

1997-98 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

*Joint Committee for
Review of
Administrative Rules*

(JCR-AR)

Sample:

- Record of Comm. Proceedings
- 97hr_AC-EdR_RCP_pt01a
- 97hr_AC-EdR_RCP_pt01b
- 97hr_AC-EdR_RCP_pt02

➤ Appointments ... Appt

➤

➤ Clearinghouse Rules ... CRule

➤

➤ Committee Hearings ... CH

➤

➤ Committee Reports ... CR

➤

➤ Executive Sessions ... ES

➤

➤ Hearing Records ... HR

➤

➤ Miscellaneous ... Misc

➤ 97hr_JCR-AR_Misc_pt01

➤ Record of Comm. Proceedings ... RCP

➤

HTCP 75 - RESTAURANT
KLEINSES

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

OCT 15 1998

NOTICE OF HEARING

RULES RELATED TO LICENSE EXEMPTION FOR RETAIL FOOD ESTABLISHMENTS
LOCATED IN LICENSED RESTAURANTS

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on proposed rules (proposed s. ATCP 75.015(7)(c)2, Wis. Adm. Code) relating to license exemption for retail food establishments located in licensed restaurants. The hearing will be held at the time and place shown below. The public is invited to attend the hearing and make comments on the proposed rule. Following the public hearing, the hearing record will remain open until November 13, 1998, for additional written comments.

A copy of this rule may be obtained free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608)224-4700. Copies will also be available at the public hearings.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter by November 6, 1998, either by writing to Debbie Mazanec, 2800 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, (608- 224-4712), or by contacting the message relay system (TTY) at 608-224-5058. Handicap access is available at the hearings.

One (1) hearing is scheduled:

Wednesday, November 11, 1998, 1:00 pm until 3:00 pm
Wisconsin Department of Agriculture, Trade and Consumer Protection
Conference Room 172
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708
Handicapped accessible

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. 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.

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 to less than 50% of all meal and nonmeal 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.

Initial Regulatory Flexibility Analysis

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 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 14th day of October, 1998.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By  *Ben Brancel*
Ben Brancel, Secretary