

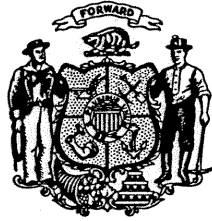
WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC  
FORM 2

***RULES CLEARINGHOUSE***

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**CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 99-078**

AN ORDER to amend ATCP 60.19 (3) and (4), relating to drug residues in raw milk.

Submitted by **DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION**

05-03-99 RECEIVED BY LEGISLATIVE COUNCIL.

05-14-99 REPORT SENT TO AGENCY.

RNS:AS:jal

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES

NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES

NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES

NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached

YES

NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES

NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES

NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

YES

NO

**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 ss. ATCP 60.19(3) and (4) relating to drug residues in raw milk.
- 

**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. X

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 either dispose of a rejected bulk load or denature it before transferring it to any other person.

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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~~. The dairy plant operator shall not be shipped either dispose of the rejected bulk load,  
17 or denature the rejected load before transferring custody of that load to any other dairy plant or  
18 recipient for use as human food person.

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



State of Wisconsin  
Tommy G. Thompson, Governor

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

DATE: May 17, 1999

TO: State Legislators

FROM: Ben Brancel, Secretary

*Ben Brancel*

SUBJECT: **Public Hearing Notice for Emergency Rule to Require Testing and Disposal of Milk Found to Contain Any Drug Residue**

Pursuant to s. 227.24(4), Stats., the Department of Agriculture, Trade, and Consumer Protection is forwarding a copy of a public hearing notice for its emergency rule relating to follow-up testing of producer milk samples and disposing of milk that tests positive for a drug residue. The emergency rule was published on April 30, 1999, and became effective immediately. A copy of the emergency rule was sent to each legislator immediately after publication.

The Department will hold public hearings on the emergency rule and a proposed permanent rule which is identical to the emergency rule. The hearings will be held simultaneously on June 18, 1999, by videoconference. The hearings will be held from 10:30 a.m. to 12:00 p.m. in Madison, Green Bay and Eau Claire at the locations noted in the attached hearing notice.

### **Contents of the Emergency Rule**

#### **• Follow-up Testing of Producer Milk Samples**

Both the emergency rule and proposed permanent rule require a dairy plant operator to perform confirmatory tests in duplicate on producer milk samples that test positive for any drug residue. Under the emergency and proposed rule, 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**

The emergency rule and proposed rule also clarify 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. The emergency and proposed rule clarify that a dairy plant operator must either dispose of a rejected bulk load or denature it before transferring it to any other person.



State of Wisconsin  
Tommy G. Thompson, Governor

NOV 02 1999

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

November 1, 1999

The Honorable Judy Robson  
State Senator  
Co-Chair, Joint Committee for Review of Administrative Rules  
State Capitol, Room 15 South  
P.O. Box 7882  
Madison, WI 53707

The Honorable Glenn Grothman  
State Representative  
Co-Chair, Joint Committee for Review of Administrative Rules  
State Capitol, Room 15 North  
P.O. Box 8952  
Madison, WI 53708

Re: **Emergency Rule Extension**  
**ss. ATCP 60.19 (3) and (4)**

Dear Senator Robson and Representative Grothman:

Pursuant to s. 227.24(2) of the Statutes, the Department of Agriculture, Trade and Consumer Protection (DATCP) is requesting the Joint Committee for Review of Administrative Rules to approve a second 60-day extension of DATCP's emergency rule relating to drug residues in raw milk (copy attached). This rule modifies current rules related to confirmatory testing of producer milk samples that test positive for drug residue. The rule also clarifies how a dairy plant must dispose of milk that tests positive for a drug residue.

DATCP adopted this emergency rule on April 28, 1999. The emergency rule was published in the Wisconsin State Journal and took effect on April 30, 1999. One public hearing was held on the emergency rule on June 18, 1999. An initial 60-day extension of the emergency rule was requested and granted by the Joint Committee for Review of Administrative Rules at its September 22, 1999 meeting.

On April 8, 1999, the Board of Agriculture, Trade and Consumer Protection authorized public hearings on a draft permanent rule that was identical to the emergency rule. The department held one permanent rule hearing on June 18, 1999, in conjunction with the emergency rule hearing.

The Honorable Judy Robson  
The Honorable Glenn Grothman  
November 1, 1999  
Page 2

A final draft permanent rule (with minor modifications) was approved by the DATCP Board at its August 11, 1999 meeting. The department referred the final draft rule for legislative committee review on September 28, 1999. The review period will end this week.

We currently anticipate a January 1, 2000 effective date for the permanent rule. The first 60-day extension of the emergency rule will expire on November 26, 1999. As a result, we are requesting a second 60-day extension of the existing emergency rule to avoid a gap in regulatory coverage between the emergency rule and the effective date of the permanent rule.

We appreciate your consideration of this extension request. I will ask department staff to attend the meeting at which the committee considers the requested extension. Staff will respond to any questions the committee may have. You may contact Tom Leitzke (224-4711) concerning the emergency rule or the committee's meeting schedule.

Sincerely,



Ben Brancel  
Secretary

Attachment





State of Wisconsin  
Tommy G. Thompson, Governor

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

July 26, 1999

JUL 28 REC'D

The Honorable Judy Robson  
State Senator  
Co-Chair, Joint Committee for Review of Administrative Rules  
State Capitol, Room 15 South  
P.O. Box 7882  
Madison, WI 53707

The Honorable Glenn Grothman  
State Representative  
Co-Chair, Joint Committee for Review of Administrative Rules  
State Capitol, Room 15 North  
P.O. Box 8952  
Madison, WI 53708

Dear Senator Robson and Representative Grothman:

Re: **Emergency Rule Extension**

Pursuant to s. 227.24(2), Stats., the Department of Agriculture, Trade and Consumer Protection (DATCP) asks the Joint Committee for Review of Administrative Rules to approve a 60-day extension of DATCP's emergency rule relating to drug residues in raw milk (copy attached). This rule modifies current rules related to confirmatory testing of producer milk samples that test positive for drug residue. The rule also clarifies how a dairy plant must dispose of milk that tests positive for a drug residue.

DATCP adopted this emergency rule on April 27, 1999. The emergency rule was published in the Wisconsin State Journal and took effect on April 30, 1999. The emergency rule expires on September 27, 1999. One public hearing was held on the emergency rule on June 18, 1999.

On April 8, 1999, the Board of Agriculture, Trade and Consumer Protection authorized public hearings on a draft permanent rule that was identical to the emergency rule. The department held one permanent rule hearing on June 18, 1999, in conjunction with the emergency rule hearing.

The department will ask the DATCP Board to approve a final draft permanent rule (with minor modifications) at the board's next meeting on August 11, 1999. If the board approves the final draft permanent rule, the department will refer that final draft rule for legislative committee review.

The Honorable Judy Robson  
The Honorable Glenn Grothman  
July 26, 1999  
Page 2

The emergency rule, if extended for 60 days, will expire on November 27, 1999. Depending on the effective date of the permanent rule, we may need to request a second 60-day extension of the emergency rule to avoid a gap in coverage.

We appreciate your consideration of this extension request. I will ask department staff to attend the meeting at which the committee considers the requested extension. Staff will respond to any questions the committee may have. You may contact Tom Leitzke (224-4711) concerning the emergency rule or the committee's meeting schedule.

Sincerely,

A handwritten signature in cursive script that reads "Ben Brancel".

Ben Brancel  
Secretary

Attachment



State of Wisconsin  
Tommy G. Thompson, Governor



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

**DATE:** April 27, 1999

**TO:** State Legislators

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

**SUBJECT:** **Emergency Rule to Require Testing and Disposal of Milk Found to Contain Any Drug Residue**

Pursuant to s. 227.24(3), Stats., the Department of Agriculture, Trade, and Consumer Protection is forwarding a copy of an emergency rule, together with the fiscal estimate which will amend s. ATCP 60.19(3) and (4), Wis. Adm. Code, relating to follow-up testing of producer milk samples and disposing of milk that tests positive for a drug residue.

The emergency rule requires a dairy plant operator to perform confirmatory tests in duplicate on producer milk samples that test positive for any drug residue. Under the emergency rule, 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.

The emergency 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. The emergency rule clarifies that a dairy plant operator must either dispose of a rejected bulk load or denature it before transferring it to any other person.

**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 in duplicate on producer samples.

### **DATCP's Rulemaking Authority**

This emergency rule is promulgated under the authority of ss.93.07(1), 97.09(4), 97.20(4), 97.22(8), and 97.23, Stats. Further, as part of its Food Safety and Inspection program, the department monitors and enforces the provisions of s. ATCP 60.19, Wis. Adm. Code, pertaining to specific requirements that dairy plants perform drug residue screening and confirmation tests on every bulk load of milk they receive. When a bulk load is confirmed to contain drug residue, the dairy plant must test a milk sample from each producer milk shipment comprising the bulk load to determine the source of drug residue contamination.

### **Why An Emergency Rule is Needed**

Milk from Wisconsin dairy farms may not contain drug residues. Current rules under Ch. ATCP 60, Wis. Adm. Code, require every dairy plant operator to perform a drug residue screening test on every bulk load of milk received by that operator. Current rules also require that, if the bulk load tests positive for any drug residue, the test result must be confirmed. The current rule requires that whenever a bulk load is determined to contain drug residue, the dairy plant must test a milk sample from each producer's milk shipment comprising the bulk load to determine the source of drug residue contamination. However, current rules do not require confirmation of producer test results when results of producer milk are positive for the presence of drug residue.

If a producer sample tests positive, the dairy plant operator may hold that producer financially responsible for contaminating the bulk load. In some case the cost of a contaminated tanker load of milk may be \$5,000 or more.

In several recent enforcement actions, producers have argued that dairy plant drug residue tests were inaccurate. Producers complained that the dairy plant was not required to perform confirmatory testing on positive producer milk samples and there was no other avenue available to confirm the accuracy of the dairy plant's positive test result. Inaccurate testing of producer milk and disputes about the accuracy of producer milk test results may unfairly penalize affected producers and may cause or aggravate conflicts between dairy plant operators and milk producers.

Confirmatory testing of test-positive producer samples would provide greater assurance of fairness for milk producers and would help avoid conflicts between dairy plant operators and producers. Confirmatory testing of test-positive producer sample will enhance the safety of Wisconsin milk supplies and promote the efficient operation and economic well-being of Wisconsin's dairy industry. Finally, this emergency rule will strengthen public health protection by requiring dairy plant operators to dispose of contaminated bulk loads of milk, or denature contaminated loads before transferring them to the custody of another person. Denaturing ensures that persons receiving custody of contaminated loads will not redirect them to human food use.

### **Contents of the Emergency Rule**

- **Follow-up Testing of Producer Milk Samples**

Both the emergency rule and proposed permanent rule require a dairy plant operator to perform confirmatory tests in duplicate on producer milk samples that test positive for any drug residue. Under the emergency and proposed rule, 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**

The emergency rule and proposed rule also clarify 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. The emergency and proposed rule clarify that a dairy plant operator must either dispose of a rejected bulk load or denature it before transferring it to any other person.

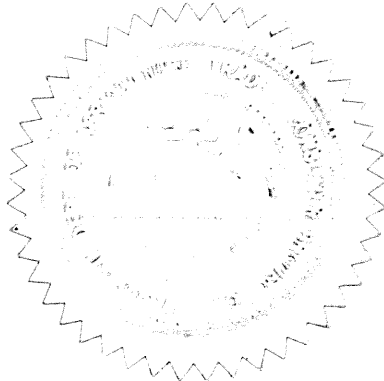
STATE OF WISCONSIN )  
 )  
DEPARTMENT OF AGRICULTURE, )  
TRADE & CONSUMER PROTECTION )

**CERTIFICATION: Order Adopting Emergency Rules Relating to Drug Residues  
in Raw Milk**

I, Ben Brancel, Secretary of the Wisconsin Department of Agriculture, Trade and Consumer Protection, and custodian of the official records of the department, hereby certify that the department issued the attached order adopting emergency rules on April 27, 1999. I further certify that I have compared the attached copy with the original on file with the department, and that the attached copy is a complete and accurate copy of the original.

Signed and sealed at Madison, Wisconsin this 27th day of April, 1999.

By Ben Brancel  
Ben Brancel, Secretary



STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

NOTICE OF HEARING

EMERGENCY RULES RELATED TO DRUG RESIDUES IN RAW MILK

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on its emergency rule (ss. ATCP 60.19(3) and (4), Wis. Adm Code) relating to drug residues in raw milk. The hearings will be held at the times and places shown below.

Pursuant to s. 227.24(4), Stats., public comment is being sought on the Department's emergency rule. The public is invited to attend the hearings and make comments on the emergency rule. Following the public hearings, the hearing record will remain open until June 30, 1999, for additional written comments.

A copy of this rule may be obtained free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608)224-4700. Copies will also be available at the public hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by July 15, 1996 either by writing to Debbie Mazanec, 2800 Agriculture Drive, P.O. Box 8911, Madison, WI 53708, (608- 224-4712 ), or by contacting the message relay system (TTY) at 608-266-4399 to forward your call to the Department at 608-224-5058. Handicap access is available at the hearings.

Three (3) hearings are scheduled. The hearings will be held simultaneously by videoconferencing at the following locations on Friday, June 18, 1999, from 10:30 a.m. - 12:00 p.m. These hearings are being held in conjunction with hearings on a proposed permanent rule which is identical to the emergency rule.

Wisconsin Department of Agriculture, Trade and Consumer Protection  
Room 472  
2811 Agriculture Drive  
Madison, WI 53704  
Handicapped accessible

State of Wisconsin Office Building  
Room 618  
200 North Jefferson Street  
Green Bay, WI 54301  
Handicapped accessible

State of Wisconsin Office Building  
Room 139  
718 West Clairemont Avenue  
Eau Claire, WI 54701  
Handicapped accessible

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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 emergency 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 emergency 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 emergency 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 emergency 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 emergency 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 emergency rule clarifies that a dairy plant operator must either dispose of a rejected bulk load or denature it before transferring it to any other person.



## FINDING OF EMERGENCY

The state of Wisconsin department of agriculture, trade and consumer protection (DATCP) finds that an emergency exists and that the following emergency rule is necessary to protect public health, safety and welfare. The facts constituting the emergency are as follows:

(1) Milk from Wisconsin dairy farms may not contain drug residues. Current rules under ch. ATCP 60, Wis. Adm. Code, require every dairy plant operator to perform a drug residue screening test on every bulk load of raw milk received by that operator. If the bulk load tests positive for any drug residue, the operator must test a milk sample from each producer milk shipment included in that bulk load. Current rules do not require a dairy plant operator to perform a confirmatory test if a producer sample tests positive on an initial test.

(2) If a producer sample tests positive for drug residue, the dairy plant operator may hold that producer financially responsible for contaminating the bulk load. In some cases, the cost of a contaminated tanker load of milk may be \$5,000 or more. The department may also take enforcement action against the milk producer. Enforcement may result in financial penalties or suspension of the milk producer's license.

(3) In several enforcement actions, producers have argued that dairy plant drug residue tests were inaccurate. Producers claimed that there was no confirmatory testing, and no opportunity to confirm the accuracy of the dairy plant operator's test findings. Inaccurate findings may unfairly penalize affected producers, and result in severe financial losses to those producers. The lack of a confirmatory test aggravates conflicts between dairy plant operators and milk producers.

(4) Confirmatory testing of test-positive producer samples would provide greater assurance of fairness for milk producers, and would help avoid conflicts between dairy plant operators and

producers. Dairy plant operators can perform confirmatory tests at reasonable cost. An emergency rule requiring confirmatory testing of producer samples is necessary to protect milk producers, and to promote the efficient operation and economic well-being of Wisconsin's dairy industry.

(5) Confirmatory testing of test-positive producer samples will enhance, and not reduce, the safety of Wisconsin milk supplies. Dairy plant operators will still be required to test bulk tanker loads of milk, and dispose of tanker loads that test positive for drug residues.

(6) This emergency rule will strengthen public health protection by requiring dairy plant operators to dispose of contaminated loads, or denature contaminated loads before transferring them to the custody of another person. Denaturing ensures that persons receiving custody of contaminated loads will not redirect them to human food use.

(7) Pending the adoption of rules according to normal administrative rulemaking procedures, it is necessary to adopt this emergency rule to do both of the following:

(a) Protect the public milk supply against drug residue contamination by assuring proper disposal of contaminated milk.

(b) Provide additional assurance that milk producers will not be subjected to serious penalties or financial losses based on inaccurate drug residue tests.

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### **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.

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### INITIAL REGULATORY FLEXIBILITY NOTICE

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.

Dated this 14 day of May, 1999

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By: Ben Brancel  
Ben Brancel, Secretary

**ORDER OF THE STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION  
ADOPTING EMERGENCY RULES**

1 The state of Wisconsin department of agriculture, trade and consumer protection hereby adopts  
2 the following emergency rule to amend ss. ATCP 60.19(3) and (4) relating to drug residues in raw  
3 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 emergency 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 emergency 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 emergency 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 emergency 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 emergency 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 emergency rule clarifies that a dairy plant operator must either dispose of a rejected bulk load or denature it before transferring it to any other person.

## FINDING OF EMERGENCY

The state of Wisconsin department of agriculture, trade and consumer protection (DATCP) finds that an emergency exists and that the following emergency rule is necessary to protect public health, safety and welfare. The facts constituting the emergency are as follows:

(1) Milk from Wisconsin dairy farms may not contain drug residues. Current rules under ch. ATCP 60, Wis. Adm. Code, require every dairy plant operator to perform a drug residue screening test on every bulk load of raw milk received by that operator. If the bulk load tests positive for any drug residue, the operator must test a milk sample from each producer milk shipment included in that bulk load. Current rules do not require a dairy plant operator to perform a confirmatory test if a producer sample tests positive on an initial test.

(2) If a producer sample tests positive for drug residue, the dairy plant operator may hold that producer financially responsible for contaminating the bulk load. In some cases, the cost of a contaminated tanker load of milk may be \$5,000 or more. The department may also take enforcement action against the milk producer. Enforcement may result in financial penalties or suspension of the milk producer's license.

(3) In several enforcement actions, producers have argued that dairy plant drug residue tests were inaccurate. Producers claimed that there was no confirmatory testing, and no opportunity to confirm the accuracy of the dairy plant operator's test findings. Inaccurate findings may unfairly penalize affected producers, and result in severe financial losses to those producers. The lack of a confirmatory test aggravates conflicts between dairy plant operators and milk producers.

(4) Confirmatory testing of test-positive producer samples would provide greater assurance of fairness for milk producers, and would help avoid conflicts between dairy plant operators and producers. Dairy plant operators can perform confirmatory tests at reasonable cost. An emergency

rule requiring confirmatory testing of producer samples is necessary to protect milk producers, and to promote the efficient operation and economic well-being of Wisconsin's dairy industry.

(5) Confirmatory testing of test-positive producer samples will enhance, and not reduce, the safety of Wisconsin milk supplies. Dairy plant operators will still be required to test bulk tanker loads of milk, and dispose of tanker loads that test positive for drug residues.

(6) This emergency rule will strengthen public health protection by requiring dairy plant operators to dispose of contaminated loads, or denature contaminated loads before transferring them to the custody of another person. Denaturing ensures that persons receiving custody of contaminated loads will not redirect them to human food use.

(7) Pending the adoption of rules according to normal administrative rulemaking procedures, it is necessary to adopt this emergency rule to do both of the following:

(a) Protect the public milk supply against drug residue contamination by assuring proper disposal of contaminated milk.

(b) Provide additional assurance that milk producers will not be subjected to serious penalties or financial losses based on inaccurate drug residue tests.

---

**EMERGENCY RULE**

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

ATCP 60.19(3) DRUG RESIDUE FOUND IN BULK LOAD; FOLLOW-UP TESTING. If a bulk load of milk tests positive for a drug residue under sub. (2), the dairy plant operator shall perform a drug residue test on each of the individual milk producer samples collected for that bulk load under s. ATCP 60.17. The dairy plant operator shall test each producer sample before collecting any further milk from that producer. The drug residue test performed on each producer sample shall be sensitive to the same drug residue that was detected in the bulk load. If a producer sample tests positive for any drug residue, the dairy plant operator shall perform a confirmatory test, using the same test

1 method and sample. The dairy plant operator shall perform the confirmatory test in duplicate, with  
2 single positive and negative controls. If either confirmatory test result is positive for a drug residue,  
3 the milk producer's sample is considered positive for that drug residue.

4 (4) DRUG RESIDUE FOUND IN BULK LOAD; LOAD REJECTED. If a bulk load of milk from one or  
5 more producers tests positive for a drug residue under sub. (2), the dairy plant operator shall reject  
6 the entire bulk load. Milk from a rejected bulk load ~~shall~~ may not be used for human food, ~~and~~. The  
7 dairy plant operator shall not be shipped either dispose of the rejected bulk load, or denature the  
8 rejected load before transferring custody of that load to any other dairy plant or recipient for use as  
9 human food person.

10 **EFFECTIVE DATE.** This emergency rule takes effect upon publication. It remains in  
11 effect for 150 days, as provided in s. 227.24(1)(c), Stats., unless extended by the legislature's joint  
12 committee for review of administrative rules under s. 227.24(2), Stats.

Dated this \_\_\_\_\_ of April, 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 Existing Appropriation     Increase Existing Revenues  
 Decrease Existing Appropriation     Decrease Existing Revenues  
 Create New Appropriation

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

Decrease Costs

Local :  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.)

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

Authorized Signature/Telephone No.

*Barbara Knapp*  
Barbara Knapp (608) 224-4746

Date

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.
--	---------------

**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

<b>II. Annualized Cost:</b>	<b>Annualized Fiscal Impact on State funds from:</b>	
<b>A. State Costs by Category</b>	<b>Increased Costs</b>	<b>Decreased Costs</b>
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
<b>TOTAL State Costs by Category</b>	<b>\$ 0</b>	<b>\$ - 0</b>
<b>B. State Costs by Source of Funds</b>	<b>Increased Costs</b>	<b>Decreased Costs</b>
GPR	\$ 0	\$ - 0
FED	0	- 0
PRO/PRS	0	- 0
SEG/SEG-S	0	- 0
<b>III. State Revenues -</b>	<b>Increased Rev.</b>	<b>Decreased Rev.</b>
<small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>		
GPR Taxes	\$ 0	\$ - 0
GPR Earned	0	- 0
FED	0	- 0
PRO/PRS	0	- 0
SEG/SEG-S	0	- 0
<b>TOTAL State Revenues</b>	<b>\$ 0</b>	<b>\$ - 0</b>

**NET ANNUALIZED FISCAL IMPACT**

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

<b>Agency Prepared by: (Name &amp; Phone No.)</b> DATCP C. Thomas Leitzke (608) 224-4711	<b>Authorized Signature/Telephone No.</b> Barbara Knapp (608) 224-4746	<b>Date</b> 3/18/99
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OCT 01 1999

Docket No. 98-R-17

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

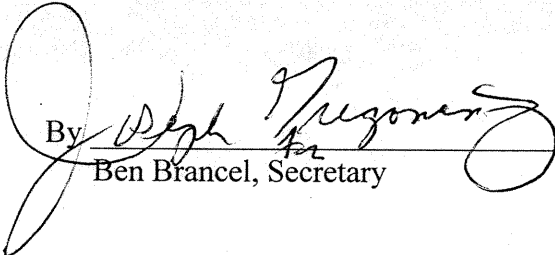
NOTICE OF SUBMISSION OF PROPOSED RULES TO  
PRESIDING OFFICERS OF EACH HOUSE OF THE LEGISLATURE

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 27<sup>th</sup> day of September, 1999.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By

  
Ben Brancel, Secretary



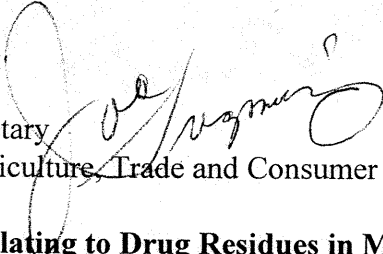
State of Wisconsin  
Tommy G. Thompson, Governor

**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  
Page 3

### **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.
- 

**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 Existing Appropriation     Increase Existing Revenues  
 Decrease Existing Appropriation     Decrease Existing

**Revenues**

Create New Appropriation

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

Decrease Costs

**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.
--	---------------

<b>Subject</b> Dairy Farms		
<b>I. One-time Cost or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):</b> \$500.00		
<b>II. Annualized Cost:</b>	<b>Annualized Fiscal Impact on State funds from:</b>	
<b>A. State Costs by Category</b>	<b>Increased Costs</b>	<b>Decreased Costs</b>
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
<b>TOTAL State Costs by Category</b>	<b>\$ 0</b>	<b>\$ - 0</b>
<b>B. State Costs by Source of Funds</b>	<b>Increased Costs</b>	<b>Decreased Costs</b>
GPR	\$ 0	\$ - 0
FED	0	- 0
PRO/PRS	0	- 0
SEG/SEG-S	0	- 0
<b>III. State Revenues -</b> <small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>	<b>Increased Rev.</b>	<b>Decreased Rev.</b>
GPR Taxes	\$ 0	\$ - 0
GPR Earned	0	- 0
FED	0	- 0
PRO/PRS	0	- 0
SEG/SEG-S	0	- 0
<b>TOTAL State Revenues</b>	<b>\$ 0</b>	<b>\$ - 0</b>

**NET ANNUALIZED FISCAL IMPACT**

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

<b>Agency Prepared by: (Name &amp; Phone No.)</b> DATCP C. Thomas Leitzke (608) 224-4711	<b>Authorized Signature/Telephone No.</b> Barbara Knapp (608) 224-4746	<b>Date</b> 3/18/99
--	---	------------------------

## 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 18<sup>th</sup> 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

SENATOR JUDITH B. ROBSON  
 Co-CHAIR  
 PO BOX 7882  
 MADISON, WI 53707-7882  
 (608) 266-2253



REPRESENTATIVE GLENN GROTHMAN  
 Co-CHAIR  
 PO BOX 8952  
 MADISON, WI 53708-8952  
 (608) 264-8486

**JOINT COMMITTEE FOR  
 REVIEW OF ADMINISTRATIVE RULES**

***Emergency Rule Extension Motion Form***

*Last Modified March, 1999*

Date 11/18/99 Location Room 411 South  
 Moved by Robson, Seconded by Grothman

**THAT**, pursuant to § 227.24(2)(a), *Wisconsin State Statutes*, the Joint Committee for the Review of Administrative Rules extend the effective period of Emergency Rule ATCP 100.45 by 60 days, at the request of the Department of Agriculture, Trade and Consumer Protection.

and ATCP  
 60.19

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON	X		
2. Senator GROBSCHMIDT	X		
3. Senator SHIBLISKI	X		
4. Senator WELCH			X
5. Senator DARLING	X		
6. Representative GROTHMAN	X		
7. Representative GUNDERSON	X		
8. Representative SERATTI			X
9. Representative KREUSER			X
10. Representative BLACK	X		
Totals	7	0	3

\* polled by phone  
 paper ballot

Motion Carried

Motion Failed

SENATOR JUDITH B. ROBSON  
CO-CHAIR  
PO Box 7882  
MADISON, WI 53707-7882  
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN  
CO-CHAIR  
PO Box 8952  
MADISON, WI 53708-8952  
(608) 264-8486

## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

November 19, 1999

Mr. Ben Brancel  
Secretary, Department of Agriculture, Trade and Consumer Protection  
P.O. Box 8911  
Madison, WI 53708-8911

Dear Secretary Brancel:

We are writing to inform you that the Joint Committee for the Review of Administrative Rules (JCRAR) held a public hearing and executive session on November 18, 1999. At that meeting, the JCRAR took the following action:

1. The committee voted to extend the effective period of Emergency Rule ATCP 60.19 by 60 days; and
2. The committee voted to extend the effective period of Emergency Rule ATCP 100.45 by 60 days.

Pursuant to §227.24(2)(c), *Stats.*, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,

Judith B. Robson  
State Senator  
15<sup>th</sup> Senate District

Glenn Grothman  
State Representative  
59<sup>th</sup> Assembly District

JBR:da

cc: Secretary of State Doug La Follette  
Revisor of Statutes Gary Poulson

# **Emergency Rule ATCP 60.19**

SENATOR JUDITH B. ROBSON  
 CO-CHAIR  
 PO Box 7882  
 MADISON, WI 53707-7882  
 (608) 266-2253



REPRESENTATIVE GLENN GROTHMAN  
 CO-CHAIR  
 PO Box 8952  
 MADISON, WI 53708-8952  
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**JOINT COMMITTEE FOR  
 REVIEW OF ADMINISTRATIVE RULES**

***Emergency Rule Extension Motion Form***

*Last Modified March, 1999*

Date: September 22, 1999      Location: Room 201 Southeast, State Capitol

Moved by Sen. Welch, Seconded by Rep. Grothman

**THAT**, pursuant to § 227.24(2)(a), *Wisconsin State Statutes*, the Joint Committee for the Review of Administrative Rules extend the effective period of Emergency Rule ATCP 60.19 by 60 days, at the request of the Department of Agriculture, Trade and Consumer Protection.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON			X
2. Senator GROBSCHMIDT	✓		
3. Senator SHIBLISKI			X
4. Senator WELCH	✓		
5. Senator DARLING	✓		
6. Representative GROTHMAN	✓		
7. Representative GUNDERSON	✓		
8. Representative SERATTI	✓		
9. Representative KREUSER	✓		
10. Representative BLACK	✓		
Totals			

\*by polling

Motion Carried

Motion Failed

SENATOR JUDITH B. ROBSON  
CO-CHAIR

PO BOX 7882  
MADISON, WI 53707-7882  
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN  
CO-CHAIR

PO BOX 8952  
MADISON, WI 53708-8952  
(608) 264-8486

## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

September 24, 1999

Mr. Ben Brancel  
Secretary, Department of Agriculture, Trade and Consumer Protection  
P.O. Box 8911  
Madison, WI 53708-8911

Dear Secretary Brancel:

We are writing to inform you that the Joint Committee for the Review of Administrative Rules (JCRAR) held a public hearing on September 22, 1999. At that meeting, JCRAR received public testimony regarding **Emergency Rule ATCP 60.19**, relating to drug residues in raw milk.

The Joint Committee for the Review of Administrative Rules met in Executive Session on September 22, 1999 and adopted the following motion:

Pursuant to §227.24(2)(a), *Stats.*, the Joint Committee for Review of Administrative Rules extend the effective date of **Emergency Rule ATCP 60.19** by 60 days, at the request of the Department of Agriculture, Trade and Consumer Protection.

Ayes: (8) Senators Grobschmidt, Welch, and Darling\*; Representatives Grothman, Seratti, Gunderson, Kreuser, and Black

Noes: (0)

Absent: (2) Senators Robson and Shibilski. \*Roll held open, voted by phone.

**Motion Carried: Extension Granted.**  
8 Ayes, 0 Noes, 2 Absent.

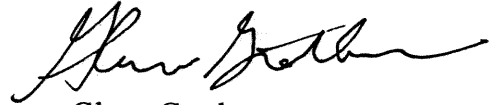


Pursuant to §227.24(2)(c), *Stats.*, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,



Judith B. Robson  
State Senator  
15<sup>th</sup> Senate District



Glenn Grothman  
State Representative  
59<sup>th</sup> Assembly District

JBR:da

cc: Secretary of State La Follette  
Revisor of Statutes Gary Poulson



State of Wisconsin  
Tommy G. Thompson, Governor

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

July 26, 1999

JUL 28 REC'D

The Honorable Judy Robson  
State Senator  
Co-Chair, Joint Committee for Review of Administrative Rules  
State Capitol, Room 15 South  
P.O. Box 7882  
Madison, WI 53707

The Honorable Glenn Grothman  
State Representative  
Co-Chair, Joint Committee for Review of Administrative Rules  
State Capitol, Room 15 North  
P.O. Box 8952  
Madison, WI 53708

Dear Senator Robson and Representative Grothman:

Re: **Emergency Rule Extension**

Pursuant to s. 227.24(2), Stats., the Department of Agriculture, Trade and Consumer Protection (DATCP) asks the Joint Committee for Review of Administrative Rules to approve a 60-day extension of DATCP's emergency rule relating to drug residues in raw milk (copy attached). This rule modifies current rules related to confirmatory testing of producer milk samples that test positive for drug residue. The rule also clarifies how a dairy plant must dispose of milk that tests positive for a drug residue.

DATCP adopted this emergency rule on April 27, 1999. The emergency rule was published in the Wisconsin State Journal and took effect on April 30, 1999. The emergency rule expires on September 27, 1999. One public hearing was held on the emergency rule on June 18, 1999.

On April 8, 1999, the Board of Agriculture, Trade and Consumer Protection authorized public hearings on a draft permanent rule that was identical to the emergency rule. The department held one permanent rule hearing on June 18, 1999, in conjunction with the emergency rule hearing.

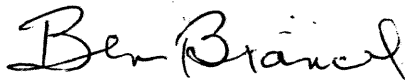
The department will ask the DATCP Board to approve a final draft permanent rule (with minor modifications) at the board's next meeting on August 11, 1999. If the board approves the final draft permanent rule, the department will refer that final draft rule for legislative committee review.

The Honorable Judy Robson  
The Honorable Glenn Grothman  
July 26, 1999  
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The emergency rule, if extended for 60 days, will expire on November 27, 1999. Depending on the effective date of the permanent rule, we may need to request a second 60-day extension of the emergency rule to avoid a gap in coverage.

We appreciate your consideration of this extension request. I will ask department staff to attend the meeting at which the committee considers the requested extension. Staff will respond to any questions the committee may have. You may contact Tom Leitzke (224-4711) concerning the emergency rule or the committee's meeting schedule.

Sincerely,

A handwritten signature in cursive script that reads "Ben Brancel".

Ben Brancel  
Secretary

Attachment



State of Wisconsin  
Tommy G. Thompson, Governor

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

**Joint Committee for Review of Administrative Rules**  
**September 22, 1999**  
**Emergency Rule ATCP 60.19**

Representative Grothman, Senator Robson, members of the committee. Good afternoon. My name is Tom Leitzke. I am the Director of the Bureau of Food Safety and Inspection in the Division of Food Safety in the Department of Agriculture, Trade and Consumer Protection. I am here to testify in support of the Department's request to extend the effective period of emergency rule ATCP 60.19, relating to drug residues in raw milk, for 60 days.

This emergency rule modifies current rules related to follow-up testing of producer milk samples when a bulk tanker of milk tests positive for drug residue. The emergency 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**

This emergency rule requires a dairy plant to perform a confirmatory test in duplicate on each producer milk sample that tests positive for any drug residue. The confirmatory test must be performed using the same test method and the same producer milk sample that originally tested positive. Positive and negative controls must also be run to insure the test is performing appropriately. If one or more of the confirmatory tests are positive for a drug residue, the milk producer's sample is considered positive.

When a bulk tanker of milk tests positive for drug residue, it must be removed from the human food supply. There is a reasonably high cost in doing this and the dairy plant generally holds a producer financially liable for these costs if the producer's milk sample tests positive for drug residue.

This emergency rule provides greater assurance of fairness to milk producers when their milk samples are tested after a bulk load of milk tests positive for drug residues. These procedures are identical to the procedures used for confirming bulk milk tankers positive for a drug residue.

**Disposing of Contaminated Milk**

This emergency 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. The rejected load may not be used for human food. The emergency rule clarifies that a dairy plant operator must either dispose of a rejected bulk load or denature the load before transferring it to any other person.

This clarification helps ensure that persons receiving custody of contaminated milk will not redirect it to the human food supply.

On April 8, 1999, the Board of Agriculture, Trade and Consumer Protection authorized public hearings on a proposed final rule which is identical to the emergency rule. Three (3) public hearings were held on June 18, 1999, to solicit comments on the emergency rule and the proposed permanent rule. The hearings were held simultaneously by video-conferencing. Hearing participants supported both the emergency rule and the proposed permanent rule, but suggested modifications.

On August 11, 1999, the Board of Agriculture, Trade and Consumer Protection approved a final draft rule with a minor modification from the requirements of the emergency rule and the original proposed final rule. The minor modification made in the approved final draft rule requires the dairy plant operator to denature or take responsibility for disposing of a contaminated bulk load of milk in a manner which precludes its use as human food.

This emergency rule took effect on April 30, 1999 and expires on September 27. An extension is needed to allow the department to finish promulgating a permanent rule. The final draft rule approved by the Board has not yet been transmitted for Legislative committee review. I expect that to happen very soon.

Thank you for your consideration of this request for extension of the emergency rule. I will be happy to answer any questions you may have.

**I.C.R.A.R HEARING SLIP**

(Please Print Plainly)

DATE: 11-18-99

CHR-NO. 99-78

SUBJECT ATCP 60

(NAME) Tom Leitzke

(Street Address or Route Number) P.O. Box 8911

(City and Zip Code) Madison, WI 53728

(Representing) WDATCP

Speaking in Favor of Rule:

(i.e. against objection or the rule suspension)

Speaking Against the Rule:

(i.e. in favor of objection or suspension)

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O.Box 7882  
Madison, WI 53707-7882

**I.C.R.A.R HEARING SLIP**

(Please Print Plainly)

DATE: 9-22-99

CHR-NO. ATCP 60.19

SUBJECT \_\_\_\_\_

(NAME) John Unhoefel

(Street Address or Route Number) P.O. Box 2133

(City and Zip Code) Madison WI 53761

(Representing) Wisconsin Cheese Makers Assn.

Speaking in Favor of Rule:

(i.e. against objection or the rule suspension)

Speaking Against the Rule:

(i.e. in favor of objection or suspension)

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

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P.O.Box 7882  
Madison, WI 53707-7882

**I.C.R.A.R HEARING SLIP**

(Please Print Plainly)

DATE: 9-22-99

CHR-NO. ATCP 60.19

SUBJECT \_\_\_\_\_

(NAME) John Manske

(Street Address or Route Number) 30 W. Miffline

(City and Zip Code) Madison 53703

(Representing) WI Federation of Coops

Speaking in Favor of Rule:

(i.e. against objection or the rule suspension)

Speaking Against the Rule:

(i.e. in favor of objection or suspension)

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

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State Capitol - B35 South  
P.O.Box 7882  
Madison, WI 53707-7882

# I.C.R.A.R HEARING SLIP

(Please Print Plainly)

DATE: 9-22-99

CHR-NO ATCP 60,19  
OR

SUBJECT \_\_\_\_\_

Tom Leitzke  
(NAME)

P.O. Box 8977  
(Street Address or Route Number)

Madison WI 53708  
(City and Zip Code)

ATCP  
(Representing)

Speaking in Favor of Rule:   
(i.e. against objection or the rule suspension)

Speaking Against the Rule:   
(i.e. in favor of objection or suspension)

Registering in Favor:   
but not speaking:

Registering Against:   
but not speaking:

Speaking for information  
only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

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