

**MEMORANDUM OF UNDERSTANDING**  
**Between the**  
**Wisconsin Department of Public Instruction (DPI)**  
**and the**  
**Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP)**  
**July 1, 2020 - June 30, 2022**

**Purpose**

1. Public law 111-296, The Healthy, Hunger-Free Kids Act of 2010, requires that all schools participating in the National School Lunch (NSLP) or School Breakfast Programs (SBP) shall, at least twice during each school year, obtain a food safety inspection conducted by a state or local governmental agency responsible for food safety inspections. DPI and DATCP enter into this Memorandum of Understanding (MOU) in order to coordinate such inspections, to implement and monitor a school food safety program, and to assist schools in complying with food safety standards in Wis. Admin. Code ch. ATCP 75 and its Appendix.

**Agency Authority**

2. DPI may contract for the operation and maintenance of school lunch and breakfast programs, pursuant to Wis. Stat. § 115.34 and § 115.341.

3. DATCP and its agent local health departments (hereinafter, “agent” or “agents”) inspect and issue permits for retail food establishments - restaurants, pursuant to Wis. Stat. ch. 97. The statutes currently exempt any public or private school lunchroom, for which food service is directly provided by the school, from licensing as a retail food establishment - restaurant. DATCP enters into this MOU to establish food protection measures for the health, safety, and welfare of the public, under the authority granted in Wis. Stat. 97.

**Applicability**

4. This MOU applies to all Wisconsin elementary and secondary schools, schools for visually and hearing impaired, residential group homes, and juvenile detention facilities participating in the NSLP or SBP.

5. DATCP and DPI will work cooperatively with local health departments to assist those schools, covered by this MOU, to achieve compliance with changes in the Richard B. Russell National School Lunch Act, 42 U.S.C. 1758.

6. This MOU will not supersede established DPI school food service requirements, so long as food safety inspections are conducted at least twice per State fiscal year (July 1 – June 30). Federal law recognizes that certain local health departments conduct voluntary annual health inspections. This MOU is not intended to interfere with established inspection agreements between school districts and local health departments to provide two inspections, so long as they are completed.

## **Licensing**

7. Wis. Stat. ch. 97 exempts any public or private school lunchroom, for which food service is directly provided by the school, from requirements to be licensed as a retail food establishment - restaurant.

8. A public or private school shall be licensed as a retail food establishment – restaurant, if it serves, sells, or prepares meals to any of the following, not under the jurisdiction of the school or school district, unless the public or private school selling the meals is receiving two annual inspections as a result of participation in the NSLP or SBP:

- a. A licensed child or adult daycare,
- b. A Head Start program center,
- c. A senior center, or
- d. Another public or private school.

A public or private school, that serves, sells, or prepares meals to any other entity licensed by DATCP, shall be licensed as a retail food establishment – restaurant.

9. Vending machines, which are operated by a school food service receiving two annual inspections as part of the NSLP or SBP, and which provide meals solely to students, faculty, and school employees, shall be exempt from licensing under Wis. Admin. Code ch. ATCP 75, based on approved comparable compliance, provided they are inspected during the NSLP/SBP inspections. School vending machines, which are used for purposes other than providing meals under the NSLP or SBP, or are operated other than by the school food service, shall meet the requirements prescribed in ATCP 75 and its Appendix.

## **Requirement for Food Safety Inspection**

10. As amended by Section 111 of Public Law 108-265, the Child Nutrition and WIC Reauthorization Act of 2004, Section 9(h) of the Richard B. Russell National School Lunch Act (42 U.S.C. § 1758(h)) specifies the food safety inspection requirements this MOU seeks to implement as follows:

“(h) Food Safety.

(1) In general. A school participating in the school lunch program under this Act [42 USCS § § 1751 et seq.] or the school breakfast program under section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) shall--

(A) At least twice during each school year, obtain a food safety inspection conducted by a State or local governmental agency responsible for food safety inspections;

(B) Post in a publicly visible location a report on the most recent inspection conducted under subparagraph (A); and

(C) On request, provide a copy of the report to a member of the public.

(2) State and local government inspections. Nothing in paragraph (1) prevents any State or local government from adopting or enforcing any requirement for more frequent food safety inspections of schools.

(3) Audits and reports by States. For each fiscal year, each State shall annually:

(A) Audit food safety inspections of schools conducted under paragraphs (1) and (2); and

(B) Submit to the USDA Secretary of Agriculture a report of the results of the audit.

(4) Audit by the USDA Secretary of Agriculture. For each fiscal year, the Secretary shall annually audit State reports of food safety inspections of schools submitted under paragraph (3).

(5) School food safety program. Each school food authority shall implement a school food safety program, in the preparation and service of each meal served to children, that complies with any hazard analysis and critical control point system established by the Secretary.”

### **Inspection of School Food Service Facilities**

11. While school is in session each State fiscal year (July 1-June 30), DATCP or its agents will conduct a minimum of two inspections of every school food service facility participating in the NSLP or SBP, as defined by 7 CFR § 210.2 and 7 CFR § 220.2, based on Wis. Admin. Code ch. ATCP 75 requirements. DATCP or its agent will conduct food safety inspections during meal preparation and/or meal service time to determine if food is being handled and prepared in a manner consistent with proper food safety procedures, as defined in the Wisconsin Food Code. The second inspection will include a Hazard Analysis Critical Control Point (HACCP) verification inspection of the facility’s food safety plan.

12. USDA mandates a minimum of two independent physical inspections conducted at each individual location where food is prepared or served. Routine and HACCP verification inspections shall be conducted a minimum of 30 days apart. It is recommended that an inspection occur once during each of the spring and fall semesters, when the food service program is operating, or one may be conducted in summer, if a school participates in a summer feeding program.

13. DATCP or its agent will complete a written report for each school food service facility inspection and provide a copy to the school food authority at the time of the inspection. If, during the second inspection for the state fiscal year, the school food service facility has not implemented the required food safety plan, DATCP or its agent will notify DPI.

14. DATCP or its agent will make inspection reports available to DPI upon request.

15. DATCP or its agent may assess a fee for each inspection completed under this MOU. The fees apply to production and satellite kitchens. Pursuant to the DATCP Division of Food and Recreational Safety - Bureau of Food and Recreational Businesses Policy Memo, “Definition of a Satellite School for Establishment of Fees,” the definition of “satellite kitchen” is as follows:

*“A **satellite** kitchen will do no food preparation. Activities that are permitted include reheating and/or holding cooked food that has been delivered from the **production** kitchen, storage of cold ready-to-eat (RTE) items, and portioning and serving bulk products either delivered from the **production** kitchen or requiring no preparation.”*

16. DATCP's agent shall have the right to negotiate inspection fees with the local school food authorities within the agent's jurisdiction. The agent's fee shall not exceed the cost of the inspection service.

17. DATCP or its agent shall notify DPI of any unresolved critical food safety issues, including orders to correct or cease operating pending compliance and correction, and shall notify DPI of any resolutions to these issues.

18. DATCP or its agent shall provide, to the extent that resources are available, training for food service employees. DATCP or its agent will recommend corrective actions based on Wis. Admin. Code ch. ATCP 75 and its Appendix.

### **Records**

19. Under this MOU, and in accordance with 7 CFR § 210.9(b) (17) and § 220.7(e) (13), school food service inspection records shall be maintained for three years plus the current year. The Child Nutrition and WIC Reauthorization Act of 2004 requires that the most recent inspection report be publicly posted and a copy provided to the public upon request.

20. Records shall include the name and address of the school food service facility, the name of the person in charge on premises, the name of the authorized representative, the name of the school food authority, inspection findings, the response from the school food authority and DATCP's or its agent's response to the school food service authority.

21. DATCP or its agent performing the school food service inspections shall retain copies of the current report plus the records for the previous three years.

### **Investigation of Complaints against School Food Service Operations**

22. Complaints received by DATCP or its agent regarding any school inspected under this MOU shall be investigated in a timely manner. DATCP or its agent shall investigate complaints made against a school and notify the school food authority of the complaint and the findings.

23. DPI shall forward all complaints received under this MOU to DATCP or its agent for investigation.

24. DATCP or its agent shall forward unresolved complaints of a critical nature to DPI.

### **Conflict Resolution**

25. A DPI representative and either a DATCP or DATCP's agent representative shall meet with the local school food authority to resolve conflicts that may arise from the implementation of this MOU. For guidance, the parties will use the joint document prepared by DATCP and DPI titled, "Protocol for Resolving Non-Compliance Issues."

**Joint Development of Policies and Procedures**

26. DPI and DATCP will cooperate in the development of policies and procedures related to food safety inspection of, and compliance by, participating schools and other entities.

27. DATCP and DPI will explore legislation to codify the policies and procedures related to food safety inspection of schools and other entities that participate in the NSLP and SBP, as time and resources permit.

**Revisions**

28. DPI and DATCP will review this MOU, prior to the expiration date, to determine whether it should be revised or canceled.

29. DPI and DATCP may, at any time, amend this MOU or replace it with an MOU signed by the secretary and state superintendent, or designee.

**Cancellation**

30. DPI or DATCP may terminate this MOU upon 90 days advance written notice to the other party.

The undersigned, as the duly authorized representatives of their respective agencies, hereby agree to the terms of this Memorandum of Understanding.

Wisconsin Department of Public Instruction

Wisconsin Department of Agriculture, Trade and Consumer Protection

Dated: 8/17/2020

Dated: 27 August 2020

By: 

By: 

Michele McGaffin  
Business Services Director  
Department of Public Instruction

*for*  
Angela James  
Deputy Secretary  
Department of Agriculture, Trade and Consumer Protection

**Kelly A. Smithback - Administrator  
Division of Management Services**