

# ☞ 07hr\_CRule\_07-037\_AC-Ag\_pt03



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)



State of Wisconsin  
Jim Doyle, Governor

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

February 15, 2008

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

Dear Representative Ott:

This letter and the attached revised Clearinghouse Rule 07-037 (CR 07-037) respond to your February 12, 2008 letter that contains the Assembly Committee on Agriculture request to the Department to consider modifications to CR 07-037 related to increases in fees associated with food and dairy licenses, reinspections, and milk procurement. The motion adopted by the Committee during the executive session held on February 12, 2008 requests that the rule be modified as follows:

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

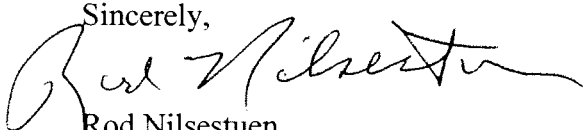
The department has considered this request and recommended that the DATCP Board approve the requested reduction at the Board's February 13, 2008 meeting. The Board approved this 25% reduction in the aggregate fee increase as well as the allocation of this revised increase.

The 25% reduction is generally allocated equally across all license categories. The grade A milk procurement fee also was reduced, but only as needed to bring the fee increase down to the requested 25% reduction. The revised rule as well as a chart showing allocation of the revised fee increases is attached for the committee's consideration.

Our ultimate goal is to provide adequate, stable funding to the Department's food and dairy safety and inspection programs. Though this rule will provide adequate funding for these critical public health and consumer protection programs in the short term, we agree it is not a long term solution to the challenge of providing funding that is both adequate and stable. However, given the difficult economic circumstance we currently face, we cannot accomplish that goal at this time. Our longer term goal remains to revisit and thoughtfully consider the appropriate balance between public and private funding support.

Thank you for your efforts in securing an equitable compromise to allow this rule to move forward toward on-time implementation.

Sincerely,



Rod Nilsestuen  
Secretary

*Agriculture generates \$51.5 billion for Wisconsin*

<b>FISCAL ESTIMATE</b> DOA-2048 N(R 10/98)	<input checked="" type="checkbox"/> ORIGINAL	<input type="checkbox"/> UPDATED	List both LRB No. and Bill/Adm. Rule No. ATCP 60,69,70,71,75,77,80, 81, 82, 85 Amendment No. (If Applicable)
	<input checked="" type="checkbox"/> CORRECTED	<input type="checkbox"/> SUPPLEMENTAL	

**Subject** Food and Dairy License Fees

<b>Fiscal Effect</b> State: <input type="checkbox"/> No State Fiscal Effect Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation  <input type="checkbox"/> Increase Existing Appropriation <input checked="" type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation	<input type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input type="checkbox"/> No  <input type="checkbox"/> Decrease Costs
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<b>Local</b> : <input type="checkbox"/> No local government costs 1. <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input checked="" type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input checked="" type="checkbox"/> Increase Revenues <input checked="" type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Unit Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input checked="" type="checkbox"/> Cities <input checked="" type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
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<b>Fund Source Affected</b> <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	<b>Affected Ch. 20 Appropriations</b> 20.115(1)(gb)
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**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 \$683,000. 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 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 \$51,800 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 \$213,300 by the end of FY 2008-09. DATCP projects a positive balance of \$119,700 by the end of FY 2010-11, however due to gradually rising program costs the balance will then decline further.

**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 \$70,700. The annual statewide cost to local governments will thus increase by \$12,700. 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 Implications**

<b>Agency/prepared by: (Name &amp; Phone No.)</b> Department of Agriculture, Trade and Consumer Protection  Michelle Wachter (608) 224-4703	<b>Authorized Signature/Telephone No.</b>  <i>Barbara Knapp</i> Barbara Knapp (608) 224-4746	<b>Date</b>  2-15-08
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# FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect	<input type="checkbox"/> ORIGINAL	<input checked="" type="checkbox"/> UPDATED	LRB No. and Bill/Adm. Rule No. ATCP 60, 69, 70, 71, 75,	Amendment No.
DOA-2047 (R10/98)	<input type="checkbox"/> CORRECTED	<input type="checkbox"/> SUPPLEMENTAL	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) <span style="float:right;">FTE</span>		
State Operations - Other Costs		
Local Assistance		
Aids to Individuals and Organizations		
<b>TOTAL State Costs by Category</b>		
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	<b>\$683,000</b>	
SEG/SEG-S		
<b>TOTAL State Revenues</b>	<b>\$683,000</b>	

## NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	_____	<b>\$12,700</b>
NET CHANGE IN REVENUES	<b>\$683,000</b>	_____

Dept. of Agriculture, Trade & Consumer Protection Michelle Wachter (608) 224-4703	Authorized Signature/Telephone No. <i>Barbara Knapp</i> Barbara Knapp (608) 224-4746	Date 2-15-08
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**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.

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**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.

<b>Entity</b>	<b>Current Fee(s)</b>	<b>Proposed Fee(s)</b>
Dairy Farm	\$24 annual license fee (paid by dairy plant operator)	\$30
	\$24 or \$48 reinspection fee (paid by dairy plant operator if reinspection is required)	\$30 or \$60
Dairy Plant	<i>Annual license fee</i> (calculations include an increase in the basic license fee from \$96 to \$120):	
	\$699 or \$879 for grade A processing plant (based on size)	\$855 or \$1,075
	\$397 for grade A receiving station	\$490
	\$96 for grade A transfer station	\$120
	\$96 to \$421 for grade B processing plant (based on size)	\$120 or \$520
	\$96 for grade B receiving station or transfer station	\$120
	Grade A milk procurement fee: 0.96 cents per 100 lbs.	1.048 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)	\$60
\$203 or \$246 for grade A processing plant	\$250 or \$300
\$221 for grade B processing plant	\$270
\$122 for grade A receiving station	\$150
\$48 for grade B receiving station or transfer station	\$60

*Butter and cheese grading fee:*

1.09 cents per 100 lbs. of product	1.35 cents per 100 lbs. of product
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Food Processing  
Plant

\$78-\$685 annual license fee  
(based on size and type) \$95 - \$835

\$261 canning surcharge for canning  
plants with annual production of  
\$25,000 or more \$320

\$49-\$431 reinspection fee  
(based on size and type) \$60 - \$525

Food Warehouse

\$65-\$261 annual license fee  
(based on size and type) \$80-\$320

\$92-\$246 reinspection fee  
(based on size and type) \$115 - \$300

Milk Distributor

\$60 annual license fee  
per facility \$75

\$25 reinspection fee  
per facility \$30

Retail Food Store

\$37-\$562 annual license fee  
(based on size and type) \$45-\$685

	\$74-\$369 reinspection fee (based on size and type)	\$90 - \$450
Dairy, Food or Water Testing Lab	\$336 annual lab certification fee for each dairy or food test (other than milk drug residue screening)	\$410
	\$276 annual lab certification fee for each water test	\$340
	\$25 annual certification fee for each dairy or food analyst (other than milk drug residue screening analyst)	\$30
	\$50-\$500 initial fee and \$25-\$50 annual renewal fee for lab performing milk drug residue screening	\$60-\$610 initial fee \$30-\$60 annual renewal fee
	\$25 initial evaluation fee for milk drug residue screening analysts (if more than 3 per lab)	\$30
Bulk Milk Tanker	\$36 annual bulk milk tanker license fee	\$45
	\$36 bulk milk tanker reinspection fee	\$45
	\$48 bulk milk weigher and sampler license fee (2-year license)	\$60
	\$48 bulk milk weigher and sampler reinspection fee	\$60
Buttermaker or Cheesemaker	\$60 license fee (2-year license)	\$75
Butter or Cheese Grader	\$60 license fee (2-year license)	\$75

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 \$683,000 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 \$51,800 in its food safety PR account. 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 \$683,000 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 \$213,300 by the end of FY 2008-09.

## **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 \$70,700. This rule thus increases local costs by approximately \$12,700 (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 \$683,000 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

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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   \$30.

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 \$30.

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~~ \$60.

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~~ \$75.

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~~ \$75.

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~~ \$400.

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~~ \$835.

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~~ \$160.

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~~ \$520.

19 (e) For a food processing plant that has an annual production of less than \$25,000, an  
20 annual license fee of ~~\$78~~ \$95.

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~~\$320, 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~~\$255.

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~~\$525.

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~~\$150.

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~~\$490.

16 (b)5. For a food processing plant that has an annual production of less than \$25,000 the  
17 reinspection fee is ~~\$49~~\$60.

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~~ \$120.

21 (b) For a warehouse that stores potentially hazardous food, and has at least 50,000 square  
22 feet of storage area, ~~\$261~~ \$320.

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~~ \$80.

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~~ \$160.

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~~ \$115.

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~~ \$300.

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~~ \$150.

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~~ \$300.

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~~ \$75 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~~ \$30 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~~ \$265.



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~~ \$685.

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~~ \$190.

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~~ \$60.

8 (e) For a retail food establishment that is not engaged in food processing, an annual  
9 license fee of ~~\$37~~ \$45.

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~~ \$190.

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~~ \$450.

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~~ \$190.

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~~ \$90.

21 (b)5. For a retail food establishment that is not engaged in food processing, the  
22 reinspection fee is ~~\$74~~ \$90.

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~~ \$410 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~~ \$30 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~~ \$340 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~~ \$610, except as provided in par. (b) or (c).

13           (c) An initial fee of ~~\$50~~ \$60 if the laboratory does not apply for approval to perform any  
14 visual read test.

15           (d) A fee of ~~\$25~~ \$30 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~~ \$60 for each annual renewal of the laboratory approval,  
18 except that the renewal fee is ~~\$25~~ \$30 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~~ \$120  
21 plus the following:

1 (b)1. For a grade A processing plant, a supplementary license fee of ~~\$783~~ \$955 if the  
2 plant received more than 2,000,000 pounds of milk from milk producers, or a supplementary  
3 license fee of ~~\$603~~ \$735 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~~ \$400.

7 (b)3. For a grade A receiving station, a supplementary license fee of ~~\$301~~ \$370.

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~~ 1.048 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~~ \$60 plus a supplementary  
14 reinspection fee as follows:

15 (b)1. For a grade A processing plant, a supplementary reinspection fee of ~~\$198~~ \$240 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~~ \$190 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~~ \$210.

20 (b)3. For a grade A receiving station, a supplementary reinspection fee of ~~\$74~~ \$90.

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~~ 1.35 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~~ \$75.

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~~ \$45.

14 (5)(b) The reinspection fee under par. (a) is ~~\$36~~ \$45.

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~~ \$60.

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~~ \$60. 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~~ \$75.

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 \_\_\_\_\_, 2008.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By \_\_\_\_\_  
Rodney J. Nilsestuen  
Secretary

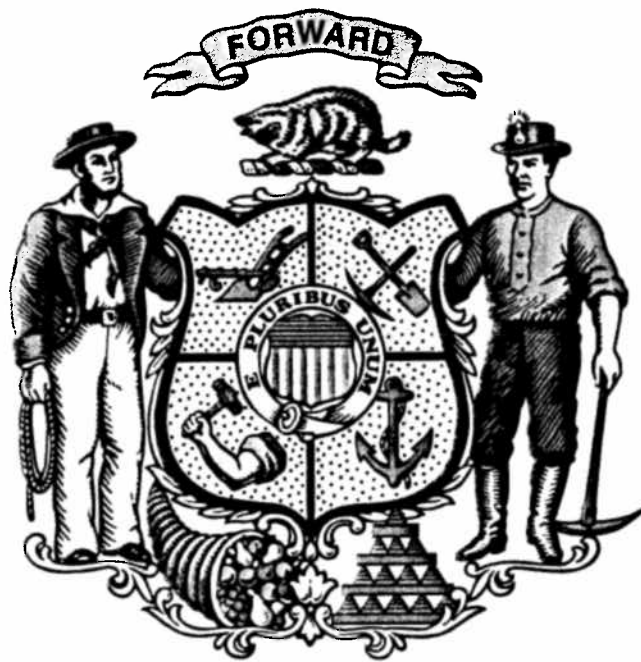
**Rule Draft - Fee Chart Attachment**

**2/12/08**

**Fee increase based on 25% reduction from original proposal**

<b>Entity</b>	<b>Current Fee(s)</b>	<b>Proposed Fee(s)</b>	<b>Page in rule draft</b>
Dairy Farm	\$24 annual license fee (paid by dairy plant operator)	\$30	2
	\$24 or \$48 reinspection fee (paid by dairy plant operator if reinspection is required)	\$30 or \$60	
Dairy Plant	Annual license fee (calculations include an increase in the basic license fee from \$96 to \$120)		
	\$699 or \$879 for a grade A processing plant (based on size)	\$855 or \$1075	2
	\$397 for grade A receiving station	\$490	
	\$96 for grade A transfer station	\$120	
	\$96 to \$421 for grade B processing plant (based on size)	\$120 or 520	
	\$96 for grade B receiving station or transfer station	\$120	
	Grade A milk procurement fee: 0.96 cent per 100 lbs.	1.048 cent per 100 lbs. (for payments due beginning July 1, 2008)	
	Grade B milk procurement fee: 0.2 cent per 100 lbs.	No change	
	<i>Reinspection fee:</i> Basic plant fee \$48 (included in charges below)	\$60	
	\$203 or \$246 for grade A processing plant	\$250 or \$300	3
	\$221 for grade B processing plant	\$270	
	\$122 for grade A receiving station	\$150	
	\$48 for grade B receiving station or transfer station	\$60	
	<i>Butter and cheese grading fee:</i> 1.09 cents per 100 lbs. of product	1.35 cents per 100 lbs. of product	
Food Processing Plant	\$78-\$685 annual license fee (based on size and type)	\$95-\$835	3
	\$261 canning surcharge for canning plants with annual production of \$25,000 or more	\$320	

<b>Entity</b>	<b>Current Fee(s)</b>	<b>Proposed Fee(s)</b>	<b>Page in rule draft</b>
Food Processing Plant	\$49-\$431 reinspection fee (based on size and type)	\$60 - \$525	3
Food Warehouse	\$65-\$261 annual license fee (based on size and type)	\$80 - \$320	3
	\$92-\$246 reinspection fee (based on size and type)	\$115 - \$300	
Milk Distributor	\$60 annual license fee per facility	\$75	3
	\$25 reinspection fee per facility	\$30	
Retail Food Store	\$37-\$562 annual license fee (based on size and type)	\$45 - \$685	3
	\$74-\$369 reinspection fee (based on size and type)	\$90 - \$450	
Dairy, Food or Water Testing Lab	\$336 annual lab certification fee for each dairy or food test (other than milk drug residue screening)	\$410	3
	\$276 annual lab certification fee for each water test	\$340	
	\$25 annual certification fee for each dairy or food analyst (other than milk drug residue screening analyst)	\$30	4
	\$50-\$500 initial fee and \$25-\$50 annual renewal fee for lab performing milk drug residue screening	\$60 - \$610 initial fee \$30 - \$60 annual renewal fee	
	\$25 initial evaluation fee for milk drug residue screening analysts (if more than 3 per lab)	\$30	
Bulk Milk Tanker	\$36 annual bulk milk tanker license fee	\$45	4
	\$36 bulk milk tanker reinspection fee	\$45	
	\$48 bulk milk weigher and sampler license fee (2-year license)	\$60	
	\$48 bulk milk weigher and sampler reinspection fee	\$60	
Buttermaker or Cheesemaker	\$60 license fee (2-year license)	\$75	4
Butter or Cheese Grader	\$60 license fee (2-year license)	\$75	4







**Al Ott**

State Representative • 3rd Assembly District

March 4, 2008

Secretary Rod Nilsestuen  
Wisconsin Department of Agriculture, Trade & Consumer Protection  
2811 Agriculture Drive  
Madison, WI 53708

Dear Secretary Nilsestuen,

This letter is to inform you that the following clearinghouse rule has been reported out of the Assembly Committee on Agriculture:

Clearinghouse Rule #07-037  
Relating to:  
Food and Dairy License and Reinspection Fees

I appreciate the Department's work on this rule and your willingness to accept the Committee's request for modifications.

Please feel free to contact my office if you have any questions.

Sincerely,

Al Ott  
State Representative  
Chair, Assembly Committee on Agriculture





Date?

ONE SOUTH PINCKNEY, SUITE 504 • MADISON, WI 53703 • 608/244-7150 • FAX 608/244-9030

## TALKING POINTS CR 07-37

**License Fee History** (food sales of at least \$1 million and process potentially hazardous food, i.e. milk.

Effective 1998—\$450

Effective July, 2006—\$562

Proposed July, 2008—\$753

- This is the second fee increase in a two-year period which will result in a total 50% increase. As most grocers will tell you, if they raised their prices 50% in two years, they would be out of business.
- This is simply a short term fix to a long term problem. The Department should do what most businesses do when expenses and revenues are not in line; become more efficient by understanding their customers.
- We will not be receiving additional inspection services for our fees. The Legislative Fiscal Bureau and the Department have reported the fees are simply to maintain the program at its current level.
- The program is being penalized for \$1.2 million in funds that the Governor took from this program and put into the general purpose revenue for the state. If the Department was able to carry a surplus in past years, why can't they continue to operate using additional dollars that were excess in past years?
- The Ag Department uses the fees for both dairy and retail inspections. Dairy inspections are federally mandated and DATCP has admitted that inspectors are pulled off retail for dairy. Because of the focus on dairy, the department misses at least one third of the goals set to do retail inspections.
- No grocer wants their customers to get sick. Retailers already spend thousands of dollars themselves ensuring food safety. These fees are on top of these efforts.
- This fee increase is for retailers that are licensed and inspected by DATCP. As a result of these increases local governments that act as agents for the state and will need to pass this increase on to their retailers.

• In a November 9, 2005 letter to Representative Al Ott, Secretary Nilsestuen committed to *“working with its stakeholders, particularly operators and representatives of retail food businesses, to review the mission, operation, funding and efficiency of the Department’s food and dairy safety program. The objectives of this review will be to seek further operational efficiencies and to align program focus and overall effort with food safety risk, revenue, and the needs of the food and dairy industries and Wisconsin’s consumers.”* This promise was made more than two years ago and nothing has been done.

The WGA has presented DATCP with many suggestions and recommendations on efficiencies that can be made within the Agency, including:

- A commitment to work with the industry to develop a food safety inspection process that streamlines DATCP procedures by recognizing the systems many grocers already have in place.
- Additional services for grocers—either in reducing the inspections that are overdue or in offering additional education requirements such as food safety certification courses or train the trainer courses for retail.
- A yearly report to the Assembly and Senate Ag. Committees that includes a breakout and analysis of inspections—for example, the inspection goal vs. reality for the year.
- An analysis of the pathogen sampling program to determine whether it would be scientifically and economically better to privatize these functions.
- A study determining the efficiency of the division with specific attention paid to dedicated inspectors vs. the current inspectors responsible for dairy and food. The grocery industry in Wisconsin has changed considerably in the last 20 years and the Department could save a lot of money capitalizing on these changes.
- Uniform Food Safety Division—Both DATCP and DHFS house Divisions of Food Safety which license and inspect retailers. DHFS regulates restaurants, while DATCP regulates grocers and dairy. Merging these identical divisions will create numerous efficiencies savings thousands of dollars.



State of Wisconsin  
Jim Doyle, Governor

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

November 9, 2005

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

Dear Representative Ott:

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

Clearinghouse Rule 05-044 has been modified as follows.

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

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

*Agriculture generates \$51.5 billion for Wisconsin*

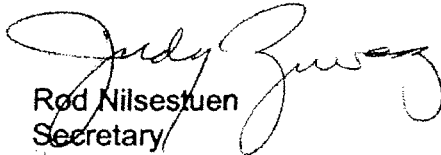
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Representative Alvin Ott  
November 9, 2005  
Page 2

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

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

Sincerely,

  
Rod Nilsen  
Secretary



Date?

**MICHAEL W. PARIZA, PH.D.** is the Director of the Food Research Institute (FRI) and Wisconsin Distinguished Professor of Food Microbiology and Toxicology, Department of Food Science, University of Wisconsin--Madison. He has authored or co-authored over 150 articles and publications, holds more than 25 U.S. patents, and is recognized by Thompson Scientific as one of the most "Highly Cited Researchers" of the last two decades. Dr. Pariza received his B.S. in Bacteriology at the University of Wisconsin--Madison and his M.S. and Ph.D. in Microbiology at Kansas State University. He completed three years of postdoctoral study at the McArdle Laboratory for Cancer Research at the University of Wisconsin--Madison and joined the faculty of the Food Research Institute in 1976. The research program of the Food Research Institute centers on foodborne microbial pathogens and toxins; Dr. Pariza's research focuses on conjugated linoleic acid, the biological activity of which was discovered in his laboratory, and on various food toxicology issues, most recently the control of acrylamide formation in food.



Statement by Michael W. Pariza  
Director, Food Research Institute, University of Wisconsin-Madison

Good morning. I'm Mike Pariza, Director of the UW-Madison Food Research Institute (FRI) and Wisconsin Distinguished Professor of Food Microbiology and Toxicology. I appreciate the opportunity to speak this morning and will begin by commending Senator Kohl for holding this extraordinary meeting here in Badger Capital, where we know that the most important reason for having a beltline is to transport excited basketball fans from all over the state to the streets that go to the Kohl Center.

Seriously, Senator Kohl, it is almost impossible to fully express our gratitude for your unfailing dedication and support, both public and personal, to the state of Wisconsin and UW-Madison. You exemplify the highest principles of public service.

We are here this morning to consider a serious issue: the apparent increase in foodborne illness, associated particularly with fresh produce. I say "apparent" because we are not really sure how much is due to a true increase, as opposed to increased awareness and reporting. Of course either way it's important news, and as we know important news can be both good and bad.

The good news is that the public and Congress are focusing on food-related issues that are true risks, rather than distractions like the "carcinogen-of-the-week" headlines that used to occupy an inordinate amount of FDA's energy and resources. I'm pleased to say that we were able to work with former Congressman Scott Klug to revise the so-called "Delaney Clause" and bring it in line with current scientific understanding. This revision permitted resources to be redirected to foodborne illness, which is a real issue that we can actually address with the tools of science. We really can reduce the risks, the economic loss, the morbidity and mortality caused by foodborne pathogens and toxins.

But there is bad news too. There are critical gaps in our knowledge base. The limiting factor is lack of research funds rather than lack of good ideas. Perhaps even worse is the realization that our regulatory agencies, in particular FDA, lack the resources to apply what we already do know.

On the morning of September 11, 2001 Americans got a wake-up call that continues to reverberate. Funds were quickly allocated to among other things food security, which was certainly appropriate. UW-Madison is a major partner in DHS's National Center for Food Protection and Defense, which is currently headquartered at the University of Minnesota.

However, funds that had previously been allocated for traditional food safety research and regulatory activities were also redirected to defense against food bioterrorism, and that trend should be reversed. The prospect of food bioterrorism is very scary and could have catastrophic consequences, but in fighting this demon we should not lose sight of the more mundane but very real risks of foodborne illness from more familiar corners.

You've asked whether the current system is working or broken. The answer, in my opinion, is yes and yes. One might argue that the system works, at least "sort of," because foodborne illness, when it happens particularly on a large scale, is still news. If the system were completely broken foodborne illness would be commonplace, and it certainly is not that.

The safety of fresh produce is very important and the focus of this hearing. Illnesses and deaths associated with fruits, vegetables and herbs are unacceptable. Of course fresh produce is not the only type of food that can harbor risks from microbial pathogens, so it is important that funds are not simply redirected to fresh produce safety from other important areas.

UW-Madison's food safety program is designed to enhance the safety of all foods consumed in the US. We've found that knowledge gained from one area can often be applied to other areas. At risk of sounding immodest, I should tell you that a substantial amount of the information used by the processed food industry and its regulators to ensure safe food was discovered or developed at FRI. Especially noteworthy examples of research by FRI faculty and staff that affect virtually every consumer include the development of the methodologies that are used worldwide to ensure that processed cheese spreads are safe, and methods for producing microbiologically safe low-nitrite bacon. You may have noticed holes in the plastic wrap around fresh mushrooms; those holes are there because FRI researchers discovered that allowing air to enter freely into the package eliminates the threat of botulism from the product.

FRI faculty and staff isolated the toxins that produce staphylococcal food poisoning, known euphemistically as "the two bucket disease." They also developed the reagents needed to detect these toxins, and used them to save a small cheese company in Green Bay Wisconsin from bankruptcy. Today you know that company as Schreiber Foods.

More recently FRI personnel studied the transmission, on farms, of *Escherichia coli* O157:H7, also known as *hemorrhagic E. coli* because it causes bloody diarrhea that can be fatal, especially for children. This critically important work led to a simple solution: keep manure out of the water that cows drink. That may sound obvious but imagine how difficult it is to implement on a large dairy farm. One needs knowledgeable dedicated individuals, and capital investment in the required equipment. This research was initiated to enhance our understanding of the ecology of *E. coli* O157:H7 and reduce the risk of the pathogen in ground beef, but the discoveries from the project have wider impact that include reducing the contamination of fresh produce from farm runoff and the use of manure as fertilizer.

Other current FRI research is aimed at helping the state and national dairy and meat processing industries develop safe formulations, reduce mold toxins in grain, eliminate thin layers of microbial pathogens (called biofilms) from food processing equipment, control acrylamide formation in fried potato products, and understand botulinum toxin which led, paradoxically, to the development of botulinum toxin as a drug. Yes, that's

right, the first BOTOX ever approved by FDA for human drug use was purified right here in Madison at FRI. The Wisconsin Alumni Research Foundation (WARF) has patented discoveries made at FRI involving conjugated linoleic acid (CLA). CLA is now the 6<sup>th</sup> most financially successful technology in WARF history, and earns more than \$1.5 million dollars annually in royalty income, the bulk of which goes to support research at UW-Madison.

FRI faculty and staff also collaborate with the broader UW-Madison community, for example the College of Engineering. Projects include using nanotechnology to develop of novel sensors for detecting microbial pathogens and toxins, and procedures for disposing of food that was intentionally contaminated with a biological agent. We are discussing a major collaborative effort to utilize our collective expertise in food safety, risk analysis, risk perception, and applied economics to study the spread of microbial contamination from the farm fields to consumers in the fresh produce industry. The ultimate goal of this project is to assess the effectiveness of potential risk-reduction measures, and identify cost-effective strategies for improving the safety of fresh produce.

I've discussed how the current national food safety system "sort of" works. But the system is also "sort of" broken. To be clear, the system needs repair, not a major overhaul. In this regard you can help us with one big matter: the need for increased funding directed to food safety research and regulatory activity, without of course compromising the equally important complementary efforts aimed at preventing food bioterrorism.

With regard to fresh produce, the need for improvements in pre-harvest practices and post-harvest intervention is crucial. The term "pre-harvest" encompasses all that happens while a crop is growing in a field or orchard. By contrast "post-harvest" encompasses what happens between the harvest of a crop and its transport to a supermarket, and may include washing, cutting and packaging.

In this country the most important pathogens associated with fresh produce are enteric pathogens, particularly *E. coli* O157:H7 and *Salmonella*. These microorganisms are commonly found in the intestines of mammals and birds, and they find their way onto fresh produce because of fecal contamination-- birds fly over orchards, rodents run between the crop rows, cows graze near fields planted with food crops, and so forth. You can reduce the impact through improved fencing and cover, and cultivation practices that minimize contamination from runoff. However we would have to grow all our crops in sterile greenhouses to ensure the complete absence of contamination.

Accordingly, there is great need for improved pathogen surveillance tools and detection methodologies. Typically one is dealing with small levels of pathogen contamination against a much larger backdrop of harmless, mundane bacteria that are commonly found in soil. Quickly identifying the pathogens and differentiating them from their harmless relatives is no easy task, and we don't have optimal tools for this yet.

Post-harvest intervention focuses on treating fresh produce so that the inevitable pathogens are destroyed while at the same time protecting the fresh quality that consumers want.

Traditional post-harvest methods for killing pathogens and preserving vegetables and fruit, for example canning, are not the solution because no matter how safe canned vegetables are they don't taste fresh. Rinsing fresh produce helps but effectiveness is limited because pathogens can sometimes hide within the cellular structures of the plant, where the rinse cannot penetrate. Other methods, for example irradiation and the use of high-pressure pasteurization, appear to work very well in many applications. However both of these are expensive, and in the case of irradiation unfairly maligned. Accordingly there is urgent need for novel processing and disinfection methodologies that are effective and economically viable across a wide range of products and applications.

Post-harvest intervention is an area that truly needs more research. We will not solve the problem of fresh produce safety until we master post-harvest intervention.

Finally, education is critically important to maintaining a safe food supply. While there is a lot we do not yet know, it is equally true that there is a lot about food safety that we do know, and that is where educational programs focused on food and food safety at research universities like UW-Madison come in. Some of our former students go into the private sector where they often make crucially important contributions. An example is the late Dr. Howard Bauman, who received his Ph.D. at UW-Madison under the direction of Professor Mike Foster, FRI's last Director and one of the principals involved in moving the Food Research Institute from the University of Chicago to UW-Madison in the 1960s. Dr. Bauman spent his career at the Pillsbury Company, where he invented a procedure called HACCP, the acronym for Hazard Analysis Critical Control Point. HACCP is a method used to identify and control the vulnerable steps in a process where contamination may occur. It has become the backbone for food safety analysis worldwide and is mandated by USDA. If you operate a food plant that falls under USDA inspection, you must have a HACCP plan. FDA has HACCP guidelines that are widely utilized. HACCP is also applied to agricultural practices, to identify and control the most vulnerable areas for pathogen contamination.

We're also very proud that some of our food safety program graduates choose careers in the public sector, for example Dr. Brackett who you will hear from next, and Dr. Don Burr who is in the audience. Both Dr. Brackett and Dr. Burr manage key programs to help ensure that our food remains safe and secure.

In summary, the US food safety system is not really broken, but it is also not working as well as it could. A critical missing component is sufficient funding for research and regulatory activities.

Thank you.



*Food Research Institute (FRI)*

1946 – 1966      University of Chicago

1966 – present    University of Wisconsin–Madison



Foodborne  
Pathogens  
at FRI,  
1950

- *Clostridium botulinum*
- *Salmonella*
- *Staphylococcus aureus*

Foodborne  
Pathogens  
at FRI,  
1970

- *Clostridium botulinum*
- *Salmonella*
- *Staphylococcus aureus*
- *Clostridium perfringens*
- **Viruses**
- **Mycotoxins**

Foodborne  
Pathogens  
at FRI,  
1990

- *Clostridium botulinum*
- *Salmonella*
- *Staphylococcus aureus*
- Viruses
- Mycotoxins
- *Bacillus cereus*
- *Listeria monocytogenes*
- *Campylobacter jejuni*
- *Escherichia coli* O157:H7
- Prions (“Downer” cows)



Foodborne  
Pathogens  
at FRI,  
today

- *Clostridium botulinum*
- *Salmonella*
- *Staphylococcus aureus*
- Viruses
- Mycotoxins
- *Bacillus cereus*
- *Listeria monocytogenes*
- *Campylobacter jejuni*
- *Escherichia coli* O157:H7
- Prions (BSE)
- **parasites**

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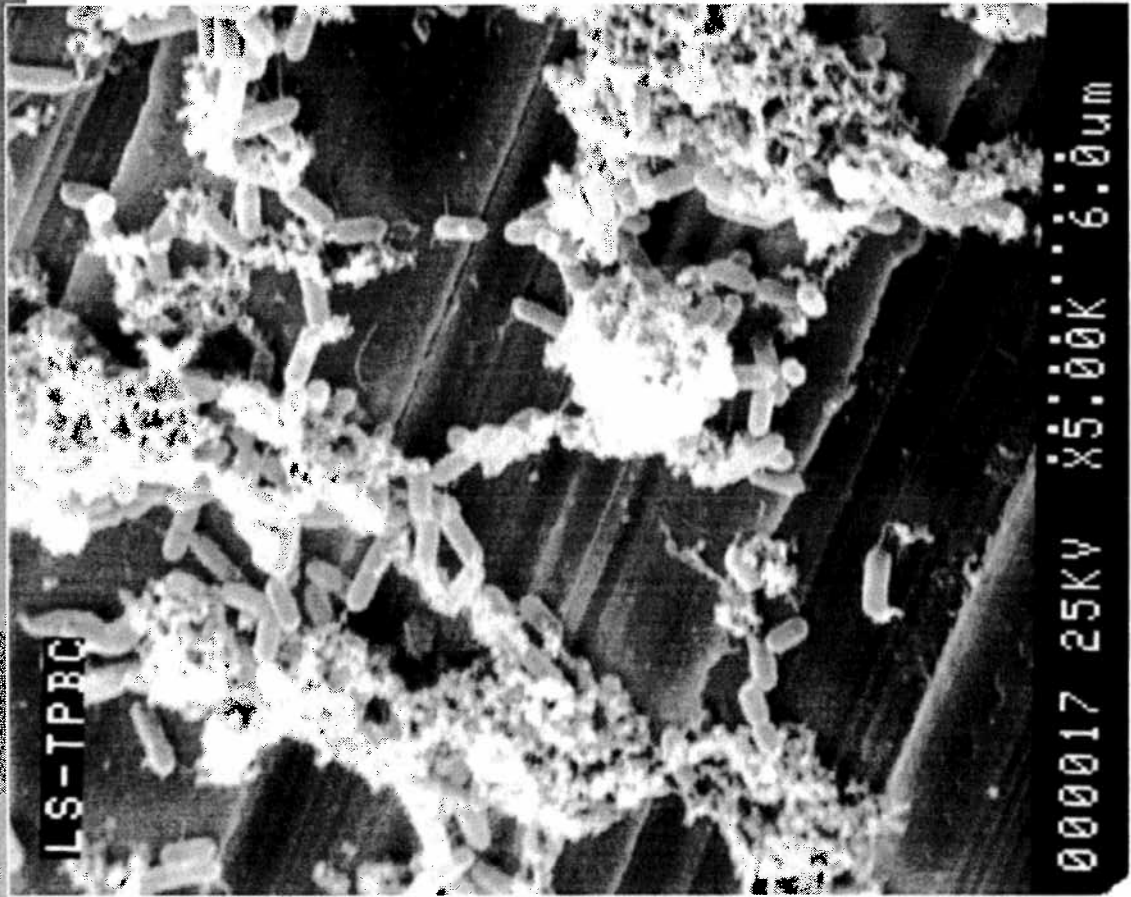
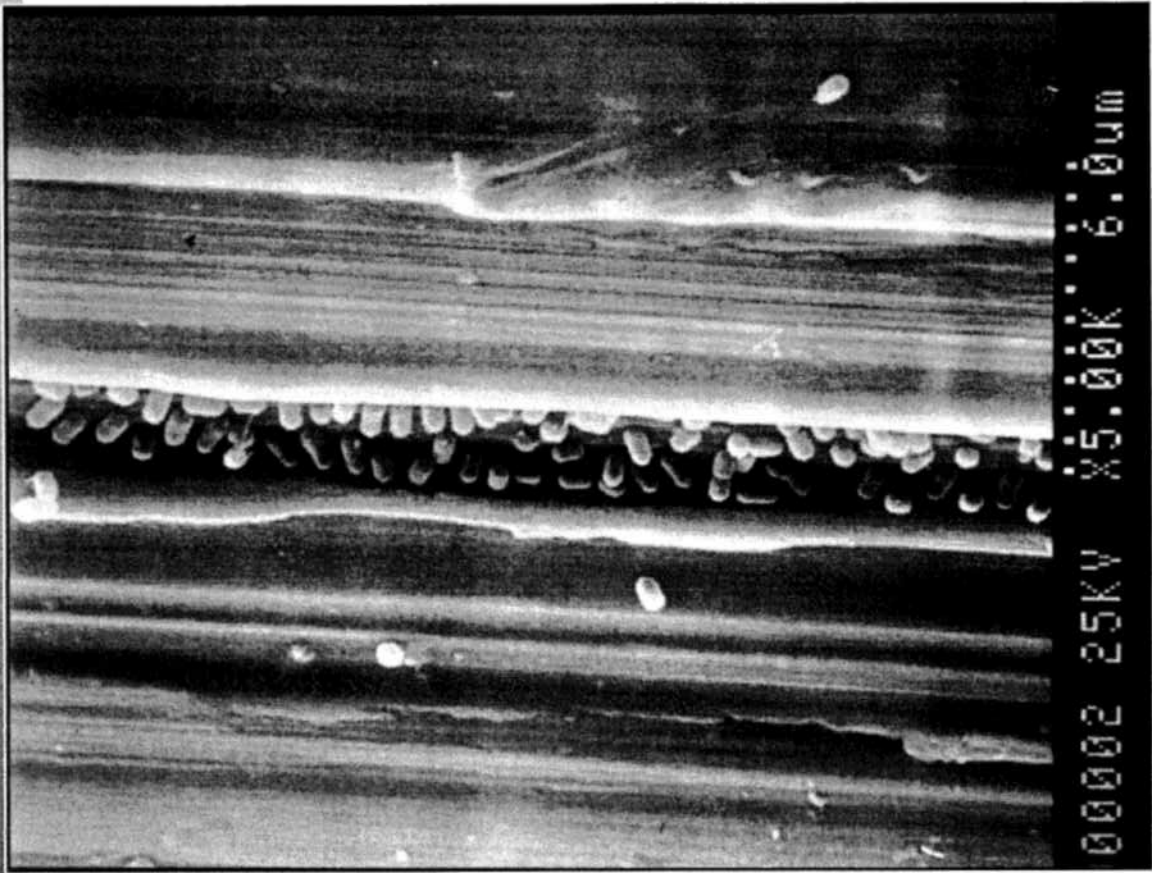
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**How does constructive food safety regulation assist industry and protect the public?**

**By ensuring practices that are consistent with basic sanitation and Hazard Analysis Critical Control Point (HACCP) procedures.**

**Example: controlling biofilms on food contact surfaces**

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## Lessons Learned

### *The Foster Maxim (Sanitized)*

*“When you’re up to your butt in alligators,  
it’s hard to remember that your objective was  
to drain the swamp.”*

*—Mike Foster*

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