

Wisconsin Department of Agriculture, Trade and Consumer Protection

Business Impact Analysis¹

Rule Subject: Food and Dairy License Fees
Adm. Code Reference: ATCP 60, 69, 70, 71, 75, 77, 80, 81, 82, 85, Wis. Adm. Code
Rules Clearinghouse #: Not yet assigned
DATCP Docket #: 05-R-07

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

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

This rule will increase food safety program revenues by approximately \$994,000 beginning in FY 2008. The increase is needed to address an imminent deficit in DATCP’s food safety program revenue account. DATCP projects that the deficit will begin in 2007 and will grow steadily worse if not addressed.

This rule affects the following entities licensed by DATCP:

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

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

The Governor's budget bill for FY 2007-09 proposes to transfer available funds from the Agricultural Chemical Cleanup Program to the Food Safety program, to help address the impending food safety budget deficit. The Governor proposes to transfer \$250,000 in the first year of the biennium and \$100,000 in the second year. That transfer, if enacted by the Legislature, would reduce the size of the food and dairy license fee increases that may be needed to address the food safety deficit.

However, DATCP must begin rulemaking now to ensure that new fees will in effect for all affected businesses by July 1, 2008 (DATCP must adopt and publish the final draft rule *before May 1, 2008*, because the statutes provide an automatic 2-month delayed effective date for "small business"). DATCP cannot yet assume that the Legislature will enact the Governor's proposed fund transfer. If the fund transfer *is* enacted, DATCP will modify its license fee rule proposal accordingly.

Background

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

Recent state budgets have lapsed a substantial amount of food safety license fee revenue to the state general fund (to help remedy state budget deficits). At the same time, DATCP has experienced a modest increase in operating costs. DATCP proposed a license fee increase in 2005, but was forced to withdraw a large share of that fee increase proposal. As a result, DATCP projects a substantial food safety budget deficit beginning in FY 2007.

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

- DATCP has reduced its food and dairy staff by approximately 17% since 1990 (from 118 to 98 staff). Staffing trends fairly reflect changes in the food and dairy industry, including a reduction in dairy farm numbers and increased delegation of retail food regulation to cooperating local governments. While food safety inspection needs are declining in some traditional areas, food safety needs are growing in other areas.
- DATCP works with local government to license and inspect retail food establishments. Thirty-four local entities license and inspect on behalf of DATCP, compared to 15 in 1997 (local participation is voluntary). Local entities now license and inspect 4,600 retail food establishments. DATCP licenses and inspects the remaining 4,200 establishments.

- DATCP is working to reform national dairy regulations, which include rigid requirements related to Grade A inspection frequency. DATCP is pursuing a more flexible, risk-based inspection system that could reduce inspection costs. In the meantime, Wisconsin must comply with current inspection mandates in order to ship milk and fluid milk products in interstate commerce.
- DATCP and the Wisconsin Department of Health and Family Services (DHFS) have eliminated duplicate licensing and inspection of grocery stores, restaurants, and combination grocery-restaurants. DATCP and DHFS have adopted uniform rules for grocery stores and restaurants, based on the federal Model Food Code.

Rule Content

This rule increases current license and reinspection fees for dairy and food businesses, as shown below. The increases first apply to license fees that are due on July 1, 2008.

Entity	Current Fee(s)	Proposed Fee(s)
Dairy Farm	\$24 annual license fee (paid by dairy plant operator)	\$32
	\$24 or \$48 reinspection fee (paid by dairy plant operator if reinspection is required)	\$32 or \$64
Dairy Plant	<i>Annual license fee</i> (calculations include an increase in the basic license fee from \$96 to \$129):	
	\$699 or \$879 for grade A processing plant (based on size)	\$937 or \$1,178
	\$397 for grade A receiving station	\$532
	\$96 for grade A transfer station	\$129
	\$96 to \$421 for grade B processing plant (based on size)	\$129 or \$565
	\$96 for grade B receiving station or transfer station	\$129
	Grade A milk procurement fee: 0.96 cent per 100 lbs.	1.081 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>	
	\$203 or \$246 for grade A processing plant	\$336 or \$394
	\$221 for grade B processing plant	\$360
	\$122 for grade A receiving station	\$229
	\$48 for grade B receiving station or transfer station	\$64
	<i>Butter and cheese grading fee:</i>	
	1.09 cents per 100 lbs. of product	1.5 cents per 100 lbs. of product
Food Processing Plant	\$78-\$685 annual license fee (based on size and type)	\$105 - \$918
	\$261 surcharge for canning for food processing plants with annual production of \$25,000 or more	\$350
	\$49-\$431 reinspection fee (based on size and type)	\$66 - \$578
Food Warehouse	\$65-\$261 annual license fee (based on size and type)	\$87-\$350
	\$92-\$246 reinspection fee (based on size and type)	\$123 - \$330
Milk Distributor	\$60 annual license fee per facility	\$80
	\$25 reinspection fee per facility	\$34
Retail Food Store	\$37-\$562 annual license fee (based on size and type)	\$50-\$753

	\$74-\$369 reinspection fee (based on size and type)	\$99 - \$494
Dairy, Food or Water Testing Lab	\$336 annual lab certification fee for each dairy or food test (other than milk drug residue screening)	\$450
	\$276 annual lab certification fee for each water test	\$370
	\$25 annual certification fee for each dairy or food analyst (other than milk drug residue screening analyst)	\$34
	\$50-\$500 initial fee and \$25-\$50 annual renewal fee for lab performing milk drug residue screening	\$67-\$670 initial fee \$34-\$67 annual renewal fee
	\$25 initial evaluation fee for milk drug residue screening analysts (if more than 3 per lab)	\$34
Bulk Milk Tanker	\$36 annual bulk milk tanker license fee	\$48
	\$36 bulk milk tanker reinspection fee	\$48
	\$48 bulk milk weigher and sampler license fee (2-year license)	\$64
	\$48 bulk milk weigher and sampler reinspection fee	\$64
Buttermaker or Cheesemaker	\$60 license fee (2-year license)	\$80
Butter or Cheese Grader	\$60 license fee (2-year license)	\$80

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

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

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

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)(a), 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 \$994,000 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 allocation of license fees between affected businesses.

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

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

Steps to Assist Small Business

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

The Governor’s budget bill, if enacted, would further alleviate the impact on affected businesses (including small businesses). The Governor proposes to transfer available funds from the Agricultural Chemical Cleanup Program to the Food Safety program, to help address the impending food safety budget deficit.

The Governor proposes to transfer \$250,000 in the first year of the biennium and \$100,000 in the second year. That transfer, if enacted, would reduce the size of the food and dairy license fee increases that may be needed to address the food safety deficit. If the Legislature enacts the transfer, DATCP will modify this rule accordingly.

Conclusion

This rule increases food and dairy license fees, in order to address an imminent deficit in Wisconsin’s food safety program. The fee increases will have a significant, but not dramatic, impact on food and dairy businesses. Enactment of the Governor’s budget bill would reduce the size of license fees proposed by this rule.

This rule requires no additional recordkeeping or other procedures for small businesses. Small businesses will need no additional professional skills or assistance in order to comply with this rule.

Dated this _____ day of _____, 2007

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Steven B. Steinhoff, Administrator
Division of Food Safety