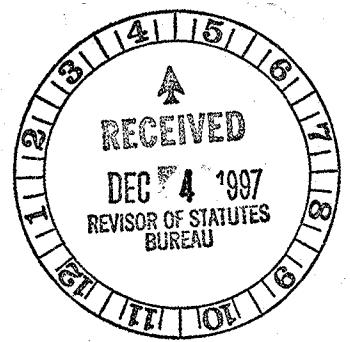


Clearinghouse Rule 97-038



STATE OF WISCONSIN)
) ss.
DEPARTMENT OF AGRICULTURE,)
TRADE & CONSUMER PROTECTION)

Clearinghouse Rule
No. 97-038

CERTIFICATION:

I, Ben Brancel, Secretary of the State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, and custodian of the department's official records, hereby certify that the attached rulemaking order relating to food and dairy license fees was signed and adopted by the department on December 3, 1997.

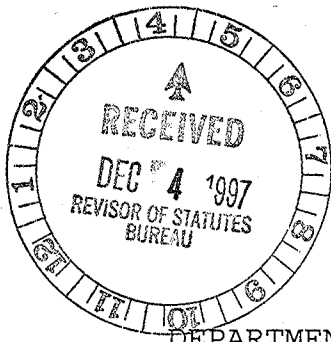
I further certify that I have compared the attached copy to the original on file in the department, and that the attached copy is a complete and accurate copy of the original.

Signed and sealed this 3rd day of December, 1997.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Ben Brancel
Ben Brancel, Secretary





Final Draft
December 3, 1997

ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING, AMENDING OR REPEALING RULES

The state of Wisconsin department of agriculture, trade and consumer protection adopts the following order to amend ATCP 70.03(1) and (2), 71.02(3) and (5)(b), 74.08(1), 75.015(2), and 80.04(2)(b)1.; and to create ATCP 70.03(2m), (2n) and (2r), and 75.015(2m) and (2n), relating to food and dairy license fees.

Analysis Prepared by the Department of
Agriculture, Trade and Consumer Protection

Statutory authority: ss 93.07(1), 97.20(4), 97.22(8),
97.27(5), 97.29(5) and 97.30(5), Stats.

Statutes interpreted: ss. 97.20(2c)(b), (2g)(b), and (2n)(b);
97.22(2)(b) and (4)(am); 97.27(3m),
97.29(3)(am) and (3)(cm); and 97.30(3m),
Stats.

The department of agriculture, trade and consumer protection enforces Wisconsin's food safety laws. Among other things, the department licenses and inspects food processing plants, retail food establishments, food warehouses, dairy plants and dairy farms. These programs are designed to safeguard public health, and ensure a safe and wholesome food supply. They also facilitate the sale of Wisconsin dairy and food products in interstate and international markets.

Wisconsin's food safety programs are funded by 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 raised the percentage of PR funding to 50%. Program costs have also increased due to external factors, such as inflation and statewide pay increases. As a result, the department projects a deficit in its food safety budget in FY 1997-98.

In order to maintain current food safety inspection services, the department is proposing to increase certain food and dairy license fees. The department has not increased license fees since 1991. This rule increases license fees and reinspection fees for food processing plants, retail food establishments and food warehouses. It also increases the grade A milk procurement

fee for dairy plants.

Milk Procurement Fees

Currently, dairy plants pay a monthly milk procurement fee which is intended to fund a portion of the dairy farm inspection program. This rule increases the grade A milk procurement fee from 0.4 cents per hundredweight of grade A milk received from producers to 0.6 cents per hundredweight. The milk procurement fee for grade B milk is not changed by this rule and remains at the current rate of 0.2 cents per hundredweight.

Food Processing Plant License Fees

This rule will increase annual food processing plant license fees as follows:

- The current annual \$120 fee for a food processing plant that has an annual production of at least \$25,000 but less than \$250,000, and is engaged in processing potentially hazardous food or in canning will increase to \$250.
- The current annual \$270 fee for a food processing plant that has an annual production of at least \$250,000, and is engaged in processing potentially hazardous food or in canning, will increase to \$525.
- The current annual \$50 fee for a food processing plant that has an annual production of at least \$25,000 but less than \$250,000, and is not engaged in processing potentially hazardous food or in canning, will increase to \$100.
- The current annual \$110 fee for a food processing plant with an annual production of at least \$250,000 that is not engaged in processing potentially hazardous food or in canning will increase to \$325.
- The current annual \$40 fee for a food processing plant that has an annual production of less than \$25,000 will increase to \$60.
- The current annual \$195 surcharge for food processing plants engaged in canning operations will increase to \$200.

Food Processing Plant Reinspection Fees

This rule will increase food processing plant reinspection fees as follows:

- The current \$80 reinspection fee for a food processing plant that has an annual production of at least \$25,000 but less than \$250,000, and is engaged in processing potentially

hazardous food or in canning, will increase to \$170.

- The current \$180 reinspection fee for a food processing plant that has an annual production of at least \$250,000, and is engaged in processing potentially hazardous food or in canning, will increase to \$350.
- The current \$50 reinspection fee for a food processing plant that has an annual production of at least \$25,000 but less than \$250,000, and is not engaged in processing potentially hazardous food or in canning, will increase to \$100.
- The current \$110 reinspection fee for a food processing plant with an annual production of at least \$250,000 that is not engaged in processing potentially hazardous food or in canning will increase to \$325.

Retail Food Establishment License Fees

This rule will increase annual retail food establishment license fees as follows:

- The current annual \$90 fee for a retail food establishment that has annual food sales of at least \$25,000 but less than \$1,000,000, and processes potentially hazardous food, will increase to \$175.
- The current annual \$210 fee for a retail food establishment that has annual food sales of at least \$1,000,000, and processes potentially hazardous food, will increase to \$450.
- The current annual \$80 fee for a retail food establishment that has annual food sales of at least \$25,000 and is engaged in food processing, but does not process potentially hazardous food, will increase to \$125.
- The current annual \$40 fee for a retail food establishment that has annual food sales of less than \$25,000, and is engaged in food processing, will increase to \$60.
- The current annual \$20 fee for a retail food establishment not engaged in food processing will increase to \$30.

Under current law, agent cities and counties that license retail food establishments on behalf of the department may establish license fees that are different from state license fees. Under s. 97.41(5), Stats., an agent city or county must pay 20% of the state license fee amount to the department. This rule incorporates the 20% payment requirement without change. However, the amount of the payment will be higher, because it will be calculated on a higher state license fee amount. Agent cities and counties may therefore wish to amend local ordinances

which set retail food license fees. The increased fee payment requirement is delayed until fiscal year 1999-2000 to give agent cities and counties time to amend their ordinances.

Retail Food Establishment Reinspection Fees

This rule will increase retail food establishment reinspection fees as follows:

- The current \$60 reinspection fee for a retail food establishment that has annual food sales of at least \$25,000 but less than \$1,000,000, and processes potentially hazardous food, will increase to \$125.
- The current \$140 reinspection fee for a retail food establishment that has annual food sales of at least \$1,000,000, and processes potentially hazardous food, will increase to \$300.
- The current \$80 reinspection fee for a retail food establishment that has annual food sales of at least \$25,000 and is engaged in food processing but does not process potentially hazardous food, will increase to \$125.
- The current \$40 reinspection fee for a retail food establishment that has annual food sales of less than \$25,000, and is engaged in food processing, will increase to \$60.
- The current \$50 reinspection fee for a retail food establishment not engaged in food processing will increase to \$60.

Food Warehouse License Fees

This rule will increase annual food warehouse license fees as follows:

- The current \$50 license fee for a food warehouse that stores potentially hazardous food and that has fewer than 50,000 square feet of storage area will increase to \$75.
- The current \$100 license fee for a food warehouse that stores potentially hazardous food and has at least 50,000 square feet of storage area will increase to \$200.
- The current \$25 license fee for a food warehouse that does not store potentially hazardous food and has fewer than 50,000 square feet of storage area will increase to \$50.
- The current \$50 license fee for a food warehouse that does not store potentially hazardous food and has at least 50,000

square feet of storage area will increase to \$100.

Food Warehouse Reinspection Fees

This rule will increase food warehouse reinspection fees as follows.

- The current \$50 reinspection fee for a food warehouse that stores potentially hazardous food and has fewer than 50,000 square feet of storage area will increase to \$75.
- The current \$100 reinspection fee for a food warehouse that stores potentially hazardous food and has at least 50,000 square feet of storage area will increase to \$200.
- The current \$50 reinspection fee for a food warehouse that does not store potentially hazardous food and has fewer than 50,000 square feet of storage area will increase to \$100.
- The current \$100 reinspection fee for a food warehouse that does not store potentially hazardous food and has at least 50,000 square feet of storage area will increase to \$200.

SECTION 1. ATCP 70.03(1) and (2) are amended to read:

ATCP 70.03(1) LICENSE REQUIRED. Except as provided under sub. (7), no person may operate a food processing plant without a valid license issued by the department for that food processing plant under s. 97.29, Stats. A food processing plant license expires on March 31 annually. A license is not transferable between persons or food processing plants.

(2) LICENSE APPLICATION. Application for an annual food processing plant license shall be made on a form provided by the department. The application shall be accompanied by the fees required under ~~s. 97.29 (3), Stats.~~ sub. (2m) and (2n), and by the sworn statement required under s. 100.03 (2), Stats.

SECTION 2. ATCP 70.03 (2m), (2n) and (2r) are created to read:

ATCP 70.03 (2m) ANNUAL LICENSE FEE. An applicant for a food processing plant license shall pay an annual license fee as follows:

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

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

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

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

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

(2n) CANNING OPERATIONS; LICENSE FEE SURCHARGE. If a food processing plant is engaged in canning operations, the operator shall pay an annual license fee surcharge of \$200, which shall be added to the license fee under sub. (2m).

(2r) REINSPECTION FEE. (a) If the department reinspects a

food processing plant because the department has found a violation of ch. 97, Stats., or this chapter on a regularly scheduled inspection, the department shall charge the food processing plant operator the reinspection fee specified under par. (b). A reinspection fee is payable when the reinspection is completed, and is due upon written demand from the department. The department may issue a demand for payment when it issues a license renewal application form to a food warehouse operator.

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

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

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

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

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

SECTION 3. ATCP 71.02(3) and (5)(b) are amended to read:

ATCP 71.02(3) ANNUAL LICENSE FEE. An applicant for a food warehouse license shall pay an annual license fee as follows:

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

(b) For a food warehouse that stores potentially hazardous food, and ~~that~~ has at least 50,000 ~~or more~~ square feet of storage area, ~~\$100~~ 200.

(c) For a food warehouse that does not store potentially hazardous food, and ~~that~~ has fewer than 50,000 square feet of storage area, ~~\$25~~ 50.

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

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

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

2. For a food warehouse that stores potentially hazardous food, and ~~that~~ has at least 50,000 ~~or more~~ square feet of storage area, ~~\$100~~ 200.

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

4. For a food warehouse that does not store potentially hazardous food, and ~~that~~ has at least 50,000 ~~or more~~ square feet of storage area, \$~~100~~ 200.

SECTION 4. ATCP 74.08(1) is amended to read:

ATCP 74.08(1) The fiscal year under an agency agreement shall begin on July 1 and end on June 30, except as otherwise authorized by the department. Each agent city or county shall pay the department 20% of the license fee charged under s. ATCP 75.015(2m), to reimburse the department for its costs as required under s. 97.41(5), Stats. By September 30 of each year, the agent city or county shall file with the department all reimbursement required under ~~s. 97.41(5), Stats.,~~ this subsection for licenses issued during the previous fiscal year.

SECTION 5. ATCP 75.015(2) is amended to read:

ATCP 75.015(2) LICENSE APPLICATION. Application for a retail food establishment license shall be made on a form provided by the department, or by the agent municipality or county, and shall be accompanied by the applicable fees under sub. (2m) or s. 97.30(3) or (4), Stats.

SECTION 6. ATCP 75.015(2m) and (2n) are created to read:

ATCP 75.015(2m) ANNUAL LICENSE FEE. An applicant for a retail food establishment license shall pay an annual license fee as follows:

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

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

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

(d) For a retail food establishment that has annual food sales of less than \$25,000, and is engaged in food processing, but does not process potentially hazardous food, an annual license fee of \$60.

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

(2n) REINSPECTION FEE. (a) If the department reinspects a retail food establishment because the department has found a violation of ch. 97, Stats., or this chapter on a regularly scheduled inspection, the department shall charge the retail food establishment operator the reinspection fee specified under par.

(b). A reinspection fee is payable when the reinspection is completed, and is due upon written demand from the department. The department may issue a demand for payment when it issues a license renewal application form to the retail food establishment operator.

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

1. For a retail food establishment that has annual food

sales of at least \$25,000 but less than \$1,000,000, and processes potentially hazardous food, the reinspection fee is \$125.

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

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

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

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

SECTION 7. ATCP 80.04(2)(b)1. is amended to read:

ATCP 80.04(2)(b)1. For each 100 pounds of grade A milk received from milk producers, 0.6 cent.

SECTION 8. EFFECTIVE DATE. The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided under s. 227.22(2)(intro.), Stats.

SECTION 12. INITIAL APPLICABILITY. (1) The treatment of section ATCP 70.03(2m) and (2n) first applies to applications for new licenses that are filed on or after the effective date of this section and to renewals of food processing plant licenses which expire on March 31, 1998.

(2) The treatment of sections ATCP 71.02(3) and 75.015(2m) first applies to applications for new licenses that are filed on or after the effective date of these subsections, and to renewals of food warehouse and retail food establishment licenses which expire on June 30, 1998.

(3) The treatment of section ATCP 74.08(1) first applies to reimbursements payable to the department on September 30, 2000, for licenses issued by agent cities or counties during fiscal year 1999-2000.

Dated this 3 day of Dec, 1997.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Ben Brancel
Ben Brancel
Secretary