

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE & CONSUMER PROTECTION

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Clearinghouse Rule
No. 93-105

CERTIFICATION:

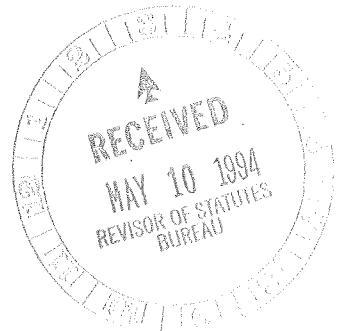
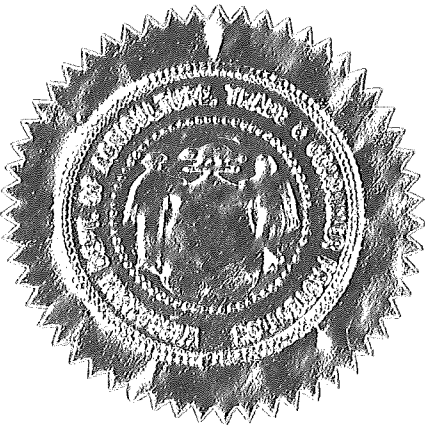
I, Alan T. Tracy, Secretary of the State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, and custodian of the department's official records, hereby certify that the attached rulemaking order relating to food warehouses and retail food establishments was signed and adopted by the Department on May 5, 1994.

I further certify that I have compared the attached copy to the original on file in the department, and that the attached copy is a complete and accurate copy of the original.

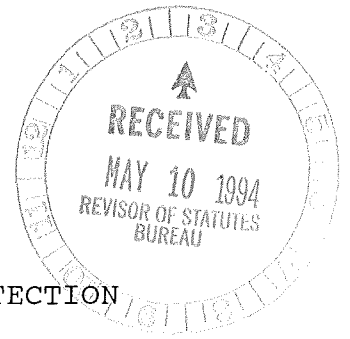
Signed and sealed this 5th day of May, 1994

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Alan T. Tracy
Alan T. Tracy, Secretary



7-1-94



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

1 The state of Wisconsin department of agriculture, trade and
2 consumer protection adopts an order to amend ATCP 75.10(2)(a); to
3 repeal and recreate chapter ATCP 71, ATCP 75.01(6m) and (10),
4 75.015(7)(a), and 75.12(2) and (5); and to create ATCP 75.01(8m),
5 75.06(2)(f) and (g), 75.07(9), and 75.12(9); relating to food
6 warehouses and retail food establishments.

Analysis Prepared by the Department of Agriculture
Trade and Consumer Protection

Statutory authority: ss. 93.07(1), 97.27(5) and 97.30(5),
Stats.

Statutes interpreted: ss. 97.27 and 97.30, Stats.

This rule creates a new chapter (ch. ATCP 71, Wis. Adm. Code) related to food warehouses, including rules related to the licensing, construction, and sanitary operation of food warehouses. It repeals current rules related to cold storage warehouses, and incorporates cold storage warehouse requirements as part of the new food warehouse rules.

This rule also amends current rules under ch. ATCP 75, Wis. Adm. Code (formerly ch. Ag 32) related to retail food establishments. The rule specifies minimum cooking temperatures for potentially hazardous foods, and establishes standards for treating pork and pork products to destroy trichinae. This rule also establishes new standards for the licensing and sanitary operation of mobile food establishments, including pushcarts.

Food Warehouses; Rule Coverage

This rule applies to food warehouses, including but not limited to cold storage warehouses, frozen food warehouses, and frozen food locker plants. It does not apply to any of the following:

- A warehouse used solely for the storage of grain or other raw agricultural commodities.
- A retail food establishment, restaurant or other retail facility at which food is stored on a temporary basis

- incidental to retail preparation or sale.
- A warehouse located in a licensed dairy plant, food processing plant or meat establishment, and used primarily for the storage of food ingredients or food products manufactured or processed at the licensed establishment.
 - A food warehouse operated by a licensed milk distributor, and used primarily for the storage and distribution of milk or fluid milk products.
 - A facility owned or operated by a consumer and used by that consumer to store food for the consumer's use.

Food Warehouse Licensing

The department currently licenses food warehouses under s. 97.27, Stats. A food warehouse operator is required to pay fees specified by statute. This rule incorporates statutory licensing requirements and fees without change.

Under this rule, the department may issue a temporary license to a food warehouse operator pending final action on the operator's license application. A temporary license may be issued for a period not to exceed 40 business days. The department must grant or deny a license application within 20 days after the department receives a complete license application, or before the expiration of any temporary license.

Under this rule, if a license is denied, the department must notify the applicant of the reason for the denial. The department may not issue an annual license or a temporary license for a new food warehouse until the department has inspected that food warehouse.

Food Warehouse Construction and Maintenance

This rule establishes basic requirements for the sanitary construction and maintenance of food warehouses. It includes basic requirements related to building construction, lighting, ventilation, refrigerated and frozen food storage facilities, toilets and other personnel facilities, garbage and refuse disposal, pest control and cleaning. Construction and maintenance standards are based on established food industry guidelines, and are designed to be consistent with other federal, state and local requirements.

Food Sanitation, Storage and Handling at Food Warehouses

This rule establishes basic requirements related to personnel sanitation, food storage and handling at a food warehouse. The amount of food stored in a warehouse may not exceed the reasonable capacity of the warehouse. Food must be stored in a safe and sanitary manner, to protect it from contamination. Food must be stored in an orderly manner to facilitate identification,

inspection and cleaning. A warehouse operator must inspect food upon delivery, and must exclude or remove any food that threatens to contaminate other food in the warehouse.

Refrigerated and Frozen Food Storage at Food Warehouses

In order to prevent the growth of undesirable microorganisms, potentially hazardous foods must be kept refrigerated at or below 40° F. or frozen at or below 5° F. at all times. Frozen food may not be refrozen after having thawed. Refrigerators and freezers may not be filled beyond capacity, and temperatures must be recorded on a daily basis.

Food Identification and Stock Rotation at Food Warehouses

Each lot of food received at a food warehouse must be identified to indicate the date of receipt. A food warehouse operator must implement effective stock rotation procedures, and keep adequate records, to ensure adequate rotation of all food in storage.

Food Warehouse Inventory Records

A food warehouse operator must keep accurate records of all food received into the warehouse, all food in inventory, and all food removed from the warehouse. For each lot of food, records must include:

- A description of the lot including the identity of the food, the number of individual units, and the total amount included.
- The name and address of the owner (while the food is in storage), if other than the warehouse operator.
- The name and address of the person who shipped, and the carrier who delivered, the lot to the warehouse.
- The dates when the lot was received at, and removed from the warehouse.
- The destination of the lot after it left the warehouse, including the name and address of the recipient if any.

Records must be retained for at least 2 years.

Retail Food Establishments; Rule Coverage

The department currently regulates retail food establishments under s. 97.30, Stats., and ch. ATCP 75 (formerly ch. Ag 32), Wis. Adm. Code. Previously, under s. 97.30, Stats., a retail food establishment was defined to include a permanent or mobile food processing facility, or a permanent food sales facility. Under 1991 Wis. Act 39, the statutory definition of "retail food establishment" was expanded to include a mobile food establishment that sells a "potentially hazardous food," whether or not the mobile establishment is engaged in processing. (A

"potentially hazardous food" is any food that is capable of supporting the rapid and progressive growth of infectious or toxicogenic microorganisms.) This rule revises the definition of "retail food establishment" under ch. ATCP 75 to conform to the new statutory definition.

Mobile Retail Food Establishments; Licensing

Under current rules, the department licenses mobile food processing facilities. This rule expands the current license requirement to include any mobile facility (including a "pushcart") that sells potentially hazardous food or is engaged in food processing. This treatment is consistent with statutory changes under 1991 Wis. Act 39 which expanded the definition of "retail food establishment."

Retail Food Establishments; License Exemption

Under s. 97.30, Stats., certain retail food establishments are exempt from licensing by the department. This rule incorporates a statutory exemption as modified by 1989 Wis. Act 174. Under the modified exemption, a retail food establishment (including a mobile food establishment) is exempt from licensing if it sells only packaged foods or fresh fruits and vegetables, provided the establishment does not sell potentially hazardous food and does not engage in food processing.

Mobile Retail Food Establishments; Pushcarts

This rule establishes sanitation requirements for "pushcarts" used as mobile food establishments. Under this rule, a "pushcart" is exempt from certain construction requirements that apply to other mobile food establishments. However, a "pushcart" may not be used to process or serve a potentially hazardous food unless all of the following apply:

- The food is held at all times in a fully enclosed container.
- The pushcart is mechanically equipped to keep the potentially hazardous food at safe temperatures, and is equipped with a temperature recording device to measure the temperature at which the food is kept.
- The potentially hazardous food is kept at safe temperatures at all times.
- The potentially hazardous food, if sold as a separate food item, is dispensed to consumers in prepackaged form as packaged by the manufacturer or processor. The potentially hazardous food, if used as a food ingredient and processed at an outdoor pushcart, is entirely contained and processed in an enclosed system that precludes an contamination of food.

- There is no manual contact with the potentially hazardous food.

A pushcart must be returned to a service facility at least once every 24 hours to be cleaned and serviced. The service facility must be a permanent building which is one of the following:

- A food processing plant licensed under s. 97.29, Stats.
- A retail food establishment licensed under s. 97.30, Stats.
- A restaurant holding a permit under s. 50.51, Stats.

A service facility must be large enough, and must be adequately equipped, to clean and service all of the pushcarts operating from that facility. All equipment and utensils used in connection with a pushcart must be cleaned and sanitized daily at the service facility.

A pushcart must be equipped with an adequate supply of clean and sanitized utensils so that a soiled utensil can be replaced, if necessary, with a clean and sanitized utensil. Only single-service food containers and utensils may be used by customers to receive or consume food from a push cart. Customer self-service from push carts is prohibited.

Retail Food Establishments; Cooking Temperature Requirements

This rule establishes cooking temperature requirements for potentially hazardous foods prepared by a retail food establishment. Unless a different temperature is specified for a particular type of food, all parts of a potentially hazardous food must be heated to at least 150° F. Ground meat products must be cooked to an internal temperature of at least 155° F. The rule also specifies minimum cooking temperature requirements for poultry, stuffed meats, pork, rare roast beef, and beef roasts cooked in a microwave oven. If potentially hazardous foods have previously been cooked, they must be rapidly reheated to at least 165° F. before being served by a retail food establishment.

Retail Food Establishments; Treating Pork and Pork Products to Destroy Trichinae

Currently, under ch. ATCP 55, Wis. Adm. Code, meat establishments that process cured or potentially ready-to-eat pork products must treat those products according to specified standards to destroy any possible trichinae. This rule incorporates trichinae treatment requirements into ch. ATCP 75, which applies to retail food establishments making their own cured or potentially ready-to-eat pork products. Under this rule, a retail food establishment producing specified pork products must heat or cure those products according to specified minimum standards to destroy any possible trichinae. Under this rule, a retail food

establishment may not use freezing as a method for destroying trichinae. (Licensed meat establishments may currently use freezing as a method for destroying trichinae.)

Retail Food Establishments; Exemption from 3-Compartment Sink Requirement.

Under current rules, a retail food establishment that manually cleans and sanitizes equipment and utensils must have a 2-compartment or 3-compartment sink for that purpose. Under current rules, any sink installed after June 30, 1989 must be a 3-compartment sink. This rule authorizes the department or its local agent to exempt an individual retail food establishment from the 3-compartment sink requirement if the department or its agent determines in writing that a 2-compartment sink is adequate to clean and sanitize the equipment and utensils used at that establishment (e.g., because the establishment uses a small number of utensils).

SECTION 1. Chapter ATCP 71 is repealed and recreated to read:

Chapter ATCP 71

FOOD WAREHOUSES

ATCP 71.01 Definitions.

ATCP 71.02 Food warehouse license; fees.

ATCP 71.03 Construction and sanitary maintenance.

ATCP 71.04 Personnel standards.

ATCP 71.05 Food storage and handling.

ATCP 71.06 Records.

ATCP 71.01 DEFINITIONS. As used in this chapter:

(1) "Cold storage warehouse" has the meaning specified in s. 97.27(1)(a), Stats.

(2) "Department" means the state of Wisconsin department of agriculture, trade and consumer protection.

(3) "Food" has the meaning specified in s. 97.01(6), Stats.

(4) "Food warehouse" means a warehouse used for the storage of food, and includes a cold storage warehouse, frozen food warehouse and frozen food locker plant. "Food warehouse" does

1 not include:

2 (a) A warehouse used solely for the storage of grain or
3 other raw agricultural commodities.

4 (b) A retail food establishment, restaurant or other retail
5 facility at which food is stored on a temporary basis incidental
6 to retail preparation or sale.

7 (c) A warehouse located in a dairy plant licensed under s.
8 97.20, Stats., a food processing plant licensed under s. 97.29,
9 Stats., or a meat establishment licensed under s. 97.42, Stats.,
10 and used primarily for the storage of food ingredients or food
11 products manufactured or processed at the licensed establishment.

12 (d) A warehouse operated by a milk distributor licensed
13 under s. 97.21(3), Stats., and used primarily for the storage and
14 distribution of milk and fluid milk products, as defined in s.
15 97.20(1)(c) and (g), Stats.

16 (e) A facility owned or operated by a consumer and used by
17 that consumer to store food for the consumer's use.

18 (5) "Frozen food locker plant" has the meaning specified in
19 s. 97.27(1)(c), Stats.

20 (6) "Frozen food warehouse" has the meaning specified in s.
21 97.27.(1)(d), Stats.

22 (7) "Potentially hazardous food" means any food that can
23 support the rapid and progressive growth of infectious or
24 toxicogenic microorganisms.

25 (8) "Regularly scheduled inspection" means a routine
26 inspection, other than an inspection scheduled in response to a

1 finding of a violation of ch. 97, Stats., or this chapter.

2 (9) "Warehouse" means any building, room, structure or
3 facility used for the storage of property.

4 ATCP 71.02 FOOD WAREHOUSE LICENSE; FEES. (1) LICENSE
5 REQUIRED. No person may operate a food warehouse without a valid
6 license issued by the department under s. 97.27, Stats., for that
7 food warehouse. A food warehouse license expires on June 30
8 annually. A separate license is required for every food
9 warehouse location. A license is not transferable between
10 persons or food warehouses.

11 NOTE: If a food warehouse is operated as a public storage
12 warehouse, the food warehouse must also be licensed
13 under ch. 99, Stats.

14 (2) LICENSE APPLICATION. Application for an annual food
15 warehouse license shall be made on a form provided by the
16 department. The application shall be accompanied by each
17 applicable fee and surcharge required under subs. (3) to (5). An
18 application shall include all of the information required under
19 this section for licensing purposes.

20 NOTE: A license application form may be obtained from the
21 State of Wisconsin Department of Agriculture, Trade and
22 Consumer Protection, Division of Food Safety, P. O. Box
23 8911, Madison, WI 53708-8911.

24 (3) ANNUAL LICENSE FEE. An applicant for a food warehouse
25 license shall pay an annual license fee as follows:

26 (a) For a food warehouse that stores potentially hazardous
27 food, and that has fewer than 50,000 square feet of storage area,
28 \$50.

29 (b) For a food warehouse that stores potentially hazardous

1 food, and that has 50,000 or more square feet of storage area,
2 \$100.

3 (c) For a food warehouse that does not store potentially
4 hazardous food, and that has fewer than 50,000 square feet of
5 storage area, \$25.

6 (d) For a food warehouse that does not store potentially
7 hazardous food, and that has 50,000 or more square feet of
8 storage area, \$50.

9 (4) SURCHARGE AND PAST FEES FOR OPERATING WITHOUT A
10 LICENSE. (a) An applicant for a food warehouse license shall
11 pay a license fee surcharge of \$100 if the department determines
12 that, within 365 days prior to submitting the license
13 application, the applicant operated the food warehouse without a
14 license in violation of sub. (1).

15 (b) In addition to paying the license fee surcharge under
16 par. (a), an applicant who violated sub. (1) shall pay all fees,
17 set forth in a statement from the department, that are due for
18 the license year in which the applicant violated sub. (1).

19 (c) Payment of the license fee surcharge and past fees
20 under pars. (a) and (b) does not relieve the applicant of any
21 other civil or criminal liability that results from the
22 unlicensed operation of a food warehouse, but does not constitute
23 evidence of any violation of law.

24 (5) REINSPECTION FEE. (a) If the department reinspects a
25 food warehouse because the department has found a violation of
26 ch. 97, Stats., or this chapter on a regularly scheduled

1 inspection, the department shall charge the food warehouse
2 operator the reinspection fee specified under par. (b). A
3 reinspection fee is payable when the reinspection is completed,
4 and is due upon written demand from the department. The
5 department may issue a demand for payment when it issues a
6 license renewal application form to a food warehouse operator.

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

9 1. For a food warehouse that stores potentially hazardous
10 food, and that has fewer than 50,000 square feet of storage area,
11 \$50.

12 2. For a food warehouse that stores potentially hazardous
13 food, and that has 50,000 or more square feet of storage area,
14 \$100.

15 3. For a food warehouse that does not store potentially
16 hazardous food, and that has fewer than 50,000 square feet of
17 storage area, \$50.

18 4. For a food warehouse that does not store potentially
19 hazardous food, and that has 50,000 or more square feet of
20 storage area, \$100.

21 (6) ACTION ON LICENSE APPLICATION; DEADLINE. The
22 department shall grant or deny a license application under sub.
23 (2) within 20 business days after the department receives a
24 complete application, or before the expiration date of any
25 temporary license issued under sub. (8). If the license
26 application is denied, the department shall notify the applicant,

1 in writing, of the reasons for the denial.

2 (7) PREREQUISITES FOR LICENSING. The department shall not
3 issue or renew a food warehouse license, or issue a temporary
4 license under sub. (8), unless all of the following conditions
5 are met:

6 (a) The applicant has paid all fees and surcharges, set
7 forth in a statement from the department, that are due and
8 payable by the applicant under subs. (3) to (5). The department
9 shall refund a license fee surcharge paid under protest if, upon
10 review, the department determines that the surcharge is not due
11 and payable.

12 (b) If the food warehouse is a new food warehouse, the
13 department has inspected the food warehouse under sub. (9).

14 (8) TEMPORARY LICENSE. (a) The department may issue a
15 temporary license to an applicant under sub. (2) pending the
16 department's final action on that license application. A
17 temporary license may be issued for a period not to exceed 40
18 business days.

19 (b) The holder of a temporary license acquires no rights as
20 a licensee beyond those conferred by the temporary license. If
21 the department denies an annual license application before the
22 applicant's temporary license expires, the temporary license is
23 automatically terminated when the applicant receives written
24 notice of the denial.

25 (c) The department may not issue a temporary license under
26 par. (a) in response to a license renewal application by the

1 holder of an existing license.

2 (d) The department may not issue a temporary license under
3 par. (a) for a food warehouse that is not currently licensed
4 unless the department first inspects that food warehouse under
5 sub. (9).

6 (9) PRE-LICENSE INSPECTION. The department may inspect a
7 food warehouse, as the department deems necessary, before issuing
8 a license for the food warehouse. The department may not issue a
9 license or temporary license for a food warehouse that is not
10 currently licensed unless the department first inspects that food
11 warehouse for compliance with this chapter.

12 (10) DENIAL, SUSPENSION OR REVOCATION OF LICENSE;
13 CONDITIONAL LICENSE. The department may deny, suspend or revoke
14 a license, or impose conditions on a license, as provided under
15 s. 93.06(7) and (8), Stats.

16 NOTE: The procedure for suspending or revoking a license is
17 set forth in ch. ATCP 1, Wis. Adm. Code.

18 ATCP 71.03 CONSTRUCTION AND SANITARY MAINTENANCE. (1)
19 GENERAL. A food warehouse shall be constructed and maintained in
20 compliance with this chapter. Buildings, facilities and
21 equipment used in the operation of a food warehouse shall be
22 soundly constructed, and shall be capable of being maintained in
23 a clean and sanitary condition. A food warehouse shall be kept
24 in good repair, and in a clean and sanitary condition.

25 (2) EXTERIOR PREMISES. (a) The premises immediately
26 adjacent to a food warehouse shall be all of the following:

27 1. Well-drained, so that water does not accumulate around

1 the food warehouse.

2 2. Kept in a neat and orderly condition.

3 3. Free of conditions that may contaminate food while the
4 food is being received at, stored in or shipped from the
5 warehouse.

6 4. Free of conditions that may attract or harbor pests.

7 (b) Shipping and receiving areas, truck aprons, rail
8 sidings, driveways, and parking areas adjoining a food warehouse
9 shall be surfaced and maintained to facilitate good drainage.
10 The areas shall be kept clean to minimize the entry of airborne
11 dust and tracked dirt into a food warehouse.

12 (3) FLOORS, WALLS AND CEILINGS. Floors, walls and ceilings
13 in a food warehouse shall be of sound construction, and shall be
14 kept clean and in good repair. Floors, walls and ceilings in
15 cold storage areas, frozen food storage areas, toilet rooms, and
16 areas used for the cleaning or storage of equipment shall be
17 constructed of smooth, impervious and easily cleanable materials.

18 (4) DOORS AND WINDOWS. Doors, windows, skylights, and
19 other openings to the outside shall be tight-fitting, free of
20 breaks, and effectively screened or protected against the entry
21 of rodents, insects, birds and other animals. External doors,
22 other than overhead doors in receiving and shipping areas, shall
23 be self-closing. External doors shall be kept closed when not in
24 use.

25 (5) LIGHTING. Lighting in every part of a food warehouse
26 shall provide easy visibility for every function performed in

1 that part of the food warehouse. Lighting shall provide easy
2 visibility for cleaning, inspection, identification of food, and
3 visual evaluation of food condition. Artificial lights,
4 skylights, and other glass fixtures over exposed food shall be
5 equipped with protective shields or shatter-resistant bulbs.

6 (6) VENTILATION. (a) A food warehouse, including food
7 storage and handling areas, locker rooms, toilet rooms, employe
8 break rooms, and garbage or rubbish storage areas, shall be
9 adequately ventilated. Ventilation shall be adequate to keep the
10 food warehouse free of excessive heat, condensation, vapors,
11 obnoxious odors, smoke and fumes.

12 (b) Heating, cooling and ventilating systems, including
13 ducts and pipes over food storage and handling areas, shall be
14 designed or located to prevent conditions whereby drip or
15 condensate may contaminate food or food packages. Intake fans
16 shall be equipped with filters that are readily removable for
17 cleaning and replacement. Intake fans, exhaust fans, and
18 ventilation ducts shall be kept clean and in good repair and
19 shall be screened or louvered to exclude dust and insects.

20 (7) REFRIGERATED AND FROZEN FOOD STORAGE FACILITIES.

21 (a) Refrigerated and frozen food storage facilities shall be
22 mechanically refrigerated.

23 (b) If a refrigerated food storage facility is used to
24 store potentially hazardous food, the refrigerating capacity of
25 that facility shall be adequate to maintain air temperatures at
26 or below 40° F. (5° C.) at all times when the facility is loaded

1 to maximum capacity, regardless of reasonably foreseeable
2 external temperatures.

3 (c) If a frozen food storage facility is used to store
4 potentially hazardous frozen food, the refrigerating capacity of
5 that facility shall be adequate to maintain air temperatures at
6 or below 5° F. (-15° C.) at all times when the facility is loaded
7 to maximum capacity, regardless of reasonably foreseeable
8 external temperatures.

9 (d) Every facility used to store refrigerated or frozen
10 food shall be equipped with one or more temperature measuring
11 devices. Measuring devices shall be accurate, and shall be
12 installed to measure the warmest air temperature in the
13 refrigerated or frozen food storage facility.

14 (8) RECEIVING AND SHIPPING DOCKS. Loading docks, truck
15 bays, driveways, and rail sidings for receiving and shipping food
16 products at a food warehouse shall be kept free of accumulated
17 debris and spillage, and free of any foreign materials which may
18 contaminate food or damage food packages.

19 (9) TOILET FACILITIES. (a) A food warehouse shall have a
20 sufficient number of toilet rooms to accommodate all warehouse
21 personnel, according to s. ILHR 54.12 and applicable local
22 regulations. Toilet rooms shall be conveniently located,
23 completely enclosed, well-lighted, and equipped with tight-
24 fitting, self-closing doors. Toilet rooms and fixtures shall be
25 easily cleanable, and shall be kept clean and in good repair.

26 (b) Handwashing facilities shall be located in or adjacent

1 to every toilet room. Handwashing facilities shall include hot
2 and cold running water, soap in a soap dispenser, and a sanitary
3 single-service means of drying the hands. A sign directing
4 warehouse personnel to wash their hands shall be prominently
5 posted in every toilet room used by warehouse personnel.

6 (10) LOCKER AND OTHER PERSONNEL FACILITIES. A food
7 warehouse shall have lockers or similar facilities in which food
8 warehouse personnel can store street clothing and other personal
9 items while working at the warehouse. Locker areas, dressing
10 areas, lunch and break areas, and similar personnel areas shall
11 be maintained in a clean and sanitary condition, so that the
12 areas are free of trash, food scraps and litter which may attract
13 or harbor pests.

14 (11) GARBAGE AND REFUSE DISPOSAL. (a) Garbage and refuse
15 shall not be allowed to accumulate in a food warehouse or on the
16 grounds surrounding a food warehouse which are under the control
17 of the warehouse operator. Garbage and refuse shall be removed
18 regularly, and as often as needed, to keep the premises in a
19 clean and sanitary condition.

20 (b) Garbage and refuse storage areas shall be well-drained,
21 and shall be constructed and maintained so that they do not
22 attract or harbor pests. Garbage and refuse shall be held in
23 durable, leakproof, easily cleanable and pest-resistant
24 containers. Containers shall be kept covered with tight-fitting
25 lids, and shall be cleaned regularly to prevent unsanitary
26 conditions.

1 (c) Garbage and refuse shall not be burned on the premises
2 except in compliance with state and local laws. Garbage and
3 refuse shall not be burned on the premises if burning may
4 contaminate food.

5 (12) CONTROL OF PESTS. (a) A food warehouse operator
6 shall take effective measures to prevent and, if necessary,
7 control insects, rodents and other pests in and around a food
8 warehouse. A food warehouse shall be free of evidence of pest
9 infestation, and shall be free of garbage, litter and other
10 conditions that may attract or harbor pests.

11 (b) Pesticides and other hazardous substances shall not be
12 stored in food storage areas, and shall not be used in a manner
13 which may contaminate food. Pesticides shall not be stored,
14 handled or used in a manner inconsistent with label directions,
15 or in a negligent manner.

16 NOTE: Pesticide storage and use must comply with ss. 94.67
17 to 94.71, Stats., and ch. ATCP 29. Pesticides must be
18 registered for use by the U. S. environmental
19 protection agency or by the department.

20 (13) CLEANING. (a) A food warehouse shall be neat and
21 orderly, and shall be kept clean at all times. Storage
22 facilities, equipment and stored food shall be arranged so that
23 all parts of the food warehouse can be effectively cleaned and
24 inspected.

25 (b) A food warehouse operator shall keep the warehouse in a
26 clean and sanitary condition. Cleaning operations shall not
27 contaminate food or food packages. Detergents, sanitizers and
28 other cleaning materials shall be safe and effective for their

1 intended uses.

2 (c) Equipment and utensils used to handle or store food in
3 a food warehouse shall be kept clean, and shall be sanitized if
4 necessary to prevent the contamination of food.

5 ATCP 71.04 PERSONNEL STANDARDS. (1) CLEANLINESS. Every
6 person who handles food at a food warehouse shall observe good
7 hygienic practices during all working periods. Food handlers
8 shall wash their hands before beginning work and upon returning
9 to work after using toilet facilities, eating, smoking, or
10 engaging in other activities which may contaminate their hands.

11 (2) COMMUNICABLE DISEASE. No person infected with a
12 disease that is communicable by food handling may work in a food
13 warehouse in any capacity that may result in the contamination of
14 food.

15 (3) CONSUMPTION OF FOOD, BEVERAGES AND TOBACCO. No person
16 may consume food or beverages or use tobacco in any part of a
17 food warehouse where food is handled or stored. Consumption of
18 food or beverages, and the use of tobacco shall be confined to
19 clearly designated areas that are separated from food storage and
20 handling areas.

21 ATCP 71.05 FOOD STORAGE AND HANDLING. (1) GENERAL. (a)
22 A food warehouse operator shall handle and store food in a safe
23 and sanitary manner, and under sanitary conditions, to protect
24 the safety and wholesomeness of the food.

25 (b) A food warehouse operator shall store food in a neat
26 and orderly manner, so that the food is readily accessible for

1 inspection and movement, and so that the food warehouse can be
2 readily inspected and cleaned.

3 (c) The amount of food stored in a food warehouse shall not
4 exceed the reasonable capacity of that warehouse.

5 (2) FOOD DELIVERED TO WAREHOUSE; INSPECTION. (a) A food
6 warehouse operator shall inspect all food delivered for storage
7 at the food warehouse. The operator shall inspect the food
8 before it is unloaded, unless the delivery vehicle is too fully
9 loaded to permit inspection. The operator shall inspect for
10 damage to food or food packages, insect or rodent infestation,
11 objectionable odors, and other indications of contamination.

12 (b) If a food warehouse operator rejects any portion of a
13 food delivery because the food is contaminated, the operator
14 shall promptly notify both the food carrier and the food shipper
15 or owner.

16 (c) If a warehouse operator has reason to believe that an
17 unloaded delivery of food may be contaminated, the warehouse
18 operator shall segregate that food for prompt inspection, sorting
19 and disposition before the food is stored in the food warehouse.

20 (3) FOOD ACCEPTED FOR STORAGE; IDENTIFICATION. (a) A food
21 warehouse operator shall mark each lot of food accepted for
22 storage with all of the following:

- 23 1. The name and address of the food warehouse.
- 24 2. The word "Received," or a recognizable abbreviation of
25 that word, and a numeric designation of the month, day and year
26 when the food was received in the food warehouse.

1 Note: For example, an acceptable marking of an incoming
2 shipment of a food product under this subsection is
3 "Rec'd. 7-1-93".

4 (b) The information required to be marked on a lot of food
5 under par. (a) may be contained on a tag securely fastened to the
6 packaging material enclosing that lot of food. The tag shall be
7 affixed so that it cannot be readily detached, mutilated or made
8 illegible.

9 (c) No person may remove, alter, mutilate or conceal a
10 marking required under par. (a). No person may divide any lot of
11 food marked under par. (a) unless each portion of the divided lot
12 bears the same marking.

13 (4) CONTAMINATED FOOD. A food warehouse operator shall
14 promptly destroy, or shall exclude or promptly remove from the
15 food warehouse, any food which threatens to contaminate other
16 food in storage, which may cause a pest infestation, or which may
17 contaminate the food warehouse.

18 (5) FIRE, FLOOD OR CASUALTY DAMAGE. Food which has been
19 subjected to possible contamination in a fire, flood or other
20 casualty shall not be removed from the warehouse for use as human
21 food unless the department has inspected the food and authorized
22 its removal or disposition. A food warehouse owner or operator
23 shall notify the department whenever food in the warehouse has
24 been subjected to possible damage or contamination because of
25 fire, flood or other casualty.

26 (6) STOCK ROTATION. A food warehouse operator shall adopt
27 and implement effective stock rotation procedures, appropriate to

1 each type of food, to preclude spoilage of any food in storage.
2 The warehouse operator shall keep adequate records to permit the
3 effective rotation of food in storage.

4 (7) REFRIGERATED AND FROZEN FOOD. (a) Potentially
5 hazardous refrigerated food stored at a food warehouse shall at
6 all times be kept refrigerated at a temperature of 40° F. (5° C.)
7 or below. Potentially hazardous frozen food shall at all times
8 be kept frozen at a temperature of 5° F. (-15° C.) or below.

9 (b) Frozen food shall not be refrozen after having thawed.

10 (c) The operator of a food storage warehouse shall record,
11 on a daily basis, the air temperature in each facility in which
12 potentially hazardous food is stored. The operator shall record
13 the temperature shown by each measuring device installed in the
14 facility under s. ATCP 71.03(7), together with the date on which
15 the temperature reading was taken. The operator shall retain the
16 temperature record for at least 2 years.

17 (d) The amount of food stored in a refrigerated or frozen
18 food storage facility shall not exceed the designed capacity of
19 that facility. Refrigerated and frozen food shall be marked as
20 required under s. ATCP 71.05(3), and shall be stored in an
21 orderly manner, so that the contents of a refrigerated or frozen
22 food storage facility can be readily inspected and identified.

23 ATCP 71.06 RECORDS. (1) A food warehouse operator shall
24 keep accurate records of warehouse operations, including all of
25 the following:

26 (a) A record of each lot of food received for storage at

1 the food warehouse, including all of the following:

2 1. The name and address of the person who shipped the lot,
3 and the carrier who delivered the lot to the warehouse.

4 2. A description of the lot, including the identity of the
5 food, the number of individual units, and the total quantity
6 included in the lot.

7 3. The date on which the lot was received.

8 (b) A record of each lot of food in storage, including:

9 1. The name and address of the owner, if other than the
10 warehouse operator.

11 2. A description of the lot, including the identity of the
12 food, the number of individual units, and the total quantity
13 included in the lot.

14 3. The date on which the lot was received.

15 (c) A record of each lot of food removed from the food
16 warehouse, including all of the following:

17 1. The destination of the lot, including the name and
18 address of the recipient if any.

19 2. A description of the lot, including the identity of the
20 food, the number of individual units, and the total quantity
21 included in the lot.

22 3. The date on which the lot was removed from the
23 warehouse.

24 (2) A food warehouse operator shall retain records made
25 under sub. (1) for at least 2 years.

26 SECTION 2. ATCP 75.01(6m) is repealed and recreated to

1 read:

2 ATCP 75.01(6m) "Mobile food establishment" means a retail
3 food establishment that is erected on a temporary basis, or
4 designed to be moved from place to place. "Mobile food
5 establishment" includes a pushcart but does not include a vehicle
6 which is used solely to transport or deliver food.

7 SECTION 3. ATCP 75.01(8m) is created to read:

8 ATCP 75.01(8m) "Pushcart" means a mobile food establishment
9 that is designed to be pushed by hand, with or without auxiliary
10 power.

11 SECTION 4. ATCP 75.01(10) is repealed and recreated to
12 read:

13 ATCP 75.01(10) "Retail food establishment" means any of the
14 following, but does not include a restaurant or other
15 establishment holding a permit under s. 50.51, Stats., to the
16 extent that the activities of the establishment are covered by
17 that permit:

18 (a) A permanent or mobile food processing facility where
19 food is processed primarily for direct retail sale to consumers
20 at the facility.

21 (b) A mobile facility from which potentially hazardous food
22 is sold to customers at retail.

23 (c) A permanent facility from which food is sold to
24 consumers at retail, whether or not that facility sells
25 potentially hazardous food or is engaged in food processing.

26 SECTION 5. ATCP 75.015(7)(a) is repealed and recreated to

1 read:

2 ATCP 75.015(7)(a) A retail food establishment that sells
3 only packaged foods or fresh fruits and vegetables, provided the
4 establishment does not sell potentially hazardous food and does
5 not engage in food processing.

6 SECTION 6. ATCP 75.06(2)(f) and (g) are created to read:

7 ATCP 75.06(2)(f) A potentially hazardous food that is
8 cooked at a retail food establishment shall be cooked so that all
9 parts of the food are heated to a temperature of at least 150° F.
10 (66° C.), except that:

11 1. Cooked poultry, poultry stuffing, stuffed meats and
12 stuffing containing meat shall be cooked so that all parts of the
13 food are heated to at least 165° F. (74° C) with no interruption
14 of the cooking process.

15 2. Cooked pork and pork products shall be cooked so that
16 all parts of the food are heated to at least 150° F. (66° C.) or,
17 if cooked in a microwave oven, to at least 170° F. (77° C.).

18 3. Beef roasts, if cooked in a microwave oven, shall be
19 cooked to an internal temperature of at least 145° F. (63° C.).

20 4. Rare roast beef shall be cooked to an internal
21 temperature of at least 140° F. (60° C.) unless otherwise ordered
22 by the immediate consumer.

23 5. Cooked ground meat and ground meat products shall be
24 cooked to an internal temperature of at least 155° F. (68.3° C.)
25 unless otherwise ordered by the immediate consumer.

26 (g) If a potentially hazardous food has been cooked and

1 then refrigerated, all parts of that food shall be reheated
2 rapidly to at least 165° F. (74° C.) before the food is served
3 for consumption or placed in a hot food holding facility at a
4 retail food establishment. The time period needed to reach
5 165° F. shall not exceed two ours. A hot food holding facility
6 such as a steam table, bainmarie, warmer or similar hot food
7 holding devices may not be used for the rapid reheating of a
8 potentially hazardous food under this paragraph.

9 SECTION 7. ATCP 75.07(9) is created to read:

10 ATCP 75.07(9) TREATING PORK AND PORK PRODUCTS TO DESTROY
11 TRICHINAE. (a) Treatment required. All meat products listed
12 under par. (b) and all pork muscle tissue used as an ingredient
13 of a meat product listed under par. (b) shall be treated to
14 destroy any possible live trichinae. Treatment shall consist of
15 heating or curing. Heating and curing shall comply with
16 applicable requirements under pars. (c) to (e).

17 (b) Products requiring treatment. The following meat
18 products and all products of a similar character, if produced at
19 a retail food establishment, shall be treated under par. (a) if
20 they contain any pork muscle tissue, pork hearts, pork stomachs
21 or pork livers:

- 22 1. Bologna.
- 23 2. Frankfurters.
- 24 3. Vienna sausage.
- 25 4. Smoked sausage and knoblauch sausage.
- 26 5. Mortadella.

- 1 6. All forms of summer or dried sausage, including
- 2 mettwurst.
- 3 7. Ground meat mixtures containing pork and beef, veal,
- 4 lamb, mutton, goat, or game meat, which may be prepared in such a
- 5 manner that the ground meat mixture might be eaten rare or
- 6 without thorough cooking.
- 7 8. Flavored pork sausages such as those containing wine or
- 8 similar flavoring materials.
- 9 9. Cured pork sausage.
- 10 10. Sausage containing cured pork or smoked pork, or both.
- 11 11. Cooked pork loaves.
- 12 12. Roasted, baked, boiled or cooked hams.
- 13 13. Pork shoulders or pork shoulder picnics.
- 14 14. Italian-style hams.
- 15 15. Westphalia-style hams.
- 16 16. Smoked boneless pork shoulder butts.
- 17 17. Cured meat rolls.
- 18 18. Capocollo, also known as capicola or capicola.
- 19 19. Coppa.
- 20 20. Fresh or cured boneless pork shoulder butts, hams,
- 21 loins, shoulders, shoulder picnics, and similar pork cuts in
- 22 casings or other containers in which ready-to-eat delicatessen
- 23 articles are customarily enclosed. Cured boneless pork loins
- 24 shall be treated to destroy trichinae before they are shipped
- 25 from the establishment where cured.
- 26 21. Breaded pork products.

1 22. Boneless back bacon.

2 23. Smoked pork cuts such as hams, shoulders, loins and
3 pork shoulder picnics.

4 (c) Heating. 1. If a product is treated by heating, all
5 parts of the product shall be heated to one of the internal
6 temperatures in the following table for the period of time
7 corresponding to that temperature:

8 TABLE 1: HEAT TREATMENT TIME AND TEMPERATURE

9

<u>Minimum Internal Temperature</u>		<u>Minimum Time</u>
Degrees Fahrenheit	Degrees Centigrade	
120	49.0	21.0 hours
122	50.0	9.5 hours
124	51.1	4.5 hours
126	52.2	2.0 hours
128	53.4	1.0 hours
130	54.5	30.0 minutes
132	55.6	15.0 minutes
134	56.7	6.0 minutes
136	57.8	3.0 minutes
138	58.9	2.0 minutes
140	60.0	1.0 minute
142	61.1	1.0 minute
144	62.2	Instant

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28 2. If a product is treated by heating, the time to raise
29 the product's temperature from 60° F. to 120° F. shall not exceed
30 2 hours unless the product has been cured or fermented to inhibit
31 the growth of Clostridium botulinum.

32 3. If a product is heated to a temperature of at least
33 138° F. but not greater than 143° F., the time under subd. 1 need
34 not be monitored if the product's minimum thickness exceeds 2
35 inches and the product is not refrigerated until at least 5

1 minutes after the temperature of 138° F. is attained.

2 (d) Curing. If a product is cured to destroy trichinae,
3 the product shall be cured using an appropriate curing method for
4 that product as provided in 9 CFR 318.10(c)(3), or by another
5 method approved in writing by the department.

6 (e) Time and temperature monitoring. When necessary to
7 comply with this subsection, smokehouses, drying rooms, and other
8 compartments used in the treatment of pork to destroy trichinae
9 shall be equipped with accurate automatic recording thermometers.
10 Alternate methods of monitoring time and temperature may be
11 approved by the department upon written request from a retail
12 food establishment. A department inspector may approve an
13 automatic recording thermometer for use in a sausage smokehouse,
14 drying room, or other compartment if, in the inspector's
15 judgment, the thermometer is adequate for the purpose used.

16 SECTION 8. ATCP 75.10(2)(a) is amended to read:

17 ATCP 75.10(2)(a) If equipment and utensils are cleaned or
18 sanitized manually, the retail food establishment shall be
19 equipped with wash and rinse sinks which are suitable for all
20 manual cleaning and sanitizing operations. Sinks shall be
21 conveniently located and adequate in number. Each sink shall be
22 constructed of stainless steel or other approved material. Each
23 sink shall have at least 2 compartments. A sink installed in a
24 retail food establishment after June 30, 1989 shall have at least
25 3 compartments ~~for washing, rinsing and sanitizing equipment and~~
26 utensils unless the department or its agent determines in writing

1 that a 2-compartment sink is adequate to clean and sanitize the
2 equipment and utensils at that retail food establishment.

3 SECTION 9. ATCP 75.12(2) is repealed and recreated to read:

4 ATCP 75.12(2) SANITARY CONSTRUCTION. (a) A mobile food
5 establishment shall be soundly constructed, and shall be kept
6 clean and in good repair. An outdoor pushcart mobile food
7 establishment shall have a ceiling or canopy that extends over
8 the entire length and width of the pushcart. A indoor pushcart
9 mobile food establishment may operate without a ceiling or
10 canopy. Floors, walls, ceilings or canopies, and other permanent
11 surfaces shall be reasonably smooth, impervious to water and
12 easily cleanable.

13 (b) If a temporarily assembled mobile food establishment is
14 exempt from licensing under s. ATCP 75.015(7)(a), the mobile food
15 establishment may be assembled on the ground, without a floor,
16 provided that the ground is covered with an easily cleanable
17 material which protects against splash and dust.

18 (c) A mobile food establishment subject to licensing shall
19 be effectively enclosed or screened to prevent insects and other
20 pests from entering processing areas. This paragraph does not
21 apply to a pushcart.

22 (d) Lighting in a mobile food establishment shall be
23 adequate for sanitary food processing and handling, and for
24 effective cleaning of food contact surfaces. Artificial lights,
25 if any, shall be equipped with protective shields or shatterproof
26 bulbs.

1 SECTION 10. ATCP 75.12(5) is repealed and recreated to
2 read:

3 (5) CLEANING AND SANITIZING EQUIPMENT AND UTENSILS. (a)
4 Equipment and utensils used in a mobile food establishment shall
5 be cleaned and sanitized according to s. ATCP 75.10. A mobile
6 food establishment, other than a push cart, shall be equipped
7 with automatic cleaning and sanitizing equipment or with manual
8 facilities under par. (b).

9 (b) If equipment or utensils are cleaned or sanitized
10 manually, the mobile food establishment shall have at least 3
11 sink compartments, or 3 pans of adequate size, for that purpose.
12 If the mobile food establishment was constructed after June 30,
13 1989, the mobile food establishment shall have a permanently
14 installed 3-compartment sink, served by hot and cold running
15 water from a faucet, unless the department or its agent
16 determines in writing that an alternative facility is adequate to
17 clean and sanitize equipment and utensils at the mobile food
18 establishment.

19 SECTION 11. ATCP 75.12(9) is created to read:

20 ATCP 75.12(9) PUSHCARTS. (a) Outdoor pushcarts shall be
21 located on a paved surface. Indoor pushcarts shall be located on
22 permanent flooring material which is smooth and easily cleanable.

23 (b) No pushcart may be used to sell or process a
24 potentially hazardous food unless all of the following apply:

25 1. The potentially hazardous food is held at all times in a
26 fully enclosed container.

1 2. The pushcart is mechanically equipped to keep the
2 potentially hazardous food at a safe temperature, and is equipped
3 with a thermometer to measure the temperature at which the food
4 is kept.

5 3. The potentially hazardous food is kept at a safe
6 temperature at all times.

7 4. The potentially hazardous food, if sold as a separate
8 food item, is dispensed to consumers in prepackaged form in the
9 original packaging of the manufacturer or processor.

10 5. The potentially hazardous food, if used as a food
11 ingredient and processed at an outdoor pushcart, is entirely
12 contained and processed in an enclosed system that precludes any
13 contamination of the food.

14 6. There is no manual contact with the potentially
15 hazardous food.

16 (c) A pushcart shall be returned to a service facility at
17 least once every 24 hours for cleaning and servicing. The
18 service facility shall be a permanent building which is one of
19 the following:

20 1. A food processing plant licensed under s. 97.29, Stats.

21 2. A retail food establishment licensed under s. 97.30,
22 Stats.

23 3. A restaurant holding a permit under s. 50.51, Stats.

24 (d) A service facility under par. (c) shall be large
25 enough, and shall be adequately equipped, to clean and service
26 all of the pushcarts which operate from that facility. Equipment

1 and utensils used in connection with the pushcart shall be
2 cleaned and sanitized daily at the service facility.

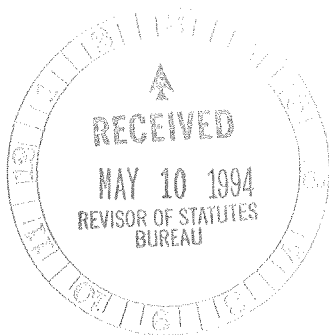
3 (e) A pushcart shall be equipped with an adequate supply of
4 clean and sanitized containers and utensils so that a soiled
5 container or utensil can be immediately replaced with a clean and
6 sanitized item. Steaming pitchers and steaming wands used to
7 froth fluid milk products used in making espresso may only be
8 used on indoor pushcarts. Steaming pitchers shall be replaced
9 with a clean and sanitized pitcher at least every 4 hours or more
10 often as necessary. Steaming wands shall be cleaned and
11 sanitized after each use. Only single-service food containers
12 and utensils may be used by consumers to receive or consume food
13 from a push cart. Consumer self-service from push carts is
14 prohibited.

15 SECTION 12. EFFECTIVE DATE. The rules contained in this
16 order shall take effect on the first day of the month following
17 publication in the Wisconsin administrative register, as provided
18 in s. 227.22(2)(intro.), Stats.

Dated this 5th day of May, 1994.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Alan T. Tracy
Alan T. Tracy
Secretary



FISCAL ESTIMATE
DOA-2048 (R 11/90)

CORRECTED ORIGINAL SUPPLEMENTAL UPDATED

LRB or Bill No./Adm. Rule No.
ATCP 71, ATCP 75
Amendment No. If Applicable

Subject

Food Warehouse requirements and retail food establishment license exemptions.

Fiscal Effect

State: No State Fiscal Effect

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

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

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

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 Units Affected:
- Towns Villages Cities
 - Counties Others
 - School Districts VTAE Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Currently, there is no general administrative rule related to food warehouses. The proposed rule, ATCP 71, establishes requirements related to licensing, construction and sanitary operation of food warehouses. It repeals current rules related to cold storage warehouses and incorporates cold storage warehouse requirements as part of the new food warehouse rules. Currently, food warehouses are licensed and inspected under s. 97.27, Stats. The proposed ch. ATCP 71, Wis. Adm. Code, has no effect on GPR or PRO funds.

1991 Wis. Act 39 and 1989 Wis. Act 174 modified the definition of a retail food establishment and exemptions from retail food establishment licensing contained in s. 97.30, Stats. The proposed rule amends appropriate sections of ch. ATCP 75, Wis. Adm. Code, to conform to the revised statutory definition and exemptions. This change in the rule has no effect on GPR or PRO funds.

The proposed rule establishes sanitation standards for "pushcarts, including the requirement that a "pushcart" have a service facility to return to for sanitation and maintenance activities. This change has no effect on GPR or PRO funds.

The proposed rule creates requirements for cooking and reheating potentially hazardous foods and establishes procedures for trichinae control in pork products. It also allows regulatory flexibility in determining the number of sink compartments required to be installed in retail food establishments with limited food processing activities. These changes in the rule have no effect on GPR or PRO funds.

Long-Range Fiscal Implications

None.

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

DATCP - C. T. Leitzke - 266-7243
07/12/93

Authorized Signature/Telephone No.

Barbara Knapp
Barbara Knapp

Date

6-7114

7/13/93