

# **07hr\_CRule\_07-037\_AC-Ag\_pt02**



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**
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#### **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)
  - (**ajr** = Assembly Joint Resolution)
  - (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

DATE: January 2, 2008

TO: Erin Ruby

Committee on Agriculture

FROM: Patrick E. Fuller, Assembly Chief Clerk

RE: Clearinghouse Rules Referral

The following Clearinghouse Rule has been referred to your committee.

### **CLEARINGHOUSE RULE 07-037**

AN ORDER to amend ATCP 60.02 (4) (a), 60.04 (2) (a) and (b), 69.01 (5), 69.02 (6), 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 (b), 75.02 (3) (a) to (e) and (4) (b) 1. to 5., 77.06 (1) (a), (b), and (d), 77.23 (3) 9a) and (c) to (e), 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) and (5) (b), 82.04 (5) (a) and (b) and 85.07 (2), relating to food and dairy license and reinspection fees.

Submitted by **Department of Agriculture, Trade and Consumer Protection.**

Report received from Agency on **December 18, 2007.**

To committee on **Agriculture.**

Referred on **Wednesday, January 2, 2008.**

Last day for action - **Friday, February 1, 2008.**

Under section 227.19 (4) of the Wisconsin Statutes, your committee has 30 days to take action or get an extension. The day **after** the official referral date is day one of your review period. Therefore, the 30th day should fall four weeks and two days after the referral date. For example, for Clearinghouse Rules referred on a Monday, a Wednesday would be your 30th day. For Clearinghouse Rules referred on a Tuesday, a Thursday would be your 30th day. For Clearinghouse Rules referred on a Wednesday, a Friday would be your 30th day. For Clearinghouse Rules referred on a Thursday or Friday, your 30th day would fall on a weekend. Therefore, your time would expire on the next working day (Monday) as provided for in s. 990.001 of the Wisconsin Statutes. Also, if the 30th day falls on a legal holiday, time would expire on the next working day.

Section 227.19 **requires** you to notify each member of your committee that you have received this Clearinghouse Rule. Although some committee chairs choose to do so, you are not required by law or rule to send a copy of the text of the rule to each member at this time. Instead, your notice could state that members should contact you if they wish to receive a hard copy of the rule. Another option would be to email the rule to members. **(Please note that the text of Rules beginning with the prefix "01" is available online in the Clearinghouse Rules infobase in FOLIO.)** Please put a copy of your official notification memo in the rule jacket.

Three copies of the Clearinghouse Rule and its accompanying documents are contained in the jacket. If you wish to have your Legislative Council attorney review the Clearinghouse Rule, send him/her a copy. I only need one copy remaining in the jacket when you report it out of committee at the end of the review period.

The identical process is happening simultaneously in the Senate. Keep track of their action on the rule.

For assistance with the Clearinghouse Rule process, please consult Kay Inabnet (6-5550) or your Legislative Council attorney. If you wish to learn more on this subject, read *Review of Administrative Rules* which is part of the Legislative Council's Wisconsin Legislator Briefing Book series, section 227.19 of the Wisconsin Statutes or part 2 of the *Administrative Rules Procedures Manual* written by the Revisor of Statutes Bureau and the Wisconsin Legislative Council staff.



## Ruby, Erin

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**From:** Rep.Ott  
**Sent:** Wednesday, January 02, 2008 11:59 AM  
**To:** Rep.Garthwaite; Rep.Gronemus; Rep.Jorgensen; Rep.Molepske; Rep.Mursau; Rep.Murtha; Rep.Nerison; Rep.Tauchen; Rep.Vruwink; Rep.WilliamsM  
**Cc:** Arrowood, Craig; Cross, William; Gillis, George; Halbach, Nathan; Hochhausen, Natolie; Hoelter, Jon; Junck, Linda; Kraak, Maureen; McKinny, Chris; Nelson, Elise; Palese, Tony; Patronskey, Mark; Peterson2, Ilsa; Pettack, Deanna; Potts, Andrew; Rausch, Scott; Smith-Loomans, Sandra; Sweeney, Rebekah; Wolkomir, Jon  
**Subject:** Clearinghouse Rule Referred to Assembly Committee on Agriculture  
**Attachments:** 20080102111548861.pdf

The following Clearinghouse Rule has been referred to the Assembly Committee on Agriculture for a 30 day review period:

**Clearinghouse Rule 07-037:** Food and Dairy License and Reinspection Fees

A copy of the rule is attached (39 pages).



2008010211154886  
1.pdf (2 MB)

Please contact my office if you have any questions or need a hard copy of the rule. The committee will have a public hearing on this rule.

The initial 30 day deadline for committee review is Friday, February 1, 2008.





To: Assembly Committee on Agriculture  
From: Nickolas C. George, Jr., Midwest Food Processors Association  
Date: January 10, 2008  
Re: Food & Dairy License & Re-inspection Fees - CR07-037

The Midwest Food Processors Association (MWFPA), representing over 60 food processing facilities in Wisconsin, is opposed to the 34% increase in Food & Dairy License & Re-inspection fees proposed by the Department of Agriculture, Trade & Consumer Protection (DATCP) in Clearinghouse Rule 07-037.

In the past the MWFPA has voiced concern over large fee increases. We strongly opposed the 93% fee increase adopted in 1997. And in December 2005 we remained silent over the 10% fee increase due primarily to the fact that the department agreed to eliminate the inclusion of a funding mechanism that automatically adjusted fees without public input—which we opposed.

MWFPA is not opposed to regulations or their cost. However we are opposed to excessive costs that put Wisconsin food processors at a disadvantage to national and international competitors. There is a middle ground where the need to instill consumer confidence can meet the need of the regulated industry to survive and grow.

In our comments to DATCP during the rule making process we asked the department to consider the following alternatives.

Consider a smaller increase: No one denies that costs go up. However 10% one year followed by 34% the next is excessive by anyone's definition. At some point businesses must ask themselves if the fee is worth the cost. This fee is one of dozens of fees that the food industry pays in order to operate in Wisconsin. Smaller companies in particular are having a harder time meeting the increased cost of doing business here.

Consider more funding sources: Over the past few years state agencies have increasingly depended on fees to supplement fewer general tax dollars that are being used for other programs. The department can make the argument that more general purpose funds are needed to operate this program, as well as many others. Raiding other sources, as is being considered in the current budget to fill this hole, is not the answer.

Control expenses through self-enforcement: Though the department states that costs have been cut, it does not mean that it shouldn't consistently look for ways to deliver services at a fair, affordable price. It was suggested by an industry representative at a recent DATCP meeting, that costs could be reduced if the scope of the task could be reduced. In other words perform fewer inspections with fewer inspectors.

(OVER)

EXPERTISE AND INFLUENCE TO POWER YOUR FOOD BUSINESS

The nature of the food industry lends itself to this approach for one all-encompassing reason—no one, including DATCP, cares more about food safety than the industry. It is in the industry's best interest to maintain a safe food supply. Therefore, clearly communicate what is expected, focus regulation on "bad actors", and allow the "good actors" to operate more freely under self-enforcement thus eliminating the need for an army of inspectors. How much could the agency save if inspections were reduced by 30% or 40%?

This idea is not a new one and in fact was one of the many Project Recommendations from the Future of Farming and Rural Life in Wisconsin Forum recently completed by the University of Wisconsin – Academy of Sciences, Arts and Letters. The Forum also recommended that food regulations be applied, "...with consideration for the producers' ability to be competitive in the marketplace." (Project Recommendations – page 20; Regulation) Though these recommendations are aimed at producers, they apply to the entire food industry - farm to fork.

We cannot over emphasize the importance of the ability to "be competitive in the marketplace." Wisconsin's food processing industry is under incredible pressure to deliver wholesome, safe food at an affordable price. It can be done if costs and regulations are fair and predictable. The fee increases contained in this rule are neither.

Thank you for holding this hearing and for the opportunity to comment on this rule. We ask that DATCP reconsider the 34% fee increase contained in this rule and look forward to working with the department to make this rule more acceptable to the industry while assuring the public that its food supply is safe.





**Testimony on Dairy Fees**  
**1/10/08**  
**Assembly Agriculture Committee**  
**Presented by Brad Legreid, Executive Director**  
**WI Dairy Products Assn.**

- No one likes fee increases.
- Members of the WI Dairy Products Assn. (WDPA) have never been enamored with fee increases.
- But, over the years, WDPA has always dealt with these fee increases in a professional manner. We have tried to view each increase with a rational and realistic perspective.
- We have always worked with the WI Department of Agriculture to arrive at fee increases that are fair and palatable to our members.
- We have never stubbornly opposed every increase. Rather, we carefully analyze and debate each increase on its merits to determine our course of support, or lack of support.
- In the past, WDPA has supported some increases and opposed others. In 2005, we vigorously opposed the proposal that contained an “automatic adjuster” for raising or lowering fees.
- Like I said, no one is happy with a fee increase, but I can confidently say that WDPA members have always approached this debate with open mindedness.
- However, this last fee proposal is troubling, primarily due to the size of the increase.
- Our association is cognizant of the fact that the Department has to increase fees since its facing a \$159,000 deficit this fiscal year, which will grow to \$927,000 by FY 2009 if left unchecked.
- It’s readily apparent there is a need for some type of increase.
- What is troubling is that the Department is proposing a 33% increase. That is a dramatic increase.

- As a sense of perspective, we must look at the past to understand the present.
- As we all know, prior to 1987, the Food Safety program was 100% funded by tax dollars (GPR). However, in the next 20 years, that percentage has drastically changed.
- Due to massive biennial budget deficits and raiding of surplus funds by the legislature, there has been a great reduction in public funding.
- WDPA has always believed the Food Safety program benefits the public by ensuring the food supply is safe and wholesome. Therefore, the public has a certain responsibility to fund a portion of this program through tax dollars.
- Unfortunately, political realities are different than common sense.
- Over the past 20 years, the legislature has whittled away at the amount of tax dollars going to the Food Safety program in order to balance the biennial budgets. The funding ratios have gone from 100% GPR in 1987 to 60% GPR- 40% PRO in 1991, to the current level of 40% GPR- 60% PRO.
- This proposal would further erode tax dollars to a 36% GPR- 64% PRO funding split.
- WDPA is also cognizant of the fact that due to past legislative practices of lapsing surplus funds, the Food Safety program can no longer set fee schedules on a 4-5 year cycle. This past practice worked well until the legislature began raiding surplus agency funds.
- Because of this practice, it's necessary to institute a new fee collection schedule, which will increase fees more frequently, but at lower rates in order to avoid creating surpluses which would be prime targets for legislative lapsing.
- That is why this current 33% fee increase proposal is troubling. It's a tremendously steep increase.
- When viewing such a steep fee increase, one must ask if such an increase can realistically be justified. Some of the contributing factors for a fee increase need to be examined, such as:
  1. With the reduction of farms and dairy plants in the state, shouldn't there be fewer inspection hours needed to perform these services? Shouldn't that keep the division's expenses down?
  2. We realize the DATCP is attempting to change federal mandates pertaining to farm inspections. Any changes would greatly reduce DATCP's expenses. However, we know that any changes to the Pasteurized Milk Ordinance, as mandated by the NCIMS, will take a great deal of time. Drastic changes to the PMO- which are not universally supported by other states- move at a snail-like

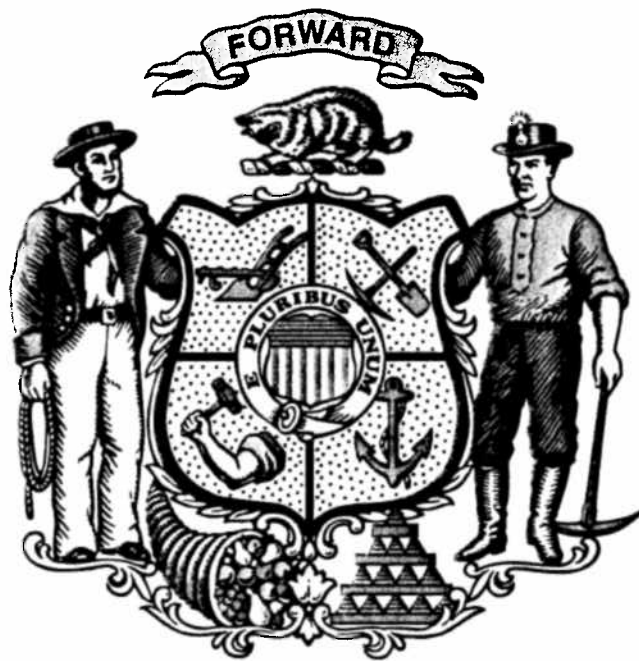
pace. WDPa stands ready to work with DATCP on any future NCIMS initiatives which will modify the PMO and reduce DATCP expenses.

3. As DATCP knows, the WI dairy industry competes in the national marketplace. The vast majority of dairy products produced in this state are sold outside of WI. Our dairy plants face stiff competition from dairy processors in CA, ID, NM, etc. Any increase in regulatory fees will increase the costs of our dairy products and place us at a competitive disadvantage with dairy manufacturers from other states.
4. Just like dairy manufacturers, DATCP's Food Division must continually monitor and streamline their operations and expenses in order to keep costs down. It's imperative that the same "belt tightening" efforts made by dairy plants be mimicked by the Department.
5. WDPa would gladly support any effort to increase the amount of GPR taxes which go towards funding the Food Safety program. We would be thrilled to see the Food Safety program being funded with greater tax dollars. Instead of a 36%-64% split between GPR and industry fees, it would be great to see an even 50-50 split.  
However, political realities tell us that probably will not happen. Many legislators say that there are no extra tax dollars to fund various regulatory agency programs.

The political reality is that as long as there are huge deficits affecting future biennial budgets, there will not be additional tax dollars going to the Food Safety program. Therefore, industry fees will have to continue being a higher percentage of the Food Safety program's funds than tax dollars. That is why it is imperative that DATCP does everything in its power to reduce expenses in order to avoid having to implement large increases in industry fees. DATCP must do everything feasibly possible to help our dairy companies remain competitive and profitable.

6. WDPa requests that DATCP carefully review their accepted practice of working with local governments to license and inspect retail food establishments. Currently, 34 local entities license and inspect on behalf of DATCP, compared to 15 in 1997. However, when local food agents are utilized to perform these services, the revenue DATCP receives for inspection services is reduced. DATCP must study whether there should be less local agents employed in order to increase revenues for the Food Safety program.
- WDPa requests DATCP to carefully consider if a 33% increase in fees is totally necessary. It's important to note that at the public hearings for this rule, which DATCP held in 2007, not one organization supported this proposed fee increase.
  - As I previously stated, WDPa has always worked with the Department on these fee increases. In the past, if the increases were justified, WDPa would support them. However, this latest fee increase is being questioned by many of our members, primarily due to the magnitude of the 33% increase.

- WDPa would also like to suggest that any increase be gradually phased in over a 2-3 year period. This would accomplish the following:
  - By having moderate annual increases, a large surplus would not build up that would be a target of legislative lapsing.
  - Moderate annual increase would be more palatable to the industry. Instead of being hit all at once by a large increase, industry could slowly absorb these moderate increases over a period of time.
  
- Thank you



Testimony on CR 07-037  
To: Assembly Ag Committee  
Presented by: Mark J. Stellpflug  
January 10, 2007

Good Morning. My name is Mark Stellpflug. My wife and I own and operate Stell's Piggly Wiggly in New Holstein. New Holstein is a small city of about 3300 people in Calumet County. Our family has operated a supermarket in our community for nearly 45 years. We are representative of thousands of small town, main street businesses that help to make Wisconsin and America's economy the envy of much of the world.

I come to you today to voice my opposition to Clearinghouse Rule 07-037, a rule that would force small businesses like mine to pay 25% more in increased DATCP licensing fees. This fee increase comes on top of an additional 25% fee increase imposed on retailers less than two years ago!

In preparation for my comments today, I have reviewed past testimony to both Assembly and Senate committees regarding past fee increases. I have reviewed communication between the Wisconsin Grocers Association, the Department of Agriculture, and Representative Al Ott, chairman of this committee. I am aware that the Secretary of the DATCP has made assurances, most notably in a letter to Representative Ott dated November 9, 2005, in which he said; *"over the next two years the Department (is) committed to working with 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."*

I sit before you today to report that, from my perspective, the secretary has failed in his commitment to meet the criteria set forth more than two years ago. Moreover, the record in the area of funding does not appear to indicate much success by DATCP when you consider they are asking for a 50% fee increase to be imposed on the stakeholders they serve in the same two year period in which they committed to identify operational efficiencies.

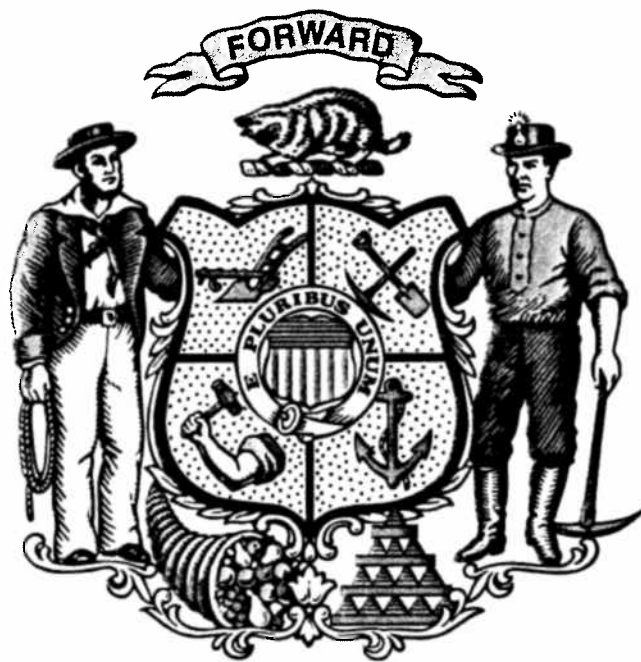
I am not here today to review and re-hash all of the commitments, assurances, and requests made by all entities involved over the past couple of years; that appears to largely be an effort in futility, if recent history is any indicator. No, I am here to speak to my legislative representatives to respectfully remind you that you represent the people of this great State of Wisconsin, and that the People look to you to watch out for their best interests. At the risk of being overly blunt, we count on you not to be protectors of the status quo, but rather to challenge the government, and its many agencies to be good stewards of their mission and purpose.

America prides itself on being a free market economy, and gives lip service to fostering entrepreneurship and the American dream. But our government, and its associated bureaucracy, operates in a cost plus fashion, and compensates its employees in a seniority based, non-merit manner. If government entities had to deliver products and services in the same way I must deliver them to my customer, you could not even conceive of raising the cost of that service by 25%, not to mention increasing the price another 25% two years later. In the market economy I operate in, I would be out of business if I didn't find a more efficient, and cost effective way to deliver that service.

From first hand experience I commend the Department of Agriculture for the stance it currently takes in its approach to the inspection process in retail grocery stores today. Gone are the days of inspectors shining flashlights in the corners of our stores looking for dust. Today the inspectors observe our team member's food handling practices, the inspectors discuss and test the food handling knowledge of our team members, and the inspectors are focused on fostering food handling best practices. In fact, my staff no longer lives in fear of an inspector, but sees them as a mentor, as partners in ensuring that we deliver wholesome food for the customers we serve.

Unfortunately, while the Department of Ag is being proactive and innovative in the way it approaches it's working relationship with retailers. It, and all of government, steadfastly clings to out-dated and unsustainable modes of measuring the competency and efficiency of employees, as well as the way it compensates employees. Additionally, it appears to be unwilling to apply sound and responsible business practices to ensure efficiency in its operations. As a result, we are left with the prospect of raising inspection fees by 50% in two years.

I respectfully suggest that those charged with the responsibility of managing government agencies, and all legislators responsible for overseeing the public sector, require that operational models, pay, and benefits begin to mirror that of the private sector. For to do anything less, places an unfair and untenable burden on those of us that pay to keep the bureaucracy operating. As a taxpaying citizen whom you seek to represent, I ask you to be good stewards of your oversight responsibility. I respectfully ask that you cast your vote in opposition to Clearinghouse Rule 07-037. Thank you.







STATE OF WISCONSIN

Legislative Audit Bureau

22 East Mifflin Street, Suite 500  
Madison, Wisconsin 53703  
(608) 266-2818  
Fax (608) 267-0410  
leg.audit.info@legis.wisconsin.gov

Janice Mueller  
State Auditor

January 15, 2008

Representative Al Ott  
323 North, State Capitol  
Madison, Wisconsin 53702

Dear Representative Ott:

I am writing in response to your January 14<sup>th</sup> letter, in which you request that we expedite completion of our audit of food and dairy inspection processes. I understand that your request is prompted, in part, by the March 3, 2008 expiration of jurisdiction of the Assembly Committee on Agriculture over Clearinghouse Rule 07-037, and your desire for the Committee to consider our findings in its deliberations on this rule package.

In order to assist the Committee in its deliberations, we agree to proceed expeditiously to complete the fee component of our larger audit effort on food and dairy inspection. We hope to release a letter report on our findings to the Joint Legislative Audit Committee in mid-February. We will then complete the remainder of our audit for release at a later date. We will ensure that all members of the Assembly Committee on Agriculture receive copies of both audit reports when they are issued.

I hope that you will find this information helpful in planning for the work of your Committee. Please contact me with any questions.

Sincerely,

Janice Mueller  
State Auditor

JM/kc

cc: Members, Assembly Committee on Agriculture

Members, Joint Legislative Audit Committee

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



Al Ott

State Representative • 3rd Assembly District

January 14, 2008

Janice Mueller  
State Auditor – Legislative Audit Bureau  
22 E. Mifflin Street, Suite 500  
Madison, WI 53703  
*Hand-Delivered*

Dear Ms. Mueller,

On behalf of the Assembly Committee on Agriculture, I respectfully request your consideration in expediting the completion of the Department of Agriculture, Trade and Consumer Protection Food and Dairy Inspection Performance Audit.

As you know, the Committee is currently reviewing Clearinghouse Rule 07-037, which calls for a significant increase in fees assessed to the various industries regulated by the Department's food safety program. According to the Department, the fee increase is necessary to ensure adequate revenue to continue program operations. Without the additional revenue, the Department estimates considerable shortfalls in the program's operating budget.

Yvonne Onsager of your staff attended the Committee's January 10<sup>th</sup> hearing on Clearinghouse Rule 07-037. The Committee appreciated her short briefing on the objective and status of the current audit. Ms. Onsager indicated in her comments that the final report is expected to be issued in March.

The Assembly Committee on Agriculture retains jurisdiction over Clearinghouse Rule 07-037 until March 3<sup>rd</sup>. While the committee is aware that the audit's primary focus is not related to the program's funding mechanism, we feel the audit's findings are timely, and may be helpful as we deliberate potential committee action on the rule package.

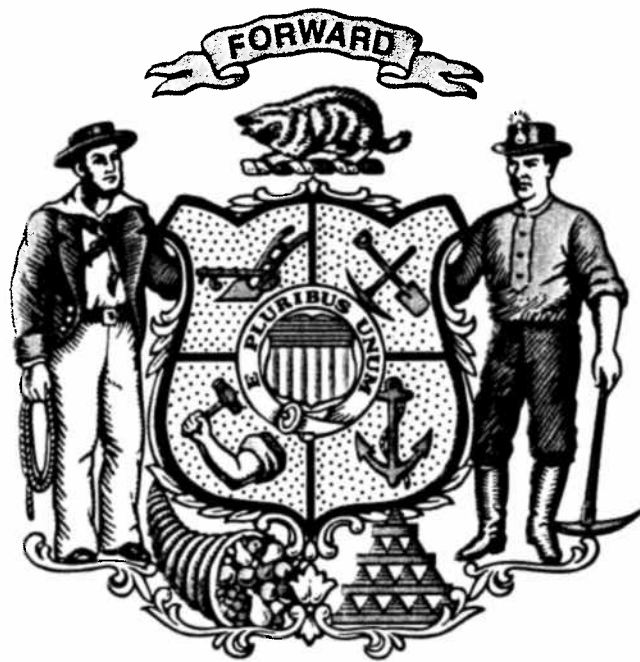
The Committee understands the substantial work that has thus far gone into the audit of the food safety program and the significant amount of work remaining to issue the final report. We are hopeful, however, that you will consider directing any additional resources necessary to complete the audit during the month of February. The Committee would greatly appreciate anything the Bureau may be able to do to expedite the completion of this audit.

Thank you for your time and your consideration of this request. Please do not hesitate to contact me to discuss this matter further. I look forward to hearing from you.

Sincerely,

Al Ott  
State Representative  
3<sup>rd</sup> Assembly District  
Chair, Assembly Committee on Agriculture

cc: Assembly Committee on Agriculture



PHONE CALL

FOR M. Mike Copper Smith DATE 1/8 TIME 3:15 A.M. P.M.

OF PHONE/MOBILE Festival Foods - New London FAX \_\_\_\_\_

MESSAGE 920 982 9869  
reject Rule

SIGNED \_\_\_\_\_ 1154

TELEPHONED  
 RETURNED YOUR CALL  
 PLEASE CALL  
 WILL CALL AGAIN  
 CAME TO SEE YOU  
 WANTS TO SEE YOU

Jan 2008  
CRU  
07-037  
?

PHONE CALL

FOR M. Charles Potter DATE Saturday 1/5 TIME \_\_\_\_\_ A.M. P.M.

OF PHONE/MOBILE 414-764-7640 FAX \_\_\_\_\_ Oak Creek Grocery Store

MESSAGE food  
OPPOSE fee increase

SIGNED \_\_\_\_\_ 1154

TELEPHONED  
 RETURNED YOUR CALL  
 PLEASE CALL  
 WILL CALL AGAIN  
 CAME TO SEE YOU  
 WANTS TO SEE YOU

PHONE CALL

FOR M. PAT Foy - Pif Wick DATE 1/8 TIME 11:08 A.M. P.M.

OF PHONE/MOBILE \_\_\_\_\_ FAX \_\_\_\_\_ Conomowoc & Hartland

MESSAGE OPPOSE food Rule

SIGNED \_\_\_\_\_ 1154

TELEPHONED  
 RETURNED YOUR CALL  
 PLEASE CALL  
 WILL CALL AGAIN  
 CAME TO SEE YOU  
 WANTS TO SEE YOU



## Ruby, Erin

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**From:** Rep.Ott  
**Sent:** Tuesday, February 05, 2008 4:37 PM  
**To:** Rep.Garthwaite; Rep.Gronemus; Rep.Jorgensen; Rep.Molepske; Rep.Mursau; Rep.Murtha; Rep.Nerison; Rep.Tauchen; Rep.Vruwink; Rep.WilliamsM  
**Cc:** Arrowood, Craig; Cross, William; Gillis, George; Halbach, Nathan; Hochhausen, Natolie; Hoelter, Jon; Junck, Linda; Kraak, Maureen; McKinny, Chris; Nelson, Elise; Palese, Tony; Patronskey, Mark; Peterson2, Ilsa; Pettack, Deanna; Potts, Andrew; Rausch, Scott; Smith-Loomans, Sandra; Sweeney, Rebekah; Wolkomir, Jon  
**Subject:** Thursday's Agriculture Committee Meeting  
**Attachments:** 20080205113422113.pdf

Members,

Please find attached a copy of a Legislative Fiscal Bureau memo regarding DATCP's food and dairy fee rule package. We will be briefed on this memo by Daryl Hinz, LFB Program Supervisor, during Thursday's hearing.



2008020511342211  
3.pdf (373 KB)...

We will also hear a presentation from Paul Stuibler and Yvonne Onsager of the Legislative Audit Bureau on the Food & Dairy Safety Program Funding Letter Report released last week. A copy should have been delivered to your office. Please bring the report with you to the hearing, as Paul and Yvonne will run through the report's various charts.

I have also asked DATCP to come before the Committee again to comment on both the Audit Bureau report and the Fiscal Bureau memo.

Please feel free to contact my office with any questions or if you need hard copies of either document.

Rep. Ott  
Chair, Assembly Committee on Agriculture



## Legislative Fiscal Bureau

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

February 5, 2008

TO: Representative Alvin Ott  
Room 323 North, State Capitol

FROM: Daryl Hinz, Program Supervisor

SUBJECT: DATCP Food and Dairy Safety Program Funding and Fee Levels

The following is provided in response to your request for information on funding for the food and dairy regulation program administered by the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP). Specifically you inquired about the general fund versus program revenue (fees) portion of the budget, the proposed DATCP administrative rule increasing fees, and several alternative fee options.

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 (PR) appropriation account receives these food and dairy fees, and uses the revenues for related food and dairy training, inspection, testing, and licensing activities. The program is also supported by general fund (GPR) and federal (FED) revenues. For 2007-08, DATCP's food regulation program has budgeted expenditures of \$9.1 million.

### Food Safety Program Funding

In state fiscal year 1986-87 the program was provided \$3.1 million GPR and no program revenues were budgeted. However, the next year the program was funded equally at \$1.9 million each from GPR and PR. GPR appropriations have ranged between approximately 47% and 53% of program authority between fiscal years 1987-88 and 2000-01. The following table shows the amount appropriated under the state budget for the food safety program in the second (odd) year of each of the last five biennia. Since the 2001-03 budget, the GPR portion has generally been budgeted between 41% and 43%, with PR at 57% to 59%. However, if federal funding is considered, program revenue fees would represent 54% to 58% of the total food safety budget since 2002-03.

**TABLE 1**

**DATCP's Food Safety Program - Appropriated**

	<u>2000-01</u>		<u>2002-03</u>		<u>2004-05</u>		<u>2006-07</u>		<u>2008-09</u>	
GPR	\$3,287,400	46%	\$3,008,500	42%	\$3,070,600	41%	\$3,150,000	40%	\$3,777,600	41%
PR	3,720,100	52	3,939,900	56	4,423,600	58	4,450,200	56	4,910,800	54
FED	<u>111,000</u>	2	<u>154,500</u>	2	<u>76,300</u>	1	<u>304,900</u>	4	<u>415,800</u>	5
All Funds	\$7,118,500		\$7,102,900		\$7,570,500		\$7,905,100		\$9,104,200	
GPR/PR Budget	\$7,007,500		\$6,948,400		\$7,494,200		\$7,600,200		\$8,688,400	
GPR Share	47%		43%		41%		41%		43%	
PR Share	53		57		59		59		57	

It should be noted that beginning in 2003-04 the grade A dairy certification program (and the associated \$362,100 and 4.8 position budget) was transferred from the Department of Health and Family Services to DATCP. While the program had been GPR funded in H&FS, it was funded from PR fees upon transfer to DATCP. Further, Table 1 reflects amounts appropriated by the Legislature (the budgeted funding split). It does not include supplements provided through an administrative process to reflect actual pay and benefit increases.

You also asked what the effect would be if the state budgeted the program at a 50/50 general purpose revenue/program revenue split. For fiscal year 2008-09 this would require providing an additional \$566,600 GPR and deleting the same amount of PR authority.

**Current Fee Levels**

DATCP's food regulation program revenue (PR) appropriation account receives various food and dairy fees, and uses the revenues for related food and dairy inspection and licensing activities. For 2007-08, DATCP's food safety program is authorized expenditures of \$9.1 million and 99.5 positions (\$4.9 million PR with 57.54 PR positions, \$3.8 million GPR with 41.71 positions, and \$0.4 million FED with 0.25 position). Table 2 depicts an estimated account balance for DATCP's food regulation PR appropriation account for the current and next biennia. Expenditures shown after fiscal year 2007-08 are based on the authorized levels for the appropriation, with adjustments in future years for salary and fringe benefit increases and estimated expenditure authority lapses. The revenues shown for 2007-09 include one-time transfers from the segregated agricultural chemical cleanup fund authorized in 2007 Act 20 (\$250,000 in 2007-08 and \$100,000 in 2008-09).



**TABLE 2**

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

	Actual <u>2005-06</u>	Actual <u>2006-07</u>	Projected <u>2007-08</u>	Projected <u>2008-09</u>	Projected <u>2009-10</u>	Projected <u>2010-11</u>
Opening Balance	\$453,400	\$17,100	-\$51,800	\$48,200	-\$176,800	-\$606,800
Revenues	4,032,100	4,532,200	5,020,000	4,870,000	4,770,000	4,770,000
Expenditures	<u>-4,468,400</u>	<u>-4,601,100</u>	<u>-4,920,000</u>	<u>-5,095,000</u>	<u>-5,200,000</u>	<u>-5,330,000</u>
Closing Balance	\$17,100	-\$51,800	\$48,200	-\$176,800	-\$606,800	-\$1,166,800

**Proposed Fee Increases**

The proposed food and dairy fee rule modifications would make a number of changes to the food and dairy fees collected by DATCP. Table 3 shows the 2005 fee level, current fees, and the proposed fees, and the estimated increase in revenue from the fee increases based on the number of licenses/payers anticipated by DATCP. In general, DATCP proposes a 30% fee increase for most payers, however the Grade A milk procurement fee would increase 12.6%. Under the proposed rule, food and dairy regulation annual PR revenues would increase by about 19% (from approximately \$4.8 million currently to \$5.7 million).

**TABLE 3**

**Food and Dairy Fees**

<u>License</u>	<u>2005 Fee</u>	<u>Current Fee</u>	<u>Proposed Fee</u>	<u>Fee Increase</u>	<u>Annual Revenue Increase</u>
Retail Food Establishment (large)	\$450	\$562	\$731	\$169	\$72,500
Retail Food Establishment (small)	175	218	283	65	63,500
Food Processing Plant (large - perishable)	525	685	890	205	27,500
Food Processing Plant (large)	325	424	551	127	34,300
Grade A Dairy Farm	20	24	31	7	84,000
Bulk Milk Weigher and Sampler	40	48	62	14	54,200
Bulk Milk Tanker	30	36	47	11	39,200
Grade A Milk Procurement Fee*	0.6¢/CWT	0.96¢/CWT	1.081¢/CWT	0.121¢/CWT	280,000
Laboratory Certification	Various	Various	Various	---	46,700
Cheese & Butter Grading	Various	Various	Various	---	33,000
All Others (various fees)	---	---	---	---	<u>175,100</u>
Total					\$910,000

\*"CWT" is hundredweight of milk.

While the projected annual increase, as shown in Table 3, is expected to be approximately \$0.9 million, based on a July 1, 2008, effective date for the fee increases, this revenue increase

would not be realized until 2008-09. This assumes a rule is approved by the Legislature by mid-March, published by the Legislative Reference Bureau before the end of April, and becomes effective for large businesses on May 1 and small businesses on July 1, 2008.

Table 4 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 2007-08 reflect the statutorily authorized amounts, modified in future years to reflect anticipated lapses, as well as an annual adjustment for salary and fringe benefit related costs.

**TABLE 4**

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

	<u>2007-08</u>	<u>2008-09</u>	<u>2009-10</u>	<u>2010-11</u>
Opening Balance	-\$51,800	\$48,200	\$733,200	\$1,213,200
Current Revenues	5,020,000	4,870,000	4,770,000	4,770,000
New Revenues (rule)	0	910,000	910,000	910,000
Expenditures	<u>-4,920,000</u>	<u>-5,095,000</u>	<u>-5,200,000</u>	<u>-5,330,000</u>
Closing Balance	\$48,200	\$733,200	\$1,213,200	\$1,563,200

However, additional factors related to the expenditures shown in Tables 2 and 4 should be noted. First, 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, prior to 2005-06, DATCP generally had not fully utilized its available expenditure authority. For example, in fiscal years 2003-04 and 2004-05 DATCP had authorized expenditures of \$4.4 million, but spent only \$3.9 million. DATCP officials attributed the under-spending largely to past hiring slow-downs and freezes. Prior to 2006, DATCP had generally maintained between eight and 10 vacant positions. The food regulation PR account had four vacant positions in January, 2007 and 6.5 vacancies in January 2008. If unexpected vacancies occur or persist, DATCP expenditures could again be reduced. However, DATCP indicates a reclassification of food safety inspectors in the last biennium resulted in a significant increase in salary related costs for inspectors and associated supervisory staff. This is expected to assist with staff retention. Further, a significant increase in expenditures occurred related to costs such as travel, information technology, and lab fees. As a result expenditure authority has been fully utilized the past two fiscal years.

Moreover, the tables do not reflect any transfers from the DATCP food regulation PR account to the general fund in 2007-09 or beyond. While 2007 Act 20 does not identify any specific lapse from this account, the act does require GPR lapses, and PR and SEG transfers, to the general fund totaling \$200 million for the biennium. The Department of Administration is given broad discretion to identify the agency 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 2007-09 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). Further, under Act 20 this provision also applies to the 2009-11 biennium.

### Discussion

As shown in Table 2, by June 30, 2011, DATCP's food regulation appropriation account would be projected to have a deficit of almost \$1.2 million under the current fees, with an annual structural deficit (annual expenditures exceed revenues) of over \$500,000 by 2010-11. Therefore, without a fee increase DATCP would have to substantially reduce authorized expenditures in order to maintain a positive account balance (reductions of over \$1.1 million during the next three years). DATCP officials indicate reductions of this magnitude could substantially affect its ability to maintain an adequate food safety program.

Given the Department's desire to bring revenues more in-line with authorized expenditures, any changes made to the proposed fee modifications should attempt to correct the account's structural deficit, and maintain a positive account balance. As shown in Table 4, under the proposed fee increases DATCP's food regulation appropriation account would be expected to have a June 30, 2011, balance of over \$1.5 million. Given this projected balance, one option would be to reduce the proposed increase. Further, it should be noted that, to the extent GPR support for the food safety program were increased (above the current \$3.8 million), program revenue fees could be reduced accordingly.

### Options

The following tables reflect the expected condition of the program revenue account under three different alternatives. DATCP has proposed an administrative rule increasing food and dairy fees totaling approximately \$910,000 annually, beginning in fiscal year 2008-09. Table 5 reflects estimated revenues from a fee increase that would be one-third lower than proposed by DATCP. Table 6 reflects revenues one-fourth lower than DATCP has proposed and Table 7 reflects an increase of \$500,000 in annual revenues (rather than the proposed \$910,000).

**TABLE 5**

**Reduce Increase by One-third**

	<u>2007-08</u>	<u>2008-09</u>	<u>2009-10</u>	<u>2010-11</u>
Opening Balance	(\$51,800)	\$48,200	\$430,200	\$607,200
Current Revenues	5,020,000	4,870,000	4,770,000	4,770,000
New Revenues	0	607,000	607,000	607,000
Expenditures	<u>(4,920,000)</u>	<u>(5,095,000)</u>	<u>(5,200,000)</u>	<u>(5,330,000)</u>
Closing Balance	\$48,200	\$430,200	\$607,200	\$654,200

**TABLE 6****Reduce Increase by One-quarter**

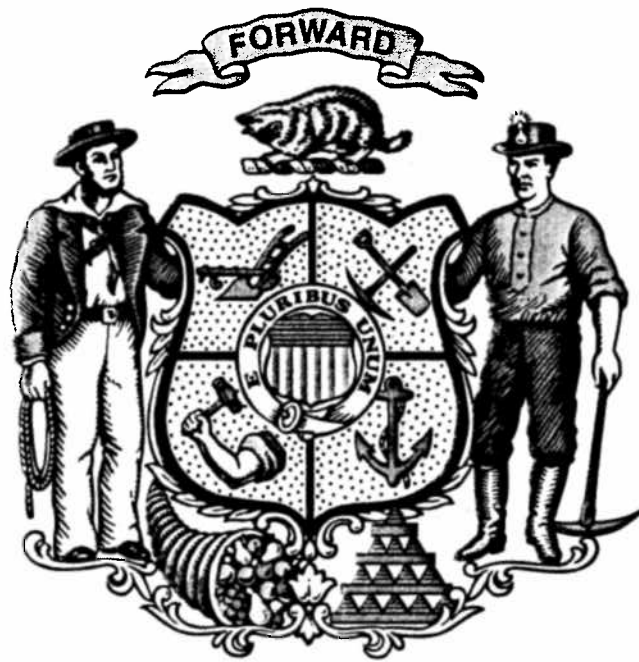
	<u>2007-08</u>	<u>2008-09</u>	<u>2009-10</u>	<u>2010-11</u>
Opening Balance	(\$51,800)	\$48,200	\$506,200	\$759,200
Current Revenues	5,020,000	4,870,000	4,770,000	4,770,000
New Revenues	0	683,000	683,000	683,000
Expenditures	<u>(4,920,000)</u>	<u>(5,095,000)</u>	<u>(5,200,000)</u>	<u>(5,330,000)</u>
Closing Balance	\$48,200	\$506,200	\$759,200	\$882,200

**TABLE 7****\$500,000 Revenue Target**

	<u>2007-08</u>	<u>2008-09</u>	<u>2009-10</u>	<u>2010-11</u>
Opening Balance	(\$51,800)	\$48,200	\$323,200	\$393,200
Current Revenues	5,020,000	4,870,000	4,770,000	4,770,000
New Revenues	0	500,000	500,000	500,000
Expenditures	<u>(4,920,000)</u>	<u>(5,095,000)</u>	<u>(5,200,000)</u>	<u>(5,330,000)</u>
Closing Balance	\$48,200	\$323,200	\$393,200	\$333,200

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

DH/mb



## Ruby, Erin

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**From:** Ruby, Erin  
**Sent:** Tuesday, February 12, 2008 3:31 PM  
**To:** Nilsestuen, Rod J - DATCP  
**Cc:** Schultz, Karen E - DATCP; 'Matson, James K - DATCP'; Steinhoff, Steve B - DATCP  
**Subject:** Letter & Motion on Clearinghouse Rule 07-037

**Attachments:** 20080212152300715.pdf



2008021215230071  
5.pdf (80 KB)

Please find attached a letter and motion from the Assembly Committee on Agriculture regarding Clearinghouse Rule 07-037.

Thank you!

Erin Ruby  
Research Assistant  
Clerk, Assembly Committee on Agriculture  
Office of State Representative Al Ott  
608.266.5831  
erin.ruby@legis.wisconsin.gov



Al Ott

State Representative • 3rd Assembly District

February 12, 2008

Secretary Rod Nilsestuen  
Department of Agriculture, Trade & Consumer Protection  
P.O. Box 8911  
Madison, WI 53718-8911  
*(Transmitted Via E-mail)*

Dear Secretary Nilsestuen,

Please find attached a motion adopted by the Assembly Committee on Agriculture relative to Clearinghouse Rule 07-037. The Committee approved the motion 10-0.

The Committee respectfully requests the Department consider modifications to this rule as outlined in the motion.

Please respond, in writing, as to your intent to consider modifications by 5:00 p.m. on Friday, February 15, 2008. Should the Department fail to respond or refuse the Committee's request to consider modifications, the motion provides that the Committee will object to the rule.

I sincerely appreciate the Department's cooperation thus far on Clearinghouse Rule 07-037. Please do not hesitate to contact my office with any questions or concerns.

Sincerely,

Al Ott  
State Representative  
Chair, Assembly Committee on Agriculture

Attachment

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.