

07hr_CRule_07-037_AC-Ag_pt01



Details:

(FORM UPDATED: 07/12/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on ... Agriculture (AC-Ag)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**
- Record of Comm. Proceedings ... **RCP**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt**
 - Clearinghouse Rules ... **CRule**
 - Hearing Records ... bills and resolutions
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution)
 - Miscellaneous ... **Misc**
- (**ajr** = Assembly Joint Resolution)
(**sjr** = Senate Joint Resolution)

Vote Record

Committee on Agriculture

Date: 2/12/08

Bill Number: Clean Air Act 07-037

Moved by: Ott Seconded by: Tauchen

Motion: Request for Consideration of Modifications

* See Attached

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Representative Alvin Ott, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Lee Nerison	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative John Murtha	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Jeffrey Mursau	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Mary Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Gary Tauchen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Barbara Gronemus	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Representative Amy Sue Vruwink	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Louis Molepske	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Phil Garthwaite	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Andy Jorgensen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>10</u>	<u>0</u>	<u>1</u>	<u> </u>

Motion Carried

Motion Failed

February 12, 2008

MOTION

Moved, that the Assembly Committee on Agriculture, pursuant to s. 227.19 (4) (b) 2., Stats., requests the Department of Agriculture, Trade, and Consumer Protection to consider modifications to Clearinghouse Rule 07-037, relating to food and dairy license and reinspection fees, to change the proposed rule as follows:

- Reduce by 25% the estimated annual increase in the aggregate amount of fees collected under the proposal rule.
- Allocate the reductions in fees paid by individual types of dairy and food businesses.

If the Department of Agriculture, Trade, and Consumer Protection does not agree to consider modifications to Clearinghouse Rule 07-037 in a letter to the chair of the Assembly Committee on Agriculture, or fails to respond in writing to this request for modification, by 5:00 p.m., Friday, February 15, 2008, the Assembly Committee on Agriculture objects to Clearinghouse Rule 07-037, pursuant to s. 227.19 (4) (d) 6., Stats., on the grounds that the proposed rule is arbitrary and capricious, and imposes an undue hardship.





State of Wisconsin
Jim Doyle, Governor

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

PUBLIC NOTICE

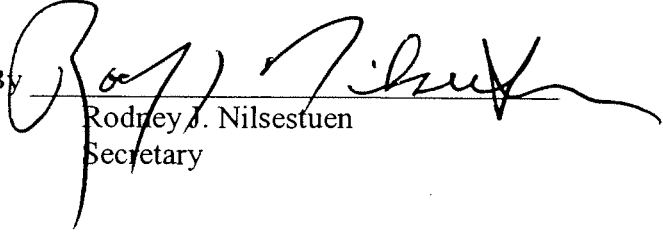
FINAL DRAFT RULE TO LEGISLATURE

The Department of Agriculture, Trade and Consumer Protection announces that it is submitting the following rule for legislative committee review, pursuant to s. 227.19, Stats.:

CLEARINGHOUSE RULE #: **07-037**
SUBJECT: **Food and Dairy Fees**
ADM. CODE REFERENCE: **ATCP 60, 69, 70, 71,75, 77, 80, 81, 82 and 85**
DATCP DOCKET #: **05-R-07**

Dated this 18 day of December, 2007

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

By 
Rodney J. Nilsestuen
Secretary

Agriculture generates \$51.5 billion for Wisconsin




State of Wisconsin
Jim Doyle, Governor

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

DATE: December 10, 2007

TO: The Honorable Fred Risser
President, Wisconsin State Senate
Room 220 South, State Capitol
P.O. Box 7882
Madison, WI 53707-7882

The Honorable Michael Huebsch
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
P.O. Box 8952
Madison, WI 53708-8952

FROM: Rodney J. Nilsestuen, Secretary 
Department of Agriculture, Trade and Consumer Protection

SUBJECT: Food and Dairy Fees; Final Draft Rule
(Clearinghouse Rule #07-037)

The Department of Agriculture, Trade and Consumer Protection (DATCP) is transmitting this rule for legislative committee review, as provided in s. 227.19(2) and (3), Stats. DATCP will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19(2), Stats.

Summary

A serious food safety funding shortfall has created the need for this rule to increase current food and dairy license fees. The fee increase is necessary just to maintain current minimal levels of food safety inspection. DATCP currently has a negative cash balance in its food safety program revenue account, which will grow steadily worse if not addressed.

This rule will increase food safety program revenue by approximately \$909,200 per year beginning in FY 2008-09. This rule affects the following entities licensed by DATCP:

- Dairy farms.
- Dairy plants.
- Food processing plants.
- Food warehouses.
- Retail food establishments.
- Dairy, food and water testing laboratories.
- Milk haulers.

Agriculture generates \$51.5 billion for Wisconsin

The Honorable Fred Risser
The Honorable Michael Huebsch
December 10, 2007
Page 2

- Milk distributors.
- Buttermakers and cheesemakers.
- Butter and cheese graders.

Background

DATCP administers Wisconsin's food safety program. This program is designed to safeguard public health and ensure a safe and wholesome food supply to Wisconsin's 5.6 million consumers. The program also makes it possible for Wisconsin to market dairy and food products in interstate and international markets. Approximately 85% of Wisconsin's dairy production is marketed outside the state.

DATCP licenses and inspects dairy and food operations (Grade A dairy inspection frequencies are mandated by national regulations). Licensed businesses must pay license fees and comply with food safety standards. DATCP may adjust most license fees by rule. Wisconsin's food safety program is funded by a combination of general purpose revenue (GPR) and program revenue from license fees (PR).

In 1991, license fees funded about 40% of food safety program costs. The 1995-97 biennial budget act reduced the GPR funding share, so that license fees funded about 50% of program costs. Subsequent state budgets effectively reduced the GPR funding share still further, so that license fees now fund about 60% of the food safety budget.

Recent state budgets have lapsed a substantial amount of food safety license fee revenue to the state general fund (to help remedy state budget deficits). At the same time, DATCP has experienced a modest increase in operating costs. DATCP proposed a license fee increase in 2005, but it was forced to withdraw a large share of that fee increase proposal.

As a result of all these factors, annual food safety operating costs now exceed annual food safety revenues and the cash balance in the food safety program revenue account has been completely depleted. At the end of FY 2006-07, DATCP had a *negative cash balance of \$51,700 in its food safety PR account*, as reported in the department's Cash Balance Final Report Summary for FY 2006-07. If no corrective action is taken, DATCP *projects a negative cash balance of \$470,000 at the end of FY 2008-09*.

In short, DATCP cannot continue the food safety program at the current funding levels. Although food safety funding has little impact on the overall state budget, or on overall industry costs or competitiveness, funding shortfalls may have grave implications for public health and safety and for Wisconsin's ability to market its products in interstate commerce. Without increased funding, DATCP will be forced to reduce food safety inspection at a time when public concern over food safety risks is growing.

Food safety GPR costs represent a very small share (considerably less than *one one-thousandth*) of the overall state GPR budget. Food safety fees also represent a very small share of overall dairy and food industry costs, although impacts may vary between licensed entities. For example, dairy plant operator fees for dairy plant *and* dairy farm inspection (the largest item in the food safety budget) total less than *one one-thousandth* of the amount that dairy plant operators pay for milk.

DATCP is working to deliver effective food safety protection as efficiently as possible. For example:

- DATCP has reduced its food and dairy staff by approximately 17% since 1990 (from 118 to 98 staff). Staffing trends fairly reflect changes in the food and dairy industry, including a reduction in dairy farm numbers (remaining farms are larger and more widely dispersed) and increased delegation of retail food regulation to cooperating local governments (DATCP must still train, assist and evaluate local agents). While food safety staffing needs have declined in some traditional areas, they are growing in other areas.
- DATCP trains, assists and evaluates local governments that agree to license and inspect retail food establishments in their jurisdictions. Thirty-seven local entities license and inspect on behalf of DATCP, compared to 15 in 1997 (local participation is voluntary). Local entities now license and inspect 4,600 retail food establishments. DATCP licenses and inspects the remaining 4,200 establishments (the remaining DATCP-inspected establishments are more widely dispersed, complicating inspection logistics). The rapid growth of “ready to eat” and delicatessen operations has increased retail food safety risks.
- DATCP is working to reform national dairy regulations, which include rigid requirements related to Grade A inspection frequency. DATCP is pursuing a more flexible, risk-based inspection system that could reduce inspection costs. But national reform will take time. In the meantime, Wisconsin must comply with current inspection mandates in order to ship milk and fluid milk products in interstate commerce.
- DATCP and the Wisconsin Department of Health and Family Services (DHFS) have eliminated duplicate licensing and inspection of grocery stores, restaurants, and combination grocery-restaurants. DATCP and DHFS have adopted uniform rules for grocery stores and restaurants, based on the federal Model Food Code.
- DATCP’s Food Safety Division has reduced its annual operating costs by closing its Green Bay and Madison regional offices, consolidating space, changing its organizational structure to eliminate management positions, streamlining administrative and program work, and consolidating complementary program activities.

- DATCP has convened an advisory council to consider possible restructuring of retail food license fees. But fee restructuring, if any, will require statutory changes. This rule is based on the current statutory fee structure.

Rule Contents

This rule increases current license and reinspection fees for dairy and food businesses, as shown below. DATCP plans to adopt and publish this rule before May 1, 2008, but fee increases will first apply to fees that are due on or after July 1, 2008.

Entity	Current License Fee(s)	New License Fee(s)
Dairy Farm	\$24 annual license fee (paid by dairy plant operator)	\$31
	\$24 or \$48 reinspection fee (paid by dairy plant operator if reinspection is required)	\$31 or \$62
Dairy Plant	<i>Annual license fee</i> (calculations include an increase in the basic license fee from \$96 to \$125):	
	\$699 or \$879 for grade A processing plant (based on size)	\$909 or \$1,143
	\$397 for grade A receiving station	\$516
	\$96 for grade A transfer station	\$125
	\$96 to \$421 for grade B processing plant (based on size)	\$125 or \$548
	\$96 for grade B receiving station or transfer station	\$125
	Grade A milk procurement fee: 0.96 cents per 100 lbs.	1.081 cents per 100 lbs. (for payments due beginning July 1, 2008)
Grade B milk procurement fee: 0.2 cents per 100 lbs.	No change	

Reinspection fee:

Basic plant fee \$48 (included in charges below)	\$62
\$203 or \$246 for grade A processing plant	\$265 or \$319
\$221 for grade B processing plant	\$287
\$122 for grade A receiving station	\$158
\$48 for grade B receiving station or transfer station	\$62

Butter and cheese grading fee:

1.09 cents per 100 lbs. of product	1.5 cents per 100 lbs. of product
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Food Processing Plant	\$78-\$685 annual license fee (based on size and type)	\$101 - \$890
	\$261 surcharge for canning for food processing plants with annual production of \$25,000 or more	\$339
	\$49-\$431 reinspection fee (based on size and type)	\$64 - \$560
Food Warehouse	\$65-\$261 annual license fee (based on size and type)	\$85-\$339
	\$92-\$246 reinspection fee (based on size and type)	\$120 - \$320
Milk Distributor	\$60 annual license fee per facility	\$78
	\$25 reinspection fee per facility	\$32
Retail Food Store	\$37-\$562 annual license fee (based on size and type)	\$48-\$731

	\$74-\$369 reinspection fee (based on size and type)	\$96 - \$480
Dairy, Food or Water Testing Lab	\$336 annual lab certification fee for each dairy or food test (other than milk drug residue screening)	\$437
	\$276 annual lab certification fee for each water test	\$359
	\$25 annual certification fee for each dairy or food analyst (other than milk drug residue screening analyst)	\$32
	\$50-\$500 initial fee and \$25-\$50 annual renewal fee for lab performing milk drug residue screening	\$65-\$650 initial fee \$32-\$65 annual renewal fee
	\$25 initial evaluation fee for milk drug residue screening analysts (if more than 3 per lab)	\$32
Bulk Milk Tanker	\$36 annual bulk milk tanker license fee	\$47
	\$36 bulk milk tanker reinspection fee	\$47
	\$48 bulk milk weigher and sampler license fee (2-year license)	\$62
	\$48 bulk milk weigher and sampler reinspection fee	\$62
Buttermaker or Cheesemaker	\$60 license fee (2-year license)	\$78
Butter or Cheese Grader	\$60 license fee (2-year license)	\$78

This rule does *not* affect any of the following:

- *Fees that DATCP charges for certain services*, such as review of food processing equipment plans, or the testing, timing and sealing of pasteurizers. DATCP is authorized to charge fees for such services in order to cover its cost of providing the services. DATCP may adjust these service fees by written notice, in order to keep fees consistent with service costs.
- *License fees for milk and cream testers*. DATCP is not authorized to adjust these fees by rule. Milk and cream testers currently pay a license fee of \$50 (for a 2-year license) and a reinspection fee of \$25.
- *License fees for meat establishments*. Meat inspection programs are funded by a combination of federal dollars and matching state GPR dollars. Under federal law, states must match federal dollars with state GPR dollars, not license fees.

Public Hearings

DATCP held 3 hearings on this rule. DATCP held hearings on May 15, 2007 in Eau Claire, May 16, 2007 in Appleton, and May 22, 2007 in Madison. Seven persons attended the hearings. Six of the 7 offered both oral and written testimony. All 6 persons opposed fee increases. Two more persons filed written comments opposing the fee increases. Opponents cited various concerns including the size of the fee increases, the need for DATCP to reduce costs, and the continued erosion of GPR funding for the food safety program. A hearing summary is attached.

Changes from Hearing Draft

This final draft reduces the amount of all the fee increases proposed in the hearing draft. The biennial budget act (2007 Wis. Act 20) included a one-time transfer of funds (\$250,000 in FY 2007-08 and \$100,000 in FY 2008-09) from the Agricultural Chemical Cleanup Fund to the food safety program revenue account, to augment food safety funding. That one-time transfer allowed DATCP to reduce proposed fee increases by a modest amount. The one-time transfer will not supplement the food safety program revenue account beyond the current biennium.

DATCP also made a number of technical changes and clarifications, including editorial changes suggested by the Legislative Council Rules Clearinghouse (see below). DATCP corrected hearing draft computation errors related to re-inspection fees for 3 dairy plant license categories. All final draft license and reinspection fees are lower than the hearing draft fees.

Response to Rules Clearinghouse Comments

The Legislative Council Rules Clearinghouse made minor editorial comments on the rule. DATCP modified the final draft rule to address all of the Rules Clearinghouse comments.

Fiscal Estimate

This rule will increase DATCP program revenues by approximately \$909,200 per year, beginning in FY 2008-09. This rule will increase local government costs by \$17,400 (statewide total for all local governments). Local governments may increase retail food license fees to cover those costs.

At the end of FY 2006-07, DATCP had a negative cash balance of \$51,700 in its food safety PR account, as reported in the department's Cash Balance Final Report Summary for FY 2006-07. DATCP estimates that if nothing is done, the food safety PR account will have a negative cash balance of \$470,000 at the end of FY 2008-09.

To return the PR account to a positive balance by the end of FY 2008-09, DATCP must increase food safety license fees by a combined total of \$909,200 per year. DATCP proposes to implement that increase beginning at the start of FY 2008-09. DATCP projects that the fee increase will yield a positive PR account balance of \$440,000 by the end of FY 2008-09. DATCP projects that the positive balance will grow to \$798,000 by the end of FY 2010-11 before it again begins to decline due to gradually rising program costs.

Some local governments currently license and inspect retail food establishments as agents of DATCP. DATCP provides administrative services to participating local agents. Under current rules, local agents must reimburse DATCP for those services. The reimbursement amount is 10% of the DATCP license fee amount (local agents typically charge higher license fees than DATCP). The current reimbursement amount does not fully compensate DATCP for its costs.

For FY 2006-07, local agent reimbursement to DATCP equaled \$58,000. Under this rule, the reimbursement rate will remain at 10%, but will be applied to higher DATCP license fee amounts. That will increase the total reimbursement amount to approximately \$75,400. Local governments can (and typically do) pass this increase on to retail food businesses. Local governments can set license fees to recover up to 100% of their reasonable operating costs.

A Fiscal Estimate is attached.

Business Impact

This rule modifies license fees for food and dairy businesses, many of which are "small businesses." This rule increases annual license fees, reinspection fees and milk procurement fees, beginning with fees that are due in July 2008.

This rule will increase dairy and food industry costs by a combined total of approximately \$909,200 per year. Costs for individual businesses will depend on business size and type. Because of competitive market conditions, it may be difficult for affected businesses to increase prices to recover these costs.

The proposed fee increases will have a significant but not dramatic impact on affected businesses. In the multi-billion dollar dairy and food industries, license fees comprise a small overall share of industry costs. For example, dairy plant operator fees for dairy plant *and* dairy farm inspection (the largest item in the food safety budget) total less than *one one-thousandth* of the amount that dairy plant operators pay for milk. DATCP has worked to maintain a fair allocation of license fees between affected businesses.

Fees are based on actual food safety costs related to each business sector. Fees are also based on business size, food product type, and type of food handling operation. Smaller businesses generally pay lower fees than large businesses. Businesses producing lower-risk foods or engaged in lower-risk activities generally pay lower fees than businesses producing higher-risk foods or engaged in higher-risk activities.

This rule increases food safety license fees, but it does not change other license requirements. This rule requires no additional recordkeeping and no added professional services to comply.

A Business Impact Analysis is attached.

Federal Regulation

There are no existing or proposed federal regulations related to license fees for food and dairy businesses operating in Wisconsin. However, national regulations such as the Interstate Pasteurized Milk Ordinance ("PMO") have a significant impact on state program costs. The PMO includes rigid inspection frequency requirements for grade A dairy farms and other grade A dairy operations. Wisconsin must comply with the PMO in order to ship milk and fluid milk products in interstate commerce.

Surrounding State Programs

All of the surrounding states charge license fees to food and dairy businesses. License structure and fees vary between states. Differences in license fees are partly related to differences in general tax dollar support for food and dairy programs in different states. A detailed summary is found in the "plain language analysis" that accompanies the rule.

**Hearing Appearance and Registration Log
Department of Agriculture, Trade and Consumer Protection (DATCP)**

CLEARINGHOUSE RULE #: 07-037
SUBJECT: Food and Dairy Fees
ADM. CODE REFERENCE: ATCP 60, 69, 70, 71, 75, 77, 80, 81, 82 and 85
DATCP DOCKET #: 05-R-07

Hearing Appearances and Testimony

Eau Claire, Wisconsin
May 15, 2007

Person/Organization	Testified- Y/N	Written- Y/N	Registered	Comments
Jerome Michels	No	No	Yes	Did not wish to speak.

Appleton, Wisconsin
May 16, 2007

Person/Organization	Testified- Y/N	Written- Y/N	Registered	Comments
No Attendees				

Madison, Wisconsin
May 22, 2007

Person/Organization	Testified- Y/N	Written- Y/N	Registered	Comments
John Umhoefer Wisconsin Cheese Makers Association	Yes	Yes		Opposed to fee increases. Also voiced concern over the erosion of GPR funding.
Nick George Midwest Food Processors	Yes	Yes		Opposed to the size of fee increases. Voiced concern over the erosion of GPR funding. Suggested that DATCP look for more efficiencies within the agency to reduce costs.
Jay Ellingson	Yes	Yes		Opposed to fee increases.

Kwik Trip				Wanted DATCP to look for more efficiencies within the agency to reduce costs.
Michelle Kussow Wisconsin Grocers Association	Yes	Yes		Opposed to fee increases. Wanted DATCP to look for more efficiencies within the agency to reduce costs.
Brad Legreid Wisconsin Dairy Products Association	Yes	Yes		Opposed to the size of fee increases. Voiced concern over the erosion of GPR funding. Suggested that DATCP look for more efficiencies within the agency to reduce costs.
Marty Putz Kwik Trip	No	No	Yes	Opposed fee increase.

Written Comments Received After Hearings

Wisconsin Dairy Business Association	Opposed to fee increases. Voiced concern over the erosion of GPR funding.
John Manske Wisconsin Federation of Cooperatives	Opposed to fee increases. Voiced concern over the erosion of GPR funding.

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

1 The state of Wisconsin department of agriculture, trade and consumer protection proposes the
2 following order to amend ATCP 60.02(4)(a), 60.04(2)(a) and (b), 69.01(5), 69.02(6),
3 70.03(2m)(a) to (e), (2n), and (2r)(b)1. to 5., 71.02(3)(a) to (d) and (5)(b)1. to 4., 71.10(3)(a) and
4 (b), 75.02(3)(a) to (e) and (4)(b)1. to 5., 77.06(1)(a), (b) and (d), 77.23(3)(a) and (c) to (e),
5 80.04(1)(b)(intro.) and 1. to 3., (2)(b)1., (3)(b)(intro.) and 1. to 3., and (5)(b), 81.02(3), 82.02(4)
6 and (5)(b), 82.04(5)(a) and (b), and 85.07(2); relating to food and dairy license and reinspection
7 fees.

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

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) administers Wisconsin’s dairy and food safety program. The program is funded, in major part, by dairy and food license fees. This rule increases current license fees in order to address the increasing deficit in the food safety program revenue account.

Statutory Authority

Statutory authority: 93.07(1), 93.09(10), 93.12(7), 97.17(4), 97.175(2), 97.20(2c)(b), (2g)(b), (2n)(b), (2w) and (4), 97.21(4m) and (6), 97.22(2)(b), (4)(am) and (8), 97.27(3m) and (5), 97.29(3)(am), (cm) and (5), 97.30(3m) and (5), and 98.146(4), Stats.

Statutes interpreted: 93.09, 93.12, 97.17, 97.175, 97.20, 97.21, 97.22, 97.27, 97.29, 97.30 and 98.146(4), Stats.

DATCP has broad authority under s. 93.07(1), Stats., to adopt rules needed to implement laws under its jurisdiction. DATCP also has specific authority under the provisions cited (above) to establish dairy and food license and reinspection fees.

Rule Content

This rule increases current license and reinspection fees for dairy and food businesses, as shown below. DATCP plans to adopt and publish this rule before May 1, 2008, so that the new fees will apply to all affected businesses (including small businesses for whom there is a 2-month delayed effective date) by the next annual licensing cycle beginning July 1, 2008.

Entity	Current Fee(s)	Proposed Fee(s)
Dairy Farm	\$24 annual license fee (paid by dairy plant operator)	\$31
	\$24 or \$48 reinspection fee (paid by dairy plant operator if reinspection is required)	\$31 or \$62
Dairy Plant	<i>Annual license fee</i> (calculations include an increase in the basic license fee from \$96 to \$125):	
	\$699 or \$879 for grade A processing plant (based on size)	\$909 or \$1,143
	\$397 for grade A receiving station	\$516
	\$96 for grade A transfer station	\$125
	\$96 to \$421 for grade B processing plant (based on size)	\$125 or \$548
	\$96 for grade B receiving station or transfer station	\$125
	Grade A milk procurement fee: 0.96 cents per 100 lbs.	1.081 cents per 100 lbs. (for payments due beginning July 1, 2008)
Grade B milk procurement fee: 0.2 cents per 100 lbs.	No change	

Reinspection fee:

Basic plant fee \$48 (included in charges below)	\$62
\$203 or \$246 for grade A processing plant	\$265 or \$319
\$221 for grade B processing plant	\$287
\$122 for grade A receiving station	\$158
\$48 for grade B receiving station or transfer station	\$62

Butter and cheese grading fee:

1.09 cents per 100 lbs. of product	1.5 cents per 100 lbs. of product
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Food Processing
Plant

\$78-\$685 annual license fee
(based on size and type) \$101 - \$890

\$261 canning surcharge for canning
plants with annual production of
\$25,000 or more \$339

\$49-\$431 reinspection fee
(based on size and type) \$64 - \$560

Food Warehouse

\$65-\$261 annual license fee
(based on size and type) \$85-\$339

\$92-\$246 reinspection fee
(based on size and type) \$120 - \$320

Milk Distributor

\$60 annual license fee
per facility \$78

\$25 reinspection fee
per facility \$32

Retail Food Store

\$37-\$562 annual license fee
(based on size and type) \$48-\$731

	\$74-\$369 reinspection fee (based on size and type)	\$96 - \$480
Dairy, Food or Water Testing Lab	\$336 annual lab certification fee for each dairy or food test (other than milk drug residue screening)	\$437
	\$276 annual lab certification fee for each water test	\$359
	\$25 annual certification fee for each dairy or food analyst (other than milk drug residue screening analyst)	\$32
	\$50-\$500 initial fee and \$25-\$50 annual renewal fee for lab performing milk drug residue screening	\$65-\$650 initial fee \$32-\$65 annual renewal fee
	\$25 initial evaluation fee for milk drug residue screening analysts (if more than 3 per lab)	\$32
Bulk Milk Tanker	\$36 annual bulk milk tanker license fee	\$47
	\$36 bulk milk tanker reinspection fee	\$47
	\$48 bulk milk weigher and sampler license fee (2-year license)	\$62
	\$48 bulk milk weigher and sampler reinspection fee	\$62
Buttermaker or Cheesemaker	\$60 license fee (2-year license)	\$78
Butter or Cheese Grader	\$60 license fee (2-year license)	\$78

This rule does *not* affect any of the following:

- *Fees that DATCP charges for certain services*, such as review of food processing equipment plans, or the testing, timing and sealing of pasteurizers. DATCP is authorized to charge fees for such services in order to cover its cost of providing the services. DATCP may adjust these service fees by written notice to keep fees consistent with service costs.

- *License fees for milk and cream testers.* DATCP is not authorized to adjust these fees by rule. Milk and cream testers currently pay a license fee of \$50 (for a 2-year license) and a reinspection fee of \$25.
- *License fees for meat establishments.* Meat inspection programs are funded by a combination of federal dollars and matching state general purpose revenue (GPR) dollars. Under federal law, states must match federal dollars with state GPR dollars, not license fees.

Fiscal Estimate

State Fiscal Effect

This rule will increase food safety program revenues by approximately \$909,200 per year, beginning in fiscal year (FY) 2008-09. The increase is needed to offset a funding deficit in DATCP's food safety program revenue account, which will grow steadily worse if not addressed soon. A fiscal estimate is attached.

Wisconsin's food safety program is funded by a combination of GPR and program revenue (PR) from license fees. DATCP supports shared funding of programs, such as food safety, that have both public and private industry benefits. But appropriate funding shares may be open to debate. In 1991, license fees funded about 40% of program costs. The 1995-97 biennial budget changed the funding share, so that license fees funded about 50% of program costs. Subsequent state budgets have effectively reduced the GPR funding share, so that license fees now fund approximately 60% of the food safety budget. This rule will increase that percentage to approximately 64%.

Recent state budgets have also lapsed a substantial amount of food safety license fee revenue to the state general fund (to help remedy state budget deficits). At the same time, DATCP has experienced a modest increase in operating costs. DATCP proposed a license fee increase in 2005 but was forced to withdraw a large share of that fee increase proposal.

As a result of all these factors, annual food safety operating costs now exceed annual food safety revenues and the cash balance in the food safety program revenue account has been completely depleted. At the end of FY 2006-07, DATCP had a negative cash balance of \$51,777 in its food safety PR account, as reported in the department's Cash Balance Final Report Summary for FY 2006-07. DATCP estimates that if nothing is done, the food safety PR account will have a negative cash balance of \$470,000 at the end of FY 2008-09.

To return the PR account to a positive balance by the end of FY 2008-09, DATCP must increase food safety license fees by a combined total of \$909,200 per year. DATCP proposes to implement that increase beginning at the start of FY 2008-09. DATCP projects that the fee increase will yield a positive PR account balance of \$440,000 by the end of FY 2008-09. DATCP projects that the positive balance will grow to \$798,000 by the end of FY 2010-11 before it again begins to decline due to gradually rising program costs.

Local Fiscal Effect

DATCP currently provides administrative support to local governments that license and inspect retail food establishments as agents of DATCP. Local governments establish their own license fees and reimburse DATCP for administrative services costs. The reimbursement amount equals 10% of the license fees that DATCP would charge local license holders, if DATCP licensed them directly. An increase in DATCP license fees therefore increases local reimbursement payments (current payments do not fully compensate DATCP for its costs).

In FY 2007, local governments made a total of \$58,000 in reimbursement payments. If DATCP adopts the fee increases proposed in this rule, the reimbursement rate will remain at 10%, but the total reimbursement amount will increase to approximately \$75,400. This rule thus increases local costs by approximately \$17,400 (statewide total). Local governments can (and likely will) pass this increased cost on to retail food businesses. Local governments can set license fees to recover up to 100% of their reasonable operating costs.

Business Impact

This rule affects all milk producers, dairy plants, food processing plants, food warehouses, milk distributors, retail food stores, dairy and food testing laboratories, milk haulers, buttermakers, cheesemakers, and butter and cheese graders licensed by the department. Many of these businesses are “small businesses” as defined in s. 227.114(1), Stats.

This rule increases annual license fees, reinspection fees, and milk procurement fees, beginning with fees that are due in July 2008. This will increase overall dairy and food industry costs by a combined total of approximately \$909,200 per year. Costs for individual businesses will depend on business size and type. Because of competitive market conditions, it may be difficult for affected businesses to increase prices to recover these costs.

The proposed fee increases will have a significant but not dramatic impact on affected businesses. In the multi-billion dollar dairy and food industries, license fees comprise a relatively small overall share of industry costs. DATCP has worked to maintain a fair and equitable license fee schedule.

Fees are based on actual food safety costs related to each license sector. Fees are also based on business size, food product type, and type of food handling operations. Smaller businesses generally pay lower fees than larger businesses. Businesses that produce lower-risk foods or engage in lower-risk activities generally pay lower fees than businesses that produce higher-risk foods or engage in higher-risk activities.

This rule increases food safety license fees, but it does not change other license requirements. This rule requires no additional recordkeeping and no added professional services to comply. A Business Impact Analysis is attached.

DATCP has not incorporated a small business enforcement policy in this rule, but it has adopted a separate rule on that subject (see subch. VII of ch. ATCP 1). DATCP will seek voluntary compliance. However, food and dairy businesses must pay required license fees in order to obtain a license from DATCP.

Federal Regulation

There are no existing or proposed federal regulations related to license fees for food and dairy businesses operating in Wisconsin. However, national regulations such as the Interstate Pasteurized Milk Ordinance (“PMO”) have a significant impact on state program costs. The PMO includes rigid inspection frequency requirements for grade A dairy farms and other grade A dairy operations. Wisconsin must comply with the PMO in order to ship milk and fluid milk products in interstate commerce.

Surrounding State Programs

All of the surrounding states charge license fees to food and dairy businesses. License structure and fees vary between states. Differences in license fees are partly related to differences in general tax dollar support for food and dairy programs in different states.

Minnesota

Minnesota has a license and fee structure that is similar to, but not identical to, Wisconsin’s structure:

Dairy Fees – Minnesota

Grade A pasteurizing plant	\$500
Grade A farm	\$50
Grade A farm reinspection fee	\$45
Manufacturing plant	\$140 per pasteurizer unit
Manufactured farm	\$25
Manufactured farm reinspection fee	\$45
Processor assessment	\$.07 per cwt for fluid milk products sold for retail sale in Minnesota
Farm bulk milk pick-up tanker	\$25
Milk procurement fee	\$.0071 per cwt of raw milk purchased

Food Fees – Minnesota

Retail food handler	\$50-\$2,001 based on sales volume
Wholesale food handler	\$57-\$1,502 based on sales volume
Food broker	\$150
Wholesale food processor or manufacturer	\$169-\$2,571 based on sales volume

Michigan

Michigan has a license and fee structure that is similar to, but not identical to, Wisconsin’s structure:

Dairy fees – Michigan

Milk plant	\$175
Farms sending milk to plant	\$5-\$10
Receiving or transfer station	\$50
Milk tank truck cleaning facility	\$50
Milk transportation company	\$20
Milk tank truck	\$10
Grade A milk distributor	\$50
Single service container and closure plant	\$50
Bulk milk hauler/sampler	\$40 for 2 years

Food Fees – Michigan

Retail food establishment	\$70
Limited wholesale food processor	\$70
Food warehouse	\$70
Extended retail food establishment	\$175
Wholesale food processor	\$175
Mobile food establishment	\$175
Temporary food establishment	\$28
Bottled water manufacturer	\$25 for each product registered and \$25 for each water dispensing machine

Iowa

Iowa has a license and fee structure that is similar to, but not identical to, Wisconsin's structure:

Dairy Fees – Iowa

Milk plant	\$2,000 for 2 years
Transfer station	\$400 for 2 years
Receiving station	\$400 for 2 years
Milk hauler	\$20 for 2 years
Milk grader	\$20 for 2 years
Bulk milk tanker permit	\$50 for 2 years
Reinspection fee	\$40
Resealing pasteurizer fee	\$100 per reseal
Purchaser of milk fee - Grade A	\$.015 per cwt of raw milk purchased
Purchaser of milk fee - Grade B	\$.005 per cwt of raw milk purchased

Food Fees – Iowa

Mobile food unit or pushcart	\$20
Temporary food establishment	\$25
Food establishment	\$30-\$225 based on sales volume*
Food service establishment	\$50-\$225 based on sales volume*
Food processing plant	\$50-\$250 based on sales volume
Egg handler	\$15-\$250 based on cases sold

*If one establishment must hold both a food establishment and a food service establishment license, each license fee is 75% of the established fee.

Illinois

Illinois has a license and fee structure that is substantially different from the Wisconsin structure:

Dairy Fees – Illinois

Milk plant permit	\$100
Receiving or transfer station	\$50
Cleaning and sanitizing facility	\$50
Milk hauler-sampler	\$25
Milk tank truck	\$25
Certified pasteurizer sealer	\$100

Illinois does not license or charge fees to non-dairy food establishments, except that Illinois charges the following fees to the following establishments:

Food Fees

Salvage Operator	\$100 plus inspection fee based on size
Bottled water manufacturer or distributor	\$150
Egg handlers, distributors and breakers	\$15-\$200 plus inspection fee per case of eggs sold

Agency Contact for Submitting Comments

Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Food Safety
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708-8911
Attn: Tom Leitzke
Telephone: (608) 224-4711
Tom.Leitzke@datcp.state.wi.us

- 1 **SECTION 1.** ATCP 60.02(4)(a) is amended to read:
- 2 ATCP 60.02(4)(a) The annual fee for a milk producer license under this section is \$24
- 3 \$31.
- 4 **SECTION 2.** ATCP 60.04(2)(a) and (b) are amended to read:
- 5 ATCP 60.04(2)(a) Except as provided in par. (b), the reinspection fee under sub. (1) is
- 6 \$24 \$31.
- 7 (b) If a reinspection is required under this chapter for reinstatement of a producer's
- 8 license or grade A permit, the reinspection fee under sub. (1) is \$48 \$62.
- 9 **SECTION 3.** ATCP 69.01(5) is amended to read:

1 ATCP 69.01(5) LICENSE FEE. An applicant for a buttermaker license shall pay a license
2 fee of ~~\$60~~ \$78.

3 **SECTION 4.** ATCP 69.02(6) is amended to read:

4 ATCP 69.02(6) LICENSE FEE. An applicant for a cheesemaker license shall pay a license
5 fee of ~~\$60~~ \$78.

6 **SECTION 5.** ATCP 70.03(2m)(a) to (e) are amended to read:

7 ATCP 70.03(2m)(a) For a food processing plant that has an annual production of at least
8 \$25,000 but less than \$250,000, and is engaged in processing potentially hazardous food or in
9 canning, an annual license fee of ~~\$326~~ \$424.

10 (b) For a food processing plant that has an annual production of at least \$250,000, and is
11 engaged in processing potentially hazardous food or in canning, an annual license fee of
12 ~~\$685~~ \$890.

13 (c) For a food processing plant that has an annual production of at least \$25,000 but less
14 than \$250,000, and is not engaged in processing potentially hazardous food or in canning, an
15 annual license fee of ~~\$131~~ \$170.

16 (d) For a food processing plant that has an annual production of at least \$250,000, and is
17 not engaged in processing potentially hazardous food or in canning, an annual license fee of
18 ~~\$424~~ \$551.

19 (e) For a food processing plant that has an annual production of less than \$25,000, an
20 annual license fee of ~~\$78~~ \$101.

21 **SECTION 6.** ATCP 70.03(2n) is amended to read:

22 ATCP 70.03(2n) CANNING OPERATIONS; LICENSE FEE SURCHARGE. If a food processing
23 plant is engaged in canning operations and has an annual production of \$25,000 or more, the

1 operator shall pay an annual license fee surcharge of ~~\$261~~\$339, which shall be added to the
2 license fee under sub. (2m).

3 **SECTION 7.** ATCP 70.03(2r)(b)1. to 5. are amended to read:

4 ATCP 70.03(2r)(b)1. For a food processing plant that has an annual production of less
5 than \$250,000, and is engaged in processing potentially hazardous food or in canning, the
6 reinspection fee is ~~\$209~~\$272.

7 (b)2. For a food processing plant that has an annual production of at least \$250,000, and
8 is engaged in processing potentially hazardous food or in canning, the reinspection fee is
9 ~~\$431~~\$560.

10 (b)3. For a food processing plant that has an annual production of less than \$250,000, and
11 is not engaged in processing potentially hazardous food or in canning, the reinspection fee is
12 ~~\$123~~\$160.

13 (b)4. For a food processing plant that has an annual production of \$250,000 or more, and
14 is not engaged in processing potentially hazardous food or in canning, the reinspection fee is
15 ~~\$400~~\$520.

16 (b)5. For a food processing plant that has an annual production of less than \$25,000 the
17 reinspection fee is ~~\$49~~\$64.

18 **SECTION 8.** ATCP 71.02(3)(a) to (d) are amended to read:

19 ATCP 71.02(3)(a) For a warehouse that stores potentially hazardous food, and has fewer
20 than 50,000 square feet of storage area, ~~\$98~~ \$127.

21 (b) For a warehouse that stores potentially hazardous food, and has at least 50,000 square
22 feet of storage area, ~~\$261~~ \$339.

1 (c) For a warehouse that does not store potentially hazardous food, and has fewer than
2 50,000 square feet of storage area, ~~\$65~~ \$85.

3 (d) For a warehouse that does not store potentially hazardous food, and has at least
4 50,000 square feet of storage area, ~~\$131~~ \$170.

5 **SECTION 9.** ATCP 71.02(5)(b)1. to 4. are amended to read:

6 ATCP 71.02(5)(b)1. For a food warehouse that stores potentially hazardous food and has
7 fewer than 50,000 square feet of storage area, the reinspection fee is ~~\$92~~ \$120.

8 (b)2. For a food warehouse that stores potentially hazardous food and has at least 50,000
9 square feet of storage area, the reinspection fee is ~~\$246~~ \$320.

10 (b)3. For a food warehouse that does not store potentially hazardous food and has fewer
11 than 50,000 square feet of storage area, the reinspection fee is ~~\$123~~ \$160.

12 (b)4. For a food warehouse that does not store potentially hazardous food and has at least
13 50,000 square feet of storage area, the reinspection fee is ~~\$246~~ \$320.

14 **SECTION 10.** ATCP 71.10(3)(a) and (b) are amended to read:

15 ATCP 71.10(3)(a) An annual license fee. The license fee is ~~\$60~~ \$78 for each storage
16 facility operated by the milk distributor.

17 (b) A reinspection fee, if required under s. 97.21(4)(b), Stats., for each reinspection of a
18 storage facility operated by the milk distributor. The reinspection fee is ~~\$25~~ \$32 for each
19 reinspected storage facility.

20 **SECTION 11.** ATCP 75.02(3)(a) to (e) are amended to read:

21 ATCP 75.02(3)(a) For a retail food establishment that has annual sales of at least
22 \$25,000 but less than \$1,000,000 and processes potentially hazardous food, an annual license fee
23 of ~~\$218~~ \$283.

1 (b) For a retail food establishment that has annual sales of at least \$1,000,000 and
2 processes potentially hazardous food, an annual license fee of ~~\$562~~ \$731.

3 (c) For a retail food establishment that has annual sales of at least \$25,000 and is
4 engaged in food processing, but does not process potentially hazardous food, an annual license
5 fee of ~~\$156~~ \$203.

6 (d) For a retail food establishment that has annual food sales of less than \$25,000, and is
7 engaged in food processing, an annual license fee of ~~\$50~~ \$65.

8 (e) For a retail food establishment that is not engaged in food processing, an annual
9 license fee of ~~\$37~~ \$48.

10 **SECTION 12.** ATCP 75.02(4)(b)1. to 5. are amended to read:

11 ATCP 75.02(4)(b)1. For a retail food establishment that has annual food sales of at least
12 \$25,000 but less than \$1,000,000, and processes potentially hazardous food, the reinspection fee
13 is ~~\$154~~ \$200.

14 (b)2. For a retail food establishment that has annual food sales of at least \$1,000,000, and
15 ~~process~~ processes potentially hazardous food, the reinspection fee is ~~\$369~~ \$480.

16 (b)3. For a retail food establishment that has annual food sales of at least \$25,000, and is
17 engaged in food processing but does not ~~processes~~ process potentially hazardous food, the
18 reinspection fee is ~~\$154~~ \$200.

19 (b)4. For a retail food establishment that has annual food sales of less than \$25,000, and
20 is engaged in food processing, the reinspection fee is ~~\$74~~ \$96.

21 (b)5. For a retail food establishment that is not engaged in food processing, the
22 reinspection fee is ~~\$74~~ \$96.

23 **SECTION 13.** ATCP 77.06(1)(a), (b) and (d) are amended to read:

1 ATCP 77.06(1)(a) *Milk or food tests*. An annual certification fee of ~~\$336~~ \$437 for each
2 test under s. ATCP 77.02(1) or (2) at each laboratory for which the operator is certified. This fee
3 does not apply to a laboratory that is approved under s. ATCP 77.23 only to conduct drug residue
4 screening tests on milk samples.

5 (b) *Certified analysts; milk or food tests*. An annual certification fee of ~~\$25~~ \$32 for each
6 analyst who performs one or more tests under s. ATCP 77.02(1) or (2). This fee does not apply
7 to an individual approved under s. ATCP 77.23 only to conduct drug residue screening tests on
8 milk samples.

9 (d) *Water tests*. An annual certification fee of ~~\$276~~ \$359 for each test under s. ATCP
10 77.02(3) for which the operator is certified.

11 **SECTION 14.** ATCP 77.23(3)(a) and (c) to (e) are amended to read:

12 ATCP 77.23(3)(a) An initial fee of ~~\$500~~ \$650, except as provided in par. (b) or (c).

13 (c) An initial fee of ~~\$50~~ \$65 if the laboratory does not apply for approval to perform any
14 visual read test.

15 (d) A fee of ~~\$25~~ \$32 for each individual, in excess of 3 individuals, that the department
16 evaluates under sub. (4) at the time of the initial laboratory inspection under sub. (1)(c)1.

17 (e) An annual renewal fee of ~~\$50~~ \$65 for each annual renewal of the laboratory approval,
18 except that the renewal fee is ~~\$25~~ \$32 if the laboratory qualifies under par. (b).

19 **SECTION 15.** ATCP 80.04(1)(b)(intro.) and 1. to 3. are amended to read:

20 ATCP 80.04(1)(b)(intro.) *License fee amounts*. The license fee under par. (a) is ~~\$96~~ \$125
21 plus the following:

1 (b)1. For a grade A processing plant, a supplementary license fee of ~~\$783~~ \$1,018 if the
2 plant received more than 2,000,000 pounds of milk from milk producers, or a supplementary
3 license fee of ~~\$693~~ \$784 if the plant received 2,000,000 pounds or less of milk from producers.

4 (b)2. For a grade B processing plant that manufactured or processed more than 1,000,000
5 pounds of dairy products or more than 200,000 gallons of frozen dairy products, a supplementary
6 license fee of ~~\$325~~ \$423.

7 (b)3. For a grade A receiving station, a supplementary license fee of ~~\$301~~ \$391.

8 **SECTION 16.** ATCP 80.04(2)(b)1. is amended to read:

9 ATCP 80.04(2)(b)1. For each 100 pounds of grade A milk received from milk producers,
10 ~~0.86 cent beginning January 1, 2006 and 0.96 cent beginning July 1, 2007~~ 1.081 cent.

11 **SECTION 17.** ATCP 80.04(3)(b)(intro.) and 1. to 3. are amended to read:

12 ATCP 80.04(3)(b)(intro.) *Fee amounts.* The reinspection fee required under par. (a)
13 includes, for each reinspection, a basic reinspection fee of ~~\$48~~ \$62 plus a supplementary
14 reinspection fee as follows:

15 (b)1. For a grade A processing plant, a supplementary reinspection fee of ~~\$198~~ \$257 if
16 the plant received more than 2,000,000 pounds of milk from milk producers during the previous
17 calendar year, or a supplementary reinspection fee of ~~\$155~~ 203 if the plant received 2,000,000
18 pounds or less of milk from milk producers during the previous calendar year.

19 (b)2. For a grade B processing plant, a supplementary reinspection fee of ~~\$173~~ \$225.

20 (b)3. For a grade A receiving station, a supplementary reinspection fee of ~~\$74~~ \$96.

21 **SECTION 18.** ATCP 80.04(5)(b) is amended to read:

22 ATCP 80.04(5)(b) The grading fee under par. (a) is ~~1.09~~ 1.5 cents per 100 pounds of
23 gradable butter and cheese produced at the dairy plant by any operator during the previous

1 calendar year. If the dairy plant was not in operation during the previous calendar year, the
2 license applicant shall pay a grading fee based on estimated production for the calendar year in
3 which the application is made. At the end of the license year, the license holder shall report the
4 actual calendar year production, and the department shall re-calculate the grading fee based on
5 that actual production. If the grading fee based on actual production differs from the fee based
6 on estimated production, the license holder shall pay the balance due or receive a credit from the
7 department on the next year's grading fee.

8 **SECTION 19.** ATCP 81.02(3) is amended to read:

9 ATCP 81.02(3) LICENSE FEE. A person applying for a license under sub. (1) shall pay a
10 license fee of ~~\$60~~ \$78.

11 **SECTION 20.** ATCP 82.02(4) and (5)(b) are amended to read:

12 ATCP 82.02(4) LICENSE FEE. An applicant for a bulk milk tanker license shall pay an
13 annual license fee of ~~\$36~~ \$47.

14 (5)(b) The reinspection fee under par. (a) is ~~\$36~~ \$47.

15 **SECTION 21.** ATCP 82.04(5)(a) and (b) are amended to read:

16 ATCP 82.04(5)(a) *License fee.* An applicant for a bulk milk weigher and sampler
17 license shall pay a biennial license fee of ~~\$48~~ \$62.

18 (b) *Reinspection fee required.* If the department reinspects a bulk milk sampler because
19 the department finds a violation of ch. 97, Stats., or this chapter, the department shall charge the
20 bulk milk weigher and sampler a reinspection fee. The fee is ~~\$48~~ \$62. The reinspection fee is
21 payable when the reinspection is completed, and is due upon written demand from the
22 department. The department may issue a demand for payment when it issues a license renewal
23 application to the bulk milk weigher and sampler.

1 **SECTION 22.** ATCP 85.07(2) is amended to read:

2 ATCP 85.07(2) A person applying for a license under sub. (1) shall pay a biennial
3 license fee of ~~\$60~~ \$78.

4 **INITIAL APPLICABILITY.** This rule first applies to fees and surcharges that are due on or
5 after the later of the following:

6 (a) The rule effective date.

7 (b) July 1, 2008.

8 **EFFECTIVE DATE.** (a) Except as provided in par. (b), this rule takes effect on the first
9 day of the month following publication in the Wisconsin administrative register, as provided
10 under s. 227.22(2) (intro.), Stats.

11 (b) Pursuant to s. 227.22(2)(e), Stats., for small businesses as defined in s. 227.114(1),
12 Stats., this rule takes effect on the first day of the third month commencing after the date of
13 publication in the Wisconsin administrative register.

Dated this _____ day of _____, 2007.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Rodney J. Nilsestuen
Secretary

Wisconsin Department of Agriculture, Trade and Consumer Protection

Business Impact Analysis¹

Rule Subject: Food and Dairy License Fees
Adm. Code Reference: ATCP 60, 69, 70, 71, 75, 77, 80, 81, 82, 85, Wis. Adm. Code
Rules Clearinghouse #: 07-037
DATCP Docket #: 05-R-07

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) administers Wisconsin’s food safety program. This program is designed to safeguard public health and ensure a safe and wholesome food supply. The program also makes it possible for Wisconsin to market dairy and food products in interstate and international markets.

DATCP licenses food and dairy businesses, as mandated by state law. Licensed businesses must pay license fees and comply with food safety standards. DATCP may adjust most license fees by rule. This rule increases current food and dairy license fees.

This rule increases current food and dairy license fees to meet the current and continuing shortfall in food safety revenues. This rule will increase food safety program revenues by approximately \$909,200 per year beginning in FY 2008-09. This rule affects the following entities licensed by DATCP:

- Dairy farms.
- Dairy plants.
- Food processing plants.
- Food warehouses.
- Retail food establishments.
- Dairy, food and water testing laboratories.
- Milk haulers.
- Milk distributors.
- Buttermakers and cheesemakers.
- Butter and cheese graders.

This fee increase is vitally necessary to address the rising deficit in DATCP’s food safety program revenue (PR) account. At the end of FY 2006-07, the food safety program revenue account had a negative cash balance of \$51,700. This deficit will grow steadily worse if not addressed soon. DATCP plans to implement the new fees starting July 1, 2008 (prior to the next annual license cycle).

¹ This analysis includes, but is not limited to, a small business analysis (“regulatory flexibility analysis”) under s. 227.114, Stats.

Background

DATCP administers Wisconsin's food safety program. This program is designed to safeguard public health and ensure a safe and wholesome food supply. The program also makes it possible for Wisconsin to market dairy and food products in interstate and international markets. DATCP licenses food and dairy businesses, as mandated by state law. Licensed businesses must pay license fees and comply with food safety standards. DATCP may adjust most license fees by rule.

Wisconsin's food safety program is funded by a combination of general purpose revenue (GPR) and program revenue from license fees. DATCP supports shared funding of programs, such as food safety, which have both public and private industry benefits. But appropriate funding shares may be open to debate. In 1991, license fees funded about 40% of food safety program costs. The 1995-97 biennial budget act reduced the GPR funding share, so that license fees funded about 50% of program costs. Subsequent state budgets effectively reduced the GPR funding share still further, so that license fees now fund about 60% of the food safety budget (this rule will increase that share to about 64%).

Recent state budgets have lapsed a substantial amount of food safety license fee revenue to the state general fund (to help remedy state budget deficits). At the same time, DATCP has experienced a modest increase in operating costs. DATCP proposed a license fee increase in 2005, but it was forced to withdraw a large share of that fee increase proposal. As a result of all these factors, DATCP had a negative cash balance of \$51,700 at the end of FY 2006-07 in its food safety PR account, as reported in the department's Cash Balance Final Report Summary for FY 2006-07. DATCP estimates that, if nothing is done, the food safety PR account will have a negative cash balance of \$470,000 by the end of FY 2008-09.

Food safety GPR costs represent a very small share (considerably less than *one one-thousandth*) of the overall state GPR budget. Food safety fees also represent a very small share of overall dairy and food industry costs, although impacts may vary between licensed entities. For example, dairy plant operator fees for dairy plant *and* dairy farm inspection (the largest item in the food safety budget) total less than *one one-thousandth* of the amount that dairy plant operators pay for milk.

DATCP cannot continue the food safety program at the current funding levels. Although food safety funding has little impact on the overall state budget, or on overall industry costs or competitiveness, funding shortfalls may have grave implications for public health and safety and for Wisconsin's ability to market its products in interstate commerce.

The 2007-09 biennial budget act (2007 Act 20) included a one-time transfer of funds from the Agriculture Chemical Fund (\$250,000 in FY 2007-08 and \$100,000 in FY 2008-09) to the food safety program revenue account. That one-time transfer allowed DATCP to reduce proposed fee increases by a modest amount, but it will not supplement the food safety program revenue account beyond the current biennium.

DATCP is working to deliver effective food safety protection as efficiently as possible. For example:

- DATCP has reduced its food and dairy staff by approximately 17% since 1990 (from 118 to 98 staff). Staffing trends fairly reflect changes in the food and dairy industry, including a reduction in dairy farm numbers (remaining farms are larger and more widely dispersed) and increased delegation of retail food regulation to cooperating local governments (DATCP must still train, assist and evaluate local agents). While food safety staffing needs have declined in some traditional areas, they are growing in other areas.
- DATCP trains, assists and evaluates local governments that agree to license and inspect retail food establishments in their jurisdictions. Thirty-seven local entities license and inspect on behalf of DATCP, compared to 15 in 1997 (local participation is voluntary). Local entities now license and inspect 4,600 retail food establishments. DATCP licenses and inspects the remaining 4,200 establishments (the remaining DATCP-inspected establishments are more widely dispersed, complicating inspection logistics).
- DATCP is working to reform national dairy regulations, which include rigid requirements related to Grade A inspection frequency. DATCP is pursuing a more flexible, risk-based inspection system that could reduce inspection costs. In the meantime, Wisconsin must comply with current inspection mandates in order to ship milk and fluid milk products in interstate commerce.
- DATCP and the Wisconsin Department of Health and Family Services (DHFS) have eliminated duplicate licensing and inspection of grocery stores, restaurants, and combination grocery-restaurants. DATCP and DHFS have adopted uniform rules for grocery stores and restaurants, based on the federal Model Food Code.
- DATCP's Food Safety Division has reduced its annual operating costs by closing its Green Bay and Madison regional offices, consolidating space, changing its organizational structure to eliminate management positions, streamlining administrative and program work, and consolidating complementary program activities.
- DATCP has convened an advisory council to consider possible restructuring of retail food license fees. But fee restructuring, if any, will require statutory changes. This rule is based on the current statutory fee structure.

Rule Content

This rule increases current license and reinspection fees for dairy and food businesses, as shown below. DATCP plans to adopt and publish this rule before May 1, 2008, but fee increases will first apply to fees that are due on July 1, 2008.

Entity	Current License Fee(s)	New License Fee(s)
Dairy Farm	\$24 annual license fee (paid by dairy plant operator)	\$31
	\$24 or \$48 reinspection fee (paid by dairy plant operator if reinspection is required)	\$31 or \$62
Dairy Plant	<i>Annual license fee</i> (calculations include an increase in the basic license fee from \$96 to \$125):	
	\$699 or \$879 for grade A processing plant (based on size)	\$909 or \$1,143
	\$397 for grade A receiving station	\$516
	\$96 for grade A transfer station	\$125
	\$96 to \$421 for grade B processing plant (based on size)	\$125 or \$548
	\$96 for grade B receiving station or transfer station	\$125
	Grade A milk procurement fee: 0.96 cents per 100 lbs.	1.081 cents per 100 lbs. (for payments due beginning July 1, 2008)
	Grade B milk procurement fee: 0.2 cents per 100 lbs.	No change
	<i>Reinspection fee:</i>	
	Basic plant fee \$48 (included in charges below)	\$62
	\$203 or \$246 for grade A processing plant	\$265 or \$319
	\$221 for grade B processing plant	\$287
	\$122 for grade A receiving station	\$158

	\$48 for grade B receiving station or transfer station	\$62
	<i>Butter and cheese grading fee:</i> 1.09 cents per 100 lbs. of product	1.5 cents per 100 lbs. of product
Food Processing Plant	\$78-\$685 annual license fee (based on size and type)	\$101 - \$890
	\$261 surcharge for canning for food processing plants with annual production of \$25,000 or more	\$339
	\$49-\$431 reinspection fee (based on size and type)	\$64 - \$560
Food Warehouse	\$65-\$261 annual license fee (based on size and type)	\$85-\$339
	\$92-\$246 reinspection fee (based on size and type)	\$120 - \$320
Milk Distributor	\$60 annual license fee per facility	\$78
	\$25 reinspection fee per facility	\$32
Retail Food Store	\$37-\$562 annual license fee (based on size and type)	\$48-\$731
	\$74-\$369 reinspection fee (based on size and type)	\$96 - \$480
Dairy, Food or Water Testing Lab	\$336 annual lab certification fee for each dairy or food test (other than milk drug residue screening)	\$437
	\$276 annual lab certification fee for each water test	\$359

	\$25 annual certification fee for each dairy or food analyst (other than milk drug residue screening analyst)	\$32
	\$50-\$500 initial fee and \$25-\$50 annual renewal fee for lab performing milk drug residue screening	\$65-\$650 initial fee \$32-\$65 annual renewal fee
	\$25 initial evaluation fee for milk drug residue screening analysts (if more than 3 per lab)	\$32
Bulk Milk Tanker	\$36 annual bulk milk tanker license fee	\$47
	\$36 bulk milk tanker reinspection fee	\$47
	\$48 bulk milk weigher and sampler license fee (2-year license)	\$62
	\$48 bulk milk weigher and sampler reinspection fee	\$62
Buttermaker or Cheesemaker	\$60 license fee (2-year license)	\$78
Butter or Cheese Grader	\$60 license fee (2-year license)	\$78

This rule does *not* affect any of the following:

- *Fees that DATCP charges for certain services*, such as review of food processing equipment plans, or the testing, timing and sealing of pasteurizers. DATCP is authorized to charge fees for such services in order to cover its cost of providing the services. DATCP may adjust these service fees by written notice, in order to keep fees consistent with service costs.
- *License fees for milk and cream testers*. DATCP is not authorized to adjust these fees by rule. Milk and cream testers currently pay a license fee of \$50 (for a 2-year license) and a reinspection fee of \$25.
- *License fees for meat establishments*. Meat inspection programs are funded by a combination of federal dollars and matching state GPR dollars. Under federal law, states must match federal dollars with state GPR dollars, not license fees.

Business Impact

Food safety is important for Wisconsin food businesses, as well as consumers. Food safety inspection maintains consumer confidence, and helps prevent food contamination incidents that can harm entire industries (not just the individual businesses where the incidents originate). This rule ensures adequate funding for Wisconsin's food safety program, so that the program can maintain current minimum levels of food safety inspection.

However, this rule also increases license fee costs for food and dairy businesses, many of which are "small businesses." This rule increases annual license fees, reinspection fees, and milk procurement fees, beginning with fees that are due in July 2008.

This rule will increase dairy and food industry costs by a combined total of approximately \$909,200 per year. Costs for individual businesses will depend on business size and type. Because of competitive market conditions, it may be difficult for affected businesses to increase prices to recover these costs.

The proposed fee increases will have a significant but not dramatic impact on affected businesses. In the multi-billion dollar dairy and food industries, license fees comprise a small overall share of industry costs. For example, dairy plant operator fees for dairy plant *and* dairy farm inspection (the largest item in the food safety budget) total less than *one one-thousandth* of the amount that dairy plant operators pay for milk. DATCP has worked to maintain a fair allocation of license fees between affected businesses.

Fees are based on actual food safety costs related to each business sector. Fees are also based on business size, food product type, and type of food handling operation. Smaller businesses generally pay lower fees than large businesses, and businesses with lower inherent food safety risks generally pay lower fees than businesses with higher inherent food safety risks.

This rule increases food safety license fees, but it does not change other license requirements. This rule requires no additional recordkeeping and no added professional services to comply.

Steps to Assist Small Business

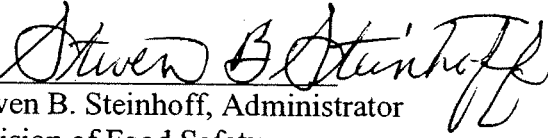
DATCP has tried to minimize the effect of this rule on small businesses by maintaining a fair allocation of license fees between small and large businesses. Fees are based on actual food safety costs associated with each food business category. Cost allocations within each business category are based on business volume, food types and associated food safety risks. Small businesses pay lower license fees than large businesses engaged in similar activities.

Conclusion

This rule increases food and dairy license fees, in order to address a mounting deficit in Wisconsin's food safety program. The fee increases will have a significant, but not dramatic impact on food and dairy businesses. This rule requires no additional recordkeeping or other procedures for small businesses. Businesses will not need additional professional skills or assistance to comply with this rule.

Dated this 7th day of December, 2007

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 
Steven B. Steinhoff, Administrator
Division of Food Safety

FISCAL ESTIMATE

DOA-2048 N(R 10/98)



ORIGINAL



UPDATED

List both LRB No. and
Bill/Adm. Rule No.ATCP 60,69,70,71,75, 77, 80, 81, 82,
85

CORRECTED



SUPPLEMENTAL

Amendment No. (If Applicable)

Subject Food and Dairy License Fees**Fiscal Effect**State: No State Fiscal EffectCheck 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)(gb)

Assumptions Used in Arriving at Fiscal Estimate

This rule increases food and dairy license fees to address a serious food safety funding deficit. This rule will first apply to food and dairy license fees paid on or after July 1, 2008. DATCP estimates that this rule will increase annual program revenues by \$909,200. The fee increase is necessary just to maintain current minimal levels of food safety inspection. DATCP currently has a negative cash balance in its food safety program revenue account, which will grow steadily worse if not addressed.

Wisconsin's food safety programs are funded by a combination of general purpose revenue (GPR) dollars and program revenue (PR) from industry license and service fees. In 1991, program revenue funded about 40% of program costs. The 1995-97 biennial budget reduced the GPR funding share, and increased the PR share to 50%. Subsequent state budgets effectively reduced the GPR funding share still further, so that license fees now fund about 60% of the food safety budget.

Recent state budgets have also resulted in a substantial amount of food safety license fee revenue being lapsed to the state general fund (to help remedy state budget deficits). At the same time, DATCP has experienced a modest increase in operating costs. DATCP proposed a license fee increase in 2005. However, the proposed rates were decreased as the rule went through the legislative review process.

As a result of all these factors, annual food safety operating costs now exceed annual food safety revenues and the cash balance in the food safety program revenue account has been completely depleted. At the end of FY 2006-07, DATCP had a negative cash balance of \$51,700 in its food safety PR account, as reported in the department's Cash Balance Final Report Summary for FY 2006-07. DATCP estimates that, if no corrective action is taken, the account will have a negative cash balance of \$470,000 at the end of FY 2008-09.

DATCP estimates that the fee increases in this rule will yield a positive PR account balance of \$440,000 by the end of FY 2008-09. DATCP projects that the positive balance will grow to \$798,000 by the end of FY 2010-11, before it again begins to decline due to gradually rising program costs.

Local Government Impact

Some local governments currently license and inspect retail food establishments as agents of DATCP. DATCP provides administrative services to participating local agents. Under current rules, local agents must reimburse DATCP for those services. The reimbursement amount is 10% of the DATCP license fee amount (local agents typically charge higher license fees than DATCP). The current reimbursement amount does not fully compensate DATCP for its costs.

For FY 2006-07, local agent reimbursement to DATCP equaled \$58,000. Under this rule, the reimbursement rate will remain at 10%, but will be applied to higher DATCP license fee amounts. That will increase the total reimbursement amount to approximately \$75,400. The annual statewide cost to local governments will thus increase by \$17,400. Local governments can (and typically do) pass this increase on to retail food businesses. Local governments can set license fees to recover up to 100% of their reasonable operating costs.

Long - Range Fiscal ImplicationsAgency/prepared by: (Name & Phone No.)
Department of Agriculture, Trade and
Consumer Protection

Michelle Wachter (608) 224-4703

Authorized Signature/Telephone No.

Barbara Knapp

Barbara Knapp (608) 224-4746

Date

11-16-07

FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect	<input checked="" type="checkbox"/> ORIGINAL	<input type="checkbox"/> UPDATED	LRB No. and Bill Adm. Rule No.	Amendment No.
DOA-2047 (R10/98)	<input type="checkbox"/> CORRECTED	<input type="checkbox"/> SUPPLEMENTAL	ATCP 60, 69, 70, 71, 75, 77, 80, 81, 82 & 85	

Subject
Food and Dairy License Fees

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

II. Annualized Costs:	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		
State Operations - Other Costs		
Local Assistance		
Aids to Individuals and 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	Increased Rev.	Decreased Rev.
<small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>		
GPR Taxes		
GPR Earned		
FED		
PRO/PRS	\$909,200	
SEG/SEG-S		
TOTAL State Revenues	\$909,200	

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	_____	<u>\$17,400</u>
NET CHANGE IN REVENUES	<u>\$909,200</u>	_____

Dept. of Agriculture, Trade & Consumer Protection	Authorized Signature/Telephone No.	Date
Michelle Wachter (608) 224-4703	<i>Barbara Knapp</i> Barbara Knapp (608) 224-4746	11-16-07