99-151 (25) 26

DATE: April 2, 2001

TO: Beatta 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 99–151

AN ORDER to amend ATCP 81.20 (intro.) and (4), 81.22 (1), 81.24 (1) and (3) and 81.30 (2) (chart); to repeal and recreate ATCP 81.20 (6) and Note and 81.21 (2); and to create ATCP 81.215 and 81.25 (1) (e), relating to cheese grading, packaging and labeling.

Submitted by **Department of Agriculture, Trade and Consumer Protection**.
Report received from Agency on **March 22, 2001**.
To committee on **Agriculture**.
Referred on **Monday, April 2, 2001**.
Last day for action – **Wednesday, May 3, 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.

Kalies, Beata

From: Napralla, Erin
Sent: Monday, May 07, 2001 2:02 PM
To: Kalies, Beata
Subject: FW: Sargento Cheese issue

-----Original Message-----

From: **Chalmers, Sandy S DATCP**
Sent: Monday, May 07, 2001 1:55 PM
To: Kestell, Steve; Rep.Ott
Subject: Sargento Cheese issue

Howdy. Terri Wenger is continuing to work with Barbara Gannon on this. According to Terri, Sargento's current labeling already meets the requirements in the rule. But Sargento says they need flexibility to take advantage of future technologies not yet developed.

We also brought John Umhoefer into the loop. Terri worked hand-in-hand with John during the development of the rules, and the WCMA strongly supports the rule as written.

I'll keep you posted. Let me know if you have questions. Sandy

Sandy Chalmers, Director
Office of Outreach and Policy
Wisconsin Department of Agriculture,
Trade and Consumer Protection
VOICE (608)224-5001 FAX (608)224-5034
sandy.chalmers@datcp.state.wi.us

Kalies, Beata

From: Kestell, Steve
Sent: Friday, May 11, 2001 11:16 AM
To: Ott, Alvin

Al,

I have received an email from Barbara Gannon @ Sargento Foods. They have been working with DATCP and John (WCMA) in an effort to reach a compromise solution to the cheese/date labeling rule. Are we OK on time, or is the clock ticking? There is a meeting with WCMA scheduled for 5/16. Please let me know if there are any problems with the committee holding on to the rule for a couple more weeks.

Thanks, Steve

FYI – I called Rep. Kestell's office
+ also emailed Rep. Kestell
about the extension going till end of
May.

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: April 2, 2001

The following Clearinghouse Rule has been referred to the Assembly Agriculture Committee for a 30-day review period.

Clearinghouse Rule 99-151
Relating to cheese grading, packaging and labeling.
Submitted by the Department of Agriculture, Trade & Consumer Protection.

The deadline for action on this rule is **Wednesday, May 3rd, 2001**. A brief summary is enclosed. If you would like a copy of the rule in its entirety or would like additional information, please contact Beata Kalies in my office - 266-5831. Thank you.

Office: P.O. Box 8953 • Madison, WI 53708 • (608) 266-5831 • Toll-Free: (888) 534-0003 • Rep.Ott@legis.state.wi.us
Home: P.O. Box 112 • Forest Junction, WI 54123-0112 • (920) 989-1240

Chairman:
Agriculture Committee

Member:
Conservation & Land Use
Consumer Affairs
Natural Resources
Utilities

Al Ott

State Representative • 3rd Assembly District

May 3. 2001

Secretary Jim Harsdorf
Department of Agriculture, Trade & Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911

Dear Secretary Harsdorf,

By this letter, I am requesting a meeting with the Department regarding the following clearinghouse rule:

CLEARINGHOUSE RULE 99-151, relating to cheese grading, packaging and labeling.

Pursuant to s. 227.19 (4)(b) 1.a., this will extend our review period another 30 days from today's date. The extra time to consider these rules will be very helpful for the Assembly Agriculture Committee Members.

I will contact your office at a later time to schedule this meeting.

Sincerely,

Al Ott, Chair
Assembly Agriculture Committee
State Representative
3rd Assembly District

cc: Keeley Moll, DATCP
Ken Stigler, Chief Clerk's office
Rep. Kestell

AO:BK

Office: P.O. Box 8953 • Madison, WI 53708 • (608) 266-5831 • Toll-Free: (888) 534-0003 • Rep.Ott@legis.state.wi.us
Home: P.O. Box 112 • Forest Junction, WI 54123-0112 • (920) 989-1240

State of Wisconsin
Scott McCallum, Governor

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

DATE: March 20, 2001

TO: The Honorable Fred A. Risser
President, Wisconsin State Senate
220 South, State Capitol
P. O. Box 7882
Madison, WI 53707-7882

The Honorable Scott Jensen
Speaker, Wisconsin State Assembly
211 West, State Capitol
P. O. Box 8952
Madison, WI 53708-8952

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

SUBJECT: **Proposed Rule Relating to Cheese Grading, Packaging and Labeling (Clearinghouse Rule No. 99-151)**

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 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, as required by s. 227.19(2), Stats.

Background

Current department rules under ch. ATCP 81, Wis. Adm. Code, regulate cheese grading, packaging and labeling. These rules prevent fraud and deception, and help wholesale and retail purchasers make informed value comparisons and purchase decisions. Grade standards set benchmarks for cheese quality.

A DATCP Food Safety Task Force looked at ways to reduce costs and increase efficiency in the department's food safety programs. A subcommittee made recommendations to enhance the dairy product grading program. This rule incorporates subcommittee recommendations, and makes other changes to current grading rules.

Rule Contents

Wisconsin Cheese; Manufacturer's Label

Under current rules, a cheese manufacturer must label all bulk cheese with the name of the cheese, state identification, dairy plant identification, vat identification and date of manufacture. The labeling must remain on the bulk cheese until the cheese is used in the manufacture or processing of another food, or until the cheese is relabeled by a buyer who cuts and repackages the bulk cheese into consumer size packages.

This rule permits a cheese manufacturer to use bar codes or other electronic labeling methods to display label information while the cheese remains in the manufacturer's custody. However, conventional labeling (not just electronic code labeling) must appear on all bulk cheese that leaves the manufacturer's custody and control. If a cheese manufacturer uses electronic code labeling, the manufacturer must provide a scanner or other device that enables a department employee or agent to decode the information into a readable format at the place where the manufacturer keeps the cheese.

Under current rules, a bulk cheese label must disclose the month, date and year of manufacture. Under this rule, the labeler may abbreviate the date of manufacture using an alphanumeric or all numeric format. The abbreviation must clearly identify the month, date and year, or a Julian calendar date consisting of a 2-digit designation for the year of manufacture followed by a 3-digit Julian date. A Julian calendar date is the numerical designation for a specified day of the year using consecutive numbers between "001" for January 1 and "365" for December 31.

Cheese from other States or Countries; Wisconsin Grade Labeling Prohibited

Under current rules, cheese from other states or countries may be identified with a Wisconsin grade mark or grade label if it is graded by a Wisconsin licensed cheese grader and labeled to identify the state or country of origin. This rule prohibits the use of Wisconsin grade labeling on cheese originating from other states or countries, even if that cheese is graded by a Wisconsin licensed grader.

Age Labeling of Cheese

Under current rules, if a manufacturer labels cheese as "aged" or "cured," the manufacturer's label must also disclose the minimum length of time that the cheese has been aged or cured. This rule applies the same requirement to any cheese (including retail cheese packages) labeled "aged" or "cured," regardless of who labeled that cheese.

Grade Labeling Retail Cheese Packages

Under current rules, the department may authorize a licensed food processing plant or retail food establishment to grade label retail packages of cheese. This rule clarifies that a licensed *dairy plant* may also cut, wrap and grade label cheese for retail distribution. A Wisconsin licensed

cheese grader must grade the cheese, and the grade labeling must comply with applicable department rules.

Swiss Cheese

This rule eliminates current weight and size requirements for rindless blocks of Swiss cheese. This change will give Wisconsin manufacturers greater flexibility to meet customers' demands.

Recordkeeping

Under current rules, a licensed cheese grader must keep records showing the name of each person for whom cheese is graded, the quantity graded, the grading date, and the grade of each graded lot. This rule also requires the grader to keep records of the name of the cheese, the state and dairy plant identification of the manufacturer, date of manufacture and vat identification for each lot of cheese.

Hearing Comments

The Department held a public hearing from three (3) locations on December 9, 1999. The hearing was conducted in Madison with video conference links to Green Bay and Eau Claire. The hearing record was held open until January 14, 2000 for additional written comments.

The Department received oral or written testimony from the Wisconsin Cheese Makers Association, the Wisconsin Dairy Products Association, the Wisconsin Federation of Cooperatives, Wisconsin Cheeseman, Green Bay Cheese Company, Associated Milk Producers Inc., Oshkosh Cold Storage, and Wisconsin Cheese Group Inc. Hearing participants expressed overall support for the proposed rule, but suggested some modifications. A hearing summary and list of participants is attached as *Appendix A.*

Changes from Hearing Draft

The final draft modified the hearing draft requirement for age labeling of cheese. The labeling requirement applies to any manufacturer or repackager who labels bulk cheese or retail packages of cheese as "aged" or "cured." If the label of any bulk cheese or retail package of cheese states that the cheese is "aged" or "cured," the label must state the minimum length of time in days, months or years that the cheese has been aged or cured since it was manufactured.

The final draft deleted the hearing draft requirement for cheese graders to keep records of fat and moisture content of all cheese which they grade. In its place, the final rule requires licensed graders to keep records showing the name of the cheese, identification of the state and dairy plant where the cheese was manufactured, the date of manufacture and the vat identification of each graded lot. The required manufacturing information will enable traceback in dairy plant records to ascertain fat and moisture content for each lot of cheese if the fat or moisture content is measured.

Response to Rules Clearinghouse Comments

The Legislative Council Rules Clearinghouse suggested two minor changes in the hearing draft rule and additional explanations in the analysis to the rule. DATCP has incorporated all of these changes in the final draft rule.

Fiscal Estimate

Electronic code labeling of bulk cheese may cause a small reduction in inspection efficiency, and a small increase in inspection costs. The amount of the increased costs will depend on the number of manufacturers who adopt electronic coding. The department currently estimates that it can absorb the increased costs without increasing inspection fees.

The other rule changes will not have any fiscal impact on DATCP or local units of government. A fiscal estimate is attached as *Appendix B*.

Small Business Analysis

This rule will not have a major impact on small business. It will not require additional knowledge or professional skills. Additional reporting or recordkeeping will be minimal. This rule modifies and updates ch. ATCP 81 to accommodate changes in cheese technology and customer expectations. The rule changes allow Wisconsin's dairy industry to remain competitive on a nationwide basis and provide benefits to businesses of all sizes. A small business analysis ("final regulatory flexibility analysis") is attached as *Appendix C*.

Proposed Final Draft
April 3, 2000

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 repeal ATCP 81.20(6); to amend 81.20(intro.) and (4), 81.22(1), 81.24(1) and
3 (3), and 81.30(2)(chart); to repeal and recreate 81.20 (note) and 81.21(2); and to create 81.215
4 and 81.25(1)(e); relating to cheese grading, packaging and labeling.

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

Statutory Authority: ss. 93.07(1), 97.09(4) and 97.177(4), Stats.

Statutes Interpreted: s. 97.177, Stats.

The department of agriculture, trade and consumer protection (DATCP) regulates the grading, packaging and labeling of cheese in this state. This rule modifies current rules related to cheese grading, packaging and labeling. The current rules are contained in ch. ATCP 81, Wis. Adm. Code.

Wisconsin Cheese; Manufacturer's Label

Under current rules, a cheese manufacturer must label all bulk cheese with the name of the cheese, state identification, dairy plant identification, vat identification and date of manufacture. The labeling must remain on the bulk cheese until the cheese is used in the manufacture or processing of another food, or until the cheese is relabeled by a buyer who cuts and repackages the bulk cheese into consumer size packages.

This rule permits a cheese manufacturer to use electronic code labeling to display any or all of the required bulk cheese label information. Conventional labeling (not just electronic code labeling) must appear on all bulk cheese that leaves the manufacturer's custody and control. If a cheese manufacturer uses electronic code labeling, the manufacturer must provide a scanner or other device that enables a DATCP employee or agent to decode the information into a readable format at the place where the manufacturer keeps the cheese.

Under current rules, the bulk cheese label must disclose the month, date and year of manufacture. Under this rule, the labeler may abbreviate the date of manufacture using an alphanumeric or all numeric format. The abbreviation shall clearly identify the month, date and year, or a Julian calendar date consisting of a 2-digit designation for the year of manufacture followed by a 3-digit Julian date. A Julian calendar date is the numerical designation for a specified day of the year using consecutive numbers between "001" for January 1 and "365" for December 31.

Cheese from other States or Countries; Wisconsin Grade Labeling Prohibited

Under current rules, cheese from other states or countries may be identified with a Wisconsin grade mark or grade label if it is graded by a Wisconsin licensed cheese grader and labeled to identify the state or country of origin. This rule prohibits the use of Wisconsin grade labeling on cheese originating from other states or countries, even if that cheese is graded by a Wisconsin licensed grader. The prohibition eliminates the likelihood of confusion or misunderstanding by buyers and consumers as to the origin of the cheese, since Wisconsin graded cheese is stamped with a Wisconsin grade stamp that includes an outline of the state's borders.

Age Labeling of Cheese

Under current rules, if a manufacturer labels cheese as "aged" or "cured," the manufacturer's label must also disclose the minimum length of time that the cheese has been aged or cured. This rule applies the same requirement to any cheese (including retail cheese packages) labeled "aged" or "cured," regardless of who labeled that cheese.

Grade Labeling of Certain Wisconsin Manufactured Cheese

This rule clarifies that Wisconsin manufactured cheese must be graded and labeled only if there is a Wisconsin grade standard for that particular cheese variety. There are no Wisconsin grade standards for some cheeses such as Blue cheese, Parmesan, Gorgonzola, Mozzarella and pasteurized process cheeses.

Grade Labeling Retail Cheese Packages

Under current rules, DATCP may authorize a licensed food processing plant or retail food establishment to grade label retail packages of cheese. This rule clarifies that a licensed dairy plant may also cut, wrap and grade label cheese for retail distribution. A Wisconsin licensed cheese grader must grade the cheese, and the grade labeling must comply according to applicable DATCP rules.

Swiss Cheese

This rule eliminates current weight and size requirements for rindless blocks of Swiss cheese. This change will give Wisconsin manufacturers greater flexibility to meet customers' demands. DATCP's Food Safety Task Force recommended this change.

Recordkeeping

Under current rules, a licensed cheese grader must keep records showing the name of each person for whom cheese is graded, the quantity graded, the grading date, and the grade of each graded lot. This rule also requires the grader to keep records showing the name of the cheese, identification of the state and dairy plant where the cheese was manufactured, the date of manufacture and the vat identification of each graded lot. The required manufacturing information will allow graders to check fat and moisture content for each lot of cheese if the fat or moisture content is measured.

SECTION 1. ATCP 81.20(intro.) and (4) are amended to read:

ATCP 81.20 (intro.) All cheese manufactured in this state shall be labeled at the dairy plant or cheese factory with all of the items listed under subs. (1) to (5). The labeling ~~of bulk cheese~~ shall remain on the cheese until the cheese is used in the manufacture or processing of another food, or until it is relabeled by a buyer who cuts and repackages the bulk unit into consumer size packages. A manufacturer may not use electronic code labeling as the sole means to display labeling required under this section, except when the cheese is under the manufacturer's custody and control. If a manufacturer uses electronic code labeling, the manufacturer shall provide a scanner or other device that enables a department employe or agent to decode the information into a readable format at the place where the manufacturer keeps the cheese.

(4) DATE OF MANUFACTURE. The month, date and year of manufacture for the cheese. The date of manufacture may be abbreviated using an alphanumeric or all numeric format. The abbreviation shall clearly identify the month, date and year, or a Julian calendar date consisting of a 2 digit designation for the year of manufacture followed by a 3 digit Julian date.

SECTION 2. ATCP 81.20(6) is repealed.

SECTION 3. ATCP 81.20 (note) is repealed and recreated to read:

NOTE: A manufacturer's label will substantially comply with this subsection if it uses one of the following alternative formats for each label requirement under subs. (1) to (5):

TYPE OF CHEESE WISCONSIN 1402 VAT A DEC 9 90	TYPE OF CHEESE WISCONSIN 1402 VAT A 12-9-90	TYPE OF CHEESE 55-1402 VAT A 12-9-90	TYPE OF CHEESE 55-1402 VAT A 90/343

SECTION 4. ATCP 81.21 (2) is repealed and recreated to read:

ATCP 81.21 (2) WISCONSIN GRADE LABELING PROHIBITED. No person may use any Wisconsin grade mark or Wisconsin grade label designation on cheese manufactured in another state or country.

SECTION 5. ATCP 81.215 is created to read:

ATCP 81.215 Age labeling of cheese. If the label on any bulk cheese or retail package of cheese states that the cheese is "aged" or "cured," the label shall state the minimum length of time in days, months or years that the cheese has been aged or cured since it was manufactured.

SECTION 6. ATCP 81.22(1) is amended to read:

ATCP 81.22(1) GRADES. ~~All cheese~~ Cheese manufactured and sold in this state shall be graded or identified in one of the following categories, according to the grade standards applicable to the particular cheese variety in ~~subch.~~ subchs. IV to VII, if there is a Wisconsin grade standard for that variety in subchs. IV to VII:

SECTION 7. ATCP 81.24(1) and (3) are amended to read:

ATCP 81.24(1) GENERAL. A retail food establishment licensed under s. 97.30, Stats., or a food processing plant licensed under s. 97.29 Stats., may obtain a cheese grade labeling permit from the department. A permit holder may affix a cheese grade label to retail packages of graded cheese purchased in bulk by the permit holder if the bulk lot has been graded as Wisconsin Certified Premium Grade AA, Wisconsin Grade A or Wisconsin State Brand and the cheese is cut, packaged and labeled for retail distribution. No retail food establishment may grade label retail packages of cheese without a permit from the department. Retail grade labeling shall comply with this section. A dairy plant licensed under s. 97.20, Stats., may cut, wrap and grade label cheese for retail distribution if the cheese is graded by a cheese grader licensed under s. 97.175, Stats., and the retail packages are grade labeled as required under s. ATCP 81.22.

(3) RETAIL PACKAGE GRADE LABELING. The department shall issue a permit identification number to each grade labeling permit holder under sub. (1). The identification number shall consist of the letter prefix "P", followed by a three-digit identification number. When affixing a grade label to retail packages of graded cheese under this section, the permit holder shall print

the specified grade and the permit holder's identification number within a miniature outline map of the boundaries of the state of Wisconsin. The type shall be designed and spaced so as to be legible and present a symmetrical appearance. ~~Cheese manufactured in a state other than Wisconsin or in a foreign country, and grade labeled under sub. (1) shall identify the state or country of origin on the retail package label in a type size not smaller than the type size required for the net weight statement.~~

SECTION 8. ATCP 81.25(1)(e) is created to read:

ATCP 81.25(1)(e) The information required under ATCP 81.20(1) to (5).

SECTION 9. ATCP 81.30(2)(chart) is amended to read:

ATCP 81.30(2)(chart)

Style	Weight in Pounds	Diameter in Inches	Height in Inches	Length in Inches	Width in Inches
(1) Cheddar	70 to 78	14½	12 to 12¼		
(2) Flat	32 to 37	14½	6⅛ to 6¼		
(3) Daisy	21 to 24	14	4 to 4¼		
(4) Longhorn	12½ to 13¾	6	12 to 12½		
(5) Midget	11 to 12½	9¾	4¼ to 4⅜		
(6) 20-lb. Block	20¼ to 22		3⅛ to 3⅝	14 to 14¼	11 to 11¼
(7) 40-lb. Block	41 to 44		6⅞ to 7¾	14 to 14¼	11 to 11¼
(8) 60-lb. Block	61 to65		10⅜ to 10⅝	14 to 14¼	11 to 11¼
(9) 640-lb. Block	640 (min.)				
(10) Barrel; 55 gal.					
(a) Metal	480 (min.)	22½	33½		
(b) Fiber	480 (min.)	23½	33 to 34		
~~(11) Swiss Cheese Rindless Blocks~~					
~~(a) Single~~	~~95 to 98~~		~~7 to 8½~~	~~25 to 26½~~	~~15 to 15¾~~
~~(b) Double~~	~~190 to 196~~		~~7 to 8½~~	~~25 to 26½~~	~~30 to 31½~~

SECTION 10. ATCP 81.70(4)(b) is amended to read:

ATCP 81.70(4)(b) *Rindless Swiss cheese.* A rindless block of grade A Swiss cheese ~~shall be not less than 6 ½ inches nor more than 8 ½ inches in height. The cheese block~~ shall be reasonably uniform in size and well shaped. The wrapper or covering shall adequately and securely envelop the cheese. The wrapper or covering may be slightly wrinkled, but shall be neat, unbroken and fully protect the surface of the cheese. The surface of the cheese may contain a very slight amount of mold, but no mold shall have penetrated the interior of the cheese. Finish and appearance standards are shown in the grade A column of Table 16 under par. (a).

SECTION 11. ATCP 81.71(4)(b) is amended to read:

ATCP 81.71(4)(b) *Rindless Swiss cheese.* ~~A rindless block of Swiss cheese shall be not less than 6 ½ inches nor more than 8 ½ inches in height.~~ The wrapper or covering for a rindless block of Swiss cheese shall adequately and securely envelop the cheese. The wrapper or covering may be slightly wrinkled, but it shall be neat and unbroken and shall fully protect the surface of the cheese. The surface of the cheese may contain a slight amount of mold but no mold shall penetrate the interior of the cheese. The cheese may contain various undesirable finish and appearance characteristics to a slight degree for the applicable trait. Finish and appearance standards are shown in the grade B column of Table 16 under s. ATCP 81.70 (4) (a).

SECTION 12. Effective date. The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided under s. 227.22(2) (intro.), Stats.

Dated this _____ day of _____, 2001.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary

APPENDIX A

SUMMARY OF PUBLIC HEARING TESTIMONY
PROPOSED AMMENDMENTS TO ATCP 81

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) held public hearings at 3 locations on December 9, 1999. The hearing was conducted in Madison with video conference links to Green Bay and Eau Claire.

A total of 18 people attended the hearings, of which 8 provided oral testimony and filled out an accompanying appearance card. Nine additional attendees completed cards to register their opinion of the proposed changes. Most people registering "neither" or "other" attended the hearings for informational purposes only. Three people who did not attend the hearings submitted written comments.

Testified and Submitted Written Comments in Support of the Proposal with Some Modification

John T. Umhoefer, Executive Director, Wisconsin Cheese Makers Association: WCMA supported the proposed use of bar codes or electronic code dating for bulk cheese if limited to cheese under the custody and control of the manufacturer. WCMA also supported proposals for greater flexibility in the labeling of the date of manufacture, prohibition of Wisconsin grade labeling on cheese manufactured in another state or country, age and grade labeling of retail packages of cheese, and elimination of weight and size requirements for rindless blocks of Swiss cheese. WCMA did not support the proposal that requires licensed graders to keep records of the fat and moisture content of graded cheese. WCMA also wanted the department to eliminate current rules related to age labeling of bulk cheese and to expand the size range for eyes in Grade A Swiss cheese.

Brad Legreid, Executive Director, Wisconsin Dairy Products Association: The majority of the proposed changes were acceptable to WDPA. The association supported the prohibition of Wisconsin grade labeling of cheese from another state or country. WDPA apparently misunderstood the department's proposal for age labeling of cheese and expressed opposition to mandated minimum periods of time to achieve "aged" or "cured" cheese. (Note: this was not addressed in the hearing draft proposal.) WDPA requested that DATCP conduct rulemaking to expand the eye size range of grade A Swiss cheese, and also commented in opposition to the United States Department of Agriculture's proposed specifications for Muenster cheese.

Kenneth E. Neumeier, Oshkosh Cold Storage: Agreed with comments of WCMA. In addition, provided testimony that customers become accustomed to the flavor labeling (sharp, etc.) that individual businesses use to describe their cheese. Also commented that the proposed rule's language regarding barcoding was confusing.

Donald D. Weideman, Associated Milk Producers Inc.: Registered in support of proposal and offered additional comments. Expressed support for future rule changes for Swiss cheese related to range of acceptable eye size that would assist in production of a more consistent package and weight of cheese in the package. Also agreed that labeling of "aged" or "cured" are in reference to time factors, while labeling of "sharp" and "extra sharp" are in reference to the flavor profile.

Submitted Written Comments in Support of the Proposal with Some Modification

John Manske, Director of Government Relations, Wisconsin Federation of Cooperatives: WFC generally supported the proposed changes. However, the membership opposed the proposal that requires licensed graders to keep records of the fat and moisture content of graded cheese. WFC also supported future rulemaking to revise the range of eye size suitable for Grade A Swiss cheese.

Ken Brice, Procurement Manager, Marathon Cheese Corporation: Submitted comments in support of the proposal to give the manufacturer more flexibility with block sizes and weights of Swiss cheese. Also supported future rulemaking to allow smaller eyes in the Grade A Swiss cheese standard.

Registered Neither For Nor Against, but Offered Testimony on a Portion of the Proposal

Tom Honse, Associated Milk Producers Inc.: Expressed concern regarding the volume of additional records of fat and moisture content to be maintained by licensed graders. Suggested dairy plant records or laboratory records should suffice to meet the information needs of DATCP.

William Schlinsog: Did not see any reason why age labeling would need to appear on bulk cheese since the date of manufacture is already required on the manufacturer's label of bulk cheese.

Nick Voss, The Wisconsin Cheeseman: Expressed desire to pre-package cheese at a younger age than what the label states as long as the manufacturer maintains ownership of the cheese. Cheese must meet stated age at time of shipment.

Jon Krein, Green Bay Cheese Company: Would support a proposal to allow cutting and packaging cheese at a younger age than what the label states, and then holding the packaged cheese until later shipment. This would facilitate pre-cutting orders by his company.

Submitted Written Comments in Opposition to the Proposal

Thomas J. Dalmuge, Quality Assurance Manager, Wisconsin Cheese Group Inc.: Wisconsin Cheese Group commented in opposition to the proposed requirements for retail packages of cheese which indicate they are "aged" or "cured" to state the minimum length of time that the cheese was aged or cured on the label. Instead, Wisconsin Cheese Group favors guaranteed minimum age requirements for medium aged, aged, and extra aged cheese.

Registered in Support of the Proposal (No Testimony)

Joan Zacharius, Crystal Farms
William Novak II, Great Lakes Cheese
Polly Koepp, Associated Milk Producers Inc.

Registered Neither For Nor Against, or "Other" (No Testimony)

Robert Aschebrock
Al Bowers
Jim Kleva, Associated Milk Producers Inc.
Mary Thompson, Wisconsin Center for Dairy Research

APPENDIX B

FISCAL ESTIMATE

DOA-2048 N(R 10/98)

☒ ORIGINAL ☐ UPDATED
☐ CORRECTED ☐ SUPPLEMENTAL

1999 Session

List both LRB No. and Bill/Adm. Rule No.
ATCP 81

Amendment No. (If Applicable)

Subject
Cheese Grading, Packaging and Labeling

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
☐ GPR ☐ FED ☒ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Ch. 20 Appropriations
20.115(1) (gb)

Assumptions Used in Arriving at Fiscal Estimate

Rules relating to cheese grading, packaging and labeling are contained in Chapter ATCP 81, Wis. Adm. Code. These rules prevent fraud and deception, and assist wholesale and retail purchasers of cheese in making informed value comparisons and purchase decisions. Grade standards contained in the rules set the benchmarks for determining cheese quality.

Under current rules, all bulk cheese manufactured in Wisconsin must be labeled at the dairy plant or cheese factory with the name of the cheese, state identification, dairy plant identification, vat identification, and date of manufacture for the cheese. This rule amends ch. ATCP 81 to permit an electronic code labeling method for these items on the manufacturer's label for bulk cheese if a scanner or other appropriate device is provided where the cheese is located that enables an employe or agent of the department to decode the information into a readable format. The use of electronic code labeling as the exclusive format for any required label information will be limited to cheese while it remains under the custody and control of the manufacturer. However, we are unable to project how widely this method will be used. We anticipate that some additional time will be needed during inspections or investigations to convert the coded information into a readable format for product identification. Currently, we believe that the increased time and costs will be able to be absorbed by the department.

Under this rule, Wisconsin grade labeling is prohibited on cheese manufactured in other states or foreign countries. Requirements related to age labeling will apply to any cheese label on which a claim is made. Weight and size requirements for Swiss cheese rindless blocks will be eliminated. These and other minor technical changes are not anticipated to have any long-range fiscal effect on the department.

A one-time cost of approximately $5700 will be incurred by the department for permanent rule development.

Long - Range Fiscal Implications

A small decrease in efficiency and increase in costs for department activities are anticipated with the use of electronic code labeling of bulk cheese. However, we believe the increase in costs will be able to be absorbed by the department if the use of electronic code labeling is limited in scope to bulk cheese while it remains under the custody and control of the manufacturer.

Agency/prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
DATCP Terri L. Wenger (608) 224-4714	Barbara Knapp Barbara Knapp (608) 224-4746	9/13/99

FISCAL ESTIMATE WORKSHEET

1999 SESSION

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

☒ ORIGINAL ☐ UPDATED
☐ CORRECTED ☐ SUPPLEMENTAL

LRB or Bill No/Adm.Rule No.	Amendment No.
ATCP 81	

Subject
Cheese Grading, Packaging and Labeling

I. One-time Cost or Revenue Impacts for State and/or Local Goverment (do not include in annualized fiscal effect):
Total one-time cost = $5700

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

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	$ _____	$ _____
NET CHANGE IN REVENUES	$ _____	$ _____

Agency Prepared by: (Name & Phone No.)	Authorized Signature/Telephone No.	Date
DATCP Terri L. Wenger (608) 224-4714	Barbara Knapp Barbara Knapp (608) 224-4746	9/13/99

APPENDIX C

Final Regulatory Flexibility Analysis

Proposed ch. ATCP 81, Wis. Adm. Code

CHEESE GRADING, PACKAGING AND LABELING

This proposed rule modifies current rules under ch. ATCP 81, Wis. Adm. Code, related to cheese grading, packaging and labeling.

Under this rule, cheese manufacturers will be permitted to use electronic code labeling as an alternative method to list any or all of the items of information required on the manufacturer's label for bulk cheese, as long as the cheese remains under the control and custody of the manufacturer. The decision to label bulk cheese in this manner will be fully voluntary. Coding methods will not be standardized under one uniform system from company to company. Therefore, the manufacturer must provide a scanner or other appropriate device where the cheese is located that enables an employe or agent of the department to decode the information into a readable format. If the cheese is stored in public warehouse facilities, the warehouse may need to make adjustments in its recordkeeping and warehousing operations.

Bulk cheese must be labeled by the manufacturer with a standard, uncoded label format if the cheese will be sold in bulk form at a later date. Bulk cheese is often sold to other cheese packaging plants, manufacturers of processed or cold pack cheese, retail stores, and restaurants that have a need for product label information in a readily understandable format. Standard formats may also be necessary for interstate shipments to comply with labeling laws in other states.

In this rule, Wisconsin grade labeling is prohibited on cheese manufactured in other states or foreign countries. Protection of the "added value" attributable to Wisconsin grade labels for Wisconsin-made cheese will be expected to enhance the marketshare of our state's dairy industry.

Under the rule, licensed cheese graders must maintain and make their grading records available for inspection. Recordkeeping requirements will now include the name of the cheese, identification of the state and dairy plant where the cheese was manufactured, the date of manufacture and the vat identification of each grade lot. Many graders already record and keep this information on a voluntary basis. The required manufacturing information will enable traceback in dairy plant records to ascertain fat and moisture content for each lot of cheese if the fat or moisture content is measured. This requirement has the potential to decrease the need for official sampling when monitoring compliance with standards of identity and the need to place a product under temporary holding order. It will also enable the department to confirm that out-of-state cheese is not grade-labeled with a Wisconsin grade mark

At the request of industry, this rule eliminates the weight and size requirements for Swiss cheese rindless blocks to provide greater flexibility for our manufacturers to meet the demand of their customers. Other rule changes are minor and technical in nature and are not expected to require

any additional reporting or recordkeeping, knowledge or professional skills, nor increase costs to small businesses.

Dated this 5th day of April, 2000.

State of Wisconsin
Department of Agriculture,
Trade and Consumer Protection

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

Clearinghouse No. 99-151
Docket No. 99-R-4

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 99-151 to the presiding officer of each house of the legislature for standing committee review. The proposed rule adopts Chapter ATCP 81 relating to cheese grading, packaging and labeling.

Dated this 22nd day of March, 2001.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By James E. Harsdorf
James E. Harsdorf
Secretary