

# Clearinghouse Rule 99-116

STATE OF WISCONSIN

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DEPARTMENT OF AGRICULTURE,  
TRADE & CONSUMER PROTECTION

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Clearinghouse Rule

No. 99-116

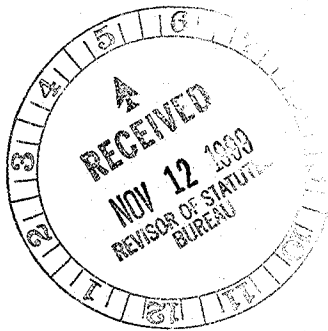
Docket No. 98-R-15

## 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 certification fees for laboratories engaged in public health testing of milk, water, and food was signed and adopted by the department on November 12, 1999.

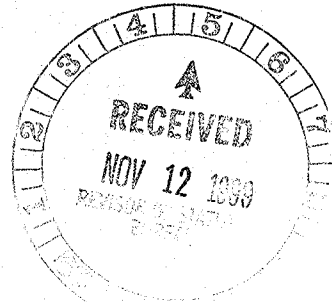
I further certify that I have compared the attached copy to the original on file in the department, and that the attached copy is a complete and accurate copy of the original.

Signed and sealed this 12th day of November, 1999.



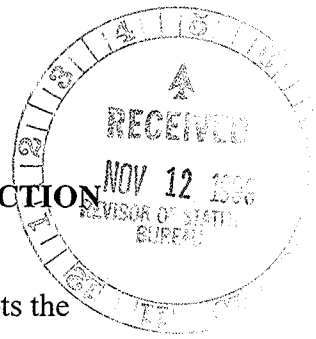
STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By Ben Brancel  
Ben Brancel, Secretary



1-1-00

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



1 The state of Wisconsin department of agriculture, trade and consumer protection adopts the  
2 following order to repeal ATCP 77.22(2)(b); to renumber ATCP 77.22(2)(c); to amend ATCP  
3 77.06(1) and (2); and to create ATCP 77.06(1)(a) to (d), relating to certification fees for  
4 laboratories engaged in public health testing of milk, water and food.

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

Statutory authority: ss. 93.07(1) and 93.12(4) and (7), Stats.

Statutes interpreted: ss. 93.12(4) and (7), Stats.

The 1995-97 biennial budget act, 1995 Wis. Act. 27, transferred administration of Wisconsin's laboratory certification program for milk, food and water laboratories from the department of health and family services to the department of agriculture, trade and consumer protection ("department"), effective July 1, 1996.

Under this program, the department is now responsible for certifying laboratories that test milk, food or water for compliance with public health standards prescribed by federal, state or local laws. Under 1995 Wis. Act 27, the department's public health lab certification program must be funded by certification fees paid by the certified laboratories. The department must establish these fees by rule.

The department adopted the current fees in 1996. Under current rules, a laboratory operator must pay an annual certification fee of \$216 for each test at each laboratory for which the operator is certified. If a laboratory operator performs a test for less than a full calendar year, the annual certification fee is prorated at \$18 per month for each full month of certification for that test. Under current rules, milk and food laboratories pay the same fees as water laboratories.

This rule amends the current fee structure to account for cost differences between different types of laboratories. Certification of milk and food laboratories requires more time than certification of water laboratories. In a milk or food laboratory, the department must also certify each individual analyst who performs any milk or food test. In a water laboratory, the department is only required to certify one analyst who performs the water test for which the department is certifying the laboratory.

This rule increases lab certification fees to provide sufficient program revenue to fund the lab certification program. It also creates a variable fee schedule that more closely reflects the time required to conduct on-site certification visits in different types of labs and, when required, determine the competency of individual analysts to conduct specific tests.

Under this rule, a certified laboratory must pay the following applicable fees:

- *Water tests.* An annual certification fee of \$276 for each test which detects microbiological contaminants in drinking water. If the department certifies a water laboratory to perform a test for less than a full calendar year, the lab operator must pay a fee of \$23 for each full month of certification.
- *Milk or food tests.* An annual certification fee of \$336 for each milk or food test. If the department certifies a milk or food laboratory to perform a test for less than a full calendar year, the lab operator must pay a fee of \$28 for each full month of certification.
- *Certified analysts who perform milk or food tests.* An annual certification fee of \$25 for each analyst who performs one or more milk or food tests. An analyst's certification is valid for an entire year, even if the analyst is no longer employed at the laboratory where the analyst was employed when the department last granted or renewed the analyst's certification.
- *Additional analyst certification.* A supplemental fee of \$150 for each requested certification of one or more analysts to conduct any milk or food test, if the certification occurs at any time other than during a mandatory inspection.

On June 3, 1999, the department referred to the Legislature a final draft rule repealing and recreating ch. ATP 77, relating to certification of public health laboratories (Clearinghouse Rule 98-142). This rule amends the text of ch. ATP 77 as it will appear after that rule is promulgated.

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1           **SECTION 1.** ATP 77.06(1) is amended to read:

2           ATP 77.06(1) FEE AMOUNTS. Except as provided under sub. (2) or (3), an operator  
3 shall pay ~~an annual~~ the following certification ~~fee of \$216 for each test at each laboratory for~~  
4 ~~which the operator is certified.~~ fees:

5           **SECTION 2.** ATP 77.06(1)(a) to (d) are created to read:

6           ATP 77.06(1)(a) *Milk or food tests.* An annual certification fee of \$336 for each test  
7 under s. ATP 77.02(1) or (2) at each laboratory for which the operator is certified.

1 (b) *Certified analysts; milk or food tests.* An annual certification fee of \$25 for each  
2 analyst who performs one or more tests under s. ATCP 77.02(1) or (2).

3 (c) *Additional analyst certification.* A supplemental fee of \$150 for each requested  
4 certification of one or more analysts to conduct any test under s. ATCP 77.02(1) or (2), if the  
5 certification occurs at any time other than during a mandatory inspection under s. ATCP  
6 77.14(1).

7 (d) *Water tests.* An annual certification fee of \$276 for each test under s. ATCP 77.02(3)  
8 for which the operator is certified.

9 **SECTION 3.** ATCP 77.06(2) is amended to read:

10 ATCP 77.06(2) PARTIAL FEES. If the department certifies an operator of a milk or food  
11 laboratory to perform a test for less than a full calendar year, the operator shall pay a fee of \$18  
12 \$28 for each full month of certification for that test. If the department certifies an operator of a  
13 water laboratory to perform a test for less than a full calendar year, the operator shall pay a fee of  
14 \$23 for each full month of certification for that test.

15 **SECTION 4.** ATCP 77.22(2)(b) is repealed.

16 **SECTION 5.** ATCP 77.22(2)(c) is renumbered (2)(b).

17 **SECTION 6. Effective date.** The rules contained in this order shall take effect on the  
18 first day of the month following publication in the Wisconsin administrative register, as provided  
19 under s. 227.22(2)(intro.), Stats.

Dated this 12 day of November, 1999.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By Ben Brancel  
Ben Brancel, Secretary



State of Wisconsin  
Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection  
Ben Brancel, Secretary



**DATE:** November 12, 1999

**TO:** Gary Poulson - Revisor of Statutes Office  
131 West Wilson Street, Suite 800

**FROM:** Ben Brancel, Secretary *Ben Brancel*

**SUBJECT:** Clearinghouse Rule No. 99-116, Chapter ATCP 77, Relating to  
Certification Fees for Laboratories Engaged in Public Health  
Testing of Milk, Water, and Food

The Department of Agriculture, Trade and Consumer Protection hereby submits the following information for filing the above rule.

#### Final Regulatory Flexibility Analysis

This rule establishes fees for certification of laboratories examining milk, food or water for the protection of public health. The 1995-97 biennial budget act transferred much of the administration of Wisconsin's laboratory certification program from the Department of Health and Family Services (DHFS) to the Department of Agriculture, Trade and Consumer Protection (DATCP). Shortly after that transfer, DATCP proposed rules establishing fees to offset the costs of certification of laboratories as required in s. 93.12, Wis. Stats. These fees are based on recovering 100% of the costs of this program from the industry affected by the program. Those rules also required the DATCP to evaluate laboratory certification fees by FY 2000 and make appropriate adjustments to the fees.

The approximately 180 laboratories currently certified range from small, one person laboratories to large facilities with dozens of analysts. This rule will have a fiscal impact on "small businesses" as defined in s. 227.114(1)(a) Wis. Stats. Annual laboratory fees are increased as compared to the \$216 per test fee currently charged by DATCP. This fee increase is due to the fact that the laboratory certification program is inadequately funded. Inadequate funding occurs because the number of laboratories requiring certification has decreased. Costs of the program have actually been reduced in the past two years by reducing program support activities.

The proposed rule will increase costs for laboratories that test milk, food or water. These laboratories currently pay a fee of \$216 per test. Fees under the proposed rule range from \$336 for one milk or food test to \$3,360 for 10 tests. Fees for water laboratories under the proposed rule range from \$276 for one test to \$1104 for four tests.

Gary Poulson  
November 12, 1999  
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The proposed rule will impact local government water laboratories. These laboratories currently pay fees of \$216 per test, based on the number of tests they run. Under the proposed rule, these laboratories would pay a \$276 fee for each test.

The proposed rule has no other impact on small businesses. It would not be necessary for certified laboratories to retain additional professional services such as accounting or legal services to comply with this rule.

#### **Comments from Legislative Committees**

On October 1, 1999, the department transmitted the above rule for legislative committee review. The rule was assigned to the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform on October 5, 1999, and the Assembly Committee on Agriculture on October 12, 1999. No action was taken during the review period by either committee.