

Initial Regulatory Flexibility Analysis

Changes To ch. ATCP 60, Wis. Adm. Code

Dairy Farms

The modifications to ch. ATCP 60, Wis. Adm. Code, Dairy Farms, will not have a fiscal impact on small businesses as defined in s. 227.114(1)(a), Stats. There are approximately 110 dairy plants currently licensed and inspected by the department that meet the definition of a small business.

The testing of every bulk load of raw milk for a drug residue received by a dairy plant operator is required under the dairy farm rule. A dairy plant operator is also required to test each of the producer milk samples collected for a bulk load that tests positive for a drug residue in order to identify the violative producer or producers.

A dairy plant operator is required to reject a bulk load of raw milk that tests positive for a drug residue. The rejected bulk load cannot be shipped to another dairy plant or used for human food.

The proposed changes to ch. ATCP 60, Wis. Adm. Code, are:

1. Clarify and standardize the testing procedures for the producer milk samples collected for a bulk load of raw milk that tested positive for a drug residue.
2. Clarify who is responsible for insuring that a bulk load of raw milk that tested positive for a drug residue is not used for human food.

The impact of the proposed rule changes on small business is negligible. It would not be necessary for licensed dairy plants to provide additional laboratory facilities or staff, or retain additional testing services to comply with these changes.

Signed this 18th day of March, 1999.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE, AND CONSUMER PROTECTION

By: Steven B. Steinhoff
Steven B. Steinhoff,
Administrator
Division of Food Safety

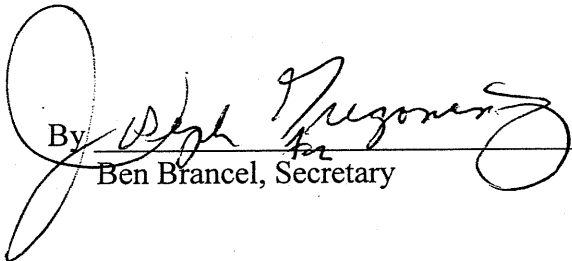
STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

NOTICE OF SUBMISSION OF PROPOSED RULES TO
PRESIDING OFFICERS OF EACH HOUSE OF THE LEGISLATURE

NOTICE IS HEREBY GIVEN, pursuant to s. 227.19(2), Stats., that the state of Wisconsin Department of Agriculture, Trade and Consumer Protection is submitting a final draft of proposed Clearinghouse Rule Number 99-078 to the presiding officer of each house of the legislature for standing committee review. The propose rule amends Chapter ATCP 60, relating to drug residues in milk.

Dated this 27th day of September, 1999.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By  _____
Ben Brancel, Secretary



State of Wisconsin
Tommy G. Thompson, Governor

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

DATE: September 28, 1999

TO: The Honorable Fred Risser
President, Wisconsin State Senate
Rm. 220 South
State Capitol
Madison, WI

The Honorable Scott Jensen
Speaker, Wisconsin State Assembly
Rm. 211 West
State Capitol
Madison, WI

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

SUBJECT: **Proposed Rule Relating to Drug Residues in Milk**
(Clearinghouse Rule #99-078)

The Department of Agriculture, Trade and Consumer Protection hereby transmits the above rule for legislative committee review, pursuant to ss.227.19(2) and (3), Stats. We are enclosing 3 copies of the final draft rule, together with the following report. We will publish a notice of this referral in the Wisconsin Administrative Register, pursuant to s. 227.19(2), Stats..

Background

Under current rules, a milk hauler must collect a sample of milk from every dairy farm milk shipment before loading that shipment onto a bulk milk tanker. The dairy plant operator receiving the bulk milk tanker load must perform a drug residue screening test on that tanker load. If the tanker load tests positive for any drug residue, the dairy plant operator must perform a drug residue test on each of the milk samples drawn from the producer milk shipments comprising the tanker load. If a producer sample tests positive for drug residue, the dairy plant operator may hold that producer financially responsible for contaminating the bulk load.

Current rules do not require confirmatory tests on producer samples that test positive for drug residues. This rule requires confirmatory testing of samples that test positive for drug residues. This rule also clarifies how a dairy plant must dispose of milk that tests positive for drug residues.

Rule Contents

Confirmatory Testing

Under this rule, a dairy plant operator must perform confirmatory tests in duplicate on producer milk samples that test positive for any drug residue. The dairy plant operator must perform a repeat test using the same test method on the same producer sample. The operator must perform the repeat test in duplicate, with single positive and negative controls. If one or both duplicate test results are positive for a drug residue, the milk producer's sample is considered positive for a drug residue.

Disposing of Milk

This rule clarifies how a dairy plant must dispose of milk that tests positive for a drug residue. Current rules require a dairy plant operator to reject a bulk tanker load of milk that tests positive for drug residue. A rejected bulk load may not be used for human food. This rule clarifies that a dairy plant operator must denature or take responsibility for disposing of the rejected bulk load in a manner that precludes the use of the milk for human food.

Rule Modifications After Public Hearing

The department held one hearing on June 18, 1999, to solicit comments on the draft rule. The hearing was conducted for video-conference participation by all persons in attendance at any of three separate locations (Madison, Green Bay and Eau Claire). The hearing record was held open until June 30, 1999, to receive written comments. The department received oral or written testimony from Wisconsin Cheese Makers Association, Wisconsin Dairy Products Association, Wisconsin Federation of Cooperatives and Alto Dairy Cooperative.

In response to hearing testimony on milk disposal requirements, the department modified the final draft rule to require a dairy plant operator to denature or take responsibility for disposing of contaminated milk in a manner that precludes its use for human food.

Response to Rules Clearinghouse Comments

The Legislative Council Rules Clearinghouse made no comments on this rule.

Honorable Fred Risser
Honorable Scott Jensen
September 28, 1999
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Fiscal Estimate

This rule will have no state or local fiscal effect. A fiscal estimate is attached.

Small Business Analysis

This rule will have a negligible impact on small business. A small business analysis (“final regulatory flexibility analysis”) is attached.

**PROPOSED 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 proposes the
2 following order to amend ATCP 60.19(3) and (4) relating to drug residues in raw milk.
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**Analysis Prepared by the Department of Agriculture,
Trade and Consumer Protection**

Statutory authority: ss. 93.07(1), 97.09(4), 97.20((4), 97.22(8) and 97.23, Stats.

Statutes interpreted: ss. 97.20, 97.22 and 97.23, Stats.

This rule modifies current rules under ch. ATCP 60, Wis. Adm. Code, related to follow-up testing of producer milk samples when a bulk tanker load of milk tests positive for a drug residue. This rule also clarifies how a dairy plant must dispose of milk that tests positive for a drug residue.

Follow-up Testing of Producer Milk Samples

Under current rules, a milk hauler must collect a sample of milk from every dairy farm milk shipment before loading that shipment onto a bulk milk tanker. The dairy plant operator receiving the bulk milk tanker load must perform a drug residue screening test on that tanker load. If the tanker load tests positive for any drug residue, the dairy plant operator must perform a drug residue test on each of the milk samples drawn from the producer milk shipments comprising the tanker load. If a producer sample tests positive for drug residue, the dairy plant operator may hold that producer financially responsible for contaminating the bulk load. Current rules do not require confirmatory tests on producer samples that test positive for drug residues.

This rule requires a dairy plant operator to perform a confirmatory test in duplicate on each producer milk sample that tests positive for any drug residue. Under this rule, the dairy plant operator must perform a confirmatory test using the same test method and producer sample. The operator must perform the confirmatory test in duplicate, with single positive and negative controls. If one or both confirmatory test results are positive for a drug residue, the milk producer's sample is considered positive for that drug residue.

Disposing of Contaminated Milk

This rule also clarifies how a dairy plant must dispose of milk that tests positive for a drug residue. Current rules require a dairy plant operator to reject a bulk tanker load of milk that tests positive for drug residue. A rejected bulk load may not be used for human food. This rule clarifies that a dairy plant operator must denature or take responsibility for disposing of the rejected bulk load in a manner that precludes its use for human food.

1 **SECTION 1.** ATCP 60.19(3) and (4) are amended to read:

2 ATCP 60.19(3) DRUG RESIDUE FOUND IN BULK LOAD; FOLLOW-UP TESTING. If a bulk load
3 of milk tests positive for a drug residue under sub. (2), the dairy plant operator shall perform a
4 drug residue test on each of the individual milk producer samples collected for that bulk load
5 under s. ATCP 60.17. The dairy plant operator shall test each producer sample before collecting
6 any further milk from that producer. The drug residue test performed on each producer sample
7 shall be sensitive to the same drug residue that was detected in the bulk load. If a producer
8 sample tests positive for any drug residue, the dairy plant operator shall perform a confirmatory
9 test using the same test method and sample. The dairy plant operator shall perform the
10 confirmatory test in duplicate, with single positive and negative controls. If either confirmatory
11 test result is positive for a drug residue, the milk producer's sample is considered positive for that
12 drug residue.

13 (4) DRUG RESIDUE FOUND IN BULK LOAD; LOAD REJECTED. If a bulk load of milk from
14 one or more producers tests positive for a drug residue under sub. (2), the dairy plant operator
15 shall reject the entire bulk load. Milk from a rejected bulk load ~~shall~~ may not be used for human
16 food, ~~and shall not be shipped to any other dairy plant or recipient for use as human food.~~ The
17 dairy plant operator shall denature or take responsibility for disposing of the rejected bulk load in a
18 manner that precludes its use for human food.

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

Dated this _____ of _____, 1999.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE, AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary

FISCAL ESTIMATE

DOA-2048 (R 10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No. /Adm. Rule No.
Ch. ATCP 60

Amendment No. (If Applicable)

Subject
Dairy Farms

Fiscal Effect

State: No State Fiscal Effect
 Check columns below only if bill makes a direct appropriation
 or affects a sum sufficient appropriation

Increase Costs - May be possible to
 Absorb Within Agency's Budget
 Yes No

 Decrease Costs

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing
 Revenues
 Create New Appropriation

Local :X No local government costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Unit
 Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS
 Districts

Fund Source Affected

XGPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The proposed rule changes incorporates orders given to the Division of Food Safety by the department secretary and deputy in three contested case decisions. These changes include the following:

1. Requires the dairy plant operator to conduct confirmation testing using positive and negative controls on a producer milk sample that screens positive for the presence of a drug residue.
2. Places the responsibility on the dairy plant operator to either dispose of or denature a bulk load of raw milk that tests positive for the presence of a drug residue.

The changes do not require any additional regulatory activity or record keeping by the department. Therefore, there is no fiscal effect attributed to the adoption of these rule changes, except for one-time costs associated with the rule making of approximately \$500, consisting of printing, mailing and costs of holding hearings.

Long - Range Fiscal Implications

Agency/prepared by: (Name & Phone No.)

Authorized Signature/Telephone No.

Date

DATCP - Division of Food Safety
C. Thomas Leitzke (608) 224-4711

Barbara Knapp (608) 224-4746

3/18/99

FISCAL ESTIMATE WORKSHEET

1997 SESSION

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No/Adm.Rule No. Ch. ATCP 60	Amendment No.
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Subject

Dairy Farms

I. One-time Cost or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

\$500.00

II. Annualized Cost:

Annualized Fiscal Impact on State funds from:

A. State Costs by Category	Increased Costs	Decreased Costs
State Operations - Salaries and Fringes	\$ 0	\$ - 0
(FTE Position Changes)	(0 FTE)	(-0 FTE)
State Operations - Other Costs	0	- 0
Local Assistance	0	- 0
Aids to Individuals or Organizations	0	- 0
TOTAL State Costs by Category	\$ 0	\$ - 0
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$ 0	\$ - 0
FED	0	- 0
PRO/PRS	0	- 0
SEG/SEG-S	0	- 0
III. State Revenues - <small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>	Increased Rev.	Decreased Rev.
GPR Taxes	\$ 0	\$ - 0
GPR Earned	0	- 0
FED	0	- 0
PRO/PRS	0	- 0
SEG/SEG-S	0	- 0
TOTAL State Revenues	\$ 0	\$ - 0

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ _____	\$ _____
NET CHANGE IN REVENUES	\$ _____	\$ _____

Agency Prepared by: (Name & Phone No.) DATCP C. Thomas Leitzke (608) 224-4711	Authorized Signature/Telephone No. Barbara Knapp (608) 224-4746	Date 3/18/99
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Chairman:
Agriculture Committee



Member:
Consumer Affairs
Government Operations
Natural Resources

Al Ott

State Representative • 3rd Assembly District

Assembly Agriculture Committee

MEMO

To: Members of the Assembly Agriculture Committee

From: Representative Al Ott, Chair

Date: October 5, 1999

The following clearinghouse rule has been referred to the Assembly Agriculture Committee:

Clearinghouse Rule 99-078

Relating to drug residues in raw milk. Submitted by the Department of Agriculture, Trade and Consumer Protection.

The deadline for action on this rule is November 5, 1999.

**ARO:ln
Attach.**