

# **05hr\_CRule\_05-044\_AC-Ag\_pt01**



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)**

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

# Vote Record

## Committee on Agriculture

Date: 10/13/05

Bill Number: C.R. 05-044

Moved by: Vruwink Seconded by: Nerison

Motion: Request for Modifications

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Representative Alvin Ott, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Lee Nerison	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative John Ainsworth	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Jerry Petrowski	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Representative J.A. Hines	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Scott Suder	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Mary Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Gabe Loeffelholz	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Debra Towns	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Representative Barbara Gronemus	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Representative Amy Sue Vruwink	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Robert Ziegelbauer	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Representative Christine Sinicki	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Representative Louis Molepske	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Joseph Parisi	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>10</u>	<u>-</u>	<u>5</u>	<u>  </u>

Motion Carried

Motion Failed





State of Wisconsin  
Jim Doyle, Governor

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

## PUBLIC NOTICE

### FINAL DRAFT RULE TO LEGISLATURE

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

CLEARINGHOUSE RULE #:       **05-044**

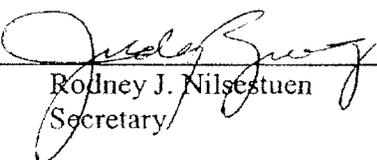
SUBJECT:                               **Food and Dairy Fees**

ADM. CODE REFERENCE:       **ATCP 59, 60, 70, 71, 75, 77, 80, 81, 82, and 85**

DATCP DOCKET #:               **01-R-06**

Dated this 26 day of August, 2005.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE AND  
CONSUMER PROTECTION

By   
Rodney J. Nilsestuen  
Secretary

*Agriculture generates \$51.5 billion for Wisconsin*

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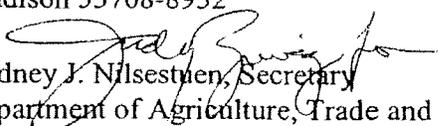
State of Wisconsin  
Jim Doyle, Governor

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

DATE: August 26, 2005

TO: The Honorable Alan J. Lasee  
President, Wisconsin State Senate  
Room 219 South, State Capitol  
P.O. Box 7882  
Madison 53707-7882

The Honorable John Gard  
Speaker, Wisconsin State Assembly  
Room 211 West, State Capitol  
P.O. Box 8952  
Madison 53708-8952

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

SUBJECT: **Food and Dairy Fees; Final Draft Rule  
(Clearinghouse Rule No. 05-044)**

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

#### Summary

This rule increases current food and dairy license fees. It also provides for annual fee adjustments (up or down) based on program revenue account balances. Upward adjustments are *not* automatic. DATCP must discuss the proposed increase with an industry advisory council, hold at least one public hearing, and obtain DATCP Board approval.

This rule will increase food safety program revenues by \$1.2 million in 2006. This is necessary to offset a projected deficit in DATCP's food safety program revenue account beginning in FY 2005-06. Fees have not increased since 1998. This rule affects the following entities:

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

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- Milk haulers.
- Milk distributors.
- Butter and cheese makers.
- Butter and cheese graders.

### **Background**

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. It also facilitates the sale of Wisconsin dairy and food products in interstate and international markets.

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 GPR funding, so that PR accounted for about 50% of food safety funding. Because of further GPR reductions in recent state budgets, the current PR funding share is about 60%.

Other developments have combined to deplete the food safety PR account balance. Recent state budgets have lapsed a substantial amount of PR to the state general fund (to help remedy state budget deficits). DATCP has postponed fee increases (none since 1998), but has experienced a modest increase in operating costs. DATCP also incurred a significant increase in PR costs when the Legislature transferred the grade A milk certification program to DATCP (without any attached funding). DATCP currently projects a PR account deficit in FY 2005-06.

DATCP is working to deliver effective food safety protection as efficiently as possible. DATCP's Bureau of Food Safety and Inspection currently has 88 staff -- 12.75 fewer than in 1997 and 15.5 fewer than in 1991. Dairy farm inspection frequency is based on milk quality tests and past inspection performance (DATCP is exploring ways to expand this risk-based approach). DATCP is also working with other agencies to share resources and minimize duplication. For example:

- DATCP works with local government to license and inspect retail food establishments. Twenty-seven local entities license and inspect on behalf of DATCP, compared to 15 in 1997. Local entities now license and inspect 3,800 retail food establishments, and DATCP licenses and inspects the remaining 4,700 establishments.
- DATCP coordinates dairy plant inspection with the United States Department of Agriculture, Agricultural Marketing Service, to avoid duplicate inspection.

- Since 1997, DATCP has worked with the Wisconsin Department of Health and Family Services (DHFS) to eliminate duplicate licensing and inspection of grocery stores, restaurants, and combination grocery-restaurants. DATCP and DHFS have adopted uniform rules for grocery stores and restaurants, to avoid conflicting standards. Standards are based on the federal model food code.

### Rule Content

This rule does all of the following:

- Increases the grade A milk procurement fee by \$0.002 per hundred weight (cwt) of milk received from producers to cover the cost of the grade A milk certification program (recently transferred to DATCP).
- Increases food and dairy license fees by an *average* of 23%. The actual increase for each fee is based on cost of the program to which that fee applies. The rule *analysis* lists the current and proposed license fees for each fee category. This rule exempts ungraded barrel cheese from the dairy product grading fee.
- Provides annual review and adjustment of fees so that DATCP can avoid drastic fee adjustments and manage program revenue account balances more effectively. DATCP intends, by this process, to maintain a small but stable account balance that is less likely to be lapsed to the state general fund. DATCP will consult with the dairy and food industry as part of the annual fee adjustment process, just as it does under the Agricultural Producer Security program. This will ensure ongoing input and accountability to industry.
- If the fee revenue balance is above \$600,000 at the end of a fiscal year, individual license fees *must* be decreased proportionally to generate a total *decrease* equal to the difference between the balance and \$500,000. If the fee revenue balance is less than \$400,000 at the end of a fiscal year, individual license fees *may* be increased proportionally to generate a total increase equal to the difference between the balance and \$500,000. If the fee balance remains between \$400,000 and \$600,000, fees will remain unchanged.

In response to industry concerns, DATCP has added procedural safeguards to the annual fee adjustment provisions. Before DATCP may increase fees, DATCP must consult with an industry advisory council, hold at least one public hearing, and obtain DATCP Board approval. All fee adjustments must be published in the Wisconsin Administrative Register before they take effect.

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### **Public Hearings**

DATCP held 4 public hearings on this rule. DATCP held the hearings in Eau Claire on June 14, Appleton on June 15, Waukesha on June 16 and by videoconference in Madison, Monroe, LaCrosse, Green Bay and Wausau on June 17, 2005. The hearing record stayed open until July 1, 2005. A total of 19 people attended the hearings and 10 people submitted written comments. Hearing comments included the following:

- 21 people registered in opposition to the proposed rules.
- 17 people registered in opposition to the fee adjustment provisions in proposed ch. ATCP 59, Wis. Adm. Code, and the increase in the milk procurement fee.
- One person registered in support to the proposed rule, but opposed the ch. ATCP 59 provisions.
- One person registered in support of the proposed change to the cheese grading fee criteria.
- Two people registered with requests for fee structure changes
- One person registered proposing changes to the canning surcharge requirement.

A list all of the persons who testified or submitted written comments for the hearing record is attached.

### **Changes After Public Hearings**

DATCP made 2 substantive changes to the proposed rule following public hearings. The final draft exempts small food processing plants with an annual production of less than \$25,000 from paying the license fee surcharge for canning operations. The final draft also requires DATCP to hold a public hearing on any proposed upward adjustment of fees. In addition to these substantive changes, DATCP made non-substantive drafting changes.

### **Response to Rules Clearinghouse Comments**

The department incorporated all recommendations from the Legislative Council Rules Clearinghouse into the final proposed rule.

### **Business Impact**

This rule modifies license fees and fee-setting mechanisms for food and dairy businesses, many of which are "small businesses." This rule:

- Increases annual license fees, reinspection fees and milk procurement fees beginning in 2006.
- Annually adjusts license fees (up or down), beginning in 2007, based on the prevailing cash balance in Wisconsin's food safety program revenue account. Upward adjustments are *not* automatic (DATCP must consult with an industry advisory committee, hold a public hearing, and get DATCP Board approval).

The proposed license fee increase will have an impact on the affected businesses, but not a dramatic impact. 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 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. A complete small business analysis ("final regulatory flexibility analysis") is attached.

### **Fiscal Estimate**

This rule will increase DATCP program revenues by \$1.2 million per year. The rule increases license fees for all food and dairy license categories. Fees have not been increased since 1998.

This rule will increase local government costs by \$11,500 (statewide total for all local governments). Some local governments currently license and inspect retail food establishments as agents of DATCP. DATCP provides administrative services to these local agents. Under current rules, local agents must reimburse DATCP for these services. The reimbursement amount is 10% of the DATCP license fee amount (local agents typically charge higher license fees than DATCP).

For FY2004, local agent reimbursement to DATCP equaled \$50,005. Under this rule, the reimbursement rate will remain at 10%, but will be applied to higher DATCP license fee amounts. This will increase the total reimbursement amount to \$61,505. Local governments can (and typically do) pass this increase on to retail food businesses. Local governments can set license fees to recover up to 100% of their reasonable operating costs.

A complete fiscal estimate is attached.

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### **Federal Regulation**

There are no existing or proposed federal regulations related to license fees for food businesses operating in Wisconsin.

### **Surrounding State Programs**

All of the surrounding states charge license fees to food and dairy businesses. Some of the surrounding states have a license and fee structure similar to Wisconsin's, while others have substantially different license and fee structures. The rule *analysis* shows fee structures for several surrounding states.

**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 repeal ATCP 70.03(2r)(a)(note) and 71.02(3)(note); to renumber ATCP 85.07;  
3 to amend ATCP 60.03(title), 70.03(2), (2m), (2n), (2r)(a) and (b) and (3), ch. ATCP 71 (title),  
4 71.02(2), (3), (5)(b) and (7)(a), 75.02(2), (3) and (4)(b), 77.06(1), (4) and (5)(c), 77.23(3)(intro.),  
5 80.04(1)(a) and (b), (2)(b)(intro.) and 1. and (3)(b), ch. ATCP 81 subch. I (title), and  
6 82.02(2)(intro.), (3)(b) and (4); to repeal and recreate ATCP 60.02(4), 60.04(2), 80.04(5) and (6),  
7 82.02(5), and 82.04(5); and to create ch. ATCP 59 and ss. ATCP 69.01(4)(title) and (5),  
8 69.02(6), 70.03(2t), 71.01(6m) and (8m), 71.02(5m), 71.10, 75.02(4m), 77.06(2)(intro.) and  
9 (2m), 77.23(3m), 81.01 (13m), 81.02, 82.02(5m), and 85.07(2) and (3); relating to food and dairy  
10 license and reinspection 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 part, by dairy and food license fees. This rule modifies current license fees. It also provides a mechanism and criteria for future license fee adjustments.

***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***

**General**

This rule increases current license and reinspection fees for milk producers, dairy plants, food processing plants, food warehouses, milk distributors, retail food stores, dairy, food or water testing laboratories, milk haulers, buttermakers, cheesemakers and butter or cheese graders. This rule increases fees beginning in 2006.

This rule also provides for annual license fee adjustments (up or down) beginning in 2007, based on the prevailing cash balance in Wisconsin's food safety program revenue account. Any *upward* adjustment of fees must be submitted to an industry advisory council, DATCP must hold a public hearing on any proposed upward adjustment and the upward adjustment must be approved by the Board of Agriculture Trade and Consumer Protection. All annual fee adjustments, whether up or down, must be published in the Wisconsin administrative register.

**Initial Fee Increase**

DATCP currently licenses certain businesses that produce, process or handle dairy or food products. These businesses must pay license fees and comply with food safety and labeling laws administered by DATCP. License fees pay for part of DATCP's food safety and labeling program. DATCP may adjust most license fees by rule. This rule increases current license and reinspection fees as follows:

<u>Entity</u>	<u>Current Fee(s)</u>	<u>Proposed Fee(s)</u>
Dairy Farm	\$20 annual license fee (paid by dairy plant operator)	\$24
	\$20 or \$40 reinspection fee (paid by dairy plant operator if reinspection is required)	\$24 or \$48
Dairy Plant fee from \$80 to \$96)	Annual license fee (calculations include an increase in the basic license	
	\$580 or \$730 for grade A processing plant (based on size)	\$699 or \$879
	\$330 for grade A receiving station	\$397
	\$80 for grade A transfer station	\$96

	\$80 to \$350 for grade B processing plant (based on size)	\$96 or \$421
	\$80 for grade B receiving station or transfer station	\$96
	Grade A milk procurement fee: 0.6 cent per 100 lbs.	0.96 cent per 100 lbs.
	Grade B milk procurement fee 0.2 cent per 100 lbs.	No change
	Reinspection fee:	
	\$165 or \$200 for grade A processing plant	\$203 or \$246
	\$180 for grade B processing plant	\$221
	\$100 for grade A receiving station	\$123
	\$40 for grade B receiving station or transfer station	\$48
	Butter and cheese grading fee: 1.09 cents per 100 lbs. of product	No change
Food Processing Plant	\$60-\$525 annual license fee (based on size and type)	\$78 - \$685
	\$200 surcharge for canning for food processing plants with annual production of \$25,000 or more	\$261
	\$40-\$350 reinspection fee (based on size and type)	\$49 - \$431
Food Warehouse	\$50-\$200 annual license fee (based on size and type)	\$65-261
	\$75-\$200 reinspection fee (based on size and type)	\$92 - \$246

Milk Distributor	\$50 annual license fee per facility	\$60
	\$20 reinspection fee per facility	\$25
Retail Food Store	\$30-\$450 annual license fee (based on size and type)	\$39-587
	\$60-\$300 reinspection fee (based on size and type)	\$74 - \$369
Dairy, Food or Water Testing Lab	\$336 annual lab certification fee for each dairy or food test (other than milk drug residue screening)	No change
	\$276 annual lab certification fee for each water test	No change
	\$25 annual certification fee for each dairy or food analyst (other than milk drug residue screening analyst)	No change
	\$50-\$500 initial fee and \$25-\$50 annual renewal fee for lab performing milk drug residue screening	No change
	\$25 initial evaluation fee for milk drug residue screening analysts (if more than 3 per lab)	No change
Milk Hauler	\$30 annual milk hauler license fee	\$36
	\$30 milk hauler reinspection fee	\$36
	\$40 milk weigher and sampler license fee (2-year license)	\$48
	\$40 milk weigher and sampler reinspection fee	\$48
Buttermaker or Cheesemaker	\$50 license fee (2-year license)	\$60

Butter or Cheese Grader \$50 license fee (2-year license) \$60

### Annual Fee Adjustment

This rule provides for annual adjustment of the above fees (up or down), based on the prevailing cash balance in Wisconsin's food safety program revenue account at the close of each fiscal year. Fees are subject to the following adjustments (adjustments take effect on September 1 of each year):

- If the program revenue account balance at the close of any fiscal year is less than \$400,000, DATCP *may increase* the fees by the percent necessary to increase the account balance by an amount equal to the difference between \$500,000 and the account balance. Before increasing any fee, DATCP must consult with an advisory council of food and dairy processors and hold a public hearing. The DATCP must hold at least one public hearing. The fee increase, if any, must be approved by the DATCP Board and published in the Wisconsin administrative register.
- If the program revenue account balance at the close of the fiscal year is greater than \$600,000, DATCP *must reduce* the fees by the percent necessary to reduce the account balance by an amount equal to the difference between \$500,000 and the account balance.
- If the program revenue account balance at the close of the fiscal year is between \$400,000 and \$600,000, the fees *do not change*.

### Exemptions

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.

This rule exempts ungraded barrel cheese from *current and proposed* cheese grading fees (paid by dairy plants).

This rule exempts small food processing plants with an annual production of less than \$25,000 from the license fee surcharge for canning.

## Technical Changes

This rule makes certain non-substantive editorial and drafting changes to current rules.

## *Fiscal Estimate*

### State Fiscal Effect

This rule will increase food safety program revenues by \$1.2 million in 2006. This is necessary to offset a projected deficit in DATCP's food safety program revenue account beginning in FY 2005-06. Fees have not been increased since 1998. DATCP proposes to increase license fees for all food and dairy license categories. A complete fiscal estimate is attached.

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 GPR funding, so that PR accounted for about 50% of food safety funding. Because of further GPR reductions in recent state budgets, the current PR funding share is about 60%.

Other developments have combined to deplete the food safety PR account balance. Recent state budgets have lapsed a substantial amount of license fee revenue to the state general fund (to help remedy state budget deficits). DATCP has delayed fee increases (none since 1998), but has experienced a modest increase in operating costs. DATCP also incurred a significant increase in PR costs when the legislature transferred the grade A milk certification program to DATCP (without any attached funding). DATCP currently projects a PR account deficit in FY 2005-06.

DATCP is working to deliver effective food safety protection as efficiently as possible. DATCP's bureau of food safety and inspection currently has 88 staff -- 12.75 fewer than in 1997 and 15.5 fewer than in 1991. Dairy farm inspection frequency is based on milk quality tests and past inspection performance (DATCP is exploring ways to expand this risk-based approach). DATCP is also working with other agencies to share resources and minimize duplication. For example:

- DATCP works with local government to license and inspect retail food establishments. Twenty-seven local entities license and inspect on behalf of DATCP, compared to 15 in 1997. Local entities now license and inspect 3,800 retail food establishments, and DATCP licenses and inspects the remaining 4,700 establishments.
- DATCP coordinates dairy plant inspection with the United States Department of Agriculture, Agricultural Marketing Service, to avoid duplicate inspection.
- Since 1997, DATCP has worked with the Wisconsin Department of Health and Family Services (DHFS) to eliminate duplicate licensing and inspection of grocery stores, restaurants, and combination grocery-restaurants. DATCP and DHFS have adopted uniform rules for grocery stores and restaurants, to avoid conflicting standards. Standards are based on the federal model food code.

## **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 fee that DATCP would charge local license holders, if DATCP licensed them directly. An increase in DATCP license fees therefore increases local reimbursement payments.

In FY 2004, local governments made a total of \$50,005 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 \$61,505. This rule thus increases local costs by \$11,500 (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 increases current license fees for milk producers, dairy plants, food processing plants, food warehouses, milk distributors, retail food stores, dairy, food or water testing laboratories, milk haulers, buttermakers, cheesemakers and butter or cheese graders licensed by DATCP. Many of these licensed entities are “small businesses.”

The proposed fee increase is necessary to prevent a deficit in Wisconsin’s food safety program revenue account. Fees have not been increased since 1998. The proposed fee increase will have an impact on the affected businesses, but not a dramatic impact. 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 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. A complete small business analysis (“initial regulatory flexibility analysis”) is attached.

Under 2003 Wis. Act 145, DATCP and other agencies must adopt rules spelling out their rule enforcement policy for small businesses. DATCP has not incorporated a small business enforcement policy in this rule, but will propose a separate rule on that subject. 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.

### *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 may partly reflect 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, but not identical to, Wisconsin's structure:

<b>Dairy Fees – Minnesota</b>	
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

<b>Food Fees – Minnesota</b>	
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, but not identical to, Wisconsin's structure:

<b>Dairy fees – Michigan</b>	
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

<b>Food Fees – Michigan</b>	
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, 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 a fee to most food establishments. The following are fees charged to Illinois food 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



1 77.23, 80.04(1)(a), (2)(a), (3)(a) and (5)(a), 81.02(1), 82.02(4) and (5)(a), 82.04(5) and 85.07(2),  
2 Stats, by up to the percent necessary to increase the account balance by an amount equal to the  
3 difference between the account balance at the close of the fiscal year and \$500,000. The fee  
4 increase shall take effect on September 1 of that year, and shall apply prospectively.

5 **ATCP 59.03 Fee adjustment procedure. (1) FEE REDUCTION.** Before any fee  
6 reduction under s. ATCP 59.02(1) takes effect, the department shall publish each reduced fee in  
7 the Wisconsin administrative register.

8 **(2) FEE INCREASE.** Before any fee increase under s. ATCP 59.02(2) takes effect, the  
9 department shall do all of the following:

10 (a) Consult with a 7-member advisory council that includes a least one representative  
11 from each of dairy producers and processors, food processors and handlers, retail food  
12 establishments and local health departments. The secretary shall appoint advisory council  
13 members to serve staggered 3-year terms. Members may not be appointed for more than 2  
14 consecutive terms.

15 (b) Hold at least one public hearing.

16 (c) Obtain board approval of the fee increase.

17  
18 (d) Publish each increased fee in the Wisconsin administrative  
19 register.  
20

21  
22 **SECTION 2.** ATCP 60.02(4) is repealed and recreated to read:

23 ATCP 60.02(4) LICENSE FEE. (a) Except as provided in par. (b), the annual fee for a  
24 milk producer license under this section is \$24.

25 (b) On September 1 of each year, the annual fee for a milk producer license under this  
26 section is subject to modification under ch. ATCP 59.

1 (c) A dairy plant operator shall pay the annual milk producer license fee under this  
2 section for each dairy farm from which the dairy plant operator receives milk at the time the fee  
3 payment is due. An applicant for an annual dairy plant license under s. ATCP 80.02 shall submit  
4 the required milk producer license fees with the applicant's dairy plant license application.

5 (d) A dairy plant operator who pays a milk producer license fee under par. (a) may  
6 charge that fee back to a milk producer if the dairy plant operator gives prior written notice to the  
7 milk producer, but the dairy plant operator may not deduct the fee from any payment that the  
8 dairy plant operator owes the milk producer for milk received by the dairy plant operator. A  
9 dairy plant operator may not discriminate between milk producers with respect to fee charges  
10 under this paragraph, but may charge back license fees to all milk producers who cease shipping  
11 milk to the operator's dairy plant during the license year.

12 **SECTION 3.** ATCP 60.03(title) is amended to read:

13 **ATCP 60.03(title) Grade A permit; fees.**

14 **SECTION 4.** ATCP 60.04(2) is repealed and recreated to read:

15 ATCP 60.04(2) FEE AMOUNT. (a) Except as provided in par. (b) or (c), the reinspection  
16 fee under sub. (1) is \$24.

17 (b) Except as provided in par. (c), if a reinspection is required under this chapter for  
18 reinstatement of a producer's license or grade A permit, the reinspection fee under sub. (1) is  
19 \$48.

20 (c) On September 1 of each year, the reinspection fee required under sub. (1) is subject  
21 to modification under ch. ATCP 59.

22 **SECTION 5.** ATCP 69.01(4)(title) is created to read:

23 **ATCP 69.01(4)(title) ACTION ON LICENSE APPLICATION.**

1           **SECTION 6.** ATCP 69.01(5) is created to read:

2           ATCP 69.01(5) LICENSE FEE. (a) Except as provided in par. (b), an applicant for a  
3 buttermaker license shall pay a license fee of \$60.

4           (b) On September 1 of each year, the fee for a buttermaker license is subject to  
5 modification under ch. ATCP 59.

6           **SECTION 7.** ATCP 69.02(6) is created to read:

7           ATCP 69.02(6) LICENSE FEE. (a) Except as provided in par. (b), an applicant for a  
8 cheesemaker license shall pay a license fee of \$60.

9           (b) On September 1 of each year, the fee for a cheesemaker license is subject to  
10 modification under ch. ATCP 59.

11          **SECTION 8.** ATCP 70.03(2) is amended to read:

12          ATCP 70.03(2) LICENSE APPLICATION. Application for an annual food processing plant  
13 license shall be made on a form provided by the department. The application shall be  
14 accompanied by the fees required under subs. (2m) and (2n), and by the sworn statement  
15 required under s. 100.03(2). Stats include applicable fees required under this section.

16          **SECTION 9.** ATCP 70.03(2m) and (2n) are amended to read:

17          ATCP 70.03(2m) ANNUAL LICENSE FEE. An applicant for a food processing plant license  
18 shall pay an annual license fee. Except as provided in sub. (2n) and (2t), the fee amount is as  
19 follows:

20          (a) For a food processing plant that has an annual production of at least \$25,000 but less  
21 than \$250,000, and is engaged in processing potentially hazardous food or in canning, an annual  
22 license fee of \$250 \$326.

1 (b) For a food processing plant that has an annual production of at least \$250,000, and is  
2 engaged in processing potentially hazardous food or in canning, an annual license fee of ~~\$525~~  
3 \$685.

4 (c) For a food processing plant that has an annual production of at least \$25,000 but less  
5 than \$250,000, and is not engaged in processing potentially hazardous food or in canning, an  
6 annual license fee of ~~\$100~~ \$131.

7 (d) For a food processing plant that has an annual production of at least \$250,000, and is  
8 not engaged in processing potentially hazardous food or in canning, an annual license fee of  
9 ~~\$325~~ \$424.

10 (e) For a food processing plant that has an annual production of less than \$25,000, an  
11 annual license fee of ~~\$60~~ \$78.

12 (2n) CANNING OPERATIONS; LICENSE FEE SURCHARGE. If a food processing plant is  
13 engaged in canning operations and has an annual production of \$25,000 or more, the operator  
14 shall pay an annual license fee surcharge of ~~\$200~~ \$261, which shall be added to the license fee  
15 under sub. (2m).

16 **SECTION 10.** ATCP 70.03(2r)(a) is amended to read:

17 ATCP 70.03(2r)(a) If the department reinspects a food processing plant because the  
18 department has found a violation of ch. 97, Stats., or this chapter on a regularly scheduled  
19 inspection, the department shall charge the food processing plant operator the reinspection fee  
20 specified under par. (b). A reinspection fee is payable when the reinspection is completed, and is  
21 due upon written demand from the department. The department may issue a written demand for  
22 payment when it issues a license renewal application to a food ~~warehouse~~ processing plant  
23 operator.

1 SECTION 11. ATCP 70.03(2r)(a)(note) is repealed.

2 SECTION 12. ATCP 70.03(2r)(b) is amended to read:

3 ATCP 70.03(2r)(b) The Except as provided in sub. (2t), the reinspection fee required

4 under par. (a) is as follows:

5 1. For a food processing plant that has an annual production of less than \$250,000, and is  
6 engaged in processing potentially hazardous food or in canning, the reinspection fee is ~~\$170~~ 209.

7 2. For a food processing plant that has an annual production of at least \$250,000, and is  
8 engaged in processing potentially hazardous food or in canning, the reinspection fee is ~~\$350~~ 431.

9 3. For a food processing plant that has an annual production of less than \$250,000, and is  
10 not engaged in processing potentially hazardous food or in canning, the reinspection fee is ~~\$100~~  
11 123.

12 4. For a food processing plant that has an annual production of \$250,000 or more, and is  
13 not engaged in processing potentially hazardous food or in canning, the reinspection fee is ~~\$325~~  
14 400.

15 5. For a food processing plant that has an annual production of less than \$25,000 the  
16 reinspection fee is \$49.

17 SECTION 13. ATCP 70.03(2t) is created to read:

18 ATCP 70.03(2t) ADJUSTED FEES. On September 1 of each year, each fee required under  
19 sub. (2m), (2n) and (2r) (a) is subject to modification under ch. ATCP 59.

20 SECTION 14. ATCP 70.03(3) is amended to read:

21 ATCP 70.03(3) ACTION ON LICENSE APPLICATION. The department shall grant or deny a  
22 license application within 40 business days after ~~a complete application, including any~~  
23 ~~information required under s. 100.03, Stats., is received by the department~~ receives a complete

1 application. If the department denies the license application is denied, the department shall notify  
2 the applicant, in writing, of the reasons for the denial. If ~~the operator of a food processing plant~~  
3 ~~procures farm products from producers, either directly or through its affiliate as defined under s.~~  
4 ~~100.03(1)(a), Stats., the department shall not issue or renew an annual license for that food~~  
5 ~~processing plant unless the operator complies with s. 100.03, Stats.~~ Except as provided under  
6 sub. (5), the department may conditionally grant a license application by issuing a temporary  
7 license under sub. (4).

8 **SECTION 15.** Ch. ATCP 71 (title) is amended to read:

9 CHAPTER ATCP 71 (title) FOOD WAREHOUSES AND MILK DISTRIBUTORS

10 **SECTION 16.** ATCP 71.01(6m) and (8m) are created to read:

11 ATCP 71.01(6m) "Milk distributor" has the meaning given in s. 97.21(1)(e), Stats.

12 (8m) "Storage facility" means each location where a milk distributor stores milk.

13 **SECTION 17.** ATCP 71.02(2) is amended to read:

14 ATCP 71.02(2) LICENSE APPLICATION. Application for an annual food warehouse  
15 license shall be made on a form provided by the department. The application shall ~~be~~  
16 ~~accompanied by each applicable fee and surcharge required under subs. (3) to (5) include~~  
17 applicable fees and surcharges required under this section. An application shall include all of the  
18 information required under this section for licensing purposes.

19 **SECTION 18.** ATCP 71.02(3) is amended to read:

20 ATCP 71.02(3) ANNUAL LICENSE FEE. An applicant for a food warehouse license shall  
21 pay an annual license fee. Except as provided in sub. (5m), the fee amount is as follows:

22 (a) For a warehouse that stores potentially hazardous food, and has fewer than 50,000  
23 square feet of storage area, \$75 \$98.

1 (b) For a warehouse that stores potentially hazardous food, and has at least 50,000 square  
2 feet of storage area, ~~\$200~~ \$261.

3 (c) For a warehouse that does not store potentially hazardous food, and has fewer than  
4 50,000 square feet of storage area, ~~\$50~~ \$65.

5 (d) For a warehouse that does not store potentially hazardous food, and has at least  
6 50,000 square feet of storage area, ~~\$100~~ \$131.

7 **SECTION 19.** ATCP 71.02(3)(note) is repealed.

8 **SECTION 20.** ATCP 71.02(5)(b) is amended to read:

9 ATCP 71.02(5)(b) ~~The~~ Except as provided in sub. (5m), the reinspection fee required  
10 under par. (a) is as follows:

11 1. For a food warehouse that stores potentially hazardous food and has fewer than 50,000  
12 square feet of storage area, ~~\$75~~ 92.

13 2. For a food warehouse that stores potentially hazardous food and has at least 50,000  
14 square feet of storage area, ~~\$200~~ 246.

15 3. For a food warehouse that does not store potentially hazardous food and has fewer than  
16 50,000 square feet of storage area, ~~\$100~~ 123.

17 4. For a food warehouse that does not store potentially hazardous food and has at least  
18 50,000 square feet of storage area, ~~\$200~~ 246.

19 **SECTION 21.** ATCP 71.02(5m) is created to read:

20 ATCP 71.02(5m) **ADJUSTED FEES.** On September 1 of each year, each fee required by  
21 sub. (3) or (5) (a) is subject to modification under ch. ATCP 59.

22 **SECTION 22.** ATCP 71.02(7)(a) is amended to read:

1           ATCP 71.02(7)(a) The applicant has paid all fees and surcharges, set forth in a statement  
2 from the department, that are due and payable by the applicant under ~~subs. (3) to (5)~~ this section.  
3 The department shall refund a license fee surcharge paid under protest if, upon review, the  
4 department determines that the surcharge is not due and payable.

5           **SECTION 23.** ATCP 71.10 is created to read:

6           **ATCP 71.10 Milk distributors; license and fees. (1) LICENSE REQUIRED.** No  
7 person may operate as a milk distributor without an annual license from the department, as  
8 provided in s. 97.21, Stats. A license expires on April 30 annually.

9           **(2) LICENSE APPLICATION.** Application for an annual milk distributor license shall be  
10 made on a form provided by the department. The application shall be accompanied by each  
11 applicable fee and surcharge required under (3). An application shall include all of the  
12 information required under this section for licensing purposes.

13           **(3). LICENSE FEES.** A milk distributor shall pay the following fees:

14           **(a)** An annual license fee. Except as provided in sub. (2), the license fee is \$60 for each  
15 storage facility operated by the milk distributor.

16           **(b)** A reinspection fee, if required under s. 97.21 (4) (b), Stats., for each reinspection of a  
17 storage facility operated by the milk distributor. Except as provided in sub. (2), the reinspection  
18 fee is \$25 for each reinspected storage facility.

19           **(c)** A surcharge, in the amount specified by s. 97.21 (4) (c), Stats., if required by s. 97.21  
20 (4) (c), Stats.

21           **(4) ADJUSTED FEES.** On September 1 of each year, each fee required under sub. (3) (a) or  
22 (b) is subject to modification under ch. ATCP 59.

23

1           SECTION 24. ATCP 75.02(2), (3) and (4)(b) are amended to read:

2           ATCP 75.02(2) LICENSE APPLICATION. A person applying for a retail food establishment  
3 license shall apply on a form provided by the department, or by the agent municipality or county.  
4 The application shall include ~~the fees under sub. (3)~~ applicable fees required under this section.

5           (3) ANNUAL LICENSE FEE. An applicant for a retail food establishment license shall pay  
6 an annual license fee. Except as provided in sub. (4m), the fee amount is as follows:

7           (a) For a retail food establishment that has annual sales of at least \$25,000 but less than  
8 \$1,000,000 and processes potentially hazardous food, an annual license fee of ~~\$175~~ \$228.

9           (b) For a retail food establishment that has annual sales of at least \$1,000,000 and  
10 processes potentially hazardous food, an annual license fee of ~~\$450~~ \$587.

11           (c) For a retail food establishment that has annual sales of at least \$25,000 and is  
12 engaged in food processing, but does not process potentially hazardous food, an annual license  
13 fee of ~~\$125~~ \$163.

14           (d) For a retail food establishment that is not engaged in food processing, an annual  
15 license fee of ~~\$30~~ \$39.

16           (4)(b) ~~The~~ Except as provided in sub. (4m), the reinspection fee required under par. (a) is  
17 as follows:

18           1. For a retail food establishment that has annual food sales of at least \$25,000 but less  
19 than \$1,000,000, and processes potentially hazardous food, the reinspection fee is ~~\$125~~ 154.

20           2. For a retail food establishment that has annual food sales of at least \$1,000,000, and  
21 processes potentially hazardous food, the reinspection fee is ~~\$300~~ 369.

1           3. For a retail food establishment that has annual food sales of at least \$25,000, and is  
2 engaged in food processing but does not processes potentially hazardous food, the reinspection  
3 fee is ~~\$125-154~~.

4           4. For a retail food establishment that has annual food sales of less than \$25,000, and is  
5 engaged in food processing, the reinspection fee is ~~\$60-74~~.

6           5. For a retail food establishment that is not engaged in food processing, the reinspection  
7 fee is ~~\$60-74~~.

8           **SECTION 25.** ATCP 75.02(4m) is created to read:

9           ATCP 75.02(4m) ADJUSTED FEES. On September 1 of each year, each fee required under  
10 this section is subject to modification under ch. ATCP 59.

11          **SECTION 26.** ATCP 77.06(1) is amended to read:

12          ATCP 77.06(1) FEE AMOUNTS. Except as provided under sub. (2), ~~(2m)~~ or (3), an  
13 operator shall pay the following certification fees:

14          **SECTION 27.** ATCP 77.06(2)(intro.) is created to read:

15          ATCP 77.06(2)(intro.) PARTIAL FEES. Except as provided in sub. (2m), an operator of a  
16 milk or food laboratory shall pay the fee as provided in par. (a) and the operator of an operator of  
17 a water laboratory shall pay the fee as provided in par. (b).

18          **SECTION 28.** ATCP 77.06(2m) is created to read:

19          ATCP 77.06(2m) ADJUSTED FEES. On September 1 of each year, each fee required under  
20 this section is subject to modification under ch. ATCP 59.

21          **SECTION 29.** ATCP 77.06(4) is amended to read:

22          ATCP 77.06(4) PAYING CERTIFICATION FEES. (a) If the department has not previously  
23 certified an operator to perform any of the tests listed under s. ATCP 77.02 at the laboratory for

1 which the operator is seeking certification, the department shall bill the operator under ~~sub. (1) or~~  
2 ~~(2)~~ this section after the department inspects the laboratory under s. ATCP 77.14 (1) (a). The  
3 department may not certify the operator to perform any test until the operator pays the required  
4 certification fee for that test.

5 (b) If the operator of a certified laboratory applies for certification to perform additional  
6 tests under sub. (5), or files a renewal application under s. ATCP 77.04 (2), the operator shall  
7 include with that application the fees required under ~~sub. (1) or (2)~~ this section.

8 **SECTION 30.** ATCP 77.06(5)(c) is amended to read:

9 ATCP 77.06(5)(c) The fees required under ~~sub. (1) or (2)~~ this section.

10 **SECTION 31.** ATCP 77.23(3)(intro.) is amended to read:

11 ATCP 77.23(3)(intro.) A Except as provided in sub. (3m), a laboratory operator shall pay  
12 the following fees to acquire and maintain a laboratory approval under sub. (1):

13 **SECTION 32.** ATCP 77.23(3m) is created to read:

14 ATCP 77.23(3m) **ADJUSTED FEES.** On September 1 of each year, each fee required under  
15 this section is subject to modification under ch. ATCP 59.

16 **SECTION 33.** ATCP 80.04(1)(a) and (b) are amended to read:

17 ATCP 80.04(1)(a) *Annual license fee.* 1. An applicant for a dairy plant license shall pay  
18 the an annual license fee ~~specified under par. (b)~~. Except as provided under subd. 2., license fees  
19 ~~under par. (b)~~ are based on the dairy plant's milk receipts or production during the previous  
20 calendar year, regardless of who operated that dairy plant in the previous calendar year.

21 2. If a dairy plant had no milk receipts or production during the previous calendar year,  
22 license fees ~~under par. (b)~~ shall be based on projected milk receipts or production during the  
23 license year for which application is made. At the end of that license year, the license holder

1 shall report the actual milk receipts or production during the license year, and the department  
2 shall determine the appropriate fee under par. (b) based on actual receipts or production. If the  
3 fee based on actual receipts or production differs from the fee based on projected receipts or  
4 production, the license holder shall pay the balance due or receive a credit from the department  
5 on the next year's license fee.

6 (b) *License fee amounts.* ~~An applicant for a dairy plant license shall pay a basic license~~  
7 ~~fee of~~ Except as provided in sub. (6), the license fee under par. (a) is \$8096 plus a supplementary  
8 ~~license fee as follows~~ the following:

9 1. For a grade A processing plant, a supplementary license fee of ~~\$650~~ \$783 if the plant  
10 received more than 2,000,000 pounds of milk from milk producers, or a supplementary license  
11 fee of ~~\$500~~ \$603 if the plant received 2,000,000 pounds or less of milk from producers.

12 2. For a grade B processing plant that manufactured or processed more than 1,000,000  
13 pounds of dairy products or more than 200,000 gallons of frozen dairy products, a supplementary  
14 license fee of ~~\$270~~ \$325.

15 3. For a grade A receiving station, a supplementary license fee of ~~\$250~~ \$301.

16 **SECTION 34.** ATCP 80.04(2)(b)(intro.) and 1. are amended to read:

17 ATCP 80.04(2)(b)(intro.) *Fee amounts.* Milk Except as provided in sub. (6), milk  
18 procurement fees required under par. (a) are as follows:

19 1. For each 100 pounds of grade A milk received from milk producers, ~~0.6~~ 0.96 cent.

20 **SECTION 35.** ATCP 80.04(3)(b) is amended to read:

21 ATCP 80.04(3)(b) *Fee amounts.* The Except as provided in sub. (6), the reinspection fee  
22 required under par. (a) includes, for each reinspection, a basic reinspection fee of ~~\$40~~ 48 plus a  
23 supplementary reinspection fee as follows:

- 1           1. For a grade A processing plant, a supplementary reinspection fee of ~~\$160~~ 198 if the  
2           plant received more than 2,000,000 pounds of milk from milk producers during the  
3           previous calendar year, or a supplementary reinspection fee of ~~\$125~~ 155 if the plant  
4           received 2,000,000 pounds or less of milk from milk producers during the previous  
5           calendar year.
- 6           2. For a grade B processing plant, a supplementary reinspection fee of ~~\$140~~ 173.
- 7           3. For a grade A receiving station, a supplementary reinspection fee of ~~\$60~~ 74.

8           **SECTION 36.** ATCP 80.04(5) and (6) are repealed and recreated to read:

9           ATCP 80.04(5) DAIRY PRODUCT GRADING FEE. (a) *Fee required.* A person applying for  
10          a license to produce gradable butter or cheese at a grade B dairy plant shall pay an annual  
11          grading fee.

12               (b) Except as provided in sub. (6), the grading fee under par. (a) is 1.09 cents per 100  
13          pounds of gradable butter and cheese produced at the dairy plant by any operator during the  
14          previous calendar year. If the dairy plant was not in operation during the previous calendar year,  
15          the license applicant shall pay a grading fee based on estimated production for the calendar year  
16          in which the application is made. At the end of the license year, the license holder shall report  
17          the actual calendar year production, and the department shall re-calculate the grading fee based  
18          on that actual production. If the grading fee based on actual production differs from the fee  
19          based on estimated production, the license holder shall pay the balance due or receive a credit  
20          from the department on the next year's grading fee.

21               (c) For purposes of this subsection, ungraded barrel cheese is not gradable cheese.

22               (6) ADJUSTED FEES. On September 1 of each year, each fee required under sub. (1) (a),  
23          (2) (a), (3) (a) and (5) (a) is subject to modification under ch. ATCP 59.

1 SECTION 37. Chapter ATCP 81 subchapter 1 (title) is amended to read:

2 SUBCHAPTER I

3 DEFINITIONS AND GENERAL PROVISIONS

4 SECTION 38. ATCP 81.01 (13m) is created to read:

5 ATCP 81.01 (13m) "Grade cheese" means to grade or identify cheese as provided in s.  
6 ATCP 81.22.

7 SECTION 39. ATCP 81.02 is created to read:

8 ATCP 81.02 Cheese grader license. (1) LICENSE REQUIRED. No person may grade  
9 cheese without a license from the department under s. 97.175, Stats.

10 (2) LICENSE APPLICATION. Application for a biennial cheese grader license shall be made  
11 on a form provided by the department. The application shall be accompanied by each applicable  
12 fee and surcharge required under (3). An application shall include all of the information required  
13 under this section for licensing purposes.

14 (3) LICENSE FEE. (a) Except as provided in par. (b), a person applying for a license  
15 under sub. (1) shall pay an annual license fee of \$60.

16 (b) On September 1 of each year, the fee for a license under sub. (1) is subject to  
17 modification under ch. ATCP 59.

18 SECTION 40. ATCP 82.02(2)(intro.), (3)(b) and (4) are amended to read:

19 ATCP 82.02(2)(intro.) LICENSE APPLICATION. An application for a license under sub. (1)  
20 shall be made on a form provided by the department and shall be accompanied by include all  
21 applicable fees that are due and payable under subs. (4) to (6) under this section. The application  
22 shall include all of the following:

1 (3)(b) The department shall not issue or renew a license until the applicant has paid all  
2 applicable fees and surcharges, set forth in a statement from the department, that are due and  
3 payable by the applicant under ~~subs. (4) to (6)~~ this section. The department shall refund a fee  
4 paid under protest if, upon review, the department determines that the fee is not due and payable.

5 (4) LICENSE FEE. ~~An~~ Except as provided in sub. (5m), an applicant for a bulk milk tanker  
6 license shall pay an annual license fee of \$30 \$36.

7 **SECTION 41.** ATCP 82.02(5) is repealed and recreated to read:

8 ATCP 82.02(5) REINSPECTION FEE. (a) If the department reinspects a bulk milk tanker  
9 because the department finds a violation of ch. 97, Stats., or this chapter, the department shall  
10 charge the bulk milk tanker operator a reinspection fee. The reinspection fee is payable when the  
11 reinspection is completed, and is due upon written demand from the department. The department  
12 may issue a demand for payment when it issues a license renewal application to the bulk milk  
13 tanker operator, or at any other time after the fee becomes effective.

14 (b) Except as provided in sub. (5m), the reinspection fee under par. (a) is \$36.

15 **SECTION 42.** ATCP 82.02(5m) is created to read:

16 (5m) ADJUSTED FEES. On September 1 of each year, each fee required under sub. (4) and  
17 (5)(a) is subject to modification under ch. ATCP 59.

18 **SECTION 43.** ATCP 82.04(5) is repealed and recreated to read:

19 ATCP 82.04(5) LICENSE AND REINSPECTION FEES. (a) *License fee.* Except as provided  
20 in par. (c), an applicant for a bulk milk weigher and sampler license shall pay a biennial license  
21 fee of \$48.

1           (b) *Reinspection fee required.* If the department reinspects a bulk milk sampler because  
2 the department finds a violation of ch. 97, Stats., or this chapter, the department shall charge the  
3 bulk milk weigher and sampler a reinspection fee. Except as provided in par. (c), the fee is \$48.  
4 The reinspection fee is payable when the reinspection is completed, and is due upon written  
5 demand from the department. The department may issue a demand for payment when it issues a  
6 license renewal application to the bulk milk weigher and sampler.

7           (c) *Adjusted fees.* On September 1 of each year, each fee required under this subsection  
8 is subject to modification under ch. ATCP 59.

9           **SECTION 44.** ATCP 85.07 is renumbered 85.07(1).

10          **SECTION 45.** ATCP 85.07(2) and (3) are created to read:

11          ATCP 85.07(2) Except as provided in sub. (3), a person applying for a license under sub.  
12 (1) shall pay a biennial license fee of \$60.

13          (3) On September 1 of each year, the license fee required under sub. (2) is subject to  
14 modification under ch. ATCP 59.

15          **EFFECTIVE DATE AND INITIAL APPLICABILITY:** (1) Except as provided in sub. (2), this  
16 rule takes effect on the first day of the month following publication in the Wisconsin  
17 administrative register, as provided under s. 227.22(2) (intro.), Stats.

1           (2) Pursuant to s. 227.22(2)(e), Stats., this rule first applies to small businesses as defined  
2 in s. 227.114 (1), Stats., on the first day of the third month commencing after the date of  
3 publication in the Wisconsin administrative register.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

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

**Hearing Appearance Log  
Food and Dairy Fees  
Clearinghouse No. 05-044**

**Eau Claire, June 14, 2005**

Ken Heiman, Nasonville Dairy: Opposes the amount of proposed fee increases and the adjustment of fees without public hearing. Suggests phasing in \$0.002 over 4 years.

**Appleton, June 15, 2005**

Don DeMotts, Alto Dairy Coop: Opposes the amount of proposed fee increases and the adjustment of fees without public hearing. Suggests phasing in \$0.002 over 4 years.

**Waukesha, June 16, 2005**

Brad Legreid, Wisconsin Dairy Professionals Association: Opposes the amount of the proposed fee increases and the adjustment of fees without public hearing. Suggests phasing in over 4 years.

Jerome Krings, Family Dairies, USA: Opposes the amount of the proposed fee increases and the adjustment of fees without public hearing.

**Madison, June 17, 2005 Video link to Monroe, Wausau, LaCrosse and Green Bay**

John Umhoefer, Wisconsin Cheese Makers Association: Supports the proposed rule with modifications. Opposes the amount of the proposed fee increases and the adjustment of fees without public hearing. Suggests phasing in 5% increases over 4 years.

**Madison, June 17, 2005 Video link to Monroe, Wausau, LaCrosse and Green Bay Cont.**

Bruce Workman, Edelweiss/Town Hall Dairy: Opposes the amount of the proposed fee increases and the adjustment of fees without public hearing. Suggests phasing in 5% increases over 4 years.

Mike Moran, Wisconsin Dairy State Cheese: Opposes the amount of the proposed fee increases and the adjustment of fees without public hearing. Suggests phasing in 5% increases over 4 years.

Steve Stettler, Decatur Swiss Cheese Coop: Opposes the amount of the proposed fee increases and the adjustment of fees without public hearing. Suggests phasing in 5% increases over 4 years.

Paul Beigle, Mapleleaf Cheese: Opposes the amount of the proposed fee increases and the adjustment of fees without public hearing. Suggests phasing in 5% increases over 4 years.

Michelle Kussow, Wisconsin Grocer's Association: Opposes the proposed rule.

Ken McMahon, Ellsworth Cooperative Creamery: Supports exemption of the grading fee for barrel cheese.

Dean Doornink: Opposes the amount of the proposed fee increases and the adjustment of fees without public hearing.

Angelica Hollstadt, Angelica's Garden: Opposes the \$200 canning fee surcharge for small food processors.

Jack Kaestner, Oconomowoc Country Club: Opposes the adjustment of fees without public hearing and supports creation of a sliding fee scale to address concerns of small artisan food processors. Recommends investigating ways to equitably distribute responsibility for funding between producers and consumers.

John Davis, Wayne and Carla Kostka, Anne Topham, Troy DeRosier, Willi Lehner, Michell Wiegart, Mary Falk, Ron Paris, Bob Wills, Wisconsin Dairy Artisan Network: Opposes the adjustment of fees without public hearing and supports creation of a sliding fee scale to address concerns of small artisan food processors. Recommends investigating ways to equitably distribute responsibility for funding between producers and consumers.

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

**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	<b>5. Types of Local Governmental Unit Affected:</b> <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 will increase program revenues by \$1.2M. The majority of fees have not been increased since 1991.

The department proposes to increase license fees for all food and dairy license categories.

Act 39, the 1991-93 biennial budget act, created the current structure for food and dairy license fees and set the fees at the current level for most fees. (Five categories were additionally increased by rule in FY98.) The 1991 budget legislation also authorized the department to adjust license fees via the rulemaking process.

Wisconsin's food safety programs are funded by a combination of general purpose revenue (GPR) dollars and program revenue (PR) from industry license fees. In 1991 program revenue funded about 40% of program costs. Act 27, the 1995-97 biennial budget act, reduced the GPR budget, and increased the percentage of PR budget to 50%. A modest increase in operating costs, significant reductions in GPR, and an increase in PR budget (from the transfer of the grade A milk certification program to DATCP) have resulted in increased PR expenditures. Because of these shifts in funding and the lapse of a significant amount of PR cash during the previous two biennia, the department projects a cash deficit in its food safety PR appropriation in FY 2005-06.

**Local Government Impact**

The cost to local governments will increase by \$11,500.

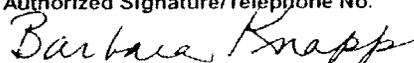
As a result of these fee increases, local governments that license and inspect retail food establishments as agents of the department will be required to increase their reimbursement to the department for administrative services. Currently, agents must reimburse the department for 10% of the license fee the department would charge if the department was delivering inspection-related services. For FY04, agent reimbursement to the department equaled \$50,005. If the proposed fee increases are implemented, the rate of reimbursement will remain at 10%, but the total agent reimbursement to the department will increase to \$61,505. Local governments can and 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**

In FY2007, you will see the remaining a full year captured of Milk Certification fees and the first six months increase of 2 year personal license fee increases that were not captured in FY2006. That will generate additional ongoing revenues of \$197,605/year.

In FY2008, you will see the remaining increase of 2 year personal license fee increases that were not captured in FY2007. That will generate additional ongoing revenues of \$50,810/year.

The full fee increase annualized amount will be reached in FY2008.

<b>Agency/prepared by: (Name &amp; Phone No.)</b>  Michelle Wachter (608) 224-4703	<b>Authorized Signature/Telephone No.</b>  Barbara Knapp (608) 224-4746	<b>Date</b> 7/25/05
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# FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect	<input checked="" type="checkbox"/> ORIGINAL	<input type="checkbox"/> UPDATED	LRB No. and Bill Adm. Rule No. 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	\$1,200,000	
SEG/SEG-S		
<b>TOTAL State Revenues</b>	<b>\$1,200,000</b>	

**NET ANNUALIZED FISCAL IMPACT**

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	_____	\$61,505
NET CHANGE IN REVENUES	\$1,200,000	\$61,505

Dept. of Agriculture, Trade & Consumer Protection	Authorized Signature/Telephone No.	Date
Michelle Wachter (608) 224-4703	<i>Barbara Knapp</i> Barbara Knapp (608) 224-4746	7/25/05

# Wisconsin Department of Agriculture, Trade and Consumer Protection

## Final Regulatory Flexibility Analysis

**Rule Subject:** Food Establishment License Fees  
**Adm. Code Reference:** ATCP 59, 60, 69, 70, 71, 75, 77, 80, 81, 82, 85, Wis. Adm. Code  
**Rules Clearinghouse #:** 05-044  
**DATCP Docket #:** 01-R-06

### Rule Description

The Department of Agriculture, Trade and Consumer Protection ("DATCP" or "department") licenses and inspects a variety of food processing and handling establishments and individuals in Wisconsin. This rule changes current license fees paid by dairy and food businesses licensed by the Department of Agriculture, Trade and Consumer Protection (DATCP). This rule:

- Increases annual license fees, beginning in 2006.
- Creates a mechanism to annually adjust license fees (up or down), beginning in 2007, based on the prevailing cash balance in Wisconsin's food safety program revenue account. Any annual adjustment must be preceded by publication of the adjusted fees and any upward adjustment must also first be brought before an advisory body for consideration and approved by the DATCP Board.

This rule increases or allows for adjustment of existing license fees for milk producers, dairy plants, food processing plants, food warehouses, milk distributors, retail food stores, dairy, food or water testing laboratories, milk haulers, buttermakers, cheesemakers and butter or cheese graders.

Wisconsin's food safety programs are funded by a combination of general tax dollars (GPR) and program revenue from industry license fees (PR). In 1991, license fees funded about 40% of program costs. The 1995-97 biennial budget act reduced GPR funding, and increased the percentage of PR funding to 50%. A modest increase in operating costs, recent, significant reductions in GPR, and a significant increase in PR cost caused by the transfer of the grade A milk certification program to DATCP have caused the PR funding proportion to increase to 60%. Because of these shifts in funding and the lapse of a significant amount of PR during the previous two biennia, the department projects a deficit in its food safety budget in FY 2005-06. Fees have not been increased since 1998.

### Small Businesses Affected by This Rule

This rule affects all milk producers, dairy plants, food processing plants, food warehouses, milk distributors, retail food stores, dairy, food or water testing laboratories, milk haulers, buttermakers, cheesemakers and butter or cheese graders licensed by the department, including many businesses that would be considered a "small business" as defined in s. 227.114(1)(a),

Stats, or under the definition of "small business" as defined in s. 227 114(1), Stats. as amended by 2003 Act 145.

### **Effects on Small Business**

Increasing license fees as proposed in this rule will affect small businesses. License fees for all categories of milk producers, dairy plants, food processing plants, food warehouses, milk distributors, retail food stores, dairy, food or water testing laboratories, milk haulers, buttermakers, cheesemakers and butter or cheese graders will increase. Small businesses exist in each category of food and dairy establishment, handler or individual.

### **Steps to Assist Small Business**

The department has attempted to accommodate small businesses and provide a reasonably fair and equitable license fee schedule. This is done by basing fees on the actual costs associated with each category of licensed establishment and then determining further subcategories of establishments based on the size or volume of each establishment and the food products processed or handled by the establishment. Smaller establishments processing and handling food with less potential food safety risks pay lower license fees than large establishments handling foods with higher food safety risks.

### **Conclusion**

This rule increases food safety license fees, but does not substantially alter the existing license fee requirements for food establishments. 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 21<sup>st</sup> day of July, 2005

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

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