

WISCONSIN STATE  
LEGISLATURE  
COMMITTEE HEARING  
RECORDS

**2005-06**

(session year)

**Senate**

(Assembly, Senate or Joint)

**Committee on  
Agriculture and  
Insurance  
(SC-AI)**

File Naming Example:

Record of Comm. Proceedings ... RCP

- > 05hr\_AC-Ed\_RCP\_pt01a
- > 05hr\_AC-Ed\_RCP\_pt01b
- > 05hr\_AC-Ed\_RCP\_pt02

*Published Documents*

> Committee Hearings ... CH (Public Hearing Announcements)

> \*\*

> Committee Reports ... CR

> \*\*

> Executive Sessions ... ES

> \*\*

> Record of Comm. Proceedings ... RCP

> \*\*

*Information Collected For Or  
Against Proposal*

> Appointments ... Appt

> \*\*

> Clearinghouse Rules ... CRule

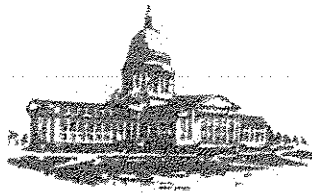
**05hr\_CRule\_05-044\_SC-AI\_pt01**

> Hearing Records ... HR (bills and resolutions)

> \*\*

> Miscellaneous ... Misc

> \*\*



Al Ott

State Representative • 3rd Assembly District

September 29, 2005

Rod Nilsestuen  
Secretary, DATCP  
P.O. Box 8911  
Madison, WI 53708-8911

**SUBJECT: Meeting Request on Clearinghouse Rule 05-044**

Dear Secretary Nilsestuen,

By this letter, I am requesting a meeting with the Department regarding the following clearinghouse rule:

05-044	Relating to Food and Dairy License and Reinspection Fees
--------	--

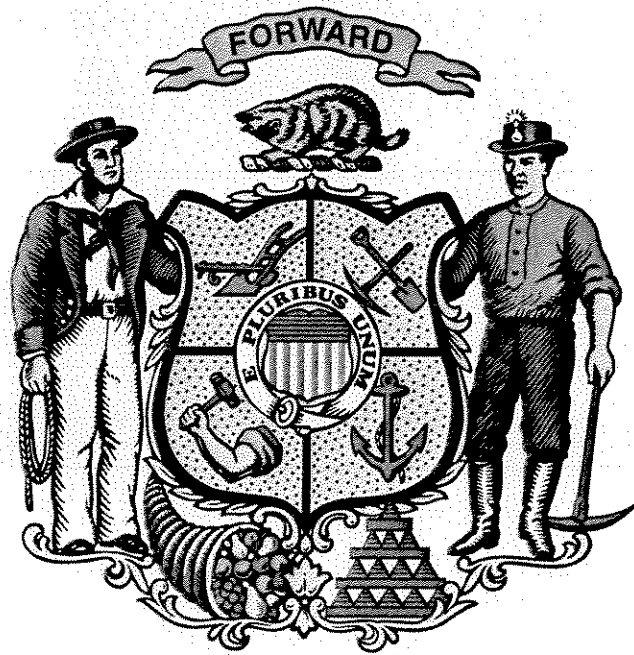
Pursuant to s. 227.19 (4)(b)1. a., this will extend our review period another 30 days from today's date. The extra time to consider this rule will be very helpful.

I will contact your office to schedule this meeting.

Sincerely,

Al Ott  
State Representative  
Chair, Assembly Committee on Agriculture

CC: Mark Patronsky – Legislative Council, 401 East Main  
Kay Inabet – Chief Clerk, 208 Risser Justice Center  
Senator Dan Kapanke – 104 South, State Capitol



DATCP  
↓

10-11-05

## Response to Questions Posed by the Wisconsin Grocers Association

This is a response to the Wisconsin Grocers Association's October 6 request for a variety of information about the operation and management of the Department's retail food safety and inspection program. We have done our best to provide requested information about cost and value of the Department's retail food safety program within the short time frame between your request and today's meeting. In some cases the data requested is not available or could not be compiled as requested in the time provided.

**14. Data comparing retail program revenue and effort is displayed in Attachment 1.** Since the pivotal question appears to be, do WGA members get regulatory food safety services in proportion to the fees paid by food retailers, this response has been moved to the front of the line.

### 1. During the past 8 years the retail food safety and inspection has changed and improved in the following ways.

- Increased in size both at the state and local agent levels
  - In 1998, there were 4571 state licensed establishments
  - In 1998, there were 2,932 agent-licensed retail establishments
  - The number of state-licensed establishments has increased by 6.5%
  - Currently there are 4871 state-licensed retail establishments
  - The number of local retail agents has increased from 15 to 27
  - The number of agent-licensed establishments has increased by 42%
  - Currently there are 4153 agent-licensed retail establishments
- Become increasingly risk-based.. Food safety inspectors are expected to know and communicate both the content and rationale for food safety requirements. Food safety inspection staff focus on identifying and assisting the retail operator to control risk factors that have the potential to cause illness. These risk factors were defined by the Centers for Disease Control and Prevention.
- Collaborated with the Department of Health and Family Services to revise statutes and administrative rules to eliminate the duplication of licensing for retail firms that sell meals.
- Published the first Wisconsin Food Code as an annex to ATCP 75. This Code is used by both DHFS and WDATCP. The Wisconsin Food Code is modeled after the FDA Food Code. This code focuses on food safety science and procedure rather than sanitary codes. The retail food industry actively participates in the process to revise and update this code via the Conference of Food Protection (CFP).

- Improved program consistency:
  - Inspection program management was centralized approximately five years ago.
  - Committee formed to address food code interpretations. This committee is comprised of DATCP, DHFS, and agent health department representatives
  - Retail Inspection Policy completed
  - State and agent inspection staff standardized to improve skill and uniformity
  - ORA-U training
  
- Improved access to information for staff via a computer reference package, fact sheets, and an electronic library
  
- Improved support and oversight of local health departments that contract to deliver retail inspection services as agents of DATCP. Food Scientists working in the Division of Food safety spend a majority of their time working in the retail program and providing support to local agent health departments in activities such as training, standards, interpretations.
  
- Gathered and compiled Risk Factor Data from every retail inspection to determine the number and frequency of occurrence of the six CDC risk factors.
  
- Developed and implemented a policy to improve the tracking and resolution of consumer complaints
  
- In the process of implementing an electronic system to move inspection and licensing information to and from inspection staff (i.e., AMANDA Mobile)
  
- Provide retail training to inspection staff via an interactive web-based training system sponsored by the FDA (i.e., ORA-U)
  
- Provided training for industry in settings that ranged from 1-on-1 to seminars for specific companies or specific departments within a company (i.e., deli managers)
  
- Implemented a follow up inspection system to address specific, isolated problems within a retail store. Inspectors work with store operators to have the operator take control of resolving specific problems and then perform a limited reinspection to ensure the permanent correction. No reinspection fee is charged for verification of these specific corrections. The chart that follows illustrates the use of this follow up system for the most recent 12 month period.

Type of Firm	Average Time of Inspection in hours	Number of Follow-ups
Large PHF Processing	2.91	28
Sm. PHF Processing	2.24	84
Large NPHF Processing	1.46	16
Small Processing	1.39	48
No Processing	1.33	6

**2. The program objective is to routinely inspect retail stores that present a higher potential food safety risk more often than stores that present a lower risk.** Potential risk is related to the product being processed and the process itself. In general, perishable foods that undergo a lot of processing or handling fall into higher risk categories. We have assigned target frequencies to retail categories as follows:

Large stores processing potentially hazardous food	8 months
Small stores processing potentially hazardous food	8 months
Very small stores processing potentially hazardous food	12 months
Large stores processing non-potentially hazardous food	12 months
Small stores processing non-potentially hazardous food	12 months
Stores that do not process	24 months

Data about current retail food inspection workload and a partial comparison to similar workload information for the year 2001 is displayed in Attachment 2.

**3. Data about retail inspection completion is displayed in Attachment 3.**

**4. The dairy inspection overdue rate is small.**

**5. Answered in responses 2 and 3**

**6. Answered in response 1**

**7. Inspection workloads are managed in an integrated way across programs.** Food Safety inspectors are assigned geographically and are responsible for completing assigned work in all food and dairy programs located in their assigned areas. When vacancies occur, we temporarily reassign work until the vacancy is filled. Work that is temporarily reassigned is integrated into the work plans by the inspector receiving the work.

**8. Answered in response 1**

9. **Program revenue accounts have a spending cap/spending authority.**
10. **Examples food fact sheets are web references are attached (Attachments 4 - 6) and a copy of the division's retail policy is available for review.**
11. **We do not routinely e-mail information to retailers.**
12. **The retail advisory council has served a useful purpose.** We have made good progress in discussing resolving a couple of the issues that brought us together. The meeting schedule for this council has become intermittent. Requests to cancel, postpone, and reschedule have originated about equally from grocer representatives or Division of Food Safety staff. All of this scheduling and rescheduling is a function of overly packed schedules and competing priorities for all.
13. **The propose fee increase is a cost to continue proposal.** Though this program has been significantly improved over the past 8 years, fee increases are proposed to maintain a program in existence not begin a new program or fund a specifically identified new service or activity

## Time and Effort - Food Programs

### Hours Worked in Food and Dairy Programs FY04

Food Hours	99,589	34%
Dairy Hours	195,164	66%
		100%

### Fee percentages - Fees collected in FY04

Overall Food Fees	\$ 1,070,748	33%
Overall Dairy Fees	\$ 2,131,981	67%
		100%

License Type	Direct Hours	*Overall Total Hours	Overall % of Effort	Fees Paid	% of Overall Fees Paid
Retail	19,222	67,223	23.6%	\$ 618,918	19.32%
Warehouses	2,026	7,084	2.5%	\$ 76,251	2.38%



## Information about Overdue Retail Inspections

<b>Firm Type</b>	<b># of Firms</b>	<b># Over due</b>	<b>% Over due</b>
Large PH	382	113	29%
Small PH	1381	384	28%
Large NPH	416	76	18%
Very Small PH	242	67	27%
Very Small NPH	1100	396	36%
Not Engaged in Processing	1350	327	24%
	4871	1363	28%

The overdue rate is inflated at this moment in time primarily because the Bureau of Food Safety and Inspection has 6 fewer inspectors than we did at this time last year. The division intends to fill 3 of these vacancies. Also, as much as possible the bureau will improve management of overdue inspections so that if inspections that go overdue are in the lower risk categories.

Retail Food Program - Workload Information

Current

License Category	Number of Businesses	Total Routine Inspections per Year	Average Time per Inspection	Total Time	Number of Inspectors As FTE's	High Public Health Importance	Comments
Retail - Large PH	382	573	7.460	4,291.8	3.64	YES	
Retail - Small PH	1381	2072	3.560	7,417.8	6.29	YES	
Retail - Large NPH	416	416	2.750	1,144.0	0.97	YES	
Retail - Very Small	1342	416	2.010	836.2	0.71	YES	
Retail - No Process	1350	675	1.560	1,053.0	0.89	NO	
Retail - Agent Health Depis	4153						Work done under contract

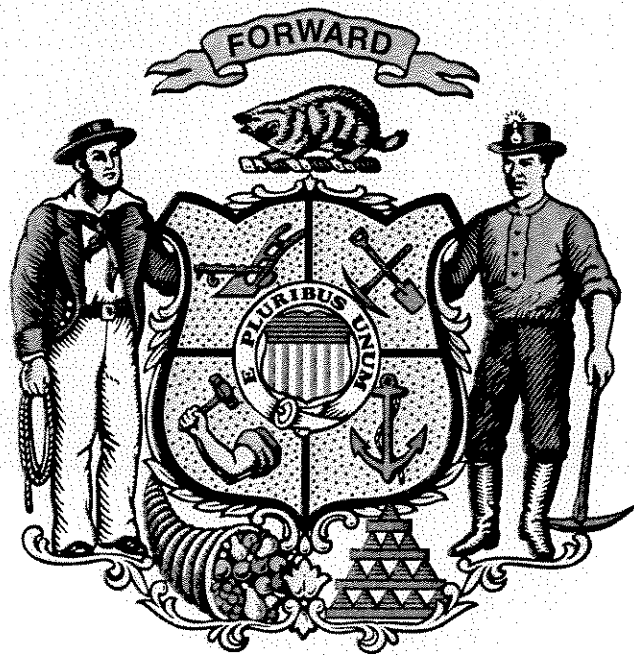
2001

License Category	Number of Businesses	Total Routine Inspections per Year	Average Time per Inspection	Total Time	Number of Inspectors As FTE's	High Public Health Importance	Comments
Retail - Large PH			6.520	-	-	YES	
Retail - Small PH			3.230	-	-	YES	
Retail - Large NPH			2.730	-	-	YES	
Retail - vary small			2.160	-	-	YES	
Retail - No Process			1.690	-	-	NO	
Retail - Agent Health Depis							Work done under contract

This data shows an increase in the average time of inspection since 2001 in Large PHF Retail Processing, Small PHF Retail Processing, and Large NPHF retail processing establishments

This data shows the current FTE's allotted to ROUTINE retail food inspection based on our inspection goals for each type of inspection.

Not included in this data is the time allotted for retail training, sampling, reinspections, follow up inspections, policy development, industry meetings, administrative conferences, supervisory follow-up, Standardization or administrative paperwork related to the retail program.





Wisconsin Federation of Co-ops • 131 West Wilson Street, Suite 400, Madison, WI 53703 • (608)258-4400 • (608)258-4407 • wfcmac.coop

DATE: October 13, 2005

TO: Members, Assembly Committee on Agriculture

FROM: Bill Oemichen, President & CEO

A handwritten signature in black ink, appearing to read "Bill Oemichen", is written over the printed name in the "FROM:" field.

**RE: Comments of the Wisconsin Federation of Cooperatives on the Rules Related to Dairy and Food License Fees in ATCP Chapters 59, 60, 69, 70, 71, 75, 77, 80, 81, 82 and 85 (Clearinghouse Rule 05-044)**

Chairperson Ott and Committee Members:

Thank you for scheduling this hearing and allowing the Wisconsin Federation of Cooperatives (WFC) and others the opportunity to present testimony on the rule changes before you in Clearinghouse Rule 05-044, which govern Dairy and Food License fees. As you know, we represent dairy cooperatives that handle more than 85% of the milk produced and marketed in this state and would be significant payers of the fee increases being proposed by the Department.

We have been encouraged by discussions that have occurred between stakeholders and DATCP under your guidance, Mr. Chairman. We understand that DATCP has retracted their proposal to create a Chapter ATCP 59, which would create an annual license fee adjustment mechanism that would avoid full rule-making and the watchful oversight of the Legislature. We were unaware of support for that proposal outside of DATCP and we applaud the apparent decision to eliminate it from the rule package.

As I stated when I addressed the subject at the June 17 DATCP rule hearing, we believe DATCP is currently following the correct process for considering fee increases, which includes the opportunity for WFC and our members to testify at hearings such as the one being held today. We certainly appreciate the Department's interest in a more expedited process that could help address the problem of raids. However, the revised process would not guarantee the maximum public input that is necessary where substantial changes are being proposed in DATCP rules.

Second, WFC is concerned about the level of fee increases being proposed, especially the fee increase being proposed for Grade A Milk Procurement that would result in an increase of 62.5% when instituted effective January 1, 2006. Overall, the dairy industry would pay an additional \$934,810 of the total \$1.2 million in projected fee increases in total for the Food Safety Division. These substantial fee increases will make the Wisconsin dairy industry less competitive.

Memo to Chairperson Al Ott and Committee Members

October 13, 2005

Page Two

WFC supports the proposed Grade A Milk Procurement fee increase from \$.006 to \$.008 for the Milk Certification Program. The activities financed by the Milk Certification Program are important to our members and we know DATCP was not provided GPR funding when this program was transferred to it from the Department of Health and Family Services.

It is our understanding that the further proposed increase of the Grade A Milk Procurement fee to \$.0096 may be delayed in whole or in part and the ability to do that appears to be supported by the September 23, 2005, Legislative Fiscal Bureau memo to Chairman Ott. We would argue that the food regulation appropriation account be maintained with a lean, yet positive, balance. LFB's projections suggest that the "second part" of the Grade A Milk Procurement fee could be delayed until July 1, 2007. That would help alleviate some of the financial burden that would be felt by our members and the rest of our state's dairy industry.

Accordingly, we ask that this committee request modifications in the rule now before you by asking DATCP to eliminate the proposed new ATCP Chapter 59 and to phase-in the Grade A Procurement fee beyond that needed to fund the Milk Certification Program.

Finally, we strongly support DATCP's intent in seeking substantial changes to the Pasteurized Milk Ordinance (PMO) to allow a more risk-based inspection system on dairy farms. That is a separate proceeding that will demand a unified voice of industry and state government. But, this is an important project that could lead to program efficiencies that also should deliver a positive outcome for long-term program staffing and fee needs.

Thank you again for the opportunity to present these remarks today.



**Testimony of the Wisconsin Cheese Makers Association  
October 13, 2005  
Wisconsin Assembly Agriculture Committee  
Re: Food and Dairy License Fees Rule**

Wisconsin Cheese Makers Association represents 86 manufacturers and marketers of cheese, butter and whey operating 104 cheese manufacturing and processing facilities. Our members – buyers of Wisconsin fresh farm milk – face the majority of the proposed fee increases.

Since January 2005, when the Wisconsin Board of Agriculture, Trade and Consumer Protection first looked at a hearing draft of the proposed fee increases, WCMA has consistently delivered two key messages:

1. The automated fee adjusting system in ATCP 59 has numerous flaws and should be abandoned.
2. The \$934,000 fee increase that dairy processors alone will face is simply too large for industry to assume all at once and creates budget surpluses for the food safety division's fund that are in danger of being lapsed by state budget drafters.

WCMA repeated these two concerns before the Board of Agriculture in April and in hearing testimony in June of 2005.

Our membership is pleased that discussions between the WDATCP leadership, the food and dairy industries and Chairman Al Ott have led to agreements that will result in the withdrawal of the automated fee adjustor and a phase-in of fee increases for industry.

It is worth noting that Wisconsin Cheese Makers Association sought a four-year phase of these new fees. We never asked WDATCP to reduce the new fee dollars it requested. Our Association only asked the department to bring on the new fees over time so the increase could be absorbed by our cash-strapped manufacturers. To complete the long journey that this fee increase proposal has taken, WCMA agreed to shorten this phase-in to 18 months, rather than four years.

### **The Cheese Industry Needs Fees Phased In Slowly**

The cheese manufacturing industry is currently facing serious economic pressure. In recent weeks, the University of Wisconsin's agricultural economists have documented what my members have relayed to our Association anecdotally. Cheese manufacturer margins, that is, the difference between the price paid for milk and the price earned for cheese are tighter than they have been in years, and for the most recent eighteen months have been lower than what the government considers a baseline manufacturing margin.

In 2002 and 2003, subtracting the cost of Class III milk (milk for cheesemaking) from the cheese price left cheesemakers with an average of \$0.14 and \$0.16 per pound, respectively. In 2004, the money left after paying for the cost of milk fell to an average of \$0.10 and in 2005 the margin is \$0.09. These margins are far less than the cost of producing cheese, which the U.S. Department of Agriculture sets at \$0.165.

8030 Excelsior Drive  
Suite 305  
Madison, WI 53717-1950

Phone  
(608) 828-4550

Fax  
(608) 828-4551

E-mail  
office@wischeesemakersassn.org

Website  
www.wischeesemakersassn.org

This collapse of margins does not include additional costs. The cost of packaging material, labor, fuel and hauling have all increased (some dramatically) since USDA set the make allowance for cheese at \$0.165 in 2000.

The Assembly Agriculture Committee cannot solve this dilemma. In fact Agri-Mark, the major cheese manufacturing cooperative in New England, has led the way asking for USDA to call an emergency hearing to review the manufacturing allowances for cheese and whey.

What this committee can do is urge the food safety division in the strongest possible way to phase in these fee increases over time to reduce their impact on dairy plants' bottom lines.

We appreciate that Chairman Ott has heard industry's concerns regarding the fees and gained an agreement that the fees should be phased in, rather than initiated on January 1.

Our deep concerns for the concept of the automated fee adjustor system proposed at a new ATCP Chapter 59 appear below.

### **The Automated Fee Adjustor Concept is Deeply Flawed**

In the final rule under review by this committee, WDATCP offers an automated fee adjustor system as a means to keep surpluses in the food safety fund relatively low (about \$500,000) to avoid lapses by state budget writers. But this single justification is flawed, and the program has several other serious flaws.

These are the flaws:

- a. State budget writers could continue to lapse this fund, even if annual surpluses are lowered to about \$500,000. For example, in this year's biennial budget, the Governor proposed lapsing \$250,000 from the WDATCP weights & measures inspection fund and \$50,000 from the WDATCP plant protection fund. No fund, no matter how small, is ever safe.
- b. The proposal would end the type of public hearing we are engaged in today. Fee increases within several regulations could be increased without industry, dairy farmers and the general public addressing these increases in public hearings. Public hearings are a pillar of democracy, a tradition in Wisconsin, and a necessary tool to provide the flow of information and ideas between state government and the people of Wisconsin. The importance of public input cannot be overstated.
- c. The proposal would allow changes in fees without review by the state legislature. Every Wisconsin rule change is put before our legislators for a 30-day "passive review." The legislature can act and direct an agency to change its proposed rule, or the legislature can choose not to act and allow the regulations to become final. This is another key "check and balance" in Wisconsin that is lost in the proposed ATCP 59.
- d. Almost certainly, public dollars for the food safety division would decline if ATCP 59 is enacted. Public tax dollars now fund only about 40 percent of the food safety division, down from 60 percent as recently as 1996. Budget drafters could confidently lower public tax dollars for the food safety division knowing that any loss of funding would automatically be covered by fee increases. This is the wrong direction for funding. Consumers, not industry, should control a majority position in the funding of food safety regulators.
- e. The proposed plan to automate fee increases has no caps and never ends. Each year that the division spends its funds, another fee increase would be set before the Board of Agriculture. The food safety division would face no incentive to reduce workforce, impose efficiencies or modernize programs. This is an open checkbook for the food safety division.

## WCMA PERSPECTIVES



**JOHN UMHOEFER**

Executive Director  
Wisconsin Cheese Makers Association  
608-828-4550  
jumhoefer@wischeesemakersassn.org

### Class III Price Squeeze

Cheese manufacturers across the nation are feeling the squeeze of painfully low margins.

Simply stated, the government formula for Class III cheesemilk allows high butter and whey prices to lift the price of milk for cheesemaking, even if cheese prices are flat. That situation has occurred during the past 18 months, and the rising price of fuel and milk hauling has added to the red ink for cheese makers.

Last week, Agri-Mark Inc. called for emergency hearings on the Class III and IV milk prices. Agri-Mark, which includes cheese makers at Cabot Creamery and McCadam Cheese, wants USDA to address the out-dated make allowances for cheese, butter, dry whey and nonfat dry milk. They also point out that the value of cream in the USDA's protein price formula for Class III milk is based on the Grade AA butter price, rather than the price commonly fetched for whey cream.

Since January 2004, the NASS AA butter price relative to the NASS cheese price has been high, resulting in a Class III price for cheesemilk that is higher than the old (pre-April 2003) Class III price formula would have produced. USDA implemented its "final decision" on the formulas in 2003, kick-

ing off a new Class III price formula that has lived up to predictions it would raise milk prices.

In 2004, the new Class III price averaged \$0.37/cwt. higher than the old Class III formula would have produced. So far this year, the new formula price is \$0.24/cwt. higher than what the old formula would have yielded.

---

**While dairy producers benefit from strong milk prices, the health of dairy processors needs to be part of USDA's strategic thinking.**

---

One reason is that the new formula raised the value of protein in the Class III price. USDA had a subtractor in the protein formula to remove the value of butterfat from the protein equation, but USDA weakened the subtractor and the value of protein rose. (These formulas are beautifully complicated.)

Strong markets for dry whey also lift the Class III milk price because the price of dry whey is used to determine the value of "other solids" in the Class III cheesemilk price.

The higher value of butter and

whey relative to the cheese price means that cheese manufacturers pay more for milk even if the cheese market is flat. A simple look at the cheese price relative to the Class III milk price illustrates today's tight margins.

In 2002 and 2003, subtracting the cost of Class III milk from the cheese price left cheese makers with \$0.14 and \$0.16 per pound, respectively. In 2004 the money left after paying for the cost of milk fell to \$0.10 and in 2005 the margin is \$0.09. These margins are far less than the cost of producing cheese.

This collapse of margins does not include additional costs. Packaging material, labor, fuel and hauling have all increased (some dramatically) since USDA set the make allowance for cheese at \$0.165 in 2001.

While dairy producers benefit from strong milk prices, the health of dairy processors needs to be part of USDA's strategic thinking. Elements of the Class III milk price formula have stimulated a milk price higher (perhaps) than government economists anticipated. An insufficient amount of money is left to cover the cost of manufacture.

Ironically, the most logical solution — raise your cheese price! — is no relief. Higher cheese prices feed directly into the Class III price formula and raise the price paid to farmers.

The remaining avenues to profitability, such as developing value-added cheeses and investing in higher value whey processing, require capital, labor and research and development. Crushed by high milk costs, these healthy investments are pushed off into an uncertain future. •

**Cheese Reporter - Providing the most timely, indepth news of industry, as well as the latest technological advances in milk processing.**

  
**CHEESE REPORTER**



**1 year subscription (52 issues)**

\_\_\_\_\_ \$100 (2nd Class)

\_\_\_\_\_ \$100 (E-mail)

Oct  
ers  
halt  
rece  
thro  
Mil  
stat  
Cou

St. I  
"Ha  
new  
have  
flak  
qual  
duce  
of S  
slow  
firm  
stru

Oct  
line  
hitti  
this  
shar  
mill  
of sl  
ers  
ket  
Cla  
new  
try  
test

Mr.  
John  
Wis  
Fac  
WC  
195  
Cha

Oct  
bee



Good Morning. My name is Michelle Kussow and I am the Vice President of Government Affairs & Communications for the Wisconsin Grocers Association. The WGA represents more than 1,000 independent grocers, retail grocery chain stores, warehouses and distributors, convenience stores, food brokers, suppliers and wholesalers.

I am here to ask this committee to reject clearinghouse rule 05-044 and to support the motion offered by Chairman Ott directing the Department to make modifications to the rule on items relating to the retail food license fees. I also want to thank Rep. Ott and Erin for the numerous meetings they have arranged to discuss this issue with us individually, and together with the dairy industry and the Department of Agriculture.

The WGA first met with Secretary Nilsestuen to discuss the proposed fee increases last October. The next opportunity we had to discuss the fee increase was at the hearing this summer. During both of these occasions, we vehemently opposed the fee increases and said that the only way our retailers can accept a fee increase is if they get something in return—whether that would be increased service or additional education components, etc.

Without going into great detail, I would like to tell you the key reasons that we oppose fee increases for retail food establishment license fees:

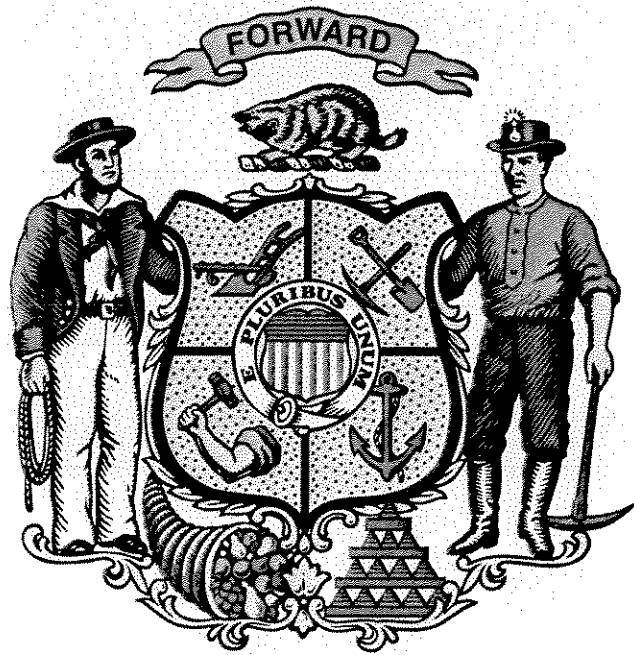
1. We don't believe that the argument that there have not been fee increases in 8 years is sufficient.
2. The fee increase is a short term fix to a long-term problem. We believe the Department should do what most businesses do when expenses and revenues are not in line—become more efficient by understanding what their customers want and need.
3. We will not be receiving additional services for our fees. Even the Fiscal Bureau reported that the fees are to maintain the program at its current level.
4. This program, including dairy, is being penalized for the \$1.2 million lapse in funds. If the Department was taking in enough money to create a surplus in past years—why can they not continue to operate using the additional dollars that were excess in past years?
5. The division is currently responsible for both dairy and retail. The Department readily admits that most of their time and effort goes to dairy due to federal inspection mandates. Therefore, retail has been subsidizing the dairy program and the Department misses at least one third of the goals set to do retail inspections.
6. Food Safety is a high priority for all grocery stores. No one wants their customers to get sick. Because of this, retailers spend thousands of dollars themselves ensuring safe food programs. Fees paid to DATCP are on top of these efforts.

For all of these reasons, we encourage the committee to oppose the rule in its current form and support the motion sending DATCP back to the drawing table. As we've discussed with Chairman Ott, we are hoping the Department comes back with a rule that includes all of the following:

- An acceptable increase which fairly represents the amount of money needed to fund inspections only and which is an accurate proportion of retail inspections vs. dairy inspections.
- A commitment to work with the industry to develop a food safety inspection process that streamlines DATCP procedures by recognizing the systems many grocers already have in place.
- Additional services for grocers—either in reducing the inspections that are overdue or in offering additional education requirements such as food safety certification courses or train the trainer courses for retail.
- A yearly report to the Assembly and Senate Ag. Committees that includes a breakout and analysis of inspections—for example, the inspection goal vs. reality for the year.
- An analysis of the pathogen sampling program to determine whether it is scientifically and economically necessary in light of the financial status and higher priorities of the department.
- A study determining the efficiency of the division with specific attention paid to dedicated inspectors vs. the current inspectors responsible for dairy and food. The grocery industry in Wisconsin has changed considerably in the last 20 years and the Department could save a lot of money capitalizing on these changes.

As I conclude, I would like to once again thank Chairman Ott and this committee for returning this clearinghouse to DATCP and requiring them to take a serious look at how the Department is run and how they can save retailers, farmers and taxpayers valuable money.

Thank you for your time. If you have any questions, I would be happy to answer them.





## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

October 18, 2005

TO: Representative Alvin Ott  
Room 323 North, State Capitol

FROM: Chris Pollek, Fiscal Analyst

SUBJECT: DATCP Food and Dairy Fee Rule

The following is provided in response to your request for information on a proposed administrative rule affecting food and dairy fees collected by the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP). In particular, you asked that we estimate the effects of several alternatives where the amounts and timing of the fee increases in the proposed rule would be modified.

DATCP administers the state's food safety program. This program is designed to safeguard public health and ensure a safe and wholesome food supply. It also facilitates the sale of Wisconsin dairy and food products in interstate and international markets. The program is funded, in part, by dairy and food license fees. DATCP's food regulation program revenue appropriation account receives these food and dairy fees, and uses the revenues for related food and dairy inspection and licensing activities. For 2005-06, DATCP's food regulation appropriation account is authorized expenditures of \$4,450,200 PR and 58.59 positions. Table 1 depicts an estimated account balance for DATCP's food regulation appropriation account for the current and next biennia. Expenditures shown after fiscal year 2005-06 are based on the authorized levels for the appropriation (\$4,450,200 PR in 2005-06), with adjustments in future years for salary and fringe benefit increases and estimated expenditure authority lapses.

**TABLE 1**

**Account Balance for DATCP's Food Regulation PR Appropriation (Current Law)**

	<u>Actual</u> <u>2003-04</u>	<u>Actual</u> <u>2004-05</u>	<u>Projected</u> <u>2005-06</u>	<u>Projected</u> <u>2006-07</u>	<u>Projected</u> <u>2007-08</u>	<u>Projected</u> <u>2008-09</u>
Opening Balance	\$1,986,700	\$1,451,100	\$453,500	-\$346,700	-\$1,229,500	-\$2,328,400
Revenue	3,710,900	3,346,300	3,650,000	3,650,000	3,650,000	3,650,000
Expenditures	-3,911,800	-3,883,400	-4,450,200	-4,532,800	-4,748,900	-4,835,700
Lapse to General Fund	<u>-334,700</u>	<u>-460,500</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Closing Balance	\$1,451,100	\$453,500	-\$346,700	-\$1,229,500	-\$2,328,400	-\$3,514,100

**Proposed Fee Increases**

The proposed food and dairy fee rule modifications, which DATCP proposed under the normal administrative rule promulgation process (no emergency procedure provisions were used), would make a number of changes to the food and dairy fees collected by DATCP, and the process by which these fees are collected. Under the proposed rules, DATCP officials indicate the overall fee increase would be approximately 23%, with new revenues coming from the sources depicted in Table 2. This table shows current fees, the proposed fees, and the estimated increase in revenue from the fee increases based on the number of licenses/payers anticipated by DATCP. However, in calculating the 23% fee increase, the Department excludes a portion of the grade A milk procurement fee increase. If the entire grade A milk procurement fee increase is included, the total fee increase is over 30%.

DATCP officials argue that the grade A milk procurement fee increase should be viewed as two separate fee increases (one increase of 0.2¢ per hundredweight and a second increase of 0.16¢ per hundredweight) in order to reflect the transfer of the state's milk certification program from the Department of Health and Family Services (DHFS) to DATCP as a part of 2003 Act 33. The act transferred the milk certification program to DATCP without separate funding (although the Department was authorized increased expenditure authority of \$362,100 PR annually and 4.8 PR positions), and eliminated the \$362,100 GPR annually and 4.8 GPR positions that had been provided to DHFS for administration of this program. However, the Department is allowed to increase fees through administrative rule in order to fund its programs. Subsequently, DATCP transferred an additional 0.2 position to help administer this program, for a total of 5.0 positions assigned to the milk certification program. DATCP officials argue that the first portion of the increase (0.2¢ per hundredweight, from 0.6¢ to 0.8¢ per hundredweight and an associated \$420,000 in annual revenue) is related to the costs of funding the transferred milk certification program, and the remaining portion of the increase (0.16¢ per hundredweight, from 0.8¢ to 0.96¢ per hundredweight and an associated \$336,000 in annual revenue) is an increase proportional to the other fee increases (approximately 23%) being proposed by the Department.

**TABLE 2**

**Food and Dairy Fees**

<u>License</u>	<u>Current Fee</u>	<u>Proposed Fee</u>	<u>Fee Increase</u>	<u>Annual Revenue Increase</u>
Retail Food Establishment (large)	\$450	\$587	\$137	\$49,000
Retail Food Establishment (small)	175	228	53	70,200
Food Processing Plant (large - perishable)	525	685	160	21,400
Food Processing Plant (large)	325	424	99	26,700
Grade A Dairy Farm	20	24	4	52,800
Bulk Milk Weigher and Sampler	40	48	8	15,500
Grade A Milk Procurement Fee*	0.6¢/CWT	0.96¢/CWT	0.36¢/CWT	756,000
All Others (various fees)	---	---	---	<u>161,100</u>
<b>Total</b>				<b>\$1,152,700</b>

\*"CWT" is hundredweight of milk.

While the projected annual increase, as shown in Table 2, is expected to be approximately \$1.2 million, due to the timing of the fees collected this full revenue increase would not be realized until 2006-07. Based on a January 1, 2006, effective date for the fee increases, \$735,900 of the new revenue would be expected to be realized in 2005-06.

Table 3 shows an estimated account balance of DATCP's food regulation appropriation account were the fee increases proposed by DATCP to be adopted. Expenditure levels beginning in 2005-06 reflect the statutory Chapter 20 authorized amounts, modified in future years to reflect anticipated lapses, as well as an annual adjustment for salary and fringe benefit related costs. Further, the table also includes expenditure increases of approximately \$130,000 annually in the 2007-09 biennium for recently approved position reclassifications.

**TABLE 3**

**Food Regulation Appropriation Account Balance under the Proposed DATCP Fee Increases**

	Actual <u>2002-03</u>	Actual <u>2003-04</u>	Actual <u>2004-05</u>	Projected <u>2005-06</u>	Projected <u>2006-07</u>	Projected <u>2007-08</u>	Projected <u>2008-09</u>
Opening Balance	\$1,880,100	\$1,986,700	\$1,451,100	\$453,500	\$389,200	\$659,100	\$712,900
Base Revenue	3,750,400	3,710,900	3,346,300	3,650,000	3,650,000	3,650,000	3,650,000
Fee Increase	<u>0</u>	<u>0</u>	<u>0</u>	<u>735,900</u>	<u>1,152,700</u>	<u>1,152,700</u>	<u>1,152,700</u>
Total Revenue	3,750,400	3,710,900	3,346,300	4,385,900	4,802,700	4,802,700	4,802,700
Budgeted Expenditures	-3,212,400	-3,911,800	-3,883,400	-4,450,200	-4,450,200	-4,581,600	-4,581,600
Pay Plan/Reserves/Lapses	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>-82,600</u>	<u>-167,300</u>	<u>-254,100</u>
Total Expenditures	-3,212,400	-3,911,800	-3,883,400	-4,450,200	-4,532,800	-4,748,900	-4,835,700
Lapses to the General Fund	<u>-431,400</u>	<u>-334,700</u>	<u>-460,500</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Closing Balance	\$1,986,700	\$1,451,100	\$453,500	\$389,200	\$659,100	\$712,900	\$679,900

However, two additional factors related to the expenditures shown in Tables 1 and 3 should be noted. First, DATCP has indicated it may seek increased expenditure authority for its food regulation program in the future. As stated above, the tables only include currently authorized expenditure levels, plus an estimate for pay plan related increases. If DATCP was to receive additional expenditure increases (either through legislation or Joint Finance Committee passive review procedures) the balances identified in the tables would be reduced accordingly. Second, it may be noted that expenditure levels shown in the tables for 2005-06 are substantially higher than actual expenditures in prior years (approximately 15% over 2004-05). This is because DATCP has not used all of its available expenditure authority in the past several years. For example, in fiscal years 2003-04 and 2004-05 DATCP had authorized expenditures of \$4.4 million, but spent only \$3.9 million. If DATCP continued to under-spend authorized levels from this appropriation, the proposed fee increases could be lowered or phased-in. DATCP officials attribute the under-spending largely to past hiring slow-downs and freezes. For the past few years, DATCP has generally maintained between eight and ten vacant positions. However, Department officials indicate that the Department is currently proceeding to fill these positions. As a result, the tables reflect projections of much lower unused expenditure authority. Thus, actual staff levels and overall funding levels would increase significantly in the 2005-07 biennium over the levels of the past few years if a fee increase is approved.

In addition, Department officials note that the food safety program is funded from a combination of GPR and PR funding and that in the past, when available, they have used GPR (in lieu of PR) funding for expenditures. With recent GPR reductions, however, the agency does not expect to have surplus GPR revenues available and anticipates having to increase PR expenditures toward the authorized levels in order to compensate. As a result, DATCP officials are concerned

that without sufficient PR revenues and expenditure authority they could be forced to make reductions within the food safety program.

Moreover, the tables do not reflect any transfers from the DATCP food regulation PR account to the general fund in 2005-07 or beyond. While 2005 Act 25 does not identify any specific lapse from this account, several provisions in the act do require substantial transfers from various PR accounts and SEG funds to the general fund, with DOA given broad discretion to identify the appropriations from which transfers will be made. Therefore, DATCP could recommend, or DOA may designate, transfers from the food regulation PR account to the general fund in the 2005-07 biennium. Any such transfers would either need to come from the available revenue of the account or by DATCP reducing expenditure levels by a corresponding amount (or a combination of the two).

### Fee Increase Alternatives

You asked that we depict several scenarios in which the amount and timing of the food and dairy fee increases are modified. The estimated impact of these alternatives are shown in Tables 4 through 6, with the effects of additional modifications based on these changes shown in Tables 7 through 10.

Table 4 depicts DATCP's food regulation PR appropriation account were the milk procurement fee increased from 0.6¢ to 0.8¢ effective January 1, 2006, and from 0.8¢ to 0.96¢ effective July 1, 2007 (as opposed to from 0.6¢ to 0.96¢ effective January 1, 2006, under the proposed rule).

**TABLE 4**

### Food Regulation Appropriation Account Balance under Modified DATCP Fee Increases

	Actual 2002-03	Actual 2003-04	Actual 2004-05	Projected 2005-06	Projected 2006-07	Projected 2007-08	Projected 2008-09
Opening Balance	\$1,880,100	\$1,986,700	\$1,451,100	\$453,500	\$221,100	\$155,100	\$208,900
Base Revenue	3,750,400	3,710,900	3,346,300	3,650,000	3,650,000	3,650,000	3,650,000
Fee Increase	<u>0</u>	<u>0</u>	<u>0</u>	<u>567,900</u>	<u>816,700</u>	<u>1,152,700</u>	<u>1,152,700</u>
Total Revenue	3,750,400	3,710,900	3,346,300	4,217,900	4,466,700	4,802,700	4,802,700
Budgeted Expenditures	-3,212,400	-3,911,800	-3,883,400	-4,450,200	-4,450,200	-4,581,600	-4,581,600
Pay Plan/Reserves/Lapses	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>-82,600</u>	<u>-167,300</u>	<u>-254,100</u>
Total Expenditures	-3,212,400	-3,911,800	-3,883,400	-4,450,200	-4,532,800	-4,748,900	-4,835,700
Lapses to the General Fund	<u>-431,400</u>	<u>-334,700</u>	<u>-460,500</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Closing Balance	\$1,986,700	\$1,451,100	\$453,500	\$221,200	\$155,100	\$208,900	\$175,900



Table 5 depicts DATCP's estimated food regulation PR appropriation account condition were the milk procurement fee increased from 0.6¢ to 0.8¢ effective January 1, 2006, and from 0.8¢ to 0.96¢ effective January 1, 2007. Under this scenario, the account would be expected to have a June 30, 2009, balance of \$343,900.

**TABLE 5**

**Food Regulation Appropriation Account Balance under Modified DATCP Fee Increases**

	Actual <u>2002-03</u>	Actual <u>2003-04</u>	Actual <u>2004-05</u>	Projected <u>2005-06</u>	Projected <u>2006-07</u>	Projected <u>2007-08</u>	Projected <u>2008-09</u>
Opening Balance	\$1,880,100	\$1,986,700	\$1,451,100	\$453,500	\$221,200	\$323,100	\$376,900
Base Revenue	3,750,400	3,710,900	3,346,300	3,650,000	3,650,000	3,650,000	3,650,000
Fee Increases	<u>0</u>	<u>0</u>	<u>0</u>	<u>567,900</u>	<u>984,700</u>	<u>1,152,700</u>	<u>1,152,700</u>
Total Revenue	3,750,400	3,710,900	3,346,300	4,217,900	4,634,700	4,802,700	4,802,700
Expenditures	-3,212,400	-3,911,800	-3,883,400	-4,450,200	-4,532,800	-4,748,900	-4,835,700
Lapse to General Fund	<u>-431,400</u>	<u>-334,700</u>	<u>460,500</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Closing Balance	\$1,986,700	\$1,451,100	\$453,500	\$221,200	\$323,100	\$376,900	\$343,900

Table 6 depicts DATCP's estimated food regulation PR appropriation account condition were the milk procurement fee increased from 0.6¢ to 0.86¢ effective January 1, 2006, and from 0.86¢ to 0.96¢ effective July 1, 2007. Under this scenario, the account would be expected to have a June 30, 2009, balance of \$364,900.

**TABLE 6**

**Food Regulation Appropriation Account Balance under Modified DATCP Fee Increases**

	Actual <u>2002-03</u>	Actual <u>2003-04</u>	Actual <u>2004-05</u>	Projected <u>2005-06</u>	Projected <u>2006-07</u>	Projected <u>2007-08</u>	Projected <u>2008-09</u>
Opening Balance	\$1,880,100	\$1,986,700	\$1,451,100	\$453,500	\$284,200	\$344,100	\$397,900
Base Revenue	3,750,400	3,710,900	3,346,300	3,650,000	3,650,000	3,650,000	3,650,000
Fee Increases	<u>0</u>	<u>0</u>	<u>0</u>	<u>630,900</u>	<u>942,700</u>	<u>1,152,700</u>	<u>1,152,700</u>
Total Revenue	3,750,400	3,710,900	3,346,300	4,280,900	4,592,700	4,802,700	4,802,700
Expenditures	-3,212,400	-3,911,800	-3,883,400	-4,450,200	-4,532,800	-4,748,900	-4,835,700
Lapse to General Fund	<u>-431,400</u>	<u>334,700</u>	<u>-460,500</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Closing Balance	\$1,986,700	\$1,451,100	\$453,500	\$284,200	\$344,100	\$397,900	\$364,900

In addition, you also asked about the effects of reducing the fee increases that would apply to retail food stores and food warehouses under the scenarios described in Tables 5 and 6, while maintaining a projected June 30, 2009, balance of at least \$300,000.

Starting with a projected June 30, 2009, balance of \$343,900, as shown in Table 5, revenues could be reduced by approximately \$40,000 over the three and a half years after the projected starting date of the new fees shown in the table (from January 1, 2006, through June 30, 2009). If this revenue was spread proportionally among the six retail food store fees and the four food warehouse fees, license fees could be reduced as shown in Table 7. This would yield fee increases of between 26% and 29%, and would result in a reduction of these fees of approximately 6% from those proposed by DATCP.

**TABLE 7**

**Modified Retail Food Store and Food Warehouse Fees Under the Specified Reduction**

	<u>Current Fee</u>	<u>Proposed Increase</u>	<u>Proposed Fee</u>	<u>Proposed Percentage Increase</u>	<u>Revised Increase</u>	<u>Revised Fee</u>	<u>Revised Percentage Increase</u>
Large PH Retail Food Store	\$450	\$137	\$587	30.4%	\$128	\$578	28.4%
Small PH Retail Food Store	175	53	228	30.3	50	225	28.6
Very Small PH Retail Food Store	40	12	52	30.0	11	51	27.5
Large NPH Retail Food Store	125	38	163	30.4	36	161	28.8
Small NPH Retail Food Store	40	12	52	30.0	11	51	27.5
No Food Processing Retail Store	30	9	39	30.0	8	38	26.7
Large PH Warehouse	200	61	261	30.5	57	257	28.5
Small PH Warehouse	75	23	98	30.7	22	97	29.3
Large NPH Warehouse	100	31	131	31.0	29	129	29.0
Small NPH Warehouse	50	15	65	30.0	14	64	28.0

Note: PH means potentially hazardous (perishable foods), while NPH means non-potentially hazardous.

Starting with a projected June 30, 2009, balance of \$364,900, as shown in Table 6, revenues could be reduced by approximately \$60,000 over the three and a half years after the projected starting date of the new fees shown in the table (from January 1, 2006, through June 30, 2009). If this revenue was spread proportionally among the six retail food store fees and the four food warehouse fees, license fees could be reduced as shown in Table 8. This would yield fee increases of between 26% and 28%, and would result in a reduction of these fees of approximately 9% from those proposed by DATCP.

**TABLE 8****Modified Retail Food Store and Food Warehouse Fees Under the Specified Reduction**

	<u>Current Fee</u>	<u>Proposed Increase</u>	<u>Proposed Fee</u>	<u>Proposed Percentage Increase</u>	<u>Revised Increase</u>	<u>Revised Fee</u>	<u>Revised Percentage Increase</u>
Large PH Retail Food Store	\$450	\$137	\$587	30.4%	\$124	\$574	27.6%
Small PH Retail Food Store	175	53	228	30.3	48	223	27.4
Very Small PH Retail Food Store	40	12	52	30.0	11	51	27.5
Large NPH Retail Food Store	125	38	163	30.4	34	159	27.2
Small NPH Retail Food Store	40	12	52	30.0	11	51	27.5
No Food Processing Retail Store	30	9	39	30.0	8	38	26.7
Large PH Warehouse	200	61	261	30.5	55	255	27.5
Small PH Warehouse	75	23	98	30.7	21	96	28.0
Large NPH Warehouse	100	31	131	31.0	28	128	28.0
Small NPH Warehouse	50	15	65	30.0	14	64	28.0

Note: PH means potentially hazardous, while NPH means non-potentially hazardous.

Further, given the scenarios displayed in Tables 5 and 6, you asked about the effects of reducing the fee increases that would apply only to retail food stores while maintaining a projected June 30, 2009, balance of at least \$300,000.

Starting with a projected June 30, 2009, balance of \$343,900, as shown in Table 5, revenues could be reduced by approximately \$40,000 over the three and a half years after the projected starting date of the new fees shown in the table (from January 1, 2006, through June 30, 2009). If this revenue was spread proportionally among the six retail food store fees, license fees could be reduced as shown in Table 9. This would yield fee increases of between 27% and 28% and would result in a reduction of these fees of approximately 7% from those proposed by DATCP.

**TABLE 9****Modified Retail Food Store and Food Warehouse Fees Under the Specified Reduction**

	<u>Current Fee</u>	<u>Proposed Increase</u>	<u>Proposed Fee</u>	<u>Proposed Percentage Increase</u>	<u>Revised Increase</u>	<u>Revised Fee</u>	<u>Revised Percentage Increase</u>
Large PH Retail Food Store	\$450	\$137	\$587	30.4%	\$127	\$577	28.2%
Small PH Retail Food Store	175	53	228	30.3	49	224	28.0
Very Small PH Retail Food Store	40	12	52	30.0	11	51	27.5
Large NPH Retail Food Store	125	38	163	30.4	35	160	28.0
Small NPH Retail Food Store	40	12	52	30.0	11	51	27.5
No Food Processing Retail Store	30	9	39	30.0	8	38	26.7

Note: PH means potentially hazardous, while NPH means non-potentially hazardous.

Starting with a projected June 30, 2009, balance of \$364,900, as shown in Table 6, revenues could be reduced by approximately \$60,000 over the three and a half years after the projected starting date of the new fees shown in the table (from January 1, 2006, through June 30, 2009). If this revenue was spread proportionally among the six retail food store fees, license fees could be reduced as shown in Table 10. This would yield fee increases of approximately 27%, and would result in a reduction of these fees of approximately 11% from those proposed by DATCP.

**TABLE 10**

**Modified Retail Food Store and Food Warehouse Fees Under the Specified Reduction**

	<u>Current Fee</u>	<u>Proposed Increase</u>	<u>Proposed Fee</u>	<u>Proposed Percentage Increase</u>	<u>Revised Increase</u>	<u>Revised Fee</u>	<u>Revised Percentage Increase</u>
Large PH Retail Food Store	\$450	\$137	\$587	30.4%	\$122	\$572	27.1%
Small PH Retail Food Store	175	53	228	30.3	47	222	26.9
Very Small PH Retail Food Store	40	12	52	30.0	11	51	27.5
Large NPH Retail Food Store	125	38	163	30.4	34	159	27.2
Small NPH Retail Food Store	40	12	52	30.0	11	51	27.5
No Food Processing Retail Store	30	9	39	30.0	8	38	26.7

Note: PH means potentially hazardous (perishable foods), while NPH means non-potentially hazardous.

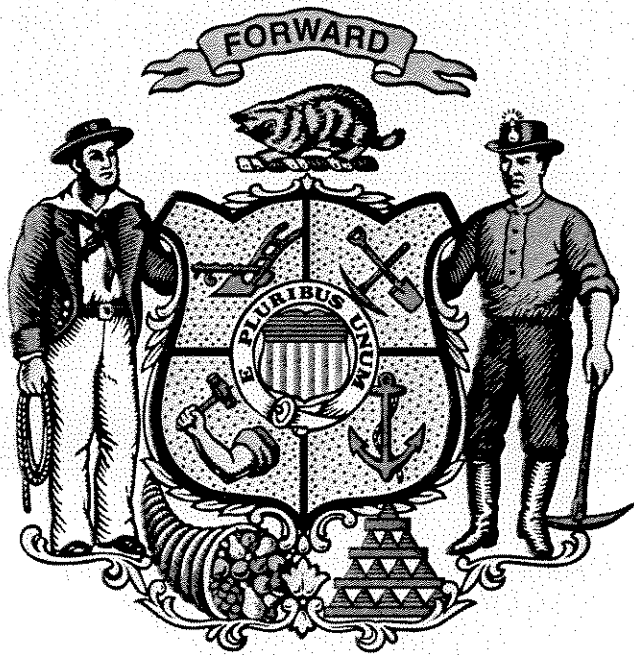
In addition, you specifically asked for information regarding the revenues currently deposited to DATCP's food regulation PR appropriation account from retail food establishment licenses and food warehouse fees. In 2004-05, revenues of approximately \$3.35 million were received by DATCP's food regulation PR appropriation. Of these total revenues, approximately \$632,900 is from retail food establishment fees, and approximately \$84,700 is from food warehouse fees. Taken cumulatively, retail food establishment and food warehouse revenues provided approximately 21.4% of the revenues deposited to DATCP's food regulation PR appropriation in 2004-05.

In 2003-04, information provided by DATCP indicates that of the total \$3.1 million in revenue from food and dairy inspection fees (another \$600,000 of revenue was collected from sources such as lab certification, re-inspections, agent city inspections, sanitary certificates, and cheese judging and grading), \$618,900 was from retail food establishment fees and \$76,300 was from food warehouse fees. This means approximately 19.9% of these revenues came from fees paid by retail food establishments and 2.5% of revenues came from fees paid by food warehouses (a combined 22.4%). Further, of the total 81,400 hours devoted to food and dairy inspections in 2003-04, DATCP officials indicate 19,200 hours, or 23.6% of the Department's inspection efforts, were

devoted to retail inspection, and 2,000 hours, or approximately 2.5% of inspection efforts, were devoted to warehouse inspection (a combined 26%).

I hope you find this information helpful. Please contact me if I can be of further assistance.

CP/lah





## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

OCT 21 2005

OCT 21, 2005  
October 21, 2005

TO: Representative Alvin Ott  
Room 323 North, State Capitol

FROM: Chris Pollek, Fiscal Analyst

SUBJECT: DATCP Food and Dairy Fee Rule

The following is provided in response to your request for information on a proposed administrative rule affecting food and dairy fees collected by the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP). In particular, you asked that we estimate the effects of a specific alternative where the amounts and timing of the fee increases in the proposed rule would be modified.

DATCP administers the state's food safety program. This program is designed to safeguard public health and ensure a safe and wholesome food supply. It also facilitates the sale of Wisconsin dairy and food products in interstate and international markets. The program is funded, in part, by dairy and food license fees. DATCP's food regulation program revenue appropriation account receives these food and dairy fees, and uses the revenues for related food and dairy inspection and licensing activities. For 2005-06, DATCP's food regulation appropriation account is authorized expenditures of \$4,450,200 PR and 58.59 positions.

### DATCP Proposed Fee Increases

The proposed food and dairy fee rule modifications, which DATCP proposed under the normal administrative rule promulgation process (no emergency procedure provisions were used), would make a number of changes to the food and dairy fees collected by DATCP, and the process by which these fees are collected. Under the proposed rules, DATCP officials indicate the overall fee increase would be approximately 23%, with new revenues coming from the sources depicted in Table 1. This table shows current fees, the proposed fees, and the estimated increase in revenue from the fee increases based on the number of licenses/payers anticipated by DATCP. However, in calculating the 23% fee increase, the Department excludes a portion of the grade A milk

procurement fee increase. If the entire grade A milk procurement fee increase is included, the total fee increase is over 30%.

DATCP officials argue that the grade A milk procurement fee increase should be viewed as two separate fee increases (one increase of 0.2¢ per hundredweight and a second increase of 0.16¢ per hundredweight) in order to reflect the transfer of the state's milk certification program from the Department of Health and Family Services (DHFS) to DATCP as a part of 2003 Act 33. The act transferred the milk certification program to DATCP without separate funding (although the Department was authorized increased expenditure authority of \$362,100 PR annually and 4.8 PR positions), and eliminated the \$362,100 GPR annually and 4.8 GPR positions that had been provided to DHFS for administration of this program. However, the Department is allowed to increase fees through administrative rule in order to fund its programs. Subsequently, DATCP transferred an additional 0.2 position to help administer this program, for a total of 5.0 positions assigned to the milk certification program. DATCP officials argue that the first portion of the increase (0.2¢ per hundredweight, from 0.6¢ to 0.8¢ per hundredweight and an associated \$420,000 in annual revenue) is related to the costs of funding the transferred milk certification program, and the remaining portion of the increase (0.16¢ per hundredweight, from 0.8¢ to 0.96¢ per hundredweight and an associated \$336,000 in annual revenue) is an increase proportional to the other fee increases being proposed by the Department.

**TABLE 1**

**Food and Dairy Fees**

<u>License</u>	<u>Current Fee</u>	<u>Proposed Fee</u>	<u>Fee Increase</u>	<u>Annual Revenue Increase</u>
Retail Food Establishment (large)	\$450	\$587	\$137	\$49,000
Retail Food Establishment (small)	175	228	53	70,200
Food Processing Plant (large - perishable)	525	685	160	21,400
Food Processing Plant (large)	325	424	99	26,700
Grade A Dairy Farm	20	24	4	52,800
Bulk Milk Weigher and Sampler	40	48	8	15,500
Grade A Milk Procurement Fee*	0.6¢/CWT	0.96¢/CWT	0.36¢/CWT	756,000
All Others (various fees)	---	---	---	<u>161,100</u>
Total				\$1,152,700

\*"CWT" is hundredweight of milk.

While the projected annual increase, as shown in Table 1, is expected to be approximately \$1.2 million, due to the timing of the fees collected this full revenue increase would not be realized until 2006-07. Based on a January 1, 2006, effective date for the fee increases, \$735,900 of the new revenue would be expected to be realized in 2005-06.

Table 2 shows an estimated account balance of DATCP's food regulation appropriation account were the fee increases proposed by DATCP to be adopted. Expenditure levels beginning in



2005-06 reflect the statutory Chapter 20 authorized amounts, modified in future years to reflect anticipated lapses, as well as an annual adjustment for salary and fringe benefit related costs. Further, the table also includes expenditure increases of approximately \$130,000 annually in the 2007-09 biennium for recently approved position reclassifications.

**TABLE 2**

**Food Regulation Appropriation Account Balance Under the Proposed DATCP Fee Increases**

	Actual 2002-03	Actual 2003-04	Actual 2004-05	Projected 2005-06	Projected 2006-07	Projected 2007-08	Projected 2008-09
Opening Balance	\$1,880,100	\$1,986,700	\$1,451,100	\$453,500	\$389,200	\$659,100	\$712,900
Base Revenue	3,750,400	3,710,900	3,346,300	3,650,000	3,650,000	3,650,000	3,650,000
Fee Increase	<u>0</u>	<u>0</u>	<u>0</u>	<u>735,900</u>	<u>1,152,700</u>	<u>1,152,700</u>	<u>1,152,700</u>
Total Revenue	3,750,400	3,710,900	3,346,300	4,385,900	4,802,700	4,802,700	4,802,700
Budgeted Expenditures	-3,212,400	-3,911,800	-3,883,400	-4,450,200	-4,450,200	-4,581,600	-4,581,600
Pay Plan/Reserves/Lapses	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>-82,600</u>	<u>-167,300</u>	<u>-254,100</u>
Total Expenditures	-3,212,400	-3,911,800	-3,883,400	-4,450,200	-4,532,800	-4,748,900	-4,835,700
Lapses to the General Fund	<u>-431,400</u>	<u>-334,700</u>	<u>-460,500</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Closing Balance	\$1,986,700	\$1,451,100	\$453,500	\$389,200	\$659,100	\$712,900	\$679,900

However, two additional factors related to the expenditures shown in Table 2 should be noted. First, DATCP has indicated it may seek increased expenditure authority for its food regulation program in the future. As stated above, the tables only include currently authorized expenditure levels, plus an estimate for pay plan related increases. If DATCP was to receive additional expenditure increases (either through legislation or Joint Finance Committee passive review procedures) the balances identified in the tables would be reduced accordingly. Second, it may be noted that expenditure levels shown in the tables for 2005-06 are substantially higher than actual expenditures in prior years (approximately 15% over 2004-05). This is because DATCP has not used all of its available expenditure authority in the past several years. For example, in fiscal years 2003-04 and 2004-05 DATCP had authorized expenditures of \$4.4 million, but spent only \$3.9 million. If DATCP continued to under-spend authorized levels from this appropriation, the proposed fee increases could be lowered or phased-in. DATCP officials attribute the under-spending largely to past hiring slow-downs and freezes. For the past few years, DATCP has generally maintained between eight and ten vacant positions. However, Department officials indicate that the Department is currently proceeding to fill these positions. As a result, the tables reflect projections of much lower unused expenditure authority. Thus, actual staff levels and overall funding levels would be expected to increase significantly in the 2005-07 biennium over the levels of the past few years if a fee increase is approved.

In addition, Department officials note that the food safety program is funded from a combination of GPR and PR funding and that in the past, when available, they have used GPR (in lieu of PR) funding for expenditures. With recent GPR reductions, however, the agency does not expect to have surplus GPR revenues available and anticipates having to increase PR expenditures toward the authorized levels in order to compensate. As a result, DATCP officials are concerned that without sufficient PR revenues and expenditure authority they could be forced to make reductions within the food safety program.

Moreover, the tables do not reflect any transfers from the DATCP food regulation PR account to the general fund in 2005-07 or beyond. While 2005 Act 25 does not identify any specific lapse from this account, several provisions in the act do require substantial transfers from various PR accounts and SEG funds to the general fund, with DOA given broad discretion to identify the appropriations from which transfers will be made. Therefore, DATCP could recommend, or DOA may designate, transfers from the food regulation PR account to the general fund in the 2005-07 biennium. Any such transfers would either need to come from the available revenue of the account or by DATCP reducing expenditure levels by a corresponding amount (or a combination of the two).

### Revised Fee Increase

Table 3 depicts the estimated food regulation PR appropriation account under an alternative scenario in which: (a) the milk procurement fee would be increased from 0.6¢ to 0.86¢ effective January 1, 2006, and from 0.86¢ to 0.96¢ effective July 1, 2007; (b) a \$300,000 account balance is maintained as a reserve against an unanticipated revenue decline or expenditure increase; and (c) retail food fees are reduced by \$30,000 annually from those in the rule as proposed by DATCP. As shown in Table 3, this would yield a June 30, 2007, balance in the account of approximately \$300,000.

**TABLE 3**

### Food Regulation Appropriation Account Balance Under Revised DATCP Fee Increases

	Actual <u>2003-04</u>	Actual <u>2004-05</u>	Projected <u>2005-06</u>	Projected <u>2006-07</u>	Projected <u>2007-08</u>	Projected <u>2008-09</u>
Opening Balance	\$1,986,700	\$1,451,100	\$453,500	\$269,200	\$299,100	\$322,900
Base Revenue	3,710,900	3,346,300	3,650,000	3,650,000	3,650,000	3,650,000
Fee Increases	<u>0</u>	<u>0</u>	<u>615,900</u>	<u>912,700</u>	<u>1,122,700</u>	<u>1,122,700</u>
Total Revenue	3,710,900	3,346,300	4,265,900	4,562,700	4,772,700	4,772,700
Expenditures	-3,911,800	-3,883,400	-4,450,200	-4,532,800	-4,748,900	-4,835,700
Lapse to General Fund	<u>-334,700</u>	<u>-460,500</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Closing Balance	\$1,451,100	\$453,500	\$269,200	\$299,100	\$322,900	\$259,900

Under Table 3 assumptions the June 30, 2009, balance would decline to \$260,000. This is below the target reserve level of \$300,000. To restore a \$300,000 balance for June 30, 2009, it is expected that DATCP would begin promulgation of a new administrative rule focused solely on retail food fees after analyzing the level of revenues it receives and resources it allocates respectively to the dairy and food industries for inspection purposes. Based on the analysis of the Department's efforts, the sources of its food regulation revenues, any recommended modifications to the Department's food regulation program model, and the projected balance of the food regulation portion of the appropriation, DATCP would be expected to propose revised retail food fees, with a targeted effective date of July 1, 2007.

Given the scenario from Table 3 (where revenue from retail food fees is to be reduced by \$30,000 annually), if the revenue was spread proportionally among the six retail food store fees, license fees would be reduced as shown in Table 4. This would yield fee increases of approximately 25%, and would result in a reduction of these fees of approximately 18% from those proposed by DATCP.

**TABLE 4**

**Modified Retail Food Store and Food Warehouse Fees Under the Specified Revision**

	<u>Current Fee</u>	<u>DATCP Proposed Increase</u>	<u>Proposed Fee</u>	<u>Proposed Percentage Increase</u>	<u>Revised Increase</u>	<u>Revised Fee</u>	<u>Revised Percentage Increase</u>
Large PH Retail Food Store	\$450	\$137	\$587	30.4%	\$112	\$562	24.9%
Small PH Retail Food Store	175	53	228	30.3	43	218	24.6
Very Small PH Retail Food Store	40	12	52	30.0	10	50	25.0
Large NPH Retail Food Store	125	38	163	30.4	31	156	24.8
Small NPH Retail Food Store	40	12	52	30.0	10	50	25.0
No Food Processing Retail Store	30	9	39	30.0	7	37	23.3

Note: PH means potentially hazardous (perishable foods), while NPH means non-potentially hazardous.

I hope you find this information helpful. Please contact me if I can be of further assistance.

CP/lah

September 30, 2005

Rod Nilsestuen  
Secretary, DATCP  
PO Box 8911  
Madison, WI 53708-8911

SUBJECT: Request for a Meeting on Clearinghouse Rule 05-044

Dear Secretary Nilsestuen,

By this letter, I am requesting a meeting with the Department regarding the following clearinghouse rule:

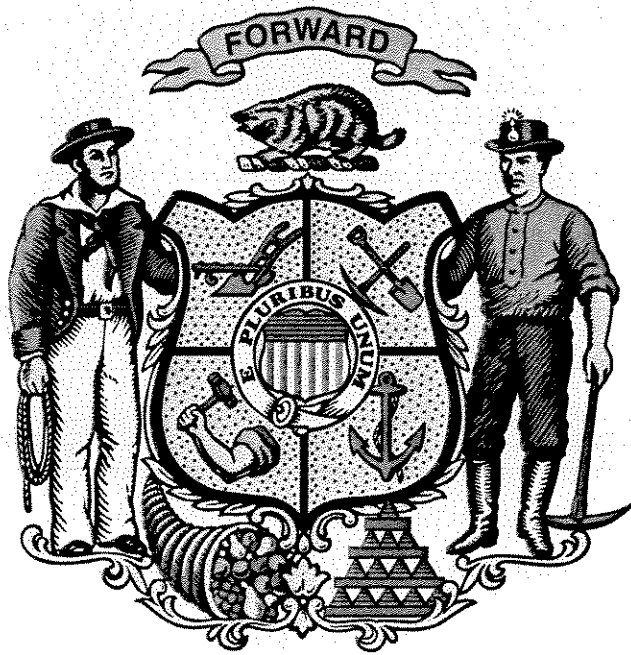
05-044      Relating to Food and Dairy License and Re-inspection Fees

Pursuant to S. 227.19(4)(b)1.a., this will extend our review period for another 30 days from today's date. My office will contact you to schedule a meeting in the near future.

Sincerely,

Dan Kapanke  
Chair, Senate Committee on Agriculture and Insurance  
32<sup>nd</sup> Senate District

Cc: Representative Al Ott, Chair, Assembly Committee on Agriculture  
David Lovell, Legislative Council  
Jeff Renk, Chief Clerk's Office





State of Wisconsin  
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection  
Rod Nilsestuen, Secretary

November 9, 2005

The Honorable Alvin Ott  
State Representative  
Chair, Assembly Committee on Agriculture  
P.O. Box 8953  
Madison, WI 53708

Dear Representative Ott:

On October 13, 2005, the Assembly Committee on Agriculture requested that the Department modify Clearinghouse Rule 05-044, relating to food and dairy license and reinspection fees. We have thoughtfully considered recommendations contained in the Committee's October 13 motion, and as a result have made the requested modifications to the rule. A copy of the revised rule is attached.

Clearinghouse Rule 05-044 has been modified as follows.

- Provisions that would have allowed annual adjustment of license fees have been deleted.
- Provisions that increase the Grade A milk procurement fee rate have been modified to phase in the originally proposed increase over an 18 month period. As modified, this procurement fee rate will increase from \$0.0006/cwt to \$0.0086/cwt of grade A milk on January 1, 2006 and from \$0.0086/cwt to \$0.0096/cwt on July 1, 2007.
- Provisions relating to increases in license fees paid by retail food establishments have been modified to decrease the amount of the fee increase for each retail category. The amount of the decrease matches amounts contained in Table 4 of a memo prepared for Representative Ott by the Legislative Fiscal Bureau on October 21, 2005.

In addition to the modifications made to the rule proposal, over the next two years the Department is committed to working with its stakeholders, particularly operators and representatives of retail food businesses, to review the mission, operation, funding, and efficiency of the Department's food and dairy safety program. The objectives of this review will be to seek further operational efficiencies and to align program focus and overall effort with food safety risk, revenue, and the needs of the food and dairy industries and Wisconsin's consumers.

*Agriculture generates \$51.5 billion for Wisconsin*

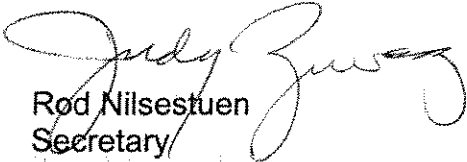
2811 Agriculture Drive • PO Box 8911 • Madison, WI 53708-8911 • Wisconsin.gov

Representative Alvin Ott  
November 9, 2005  
Page 2

The Department's food and dairy programs provide critical public health safeguards for Wisconsin consumers and food industries. Our primary objective continues to be to provide adequate, stable funding for the Food Safety and inspection program.

Thank you for your efforts in working with all parties to accomplish this objective.

Sincerely,

  
Rod Nilsestuen  
Secretary