagamie Co. Health	No position	Observed at hearing



**Milwaukee Site 4/28/00**

17. Loyce Robinson Milwaukee, WI. Milwaukee Health Dept.	No position	Observed at hearings
18. Kevin Hulbert Milwaukee, WI. Milwaukee Health Dept.	No position	Observed at hearings
19. Kim Schneeweis Milwaukee, WI. Kohl's Foods	Support with changes	Spoke at hearing
20. Kenneth Rosenwinkel Milwaukee, WI. Jewel-Osco/Albertsons	Support with changes	Spoke at hearing and provided written comments
21. Richard Tucker Milwaukee, WI. FDA Official	Support no changes	Spoke at hearing
22. John McDowell Milwaukee, WI. Roundy's Inc.	Support with changes	Spoke at hearing and provided written comments
23. Roger Johnson Milwaukee, WI Milwaukee Health Dept	Support with changes	Spoke at hearing and provided written comments
24. Mark Meske Milwaukee, WI. Wauwatosa Health Dept	No position	Observed at hearings
25. Nancy Kreiser Milwaukee, WI. Wauwatosa Health Dept	No position	Observed at hearings
26. Sue Schwister Milwaukee, WI. Kohl's Food Stores	No position	Observed at hearings
27. Bob Melcher Milwaukee, WI Prescott Supermarkets	No position	Observed at hearings
28. Andy Winger Milwaukee, WI. Milwaukee Health Dept.	No position	Observed at hearings
29. Rich Lindemeier Milwaukee, WI. Milwaukee Health Dept.	Support with changes	Observed at hearings and provided written comments

**Video Conference 5/2/00**

30. Patrick Tieney La Crosse, WI. Quillin's Inc.	Support with changes	Spoke at hearings
31. Linda Pintor Madison, WI. Kohl's Foods	Support with changes	Spoke at hearings
32. John Powell Gurnee, IL. FDA Official	Support no changes	Observed at hearings
33. Michelle Kussow Madison, WI. WI Grocers Assoc.	Support with changes	Spoke at hearings and provided written comments
34. Kathi Kilgore Madison, WI. WI. Restaurant Assoc.	Support with changes	Spoke at hearings and provided written comments
35. Sue Schwister Madison, WI. Kohl's Foods	No position	Observed at hearings
36. Paul Claflin Madison, WI. Consumer	Support with changes	Observed at hearings
37. Russell Mech Wausau, WI. Marathon Co. Health	Support with changes	Observed at hearings and provided written comments
38. Carrie Pohjola Rhineland, WI. WI. State Health Dept.	No position	Observed at hearings and provided written comments
39. Patrick Heiser Superior, WI. Douglas Co. Health Dept.	No position	Observed at hearings
40. Vicki Drake Superior, WI. Douglas Co. Health Dept.	No position	Observed at hearings
41. Michelle Larson Superior, WI. Douglas Co. Health Dept.	No position	Observed at hearings
42. Nancy Eggleston Wisconsin Rapids, WI. Wood Co. Health Dept.	No position	Observed at hearings

**Madison Site 5/8/00**

43. James Kaplanek Madison, WI. Madison Health Dept.	Support with changes	Spoke at hearing and provided written comments
44. Douglas Voegeli Madison, WI. Madison Health Dept.	Support with changes	Spoke at hearing and provided written comments
45. Elizabeth Temple DeForest, WI. Consumer	Oppose	Spoke at hearings
46. Tom Fink Madison, WI. Brodback Enterprises	Support with changes	Spoke at hearings and provided written comments
47. Helen White Madison, WI. WI. Conference Food Protection	Support with changes	Spoke at hearings and provided written comments
48. John Damman Stevens Point, WI. Copp Corp.	Support with changes	Spoke at hearings and provided written comments
49. Paul Claflin McFarland, WI. Consumer	Support with changes	Spoke at hearings
50. Richard Tucker Madison, WI. FDA Official	Support no changes	Observed at hearings
51. John Powell Gurnee, IL. FDA Official	Support no changes	Observed at hearings
52. Beth Cleary Madison, WI. Madison Health Dept.	Support with changes	Observed at hearings

**Summary of ATCP 75 Public Hearing Testimony  
Written Comments and Department Response**

Speaker #	Rule Reference	Comment	Department Response
47	4-204.117 "Wisconsin Conference on Food Protection Issue."	Revise section 4-204.117 to require automatic dispensing of detergents and sanitizers for equipment installed after the effective date of the new rule.	This has been a requirement of the restaurant rules, HFS 196, for a number of years. No action necessary.

Speaker #	Rule Reference	Comment	Department Response
37	2-103.11 "Bare Hand Contact of Ready to Eat Foods."	Need additional language to allow bare hand contact under certain circumstances?	Yes, changed language to allow bare hand contact of ready to eat foods if prior approval has been issued by regulatory authority.
34	3-301.11 "Bare Hand Contact With Ready to Eat Foods."	The WRA would not support a complete prohibition of bare hand contact. We support a variance process for this issue.	Yes, department has changed language to allow bare hand contact if prior approval has been issued by regulatory authority.
37	3-301.11 "Bare hand contact With Ready to Eat Foods."	Current language is very confusing and needs revisions to improve readability and understanding.	Yes, department has revised language.
47	3-301.11 "Bare Hand Contact With Ready to Eat Foods."	Add language to include an exception when washing fruits and vegetables as specified under section 3-302.15.	Yes, department has added this exception to this section.
2	3-301.11 "Bare Hand Contact With Ready to Eat Foods."	Allowing the exception makes it vague as to when bare hand contact is allowed.	Yes, department has revised language to make it more clear as to when bare hand contact is allowed.
43	6-201.14 "Floor Carpeting Restrictions."	Carpeting should not be allowed in food storage areas due to absorbency and cleanability issues.	Agree, department has included restriction of carpeting in food storage areas.
23	6-201.14 "Floor Carpeting Restrictions."	Carpeting should not be allowed in storerooms.	Agreed, department has restricted the use of carpeting in storerooms.
43	General "Catering"	Use current DHFS policy to add definition of catering to the new rule.	No, DHFS has a department policy that must be adopted by DATCP before incorporation into the rule.
44	3-603.11 "Consumer Advisory for Consumption of Raw or Undercooked Animal Products"	Sprouts should also be added to the Consumer Advisory.	Agreed, department added raw sprouts to the definition of ready to eat foods.

Speaker #	Rule Reference	Comment	Department Response
46	3-603.11 "Consumer Advisory"	This should not be mandated by government and should be a voluntary program with specific language developed by operator.	Changed by department to allow operator to develop specific language, however consumer advisory program will be required of all operators.
47	3-603.11 "Consumer Advisory"	Delete any reminder requirement found in section 3-603.11	No change. Reminder requirement page is not in the proposed rule.
34	3-603.11 "Consumer Advisory"	This should not be mandated by government. We recommend incorporation of consumer advisory language as a voluntary effort. If mandated then industry should be able to use their own language to inform the consumer.	Changed. Requirement for advisory is necessary, but industry will be able to incorporate their own language.
47	3-401.13 "Plant Food Cooking for Hot Holding"	There is a minimal risk from fruits and vegetables that are to be hot held regardless if they are fresh, frozen or canned. Reduce holding temperature to 130 degrees to prevent a reduction in food quality.	No change. Department believes the hot holding temperature should only be reduced when the national Conference for Food Protection approves a lower hot holding temperature.
2	3-401.11 " Raw Animal Foods"	The food time and temperature charts are confusing.	Changed. Department agrees that charts are confusing and may be inconsistent with USDA cooking charts for meeting lethality performance standards for certain meat and poultry products.
43	6-201.13(A) "Floor and Wall Junctures, Coved or Sealed."	Specifically name areas that are required to be coved. Too general of a guideline.	No change. Department believes this is a training issue to learn applicability of the new rule.
23	3-501.17(G) "Date Marking, Ready to Eat Potentially Hazardous Food."	Need to clarify temperature requirements for smoked fish.	Changed. Department added language to this section to include temperature requirements for smoked fish.

Speaker #	Rule Reference	Comment	Department Response
33	3-501.17 "Date Marking of Ready to Eat Potentially Hazardous Food."	Compliance with this section will be difficult due to questions as to where and when to label the product. Does product need to be date marked while displayed in deli case or just at time of sale?	Changed. Department changed language to indicate when product shall be consumed or sold by.
46	3-501.17 "Date Marking of Ready to Eat Potentially Hazardous Food."	This is confusing and not based on science. We have no control over a customer following these guidelines.	Changed. The language was changed to delete reference to date and added consume or sold by.
1	3-501.17 "Date Marking of Ready to Eat Potentially Hazardous Food."	The majority of ready to eat foods are sold within the four to seven day date marking requirement and this only adds to industry labor costs. Should item be marked while displayed or at time of sale?	Changed. The language has been changed in this section to reflect concerns over date marking of products.
37	3-501.17(F) "Date Marking of Ready to Eat Potentially Hazardous Food."	Specify how long these products can last. Hard cheeses and cured products.	No change. Historically, these products, when properly handled, have not been associated with a foodborne illness.
33	3-501.18 "Ready to Eat Potentially Hazardous Food Disposition."	As an industry, we recommend changing the language to read sell by. If the retailer is going to be held responsible for the labeling, then a sell by date is something that can be dictated and therefore accountable by the retailer.	Changed. The language has been changed from date to consume by or sold by to reflect concerns of industry.
2	1-201.10(25m) "Existing"	Existing, in reference to a food establishment means operating with a permit/license holder from the department and this should include agents of the state.	Changed. Existing now refers to regulatory authority, which includes agent health departments.
37	3-305.12 (E) "Food Storage, Prohibited Areas."	Need a definition for mechanical room.	No change. This is an interpretation issue, which can be handled through training on the new rule.

Speaker #	Rule Reference	Comment	Department Response
38	3-305.12(E) "Food Storage, Prohibited Areas."	What is the definition of a mechanical room? Many operators store food items and equipment in basements with compressors, furnaces and water heaters	No change. This is an interpretation issue, which can be handled through training on the new rule.
38	General	How will the code be distributed to all restaurants?	Department is looking at numerous methods of distribution such as; CD-ROM, internet web site, e-mail to agents, and printing new rule.
15	General	Consider other options for obtaining copies of the code such as CD-ROM and Web site.	Agree. Department is considering many options of delivery of the new rule.
30	General	How do you envision the state distributing the code?	Agree, other methods must be utilized to distribute the new rule.
44	2-102.11 "Demonstration of Knowledge."	Change this to a swing item rather than critical. Creates more flexibility.	Changed. Language written to reflect knowledge related to specific food operations.
43	2-102.11 "Demonstration of Knowledge."	Remove food manager certification as an option to meet this requirement.	No change. Food managers certification is necessary to assure operators receive training and knowledge in food safety practices to reduce the chance of a foodborne illness.
46	2-102.11 "Demonstration of Knowledge."	If language is taken literally, the person in charge would be required to answer 15 technical questions.	Changed. Language altered to indicate operator must have food safety knowledge relevant to his specific food operation.
37	2-102.11 "Demonstration of Knowledge."	Most inspectors are not going to give a pop quiz and this section might be interpreted to require a certified manager for all shifts.	Changed. Language altered to allow for demonstration of food safety practices in establishments rather than a quiz.
31	2-102.11 "Demonstration of Knowledge."	Do we place more emphasis on answering questions or on how well the operator utilizes food safety principles in the food operation?	Changed. Language modified to place emphasis on food safety practices.



Speaker #	Rule Reference	Comment	Department Response
1	2-102.11 "Demonstration of Knowledge."	The most important proof of knowledge is in the performance of a food operation to maintain a safe food product.	Changed. Language includes demonstration of knowledge through food safety practices in a food facility.
38	2-102.11 "Demonstration of Knowledge."	How will the operator be trained on the new food code and especially this section?	Operators may be trained through food managers certification courses, through professional organizations and by inspectors providing food safety information.
33	2-102.11 "Demonstration of Knowledge."	To sum up our sentiments, it will be difficult to comply with the requirement and for the department to enforce. Recommend deletion of 2-102.11(C&D).	Changed. Language modified to suggest areas of demonstration of knowledge.
37	2-102.11 "Demonstration of Knowledge."	Need to list specifically what are the requirements.	NO. Language altered to allow for more flexibility for demonstration of knowledge.
23	4-301.13 "Drainboards."	The word "tables" should be replaced with dish tables. Also, all drainboards should be self-draining.	Changed. Modified language to include self-draining tables or drainboards.
37	HFS 196.04(6) & (7) "Emergency Occurrence and Plan Review."	These sections should also be incorporated into ATCP 75 Code.	Changed. Emergency occurrences was added to chapter 2 of the food rule appendix and plan review was added to ATCP 75.
48	2-210.11 "Employee Health."	Recommend simplification of this section. Employee health reporting is not practical.	Changed. Language of this section was modified and an entire subsection eliminated.
46	2-201.11 "Employee Health."	We recommend that an employee be responsible for reporting an illness so that management may then take the most appropriate action.	Changed section to reflect comments received to make employee health reporting more practical.
33	2-201.11 "Employee Health."	We recommend completely deleting subsections (C) and (D) of this section.	Agree with comment. Subsection C and D have been removed as a requirement.



Speaker #	Rule Reference	Comment	Department Response
34	2-201.11 "Employee Health"	Not new to the industry but the WRA requests the department to develop example questions as a guide for employers but do not have a mandatory set of questions.	Changed section to allow more flexibility when questioning employee health.
31	2-201.11 "Employee Health."	Success in managing the completed food code will result from guidelines that are effective, well grounded and realistic.	Agree with comment and this section has been modified to reflect industry concerns to have a more practical employee health reporting section.
1	2-201.11 "Employee Health."	There is a big difference between looking for outward symptoms and having to ask personal information.	Agree with comment and this section has been modified to be more practical for operators and health agencies.
47	2-201.11 "Employee Health."	Revise section to read: Had past illness from, S.Typhi within the last three months, or Shigella species, or Shiga toxin producing E. coli within the past month, or Hepatitis A virus.	Changed. This language was added to 20201.11(C) of the new rule.
47	2-201.11 "Employee Health."	Amend all food code provisions and annex statements and forms that relate to employee health and related enforcement to include all Shiga toxin producing E. coli organisms.	Changed. This information was added to the food code annex, forms and enforcement provisions.
37	HFS 196.06 "Enforcement"	This entire section should be added into ATCP 75.	Department of Agriculture's ATCP 75.03 is essentially the same..
37	3-306.11 "Food Display"	State that home style or family style food service is acceptable.	No change. Unprotected food is subject to contamination and must be properly shielded.
37	4-205.11 "Food Equipment, Certification and Classification."	Specifically state that home-style refrigerators, freezers and dish machines are prohibited, except for temporary establishments or special organizations serving meals.	No change. This section requires adherence to established equipment standards or the approval of the department. Department approval may allow the use of other types of equipment in certain circumstances.

Speaker #	Rule Reference	Comment	Department Response
37	4-205.11"Food Equipment, certification and Classification."	Change to read: or the approval of a committee of representatives from DHFS, DATCP and their agent health departments.	No change. Department maintains listing of equipment standards and a committee would delay review of requests for a variance from these standards.
7	4-402.11(A) "Fixed Equipment, Spacing or Sealing."	Equipment that is repaired because it is not easily moveable shall be installed so that it meets one of the following methods.	No change. This section does not refer to repairing equipment but rather to equipment that is fixed in place or stationary.
37	1-201.10B "Food."	Chewing gum should not be defined as a food.	No change. Chewing gum question is an interpretation issue to be resolved through training.
37	4-301.13(m) "Food Preparation Sink."	Existing food establishments must only be required to make these changes when there is a change of operator. Commerce has issued statement allowing for conversion to a food preparation sink.	Changed. Regulatory authority has the ability to approve a food preparation sink in an existing establishment as permitted by Department of Commerce.
13	2-301.15(A) "General"	Typo 2-301.15 Delete & in paragraph A.	Changed.
23	3-501.16. "Potentially Hazardous Food, Hot and Cold Holding."	Change- remove all wording in section (B) after the word less as it refers to the Federal exception for the 45 degrees.	Changed. Wording deleted to meet Wisconsin requirements.
23	4-202.17(A). "Kick Plate Removable."	Subparagraph 4-202.11(E) referenced in this section does not exist in the code.	Changed to read 4-202.11(A)(5).
5	General	Simplify the food code language. Make it easier to read.	No change. Language must remain similar to federal code for uniformity across the country.
37	General	The page numbers for the Uniform Food Code should be identical between DHFS and ATCP.	Changed. Yes the page numbers are now identical for both state agencies.

Speaker #	Rule Reference	Comment	Department Response
23	4-101.15 "Galvanized Metal, Use Limitation."	Galvanized metal cannot be used for any food contact equipment because it does not comply as being smooth per definition for food contact use in this code.	No change. Metal is smooth enough for use with non acidic food products.
21	General	Make a note in the code referring to the annexes "Public Health Reasons."	No change. Department will provide food code training utilizing annexes public health reasons.
45	General	How could two state agencies adopt such a monstrosity of a regulation? Where is the need? Apparently the present regulation is too short, too direct, simple to understand and easy to administer. This confusion will ultimately, negatively affect the health and safety of the public.	No change. The new rule incorporates the most recent food science to provide adequate food safety for the public.
47	General	I recommend that the issues passed at the National 2000 Conference for Food Protection be considered for the Wisconsin Food code. .	Changed. These issues have been added to the new food rule.
38	General	I am not comfortable with all the cross-referencing in the code. It is overwhelming.	No change. Department believes this is a training issue and this will be clarified at food code training sessions.
30	3-501.13 "Thawing."	We will have a problem sometime down the road were there is a conflict for meat departments that customers can thaw meat on the table as long as the internal temperature is 41 degrees.	No change. What is being referred to as thawing is actually the term slacking where a food product is partially thawed then immediately cooked. The new rule does not allow food to thaw at room temperature.
37	3-304.15(C) "Gloves, Use Limitation."	Allow heat resistant liners to be used under single use gloves.	No change. Gloves are to be used for only one task and no other task then discarded when damaged. Heat would damage gloves.

Speaker #	Rule Reference	Comment	Department Response
23	4-501.11 "Good Repair, Proper Adjustment and Operation."	Change title of this section to: Good repair, proper adjustment and operation and add a section D for equipment shall be operated in accordance with manufacturers instructions and as listed and tested unless approved by regulatory authority.	Changed. Agree with comment and changes have been made to the new rule.
37	1-201.10(B) "HACCP Plan."	The contents and applicability of a HACCP plan must be written in this section.	No change. HACCP is only a recommendation in the new food rule.
37	General	The fiscal impact is understated for the incorporation of HACCP plans for specialized processing methods in section 3-502.11.	No change. HACCP plan will be required for potentially hazardous foods that have special processing procedures such as; smoking, vacuum packaging and curing which if done improperly may cause a foodborne illness.
43	2-402.11 "Effectiveness."	Remove the phrase "beard restraints and clothing that covers body hair."	No change. This section refers to food products exposed to body hair during processing.
23	6-301.12(A) "Hand Drying Provision."	Towel dispensers should be required.	No change. This section requires disposable towels.
23	5-202.12(A) "Handwashing Lavatory, Water Temperature and Flow."	It should be required that water within the required temperature range be available within 15 seconds.	No change. This section has water temperature requirements as accepted by national standards.
37	5-202.12 (C) "Handwashing Lavatory, Water Temperature and Flow."	This section must be required at a change of operator for existing establishments.	No change. This is a policy decision to be made by the departments.
37	5-202.12(D) "Handwashing Lavatory, Water Temperature and Flow."	Delete this section. Already stated in 5-202.11(A).	No change. This section refers to manufacturers instructions for installation.

Speaker #	Rule Reference	Comment	Department Response
43	5-202.12(C) "Handwashing Lavatory, Water Temperature and Flow."	Include in reference the types of facilities that this applies to.	No change. This is a policy decision to be made by the department.
37	5-203.11(C) "Handwashing Lavatory."	Change this section to allow wet wipes for only vending operations.	No change. This section refers to all limited food handling operations.
37	5-204.11(B) "Handwashing Lavatory."	Change this section to always require the hand wash inside the toilet room for new construction or remodeling of existing facility.	No change. Section refers to hand wash sink accessibility for convenient use.
7	5-204.11(B) "Handwashing Lavatory."	Do not allow hand washing on the outside of a toilet room.	No change. Refers to hand wash sink accessibility for convenient use.
7	3-801.11 "Pasteurized Foods Prohibitive Re-service and Prohibited Food."	I feel that this code as written places the burden on restaurant staff to single out individuals who may be immunocompromised.	No change. This section refers to establishments provide food for people who are immunocompromised such as nursing homes.
37	3-304.12(E) "In Use Utensils, Between Use Storage."	Delete reference to ice scoops. Ice is considered a potentially hazardous food.	No change. Ice is generally not considered potentially hazardous but may become contaminated if improperly handled.
37	General	Index the code as in the FDA Model Food Code.	Changed to match FDA Model Code.
37	HFS 196.05(2) "Inspection Frequency."	This section should be added to ATCP Food Code.	No change. Departments have statutory requirements.
37	2-303.11 "prohibition."	Prohibit facial and tongue jewelry.	No change. This section refers to prohibition of hand or arm jewelry during food preparation activities.
7	3-602.11(D) "Food Labels."	Shipped in products need to be labeled so does a retailer need to keep the ingredients on file from these products.	No change. Bulk food items only need ingredients kept on file. Each individual bulk item does not need an ingredient label.
23	6-201.17 "Walls and Ceiling, Attachments."	Add to (A) of this section overhead dust collecting ledges shall be prohibited in food preparation, ware washing and storage rooms.	No change. This section provides a general guideline for walls and ceilings in a food establishment. Not intended for specific area delineation.

Speaker #	Rule Reference	Comment	Department Response
37	1-201.10(B) "Temporary Food Establishment."	State if this license is only good at that event or good for any temporary event for an entire year.	No change. This section refers only to a temporary food stand that operates at one event or celebration.
37	ATCP 75.02(5) "License."	License application must have the same. Time as specified by DHFS.	Changed to be consistent with DHFS.
37	ATCP 75.02(6) "Temporary License."	The exact term for this license should be Conditional.	Changed to reflect DHFS language for consistency of application of new rule.
37	ATCP 75.02(h) "Temporary License."	A common number must be stated in both codes.	Changed. Numbers are consistent between both departments.
49	ATCP 75.02(5)(c) & (6) "Temporary License."	The term temporary license and the term used in the code of Temporary Food Establishment will be confusing.	Changed. Term has been changed from Temporary License to Interim License.
37	General	The license for both ATCP and DHFS should be issued in the same manner for new operators or change of operators.	No change. Each department has statutory requirements to meet.
23	6-101.11 "Surface Characteristics."	It should be continued to be required that walls and ceilings in food preparation, ware washing, storage rooms and toilet rooms be light colored.	No change. This section refers to smoothness and cleanability of walls and ceilings.
7	6-303.11 "Intensity"	In (A) remove walk in refrigeration units and in (B)(4) add at a distance of 30 inches (75 centimeters) above the floor of the walk in unit.	Changed. Language in this section was changed to reflect comment.
37	6-303.11(A) & (B) "Intensity."	The minimum light level should be 30-foot candles in these areas.	Changed. Foot candle language changed to reflect Department of Commerce lighting requirements.
37	3-304.13 "Linens and Napkins, Use Limitation."	Allow linens to cover rising bread. State linens shall be replaced when they become soiled or on a daily or weekly basis.	No change. Because of their absorbency, linens that contact food must be replaced whenever the container is re-filled.



Speaker #	Rule Reference	Comment	Department Response
7	4-204.116(A) "Manual Warewashing Equipment, Heaters and Baskets"	How do you manually warewash in 170-degree water?	No change. This type of manual washing has baskets for submersion of utensils.
7	4-703.11(B) "Hot Water and Chemical"	Can thermo labels be used in place of maximum registering thermometer?	No change. In place equipment requires a registering thermometer to verify accuracy of equipment sanitizing.
47	3-201.11(E) "Compliance with Food Law"	Delete labeling requirement from this section. USDA plants are not required to label beefsteaks.	Changed. Added to language is statement: processing plant packages the steaks and labels them or issues a letter of guarantee to indicate they meet requirements.
44	9-503.11 "Toilet Facilities"	Drop the requirement for a written agreement to use washroom or change written to verbal.	Changed. Deleted requirement for written agreement to use washroom facilities.
44	10-103.11(B) "Employee Handwashing"	Change two-gallon capacity to five gallons.	Changed. Now require a five-gallon capacity tank.
37, 38, 47	3-201.16 "Wild Mushrooms"	Must specifically define "approved mushroom expert."	Changed. Added language to clarify who is a mushroom expert and buyer specifications.
29	"Cease Operations and Reporting"	Where is this section in the food code?	Changed. Added to 2-103.11(M) of the food code in section pertaining to person in charge and their duties.
37	1-201.10(B)(49n) "Occasional"	Change definition of occasional to 3 or less days.	Changed. Wording of this definition now means not more than 3 days.
34	1-201.10(B)(49n) "Occasional"	To reduce confusion, this should be phrased as 3 or fewer days.	Changed. Wording now states not more than 3 days.
33	2-201.11 (C)&(D) "Person in Charge to Require Reporting by Food Employees and Applicants"	It is hard to comply with the requirements, as it will be for the department to enforce them.	Changed. Part D has been eliminated and part C has been greatly modified to improve applicability of this section.

Speaker #	Rule Reference	Comment	Department Response
1, 5, 30, 46	2-103.11 "Person in Charge"	The burden and additional resources placed on industry to meet this requirement are very high during operations of low risk.	Changed. Language modified so requirement addresses operations of high risk where the potential for contaminated product is greatest.
29	5-202.12(C) "Hand Washing Lavatory, Water Temperature and Flow"	Self-closing, slow closing and metered faucets should not be allowed on hand washing lavatories, in food preparation areas and ware washing areas.	No change. Code states if a slow closing metered faucet is used then certain parameters must be met for compliance.
47	5-203.15 "Conditioning Device, Design"	Carbonators and beverage dispensers with internal carbonators connected to the water supply system shall have located upstream backflow devices meeting ASSE standards.	No change. Current code has backflow requirements established by Department of Commerce.
43, 29	4-603.12 "Pre-cleaning"	Add language to include a pre-wash compartment requirement for mechanical dishwashers.	No change. Code requires a pre-wash cycle for mechanical dish machines.
2	8-101.12 "Carry Out Food Establishments"	Carry out food establishments with no on site dining must provide separate toilet room for the public. This requires a separate toilet room for the public and employees.	Changed. Deleted the word separate.
2	8-201.13(B) "Location"	How does this apply to Mall Food Court or Kiosks?	Changed. Deleted the phrase located contiguous to the dining or service areas. Toilet room must now be accessible for patron use.
37	3-304.17(A) "Refilling Returnables"	A container that is washable must be allowed for re-use.	No change. Pathogens may be passed on by consumers or employees directly, or indirectly from used tableware or containers that are not adequately washed and sanitized.



Speaker #	Rule Reference	Comment	Department Response
47	3-401.11(B) "Raw Animal Foods"	Replace charts in this section with charts provided by FSIS in Appendix A of the Compliance Guidelines for Meeting Lethality Performance Standards for Certain Meat and Poultry Products.	Changed. Replaced charts to reflect most current food science on lethality and to assure the greatest protection for the public.
37	4-501.114 "Manual and Mechanical Warewashing Equipment, Chemical Sanitization"	Set one concentration that meets all pH requirements for each sanitizer type.	No change. The code is written to allow the operator alternatives to one type of sanitizer and concentrations based upon local water conditions or treatment.
37	4-501.114(D) "Manual and Mechanical Warewashing, Chemical Sanitization"	If another chemical solution is used, it must be used according to the manufacturer's instructions.	No change. This section requires new chemicals to meet the department's sanitizer program specifications.
37	4-501.114 "General"	No ppm should be specified because the effective level for this class of sanitizers vary between manufacturer.	No change. Concentrations must meet the department's sanitizer program requirements.
37	9-104.11(D) "Mobile Food Establishments, Boundary of Operation"	Delete this section or change language to indicate what requirements must be met to obtain this exemption.	No change. As written prior approval must be obtained from the department before an exemption is granted.
37	3-302.11(A) "Packaged and Unpackaged Food, Separation, Packaging and Segregation"	Ready to Eat foods must be stored above raw animal foods, and raw animal foods should be arranged by their final cooking temperatures.	No change. This section states proper separation of raw foods from ready to eat foods and section (2)(b) has cook order.
43	5-203.13 "Service Sink"	Include the establishments that are required to include a service sink.(i.e new or re-modeled)	No change. The definition of new in the code clarifies the meaning of new establishment.

Speaker #	Rule Reference	Comment	Department Response
47	3-203.11 (B)(2)(a)&(b) "Molluscan Shellfish, Original Container"	Replace with if Shellstock are re-moved from their tagged or labeled container, preserve source identification by using a record keeping system as specified in (B)(1) of this section.	No change. Lot separation is critical to isolating shellfish implicated in illness outbreaks and tracking them to their source. Proper identification is needed to trace their origin.
37	10-201.11(A) "Roof, Sidewalls and Floors"	Delete requirement for sidewalls or allow for regulatory agency to require.	Changed. Language written to allow operation without sidewalls if approved by regulatory authority.
37	11-104.10 "Equipment and Utensils"	The use of home-style refrigerators and freezers should be permitted.	Changed. Added language to include home-style refrigerators and freezers.
7	12-202.11 "Application for Certification"	Approved course on training. Who is to provide this training to Special organizations?	No change. Chapter 11 of this code addresses special organization requirements.
2	10-103.11(B) "Employee Handwashing"	When they become busy, they will not re-fill the container and we prefer a two-basin hand wash system.	Changed. Language modified to require a five-gallon container for hand washing to avoid frequent re-filling.
47	5-202.12(A) "Handwashing Lavatory, Water Temperature and Flow"	Should be amended to read: A handwashing lavatory shall be equipped to provide water at a temperature of at least 85 degrees through a mixing valve or faucet.	No change. This section already states minimum and maximum temperature requirements.
47	4-204.112 "Temperature Measuring Devices"	Change to read: In a mechanically refrigerated or hot food storage unit, the sensor of a temperature measuring device shall be located to measure the air temperature in the warmest part of a refrigeration unit and the coldest part of a hot food storage unit.	Changed. Language now reads: the sensor of a temperature measuring device shall be located to measure the air temperature in the warmest part of a refrigeration unit and in the coldest part of a hot food storage unit.
47	4-302.12 "Food Temperature Measuring Devices"	When thin raw animal foods are cooked, a temperature measuring device capable of rapid and accurate temperature measurement be used.	No Change. Section requires temperature-measuring devices capable of assuring proper temperatures as specified in Chapter 3 of the code.

Speaker #	Rule Reference	Comment	Department Response
37	4-203.11 "Temperature Measuring Devices, Food"	The accuracy limits should be the same for food thermometers and ambient air thermometers.	No change. The accuracy specified is applicable to the entire range of use for a particular temperature-measuring device. Food temperatures must be accurately measured to safeguard the public.
29, 43	3-501.19 "Time as a Public Health Control"	Amend 3-501.19(4) to read: Approved written procedures by the regulatory authority shall be maintained in the establishment and available upon request.	Changed. Language added to include approved written procedures and regulatory authority.
47	2-301.16 (A)(1)b(ii) "Hand Sanitizers"	Delete this section, 2-301.16(A)(1)b(ii).	Changed. Deleted this subsection since USDA Publication # 1419 is no longer maintained or available.
37	3-304.12 "In Use Utensils, Between Use Storage"	Add (G) to this section to allow use of bleach water for storage of utensils for mobile and temporary establishments.	No change. Section 4-301.12(C) of the code provides for alternative methods of warewashing if prior approval has been granted.
37	3-502.11 "Variance Requirement"	Divide this section by each type of food process and define what is needed for each method. Special processes should be approved by one state agency.	No change. A variance committee will be formed comprised of DHFS, DATCP and local agents of both state agencies to develop policies/interpretations of code for use in special circumstances.
37	3-302.15(B) "Washing Fruits and Vegetables"	This section should clearly state the procedures for washing vegetables and fruits without reference to other sections or codes.	No change. Toxic or undesirable residues could be present in or on the food if chemicals used for washing purposes are unapproved or applied in excessive concentrations as outlined in an FDA guideline to minimize microbial hazards for fresh fruits and vegetables.
37, 44	4-803.12(B) "Mechanical Washing"	Prohibit the use of food preparation sinks for laundry.	Changed. Deleted reference in this section to food preparation sinks.

Speaker #	Rule Reference	Comment	Department Response
43	10-104.11(A) "Manual Warewashing"	Change language to reflect proximity of the water under pressure is available to the temporary food establishments.	No change. 10-104.11(B) provides alternatives if water under pressure is not available for use.
29	5-104.12 "Alternative Water Supply"	Change to read: and for a Food Establishment with a temporary interruption of its water supply, if approved by the regulatory authority, through.	No change. This is a policy decision that should be developed by DHFS and DACTP for consistent state policy.
44	2-301.15 "Where to Wash"	To improve readability and in an attempt to provide a cohesive list of prohibitions, warewashing should be referenced here or added to this list.	Changed. Warewash added to list of prohibitions in this section.
37	3-304.14(C) "Wiping Clothes, Use Limitations"	Delete this section. If wiping clothes are maintained as required, this section is not necessary.	No change. This section defines wiping cloth use with raw animal products and shall be strictly adhered to prevent cross contamination of food products.
37	4-204.118 "Warewashing Machines, Flow Pressure Devices"	Delete this section if equipment already meets ANSI requirements.	No change. This section clearly states requirements for pressure measuring devices on dish machines.
29	4-204.118 "Warewashing Machines, Flow Pressure Devices"	Remove the word <i>hot</i> . ANSI requires fresh water rinse, not just hot water rinse machines to have an appropriate pressure gauge.	Changed. Removed the word hot from fresh water sanitizing rinse machines.
29	4-204.115 "Warewashing Machines, Temperature Measuring Devices"	Remove hot water sanitizing from 4-204.115 (B) of this section.	Agree. Removed the words "hot water" from sanitizing rinse manifold.
44	4-501.16 "Warewashing Sinks, Use Limitation"	The sink should be sanitized after prior use so another sanitizing step prior to washing wiping clothes is excessive.	No change. When the sink is used for other functions than warewashing, such as washing wiping clothes, contamination of equipment and utensils may occur.

Speaker #	Rule Reference	Comment	Department Response
43	4-501.16 "Warewashing Sinks, Use Limitation"	Add language that prohibits use as a food preparation sink except as stated in 4-301.13(m).	No change. If the warewash sink is sanitized between uses as specified in 4-501.14 of the code there will be a reduced possibility of contamination of equipment or food products.
48	2-201.12 "Exclusions and Restrictions"	Wisconsin should simplify chapter 2 to make it easier for industry compliance.	No change. This section provides directions for employers who have employees that are ill and may transmit the illness to food products. Clarification through state sponsored training of the code.
43	2-201.13(C) "Removal of Exclusions and Restrictions"	Include approval by regulatory authority in this paragraph.	No change. This section provides for removal of an exclusion by a licensed physician only if the infectious agent of concern, identified by the regulatory authority, has been eliminated. Clarification through state sponsored training of the code.

FISCAL ESTIMATE

DOA-2048 N(R 10/98)

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

LRB or Bill No. / Adm. Rule No.

ACTP 75

Amendment No. (If Applicable)

Subject **ATCP 75 and the adoption of Appendix "A" Wisconsin Food Code**

Fiscal Effect

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

Increase Costs – May be possible to Absorb Within Agency's Budget     Yes     No

- Increase Existing Appropriation     Increase Existing Revenues  
 Decrease Existing Appropriation     Decrease Existing Revenues  
 Create New Appropriation

Decrease Costs

Local:  No local government costs

1.  Increase Costs  
     Permissive     Mandatory  
 2.  Decrease Costs  
     Permissive     Mandatory

3.  Increase Revenues  
     Permissive     Mandatory  
 4.  Decrease Revenues  
     Permissive     Mandatory

5. Types of Local Governmental Unit Affected:

- Towns     Villages     Cities  
 Counties     Others \_\_\_\_\_  
 School Districts     WTCS

Districts

Fund Source Affected

- GPR     FED     PRO     PRS     SEG     SEG-S

Affected Ch. 20 Appropriations 20.115(1)(a) & (gb)

Assumptions Used in Arriving at Fiscal Estimate

This proposal to repeal and recreate ch. ATCP 75, Wis. Adm. Code, Retail Food Establishments, will have minimal fiscal impact. Currently, ch. ATCP 75 includes our licensing and enforcement procedures, as well as regulatory requirements for retail food establishments. The proposed ch. ATCP 75 includes the same licensing and enforcement procedures. However, the sanitary and regulatory requirements are contained in an Appendix that is modeled after the federal Food and Drug Administration (FDA) Model Food Code. The federal Food Code is a model code offered to the states to provide regulatory consistency between states based on the best science currently available to the FDA. The State Legislature gave the department authorization to adopt retail food rules in the format of the federal Food Code in 1999 Wis. Act 9.

The format, style and size of the FDA Model Food Code will cause an initial one-time cost for printing copies of the rule and training the industry and state and local regulatory staff on the format and style changes.

The initial printing cost will be significant. It will be necessary to provide copies of the Code to approximately 8000 Retail Food Stores, 80 state inspection staff, and 22 Local Agent Health Departments with an average of 4 inspectors each. We estimate that the initial printing cost would be approximately \$1100 per 1000 copies. The initial number of copies needed is 10,000. Total cost of initial printing is estimated to be \$11,000.

A significant amount of training is necessary to familiarize industry and state and local regulators with the format, style and content of the Food Code. We will absorb these training costs by reallocating current training staff to develop and deliver this training. State and local staff needing training will be reallocated to this training from other training, again absorbing training costs. After the initial training period, we will be able to maintain training as we currently do.

Long - Range Fiscal Implications

None.

Agency/prepared by: (Name & Phone No.)

Authorized Signature/Telephone No.

Date

ATCP  
Wayne A. Kopp DFS (608)-224-4718

*Barbara Knapp*  
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2/25/00

**FISCAL ESTIMATE WORKSHEET**

1999 Session

Detailed Estimate of Annual Fiscal Effect DOA-2047 (R10/94)	<input checked="" type="checkbox"/> ORIGINAL	<input type="checkbox"/> UPDATED	LRB or Bill No./Adm. Rule No. ATCP 75	Amendment No.
<input type="checkbox"/> CORRECTED		<input type="checkbox"/> SUPPLEMENTAL		

Subject  
ATCP 75 and the adoption of Appendix "A" Wisconsin Food Code

**I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**

-\$11,000

**II. Annualized Costs:**

A. State Costs by Category	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
State Operations – Salaries and Fringes	\$	\$ -
(FTE Position Changes)	( FTE)	(- FTE)
State Operations – Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
<b>TOTAL State Costs by Category</b>	<b>\$</b>	<b>\$ -</b>
B. State Costs by Source of Funds	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
III. State Revenues –	Annualized Fiscal impact on State funds from:	
	Increased Rev.	Decreased Rev.
Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
<b>TOTAL State Revenues</b>	<b>\$</b>	<b>\$ -</b>

**NET ANNUALIZED FISCAL IMPACT**

	<b>STATE</b>	<b>LOCAL</b>
NET CHANGE IN COSTS	\$ _____	\$ _____
NET CHANGE IN REVENUES	\$ _____	\$ _____

Agency/Prepared by: (Name & Phone No.) ATCP Wayne Kopp 2/21/00 (608) 224-4718	Authorized Signature/Telephone No. <i>Barbara Knapp</i> Barbara Knapp (608) 224-4746	Date 2/25/00
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## Initial Regulatory Flexibility Analysis

### Chapter ATCP 75, Wis. Adm. Code

#### Retail Food Establishments

Repealing and recreating ch. ATCP 75, Wis. Adm. Code, Retail Food Establishments, will have a minimal fiscal impact on small businesses as defined in s. 227.114 (1)(a), Stats. Approximately 8,000 retail food establishments are currently licensed and inspected by either the department or a local city/county health department that serves as an agent of the department. The retail food establishments range from small establishments that only sell prepackaged food, to large, retail food establishments which process as well as sell large volumes of food.

The proposed retail food establishment rule will include an "Appendix A", Wisconsin Food Code, which will update existing requirements and provide guidance for safe food handling and processing practices. This proposed retail food establishment rule is nearly identical to the rule being proposed by DHFS for restaurants. The proposed rule is based on the 1999 model food code published by the United States food and drug administration (FDA) which is applicable to retail food establishments as well as restaurants. The FDA has recommended that state and local governments adopt the model food code to provide more regulatory uniformity between retail food establishments and restaurants and across local, state & federal jurisdictions.

The proposed changes to ATCP 75, which may impact on small businesses are:

- The food code includes management and personnel standards. Management must have knowledge of principles necessary for the prevention of foodborne disease or illness and the use of a Hazard Analysis Critical Control Point (HACCP) program. Additional personnel standards address employee health, personal cleanliness and hygienic practices.
- This rule expands and clarifies the current rules regarding sanitation standards for personnel in retail food establishments.
- This rule expands from the current rule on the procedures of how, when and where to wash your hands and the maintenance of fingernails.
- Under this rule, no retail food establishment may acquire food from an unlicensed, unapproved source.
- This rule adds the United States Food And Drug Administration (FDA) national shellfish safety program regulations regarding the handling of shellfish in retail food establishments.
- Temperatures required for the preparation, storage, holding and reheating of potentially hazardous foods have been changed to be consistent with national food safety standards. New temperature requirements for raw animal foods, cooked plant foods, wild game species, and exotic games species are provided.
- Cooling requirements for potentially hazardous foods are changed to allow longer cooling times.
- Requirements related to handling of ready-to-eat food have been changed to specifically prohibit touching of such foods with bare hands, unless otherwise approved by the department.



- New in the code is the requirement for date marking ready-to-eat potentially hazardous food held in a food establishment for more than 24 hours.
- The proposed rule allows the use of time, as the only factor, rather than time in conjunction with temperature, as a public health control measure.
- A variance from the department will be required for specialized processing methods as a method of food preservation; such as smoking food, curing food, brewing alcoholic beverages, using food additives, using reduced oxygen packaging methods and similar specialized processing methods will require
- The model food code requires the operator of a food establishment to inform consumers of the increased risk associated with eating certain animal foods that may be served raw, undercooked or not otherwise processed to eliminate pathogens.
- The proposed rule includes special requirements for food establishments that restricts the serving of certain foods to highly susceptible populations.
- The proposed rule, as does the current rule, includes food equipment standards, and requirements for utensils, linens and other equipment. It also includes requirements for mobile and temporary food establishments, public toilet rooms, and food manager certification requirements for restaurant or food service operations.

With the exception of "Demonstration of Knowledge", this rule does not propose major changes which will impact businesses in the State of Wisconsin.

The impact of requiring food service management to have knowledge of principles necessary for the prevention of foodborne disease (Demonstration of Knowledge) at licensed retail food establishments would be minimal. Currently most retail food establishments have managers that are required to maintain a Food Managers Certification. This certification covers the knowledge of food safety principles. The only additional cost would involve providing an appropriate level food safety training of all staff who handles food.

The overall impact of the proposed ATCP 75 rule change on small business is minimal. It would not be necessary for licensed food establishments to retain additional professional services to comply with this rule.

Dated this 24<sup>th</sup> day of February, 2000

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By 

Steven B. Steinhoff  
Administrator  
Division of Food Safety

## Final Regulatory Flexibility Analysis

### Chapter ATCP 75, Wis. Adm. Code

#### Retail Food Establishments

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The overall impact of the proposed ATCP 75 rule change on small business is minimal. It would not be necessary for licensed food establishments to retain additional professional services to comply with this rule.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2000

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By \_\_\_\_\_

Steven B. Steinhoff  
Administrator  
Division of Food Safety

**PROPOSED ORDER OF THE STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION  
ADOPTING, AMENDING OR REPEALING RULES**

- 1 The state of Wisconsin department of agriculture, trade and consumer protection proposes the  
2 following order to repeal and recreate ch. ATCP 75 relating to retail food establishments.
- 

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

Statutory Authority: ss. 93.07(1), 97.30(5) and 227.14(1s), Stats., as created by  
s. 2355mm., 1999 Wis. Act 9

Statutes Interpreted: s. 97.30, Stats.

This rule repeals and recreates current rules related to retail food establishments, such as grocery stores. The department of Agriculture, Trade and Consumer Protection ("DATCP") licenses and inspects retail food establishments under s. 97.30, Stats.

**Uniform Rules Based on Model Food Code**

Many retail food establishments also include restaurants, and vice-versa. The department of health and family services ("DHFS") licenses and inspects restaurants under s. 254.64., Stats. DATCP and DHFS now coordinate their activities so that a combined grocery store and restaurant is licensed and inspected by DATCP or DHFS, but not both. In metropolitan areas, agent counties or municipalities often license and inspect grocery stores and restaurants as agents of DATCP and DHFS.

Although DATCP and DHFS have coordinated their activities to avoid duplicate licensing and inspection, they still enforce somewhat different rules. This makes it difficult to administer a coordinated program, and makes it difficult for food businesses to comply. The current rules of both agencies are also outdated in certain respects.

DATCP and DHFS are therefore proposing uniform rules for retail food establishments. DATCP is proposing this rule for retail food establishments, while DHFS is proposing a nearly identical rule for restaurants. The proposed rule is based on the 1999 model food code published by the United States food and drug administration (FDA). The model food code is applicable to retail food establishments as well as restaurants. The FDA has recommended that state and local governments adopt the model food code. The model food code is based on the best science currently available to FDA.

## **Rule Contents**

The format of the model food code differs from that of state administrative rules. Under s. 227.14(1s), Stats., created by 1999 Wis. Act 9, DATCP and DHFS are authorized to adopt administrative rules in the format of the model food code. This rule, like the DHFS rule, has two parts:

- The first part contains DATCP licensing and administrative procedures related retail food establishments. This part is drafted in the normal state format. This rule does not change current licensing or administrative procedures for retail food establishments. Nor does it change current license fees.
- The second part, attached as an appendix, is the model food code. The model food code is written in the federal format, as authorized by the Wisconsin legislature. The food industry is familiar with the model food code format. DATCP and DHFS have jointly reviewed the model food code, and have made minor modifications to adapt it for use in Wisconsin.

## **Retail Food Establishments; Rule Coverage**

This rule applies to retail food establishments licensed under s. 97.30, Stats., including grocery stores and retail food processing operations. It does not apply to activities conducted under a dairy plant license (s. 97.20, Stats.), a meat or poultry establishment license (s. 97.42, Stats.) or a food processing plant license (s. 97.29, Stats.).

## **Licensing and Fees**

DATCP currently licenses retail food establishments under s. 97.30, Wis. Stats. A retail food establishment operator must pay fees specified by statute and rule. This rule incorporates statutory licensing requirements and fees without change. This rule continues current provisions that eliminate overlapping license requirements between DATCP and DHFS.

## **Definitions**

The food code defines key terms. When a defined term is used in the code, it appears in SMALL CAPS.

## **Variations**

Under the state version of the model food code, DATCP may grant variations from specific code requirements. A variation request must be reasonable and the requester must document that the variation will not compromise food safety.

## **Potentially Hazardous Foods**

The food code revises the current definition of "potentially hazardous foods," and requires that they be kept at safe temperatures. Under the code:

- Potentially hazardous foods must be refrigerated at or below 41° F. or kept frozen.
- Hot-held potentially hazardous foods must be kept at or above 140° F. during handling and storage.
- Raw animal foods, cooked plant foods, wild game species and exotic game species must be cooked at or above specified minimum temperatures
- Potentially hazardous foods that have been cooked must be rapidly cooled to 41°F. or less, according to one or more specified cooling methods.
- Cooked potentially hazardous food must be heated to a temperature of at least 145°F for at least 15 seconds, except as otherwise provided in the code. The code provides specific cooking times and temperatures for various foods including poultry, pork, ground meats and rare roast beef.
- Potentially hazardous foods must be thawed in a refrigerated space at a temperature of 41°F. or less, or under running water at a temperature of 70°F. or less for no more than 4 hours, or in a microwave oven or other cooking equipment as part of the cooking process.
- Potentially hazardous food, if previously cooked and cooled, must be reheated to a temperature of at least 165°F for at least 15 seconds.
- Potentially hazardous foods cooked or reheated in a microwave oven must be cooked or reheated according to specified standards.
- Refrigerated potentially hazardous foods must be received at safe temperatures of 41°F or less, except that milk or milk products, molluscan shellfish, eggs and smoked fish must be received according to other applicable laws.
- Cooked, hot potentially hazardous foods must be received at safe temperatures of 140°F or more.

### **Construction, Equipment and Maintenance**

The food code, like current rules, establishes construction and equipment standards for retail food establishments. The code makes the following changes to current rules:

- It prohibits the use of living quarters for food establishment operations.
- It clarifies handwashing facility requirements for toilet rooms and processing rooms.
- It describes acceptable procedures for garbage recycling and refuse handling.
- It reconciles equipment standards between DATCP and DHFS.
- It regulates the operation and maintenance of live fish and crustacean display tanks.

## **Management and Personnel Standards**

This food code includes management and personnel standards. Management must understand principles for preventing foodborne disease or illness, must understand the use of a Hazard Analysis Critical Control Point (HACCP) program. The code also addresses employee health, personal cleanliness and hygienic practices

## **Food Sources**

Under the food code:

- Food must be obtained from approved sources.
- Eggs offered for sale as “ungraded” must be grade “B” or better.
- Shellfish must comply with the National Shellfish Sanitation Program.

The food code prohibits a retail food establishment operator from doing any of the following:

- Vacuum packaging foods unless authorized in writing by DATCP or its agent.
- Vacuum packaging fish.
- Selling fish, shellfish or crustaceans unless they are commercially and legally harvested.

## **Date Marking and Food Labels**

The food code requires date marking of ready-to-eat potentially hazardous food held in a food establishment for longer than 24 hours. The food must be clearly marked to ensure that it will be consumed or discarded within 7 calendar days. If the food is received frozen or is subsequently frozen by the establishment, it must be discarded within 24 hours after thawing. Aged hard cheeses and whole, unsliced portions of cured and processed sausage are exempt from date marking

This food code prohibits a retail food establishment operator from receiving molluscan shellfish that are not properly labeled as required by federal law.

## **Time as a Public Health Control**

The food code allows a retail food establishment to hold potentially hazardous food for up to 4 hours without temperature control if the food is being prepared for cooking or if it is being held for immediate sale and consumption as ready-to-eat food.

## **Receiving, Handling, Storing and Displaying Food**

The food code updates and clarifies basic requirements related to food receipt, handling, storage and display. A retail food establishment operator must:

- Handle, package and display food using the risk-based Hazard Analysis Critical Control Point (HACCP) system, if the food is specially processed (such as smoking, curing, brewing, or reduced-oxygen packaging). DATCP or its agent must approve HACCP plans.
- Protect food from contamination during receipt.
- Receive only clean, live shellfish, and store shellfish in their original shipping container.
- Provide an accurate thermometer for frequent food temperature monitoring.
- Identify containers holding food that has been removed from its original package.
- Protect food condiments from contamination while they are being dispensed.
- Refrain from storing packaged foods in direct contact with ice or water if water may enter the food.
- Designate a trained employee to monitor consumer self-service operations.
- Provide disposable, single service tissues or serving utensils at customer self-service display containers. Serving utensils must be removable for cleaning.
- Refrain from using sulfiting agents, except under certain defined circumstances.
- Present food for sale in a way that does not mislead or misinform the consumer.
- Thoroughly wash raw fruits and vegetables before cutting and offering them for consumption in ready-to-eat form.
- Keep produce-fogging devices clean and sanitary.

### **Consumer Advisory**

The food code requires the operator of a food establishment to inform consumers about the increased risk associated with eating certain raw or undercooked animal foods. The operator may inform consumers by brochures, deli counter or menu advisories, label statements, table tents, placards or other effective written means.

### **Highly Susceptible Populations**

The food code includes special requirements for food establishments serving highly susceptible populations. Highly susceptible populations may include infants, elderly people, pregnant women and people whose immune systems are compromised. The code restricts the serving of certain foods such as raw animal food and partially cooked food. Other high-risk foods may be served if they are prepared and served according to an approved HACCP plan.



## **Cleaning, Sanitizing and Cross-Contamination**

This rule updates and clarifies basic cleaning and sanitizing requirements, as well as requirements to minimize cross-contamination of food. A retail food establishment operator must:

- Clean equipment and utensils every 4 hours when processing potentially hazardous foods. The cleaning interval may be extended, up to 24 hours if the processing area is refrigerated.
- Wash equipment and utensils thoroughly in clean water at 110°F. if the equipment and utensils are washed manually.
- Clean equipment and utensils when there is a change in processing from raw foods to ready-to-eat foods.
- Clean equipment and utensils between uses when processing raw fruits and vegetables and potentially hazardous foods.
- Clean equipment and utensils whenever contamination may have occurred.
- Rinse equipment and utensils to remove abrasives and cleaning compounds.
- Use warewashing sinks only to clean equipment and utensils. A sink may be used for activities such as washing produce or thawing foods if the sink is cleaned and sanitized before and after use.
- Use warewashing sinks that are self-draining and equipped with self-draining drain boards.
- Immerse equipment and utensils for at least one minute in 150 parts-per-million quaternary ammonium when quaternary ammonium is used as a sanitizing agent.
- Use approved sanitizers in a safe manner .
- Provide accurate thermometers to measure washing and sanitizing solution temperatures.
- Store clean and sanitized equipment and utensils at least 6 inches above the floor in a self-draining position.
- Prohibit bare hand contact with ready-to-eat food, unless otherwise approved by the regulatory authority.
- Separate raw animal foods from ready-to-eat foods.
- Separate different species of raw animal foods.
- Clean and sanitize equipment and utensils between uses.
- Separate unwashed raw fruits and vegetables from ready-to-eat foods.



See 97.30  
"agent city,  
or county"

1 establishments. A retail food establishment must comply with the model food code appended to  
2 this chapter.

3 **ATCP 75.02 Retail food establishments; licensing.** (1) LICENSE REQUIRED. Except as  
4 provided under sub. (7), no person may operate a retail food establishment without a valid  
5 license issued by the department or an agent municipality or county. Licenses expire on June 30

6 annually. Each retail food establishment shall have a separate license, which shall be  
7 prominently displayed in the retail food establishment. A license is not transferable between  
8 persons or establishments.

ditto - see statute -  
also - not  
some as in "pro  
establishment"

9 (2) LICENSE APPLICATION. A person applying for a retail food establishment license shall  
10 apply on a form provided by the department, or by the agent municipality or county. The  
11 application shall include the fees under sub. (3).

12 (3) ANNUAL LICENSE FEE. An applicant for a retail food establishment license shall pay  
13 an annual license fee as follows:

14 (a) For a retail food establishment that has annual food sales of at least \$25,000 but less  
15 than \$1,000,000, and processes potentially hazardous food, an annual license fee of \$175.

ditto  
See statute

16 (b) For a retail food establishment that has annual food sales of at least \$1,000,000 and  
17 processes potentially hazardous food, an annual license fee of \$450.

18 (c) For a retail food establishment that has annual food sales of at least \$25,000 and is  
19 engaged in food processing, but does not process potentially hazardous food, an annual license  
20 fee of \$125.

21 (d) For a retail food establishment that has annual food sales of less than \$25,000, and is  
22 engaged in food processing, but does not process potentially hazardous food, an annual license  
23 fee of \$60.

not about < \$25,000  
+ pot. haz. food?  
-8- see (4) (2) 4.

1 (e) For a retail food establishment that is not engaged in food processing, an annual  
2 license fee of \$30.

3 (4) REINSPECTION FEE. (a) If the department reinspects a retail food establishment  
4 because the department has found a violation of ch. 97, Stats., or this chapter on a regularly  
5 scheduled inspection, the department shall charge the retail food establishment operator the  
6 reinspection fee specified in par. (b). A reinspection fee is payable when the reinspection is  
7 completed, and is due upon written demand from the department. The department may issue a  
8 demand for payment when it issues a license renewal application form to the retail food  
9 establishment operator.

10 (b) The reinspection fee required under par. (a) is as follows:

11 1. For a retail food establishment that has annual food sales of at least \$25,000 but less  
12 than \$1,000,000, and processes potentially hazardous food, the reinspection fee is \$125.

13 2. For a retail food establishment that has annual food sales of at least \$1,000,000 and  
14 processes potentially hazardous food, the reinspection fee is \$300.

15 3. For a retail food establishment that has annual food sales of at least \$25,000, and is  
16 engaged in food processing but does not process potentially hazardous food, the reinspection fee  
17 is \$125.

18 4. For a retail food establishment that has annual food sales of less than \$25,000 and is  
19 engaged in food processing, the reinspection fee is \$60.

20 5. For a retail food establishment that is not engaged in food processing, the reinspection  
21 fee is \$60. *- Higher than orig. fee - all line 2*

22 (5) ACTION ON LICENSE APPLICATION. Within 15 business days after the department or  
23 its agent municipality or county receives a complete license application, the department or its  
24 agent shall do one of the following:

1 (a) Grant the application.

2 (b) Deny the application. If the department or its agent denies the application it shall the  
3 applicant written notice specifying the reasons for the denial.

4 (c) Issue a temporary license under sub. (6).

5 (6) TEMPORARY LICENSE. The department or its agent municipality or county may issue  
6 a temporary license, for a period not to exceed 40 business days, pending final action on an  
7 application for an annual retail food establishment license. The department or its agent shall  
8 grant or deny the annual license application before the temporary license expires. If the  
9 department or its agent denies a license application before the applicant's temporary license  
10 expires, the temporary license is automatically terminated when the applicant receives written  
11 notice of the denial. The holder of a temporary license acquires no license rights beyond those  
12 conferred by the temporary license under this subsection. The department or its agent may not  
13 issue a temporary license in response to a renewal application by the holder of an existing  
14 license.

15 (7) PRE-LICENSE INSPECTION. The department or its agent municipality or county may  
16 inspect a retail food establishment, as the department or agent deems necessary, before issuing a  
17 license to the retail food establishment. The department or its agent may not issue a license or  
18 temporary license for a new retail food establishment until it inspects the new retail food  
19 establishment for compliance with this chapter. A previously licensed retail food establishment  
20 is not considered a new retail food establishment under this subsection solely because of a  
21 change of ownership, or solely because of alterations in the retail food establishment.

22 (8) LICENSE EXEMPTIONS. A retail food establishment license is not required under s.  
23 97.30, Stats., or this section for any of the following: