

DATCP Docket No. 01-R-06
Rules Clearinghouse No. 05-044

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 adopts the
2 following order to repeal ATCP 70.03(2r)(a)(note), 71.02(3)(note) and 80.04(6); to renumber
3 ATCP 85.07; to amend ATCP 60.03(title), 70.03(2), (2m), (2n), (2r)(a) and (b) and (3), ch.
4 ATCP 71 (title), 71.02(2), (3), (5)(b) and (7)(a), 75.02(2), (3) and (4)(b), 77.06(1), (4) and (5)(c),
5 77.23(3)(intro.), 80.04(1)(a) and (b), (2)(b)(intro.) and 1. and (3)(b), ch. ATCP 81 subch. I (title),
6 and 82.02(2)(intro.), (3)(b) and (4); to repeal and recreate ATCP 60.02(4), 60.04(2), 80.04(5),
7 82.02(5), and 82.04(5); and to create ATCP 69.01(4)(title) and (5), 69.02(6), 71.01(6m) and
8 (8m), 71.10, 77.06(2)(intro.), 81.01 (13m), 81.02, and 85.07(2) and (3); relating to food and
9 dairy license and reinspection fees.

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.

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 fee from \$80 to \$96)	
	\$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.	0.86 (beginning January 1, 2006) and 0.96 (beginning July 1, 2007 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)	\$37-562
	\$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

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 \$615,900 in 2005-6, by \$912,700 in 2006-7 and by \$1,122,700 when fully implemented in 2008. 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:

Dairy Fees – Minnesota	
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

Food Fees – Minnesota	
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
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Michigan

Michigan has a license and fee structure that is similar, but not identical to, Wisconsin's structure:

Dairy fees – Michigan	
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

Food Fees – Michigan	
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

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2
3 **SECTION 1.** ATCP 60.02(4) is repealed and recreated to read:
4 ATCP 60.02(4) LICENSE FEE. (a) The annual fee for a milk producer license under this
5 section is \$24.
6 (b) A dairy plant operator shall pay the annual milk producer license fee under this
7 section for each dairy farm from which the dairy plant operator receives milk at the time the fee
8 payment is due. An applicant for an annual dairy plant license under s. ATCP 80.02 shall submit
9 the required milk producer license fees with the applicant’s dairy plant license application.
10 (c) A dairy plant operator who pays a milk producer license fee under par. (a) may
11 charge that fee back to a milk producer if the dairy plant operator gives prior written notice to the
12 milk producer, but the dairy plant operator may not deduct the fee from any payment that the
13 dairy plant operator owes the milk producer for milk received by the dairy plant operator. A
14 dairy plant operator may not discriminate between milk producers with respect to fee charges

1 under this paragraph, but may charge back license fees to all milk producers who cease shipping
2 milk to the operator's dairy plant during the license year.

3 **SECTION 2.** ATCP 60.03(title) is amended to read:

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

5 **SECTION 3.** ATCP 60.04(2) is repealed and recreated to read:

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

8 (b) If a reinspection is required under this chapter for reinstatement of a producer's
9 license or grade A permit, the reinspection fee under sub. (1) is \$48.

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

11 ATCP 69.01(4)(title) ACTION ON LICENSE APPLICATION.

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

13 ATCP 69.01(5) LICENSE FEE. An applicant for a buttermaker license shall pay a license
14 fee of \$60.

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

16 ATCP 69.02(6) LICENSE FEE. An applicant for a cheesemaker license shall pay a license
17 fee of \$60.

18 **SECTION 7.** ATCP 70.03(2) is amended to read:

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

23 **SECTION 8.** ATCP 70.03(2m) and (2n) are amended to read:

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

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

6 (b) For a food processing plant that has an annual production of at least \$250,000, and is
7 engaged in processing potentially hazardous food or in canning, an annual license fee of ~~\$525~~
8 \$685.

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

12 (d) For a food processing plant that has an annual production of at least \$250,000, and is
13 not engaged in processing potentially hazardous food or in canning, an annual license fee of
14 ~~\$325~~ \$424.

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

17 (2n) CANNING OPERATIONS; LICENSE FEE SURCHARGE. If a food processing plant is
18 engaged in canning operations and has an annual production of \$25,000 or more, the operator
19 shall pay an annual license fee surcharge of ~~\$200~~ \$261, which shall be added to the license fee
20 under sub. (2m).

21 **SECTION 9.** ATCP 70.03(2r)(a) is amended to read:

22 ATCP 70.03(2r)(a) If the department reinspects a food processing plant because the
23 department has found a violation of ch. 97, Stats., or this chapter on a regularly scheduled

1 inspection, the department shall charge the food processing plant operator the reinspection fee
2 specified under par. (b). A reinspection fee is payable when the reinspection is completed, and is
3 due upon written demand from the department. The department may issue a written demand for
4 payment when it issues a license renewal application to a food ~~warehouse~~ processing plant
5 operator.

6 **SECTION 10.** ATCP 70.03(2r)(a)(note) is repealed.

7 **SECTION 11.** ATCP 70.03(2r)(b) is amended to read:

8 ATCP 70.03(2r)(b) The reinspection fee required under par. (a) is as follows:

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

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

13 3. For a food processing plant that has an annual production of less than \$250,000, and is
14 not engaged in processing potentially hazardous food or in canning, the reinspection fee is ~~\$400~~
15 123.

16 4. For a food processing plant that has an annual production of \$250,000 or more, and is
17 not engaged in processing potentially hazardous food or in canning, the reinspection fee is ~~\$325~~
18 400.

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

21 **SECTION 12.** ATCP 70.03(3) is amended to read:

22 ATCP 70.03(3) ACTION ON LICENSE APPLICATION. The department shall grant or deny a
23 license application within 40 business days after ~~a complete application, including any~~

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

9 **SECTION 13.** Ch. ATCP 71 (title) is amended to read:

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

11 **SECTION 14.** ATCP 71.01(6m) and (8m) are created to read:

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

13 (8m) “Storage facility” means each location where a milk distributor stores milk.

14 **SECTION 15.** ATCP 71.02(2) is amended to read:

15 ATCP 71.02(2) LICENSE APPLICATION. Application for an annual food warehouse

16 license shall be made on a form provided by the department. The application shall ~~be~~

17 ~~accompanied by each applicable fee and surcharge required under subs. (3) to (5)~~ include

18 applicable fees and surcharges required under this section. An application shall include all of the

19 information required under this section for licensing purposes.

20 **SECTION 16.** ATCP 71.02(3) is amended to read:

21 ATCP 71.02(3) ANNUAL LICENSE FEE. An applicant for a food warehouse license shall

22 pay an annual license fee as follows:

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

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

5 (c) For a warehouse that does not store potentially hazardous food, and has fewer than
6 50,000 square feet of storage area, ~~\$50~~ \$65.

7 (d) For a warehouse that does not store potentially hazardous food, and has at least
8 50,000 square feet of storage area, ~~\$100~~ \$131.

9 **SECTION 17.** ATCP 71.02(3)(note) is repealed.

10 **SECTION 18.** ATCP 71.02(5)(b) is amended to read:

11 ATCP 71.02(5)(b) The reinspection fee required under par. (a) is as follows:

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

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

16 3. For a food warehouse that does not store potentially hazardous food and has fewer than
17 50,000 square feet of storage area, ~~\$100~~ 123.

18 4. For a food warehouse that does not store potentially hazardous food and has at least
19 50,000 square feet of storage area, ~~\$200~~ 246.

20 **SECTION 19.** ATCP 71.02(7)(a) is amended to read:

21 ATCP 71.02(7)(a) The applicant has paid all fees and surcharges, set forth in a statement
22 from the department, that are due and payable by the applicant under ~~subs. (3) to (5)~~ this section.

1 The department shall refund a license fee surcharge paid under protest if, upon review, the
2 department determines that the surcharge is not due and payable.

3 **SECTION 20.** ATCP 71.10 is created to read:

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

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

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

12 (a) An annual license fee. The license fee is \$60 for each storage facility operated by the
13 milk distributor.

14 (b) A reinspection fee, if required under s. 97.21 (4) (b), Stats., for each reinspection of a
15 storage facility operated by the milk distributor. The reinspection fee is \$25 for each reinspected
16 storage facility.

17 (c) A surcharge, in the amount specified by s. 97.21 (4) (c), Stats., if required by s. 97.21
18 (4) (c), Stats.

19

20 **SECTION 21.** ATCP 75.02(2), (3) and (4)(b) are amended to read:

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

1 (3) ANNUAL LICENSE FEE. An applicant for a retail food establishment license shall pay
2 an annual license fee as follows:

3 (a) For a retail food establishment that has annual sales of at least \$25,000 but less than
4 \$1,000,000 and processes potentially hazardous food, an annual license fee of ~~\$175~~ \$218.

5 (b) For a retail food establishment that has annual sales of at least \$1,000,000 and
6 processes potentially hazardous food, an annual license fee of ~~\$450~~ \$562.

7 (c) For a retail food establishment that has annual sales of at least \$25,000 and is
8 engaged in food processing, but does not process potentially hazardous food, an annual license
9 fee of ~~\$125~~ \$156.

10 (d) For a retail food establishment that has annual food sales of less than \$25,000, and is
11 engaged in food processing, ~~but does not process potentially hazardous food~~, an annual license
12 fee of ~~\$40~~ 50.

13 (e) For a retail food establishment that is not engaged in food processing, an annual
14 license fee of ~~\$30~~ \$37.

15 (4)(b) The reinspection fee required under par. (a) is as follows:

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

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

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

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

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

5 **SECTION 22.** ATCP 77.06(1) is amended to read:

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

8 **SECTION 23.** ATCP 77.06(2)(intro.) is created to read:

9 ATCP 77.06(2)(intro.) PARTIAL FEES. An operator of a milk or food laboratory shall pay
10 the fee as provided in par. (a) and the operator of an operator of a water laboratory shall pay the
11 fee as provided in par. (b).

12 **SECTION 24.** ATCP 77.06(4) is amended to read:

13 ATCP 77.06(4) PAYING CERTIFICATION FEES. (a) If the department has not previously
14 certified an operator to perform any of the tests listed under s. ATCP 77.02 at the laboratory for
15 which the operator is seeking certification, the department shall bill the operator under ~~sub. (1) or~~
16 ~~(2) this section~~ after the department inspects the laboratory under s. ATCP 77.14 (1) (a). The
17 department may not certify the operator to perform any test until the operator pays the required
18 certification fee for that test.

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

22 **SECTION 25.** ATCP 77.06(5)(c) is amended to read:

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

1 **SECTION 26.** ATCP 77.23(3)(intro.) is amended to read:

2 ATCP 77.23(3)(intro.) A laboratory operator shall pay the following fees to acquire and
3 maintain a laboratory approval under sub. (1):

4 **SECTION 27.** ATCP 80.04(1)(a) and (b) are amended to read:

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

9 2. If a dairy plant had no milk receipts or production during the previous calendar year,
10 license fees ~~under par. (b)~~ shall be based on projected milk receipts or production during the
11 license year for which application is made. At the end of that license year, the license holder
12 shall report the actual milk receipts or production during the license year, and the department
13 shall determine the appropriate fee under par. (b) based on actual receipts or production. If the
14 fee based on actual receipts or production differs from the fee based on projected receipts or
15 production, the license holder shall pay the balance due or receive a credit from the department
16 on the next year's license fee.

17 (b) *License fee amounts.* ~~An applicant for a dairy plant license shall pay a basic license~~
18 ~~fee of~~ The license fee under par. (a) is \$8096 plus a supplementary license fee as follows the
19 following:

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

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

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

5 **SECTION 28.** ATCP 80.04(2)(b) 1. is amended to read:

6 ATCP 80.04(2)(b)

7 1. For each 100 pounds of grade A milk received from milk producers, ~~0.6~~ 0.86 cent
8 beginning January 1, 2006 and 0.96 cent beginning July 1, 2007.

9 **SECTION 29.** ATCP 80.04(3)(b) is amended to read:

10 ATCP 80.04(3)(b) *Fee amounts.* The reinspection fee required under par. (a) includes,
11 for each reinspection, a basic reinspection fee of ~~\$40~~ 48 plus a supplementary reinspection fee as
12 follows:

13 1. For a grade A processing plant, a supplementary reinspection fee of ~~\$160~~ 198 if the
14 plant received more than 2,000,000 pounds of milk from milk producers during the
15 previous calendar year, or a supplementary reinspection fee of ~~\$125~~ 155 if the plant
16 received 2,000,000 pounds or less of milk from milk producers during the previous
17 calendar year.

18 2. For a grade B processing plant, a supplementary reinspection fee of ~~\$140~~ 173.

19 3. For a grade A receiving station, a supplementary reinspection fee of ~~\$60~~ 74.

20 **SECTION 30.** ATCP 80.04(5) is repealed and recreated to read:

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

1 (b) The grading fee under par. (a) is 1.09 cents per 100 pounds of gradable butter and
2 cheese produced at the dairy plant by any operator during the previous calendar year. If the dairy
3 plant was not in operation during the previous calendar year, the license applicant shall pay a
4 grading fee based on estimated production for the calendar year in which the application is made.
5 At the end of the license year, the license holder shall report the actual calendar year production,
6 and the department shall re-calculate the grading fee based on that actual production. If the
7 grading fee based on actual production differs from the fee based on estimated production, the
8 license holder shall pay the balance due or receive a credit from the department on the next
9 year's grading fee.

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

11 **SECTION 31. ATCP 80.04 (6) is repealed.**

12 **SECTION 32.** Chapter ATCP 81 subchapter I (title) is amended to read:

13 **SUBCHAPTER I**

14 **DEFINITIONS AND GENERAL PROVISIONS**

15 **SECTION 33.** ATCP 81.01 (13m) is created to read:

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

18 **SECTION 34.** ATCP 81.02 is created to read:

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

21 (2) LICENSE APPLICATION. Application for a biennial cheese grader license shall be made
22 on a form provided by the department. The application shall be accompanied by each applicable

1 fee and surcharge required under (3). An application shall include all of the information required
2 under this section for licensing purposes.

3 (3) LICENSE FEE. A person applying for a license under sub. (1) shall pay an annual
4 license fee of \$60.

5 **SECTION 35.** ATCP 82.02(2)(intro.), (3)(b) and (4) are amended to read:

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

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

14 (4) LICENSE FEE. An applicant for a bulk milk tanker license shall pay an annual license
15 fee of ~~\$30~~ \$36.

16 **SECTION 36.** ATCP 82.02(5) is repealed and recreated to read:

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

23 (b) The reinspection fee under par. (a) is \$36.

1 **SECTION 37.** ATCP 82.04(5) is repealed and recreated to read:

2 ATCP 82.04(5) LICENSE AND REINSPECTION FEES. (a) *License fee.* An applicant for a
3 bulk milk weigher and sampler license shall pay a biennial license fee of \$48.

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

10 **SECTION 38.** ATCP 85.07 is renumbered 85.07(1).

11 **SECTION 39.** ATCP 85.07(2) is created to read:

12 ATCP 85.07(2) A person applying for a license under sub. (1) shall pay a biennial
13 license fee of \$60.

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

17

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