

# **05hr\_CRule\_05-044\_AC-Ag\_pt02**



Details:

(FORM UPDATED: 07/12/2010)

## **WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS**

### **2005-06**

(session year)

### **Assembly**

(Assembly, Senate or Joint)

### **Committee on ... Agriculture (AC-Ag)**

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- 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**

## Ruby, Erin

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**From:** Rep.Ott  
**Sent:** Tuesday, August 30, 2005 3:37 PM  
**To:** Rep.Ainsworth; Rep.Gronemus; Rep.Hines; Rep.Loeffelholz; Rep.Molepske; Rep.Nerison; Rep.Parisi; Rep.Petrowski; Rep.Sinicki; Rep.Suder; Rep.Towns; Rep.Vruwink; Rep.WilliamsM; Rep.Ziegelbauer  
**Cc:** Anderson, John; Berken, Nathan; Boardman, Kristina; Christopher, Marc; Cross, William; Emerson, Anne; George, Mary Beth; Hilgemann, Luke; Hutkowski, Hariah; Jahnke, Carolyn; Junck, Linda; Kostelic, Luanne; Kraak, Maureen; Langan, Casey; Loomans, Scott; Mueller, Virginia (Legislature); Parrott, Douglas; Patronskey, Mark; Peterson, Eric; Polzin, Cindy; Redell, Carol; Scott, Katie; Shea, Heather; Whitmore, Lori  
**Subject:** Clearinghouse Rule Referred to Assembly Committee on Agriculture  
**Attachments:** 05-044.pdf

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

**Clearinghouse Rule 05-044:** Relating to food and dairy license and reinspection fees.

A copy of the rule is attached. It is my intention to hold a hearing on this rule. Please contact my office if you have any questions.

The initial 30 day deadline for committee review is Thursday, September 29, 2005.



05-044.pdf (1 MB)

DATE: August 30, 2005

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 05-044**

AN ORDER to repeal ATCP 70.03 (2r) (a) (note) and 71.02 (3) (note); to renumber ATCP 85.07; to amend ATCP 60.03 (title), 70.03 (2), (2m), (2n), (2r) (a) and (b) (intro.) and (3), 71.02 (2), (3), (5) (b) (intro.) and (7) (a), 75.02 (2), (3) and (4) (b) (intro.), 77.06 (1), (4) and (5) (c), 77.23 (3) (intro.), 80.04 (1) (a) and (b), (2) (b) (intro.) and 1. and (3) (b) (intro.), chapter ATCP 81 subchapter I (title) and 82.02 (2) (intro.), (3) (b) and (4); to repeal and recreate ATCP 60.02 (4), 60.04 (2), 80.04 (5) and (6), 82.02 (5) and 82.04 (5); and to create chapter ATCP 59 and ATCP 69.01 (4) (title) and (5), 69.02 (6), 70.03 (2t), 71.01 (6m), 71.02 (5m), 71.10, 75.02 (4m), 77.06 (2) (intro.) and (2m), 77.23 (3m), 81.02, 82.02 (5m) and 85.07 (2) and (3), relating to food and dairy license and reinspection fees.

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

Report received from Agency on **August 29, 2005.**

To committee on **Agriculture.**

Referred on **Tuesday, August 30, 2005.**

Last day for action - **Thursday, September 29, 2005.**

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.



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

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

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

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

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

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

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

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

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





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

CRule  
05-044?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

These are the flaws:

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

## WCMA PERSPECTIVES



**JOHN UMHOEFER**

Executive Director  
Wisconsin Cheese Makers Association  
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jumhoefer @ wischeesemakersassn.org

### Class III Price Squeeze

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

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

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

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

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

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

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

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

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

The higher value of butter and

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

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

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

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

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

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

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DATE: October 13, 2005

TO: Members, Assembly Committee on Agriculture

FROM: Bill Oemichen, President & CEO

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

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

Chairperson Ott and Committee Members:

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

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

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

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

Memo to Chairperson Al Ott and Committee Members  
October 13, 2005  
Page Two

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

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

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

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

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



October 13, 2005

## MOTION

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 the following modifications to Clearinghouse Rule 05-044, relating to food and dairy license and reinspection fees:

- Delete the provisions that allow for an annual adjustment of the license fees in future years.
- Phase in the grade A milk procurement fee.
- Make adjustments in the proposed fee increases.

If the Department of Agriculture, Trade and Consumer Protection does not agree to consider modifications to Clearinghouse Rule 05-044 in a letter addressed to the chairperson of the Assembly Committee on Agriculture, or fails to respond in writing to this request for modification, by 5:00 p.m., October 21, 2005, the Assembly Committee on Agriculture objects to Clearinghouse Rule 05-044 pursuant to s. 227.19 (4) (d) 6., Stats., on the grounds that the proposed rule is arbitrary and capricious, and imposes an undue hardship.





State of Wisconsin  
Jim Doyle, Governor

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

October 20, 2005

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

Dear Representative Ott:

This letter responds to your October 14, 2005 letter that contains the Assembly Committee on Agriculture request to the Department to consider modifications to Clearinghouse Rule 04-55 related to food and dairy license and reinspection fees. The motion adopted by the Committee during the executive session it held on October 13, 2005 proposes the following modifications to the rule:

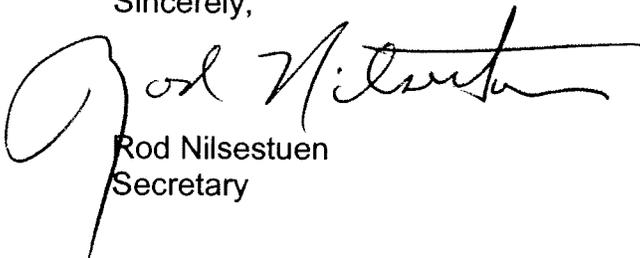
- Delete the provisions that allow for an annual adjustment of the license fees in future years.
- Phase in the grade A milk procurement fee
- Make adjustments in the proposed license increases.

The Department agrees to thoughtfully consider the modifications proposed by the Committee.

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

Thank you for your efforts to try to ensure that all parties work toward an outcome that accomplishes this objective.

Sincerely,



Rod Nilsestuen  
Secretary

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