



State of Wisconsin
Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary

98-1586



DATE: May 12, 1999

TO: The Honorable Fred Risser
President, Wisconsin State Senate
Rm. 220 South
State Capitol
Madison, WI

The Honorable Scott Jensen
Speaker, Wisconsin State Assembly
Rm. 211 West
State Capitol
Madison, WI

FROM: Ben Brancel, Secretary

SUBJECT: **Proposed Rule Relating to License Exemptions for Retail Food Establishments Locate in Licensed Restaurants (Clearing house Rule #98-158)**

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

Summary

This rule exempts, from DATCP retail food store licensing, a combined restaurant-food store if all the following apply:

- The operator holds a restaurant permit from the Department of Health and Family Services.
- Non-meal food sales at the restaurant-food store comprise less than 50% by dollar volume of all food sales from that location.

Background

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) currently licenses and inspects retail food stores under s. 97.30, Wis. Stats. The Wisconsin Department of Health and Family Services (DHFS) currently licenses and inspects restaurants under s. 254.64, Wis. Stats.

Under current rules, a person who operates a food store and restaurant at the same location may be subject to duplicate licensing and inspection by DATCP and DHFS. This rule amends current DATCP rules to eliminate duplicate licensing and inspection, starting with the license year that begins on July 1, 1998. DHFS has adopted a similar rule. Both agencies adopted temporary emergency rules pending adoption of these "permanent" rules.

Under current DATCP rules, a person who operates a restaurant and food store at the same location is exempt from a food store license if (1) the person holds a restaurant permit from DHFS and (2) non-meal food sales at the restaurant-food store comprise no more than 25% by dollar volume of all food sales from that location.

This rule expands the current exemption. Under this rule, the operator of a combined restaurant-food store is exempt from a food store license if (1) the operator holds a restaurant permit from DHFS and (2) non-meal food sales comprise less than 50% of all food sales at the combined location. DHFS has adopted reciprocal rules that will exempt, from restaurant permit requirements, food stores licensed by DATCP whose meal sales comprise less than 50% of all food sales.

Hearing Comments

The Department held one public hearing in Madison on November 11, 1998. One person, Michelle Kussow, representing the Wisconsin Grocers Association, Inc., testified in favor of the rule. One person, Bradley Legreid, representing the Wisconsin Dairy Products Association, registered in favor of the rule. No one appeared or testified in opposition to the rule, and the department received no written comments.

Changes from Hearing Draft

The department made no substantive changes to the final draft rule.

Response to Rules Clearinghouse Comments

The Legislative Council Rules Clearinghouse made minor editorial comments on the hearing draft rule. The department incorporated both comments into the final draft rule.

Fiscal Estimate

This rule is not expected to have a significant fiscal impact on the department. The department estimates that fewer than 100 businesses will be affected by this rule. At an average license fee of \$100, this would result in a PRO reduction of approximately \$10,000. A fiscal estimate is attached.

Final Regulatory Flexibility Analysis

This rule will have a positive impact on small businesses as defined in s. 227.114(1)(a), Wis. Stats. This rule increases the number of restaurant-food store operations which are exempt from licensing by DATCP as a retail food establishment. The rule effectively eliminates duplication of licensing in retail food stores and restaurants. This action will eliminate unnecessary costs and help small businesses by reducing their license fees and inspection costs. A Final Regulatory Flexibility Analysis is attached.

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

1 The state of Wisconsin department of agriculture, trade and consumer protection proposes the
2 following rule to amend s. ATCP 75.015(7)(c), relating to the retail food establishment license
3 exemption for restaurant permit holders.

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

Statutory authority: ss. 93.07(1), 97.30(5) and 227.24, Stats.

Statutes interpreted: ss. 97.30 and 254.64, Stats

The Wisconsin department of agriculture, trade and consumer protection (DATCP) currently licenses and inspects retail food stores under s. 97.30, Stats. The Wisconsin department of health and family services (DHFS) currently licenses and inspects restaurants under s. 254.64, Stats.

Under current rules, a person who operates a food store and restaurant at the same location may be subject to duplicate licensing and inspection by DATCP and DHFS. This rule amends current DATCP rules to eliminate duplicate licensing and inspection, starting with the license year that begins on July 1, 1998. DHFS is adopting a similar rule. Both agencies have adopted temporary emergency rules pending adoption of these "permanent" rules.

Under current DATCP rules, a person who operates a restaurant and food store at the same location is exempt from a food store license if (1) the person holds a restaurant permit from DHFS and (2) non-meal food sales at the restaurant-food store comprise no more than 25% by dollar volume of all food sales from that location.

This rule expands the current exemption. Under this rule, the operator of a combined restaurant-food store is exempt from a food store license if (1) the operator holds a restaurant permit from DHFS and (2) non-meal food sales comprise less than 50% of all food sales at the combined location. When calculating the amount of food sales, the current rule excludes sales of alcoholic beverages and vitamin supplements. This rule deletes vitamin supplements from the excluded items. DHFS is adopting reciprocal rules that will exempt, from restaurant permit requirements, food stores licensed by DATCP whose meal sales comprise less than 50% of all food sales.

1 **SECTION 1.** ATCP 75.015(7)(c) is amended to read:

2 ATCP 75.015(7)(c) A retail food establishment which is operated by the holder of a
3 restaurant permit issued under s. ~~50.51~~ 254.64, Stats., if all the following apply:

4 1. The retail food establishment is operated at the same location as the restaurant for
5 which a permit is held under s. s. ~~50.51~~ 254.64, Stats.

6 2. Non-meal food sales from that location comprise ~~no more than 25%~~ less than 50% by
7 dollar volume of all meal and non-meal food sales from that location. When calculating food
8 sales amounts under this subdivision, sales of alcohol beverages ~~and vitamin supplements~~ shall
9 be excluded.

10 **SECTION 2. EFFECTIVE DATE; APPLICABILITY.** (1) Except as provided in
11 sub. (2), this rule takes effect on the first day of the month following publication in the
12 Wisconsin administrative register, as provided in s. 227.22(2), Stats.

13 (2) In a city or county that licenses and inspects retail food establishments on behalf of
14 the department, pursuant to s. 97.41, Stats., and ch. ATCP 74, Wis. Adm. Code, this rule takes
15 effect on July 1, 1999.

Dated this _____ day of _____, 1999.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE, AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary

FISCAL ESTIMATE

1997 Session

LRB or Bill No. / Adm. Rule No.
ATCP 75.015(7)(c)

Amendment No. (If Applicable)

DA 2048 (R 10/94)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject

License Exemption for Retail Food Establishments Located in Licensed Restaurants.

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(gb)

Assumptions Used in Arriving at Fiscal Estimate

Currently, a retail food establishment operated by the holder of a restaurant permit is exempt from licensing as a retail food establishment if non-meal food sales at the location comprise no more than 25% by dollar volume of all meal and non-meal food sales from that location. This rule increases the dollar volume percentage of non-meal food sales to less than 50% of all meal and non-meal food sales from the location in order for the holder of the restaurant permit to be exempt from licensing as a retail food establishment. This rule will effectively eliminate duplication of licensing in restaurants and retail food establishments by this agency.

Elimination of duplication of licensing will reduce the number of retail food establishment licenses issued by the department. We estimate that less than 100 businesses will be affected by this rule. At an average license fee of \$100, this would result in a PRO reduction of approximately \$10,000.

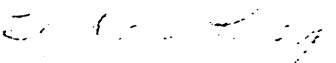
Several cities and counties are agents of the department for retail food establishment licensing and inspection. They issue retail food establishment licenses under the same criteria as the department, but under the authority of local ordinances. Local agents are permitted by statute to recover up to 100% of the costs of their retail food establishment licensing and inspection program. This rule should not have a fiscal effect on local retail food establishment licensing and inspection programs. The emergency rule does not apply in a city or county authorized to administer a food establishment licensing program as an agent of the department. The permanent rule will be effective for agent cities and counties for the license year beginning July 1, 1999.

Long - Range Fiscal Implications

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

DATCP
C. T. Leitzke, 224-4711

Authorized Signature/Telephone No.


Barbara Knapp (608) 224-4746

Date

6/26/98

FISCAL ESTIMATE WORKSHEET

1997 SESSION

Detailed Estimate of Annual Fiscal Effect
DOA 2047 (R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. Amendment No.
ATCP 75 01507(c)

Subject

License Exemption for Retail Food Establishments Located in Licensed Restaurants.

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

II. Annualized Cost:

Annualized Fiscal Impact on State funds from:

A. State Costs by Category

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

-

TOTAL State Costs by Category

\$

\$ -

B. State Costs by Source of Funds

Increased Costs

Decreased Costs

GPR

\$

\$ -

FED

-

PRO/PRS

-

SEG/SEG-S

-

III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)

Increased Rev.

Decreased Rev.

GPR Taxes

\$

\$ -

GPR Earned

-

FED

-

PRO/PRS

- 10,000

SEG/SEG-S

-

TOTAL State Revenues

\$

\$ - 10000

NET ANNUALIZED FISCAL IMPACT

STATE

LOCAL

NET CHANGE IN COSTS

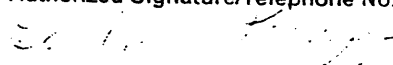
\$ _____

\$ _____

NET CHANGE IN REVENUES

\$ -10,000

\$ _____

Agency Prepared by: (Name & Phone No.) DATCP C. T. Leitzke, 608/224-4711	Authorized Signature/Telephone No.  Barbara Knapp (608) 224-4746	Date 6/26/98
--	--	-----------------

Final Regulatory Flexibility Analysis

Proposed Amendment of s. ATCP 75.015(7)(c)
Relating to the Retail Food Establishment License Exemption for
Restaurant Permit Holders

The amendments to s. ATCP 75.015(7)(c), Wis. Adm Code, will have a fiscal impact on small businesses as defined in s. 227.114(1)(a), Stats. Currently, approximately 7,500 retail food establishments are licensed and inspected by either the department or a local city/county health department that is an agent of the department. Retail food establishments range from small establishments that only sell pre-packaged food to large establishments which process as well as sell a variety of foods.

Over time some retail food establishments have added restaurant type operations and, conversely, some restaurants have added retail food sales operations. Under current rules, a person who operates both a retail food store and a restaurant at the same location may be subject to duplicate licensing by both the Department of Agriculture, Trade and Consumer Protection (DATCP) and the Department of Health and Family Services (DHFS). Local city/county health departments that contract to perform licensing and inspection of retail food establishments as agents of the state may also issue duplicate licenses for establishments which perform both restaurant and retail food sales or processing activities..

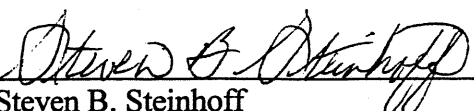
This rule exempts holders of restaurant permits from licensing as a retail food establishment if the retail food sales at the same location as the restaurant are less than 50% of the total food sales at the location. This rule effectively eliminates unnecessary duplication of licensing in restaurants with limited retail food sales or processing activities. DHFS is adopting a similar rule which will exempt retail food establishment licensees from obtaining a restaurant permit if meal food sales are less than 50% of the total food sales. These actions will eliminate unnecessary costs and help small business by reducing their license fees and inspection costs.

The proposed rule provides specific accommodations to certain small businesses. Restaurant operators who are exempt from a retail food establishment license will no longer have to pay the retail food establishment license fee or be inspected by the DATCP or its local agent.

The proposed rule does not require any additional recordkeeping for small businesses. The proposed rule does not require any additional professional services to be acquired by small businesses.

Dated this 9th day of December, 1998.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE, AND CONSUMER PROTECTION

By 
Steven B. Steinhoff
Administrator
Division of Food Safety

Chairman:
Agriculture Committee



Member:
Consumer Affairs
Government Operations
Natural Resources

Al Ott

State Representative • 3rd Assembly District

Assembly Agriculture Committee

MEMO

TO: Members of the Assembly Agriculture Committee

FROM: Representative Al Ott, Chair

DATE: May 25, 1999

The following clearinghouse rule has been referred to the Assembly Agriculture Committee:

Clearinghouse Rule 98-158

Relating to the retail food establishment license exemption for restaurant permit holders.
Submitted by the Department of Agriculture, Trade and Consumer Protection.