

99-116b  
13

Docket No. 98-R-15

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

NOTICE OF SUBMISSION OF PROPOSED RULES TO  
PRESIDING OFFICERS OF EACH HOUSE OF THE LEGISLATURE

NOTICE IS HEREBY GIVEN, pursuant to s. 227.19 (2), Stats., that the State of Wisconsin Department of Agriculture, Trade and Consumer Protection is submitting a final draft of proposed Clearinghouse Rule Number 99-116 to the presiding officer of each house for standing committee review. The proposed rule repeals ATCP 77.22 (2) (b); renumbers ATCP 77.22 (2) (c); amends ATCP 77.06 (1) and (2); and creates ATCP 77.06 (1) (a) to (d), relating to certification fees for laboratories engaged in public health testing of milk, water and food.

Dated this 30 day of September, 1999.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By Ben Brancel  
Ben Brancel, Secretary



State of Wisconsin  
Tommy G. Thompson, Governor

---

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

DATE: October 1, 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 *Ben Brancel*  
Department of Agriculture, Trade and Consumer Protection

SUBJECT: **Proposed Rule Relating to Certification Fees for Public Health Laboratories**  
**(Clearinghouse Rule #99-116)**

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

### **Background**

The 1995-97 biennial budget act (1995 Wis. Act 27) transferred administration of Wisconsin's laboratory certification program for milk, water and food laboratories from the department of health and family services to the department of agriculture, trade and consumer protection ("department") effective July 1, 1996.

Under this program, the department is responsible for certifying laboratories that test milk, food or water for compliance with public health standards prescribed by federal, state or local laws. Under 1995 Wis. Act 27, the department's laboratory certification program must be funded by certification fees paid by the certified laboratories. The department must establish these fees by rule.

Under ch. ATCP 77, Wis. Adm. Code, a certified laboratory is currently required to pay an annual certification fee of \$216 for each different type of test performed by the laboratory. If a laboratory applies for certification in mid-year, this fee is prorated by the number of months remaining in the calendar year for which the applicant seeks certification.

Earlier this year, the department did an evaluation of laboratory certification costs and revenues. The department's evaluation resulted in the following findings:

- Current revenues are not adequate to support the certification program.
- The current fee structure does not reflect the different costs entailed in the certification of different types of tests. Certification of milk and food laboratories requires more time than certification of water laboratories. In the case of milk and food laboratories, the department must also certify each individual analyst who performs certified tests. In the case of water laboratories, the department is only required to certify one analyst performing each test.

### **Rule Contents**

This rule modifies current laboratory certification fees. The rule will generate additional revenue to support the laboratory certification program. The current fee structure is amended to account for cost differences in certifying different types of laboratories. Under this rule, a certified laboratory must pay the following fees:

- An annual fee of \$276 for each type of water analysis performed by the laboratory, if the laboratory is engaged in water testing. If a water-testing laboratory applies for certification during the licensing year, the fee for each test is prorated at \$23 per month.
- An annual fee of \$336 for each different type of milk or food analysis performed by the laboratory, if the laboratory is engaged in milk or food testing. If a milk or food testing laboratory applies for certification during the licensing year, the fee for each test is prorated at \$28 per month.
- An annual fee of \$25 for each milk or food analyst employed by the laboratory.
- A fee of \$150 for each requested certification of a new milk or food analyst during the licensing year.

### **Public Hearing**

The department held one hearing on June 18, 1999, to solicit comments on the draft rule. The department conducted the hearing for video-conference participation by persons attending at any of three separate locations (Madison, Green Bay and Eau Claire). The hearing record was held open until June 30, 1999, to receive written comments.

The Wisconsin Cheese Makers Association, the Wisconsin Dairy Products Association and the Wisconsin Federation of Cooperatives testified in support of the rule. They commented that the proposed fee structure was fair and appropriate to cover necessary program costs until other funding resources could be realized. They also recommended periodic reviews of the fee structure and workload efficiency.

A summary of the hearing testimony is attached as *Appendix A*. The department made no substantive changes in the final draft rule.

### **Response to Rules Clearinghouse Comments**

The Legislative Council Rules Clearinghouse made minor editorial comments on the hearing draft rule. The final draft rule incorporates all of the Rules Clearinghouse suggestions.

### **Fiscal Estimate**

This rule increases program revenues for state government to fund the laboratory certification program, as required under s. 93.12, Wis. Stats. Local health departments and other local government units that operate certified laboratories may experience some cost increase, unless they are exempt as department agents under the state retail food inspection program. A fiscal estimate is attached as *Appendix B*.

### **Regulatory Flexibility Analysis**

This rule will have a minor impact on small businesses. Annual laboratory fees will be increased from fees currently charged by DATCP. The proposed rule will have no other impact on small businesses. It will not be necessary for certified laboratories to retain additional professional services to comply with this rule. A final regulatory flexibility analysis ("small business analysis") is attached as *Appendix C*.

## APPENDIX A

### SUMMARY OF HEARING TESTIMONY

#### CHAPTER ATCP 77

#### **CERTIFICATION FEES FOR LABORATORIES ENGAGED IN PUBLIC HEALTH TESTING OF MILK, WATER AND FOOD**

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) held public hearings on June 18, 1999 simultaneously in three locations in the state by video-conferencing. The hearing locations were: Madison, Green Bay and Eau Claire.

A combined total of 3 people attended. One person provided oral testimony and another provided written comments at the hearing. One additional written comment was received prior to the close of the hearing record on June 30, 1999.

#### Testified in Support of the Proposal:

Brad Legreid, Executive Director, Wisconsin Dairy Products Association: We have worked with the department on this fee structure. Will support the department's latest fee proposal as an equitable way of dividing the fees. Will continue working with the department to make sure that the program continues running smoothly

#### Registered and Submitted Written Comments in Support of the Proposal:

John Umhoefer, Wisconsin Cheese Makers Association: Supports the proposed rule relating to laboratory certification fees. We commend the food safety division for hosting informal meetings to discuss the fee structure prior to the rulemaking process. Proposed rule reflects WCMA's request for more equitable increases and division of new fees. WCMA requests periodic reviews of the fee structure and workload to assure the program continues to operate efficiently.

#### Submitted Written Comments in Support of the Proposal:

John Manske, Director of Government Relations, Wisconsin Federation of Cooperatives: Supports sufficient funding for the laboratory certification program. Until such time that other resources join industry fees, fee revenue will have to cover program expenses. Proposed fees are fair and appropriate in that they do not make radical shifts from existing fee levels. Supports efficiencies in the program to the extent that they do not jeopardize the quality of service provided by program staff.

#### Attendee Neither For Nor Against:

Charles Price, Sr. Regulatory Milk Specialist, Food and Drug Administration

**PROPOSED ORDER OF THE STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION  
ADOPTING, AMENDING OR REPEALING RULES**

1 The state of Wisconsin department of agriculture, trade and consumer protection proposes the  
2 following order to repeal ATCP 77.22(2)(b); to renumber ATCP 77.22(2)(c); to amend ATCP  
3 77.06(1) and (2); and to create ATCP 77.06(1)(a) to (d), relating to certification fees for  
4 laboratories engaged in public health testing of milk, water and food.

---

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

Statutory authority: ss. 93.07(1) and 93.12(4) and (7), Stats.

Statutes interpreted: ss. 93.12(4) and (7), Stats.

The 1995-97 biennial budget act, 1995 Wis. Act. 27, transferred administration of Wisconsin's laboratory certification program for milk, food and water laboratories from the department of health and family services to the department of agriculture, trade and consumer protection ("department"), effective July 1, 1996.

Under this program, the department is now responsible for certifying laboratories that test milk, food or water for compliance with public health standards prescribed by federal, state or local laws. Under 1995 Wis. Act 27, the department's public health lab certification program must be funded by certification fees paid by the certified laboratories. The department must establish these fees by rule.

The department adopted the current fees in 1996. Under current rules, a laboratory operator must pay an annual certification fee of \$216 for each test at each laboratory for which the operator is certified. If a laboratory operator performs a test for less than a full calendar year, the annual certification fee is prorated at \$18 per month for each full month of certification for that test. Under current rules, milk and food laboratories pay the same fees as water laboratories.

This rule amends the current fee structure to account for cost differences between different types of laboratories. Certification of milk and food laboratories requires more time than certification of water laboratories. In a milk or food laboratory, the department must also certify each individual analyst who performs any milk or food test. In a water laboratory, the department is

only required to certify one analyst who performs the water test for which the department is certifying the laboratory.

This rule increases lab certification fees to provide sufficient program revenue to fund the lab certification program. It also creates a variable fee schedule that more closely reflects the time required to conduct on-site certification visits in different types of labs and, when required, determine the competency of individual analysts to conduct specific tests.

Under the proposed rule, a certified laboratory must pay the following applicable fees:

- *Water tests.* An annual certification fee of \$276 for each test which detects microbiological contaminants in drinking water. If the department certifies a water laboratory to perform a test for less than a full calendar year, the lab operator must pay a fee of \$23 for each full month of certification.
- *Milk or food tests.* An annual certification fee of \$336 for each milk or food test. If the department certifies a milk or food laboratory to perform a test for less than a full calendar year, the lab operator must pay a fee of \$28 for each full month of certification.
- *Certified analysts who perform milk or food tests.* An annual certification fee of \$25 for each analyst who performs one or more milk or food tests. An analyst's certification is valid for an entire year, even if the analyst is no longer employed at the laboratory where the analyst was employed when the department last granted or renewed the analyst's certification.
- *Additional analyst certification.* A supplemental fee of \$150 for each requested certification of one or more analysts to conduct any milk or food test, if the certification occurs at any time other than during a mandatory inspection.

On June 3, 1999, the department referred to the Legislature a final draft rule repealing and recreating ch. ATCP 77, relating to certification of public health laboratories (Clearinghouse Rule 98-142). This rule amends the text of ch. ATCP 77 as it will appear after that rule is promulgated.

---

1           **SECTION 1.** ATCP 77.06(1) is amended to read:

2           ATCP 77.06(1) FEE AMOUNTS. Except as provided under sub. (2) or (3), an operator  
3 shall pay ~~an annual~~ the following certification fee of \$216 for each test at each laboratory for  
4 ~~which the operator is certified.~~ fees:

5           **SECTION 2.** ATCP 77.06(1)(a) to (d) are created to read:

1           ATCP 77.06(1)(a) *Milk or food tests.* An annual certification fee of \$336 for each test  
2 under s. ATCP 77.02(1) or (2) at each laboratory for which the operator is certified.

3           (b) *Certified analysts; milk or food tests.* An annual certification fee of \$25 for each  
4 analyst who performs one or more tests under s. ATCP 77.02(1) or (2).

5           (c) *Additional analyst certification.* A supplemental fee of \$150 for each requested  
6 certification of one or more analysts to conduct any test under s. ATCP 77.02(1) or (2), if the  
7 certification occurs at any time other than during a mandatory inspection under s. ATCP  
8 77.14(1).

9           (d) *Water tests.* An annual certification fee of \$276 for each test under s. ATCP 77.02(3)  
10 for which the operator is certified.

11           **SECTION 3.** ATCP 77.06(2) is amended to read:

12           ATCP 77.06(2) PARTIAL FEES. If the department certifies an operator of a milk or food  
13 laboratory to perform a test for less than a full calendar year, the operator shall pay a fee of \$18  
14 \$28 for each full month of certification for that test. If the department certifies an operator of a  
15 water laboratory to perform a test for less than a full calendar year, the operator shall pay a fee of  
16 \$23 for each full month of certification for that test.

17           **SECTION 4.** ATCP 77.22(2)(b) is repealed.

18           **SECTION 5.** ATCP 77.22(2)(c) is renumbered (2)(b).



1           **SECTION 6. Effective date.** The rules contained in this order shall take effect on the  
2 first day of the month following publication in the Wisconsin administrative register, as provided  
3 under s. 227.22(2)(intro.), Stats.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By \_\_\_\_\_  
Ben Brancel, Secretary

**APPENDIX B**

**1997 Session**

**FISCAL ESTIMATE**

DOA-2048 (R 10/94)

ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

LRB or Bill No /Adm Rule No.  
ATCP 77

Amendment No. (If Applicable)

**Subject**

Laboratory Certification Fees

**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 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(1)(g)

**Assumptions Used in Arriving at Fiscal Estimate**

The proposed rule increases fees for laboratory certification to offset the costs of this program as required in s. 93.12, Wis. Stats.

The Department certifies approximately 180 milk, food and water laboratories in Wisconsin. Currently, the laboratory certification program is underfunded. Portions of this program are mandatory. The Federal Pasteurized Milk Ordinance (PMO) requires laboratories examining milk and water for the grade A dairy industry to be certified. In order for grade A dairy plants to ship fluid milk and milk products out of state, the milk they process and the water they use must be examined at a laboratory certified under this program. About 85% of milk produced in Wisconsin is shipped out of state.

Certain local health departments and local units of government operate certified laboratories. These may be milk and water laboratories or water only laboratories. These are currently certified by the Department. These laboratories currently pay laboratory certification fees unless they are exempted from paying fees by being an agent of the Department for the retail food inspection program.

As stated above, this program is underfunded.

- A. During the current fiscal year the Department collected \$123,000.
- B. The program is authorized 2.5 FTE's requiring \$160,000 annual funding.
- C. Proposed fees will likely generate \$182,000 annually, which should support the program for four (4) years without any additional fee increases.

The proposed annual fee schedule is as follows:

- A. Milk or food test - \$336
- B. Water test - \$276
- C. Analyst fee - \$ 25
- D. New analyst fee - \$150

**Long - Range Fiscal Implications**

None

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

DATCP - C. T. Leitzke, 608/224-4711

Authorized Signature/Telephone No.

*Barbara Knapp*  
 Barbara Knapp (608) 224-4746

Date

March 12, 1999

**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 77

**Subject**

Laboratory Certification Fees

**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

59,000

-

SEG/SEG-S

-

**TOTAL State Revenues**

\$ 59,000

\$ -

**NET ANNUALIZED FISCAL IMPACT**

STATE

LOCAL

NET CHANGE IN COSTS

\$ \_\_\_\_\_

\$ 5400

NET CHANGE IN REVENUES

\$ 59000

\$ \_\_\_\_\_

Agency Prepared by: (Name & Phone No.)

Authorized Signature/Telephone No.

Date

DATCP  
C. T. Leitzke, 608/224-4711

*Barbara Knapp*  
Barbara Knapp (608) 224-4746

3/12/99

APPENDIX C

Final Regulatory Flexibility Analysis

Proposed ATCP 77, Wis. Adm. Code

LABORATORY CERTIFICATION FEES

This rule establishes fees for certification of laboratories examining milk, food or water for the protection of public health. The 1995-97 biennial budget act transferred much of the administration of Wisconsin's laboratory certification program from the Department of Health and Family Services (DHFS) to the Department of Agriculture, Trade and Consumer Protection (DATCP). Shortly after that transfer, DATCP proposed rules establishing fees to offset the costs of certification of laboratories as required in s. 93.12, Wis. Stats. These fees are based on recovering 100% of the costs of this program from the industry affected by the program. Those rules also required the DATCP to evaluate laboratory certification fees by FY 2000 and make appropriate adjustments to the fees.

The approximately 180 laboratories currently certified range from small, one person laboratories to large facilities with dozens of analysts. This rule will have a fiscal impact on "small businesses" as defined in s. 227.114(1)(a) Wis. Stats. Annual laboratory fees are increased as compared to the \$216 per test fee currently charged by DATCP. This fee increase is due to the fact that the laboratory certification program is inadequately funded. Inadequate funding occurs because the number of laboratories requiring certification has decreased. Costs of the program have actually been reduced in the past two years by reducing program support activities.

The proposed rule will increase costs for laboratories that test milk, food or water. These laboratories currently pay a fee of \$216 per test. Fees under the proposed rule range from \$336 for one milk or food test to \$3,360 for 10 tests. Fees for water laboratories under the proposed rule range from \$276 for one test to \$1104 for four tests.

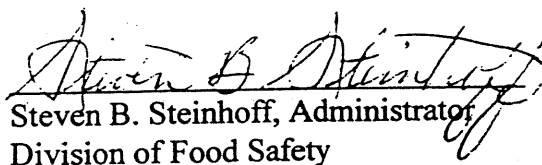
The proposed rule will impact local government water laboratories. These laboratories currently pay fees of \$216 per test, based on the number of tests they run. Under the proposed rule, these laboratories would pay a \$276 fee for each test.

The proposed rule has no other impact on small businesses. It would not be necessary for certified laboratories to retain additional professional services such as accounting or legal services to comply with this rule.

Dated this 27<sup>th</sup> day of July, 1999.

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

## MEMO

TO: Members of the Assembly Agriculture Committee

FROM: Representative Al Ott, Chair

DATE: October 12, 1999

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

Clearinghouse Rule 99-116

Relating to certification fees for laboratories engaged in public health testing of milk, water and food. Submitted by the Department of Agriculture, Trade and Consumer Protection.

ARO:ln  
Attach.