

Food Warehouse and Food Processing Plant Licensing and Operation (Clearinghouse Rule #15-093)

The Department of Agriculture, Trade and Consumer Protection (“Department”) hereby submits the following rule for publication:

CLEARINGHOUSE RULE #: 15-093

SUBJECT: Food Warehouse and Food Processing Plant Licensing and Operation

ADM. CODE REFERENCE: ATCP 70 and 71

DATCP DOCKET #: 14-R-11

We are enclosing a copy of the final rule revisions, as adopted by the Department. We are also providing the following information for publication with the rule, as required by s. 227.114(6), Stats.

Business Impact Analysis Summary

Under state law, food warehouses, under ch. ATCP 71, and food processing facilities, under ch. ATCP 70, are distinct entities that require separate licensing. Under current rules, a food warehouse that engages in food processing activities, even low-risk repacking of already-packaged foods, must hold separate food warehouse and food processing plant licenses. These rule revisions save money for establishments exempt from the following food warehouse activities that must be done under a food processing plant license:

- 1) Re-packing foods that are already packaged and labeled for retail sale into containers for further distribution,
- 2) Combining two or more individually packaged and labeled food items into a combination package for retail sale, and
- 3) Manufacturing ice that is used for temperature control of food during shipment or storage.

This rule also modifies food warehouse regulations to achieve consistency with federal and state regulations related to the storage of fish, fishery products and molluscan shellfish. These products pose unique threats to human health, including histamine production in temperature-abused fish species such as tuna, and transmission of *Vibrio vulnificus* via improperly harvested or handled molluscan shellfish. As part of the existing federal-state cooperative program for shellfish safety, state regulations require that Wisconsin firms, including food warehouses, that ship, shuck and pack, re-pack, or re-ship molluscan shellfish for interstate commerce must hold a no-fee licensee-dealer certification. The rule clarifies this requirement in ch. ATCP 71 (Food Warehouses).

Federal regulations include the storage of fish, fishery products, and molluscan shellfish in the definition of processing of these products, and therefore firms performing these activities are subject to Hazard Analysis and Critical Control Point (HACCP) regulations. Wisconsin food processing plant regulations (ch. ATCP 70) adopt, by reference, the federal HACCP regulations for processing of fish and fishery products done in a food

processing plant (21 CFR 123, cited in s. ATCP 70.18). Most Wisconsin food warehouse operators are aware of, and follow the HACCP regulations without being explicitly required to do so in Wisconsin rules. The rule clarifies that the federal HACCP requirements also apply to operators of warehouses handling fish, fishery products and molluscan shellfish, and will be enforced by the Department.

This rule harmonizes the food warehouse refrigeration temperature requirement for eggs with the requirement found in ch. ATCP 88 (Eggs). This harmonization will remove confusion over the maximum refrigeration temperature for egg producers or egg handlers who receive eggs from another egg producer or egg handler and store the eggs for more than 24 hours before selling them.

Finally, this rule clarifies which portions of new federal regulations implementing the FDA Food Safety Modernization Act (FSMA) must be followed by Wisconsin-licensed food warehouse operators.

Reporting, Bookkeeping and other Procedures

The proposed rule would not require any additional reporting, bookkeeping or other procedures.

Professional Skills Required

The proposed rule does not require any new professional skills by small businesses.

Accommodation for Small Business

Many establishments within the “warehouse” definition are quite small. While these rule revisions do not specifically address accommodations for them, the intent of the revisions is to exempt them from the multiple licenses some of them may currently require. The revisions are expected to have some small economic impact on warehouse operators storing fish, fishery products, or molluscan shellfish, because some will have to devote time and resources to obtain HACCP training, conduct a hazard analysis, and, if indicated, develop and follow a HACCP plan. Some warehouse operators may also have to obtain no-fee licensee dealer certification if they engage in specified activities with molluscan shellfish destined for interstate commerce. The complexity of these activity can be high but is generally necessary to ensure the safety of fish, fishery products, and molluscan shellfish.

Conclusion

This rule will not have a significant adverse effect on “small business” and is not subject to the delayed “small business” effective date provided in s. 227.22(2)(e), Stats. The Department will, to the maximum extent feasible, seek voluntary compliance with this rule.

Comments from Legislative Committees (Summary)

The finished rule was submitted to the legislature for review on March 22, 2016. The rule was assigned to the Assembly Committee on Agriculture and the Senate Committee on Agriculture, Small Business and Tourism. Neither committee took action. The Senate referred the rule to the Joint Committee for Review of Administrative Rules (JCRAR) on May 31, 2016, and the Assembly referred it to JCRAR on May 19, 2016. JCRAR also took no action on the rule.