

Clearinghouse Rule 98-158

STATE OF WISCONSIN

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DEPARTMENT OF AGRICULTURE,
TRADE & CONSUMER PROTECTION

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Clearinghouse Rule
No. 98-158
Docket No. 97-R-10

CERTIFICATION:

I, Ben Brancel, Secretary of the State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, and custodian of the department's official records, hereby certify that the attached rulemaking order to amend ATCP 75.015 (7) (c), Wisconsin Administrative Code, relating to the retail food establishment license exemption for restaurant permit holders was signed and adopted by the department on November 9, 1999.

I further certify that I have compared the attached copy to the original on file in the department, and that the attached copy is a complete and accurate copy of the original.

Signed and sealed this 9th day of November, 1999.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By

Ben Brancel

Ben Brancel, Secretary



1-1-00



State of Wisconsin
Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary



DATE: November 9, 1999

TO: Gary Poulson - Revisor of Statutes Office
131 West Wilson Street, Suite 800

FROM: Ben Brancel, Secretary *Ben Brancel*

SUBJECT: **Clearinghouse Rule No. 98-158, Chapter ATCP 75, Relating to the Retail Food Establishment License Exemption for Restaurant Permit Holders**

The Department of Agriculture, Trade and Consumer Protection hereby submits the following information for filing the above rule.

Final 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 sell only 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 licenses 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.

Gary Poulson
November 9, 1999
Page 2

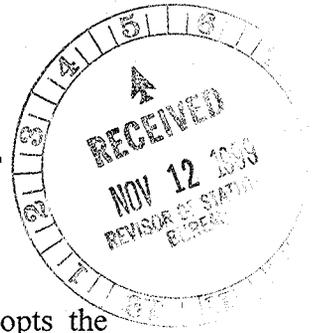
The proposed rule provides specific accommodations to certain small businesses. Restaurant operators who are exempt from a retail food establishment license will no longer have to pay the retail food establishment license fee or be inspected by the DATCP or its local agent.

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.

Comments from Legislative Committees

On May 13, 1999, the department transmitted the above rule for legislative committee review. The rule was assigned to the Senate Committee on Economic Development, Housing and Government Operations on May 18, 1999, and the Assembly Committee on Agriculture on May 24, 1999. No action was taken during the review period by either committee.

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 adopts the
- 2 following order 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. 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:

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.; and

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 12 day of November, 1999.

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

By Ben Brancel
Ben Brancel, Secretary