

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 #: 07-037
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 increases current food and dairy license fees to meet the current and continuing shortfall in food safety revenues. This rule will increase food safety program revenues by approximately \$909,200 per year beginning in FY 2008-09. 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.
- Buttermakers and cheesemakers.
- Butter and cheese graders.

This fee increase is vitally necessary to address the rising deficit in DATCP’s food safety program revenue (PR) account. At the end of FY 2006-07, the food safety program revenue account had a negative cash balance of \$51,700. This deficit will grow steadily worse if not addressed soon. DATCP plans to implement the new fees starting July 1, 2008 (prior to the next annual license cycle).

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

Background

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.

Wisconsin's food safety program is funded by a combination of general purpose revenue (GPR) and program revenue from license fees. DATCP supports shared funding of programs, such as food safety, which have both public and private industry benefits. But appropriate funding shares may be open to debate. In 1991, license fees funded about 40% of food safety 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 effectively reduced the GPR funding share still further, so that license fees now fund about 60% of the food safety budget (this rule will increase that share to about 64%).

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 it was forced to withdraw a large share of that fee increase proposal. As a result of all these factors, DATCP had a negative cash balance of \$51,700 at the end of FY 2006-07 in its food safety PR account, as reported in the department's Cash Balance Final Report Summary for FY 2006-07. DATCP estimates that, if nothing is done, the food safety PR account will have a negative cash balance of \$470,000 by the end of FY 2008-09.

Food safety GPR costs represent a very small share (considerably less than *one one-thousandth*) of the overall state GPR budget. Food safety fees also represent a very small share of overall dairy and food industry costs, although impacts may vary between licensed entities. For example, dairy plant operator fees for dairy plant *and* dairy farm inspection (the largest item in the food safety budget) total less than *one one-thousandth* of the amount that dairy plant operators pay for milk.

DATCP cannot continue the food safety program at the current funding levels. Although food safety funding has little impact on the overall state budget, or on overall industry costs or competitiveness, funding shortfalls may have grave implications for public health and safety and for Wisconsin's ability to market its products in interstate commerce.

The 2007-09 biennial budget act (2007 Act 20) included a one-time transfer of funds from the Agriculture Chemical Fund (\$250,000 in FY 2007-08 and \$100,000 in FY 2008-09) to the food safety program revenue account. That one-time transfer allowed DATCP to reduce proposed fee increases by a modest amount, but it will not supplement the food safety program revenue account beyond the current biennium.

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 (remaining farms are larger and more widely dispersed) and increased delegation of retail food regulation to cooperating local governments (DATCP must still train, assist and evaluate local agents). While food safety staffing needs have declined in some traditional areas, they are growing in other areas.
- DATCP trains, assists and evaluates local governments that agree to license and inspect retail food establishments in their jurisdictions. Thirty-seven 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 (the remaining DATCP-inspected establishments are more widely dispersed, complicating inspection logistics).
- 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.
- DATCP's Food Safety Division has reduced its annual operating costs by closing its Green Bay and Madison regional offices, consolidating space, changing its organizational structure to eliminate management positions, streamlining administrative and program work, and consolidating complementary program activities.
- DATCP has convened an advisory council to consider possible restructuring of retail food license fees. But fee restructuring, if any, will require statutory changes. This rule is based on the current statutory fee structure.

Rule Content

This rule increases current license and reinspection fees for dairy and food businesses, as shown below. DATCP plans to adopt and publish this rule before May 1, 2008, but fee increases will first apply to fees that are due on July 1, 2008.

Entity	Current License Fee(s)	New License Fee(s)
Dairy Farm	\$24 annual license fee (paid by dairy plant operator)	\$31
	\$24 or \$48 reinspection fee (paid by dairy plant operator if reinspection is required)	\$31 or \$62
Dairy Plant	<i>Annual license fee</i> (calculations include an increase in the basic license fee from \$96 to \$125):	
	\$699 or \$879 for grade A processing plant (based on size)	\$909 or \$1,143
	\$397 for grade A receiving station	\$516
	\$96 for grade A transfer station	\$125
	\$96 to \$421 for grade B processing plant (based on size)	\$125 or \$548
	\$96 for grade B receiving station or transfer station	\$125
	Grade A milk procurement fee: 0.96 cents per 100 lbs.	1.081 cents per 100 lbs. (for payments due beginning July 1, 2008)
	Grade B milk procurement fee: 0.2 cents per 100 lbs.	No change
	<i>Reinspection fee:</i>	
	Basic plant fee \$48 (included in charges below)	\$62
	\$203 or \$246 for grade A processing plant	\$265 or \$319
\$221 for grade B processing plant	\$287	
\$122 for grade A receiving station	\$158	

	\$48 for grade B receiving station or transfer station	\$62
	<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)	\$101 - \$890
	\$261 surcharge for canning for food processing plants with annual production of \$25,000 or more	\$339
	\$49-\$431 reinspection fee (based on size and type)	\$64 - \$560
Food Warehouse	\$65-\$261 annual license fee (based on size and type)	\$85-\$339
	\$92-\$246 reinspection fee (based on size and type)	\$120 - \$320
Milk Distributor	\$60 annual license fee per facility	\$78
	\$25 reinspection fee per facility	\$32
Retail Food Store	\$37-\$562 annual license fee (based on size and type)	\$48-\$731
	\$74-\$369 reinspection fee (based on size and type)	\$96 - \$480
Dairy, Food or Water Testing Lab	\$336 annual lab certification fee for each dairy or food test (other than milk drug residue screening)	\$437
	\$276 annual lab certification fee for each water test	\$359

	\$25 annual certification fee for each dairy or food analyst (other than milk drug residue screening analyst)	\$32
	\$50-\$500 initial fee and \$25-\$50 annual renewal fee for lab performing milk drug residue screening	\$65-\$650 initial fee \$32-\$65 annual renewal fee
	\$25 initial evaluation fee for milk drug residue screening analysts (if more than 3 per lab)	\$32
Bulk Milk Tanker	\$36 annual bulk milk tanker license fee	\$47
	\$36 bulk milk tanker reinspection fee	\$47
	\$48 bulk milk weigher and sampler license fee (2-year license)	\$62
	\$48 bulk milk weigher and sampler reinspection fee	\$62
Buttermaker or Cheesemaker	\$60 license fee (2-year license)	\$78
Butter or Cheese Grader	\$60 license fee (2-year license)	\$78

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 dollars and matching state GPR dollars. Under federal law, states must match federal dollars with state GPR dollars, not license fees.

Business Impact

Food safety is important for Wisconsin food businesses, as well as consumers. Food safety inspection maintains consumer confidence, and helps prevent food contamination incidents that can harm entire industries (not just the individual businesses where the incidents originate). This rule ensures adequate funding for Wisconsin's food safety program, so that the program can maintain current minimum levels of food safety inspection.

However, this rule also increases license fee costs for food and dairy businesses, many of which are "small businesses." This rule increases annual license fees, reinspection fees, and milk procurement fees, beginning with fees that are due in July 2008.

This rule will increase dairy and food industry costs by a combined total of approximately \$909,200 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 small overall share of industry costs. For example, dairy plant operator fees for dairy plant *and* dairy farm inspection (the largest item in the food safety budget) total less than *one one-thousandth* of the amount that dairy plant operators pay for milk. 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 operation. Smaller businesses generally pay lower fees than large businesses, and businesses with lower inherent food safety risks generally pay lower fees than businesses with higher inherent food safety risks.

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

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.

Conclusion

This rule increases food and dairy license fees, in order to address a mounting deficit in Wisconsin's food safety program. The fee increases will have a significant, but not dramatic impact on food and dairy businesses. This rule requires no additional recordkeeping or other procedures for small businesses. Businesses will not need additional professional skills or assistance 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