

00-146

16

DATE: February 12, 2001

TO: Beata Kalies

Committee on Agriculture

FROM: John Scocos, Assembly Chief Clerk

RE: Clearinghouse Rule Referrals

The following Clearinghouse Rules(s) has/have been referred to your committee.

CLEARINGHOUSE RULE 00-146

AN ORDER to create ATCP 10.21 (10) (c) and (15), relating to reimbursement of Johne's disease testing costs.

Submitted by **Department of Agriculture, Trade and Consumer Protection.**

Report received from Agency on **February 7, 2001.**

To committee on **Agriculture.**

Referred on **Monday, February 12, 2001.**

Last day for action – **Wednesday, March 14, 2001.**

Under section 227.19 (4) of the Wisconsin Statutes, your committee has 30 days to take action or get an extension. The day **after** the official referral date is day one of your review period. Therefore, the 30th day should fall four weeks and two days after the referral date. For example, for Clearinghouse Rules referred on a Monday, a Wednesday would be your 30th day. For Clearinghouse Rules referred on a Tuesday, a Thursday would be your 30th day. For Clearinghouse Rules referred on a Wednesday, a Friday would be your 30th day. For Clearinghouse Rules referred on a Thursday or Friday, your 30th day would fall on a weekend. Therefore, your time would expire on the next working day (Monday) as provided for in s. 990.001 of the Wisconsin Statutes. Also, if the 30th day falls on a legal holiday, time would expire on the next working day.

Section 227.19 **requires** you to notify each member of your committee that you have received this Clearinghouse Rule. Although some committee chairs do so, you are not required to send a copy of the text of the rule to each member at this time. Your notice could state that members should contact you if they wish to receive a hard copy of the rule. (Please note that, unlike bills and amendments, the text of Clearinghouse Rules is not currently available online. I am sure that this will happen sometime in the future as state agencies standardize their computer software). Please put a copy of your official notification memo in the rule jacket.

Three copies of the Clearinghouse Rule and its accompanying documents are contained in the jacket. If you wish to have your Legislative Council attorney review the Clearinghouse Rule, send him/her a copy. I only need one copy remaining in the jacket when you report it out of committee at the end of the review period.

The identical process is happening simultaneously in the Senate. Keep track of their action on the rule.

For assistance with the Clearinghouse Rule process, please consult Ken Stigler (6-2406) or your Legislative Council attorney. If you wish to learn more on this subject, read section 227.19 of the Wisconsin Statutes or part 2 of the *Administrative Rules Procedures Manual* written by the Revisor of Statutes Bureau and the Wisconsin Legislative Council staff.

Chairman:
Agriculture Committee




Member:
Conservation & Land Use
Consumer Affairs
Natural Resources
Utilities

Al Ott

State Representative • 3rd Assembly District

**Assembly Agriculture Committee
MEMO**

TO: Members of the Assembly Agriculture Committee
FROM: Representative Al Ott, Chair 
DATE: February 13, 2001

The following clearinghouse rule has been referred to the Assembly Agriculture Committee for a thirty-day review period:

Clearinghouse Rule 00-146

Relating to reimbursement of Johne's disease testing costs.
Submitted by the Department of Agriculture, Trade and Consumer Protection.

The deadline for action on this rule is **Wednesday, March 14, 2001**.
A brief summary of the rule is enclosed. Please contact Beata Kalies in my office (6-5831) if you would like a copy of the entire rule or have questions.

**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 Wis. Stat. § 227.19(2), that the State of Wisconsin Department of Agriculture, Trade and Consumer Protection is submitting a final draft of proposed Clearinghouse Rule Number 00-146 to the presiding officer of each house of the legislature for standing committee review. The proposed rule modifies Wis. Admin. Code ch. 10 and 11. The rule relates to the reimbursement of Johne's disease testing costs. It also makes minor technical changes to current equine rules.

Dated this 7 day of February, 2001.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Ben Brancel
Ben Brancel
Secretary



State of Wisconsin
Tommy G. Thompson, Governor

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

Date: February 2, 2001

TO: The Honorable Fred Risser
President, Wisconsin State Senate
Rm. 220 S, State Capitol
Madison, WI 53707

The Honorable Scott Jensen
Speaker, Wisconsin State Assembly
Rm. 211 W, State Capitol
Madison, WI 53708

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

SUBJECT: **Johne's Disease Testing Grants; Rules (Clearinghouse Rule No. 00-146)**

The Department of Agriculture, Trade and Consumer Protection (DATCP) hereby transmits the above rule for legislative committee review pursuant to ss. 227.19 (2) and (3) Stats. We are enclosing three 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.

Rule Background And Summary

This rule creates standards for the Johne's disease testing grant program created by 1999 Wis. Act 9. Under s. 95.195, Stats., and current DATCP rules, a seller warrants that cattle are free of Johne's disease at the time of sale unless the seller discloses to the prospective buyer the current Johne's disease herd classification of the source herd. Every herd of cattle has a Johne's disease herd classification.

A herd is automatically classified "maximum risk for Johne's disease" unless DATCP assigns a different herd classification based on an annual herd test. DATCP may assign one of several herd classifications, based on annual herd test results. An annual herd test is voluntary. A herd owner may arrange and pay for an annual herd test, and may ask the department to classify the herd based on the test results.

Honorable Fred Risser
Honorable Scott Jensen
February 2, 2001
Page 2

The biennial budget act (1999 Wis. Act 9) provided \$100,000 in grant funds in FY 2000-01 to help cattle owners pay for annual Johne's disease herd tests. Under this rule, a herd owner who asks the department to classify a herd based on an annual herd test may apply for reimbursement of laboratory costs associated with the annual test. When DATCP classifies the herd, it will tell the herd owner how to apply for reimbursement.

To obtain reimbursement, a herd owner must file a claim by February 1 of the year following the year in which the herd owner tests the herd. The herd owner must submit copies of bills that establish the amount of laboratory costs charged to the herd owner. DATCP will distribute available funds by June 30 (following the February 1 annual application deadline).

DATCP may reimburse all or part of an applicant's allowed claim, depending on available funding. If allowed claims exceed available funding, DATCP will pay each herd owner a pro rata share based on the amount of each herd owner's allowed claim. A herd owner may not resubmit the unpaid portion of a claim in a subsequent year.

Public Hearings

DATCP held public hearings on November 28, 2000 in Madison and November 30, 2000 in Eau Claire. DATCP also accepted written comments until December 8, 2000 for inclusion in the hearing record. *Appendix A* contains a summary of hearing testimony, along with a list of persons attending, testifying or submitting written comments for the hearing record.

Changes Following Public Hearings

There was no testimony at the public hearings that suggested any need for changes in the Johne's disease testing grant program. However, there was testimony alerting DATCP to two technical errors in current animal health rules. These technical errors pertain to equine rules, not Johne's disease rules. The technical errors occurred in the recent comprehensive overhaul of DATCP animal health rules.

This final draft rule corrects the two technical errors as follows:

- It reinstates an (inadvertently repealed) equine infectious anemia testing exemption for a nursing foal accompanying its dam to a livestock show or exhibition, provided the dam meets the test requirement.
- It eliminates an obsolete reference to an equine infectious anemia quarantine testing provision that no longer exists.

Response To Rules Clearinghouse Comments

The Legislative Council Rules Clearinghouse made three comments on the hearing draft rule.

- The Clearinghouse suggested adding a note referencing a new form used by DATCP to obtain information about a producer's testing costs. DATCP added the note in the final draft rule.
- The Clearinghouse noted an incorrect reference which DATCP corrected in the final draft rule.
- The Clearinghouse asked DATCP to review a rule provision requiring herd owners to document test costs. DATCP reviewed this provision and concluded that no change was necessary. A herd owner will be billed for laboratory costs either directly by the laboratory or as an item on a bill from the veterinarian who collected the specimens. A herd owner may submit bills from either source to substantiate the laboratory costs the owner incurred. By allowing substantiation from either source, the department is making it easier for the animal owner to participate in the program.

Fiscal Estimate

DATCP estimates that 2400 herds will be classified over a 12 month period and that 80% of the herd owners will file a reimbursement claim. If each claim requires 20 minutes to review and enter data for payment, the cost for salary and fringe will be \$12,600. DATCP estimates postage will cost \$600 per year. DATCP will absorb these costs by reprioritizing staff assignments and expenses.

This estimate covers costs for the first year of the program only. Herd participation is expected to increase approximately 20 to 50% each year. This will increase DATCP costs at a similar rate. At some point, DATCP may not be able to absorb the costs. A complete fiscal estimate is attached as *Appendix B*.

Small Business Analysis

This rule will help cattle owners by reimbursing Johne's disease testing costs. DATCP has minimized procedural requirements related to reimbursement applications, so that it will be easy for herd owners to apply. DATCP has included only those requirements that are necessary to ensure financial accountability in the distribution of public funds. This rule gives herd owners a substantial amount of time to apply for reimbursement. Herd owners must simply document the laboratory costs for which they seek reimbursement. DATCP will give herd owners information on how to apply. A small business analysis (regulatory flexibility analysis) is attached as *Appendix C*.

Appendix A

SUMMARY OF PUBLIC HEARINGS

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) held public hearings in Madison and Eau Claire.

Two hearings were held:

Madison, November 28, 2000

Eau Claire, November 30, 2000

Madison, Wisconsin
November 28, 2000

Registered: Thomas J. Knauer, DATCP

Support:	0
Opposed:	0
Neither:	0
Other:	1

Mr. Knauer testified about two technical errors in current animal health rules pertaining to equines. He testified that in the recent comprehensive overhaul of DATCP animal health rules, the department inadvertently repealed an equine infectious anemia testing exemption for a nursing foal accompanying its dam to a livestock show or exhibition, provided the dam meets the test requirement.

Mr. Knauer also testified that current equine rules contain an obsolete cross reference to an equine infectious anemia quarantine testing provision that no longer exists.

Eau Claire, Wisconsin
November 30, 2000

No one attended this hearing.

Appendix B

FISCAL ESTIMATE

DOA-2048 N(R10/98)

- ORIGIN UPDATED
 CORRECTED SUPPLEMENTAL

2001 Session

LRB No. / Adm. Rule No.

ATCP 10.21

Amendment No. If Applicable

Subject

DATCP Proposed Creation of ATCP 10.21(10)(c)(15) relating to reimbursement of Johne's Disease test co

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum certain 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 Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

20.115(2)(a) and (2)(c)

Assumptions Used in Arriving at Fiscal Estimate

The proposed rule established requirements to claim partial reimbursement of testing costs related to herd classification testing for Johne's Disease. Herd owners must file a claim for reimbursement with the department by February 1 of the year following the year in which the herd was classified. The herd owner must submit copies of bills for the laboratory costs charged to the owner. DATCP will reimburse all or part of the claim depending on available funding (\$100,000 at this time) and number of claims.

It is estimated that 2,400 herds will be classified over a 12 month period of which approximately 80% of the herd owners will file a reimbursement claim. Each claim is expected to require 20 minutes to review and complete data entry for payment. The total cost will be approximately \$13,200 (\$12,600 for salary and fringe and \$600 for postage). This time can be accommodated with existing staff and through reprioritization of work assignments in the office.

Long-Range Fiscal Implications

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

Dept of Agriculture, Trade & Consumer Protection

Clarence Siroky

DATCP Clarence Siroky (608) 224-4872

Authorized Signature/Telephone No.

Barbara Knapp

Barbara Knapp (608) 224-4746

Date:

Dec. 18, 2000

Appendix C

Final Regulatory Flexibility Analysis

This rule establishes standards for the grant program created by 1999 Wis. Act 9 to assist cattle owners in paying for Johne's disease testing. It will affect cattle owners who wish to obtain reimbursement for a portion of the costs incurred to test their herds for Johne's disease.

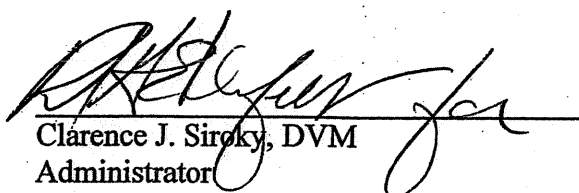
When a herd owner has his herd tested for Johne's disease and requests that the herd be classified on the basis of that test, the department will advise the herd owner that he or she is eligible to participate in the grant program. To participate in the grant program, the herd owner must file a claim no later than February 1 of the year following the calendar year in which the herd was tested. The owner must provide copies of bills from either the veterinarian or the laboratory to establish amount of laboratory costs incurred.

This claim filing process is the least onerous possible that is consistent with the state's need to audit and assure that grants are only given in appropriate amounts to eligible owners. The rule permits filing the claim anytime between the date their herd is classified and February 1 of the year after the testing is conducted. This allows significant flexibility for the animal owner.

It is not anticipated that the animal owner will need any significant professional skills to complete the claim form and become eligible for a grant under this rule.

Dated this 20 day of December, 2000.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION


Clarence J. Sirsky, DVM
Administrator
Division of Animal Health

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

- 1 The state of Wisconsin department of agriculture, trade and consumer protection
- 2 proposes the following order to amend ATCP 10.41(6), and to create ATCP 10.21(10)(c)
- 3 and (15), and 11.62(6)(am) relating to reimbursement of Johne's disease testing costs,
- 4 exhibiting an equine animal at a fair or livestock exhibition, and releasing a quarantine
- 5 following a retest for equine infectious anemia.

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

Statutory Authority: ss. 93.07(1), and 95.197(2), Wis. Stats.
Statute Interpreted: s. 95.197, Wis. Stats.

Johne's disease (paratuberculosis) is a serious disease of cattle. The 1999-2001 biennial budget act (1999 Wis. Act 9) established a grant program to help cattle owners pay for Johne's disease testing. The department of agriculture, trade and consumer protection (DATCP) administers the grant program. This rule establishes standards for the grant program, as required by the biennial budget act.

Background

Under s. 95.195, Stats., and current DATCP rules, a seller warrants that cattle are free of Johne's disease at the time of sale unless the seller discloses to the prospective buyer the current Johne's disease herd classification of the source herd. Every herd of cattle has a Johne's disease herd classification.

A herd is automatically classified "maximum risk for Johne's disease" unless DATCP assigns a different herd classification based on an annual herd test. DATCP may assign one of several herd classifications, based on annual herd test results. An annual herd test is voluntary. A herd owner may arrange and pay for an annual herd test, and may ask the department to classify the herd based on the test results.

Grant Program

The biennial budget act (1999 Wis. Act 9) provided \$100,000 in grant funds FY 2000-01 to help cattle owners pay for annual Johne's disease herd tests. Under this rule, a herd owner who asks the department to classify a herd based on an annual herd test may apply for reimbursement of laboratory costs associated with the annual test. When DATCP classifies the herd, it will tell the herd owner how to apply for reimbursement.

To obtain reimbursement, a herd owner must file a claim by February 1 of the year following the year in which the herd owner tests the herd. The herd owner must submit copies of bills that establish the amount of laboratory costs charged to the herd owner. DATCP will distribute available funds by June 30 (following the February 1 annual application deadline).

DATCP may reimburse all or part of an applicant's allowed claim, depending on available funding. If allowed claims exceed available funding, DATCP will pay each herd owner a pro rata share based on the amount of each herd owner's allowed claim. A herd owner may not resubmit the unpaid portion of a claim in a subsequent year.

Equine Infectious Anemia; Technical Rule Corrections

DATCP recently adopted comprehensive revisions to animal health rules under chs. ATCP 10-12, which took effect on December 1, 2000. At the public hearings on this Johne's disease testing grant rule, there was testimony identifying minor technical errors in those rule revisions. The minor technical errors pertain to equine rules, not Johne's disease rules. This rule corrects those minor technical errors, as follows:

- Under current DATCP rules, an equine animal housed with an EIA positive animal must be quarantined until the quarantined animal tests negative for EIA. Prior to December 1, 2000, DATCP rules provided that the test could not be conducted sooner than 45 days after the quarantined animal was last exposed to the EIA positive animal. Effective December 1, 2000, DATCP repealed the required 45-day time delay but failed to delete one obsolete cross-reference to that time delay. This rule deletes that obsolete cross-reference.
 - Current DATCP rules prohibit a person from exhibiting an equine animal at a fair or livestock exhibition unless the equine animal has tested negative for EIA during the preceding 12 months. Before December 1, 2000, there was an exception for a nursing foal accompanying its dam (if the dam had tested negative for EIA). In the comprehensive overhaul of animal health rules that took effect on December 1, 2000, DATCP inadvertently deleted the exemption for nursing foals. This rule reinstates the exemption.
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1 **SECTION 1.** ATCP 10.21(10)(c) is created to read:

2 ATCP 10.21(10)(c) *Eligibility for reimbursement.* Notice that the herd owner
3 may apply for reimbursement of testing costs, according to sub. (15).

4 **SECTION 2.** ATCP 10.21(15) is created to read:

5 ATCP 10.21(15) REIMBURSEMENT OF ANNUAL HERD TEST COSTS. (a) *Eligibility.*

6 A herd owner who asks the department to classify a herd under sub. (3) based on an
7 annual herd test performed under sub. (5) may apply for reimbursement of laboratory
8 testing costs under sub. (7).

9 (b) *Reimbursement claim.* To apply for reimbursement of annual herd test costs
10 under par. (a), a herd owner shall file a claim with the department by February 1 of the
11 year following the year in which the herd is tested and classified. The herd owner shall
12 apply on a form provided by the department. The herd owner shall submit copies of bills
13 from the veterinarian or laboratory that establish the amount of laboratory test costs that
14 the herd owner incurred.

15 **NOTE:** A copy of the form may be obtained by contacting:
16 Wisconsin Department of Agriculture, Trade and Consumer Protection
17 Division of Animal Health
18 P.O. Box 8911
19 Madison, WI 53708-8911
20 Phone: (608) 224-4872
21

22 (c) *Claims disallowed.* The department may disallow all or part of a claim under
23 par. (b) if the department finds that the herd owner has misrepresented or falsified any
24 part of a claim.

25 (d) *Reimbursement payments.* The department shall reimburse a herd owner's
26 allowed claim by June 30 of the year following the year which the owner's herd was
27 tested and classified. If allowed claims exceed available funding, the department shall

1 pay each herd owner a pro rata share based on the amount of each herd owner's allowed
2 claim. A herd owner may not resubmit the unpaid portion of a claim in a subsequent
3 year.

4 **SECTION 3.** ATCP 10.41(6) is amended to read:

5 ATCP 10.41(6) QUARANTINE RELEASE BASED ON RETEST. If a retest under sub.
6 (4) indicates that the original test may have been a false positive, the department may
7 release the quarantine issued under sub. (1). ~~The release of a quarantine under sub. (1)~~
8 ~~does not prevent the department from issuing a quarantine under sub. (2) for the same~~
9 ~~animal if the 45 day time period under sub. (2) has not yet expired.~~

10 **SECTION 4.** ATCP 11.62(6)(am) is created to read:

11 ATCP 11.62(6)(am) Paragraph (a) does not apply to a nursing foal accompanying
12 its dam if the dam has tested negative for equine infectious anemia according to par. (a).

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

Dated this _____ day of _____, 2001.

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

Ben Brancel
Secretary