

Final Draft  
January 7, 1999

**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 81.50 (2), 81.51 (2), and 81.52 (2), relating to grade standards  
3 for colby and monterey (jack) cheese.

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

Statutory Authority: ss. 97.09 (1) and 97.177 (1), (2) and (4) , Stats.

Statutes Interpreted: ss. 97.09 and 97.177, Stats.

This proposed rule modifies current rules under ch. ATCP 81, Wis. Adm. Code, related to grade standards for body and texture characteristics of colby and monterey (jack) cheese.

The current standards require the presence of mechanical openings or an "open" body in order for the cheese to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

This proposed rule repeals current grade standards that require mechanical openings in colby and monterey (jack) cheese. Under the proposed rule, the cheese may have either mechanical openings or a closed body.

When mechanical openings are present, their size and distribution are two of many factors which determine the specific grade category assigned to the cheese. Wisconsin certified premium grade AA requires that mechanical openings be "evenly distributed" and "small." Wisconsin grade A (Wisconsin state brand) requires that mechanical openings be "evenly distributed," without the added emphasis on "small." Wisconsin grade B has no requirement for mechanical openings to be "evenly distributed."

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4 **SECTION 1.** ATCP 81.50 (2) is amended to read:

5 ATCP 81.50 (2) BODY AND TEXTURE CHARACTERISTICS. Wisconsin certified premium  
6 grade AA colby and monterey (jack) cheese shall be reasonably firm ~~and shall have~~.

1 ~~numerous small mechanical openings evenly distributed throughout the cheese.~~ The cheese may  
2 have evenly distributed small mechanical openings or a closed body. The cheese may not  
3 contain any sweet holes, yeast holes, or other gas holes. The cheese may be definitely curdy or  
4 partially broken down if it is more than 3 weeks old. Body and texture standards are shown in  
5 the grade AA column of Table 6.

6 **SECTION 2.** ATCP 81.51 (2) is amended to read:

7 ATCP 81.51 (2) BODY AND TEXTURE CHARACTERISTICS. Wisconsin grade A and  
8 Wisconsin state brand colby and monterey (jack) cheese shall be reasonably firm. ~~The cheese~~  
9 ~~shall have numerous~~ The cheese may have evenly distributed mechanical openings or a closed  
10 body. When present, mechanical openings but they may not be large or connected to other  
11 openings. The cheese shall be free from sweet holes, yeast holes, or other gas holes. The cheese  
12 shall be definitely curdy or partially broken down if it is more than 3 weeks old. Body and  
13 texture standards are shown in the grade A column of Table 6 under s. ATCP 81.50 (2).

14 **SECTION 3.** ATCP 81.52 (2) is amended to read:

15 ATCP 81.52 (2) BODY AND TEXTURE CHARACTERISTICS. Wisconsin grade B colby and  
16 monterey (jack) cheese may be loosely knit and open. The cheese may have mechanical  
17 openings or a closed body. There may be a limited amount of sweet holes, scattered yeast holes  
18 and other scattered gas holes, but pinny gas holes are not permitted. Body and texture standards  
19 are shown in the grade B column of Table 6 under s. ATCP 81.50 (2).

20 **SECTION 4. EFFECTIVE DATE.** The rules contained in this order shall take effect  
21 on the first day of the month following publication in the Wisconsin administrative register, as  
22 provided under s. 227.22(2)(intro.), Stats.

Dated this \_\_\_\_\_ day 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: March 3, 1999

TO: The Honorable Fred Risser  
President, Wisconsin State Senate  
Rm. 220S, State Capitol  
PO Box 7882  
Madison, WI 53707-7882

The Honorable Scott Jensen  
Speaker, Wisconsin State Assembly  
Rm. 211W, State Capitol  
PO Box 8952  
Madison, WI 53708-8952

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

*Joseph Menzies for Ben Brancel*

SUBJECT: **Proposed Rule Relating to Grade Standards for Colby and Monterey (Jack) Cheese (Clearinghouse Rule No. 98-182)**

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

**1. BACKGROUND AND EXPLANATION OF NEED FOR RULE**

This rule would implement on a permanent basis the revised grade standards which the department established by emergency rule on August 8, 1998. Both the emergency rule and the proposed permanent rule eliminate provisions requiring mechanical openings in colby and monterey (jack) cheese.

DATCP has adopted standards for grades of cheese manufactured and sold in Wisconsin. Any cheese which carries a state grade mark must conform to the standards and characteristics of the labeled grade.

Under current DATCP rules, colby and monterey (jack) cheese must have numerous mechanical openings in order to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

Changes in cheese manufacturing technology, packaging and equipment have made it extremely difficult for many processors and packagers to achieve the numerous mechanical openings or open body character required by these top two grade categories. In addition, a majority of today's wholesale buyers and packagers prefer a closed body cheese for a variety of reasons, including ease of shredding and the ability to package "exact-weight" pieces with minimal variation and waste.

Wisconsin is the only state with its own grade standards for colby and monterey (jack) cheese. The United States Department of Agriculture modified its grade standards for colby and monterey jack cheese in 1995 and 1996, respectively, in response to industry requests to allow an open or closed body.

Under current DATCP rules, a closed body cheese cannot be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand), nor command the premium price associated with these top two grade categories. Buyers who cannot obtain the desired graded product in Wisconsin are likely to switch to suppliers from other states.

Wisconsin's dairy industry plays a major role in our state's economy. Approximately \$3 billion or 90% of Wisconsin's milk production goes into the manufacture of cheese. Lost business revenues harm the dairy industry, cause increased unemployment, and have a negative impact on the state's economy.

## **2. SUMMARY OF RULE PROVISIONS; CHANGES TO THE GRADE STANDARDS FOR BODY AND TEXTURE CHARACTERISTICS**

This rule eliminates current provisions that require mechanical openings in colby and monterey (jack) cheese. Under this rule, colby and monterey (jack) cheese may have either mechanical openings or a closed body.

When mechanical openings are present, their size and distribution are two of many factors which determine the specific grade category assigned to the cheese. Under this rule, Wisconsin certified premium grade AA requires that mechanical openings be "evenly distributed" and "small." Wisconsin grade A (Wisconsin state brand) requires that mechanical openings be "evenly distributed," without the added emphasis on "small." Wisconsin grade B has no requirement for mechanical openings to be "evenly distributed."

## **3. SUMMARY OF PUBLIC HEARING TESTIMONY**

On November 10, 1998, the DATCP Board authorized public hearings on this rule. Public hearings were held on December 11, 1998 in Appleton and December 16, 1998 in Dodgeville. The hearing record remained open until December 18, 1998 for additional written comments.

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The Honorable Scott Jensen  
March 3, 1999  
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The Wisconsin Dairy Products Association, Wisconsin Cheese Makers Association, Wisconsin Federation of Cooperatives, Alto Dairy Cooperative, Great Lakes Cheese of Wisconsin, and Marathon Cheese Corporation commented in support. Their testimony indicated the following:

- Many processors find it difficult to achieve the desired number of mechanical openings with modern processing equipment to meet current Wisconsin grade standards.
- A majority of wholesale buyers and packagers prefer a closed body style of cheese for slicing, shredding, and cutting exact weight pieces with minimal breakage and waste.
- The rule change will align Wisconsin grade standards with USDA's grade standards.
- The rule change will allow Wisconsin manufacturers the flexibility to produce top-graded cheese with either an open or closed body to meet the demands of their particular customers.
- The rule change will allow the Wisconsin cheese industry to remain competitive with other states, maintain its market share, and preserve a healthy dairy/state economy.

A summary of the hearing testimony with a list of persons attending, testifying or submitting written comments for the hearing record is attached as APPENDIX A.

#### **4. RULE MODIFICATIONS AFTER PUBLIC HEARING**

No changes were made in the final draft rule in response to the hearing comments. The DATCP Board approved the final draft rule on January 21, 1999.

#### **5. RESPONSE TO RULES CLEARINGHOUSE COMMENTS**

The department made minor editorial changes in response to comments from the Legislative Council Rules Clearinghouse.

The hearing draft rule permitted colby and monterey (jack) cheeses graded AA, A, or B to have either mechanical openings or a closed body, "depending on the method of manufacture." In response to a question from the Rules Clearinghouse, the phrase "depending on the method of manufacture" was determined to be unnecessary for the application of these grade standards and this phrase was subsequently removed from the final draft rule.

The Rules Clearinghouse also suggested that the agency define or describe the term "closed body" if the meaning of this term was not generally understood by the industry. The department confirmed that this term is indeed well understood by the cheese industry and chose not to further define it.

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A minor technical change suggested by the Rules Clearinghouse related to placement in the administrative code was also incorporated in the final draft rule.

**6. FISCAL ESTIMATE**

The department will incur a one-time cost of approximately \$3120 for permanent rule development. This rule will have no long-range fiscal impact on the department, nor will there be any cost to local governments. A complete fiscal estimate on the proposed rule is attached as **APPENDIX B.**

**7. REGULATORY FLEXIBILITY ANALYSIS**

No comments were received during the public comment period on the draft regulatory flexibility analysis. This rule will not impose any direct costs on small businesses. It will not require any additional reporting or recordkeeping, additional knowledge, or professional skills. Although the net effect of market forces is uncertain, the department believes there will be no significant effect on small cheese factories and packaging operations. A final regulatory flexibility analysis (small business analysis) is attached as **APPENDIX C.**

## APPENDIX A

### SUMMARY OF HEARING TESTIMONY

#### AMENDMENTS TO CHAPTER ATCP 81 GRADE STANDARDS FOR COLBY AND MONTEREY (JACK) CHEESE

Public hearings were held on December 11, 1998 in Appleton and December 16, 1998 in Dodgeville. The hearing record remained open until December 18, 1998 for additional written comments. A total of six people attended the hearings. Two people who did not attend the hearings submitted written comments.

#### Testified and Submitted Written Comments in Support of the Proposal:

John T. Umhoefer, Executive Director, Wisconsin Cheese makers Association: Update of Wisconsin standards and regulations needed to reflect current market demand and consumer demand. A closed body style of cheese is desirable for modern vacuum packaging technology and ability to slice, cube, and shred with minimal breakage and waste. Rule change will align Wisconsin grade standards with USDA's grade standards. Wisconsin cannot be an island. Needless barriers between manufacturers and consumer should be removed.

Eric Pinch, Alto Dairy Cooperative: Rule modification will have positive effect on Wisconsin's cheese manufacturing industry. Difficult to achieve desired number of mechanical openings in this cheese with modern processing equipment. Customers who cut, slice or shred prefer and specify a closed body. Change is necessary to remain competitive in the national cheese market for cheese sales and to service customer needs.

#### Testified in Support of the Proposal:

Brad Legreid, Executive Director, Wisconsin Dairy Products Association: Rule change will align Wisconsin grade standards with USDA's grade standards. Many processors find it difficult to achieve the desired number of mechanical openings with modern processing equipment. A majority of wholesale buyers and packagers prefer a closed body style of cheese for slicing, shredding, and cutting exact weight pieces with minimal breakage and waste. The rule change will allow Wisconsin manufacturers the flexibility to produce top-graded cheese with either an open or closed body to meet the demands of their particular customers. Essential that Wisconsin remain competitive with other states, maintain market share, and preserve a healthy dairy/state economy.



## APPENDIX A (continued)

### Registered and Submitted Written Comments in Support of the Proposal:

Dick Metzler, Great Lakes Cheese: More and more of the cheese business is going toward exact weights. The more open the piece of cheese, the more difficult to cut exact weights. More cheese is given away as heavier pieces of cheese are cut to avoid generating excessive underweights. More open cheese tends to crumble, resulting in less attractive and sometimes moldy packages of cheese. An open body requirement is a handicap for all Wisconsin packagers. There is a place for both types of colby within our state.

### Submitted Written Comments in Support of the Proposal:

Scott J. Stieber, Quality Control & Assurance Director, Marathon Cheese: Fully supports adoption of the proposed regulation changes. Adoption would provide consistent standards for these cheeses.

John Manske, Director of Government Relations, Wisconsin Federation of Cooperatives: Supports the permanent rule proposal. Wisconsin manufacturers need to be able to meet the demands of the marketplace and have the flexibility that the rule proposal provides. USDA previously modified its grade standards to allow an open or closed body.

### Registered in Support of the Proposal:

Wes Huibregtse, Great Lakes Cheese

### Registered Neither For Nor Against:

Kevin Thome, The Cheese Reporter

**APPENDIX B**

**1997 Session**

**FISCAL ESTIMATE**

LRB or Bill No. / Adm. Rule No.

**ATCP 81**

Amendment No. (If Applicable)

DOA-2048 (R 10/94)

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

**Subject**

**Grade Standards for Body and Texture Characteristics of Colby and Monterey (Jack) Cheese**

**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. Subchapter V specifies the Wisconsin grade standards for colby and monterey (jack) cheese. These standards include requirements for particular body and texture characteristics. The current standards require the presence of mechanical openings or an "open" body in order for the cheese to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

This rule amends ch. ATCP 81, Wis. Adm. Code, to eliminate the requirement for mechanical openings from the grade standards for colby and monterey (jack) cheese. This rule further clarifies that for all grade categories the cheese may exhibit either mechanical openings or a closed body, dependent upon the method of manufacture.

One-time costs of approximately \$3120 will be incurred by the department for permanent rule development.

**Long - Range Fiscal Implications**

None anticipated.

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

DATCP  
Terri L. Wenger (608) 224-4714

Authorized Signature/Telephone No.

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

Date

10/6/98

# 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.  
ATCP 81

Amendment No.

Subject

Grade Standards for Body and Texture Characteristics of Colby and Monterey (Jack) Cheese

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

Total one-time cost = \$3120

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

## NET ANNUALIZED FISCAL IMPACT

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

Agency Prepared by: (Name & Phone No.) DATCP Terri L. Wenger (608) 224-4714	Authorized Signature/Telephone No. <i>Barbara Knapp</i> Barbara Knapp (608) 224-4746	Date 10/6/98
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## APPENDIX C

### Final Regulatory Flexibility Analysis

Proposed ATCP 81, Wis. Adm. Code

#### GRADE STANDARDS FOR COLBY AND MONTEREY (JACK) CHEESE

The proposed rule modifies current rules under ch. ATCP 81, Wis. Adm. Code, related to grade standards for body and texture characteristics of colby and monterey (jack) cheese. This rule would implement, on a "permanent" basis, the revised grade standards which the department established by emergency rule on August 8, 1998.

Under current DATCP rules, colby and monterey (jack) cheese must have numerous mechanical openings in order to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

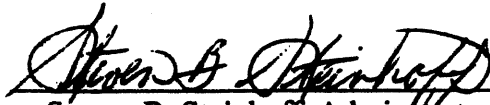
The recently adopted emergency rule temporarily eliminated rule provisions requiring mechanical openings in colby and monterey (jack) cheese. Under the emergency rule, colby and monterey (jack) cheese may have either mechanical openings or a closed body. When mechanical openings are present, their size and distribution are two of many factors which determine the specific grade category assigned to the cheese. The proposed rule would make these same rule changes on a permanent basis.

The proposed rule will not impose any direct costs on small businesses. These amendments do not require any additional reporting or recordkeeping. In addition, no other new procedures are proposed. No additional knowledge or professional skills are needed to meet the requirements of these proposed amendments.

High volume manufacturers (typically larger businesses) using newer technology, equipment and packaging have experienced difficulties in manufacturing cheese to meet the current grade requirements for mechanical openings. Small cheese factories and packaging operations using more traditional technology, equipment and packaging could more easily achieve the open body characteristics currently required for Wisconsin certified premium grade AA and Wisconsin grade A (Wisconsin state brand). As a consequence of the rule change and the elimination of the requirement for mechanical openings, these small businesses may now experience increased competition in the marketplace in the sale of Wisconsin graded cheese which may now have an open or closed body. However, an apparent majority of the cheese industry believes that small cheese processors will be able to maintain or grow a niche market for open-bodied colby and monterey (jack) cheese in the retail deli case.

Dated this 4<sup>th</sup> day of January, 1999.

State of Wisconsin  
Department of Agriculture,  
Trade and Consumer Protection

By   
Steven B. Steinhoff, Administrator  
Division of Food Safety

Chairman:  
Agriculture Committee



Member:  
Consumer Affairs  
Government Operations  
Natural Resources

**Al Ott**

State Representative • 3rd Assembly District

## **Assembly Agriculture Committee**

### **MEMO**

**TO: Members of the Assembly Agriculture Committee**

**FROM: Representative Al Ott, Chair**

**DATE: March 15, 1999**

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

**Clearinghouse Rule 98-182**

**Relating to Grade Standards for Colby and Monterey (Jack) Cheese.  
Submitted by the Department of Agriculture, Trade and Consumer  
Protection.**