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Details: Emergency Rule extension requests by Department of Agriculture, Trade and Consumer Protection.

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules ...

COMMITTEE NOTICES ...

➤ Committee Reports ... **CR**

➤ Executive Sessions ... **ES**

➤ Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

➤ Appointments ... **Appt** (w/Record of Comm. Proceedings)

➤ Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)

➤ Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)

(**ab** = Assembly Bill)

(**ar** = Assembly Resolution)

(**ajr** = Assembly Joint Resolution)

(**sb** = Senate Bill)

(**sr** = Senate Resolution)

(**sjr** = Senate Joint Resolution)

➤ Miscellaneous ... **Misc**



State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Randy Romanski, Secretary

October 5, 2010

The Honorable Josh Zepnick, Co-Chair
Joint Committee for
the Review of Administrative Rules
219 North State Capitol
P.O. Box 8953
Madison, WI 53708-8953

The Honorable Jim Holperin, Co-Chair
Joint Committee for
the Review of Administrative Rules
409 South State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Dear Representative Zepnick and Senator Holperin:

Re: **Emergency Rule Extension – Food Processing Plant License Exemptions for Certain Home-canners and Maple Sap Processors**

The Department of Agriculture, Trade and Consumer Protection (DATCP) asks the Joint Committee for the Review of Administrative Rules (JCRAR) to extend the above emergency rule for an additional 60 days. DATCP adopted the emergency rule in April, 2010, which originally was scheduled to expire on September 18, 2010. Upon request by DATCP, JCRAR granted a 60-day extension of the emergency rule until November 17, 2010. Pursuant to s. 227.24(2), Stats., DATCP asks that the rule be extended an additional 60 days until January 16, 2011.

This emergency rule exempts the following persons from having to obtain a food processor license under s. 97.29, Stats., subject to certain conditions:

- An individual who home-cans acidic, acidified or fermented vegetable or fruit products for retail sale at a community or social event, farmers' market or farm roadside stand, and receives no more than \$5,000 from those sales in any license year. This exemption implements the statutory exemption created by 2009 Wis. Act 101.
- A person who processes maple sap for sale only to other processors for further processing, and who receives no more than \$5,000 from those sales in any license year.

We are enclosing copies of the emergency rule, fiscal estimate, business impact analysis, and hearing notice. The emergency rule includes a *Finding of Emergency* that explains the need for this rule. DATCP has started a "permanent" rulemaking proceeding but will not be able to complete that proceeding before the emergency rule expires.

DATCP held a public hearing on the emergency rule on May 25, 2010; two individuals attended, but no one testified. The DATCP Board approved a hearing draft "permanent" rule on September 8, 2010. DATCP will hold approximately ten public hearings on the "permanent"

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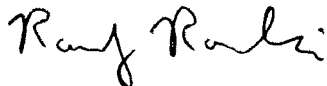
Honorable Josh Zepnick
Honorable Jim Holperin
October 5, 2010
Page 2 of 2

rule across the state beginning in November 2010. Section 227.19(2), Stats., prevents DATCP from submitting the proposed "permanent" rule for legislative committee review until January 2011.

Under s. 227.24(2), Stats., JCRAR is authorized to extend the emergency rule until the "permanent rule" takes effect or until January 16, 2011, whichever is earlier. Since DATCP will not be able to adopt the "permanent" rule until next year, DATCP is asking JCRAR to extend the emergency rule until January 16, 2011, the maximum period allowable under the statute. DATCP hopes to adopt the "permanent" rule prior to the next annual licensing cycle (beginning April 1, 2011), and prior to the next "farmers market" and maple syrup processing seasons.

DATCP will have staff available to answer questions at the JCRAR meeting on this matter.

Sincerely,



Randy Romanski
Secretary

Enclosures

STATE OF WISCONSIN)
) SS
DEPARTMENT OF AGRICULTURE)
TRADE AND CONSUMER PROTECTION)

TO THE PEOPLE OF THE STATE OF WISCONSIN:

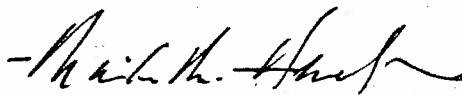
I, Rodney J. Nilsestuen, Secretary of the Wisconsin Department of Agriculture, Trade and Consumer Protection and custodian of its official records, certify all the following:

(1) The department adopted the attached emergency rule on April 14, 2010. The emergency rule relates to food processing plant licensing exemption for certain home-canners and maple sap processors.

(2) The emergency rule takes effect upon publication in the official state newspaper.

(3) I have compared the attached copy of the emergency rule with the original kept by the department. The attached copy is a complete and accurate copy of the original.

Signed and sealed this 14 day of April, 2010, at the department offices in Madison, Wisconsin.



Rodney J. Nilsestuen, Secretary



WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

EMERGENCY RULE

1 The Wisconsin department of agriculture, trade and consumer protection hereby adopts the
2 following emergency rule *to create* ATCP 70.03(7)(e) and (f) and (notes); *relating to* food
3 processing plant license exemptions for certain home-canners and maple sap processors.

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

The Department of Agriculture, Trade and Consumer Protection (DATCP) administers state food processing plant license requirements under s. 97.29, Stats. This temporary emergency rule exempts the following persons from licensing under s. 97.29, Stats., subject to certain conditions:

- An individual who home-cans acidic, acidified or fermented vegetable or fruit products for retail sale at a community or social event, farmers' market or farm roadside stand, and receives no more than \$5,000 from those sales in any license year. This exemption implements the statutory exemption created by 2009 Wis. Act 101.
- A person who processes maple sap to create maple syrup or concentrated maple sap that the person sells only to other processors for further processing, and who receives no more than \$5,000 from those sales in any license year.

DATCP is adopting this temporary emergency rule pending the adoption of a "permanent" rule to cover the same matters.

- This emergency rule is needed to implement 2009 Act 101, to provide clear guidance to home canners who wish to sell their products to the public, and to protect the public against potentially serious food safety risks.
- This emergency rule is also needed to relieve certain maple sap processors from unnecessary cost and compliance burdens, while ensuring adequate food safety protection.
- A temporary emergency rule is needed now because a "permanent" rule cannot be completed in time for this year's farmers market and maple syrup production seasons.

- This emergency rule will take effect immediately upon publication in the official state newspaper, and will remain in effect for 150 days. The Legislature's Joint Committee for Review of Administrative Rules may extend this emergency rule for up to 120 additional days.

Statutes Interpreted

Statutes Interpreted: ss. 97.09(4), 97.29 and 227.24, Stats.

Statutory Authority

Statutory Authority: ss. 93.07(1), 97.09(4), 97.29(1)(g)8. and (5), and 227.24, Stats.

Explanation of Statutory Authority

- DATCP has broad general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction.
- Under s. 97.09(4), Stats., DATCP may establish and enforce standards governing the production, processing, packaging labeling, transportation, storage, handling, display, sale, including retail sale, and distribution of foods that are needed to protect the public from the sale of adulterated or misbranded foods.
- Under s. 97.29(1)(g)8. and (5), Stats., DATCP may spell out food processing plant license requirements and exemptions.
- DATCP is authorized to adopt temporary emergency rules under s. 227.24, Stats., if emergency rules are needed to protect the public health, safety or welfare pending the adoption of "permanent" rules on the same subject.

Related Statutes and Rules

DATCP administers Wisconsin's food safety and labeling laws under ch. 97, Stats., including food processing plant license requirements under s. 97.29, Stats. (as modified by 2009 Wis. Act 101). DATCP has adopted food processing plant licensing rules under ch. ATCP 70, Wis. Adm. Code.

A person who processes food for sale or distribution is generally required to hold a state food processing plant license under s. 97.29, Stats. (there are certain exemptions). Persons who are engaged in dairy or meat processing, or who operate retail food establishments, must be licensed under other statutes. Local food license and zoning regulations may apply in some cases.

2009 Wis. Act 101 exempted, from state licensing under s. 97.29, Stats., persons who home-can acidic, acidified or fermented vegetable or fruit products for retail sale at a community or social events or farmers' markets, provided that the person receives no more than \$5,000 from those sales during the license year. Act 101 does not exempt those persons from other state license requirements that may apply, nor does it exempt them from local licensing or zoning ordinances that may apply.

Plain Language Analysis

Home Canning for Retail Sale

Under this emergency rule, a person who home-cans acidic, acidified or fermented vegetable or fruit products for retail sale at a community or social event, farmers' market or farm roadside stand is exempt from a food processing plant license under s. 97.29, Stats, if all of the following apply:

- The person is an individual, not a legal entity such as a corporation.
- The individual receives no more than \$5,000 during the license year from those sales. If 2 or more individuals home-can acidic, acidified or fermented vegetable or fruit products at the same home address, none of those individuals qualifies for the license exemption unless their combined gross receipts from the sale of those products totals no more than \$5,000.
- The canned products have an equilibrium pH value of 4.6 or lower. The individual must test the first batch of canned product produced according to each separate recipe used by the individual in each license year, to verify that canned products produced according to that recipe meet this pH requirement. The individual must keep, for at least 2 years, a record of each pH test.
- The individual registers annually with DATCP. There is no cost to register, and the registrant is not required to obtain a registration certificate from DATCP.
- The individual completes a home-canning safety course, or follows a written recipe (including ingredients and canning procedures) that reliably ensures the safety of each home-canned product.
- The individual discloses to potential buyers, by means of a sign or placard, that the canned products "are homemade in a kitchen that has not been subject to state inspection."
- Each canned product is properly labeled to include all of the following:
 - The name and address of the individual who canned the product.
 - The date on which the product was canned.
 - The following statement: "This product was made in a home not subject to state licensing or inspection."

- A list of ingredients in descending order of prominence (major ingredients must be of vegetable or fruit origin). The list must include the common name of any ingredient that originates from milk, eggs, fish, crustacean shellfish, tree nuts, wheat, peanuts or soybeans.
- The individual keeps a complete written record of every batch of canned product.
 - The batch record must include the name of the product, the product recipe (including procedures and ingredients), the amount of the product batch canned and sold, the canning and sale dates, the sale location, gross sales receipts, the results of any pH test conducted on the product, and the disposition of any product not sold.
 - The individual must keep the record for at least 2 years after the individual sells or otherwise disposes of the product, and must make that record available to DATCP for inspection and copying upon request.

Maple Sap Processed for Sale to Other Processors

Under this rule, a person who processes maple sap to produce maple syrup or concentrated maple sap for sale to another processor for further processing is exempt from licensing under s. 97.29, Stats., if all of the following apply:

- The person receives less than \$5,000 from those sales in a license year.
- The person registers annually with DATCP. There is no cost to register, and the registrant is not required to obtain a registration certificate from DATCP.
- The person keeps a written record of each sale, retains that record for at least 2 years, and makes the record available to DATCP for inspection and copying upon request. The record must include the name and address of the purchaser, the date of sale, the amount of maple syrup or concentrated maple sap sold, and the sale price.

Fiscal Impact

This rule will not have a significant fiscal impact on the state of Wisconsin or on local governments. A complete *fiscal estimate* is attached.

Business Impact

This emergency rule implements 2009 Wis. Act 101, which removes license requirements for certain home-canners who wish to sell their products to the public at community or social events, farmers' markets and farm roadside stands. The food safety standards in this rule will help protect the public from serious food safety hazards (including botulism) that may be associated with improperly home-canned products. The prevention of food safety problems promotes public confidence, and benefits the entire food industry including home-canners.

This emergency rule may encourage some home-canning hobbyists to sell their home-canned products at community or social events, at farmers' markets, or at their own farm roadside stands. That may have an adverse competitive impact on licensed canners who currently supply those sales outlets, although the adverse effect is likely to be minimal. Larger food canning businesses that supply canned food for the mass consumer market will not be significantly affected by this emergency rule.

This rule also exempts certain small maple sap processors from licensing under s, 97.29. The exemption will relieve those processors from unnecessary licensing costs and compliance burdens, while ensuring adequate food safety protection.

A complete *business impact analysis* is attached.

Environmental Impact

This rule will not have any significant environmental impact.

Federal and Surrounding State Programs

Federal Programs

There is no federal law that addresses these issues, or compels DATCP to adopt this emergency rule.

Surrounding State Programs

Minnesota exempts a person from licensing as a food processor if the person produces less than \$5,000 of non-potentially hazardous food or less than \$5,000 of home-canned acidified food. Home-canned acidified foods may only be sold at community or social events or farmers' markets in Minnesota. A point-of-sale placard and the product label must disclose that the product was produced in an unlicensed and uninspected home setting. The product label must also disclose the name and address of the processor and the date the goods were processed. Wisconsin's new law (2009 Act 101) was influenced by Minnesota's law.

Illinois and Michigan have no laws related to home-processed foods. All food processed for sale to the public in Illinois and Michigan must be processed in a licensed facility.

In Iowa, individuals may annually process up to \$20,000 in potentially-hazardous baked goods (including soft pies and bakery products with a custard or cream filling) at a licensed "home food establishment" for sale on the premises (the bakery goods may be consumed elsewhere). Individuals may sell non-potentially hazardous home-baked goods at a farmers' market, without a license. Canning and processing of low acid or acidified foods must be done in a licensed commercial establishment.

Data and Analytical Methodologies

This emergency rule is not based on any specialized data or analytical methodologies. Portions of this rule (such as pH requirements for home-canned food sold to the public) are based on well-established food science and public health principles.

DATCP Contact

Questions and comments related to this rule may be directed to:

Tom Leitzke
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-4411
E-Mail: tom.leitzke@wisconsin.gov

FINDING OF EMERGENCY

1 (1) The department of agriculture, trade and consumer protection (DATCP) administers
2 state food processing plant license requirements under s. 97.29, Stats.

3 (2) Recent legislation (2009 Act 101, enacted on February 4, 2010) created a limited
4 exemption from food processing plant license requirements under s. 97.29, Stats., for persons
5 who home-can limited quantities of acidic, acidified or fermented vegetable and fruit products
6 for retail sale at community and social events or at farmers' markets.

7 (3) Home-canned food products, if not properly canned, may pose a risk of serious food
8 safety hazards such as botulism.

9 (4) DATCP has received many requests for clarification of the new license exemption
10 under Act 101. In order to facilitate compliance and protect consumers from potentially serious
11 food safety hazards, DATCP must adopt administrative rules to clarify the scope, application and
12 terms of the new license exemption.

1 (5) Implementing rules are urgently needed because of the seriousness of the potential
2 food safety hazards, and the seasonal nature of the farmers' markets and other events at which
3 home-canned products may be sold. The normal rulemaking process takes over a year to
4 complete, and cannot be completed in time for this summer's farmers' markets (which begin as
5 early as mid-April or May). Persons who wish to sell home-canned food products must clearly
6 understand the scope of the license exemption, and the food safety standards that must be met in
7 order to qualify.

8 (6) This temporary emergency rule clarifies the scope, application and terms of the new
9 license exemption under Act 101, pending the completion of "permanent" rules by the normal
10 rulemaking process. This emergency rule is needed to protect the public health, safety and
11 welfare, and to facilitate fair and orderly implementation of the new license exemption.

12 (7) This emergency rule also exempts, from food processing plant license requirements
13 under s. 97.29, Stats., a person who collects and processes relatively small quantities of maple
14 sap to produce maple syrup or concentrated maple sap for sale to other processors for further
15 processing. These small-scale processing activities pose minimal food safety risks, and the
16 current license requirement imposes an unnecessary cost and compliance burden. An emergency
17 rule is needed to relieve these cost and compliance burdens for the maple sap collection and
18 processing season that typically begins in March. This emergency rule creates a temporary
19 license exemption, pending the completion of "permanent" rules by the normal rulemaking
20 process. This emergency rule clearly defines the scope, application and terms of the exemption,
21 in order to protect public health, safety and welfare.

22

23

1 **EMERGENCY RULE**

2 **SECTION 1.** ATCP 70.03(7)(e) and (f) and (notes) are created to read:

3 ATCP 70.03(7)(e) The processing of maple sap to produce maple syrup or concentrated
4 maple sap if all of the following apply:

5 1. The processor sells the maple syrup or concentrated maple sap only to other
6 processors for further processing.

7 2. The processor's combined gross receipts from all sales under subd. 1. during the
8 license year total less than \$5,000.

9 3. The processor keeps a written record of every sale under subd. 1., retains that record
10 for at least 2 years, and makes the record available for inspection and copying by the department
11 upon request. The record shall include the name and address of the purchasing processor, the
12 date of sale, the amount of maple syrup or concentrated maple sap sold, and the sale price.

13 4. The processor registers with the department before engaging in any processing
14 activities under this paragraph in any license year ending March 31. A registration expires at the
15 end of the license year. A processor shall register in writing on a form provided by the
16 department, or shall register online at <http://www.datcp.state.wi.us/core/food/food.jsp>. The
17 registration shall include information reasonably required by the department, including the
18 registrant's name and address and information related to the nature, location and scope of the
19 registrant's processing activities and product sales. There is no fee to register, and the registrant
20 is not required to hold a registration certificate from the department.

21 (f) An individual canning a vegetable or fruit product at that individual's home in this
22 state, for retail sale to consumers who take delivery in this state, if all of the following apply:

1 1. The individual sells and personally delivers the canned product to purchasers at a
2 community or social event or farmers' market, or at a roadside stand operated on the farm where
3 the individual resides.

4 2. The canned product has an equilibrium pH value of 4.6 or lower. The individual shall
5 test the first batch of product canned according to each separate recipe used by the individual
6 under this paragraph during each license year, to verify that products canned according to that
7 recipe meet this pH requirement. Each pH test shall be conducted with a pH meter that is
8 properly calibrated for that day's use, except that the test may be conducted with short-range pH
9 paper if the product type normally has a pH of 4.0 or lower and if the range of the pH paper
10 includes a pH of 4.6.

11 3. The individual's gross receipts from all retail sales of canned products under this
12 paragraph during the license year are less than \$5,000. If 2 or more individuals are engaged in
13 canning activities under this paragraph at the same residential address, none of those individuals
14 qualifies for the license exemption under this paragraph unless their combined gross receipts
15 from retail sales of canned products under this paragraph during the license year are less than
16 \$5,000.

17 4. The individual prominently displays a sign at each place of sale stating: "***These***
18 ***canned goods are homemade in a kitchen that has not been subject to state inspection.***"

19 5. Each container of the canned product is labeled with all of the following:

20 a. The name and address of the individual who canned the product.

21 b. The date on which the product was canned.

22 c. The following statement: "***This product was made in a home not subject to state***
23 ***licensing or inspection.***"

1 d. A list of ingredients in descending order of prominence. The list shall include the
2 common name of any ingredient that originates from milk, eggs, fish, crustacean shellfish, tree
3 nuts, wheat, peanuts or soybeans.

4 6. The individual registers with the department before engaging in any home canning
5 activities under this paragraph in any license year ending March 31. A registration expires at the
6 end of the license year. The individual shall register in writing on a form provided by the
7 department, or shall register online at <http://www.datcp.state.wi.us/core/food/food.jsp>. The
8 registration shall include information reasonably required by the department, including the
9 registrant's name and address and information related to the nature, location and scope of the
10 registrant's home canning activities and canned product sales. There is no fee to register, and the
11 registrant is not required to hold a registration certificate from the department.

12 7. The individual has documentation to show that he or she has completed a department-
13 approved acidified food processing course, or has canned the vegetable or fruit product
14 according to a written recipe that reliably ensures the safety of the product.

15 **NOTE:** An acidified food processing course provided or approved by the university of
16 Wisconsin-extension is deemed to be a department-approved course under
17 subd. 7. The department may approve other courses upon request.

18
19 A recipe qualifies under subd. 7. if it is published in the current edition of the *Ball*
20 *Blue Book* or the *Ball Complete Book of Home Preserving*, or is published by the
21 National Center for Home Food Preservation (www.uga.edu/nchfp) or the
22 University of Wisconsin (www.foodsafety.wisc.edu/preservation.html). Other
23 written recipes may qualify if the individual can objectively document that the
24 recipe (including food ingredients and canning procedures) reliably ensures the
25 safety of the canned food product.

26 8. The individual maintains a complete written record of every batch of product canned
27 for sale under this paragraph, including the name of the product, the product recipe including
28 procedures and ingredients, the amount of product canned and sold, the canning date, product

1 sale dates and locations, gross sales receipts, the results of any pH test conducted on product
2 from the batch, and the disposition of any product not sold. The individual shall retain the record
3 for at least 2 years after the individual sells or otherwise disposes of all product from the batch,
4 and shall make that record available to the department for inspection and copying upon request.

5 **NOTE:** The department offers a *Home Processing and Canning Fact Sheet* describing
6 the types of home-canned foods that may be canned for sale under par. (f) without
7 a state food processing plant license. You may obtain a free copy of the fact sheet
8 by contacting the department at the following address:

9
10 Wisconsin Department Agriculture, Trade and Consumer Protection
11 Division of Food Safety
12 PO Box 8911
13 Madison, WI 53708-8911


14
15 The fact sheet is also available at the department's website at
16 <http://www.datcp.state.wi.us/core/food/food.jsp>.

17
18 **SECTION 2. EFFECTIVE DATE:** This emergency rule takes effect upon publication and
19 remains in effect for 150 days. The department may seek to extend this emergency rule as
20 provided in s. 227.24, Stats.

Dated this 14/16 day of April, 2010.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 

 Rodney J. Nilsestuen, Secretary

Wisconsin Department of Agriculture, Trade and Consumer Protection

Business Impact Analysis¹

Rule Subject: Emergency Rule Creating License Exemptions
For Certain Small Food Processors
Adm. Code Reference: ATCP 70
Rules Clearinghouse #: None
DATCP Docket #: 10-R-01

Rule Summary

This temporary emergency rule does all of the following:

- Implements 2009 Wis. Act 101, which exempts certain home canning operations from food processing plant licensing requirements under s. 97.29, Stats. This rule exempts individuals who home-can small amounts of vegetable or fruit products for sale at community or social events, a farmers' market or a farm roadside stand. The emergency rule clarifies the scope, application and terms of the statutory license exemption, and includes food safety requirements to protect the public from serious food safety hazards that may be associated with home canned products.
- Creates a food processing plant license exemption for maple sap processors who process limited amounts of sap to create maple syrup or concentrated maple sap that is sold to other processor for further processing.

The Department of Agriculture, Trade and Consumer Protection (DATCP) is adopting this temporary emergency rule pending the adoption of "permanent" rules on the same matters.

Business Impact

Home Canning License Exemption

This emergency rule will benefit home-canners who wish to sell their home-canned vegetable or fruit products at community or social events, at farmers' markets, or at their own farm roadside stands. Those home canners will no longer need a food processing plant license, provided that the sell less than \$5,000 worth of home-canned product during the license year and meet other requirements for exemption. Exempt home canners will save a \$95 annual license fee, and will be exempt from facility construction and sanitation requirements that apply to licensed food processing plants.

¹ This analysis includes, but is not limited to, a small business analysis ("regulatory flexibility analysis") under ss. 227.114 and 227.19(3)(e), Stats.

License-exempt sales of home-canned products may have an adverse competitive impact on licensed canners who currently supply those sales outlets, although the adverse effect is likely to be minimal. Larger food canning businesses that supply canned food for the mass consumer market will not be significantly affected by this emergency rule.

Maple Sap Processing Exemption

This emergency rule will also benefit persons who process maple sap to produce maple syrup or concentrated maple sap for sale to other processors for further processing. Those persons will no longer need a food processing plant license, provided that they sell less than \$5,000 worth of maple syrup or concentrated maple sap for further processing in the license year and meet other requirements for exemption. Exempt maple sap processors will save a \$95 annual license fee, and will be exempt from facility construction and sanitation requirements that apply to licensed food processing plants.

Accommodation for Small Business

This rule is designed to benefit certain small businesses, including home canners and maple sap processors, by exempting them from food processing plant licensing requirements. This rule will not have any significant adverse impact on small business.

To qualify for a license exemption under this rule, a small business must meet the food safety requirements prescribed in this rule. Those requirements are minimal requirements needed to protect public health and safety. Home-canned products, if not properly canned, may pose serious public health risks including botulism risks.

DATCP will publish fact sheets about this emergency rule, and will make them available to affected small businesses. DATCP will also notify interested small business and food processing associations, and invite their comments on this emergency rule and eventual "permanent" rule.

Conclusion

This rule will benefit certain small businesses, including certain maple sap processors and home canners. This rule will not have a significant adverse effect on small businesses or other business.

Dated this 12th day of March, 2010

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Steven C. Ingham
Steven C. Ingham, Administrator,
Division of Food Safety

Fiscal Estimate — 2001 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number ATCP 70

Subject
 Food Processing Plant License Exemption for Certain Small Food Processors

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

- 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 WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

20.115(1a) and 1(gb)

Assumptions Used in Arriving at Fiscal Estimate

DATCP currently licenses and inspects food processing plants under s. 97.29, Stats., This emergency rule exempts certain persons from the need to obtain a food processing plant license. These persons include: (1) a person who cans or otherwise processes certain homemade foods and sells them at farmers' markets, community or social events but receives no more than \$5,000 in retail sales of these foods in a license year; and (2) a maple syrup processor that sells evaporated maple sap or syrup for further processing and receives no more than \$5,000 in a license year. For purposes of this fiscal estimate, DATCP makes the following assumptions (DATCP does not have any data to document these "best guess" assumptions):

1. About 100 home canners will begin to sell their home-canned products at community or social events or farmers' markets in response to the license exemption under this rule. Few, if any, currently licensed food processing plants will qualify for the exemption or drop their current licenses.

2. About 25 maple sap processors will qualify for a license exemption under this rule. Expected revenue loss is less than \$2,400.

Impact of the Rule on State Government

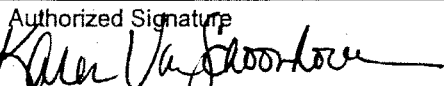
This emergency rule will have minimal fiscal impact on state government. Revenue losses will be less than \$2,400 and will be offset by reduced inspection costs. DATCP will incur some costs to implement the license exemptions and provide public information. DATCP estimates that it will need to reassign 0.1 FTE from other work, and will incur \$1,000 in added expense. DATCP expects to absorb these costs within its current budget.

Impact of the Rule on Local Governments

This rule will not have any fiscal impact on local governments.

Long-Range Fiscal Implications

No significant impact

Prepared By: C. T. Leitzke	Telephone No. 608-224-4711	Agency DATCP
Authorized Signature 	Telephone No. 608 224-4800	Date (mm/dd/ccyy) 3-11-10

Fiscal Estimate Worksheet — 2001 Session
 Detailed Estimate of Annual Fiscal Effect

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number ATCP 70

Subject
 Food Processing Plant License Exemptions for Certain Small Food Processors

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

Initial and annual DATCP administrative cost to implement license exemptions and provide information to processors and local governments. Some potential loss of license fee revenue. Cost and revenue impacts are expected to be negligible, and will be absorbed with existing staff and budget.

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations — Salaries and Fringes		\$ 0	\$ - 0
(FTE Position Changes)		(0.00 FTE)	(- 0.00 FTE)
State Operations — Other Costs		1,000	- 0
Local Assistance		0	- 0
Aids to Individuals or Organizations		0	- 0
Total State Costs by Category		\$	\$ -
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR		\$ 500	\$ - 0
FED		0	- 0
PRO/PRS		500	- 0
SEG/SEG-S		0	- 0
State Revenues	Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes		\$ 0	\$ - 0
GPR Earned		0	- 0
FED		0	- 0
PRO/PRS		0	- 2,400
SEG/SEG-S		0	- 0
Total State Revenues		\$ 0	\$ - 2,400

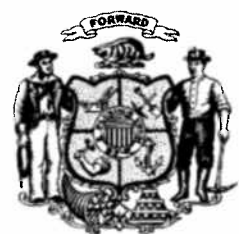
Net Annualized Fiscal Impact

	State	Local
Net Change in Costs	\$ 1,000	\$ 0
Net Change in Revenues	\$ -2	\$ 0

Prepared By: C. T. Leitzke	Telephone No. 608-224-4711	Agency DATCP
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)



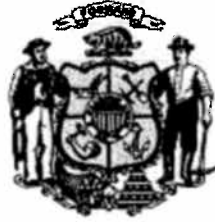
WISCONSIN STATE LEGISLATURE



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REPRESENTATIVE JOSH ZEPNICK
CO-CHAIR

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Wednesday, October 20, 2010

Randy Romanski, Secretary
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708

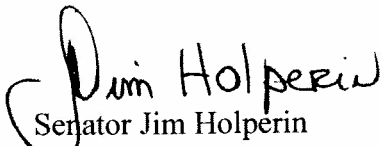
Dear Secretary Romanski:

The Joint Committee for the Review of Administrative Rules met in Executive Session on October 20, 2010 and did not pass the following motion:

Moved by Representative Hubler, seconded by Representative Hebl that the Joint Committee for Review of Administrative Rules, pursuant to s. 227.24 (2), Stats., extend the effective period of an emergency rule of the Department of Agriculture, Trade and Consumer Protection, relating to food processing plant license exemptions for certain home-canners and maple sap processors (EmR1012), for a period of 60 days through January 16, 2011.

Motion Failed 5-5.

Sincerely,


Senator Jim Holperin
Senate Co-Chair



Representative Josh Zepnick
Assembly Co-Chair

cc: Bruce Hoesly, Legislative Reference Bureau
Ron Sklansky, Legislative Council