



State of Wisconsin
Jim Doyle, Governor

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

DATE: December 10, 2007

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

SUBJECT: **Food and Dairy Fees; Final Draft Rule**
(Clearinghouse Rule #07-037)

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

Summary

A serious food safety funding shortfall has created the need for this rule to increase current food and dairy license fees. The fee increase is necessary just to maintain current minimal levels of food safety inspection. DATCP currently has a negative cash balance in its food safety program revenue account, which will grow steadily worse if not addressed.

This rule will increase food safety program revenue 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.

Agriculture generates \$51.5 billion for Wisconsin

- Milk distributors.
- Buttermakers and cheesemakers.
- Butter and cheese graders.

Background

DATCP administers Wisconsin's food safety program. This program is designed to safeguard public health and ensure a safe and wholesome food supply to Wisconsin's 5.6 million consumers. The program also makes it possible for Wisconsin to market dairy and food products in interstate and international markets. Approximately 85% of Wisconsin's dairy production is marketed outside the state.

DATCP licenses and inspects dairy and food operations (Grade A dairy inspection frequencies are mandated by national regulations). 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 (PR).

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.

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, annual food safety operating costs now exceed annual food safety revenues and the cash balance in the food safety program revenue account has been completely depleted. At the end of FY 2006-07, DATCP had a *negative cash balance of \$51,700 in its food safety PR account*, as reported in the department's Cash Balance Final Report Summary for FY 2006-07. If no corrective action is taken, DATCP *projects a negative cash balance of \$470,000 at the end of FY 2008-09.*

In short, 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. Without increased funding, DATCP will be forced to reduce food safety inspection at a time when public concern over food safety risks is growing.

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 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). The rapid growth of “ready to eat” and delicatessen operations has increased retail food safety risks.
- 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. But national reform will take time. 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 Contents

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 or after 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	

Reinspection fee:

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

Butter and cheese grading fee:

1.09 cents per 100 lbs. of product	1.5 cents per 100 lbs. of product
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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.

Public Hearings

DATCP held 3 hearings on this rule. DATCP held hearings on May 15, 2007 in Eau Claire, May 16, 2007 in Appleton, and May 22, 2007 in Madison. Seven persons attended the hearings. Six of the 7 offered both oral and written testimony. All 6 persons opposed fee increases. Two more persons filed written comments opposing the fee increases. Opponents cited various concerns including the size of the fee increases, the need for DATCP to reduce costs, and the continued erosion of GPR funding for the food safety program. A hearing summary is attached.

Changes from Hearing Draft

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

DATCP also made a number of technical changes and clarifications, including editorial changes suggested by the Legislative Council Rules Clearinghouse (see below). DATCP corrected hearing draft computation errors related to re-inspection fees for 3 dairy plant license categories. All final draft license and reinspection fees are lower than the hearing draft fees.

Response to Rules Clearinghouse Comments

The Legislative Council Rules Clearinghouse made minor editorial comments on the rule. DATCP modified the final draft rule to address all of the Rules Clearinghouse comments.

Fiscal Estimate

This rule will increase DATCP program revenues by approximately \$909,200 per year, beginning in FY 2008-09. This rule will increase local government costs by \$17,400 (statewide total for all local governments). Local governments may increase retail food license fees to cover those costs.

At the end of FY 2006-07, DATCP had a negative cash balance of \$51,700 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 at the end of FY 2008-09.

To return the PR account to a positive balance by the end of FY 2008-09, DATCP must increase food safety license fees by a combined total of \$909,200 per year. DATCP proposes to implement that increase beginning at the start of FY 2008-09. DATCP projects that the fee increase will yield a positive PR account balance of \$440,000 by the end of FY 2008-09. DATCP projects that the positive balance will grow to \$798,000 by the end of FY 2010-11 before it again begins to decline due to gradually rising program costs.

Some local governments currently license and inspect retail food establishments as agents of DATCP. DATCP provides administrative services to participating local agents. Under current rules, local agents must reimburse DATCP for those services. The reimbursement amount is 10% of the DATCP license fee amount (local agents typically charge higher license fees than DATCP). The current reimbursement amount does not fully compensate DATCP for its costs.

For FY 2006-07, local agent reimbursement to DATCP equaled \$58,000. Under this rule, the reimbursement rate will remain at 10%, but will be applied to higher DATCP license fee amounts. That will increase the total reimbursement amount to approximately \$75,400. 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 Fiscal Estimate is attached.

Business Impact

This rule modifies license fees 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. Businesses producing lower-risk foods or engaged in lower-risk activities generally pay lower fees than businesses producing higher-risk foods or engaged in higher-risk activities.

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

A Business Impact Analysis is attached.

Federal Regulation

There are no existing or proposed federal regulations related to license fees for food and dairy businesses operating in Wisconsin. However, national regulations such as the Interstate Pasteurized Milk Ordinance (“PMO”) have a significant impact on state program costs. The PMO includes rigid inspection frequency requirements for grade A dairy farms and other grade A dairy operations. Wisconsin must comply with the PMO in order to ship milk and fluid milk products in interstate commerce.

Surrounding State Programs

All of the surrounding states charge license fees to food and dairy businesses. License structure and fees vary between states. Differences in license fees are partly related to differences in general tax dollar support for food and dairy programs in different states. A detailed summary is found in the “plain language analysis” that accompanies the rule.