

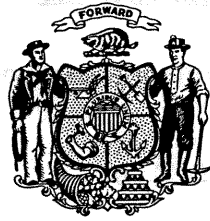
WISCONSIN LEGISLATIVE COUNCIL STAFF

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FORM 2

RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[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 99-018

AN ORDER to repeal ATCP 10.01 (50) to (54), 10.215, 10.216 and 11.01 (60); to amend ATCP 11.60 (4); and to repeal and recreate ATCP 10.21, 10.63 and 11.60 (2); and to create ATCP 11.10 (3) (c) and Note and 11.60 (2) Note, relating to paratuberculosis (Johne's disease).

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

02-05-99 RECEIVED BY LEGISLATIVE COUNCIL.

03-05-99 REPORT SENT TO AGENCY.

RNS:DF:kjf;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)]

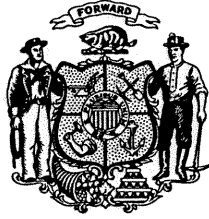
Comment Attached YES NO

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CLEARINGHOUSE RULE 99-018

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

1. Statutory Authority

In ss. ATCP 10.21 (2) (b) and 10.63 (2) (b), new exceptions from the implied warranty under s. 95.195, Stats., are created for cattle and goats sold directly to slaughter. The logic for creating this additional exception is unquestioned. However, s. 95.195 (1), Stats., only provides for two specific exceptions to the implied warranty. Therefore, the department is without statutory authority to add a "sold directly to slaughter" exception by administrative rule.

The rule does not include the statutory exception set forth in s. 95.195 (1) (a), Stats. Is this an oversight? Also, if the animals are being sold for slaughter, could the seller merely notify the buyer in writing that the animals are not warranted and thereby avoid the implied warranty? If this is done, ss. ATCP 10.21 (2) (b) and 10.63 (2) (b) appear to be unneeded.

2. Form, Style and Placement in Administrative Code

a. In ss. ATCP 10.21 (1) (b), (e), (g) and (6) (a) and 10.63 (1) (b), (e), (g) and (6) (a), "according to" should be replaced by "under." Also, s. ATCP 10.63 (1) (g) is incorrectly numbered par. (f).

b. In s. ATCP 10.21 (1) (c), "as defined in ATCP 10.01 (31)" should be deleted. The cross-reference to the definition of "herd" is not necessary. See s. ATCP 10.63 (1) (c), which does not use a cross-reference.

c. In s. ATCP 10.21 (7) (a), the parenthetical material should either be deleted or placed in a note.

d. In the treatment clause of SECTION 3, "10.216" should replace "216."

5. Clarity, Grammar, Punctuation and Use of Plain Language

Sections ATCP 10.21 (7) (c) and 10.63 (7) (b) refer to "(a)nother test approved by the department." Are these tests identified in another rule that can be cross-referenced?

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

- 1 The state of Wisconsin department of agriculture, trade and consumer protection
- 2 proposes the following order to repeal ATCP 10.01(50) to (54), 10.215, 10.216 and
- 3 11.01(60); to amend ATCP 11.60(4); and to repeal and recreate ATCP 10.21, 10.63
- 4 and 11.60(2); and to create ATCP 11.10(3)(c) and (note) and 11.60(2)(note); relating
- 5 to paratuberculosis (Johne's disease).

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

Statutory authority: ss. 93.07(1) and 95.195(2), Stats.

Statutes interpreted: s. 95.195, Stats.

This rule repeals and recreates current rules related to paratuberculosis in cattle and goats. Paratuberculosis is commonly known as Johne's disease.

Background

Johne's disease is a serious and widespread disease of cattle and goats. The disease is slow to develop, and an infected animal may go for years without showing symptoms. An infected animal, which is free of symptoms at the time of sale, may spread the disease to a buyer's herd. The disease has a serious impact on milk production, and is ultimately fatal to infected animals.

There is, at the present time, no test which can definitively rule out Johne's disease in an individual animal or herd of animals. However, annual herd test results can help buyers and sellers assess the risk that symptom-free animals may be infected with Johne's disease. Herd testing can also help herd owners manage or eliminate the disease in their herds.

Currently, under s. 95.195, Stats., there is in every contract for the sale of cattle and goats an "implied warranty" that the animals are free of Johne's disease. If an animal is infected with Johne's disease at the time of sale, the buyer may hold the seller liable under this "implied warranty" (even if the seller did not know that the animal was infected) unless the seller does one of the following prior to sale:

- Complies with testing and disclosure requirements prescribed by the department. (Under current department rules, the seller must conduct annual herd tests and disclose test results to the buyer.)
- Gives the buyer a written disclaimer that the animals are being sold "as is," without any Johne's disease warranty.

In practice, few sellers have chosen the test and disclosure alternative. Instead, many herd owners have sold their cattle with the "as is" disclaimer (which provides no meaningful herd information to buyers). The current law and rules have thus failed to achieve their goal of promoting Johne's disease testing. Current DATCP rules also discourage testing by prohibiting the sale of confirmed Johne's disease reactors, even when the seller discloses that the animals are reactors.

Herd testing is critical for the control of Johne's disease. If herd owners do not test, this serious disease will continue to spread. The department does not propose to mandate statewide herd testing for Johne's disease (no other state has taken that step). However, the department proposes the following steps to encourage more voluntary herd testing by sellers who wish to avoid liability under the "implied warranty" law:

- First, the department proposes to change its current testing and disclosure rules. This rule establishes simpler, more realistic testing and disclosure standards, based on the concept of herd risk. This rule also permits the sale of confirmed Johne's disease reactors, provided that the animals are permanently identified as reactors and the seller discloses that the animals are reactors.
- Second, the department proposes legislation to eliminate the "as is" disclaimer option under s. 95.195, Stats. Such legislation would give herd owners more incentive to test and disclose. Sellers would face a clear choice between the "implied warranty" on one hand, and testing and disclosure on the other.

Rule Contents; General

Under this rule, a sale of cattle or goats is exempt from the "implied warranty" under s. 95.195, Stats., if the seller discloses all of the following to the buyer, in writing:

- The current Johne's disease classification of the herd from which the animals are sold. Herd classifications (see below) are based on annual herd tests. If the source

herd is not tested annually, the herd is automatically classified "Maximum risk for Johne's disease."

- That the animals are confirmed Johne's disease reactors, if that is the case.

Under this rule, a sale of cattle or goats is also exempt from the "implied warranty" under s. 95.195, Stats., if the animals are being sold directly to slaughter. (No testing or disclosure is required. However, if an animal has been tested and is a reactor, it must be permanently marked.)

under s. 95.153?

Test Eligible Animals

Under this rule, all bulls over the age of three years are considered test eligible animals. All other cattle over the average age of second lactation in the herd are considered test eligible. All goats over the age of 18 months are considered test eligible.

Annual Herd Test

An annual herd test may be a "whole herd test" or a "random herd test." A "whole herd test" must include every test eligible animal in the herd. In a "random herd test," an accredited veterinarian randomly selects a test group from the whole herd. The test group must include at least 30 test eligible animals, or at least 10 percent of the test eligible animals in the herd whichever group is larger.

The date of the first annual herd test under this rule establishes an "anniversary date" for each subsequent annual herd test. Each year's test must be conducted on the "anniversary date," or within 2 months before or after the "anniversary date."

Herd Classifications

Under this rule, every herd of cattle and goats is classified in one of the following categories, in ascending order of risk for Johne's disease:

- *Johne's preventive management level A.* The department will classify a herd as "Johne's preventive management level A" if an annual herd test (random or whole herd) reveals no Johne's disease reactors. The department will add a star to a herd's "Johne's disease preventive management level A" classification for each consecutive year the herd maintains that classification.
- *Johne's preventive management level B.* The department will classify a herd as "Johne's preventive management level B" if fewer than 5% of the animals in a whole herd test are Johne's disease reactors.

- *Johne's preventive management level C.* The department will classify a herd as "Johne's preventive management level C" if at least 5% but not more than 15% of the animals in a whole herd test are Johne's disease reactors.
- *Johne's preventive management level D.* The department will classify a herd as "Johne's preventive management level D" if any of the following apply:
 - * A random herd test reveals one or more Johne's disease reactors, unless the department classifies the herd as "Johne's preventive management level B" or "C" based on a follow-up whole herd test.
 - * A whole herd test reveals more than 15% Johne's disease reactors.
- *Maximum risk for Johne's disease.* A herd is automatically classified "Maximum risk for Johne's disease," without any action by the department, if the herd owner fails to complete a timely annual herd test. "Maximum risk for Johne's disease." is the least desirable herd classification, because it signifies that the herd owner does not have an annual paratuberculosis testing program. A person buying cattle from such a herd faces an unknown, but substantial, risk that the cattle are infected with Johne's disease.

Commingled Animals; Classification

Animals added to a herd from a herd with a less desirable classification retain that less desirable herd classification for 120 days but do not affect the classification of the herd to which they are added. If animals from herds with different classifications are temporarily assembled for sale or shipment, the least desirable herd classification applies to all of the temporarily assembled animals. Animals sold through a consignment sale are not considered temporarily assembled for sale or shipment for purposes of determining their classification.

Notice to Herd Owner

Whenever the department classifies a herd based on an annual herd test, the department must promptly provide the herd owner with all of the following information in writing:

- The individual test results for each animal included in the herd test. Test results shall be identified with each animal's official individual identification.
- The herd classification. A herd classification takes effect when the department issues the classification notice, and immediately supersedes any prior classification.

Test Procedure

The person conducting an annual herd test must be an accredited veterinarian, or an employee of the department or USDA-APHIS. The person must select the test group, determine the type of test to be performed, collect an appropriate sample from each test animal, identify each sample with the animal's official individual identification and sample collection date, and transmit the samples to the testing laboratory.

Annual herd test samples must be tested by the department, the federal bureau, or a laboratory approved by the department or the federal bureau. The laboratory must use one of the following tests:

- The enzyme linked immunosorbent assay (ELISA), except that the ELISA test may not be used for goats.
- The fecal culture test.
- Another test approved by the department.

Test Results

A laboratory performing tests on annual herd test samples must report the test results to the department within 10 days. Within 30 days after the department receives the test results, the department must classify the herd and the department must issue a herd classification notice to the herd owner, if the herd owner has requested that the test results be used to assign a classification.

Johne's Disease Reactors

Under this rule, an animal is a Johne's disease reactor if any of the following applies:

- It tests positive on the enzyme linked immunosorbent assay (ELISA), unless it subsequently tests negative on the fecal culture test. (The ELISA test applies only to cattle, not goats.)
- It tests positive on the fecal culture test.
- It tests positive on any other test which the department approves and deems conclusive.

Current rules prohibit the sale of Johne's disease reactors (except to slaughter). This rule permits the sale of Johne's disease reactors if all of the following apply:

- The seller discloses to the prospective buyer in writing, prior to sale, that the animals are reactors.
- The animals are permanently identified as reactors.

Herd Vaccination

Under this rule, no person may vaccinate cattle for Johne's disease except under a herd agreement with the department. The department may not authorize vaccination in any herd in which the percentage of reactors in the last annual whole herd test was less than 7%, unless special circumstances warrant vaccination in that herd.

Misrepresenting Herd Classification

Under this rule, no person may misrepresent the classification of the herd from which cattle or goats are being sold. A seller who misrepresents a herd classification is not exempt from the implied warranty under s. 95.195, Stats., and is subject to possible penalties under s. 95.99, Stats. The department may investigate alleged misrepresentations.

Department Disclosure of Herd Classification

Under this rule, the department may disclose a herd classification to a 3rd party with the written authorization of the herd owner.

Effective Date

This proposed rule would take effect on July 1, 2000, thereby allowing time for producers to complete testing and receive classifications prior to the date on which they are required to disclose the herd classification to people who purchase animals.

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SECTION 1. ATCP 10.01(50) to (54) are repealed. ← *AKA*

SECTION 2. ATCP 10.21 is repealed and recreated to read:

ATCP 10.21 Johne's Disease Herd Classification; Disclosure. (1)

DEFINITIONS. In this section:

(a) "Anniversary date" means, for any herd of cattle, one of the following:

1 1. The month and day on which samples are collected for the first annual herd
2 test conducted after July 1, 2000, if no annual herd test was conducted within one year
3 prior to that date.

4 2. The month and day on which samples were last collected for an annual herd
5 test, if an annual herd test was conducted within one year prior to July 1, 2000.

6 (b) "Annual herd test" means an annual paratuberculosis test conducted on a
7 herd of cattle ^{under} according to this section.

8 (c) "Herd" means a herd ^{as defined in ATCP 10.01(31)} of cattle.

9 (d) "Paratuberculosis" means the infectious and communicable disease of
10 domestic ruminants, commonly known as Johne's disease, which is caused by
11 *Mycobacterium paratuberculosis*.

12 (e) "Random herd test" means a paratuberculosis test performed, ^{under} according to
13 this section, on a group of test eligible animals randomly selected from the test herd
14 ^{under} according to sub. (5)(b).

15 (f) "Test eligible animals" means all of the following:

16 1. Except as provided in subd. 2., all animals in a cattle herd that have reached
17 the average age at which cows in that herd lactate for the second time.

18 2. All bulls that are more than three years of age.

19 (g) "Whole herd test" means a paratuberculosis test performed, ^{under} according to
20 this section, on all test eligible animals in the herd.



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1 (2) EXEMPTION FROM IMPLIED WARRANTY. (a) The implied warranty
2 under s. 95.195, Stats., does not apply to a sale of cattle if the seller discloses all of the
3 following to the buyer in writing, prior to sale:

4 1. The current herd classification, under sub. (3), of the herd from which the
5 cattle are being sold.

6 2. That the cattle are paratuberculosis reactors under sub. (9), if that is the
7 case.

8 (b) The implied warranty under s. 95.195, Stats., does not apply to cattle sold
9 directly to slaughter.

10 (3) HERD CLASSIFICATION. (a) *Johne's preventive management level A.*

11 The department shall classify a herd as "Johne's preventive management level A" if an
12 annual herd test reveals no paratuberculosis reactors. The department shall add a star
13 to a herd's "Johne's preventive management level A" classification for each
14 consecutive year the herd maintains that classification.

15 NOTE: Animals from a herd classified "Johne's preventive management level
16 A" normally have the lowest risk of transmitting Johne's disease
17 (paratuberculosis). The risk is normally reduced with each additional
18 star awarded under par. (a). However, no herd classification ensures
19 that an animal is free of Johne's disease.

20
21 The department may certify a herd as a voluntary participant in the
22 national Johne's disease program if the herd is classified under par. (a)
23 as "Johne's preventive management level A, star 3" or better. To
24 participate in the national program, a herd owner must enter into a
25 certification contract with the department. In establishing the terms of
26 the contract, the department will be guided by the "U.S. Voluntary
27 Johne's Disease Herd Status Program for Cattle." For more
28 information, contact the department at the following address:
29

1 Wisconsin Department of Agriculture, Trade and Consumer
2 Protection
3 Animal Health Division
4 P.O. Box 8911
5 Madison, WI 53708-8911
6 Phone: (608) 224-4872
7

8 (b) *Johne's preventive management level B.* The department shall classify a
9 herd as "Johne's preventive management level B" if fewer than 5% of the animals
10 tested in an annual whole herd test, or in a follow-up whole herd test under par. (d)1.,
11 are paratuberculosis reactors.

12 (c) *Johne's preventive management level C.* The department shall classify a
13 herd as "Johne's preventive management level C" if at least 5% but not more than 15%
14 of the animals tested in an annual whole herd test, or in a follow-up whole herd test
15 under par. (d)1., are paratuberculosis reactors.

16 (d) *Johne's preventive management level D.* The department shall classify a
17 herd as "Johne's preventive management level D" if any of the following apply:

18 1. An annual random herd test reveals one or more paratuberculosis reactors,
19 unless the department reclassifies the herd under par. (b) or (c) based on a follow-up
20 whole herd test.

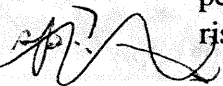
21 2. More than 15% of the animals tested in a whole herd test are
22 paratuberculosis reactors.

23 (e) *Maximum risk for Johne's disease.* Every herd in this state, and every herd
24 from which cattle are sold in this state, is automatically classified "maximum risk for
25 Johne's disease." unless one of the following applies:

1 1. The department classifies that herd under pars. (a) to (d). If the owner of a
2 herd classified under pars. (a) to (d) fails to complete an annual herd test within the
3 time required under sub. (5), that classification expires and the herd is automatically
4 classified "maximum risk for Johne's disease" until the department reclassifies the herd
5 under pars. (a) to (d).

6 2. The department has classified that herd within one year prior to July 1,
7 2000. If the owner of the classified herd fails to complete an annual herd test within
8 the time required under sub. (5), the classification expires and the herd is automatically
9 classified "maximum risk for Johne's disease." until the department reclassifies the
10 herd under pars. (a) to (d).

11 NOTE: The herd classifications under pars. (a) to (e) are arranged from most
12 desirable (a) to least desirable (e). "Maximum risk for Johne's disease."
13 is the least desirable herd classification, because it signifies that the herd
14 owner does not have an annual paratuberculosis testing program. A
15 person buying cattle from such a herd faces an unknown, but substantial,
16 risk that the cattle are infected with Johne's disease.

17 
18 (4) COMMINGLED CATTLE; CLASSIFICATION. (a) Except as provided
19 in par. (b), cattle added to a herd from a herd with a less desirable classification under
20 sub. (3) retain that less desirable herd classification for 120 days after being added but
21 do not affect the classification of the herd to which they are added.

22 NOTE: See s. ATCP 10.01(48).

23 (b) If cattle from herds with different classifications under sub. (3) are
24 temporarily assembled for sale or shipment, the least desirable classification assigned to
25 any of those source herds automatically applies to the temporarily assembled herd.

1 (c) Cattle from herds classified as "Johne's preventive management level A,"
2 "Johne's preventive management level B," "Johne's preventive management level C,"
3 or "Johne's preventive management level D" that are sent by their owners to a
4 consignment sale do not constitute a temporarily assembled herd under par. (b).

5 (5) ANNUAL HERD TEST. Samples for each annual herd test shall be
6 collected on the anniversary date under sub. (1)(b), or within 2 months before or after
7 that date. An annual herd test may be any of the following:

8 (a) A whole herd test.

9 (b) A random herd test. In a random herd test, the person who collects the test
10 samples under sub. (6) shall randomly select a group of test animals from the herd.

11 The randomly selected group shall include at least 30 test eligible animals, or at least
12 10% of the test eligible animals in the herd, whichever group is larger.

13 NOTE: The department may not classify a herd as "Johne's preventive
14 management level B" or "Johne's preventive management level C"
15 based on a random herd test under par. (b). If a random herd test
16 reveals one or more reactor animals, the herd is classified as "Johne's
17 preventive management level D" until the herd owner completes a
18 follow-up whole herd test. See sub. (3)(d)1.
19

20 (6) COLLECTING TEST SAMPLES. Annual herd test samples shall be
21 collected by an accredited veterinarian, or by an employee of the department or the
22 federal bureau. The person who collects an annual herd test sample shall do all of the
23 following: *ok*

24 (a) Determine the animals to be tested, *under* according to sub. (5).

25 (b) Determine the type of test to be performed under sub. (7).

defined in ACP 16.01 (27)

1 (c) Collect an appropriate sample from each test animal, based on the type of
2 test to be performed under sub. (7).

3 (d) Identify each sample with the official individual identification of the animal
4 from which it was collected, and the date on which it was collected.

5 (e) Transmit the test samples to the laboratory testing those samples under sub.
6 (7).

7 NOTE: A herd owner may have cattle tested for Johne's disease at any time.
8 The test results will not be used to classify the tested herd under this section
9 unless the test complies with this section and the herd owner requests that the
10 test results be used to classify the herd.

11
12 (7) LABORATORY TESTING. Annual herd test samples shall be tested by
13 the department, the federal bureau, or a laboratory approved by the department or the
14 federal bureau. The laboratory shall use one of the following tests:

15 (a) The enzyme linked immunosorbent assay (ELISA). *parena*

16 (b) The fecal culture test.

17 (c) Another test approved by the department. *← rule?*

18 (8) TEST RESULTS. A laboratory performing tests under sub. (7) shall report
19 the test results to the department within 10 days. Within 30 days after the department
20 receives the test results from the laboratory and a request for herd classification from
21 an owner, the department shall classify the herd under sub. (3) and issue a
22 classification notice under sub. (10).

23 NOTE: Under s. ATCP 10.02(2) and (3), a veterinarian or laboratory that
24 diagnoses or finds evidence of Johne's disease must report that diagnosis
25 or finding to the department within 10 days, in writing or by telefax.
26

1 (9) PARATUBERCULOSIS REACTORS. An animal is a paratuberculosis
2 reactor if any of the following apply:

3 (a) The animal tests positive on the enzyme linked immunosorbent assay
4 (ELISA), unless it subsequently tests negative on the fecal culture test.

5 (b) The animal tests positive on the fecal culture test.

6 (c) The animal tests positive on any other test which the department approves
7 and deems conclusive.

8 (10) NOTICE TO HERD OWNER. Whenever the department classifies a herd
9 under sub. (3) based on an annual herd test, or based on a follow-up whole herd test
10 under sub. (3)(d)1., the department shall promptly provide the herd owner with all of
11 the following information in writing:

12 (a) *Individual animal test results.* Individual test results for each animal
13 included in the herd test. Test results shall be identified with each animal's official
14 individual identification.

15 (b) *Herd classification.* The herd classification under sub. (3). A herd
16 classification takes effect when the department issues the classification notice, and
17 immediately supersedes any prior classification. The classification notice shall include
18 the following disclaimer:

19 "This herd classification expires on [department specifies expiration date which is
20 2 months after the next year's anniversary date] unless the herd is retested by that
21 date. Animals added to the herd from a herd with a less desirable classification
22 retain that less desirable herd classification for 120 days but do not affect the

1 classification of the herd to which they are added. If animals from herds with
2 different classifications are temporarily assembled for sale or shipment, the least
3 desirable herd classification applies to all of the temporarily assembled animals.
4 Animals from herds classified “Johne’s preventive management level A,” “Johne’s
5 preventive management level B,” “Johne’s preventive management level C” or
6 “Johne’s preventive management level D” that are sent by their owners to a
7 consignment sale do not constitute a temporarily assembled herd.”

8
9 (11) REACTOR IDENTIFICATION. (a) No person may move a
10 paratuberculosis reactor under sub. (9) unless an accredited veterinarian first identifies
11 that reactor with a permanent paratuberculosis reactor identification approved by the
12 department.

13 (b) No person may sell a paratuberculosis reactor under sub. (9) unless both of
14 the following apply:

- 15 1. An accredited veterinarian first identifies that reactor with a permanent
16 paratuberculosis reactor identification approved by the department.
- 17 2. The seller first discloses to the prospective buyer, in writing, that the animal
18 is a paratuberculosis reactor.

19 (c) Within 30 days after an animal is determined to be a reactor under sub.
20 (9)(a) or (c), an accredited veterinarian shall do one of the following:

- 21 1. Identify the reactor with a permanent paratuberculosis reactor identification
22 approved by the department.
- 23 2. Collect a sample from that animal for a fecal culture test.

1 (d) Within 30 days after an animal tests positive for paratuberculosis on a fecal
2 culture test, an accredited veterinarian shall identify the reactor with a paratuberculosis
3 reactor identification approved by the department.

4 (12) HERD VACCINATION. No person may vaccinate cattle for
5 paratuberculosis except under a herd agreement with the department. The department
6 may not authorize vaccination in any herd in which the percentage of reactors in the
7 last annual whole herd test under this section was less than 7%, unless special
8 circumstances warrant vaccination in that herd.

9 (13) MISREPRESENTING HERD CLASSIFICATION. No seller may
10 misrepresent the classification } under sub. (3) } of the herd from which cattle are being
11 sold. A seller who misrepresents a herd classification is not exempt from the implied
12 warranty under s. 95.195, Stats., and is subject to possible penalties under s. 95.99,
13 Stats. *I may be subject to*

14 (14) DEPARTMENT DISCLOSURE OF HERD CLASSIFICATION. The
15 department may disclose a herd classification under sub. (3) with the written
16 authorization of the herd owner.

17 NOTE: See s. 95.232, Stats.

18 SECTION 3. ATCP 10.215 and 216 are repealed. *10.216*

19 SECTION 4. ATCP 10.63 is repealed and recreated to read:

20 ATCP 10.63 Johne's Disease in Goats; Herd Classification; Disclosure. (1)

21 DEFINITIONS. In this section:

22 (a) "Anniversary date" means, for any herd of goats, one of the following:

1 1. The month and day on which samples are collected for the first annual herd
2 test conducted after July 1, 2000, if no annual herd test was conducted within one year
3 prior to that date.

4 2. The month and day on which samples were last collected for an annual herd
5 test, if an annual herd test was conducted within one year prior to July 1, 2000.

6 (b) "Annual herd test" means an annual paratuberculosis test conducted on a
7 herd of goats under according to this section.

8 (c) "Herd" means a herd of goats.

9 (d) "Paratuberculosis" means the infectious and communicable disease of
10 domestic ruminants, commonly known as Johne's disease, which is caused by
11 *Mycobacterium paratuberculosis*.

12 (e) "Random herd test" means a paratuberculosis test performed, according to
13 this section, on a group of test eligible animals randomly selected from the test herd
14 according to sub. (5)(b). under this section

15 (f) "Test eligible animals" means all animals over the age of 18 months.

16 * → (f) "Whole herd test" means a paratuberculosis test performed, according to
17 this section, on all test eligible animals in a herd.

18 (2) EXEMPTION FROM IMPLIED WARRANTY. (a) The implied warranty (g)

19 under s. 95.195, Stats., does not apply to a sale of goats if the seller discloses all of the
20 following to the buyer in writing, prior to sale:

21 1. The current herd classification, under sub. (3), of the herd from which the
22 goats are being sold.

same problem as s. 10.21(2)

1 2. That the goats are paratuberculosis reactors under sub. (9), if that is the
2 case.

3 (b) The implied warranty under s. 95.195, Stats., does not apply to goats sold
4 directly to slaughter.

5 (3) HERD CLASSIFICATION. (a) *Johne's preventive management level A.*

6 The department shall classify a herd as "Johne's preventive management level A" if an
7 annual herd test reveals no paratuberculosis reactors. The department shall add a star
8 to a herd's "Johne's preventive management level A" classification for each
9 consecutive year the herd maintains that classification.

10 NOTE: Animals from a herd classified "Johne's preventive management level
11 A" normally have the lowest risk of transmitting Johne's disease
12 (paratuberculosis). The risk is normally reduced with each additional
13 star awarded under par. (a). However, no herd classification ensures
14 that an animal is free of Johne's disease.

15
16 *a is subset of B*
17 (b) *Johne's preventive management level B.* The department shall classify a
18 herd as "Johne's preventive management level B" if fewer than 5% of the animals
19 tested in an annual whole herd test, or in a follow-up whole herd test under par. (d)1.,
20 are paratuberculosis reactors.

21 (c) *Johne's preventive management level C.* The department shall classify a
22 herd as "Johne's preventive management level C" if at least 5% but not more than 15%
23 of the animals tested in an annual whole herd test, or in a follow-up whole herd test
24 under par. (d)1., are paratuberculosis reactors.

1 (d) *Johne's preventive management level D.* The department shall classify a
2 herd as "Johne's preventive management level D" if any of the following apply:

3 1. An annual random herd test reveals one or more paratuberculosis reactors,
4 unless the department reclassifies the herd under par. (b) or (c) based on a follow-up
5 whole herd test.

6 2. More than 15% of the animals tested in a whole herd test are
7 paratuberculosis reactors.

8 (e) *Maximum risk for Johne's disease.* Every herd in this state, and every
9 herd from which goats are sold in this state, is automatically classified "maximum risk
10 for Johne's disease." unless one of the following applies:

11 1. The department classifies that herd under pars. (a) to (d). If the owner of a
12 herd classified under pars. (a) to (d) fails to complete an annual herd test within the
13 time required under sub. (5), that classification expires and the herd is automatically
14 classified "maximum risk for Johne's disease." until the department reclassifies the
15 herd under pars. (a) to (d).

16 2. The department has classified that herd within one year prior to July 1,
17 2000. If the owner of the classified herd fails to complete an annual herd test within
18 the time required under sub. (5), the classification expires and the herd is automatically
19 classified "maximum risk for Johne's disease." until the department reclassifies the
20 herd under pars. (a) to (d).

21 NOTE: The herd classifications under pars. (a) to (e) are arranged from most
22 desirable (a) to least desirable (e). "Maximum risk for Johne's disease."
23 is the least desirable herd classification, because it signifies that the herd
24 owner does not have an annual paratuberculosis testing program. A

1 person buying goats from such a herd faces an unknown, but substantial,
2 risk that the goats are infected with Johne's disease.

3
4 (4) **COMMINGLED GOATS; CLASSIFICATION.** (a) Except as provided in
5 par. (b), goats added to a herd from a herd with a less desirable classification under
6 sub. (3) retain that less desirable herd classification for 120 days after being added but
7 do not affect the classification of the herd to which they are added.

8 NOTE: See s. ATCP 10.01(48).

9 (b) If goats from herds with different classifications under sub. (3) are
10 temporarily assembled for sale or shipment, the least desirable classification assigned to
11 any of those source herds automatically applies to the temporarily assembled herd.

12 (c) Goats from herds classified as "Johne's preventive management level A,"
13 "Johne's preventive management level B," "Johne's preventive management level C,"
14 or "Johne's preventive management level D" that are sent by their owners to a
15 consignment sale do not constitute a temporarily assembled herd under par. (b).

16 (5) **ANNUAL HERD TEST.** Samples for each annual herd test shall be
17 collected on the anniversary date under sub. (1)(b), or within 2 months before or after
18 that date. An annual herd test may be any of the following:

19 (a) A whole herd test.

20 (b) A random herd test. In a random herd test, the person who collects the test
21 samples under sub. (6) shall randomly select a group of test eligible animals from the
22 herd. The randomly selected group shall include at least 30 animals, or at least 10% of
23 the test eligible animals in the herd, whichever group is larger.

24 NOTE: The department may not classify a herd as "Johne's preventive
25 management level B" or "Johne's preventive management level C"

1 based on a random herd test under par. (b). If a random herd test
2 reveals one or more reactor animals, the herd is classified as "Johne's
3 preventive management level D" until the herd owner completes a
4 follow-up whole herd test. See sub. (3)(d)1.
5

6 (6) COLLECTING TEST SAMPLES. Annual herd test samples shall be
7 collected by an accredited veterinarian, or by an employee of the department or the
8 federal bureau. The person who collects an annual herd test sample shall do all of the
9 following:

- X
- 10 (a) Determine the animals to be tested, according to sub. (5).
 - 11 (b) Determine the type of test to be performed under sub. (7).
 - 12 (c) Collect an appropriate sample from each test animal, based on the type of
13 test to be performed under sub. (7).
 - 14 (d) Identify each sample with the official individual identification of the animal
15 from which it was collected, and the date on which it was collected.
 - 16 (e) Transmit the test samples to the laboratory testing those samples under sub.
17 (7).

18 (7) LABORATORY TESTING. Annual herd test samples shall be tested by
19 the department, the federal bureau, or a laboratory approved by the department or the
20 federal bureau. The laboratory shall use one of the following tests:

- 21 (a) The fecal culture test.
- 22 (b) Another test approved by the department.

23 (8) TEST RESULTS. A laboratory performing tests under sub. (7) shall report
24 the test results to the department within 10 days. Within 30 days after the department

1 receives the test results, the department shall classify the herd under sub. (3) and issue
2 a classification notice under sub. (10).

3 NOTE: Under s. ATPC 10.02(2) and (3), a veterinarian or laboratory that
4 diagnoses or finds evidence of Johne's disease must report that diagnosis
5 or finding to the department within 10 days, in writing or by telefax.
6

7 (9) PARATUBERCULOSIS REACTORS. An animal is a paratuberculosis
8 reactor if any of the following apply:

9 (a) The animal tests positive on the fecal culture test.

10 (b) The animal tests positive on any other test which the department approves
11 and deems conclusive.

12 (10) NOTICE TO HERD OWNER. Whenever the department classifies a herd
13 under sub. (3) based on an annual herd test, or based on a follow-up whole herd test
14 under sub. (3)(d)1., the department shall promptly provide the herd owner with all of
15 the following information in writing:

16 (a) *Individual animal test results.* Individual test results for each animal
17 included in the herd test. Test results shall be identified with each animal's official
18 individual identification.

19 (b) *Herd classification.* The herd classification under sub. (3). A herd
20 classification takes effect when the department issues the classification notice, and
21 immediately supersedes any prior classification. The classification notice shall include
22 the following disclaimer:

23 "This herd classification expires on [department specifies expiration date
24 which is 2 months after the next year's anniversary date] unless the herd is
25 retested by that date. Animals added to the herd from a herd with a less

1 desirable classification retain that less desirable herd classification for 120
2 days but do not affect the classification of the herd to which they are added.
3 If animals from herds with different classifications are temporarily
4 assembled for sale or shipment, the least desirable herd classification
5 applies to all of the temporarily assembled animals. Animals from herds
6 classified "Johne's preventive management level A," "Johne's preventive
7 management level B," "Johne's preventive management level C" or
8 "Johne's preventive management level D" that are sent by their owners to a
9 consignment sale do not constitute a temporarily assembled herd."

10
11 (11) REACTOR IDENTIFICATION. (a) No person may move a

12 paratuberculosis reactor under sub. (9) unless an accredited veterinarian first identifies
13 that reactor with a permanent paratuberculosis reactor identification approved by the
14 department.

15 (b) No person may sell a paratuberculosis reactor under sub. (9) unless both of
16 the following apply:

17 1. An accredited veterinarian first identifies that reactor with a permanent
18 paratuberculosis reactor identification approved by the department.

19 2. The seller first discloses to the prospective buyer, in writing, that the animal
20 is a paratuberculosis reactor.

21 (c) Within 30 days after an animal tests positive for paratuberculosis, an
22 accredited veterinarian shall identify the reactor with a paratuberculosis reactor
23 identification approved by the department.

24 (12) HERD VACCINATION. No person may vaccinate goats for
25 paratuberculosis except under a herd agreement with the department. The department
26 may not authorize vaccination in any herd in which the percentage of reactors in the

1 last annual whole herd test under this section was less than 7%, unless special
2 circumstances warrant vaccination in that herd.

X
3 (13) MISREPRESENTING HERD CLASSIFICATION. No seller may
4 misrepresent the classification under sub. (3) of the herd from which goats are being
5 sold. A seller who misrepresents a herd classification is not exempt from the implied
6 warranty under s. 95.195, Stats., and is subject to possible penalties under s. 95.99,
7 Stats. *may be subject to*

8 (14) DEPARTMENT DISCLOSURE OF HERD CLASSIFICATION. The
9 department may disclose a herd classification under sub. (3) with the written
10 authorization of the herd owner.

11 NOTE: See s. 95.232, Stats.

12 SECTION 5. ATCP 11.01(60) is repealed.

13 SECTION 6. ATCP 11.10(3)(c) and (note) are created to read:

14 ATCP 11.10(3)(c) *Paratuberculosis*. No person may sell or move an animal
15 determined to be a paratuberculosis reactor under s. ATCP 10.21(9) unless an
16 accredited veterinarian first identifies that reactor with a permanent paratuberculosis
17 reactor identification approved by the department.

18 NOTE: ATCP 10.21(11) and 11.60(2) also prohibit the sale of a
19 paratuberculosis reactor unless the seller first discloses to the buyer, in
20 writing, that the animal is a paratuberculosis reactor.

1
2 SECTION 7. ATCP 11.60(2) is repealed and recreated to read:

3 ATCP 11.60(2) PARATUBERCULOSIS REACTORS; SALE OR
4 MOVEMENT. No person may sell an animal determined to be a paratuberculosis
5 reactor under s. ATCP 10.21(9) or 10.63(9) unless both of the following apply:

6 (a) An accredited veterinarian first identifies that reactor with a permanent
7 paratuberculosis reactor identification approved by the department.

8 (b) The seller first discloses to the prospective buyer, in writing, that the
9 animal is a paratuberculosis reactor.

10 SECTION 8. ATCP 11.60(2)(note) is created to read:

11 NOTE: ATCP 10.63(11) prohibits the sale of a paratuberculosis reactor unless
12 the seller first discloses to the buyer, in writing, that the animal is a
13 paratuberculosis reactor.
14

15 SECTION 9. ATCP 11.60(4) is amended to read:

16 ATCP 11.60(4) PERMIT TO MOVE. The department may issue a permit
17 allowing the movement of animals under sub. (2) ~~or~~ (3) for slaughter or other purposes
18 prescribed by the department in the permit. Movement of animals is subject to all
19 terms and conditions prescribed by the department in the permit. The department shall
20 grant or deny a permit under this subsection within 5 business days after the
21 department receives a complete permit application containing all information required
22 by the department.

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EFFECTIVE DATE: The rules contained in this order shall take effect on July 1, 2000.

Dated this _____ day of _____, 19____

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary

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

RULES RELATED TO JOHNE'S DISEASE

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed department rule related to paratuberculosis (Johne's disease) which affects all breeds of cattle (beef and dairy) and goats (proposed chapters ATCP 10 and 11, Wis. Adm. Code). The hearings will be held at the times and places shown below. The public is invited to attend the hearings and make comments on the proposed rule. Following the public hearings, the hearing record will remain open until April 9, 1999, for additional written comments.

Preceding each public hearing, the department's Division of Animal Health along with the Wisconsin Veterinary Medical Association will provide a presentation on Johne's disease, including a review of the proposed rule and a question and answer period.

A copy of the proposed rule may be obtained free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Animal Health, P. O. Box 8911, Madison, WI 53708-8911, or by calling 608 224-4872. Copies will also be available at the hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by March 5, 1999, either by writing to Lynn Jarzombek, P. O. Box 8911, Madison, WI 53708-8911, or by calling 608-224-4883. TTY users call 608-224-5058. Handicap access is available at the hearings.

Eleven hearings are scheduled:

Tuesday, March 16, 1999

Johne's Disease Presentation, 10:30 a.m. - 11:30 a.m.

Public Hearing, 11:30 a.m. - 1:00 p.m.

Holiday Inn

625 West Rolling Meadows Dr.

(Junction Hwys 41 & 151)

Fond du Lac, WI

Tuesday, March 16, 1999

Johne's Disease Presentation, 7:30 p.m. - 8:30 p.m.

Public Hearing, 8:30 p.m. - 10:00 p.m.

Holiday Inn - Airport

Sister Bay Room

2580 Ashland Ave.

(Junction Hwys 41 & 172)

Green Bay, WI

Wednesday, March 17, 1999

Johne's Disease Presentation, 10:30 a.m. - 11:30 a.m.

Public Hearing, 11:30 a.m. - 1:00 p.m.

Craig Center

Rock County 4H Fairgrounds

Randall St.

Janesville, WI

Wednesday, March 17, 1999

Johne's Disease Presentation, 7:30 p.m. - 8:30 p.m.

Public Hearing, 8:30 p.m. - 10:00 p.m.

Department of Agriculture, Trade and Consumer Protection

Board Room

2811 Agriculture Dr.

Madison, WI

Tuesday, March 23, 1999

Johne's Disease Presentation, 10:30 a.m. - 11:30 a.m.

Public Hearing, 11:30 a.m. - 1:00 p.m.

Blue Top Restaurant

3425 Church St.

(Hwy Bus 51)

Stevens Point, WI

Tuesday, March 23, 1999

Johne's Disease Presentation, 8:00 p.m. - 9:00 p.m.

Public Hearing, 9:00 p.m. - 10:00 p.m.

Best Western Midway Hotel

2901 Martin Ave.

(Hwy 51, Exit 190)

Wausau, WI

Wednesday, March 24, 1999

Johne's Disease Presentation, 10:30 a.m. - 11:30 a.m.

Public Hearing, 11:30 a.m. - 1:00 p.m.

Department of Agriculture, Trade and Consumer Protection

3610 Oakwood Hills Parkway

Eau Claire, WI

Wednesday, March 24, 1999

Johne's Disease Presentation, 8:00 p.m. - 9:00 p.m.

Public Hearing, 9:00 p.m. - 10:00 p.m.

Barron County Courthouse

Auditorium, First Floor

330 E. LaSalle

Barron, WI

Tuesday, March 30, 1999

Johne's Disease Presentation, 10:30 a.m. - 11:30 a.m.

Public Hearing, 11:30 a.m. - 1:00 p.m.

Monroe County Courthouse
County Board Meeting Room

112 South Court St.

Sparta, WI

Tuesday, March 30, 1999

Johne's Disease Presentation, 7:30 p.m. - 8:30 p.m.

Public Hearing, 8:30 p.m. - 10:00 p.m.

Pippin Conference Center

Melvill Hall (formerly the Administration Bldg.)

UW-Richland Campus

1200 Hwy 14 West

Richland Center, WI

Wednesday, March 31, 1999

Johne's Disease Presentation, 10:30 a.m. - 11:30 a.m.

Public Hearing, 11:30 a.m. - 1:00 p.m.

Youth & Ag Center

Grant County Fairgrounds

916 E. Elm St.

Lancaster, WI

Written comments will be accepted until April 9, 1999.

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

Statutory authority: ss. 93.07(1) and 95.195(2), Stats.

Statutes interpreted: s. 95.195, Stats.

This rule repeals and recreates current rules related to paratuberculosis in cattle and goats. Paratuberculosis is commonly known as Johne's disease.

Background

Johne's disease is a serious and widespread disease of cattle and goats. The disease is slow to develop, and an infected animal may go for years without showing symptoms. An infected animal, which is free of symptoms at the time of sale, may spread the disease to a buyer's herd. The disease has a serious impact on milk production, and is ultimately fatal to infected animals.

There is, at the present time, no test which can definitively rule out Johne's disease in an individual animal or herd of animals. However, annual herd test results can help buyers and sellers assess the risk that symptom-free animals may be infected with Johne's disease. Herd testing can also help herd owners manage or eliminate the disease in their herds.

Currently, under s. 95.195, Stats., there is in every contract for the sale of cattle and goats an "implied warranty" that the animals are free of Johne's disease. If an animal is infected with Johne's disease at the time of sale, the buyer may hold the seller liable under this "implied warranty" (even if the seller did not know that the animal was infected) unless the seller does one of the following prior to sale:

- Complies with testing and disclosure requirements prescribed by the department. (Under current Department of Agriculture, Trade and Consumer Protection (DATCP) rules, the seller must conduct annual herd tests and disclose test results to the buyer.)
- Gives the buyer a written disclaimer that the animals are being sold "as is," without any Johne's disease warranty.

In practice, few sellers have chosen the test and disclosure alternative. Instead, many herd owners have sold their cattle with the "as is" disclaimer (which provides no meaningful herd information to buyers). The current law and rules have thus failed to achieve their goal of promoting Johne's disease testing. Current DATCP rules also discourage testing by prohibiting the sale of confirmed Johne's disease reactors, even when the seller discloses that the animals are reactors.

Herd testing is critical for the control of Johne's disease. If herd owners do not test, this serious disease will continue to spread. The department does not propose to mandate statewide herd testing for Johne's disease (no other state has taken that step). However, the department proposes the following steps to encourage more voluntary herd testing by sellers who wish to avoid liability under the "implied warranty" law:

- First, the department proposes to change its current testing and disclosure rules. This rule establishes simpler, more realistic testing and disclosure standards, based on the concept of herd risk. This rule also permits the sale of confirmed Johne's disease reactors, provided that the animals are permanently identified as reactors and the seller discloses that the animals are reactors.
- Second, the department proposes legislation to eliminate the "as is" disclaimer option under s. 95.195, Stats. Such legislation would give herd owners more incentive to test and disclose. Sellers would face a clear choice between the "implied warranty" on one hand, and testing and disclosure on the other.

Rule Contents; General

Under this rule, a sale of cattle or goats is exempt from the “implied warranty” under s. 95.195, Stats., if the seller discloses all of the following to the buyer, in writing:

- The current Johne’s disease classification of the herd from which the animals are sold. Herd classifications (see below) are based on annual herd tests. If the source herd is not tested annually, the herd is automatically classified “Maximum risk for Johne’s disease.”
- That the animals are confirmed Johne’s disease reactors, if that is the case.

Under this rule, a sale of cattle or goats is also exempt from the “implied warranty” under s. 95.195, Stats., if the animals are being sold directly to slaughter. (No testing or disclosure is required; however, if an animal has been tested and is a reactor, it must be permanently marked.)

Test Eligible Animals

Under this rule, all bulls over 3 years old are considered “test eligible” animals. All other cattle over the average age of second lactation in the herd are considered test eligible. All goats over the age of 18 months are considered test eligible.

Annual Herd Test

An annual herd test may be a “whole herd test” or a “random herd test.” A “whole herd test” must include every test eligible animal in the herd. In a “random herd test,” an accredited veterinarian randomly selects a test group from the whole herd. The test group must include at least 30 test eligible animals, or at least 10 percent of the test eligible animals in the herd, whichever group is larger.

The date of the first annual herd test under this rule establishes an “anniversary date” for each subsequent annual herd test. Each year’s test must be conducted on the “anniversary date,” or within 2 months before or after the “anniversary date.”

Herd Classifications

Under this rule, every herd of cattle and goats is classified in one of the following categories, in ascending order of risk for Johne’s disease (herd owners who manage for Johne’s disease can improve their classification over time):

- *Johne’s preventive management level A.* The department will classify a herd as “Johne’s preventive management level A” if an annual herd test (random or whole herd) reveals no Johne’s disease reactors. The department will add a star to a herd’s

“Johne’s disease preventive management level A” classification for each consecutive year the herd maintains that classification.

- *Johne’s preventive management level B.* The department will classify a herd as “Johne’s preventive management level B” if fewer than 5% of the animals in a whole herd test are Johne’s disease reactors.
- *Johne’s preventive management level C.* The department will classify a herd as “Johne’s preventive management level C” if at least 5% but not more than 15% of the animals in a whole herd test are Johne’s disease reactors.
- *Johne’s preventive management level D.* The department will classify a herd as “Johne’s preventive management level D” if any of the following apply:
 - * A random herd test reveals one or more Johne’s disease reactors, unless the department classifies the herd as “Johne’s preventive management level B” or “C” based on a follow-up whole herd test.
 - * A whole herd test reveals more than 15% Johne’s disease reactors.
- *Maximum risk for Johne’s disease.* A herd is automatically classified “Maximum risk for Johne’s disease,” without any action by the department, if the herd owner fails to complete a timely annual herd test. “Maximum risk for Johne’s disease” is the least desirable herd classification, because it signifies that the herd owner does not have an annual paratuberculosis testing program. A person buying cattle from such a herd faces an unknown, but substantial, risk that the cattle are infected with Johne’s disease.

This rule does not require a herd owner to have an annual herd test, or to have the herd classified based on herd testing. But if a herd owner does **not** have the herd classified based on annual herd tests that comply with this rule, the herd is automatically classified “Maximum risk for Johne’s disease.”

A herd owner is not required to disclose the herd classification when selling animals from the herd. But if the herd owner does **not** disclose the herd classification, the owner sells the animals subject to an “implied warranty.” If it turns out that the animals were infected with Johne’s disease at the time of sale, the seller may then be liable to the buyer for any damages which result. There is no “implied warranty” if the herd owner discloses the herd classification at the time of sale, or sells the animals directly to slaughter.

A herd owner may elect to test (and cull) animals without having the test results used for herd classification purposes. However, all Johne’s disease test results must be reported to the department, and all confirmed Johne’s disease reactors must be permanently identified as such. No confirmed reactors may be moved or sold (even to slaughter) unless they are identified as reactors.

Commingled Animals; Classification

Animals added to a herd from a herd with a less desirable classification retain that less desirable herd classification for 120 days but do not affect the classification of the herd to which they are added. However, if animals from herds with different classifications are temporarily assembled for sale or shipment (other than for a consignment sale), the least desirable herd classification applies to all of the temporarily assembled animals.

Notice to Herd Owner

Whenever the department classifies a herd based on an annual herd test, the department must promptly provide the herd owner with all of the following information in writing:

- The individual test results for each animal included in the herd test. Test results must be identified with each animal's official individual identification.
- The herd classification. A herd classification takes effect when the department issues the classification notice, and immediately supersedes any prior classification.

Test Procedure

The person conducting an annual herd test must be an accredited veterinarian, or an employee of the department or USDA-APHIS. The person must select the test group, determine the type of test to be performed, collect an appropriate sample from each test animal, identify each sample with the animal's official individual identification and sample collection date, and transmit the samples to the testing laboratory.

Annual herd test samples must be tested by the department, the federal bureau, or a laboratory approved by the department or the federal bureau. The laboratory must use one of the following tests:

- The enzyme linked immunosorbent assay (ELISA), except that the ELISA test may not be used for goats.
- The fecal culture test.
- Another test approved by the department.

Test Results

A laboratory performing Johne's disease tests must report the test results to the department within 10 days. The department will not use the test results to classify a herd unless the herd owner asks the department to do so. If the herd owner asks the department to classify the herd based on the test results (and if the test procedure complies with this rule), the department will classify the herd within 30 days.

Johne's Disease Reactors

Under this rule, an animal is a Johne's disease reactor if any of the following applies:

- It tests positive on the enzyme linked immunosorbent assay (ELISA), unless it subsequently tests negative on the fecal culture test. (The ELISA test applies only to cattle, not goats.)
- It tests positive on the fecal culture test.
- It tests positive on any other test which the department approves.

Current rules prohibit the sale of Johne's disease reactors (except to slaughter). This rule permits the sale of Johne's disease reactors if all of the following apply:

- The seller discloses to the prospective buyer in writing, prior to sale, that the animals are reactors.
- The animals are permanently identified as reactors.

Under this rule, an accredited veterinarian must permanently identify a confirmed Johne's disease reactor, even if the herd owner does not sell the animal or sells it only to slaughter. The veterinarian must identify the animal within 30 days after the animal tests positive on an ELISA or fecal culture test. If the herd owner wishes to confirm a positive ELISA test with a fecal culture, the veterinarian must collect the fecal sample within 30 days. If the fecal culture also tests positive, the veterinarian must then identify the animal as a Johne's disease reactor within 30 days.

Herd Vaccination

Under this rule, no person may vaccinate cattle for Johne's disease except under a herd agreement with the department. The department may not authorize vaccination in any herd in which the percentage of reactors in the last annual whole herd test was less than 7%, unless special circumstances warrant vaccination in that herd.

Misrepresenting Herd Classification

Under this rule, no person may misrepresent the classification of the herd from which cattle or goats are being sold. A seller who misrepresents a herd classification is not exempt from the implied warranty under s. 95.195, Stats., and is subject to possible penalties under s. 95.99, Stats. The department may investigate alleged misrepresentations.

Department Disclosure of Herd Classification

Under this rule, the department may disclose a herd classification to a 3rd party with the written authorization of the herd owner.

Interstate Sales

Wisconsin's implied warranty law and this rule apply to cattle and goats from outside Wisconsin that are sold in this state (subject to Wisconsin contract law). Wisconsin's implied warranty law and this rule do not apply to sales of cattle and goats that occur outside this state (subject to another state's contract law).

Delayed Effective Date

This rule has a delayed effective date of July 1, 2000. The delayed effective date is intended to give producers time to complete testing and receive classifications before the new disclosure provisions take effect.

Fiscal Estimate

The complete fiscal note is available on request.

For purposes of this fiscal estimate, it is estimated that Johne's disease testing in Wisconsin will increase by 20,000 tests in sty 2001 due to the proposed rule.

Revenue:

Presently, the Wisconsin Animal Health Laboratory charges a user fee for Johne's disease tests. The user fee offsets the cost of performing the tests. An increase of 20,000 tests would generate an estimated PR fund revenue increase of \$105,300.

Expense:

The Wisconsin Animal Health Laboratory will incur \$105,300 of salary, fringe and supply expense in performing an additional 20,000 Johne's disease tests. Additionally, the department will expend \$15,500 of GPR funds to support the Johne's disease program purposed in this rule. Veterinary staff time will increase to cover classifying the additional herds testing for Johne's disease and to provide education to the state's producers and private veterinarians on Johne's disease and the proposed rules. Program assistant staff time will increase due to the increased testing, with increased computer entry of test information, herd classification certificate issuing, correspondence and filing.

Initial Regulatory Flexibility Analysis

General Overview

Johne's disease (paratuberculosis) causes significant financial losses for Wisconsin's cattle (both dairy and beef) and goat producers. In the past, the producers have been unable to make informed judgments about the risk of Johne's disease in the animals they purchase because the information was not available. This rule establishes a voluntary program designed to permit producers who want to make informed decisions to obtain the necessary information. It is also designed to permit people who will be selling cattle or goats to provide beneficial information to potential buyers, avoid the threat of an implied warranty claim, and fairly represent the extent to which his animals have tested negative for Johne's disease.

Section 95.195, Stats. establishes an implied warranty that animals sold are free of Johne's disease and gives the purchaser a cause of action against a seller if the animal is infected unless the seller has either sold the animal "as is" or has complied with the department's rules for avoiding the implied warranty. This rule modifies existing rules by implementing a herd risk based classification and exempting the animal seller from the implied warranty if the seller discloses the herd risk classification in writing prior to the sale. (The department intends to seek legislation to eliminate the "as is" loophole in the implied warranty statute since it is no longer needed to permit sellers to sell animals without testing or being subject to the implied warranty provision.)

Since this program is totally voluntary, it won't have any impact on farmers or producers unless the person chooses to participate. If the person chooses to participate in the program the rule will have effects. Its primary impact is to give people more choices and to provide information to assist them in making those choices.

Cattle and Goat Sellers

All herds of cattle and goats will be classified as to risk level for Johne's disease based on test results. If the herd owner chooses not to test, or not to request classification on the basis of a test, the herd will be classified "Maximum risk for Johne's disease." If the herd owner tests and requests classification the department will classify the herd "Johne's Preventative Management Level A, B, C, or D" based on the prevalence of disease in the animals and the number of animals tested.

The most desirable classification "Johne's Preventative Management Level A" may be obtained by testing 30 animals or 10% of the herd, whichever is a larger number. If all of the animals test negative, the herd will be classified at the "A" level. If any animal tests positive, the herd will be classified at the "D" level. Levels "B" and "C" will only be assigned if the whole herd was tested and will reflect the prevalence of test positive animals in the herd.

This program specifically permits the herd owner to have tests performed without being used for classification. Therefore, the owner may have a random test (30 animals or 10% of the herd) performed without seeking classification. If no positive animals are identified, the owner may seek classification and will receive the "A" classification. If there are positive animals identified, the owner may undertake an immediate whole herd test to determine whether he can be classified upward to a level "B" or level "C." It also permits the owner to undertake a whole herd test and cull approach and once all positive animals are culled the herd would be eligible for the "A" classification. In this way, this rule increases the choices available to the herd owners and permits the herd owner to attain the most desirable classification in a relatively short time.

Herd owners who choose to participate in the program will incur the costs of testing at least 30 animals annually. However, since the program is voluntary, the owner would be able to weigh that cost against the benefits to be gained by having information on the status of the herd.

Cattle and Goat Purchasers

At the present time, the person who plans to purchase cattle or goats has no way of determining the risk that the purchased animals are infected with Johne's disease. Producers who have experienced the financial impact of having their herds become infected with Johne's disease and have incurred the expense required to clean up their herds will frequently seek to purchase animals which they have reason to believe have a lower risk of being infected. This rule provides a way for those producers to make an informed judgment about which animals have the lower risk.

Since the program is completely voluntary, no producer is required to purchase animals of any specific classification. For example, if the purchaser already has a herd which is classified as a level "B" herd and adds animals from a level "C" herd, the combined herd retains its "B" classification (although the "C" animals do not achieve the "B" classification until they have been in the herd for 120 days).

The producer can decide for himself what level risk he is willing to undertake and refuse to purchase animals with a level of risk higher than the level he is willing to accept. If purchasers produce more demand for low risk animals than sellers are putting on the market, the purchaser will decide for himself whether to bid up the price to get the more desirable animals or to accept higher risk animals at a price he finds more acceptable. The effect of the rule is to create options for the purchaser, and to provide information the purchaser can use to evaluate the risk associated with purchasing specific animals.

Veterinarians

The third group of small business people potentially affected by this rule are veterinarians. They may experience an increase in their business associated with additional testing to be performed. The rule does not change reporting requirements for the veterinarians. Nor does it require veterinarians to expend additional money for the

supplies and services they utilize to provide their service to the producers, except that the veterinarian may need to obtain a new supply item to be used for permanently identifying reactor animals.

Notice of the proposed rule has been delivered to the department of development, as required by s. 227.114(5), Stats.

Dated this 11 day of Feb, 1999.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Ben Brancel
Ben Brancel, Secretary

JUL 07 REC'D

Docket No. 96-R-16

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 99-018 to the presiding officer of each house of the legislature for standing committee review. The proposed rule amends Chapters ATCP 10 and ATCP 11, relating to paratuberculosis (Johne's disease).

Dated this 29th day of June, 1999.

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: June 28, 1999

JUL 07 REC'D

TO: The Honorable Fred Risser
President, Wisconsin State Senate
Room 220 South, State Capitol
Madison, WI 57303

The Honorable Scott Jensen
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
Madison, WI 57303

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

SUBJECT: **Proposed Rule Relating to Johne's Disease**
(Clearinghouse Rule 99-018)

Pursuant to 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 three copies of the final draft rule, together with the following report. Pursuant to s. 227.19(2). Stats., the department will publish a notice of this referral in the Wisconsin Administrative Register.

Background

Johne's disease is a serious and widespread disease of cattle and goats. The disease is slow to develop, and an infected animal may go for years without showing symptoms. An infected animal, which is free of symptoms at the time of sale, may spread the disease to a buyer's herd. The disease has a serious impact on milk production, and is ultimately fatal to infected animals.

There is, at the present time, no test which can definitively rule out Johne's disease in an individual animal or herd of animals. However, annual herd test results can help buyers and sellers assess the risk that symptom-free animals may be infected with Johne's disease. Herd testing can also help herd owners manage or eliminate the disease in their herds.

Currently, under s. 95.195, Stats., there is in every contract for the sale of cattle and goats an "implied warranty" that the animals are free of Johne's disease. If an animal



is infected with Johne's disease at the time of sale, the buyer may hold the seller liable under this "implied warranty" (even if the seller did not know that the animal was infected) unless the seller does one of the following prior to sale:

- Complies with testing and disclosure requirements prescribed by the department. (Under current department rules, the seller must conduct annual herd tests and disclose test results to the buyer.)
- Gives the buyer a written disclaimer that the animals are being sold "as is," without any Johne's disease warranty.

In practice, few sellers have chosen the test and disclosure alternative. Instead, many herd owners have sold their cattle with the "as is" disclaimer (which provides no meaningful herd information to buyers). The current law and rules have thus failed to achieve their goal of promoting Johne's disease testing. Current department rules also discourage testing by prohibiting the sale of confirmed Johne's disease reactors, even when the animals are identified as reactors. (Reactors may be sold to slaughter under a department permit.)

Herd testing is critical for the control of Johne's disease. If herd owners do not test, this serious disease will continue to spread. The department does not propose to mandate statewide herd testing for Johne's disease (no other state has taken that step). However, the department proposes the following steps to encourage more voluntary herd testing by sellers who wish to avoid liability under the "implied warranty" law:

- First, the department proposes to change its current testing and disclosure rules. This rule establishes simpler, more realistic testing and disclosure standards, based on the concept of herd risk. This rule also permits the sale of confirmed Johne's disease reactors, provided that the animals are permanently identified as reactors and the seller discloses that the animals are reactors.
- Second, the department proposes legislation to eliminate the "as is" disclaimer option under s. 95.195, Stats. AB-314, which passed the Assembly on a 99-0 vote and is currently being considered by the Senate, addresses this issue. This legislation would give herd owners more incentive to test and disclose. Sellers would face a clear choice between the "implied warranty" on one hand, and testing and disclosure on the other.

Rule Contents

General

Under this rule, a sale of cattle or goats is exempt from the "implied warranty" under s. 95.195, Stats., if the seller discloses all of the following to the buyer, in writing:

- The current Johne's disease classification of the herd from which the animals are sold. Herd classifications (see below) are based on annual herd tests. If the source herd is not tested annually, the herd is automatically classified "Maximum risk for Johne's disease."
- That the animals are confirmed Johne's disease reactors, if that is the case.

Under this rule, a sale of cattle or goats is also exempt from the "implied warranty" under s. 95.195, Stats., if the animals are sold directly to slaughter or as feeder cattle. No testing or disclosure is required. However, if a slaughter or feeder animal has been tested and is a reactor, it must be permanently marked.

Annual Herd Test

An annual herd test may be a "whole herd test", a "random herd test" or a "split herd test:"

- A "whole herd test" must include every test eligible animal in the herd, and the samples must be collected on the same day or consecutive days.
- In a "random herd test," an accredited veterinarian randomly selects a test group from the whole herd. The test group must include at least 30 test eligible animals, or at least 10 percent of the test eligible animals, whichever group is larger. The samples must be collected on the same day.
- A "split herd test" allows the owner to test groups of animals at different times during the year, provided that all test eligible animals are tested in a 12 month period, the department approves the testing plan before samples are collected, and the herd owner tests the herd according to the approved plan.

"Test eligible animals" include all cattle in a herd that are 36 months of age or more, and all bulls 24 months of age or more. All goats 18 months of age or more are test eligible animals.

The date of the first annual herd test under this rule establishes an "anniversary date" for each subsequent annual herd test. If the first annual herd test is a "split herd test," the "anniversary date" is the date on which the last group of animals is tested. Each year's test must be conducted on the "anniversary date," or within 2 months before or after the "anniversary date," except that a "split herd test" must be completed prior to the "anniversary date."

Herd Classifications

Under this rule, every herd of cattle and goats is classified in one of the following categories, in ascending order of risk for Johne's disease (herd owners who manage for Johne's disease can improve their herd classification over time):

- *Johne's preventive management level A.* This is the most desirable herd classification. The department will classify a herd as "Johne's preventive management level A" if an annual herd test reveals no Johne's reactors.
- *Johne's preventive management level B.* The department will classify a herd as "Johne's preventive management level B" if fewer than 5% of the animals in a whole herd test or split herd test are Johne's reactors.
- *Johne's preventive management level C.* The department will classify a herd as "Johne's preventive management level C" if at least 5% but not more than 15% of the animals in a whole herd test or split herd test are Johne's reactors.
- *Johne's preventive management level D.* The department will classify a herd as "Johne's preventive management level D" if any of the following apply:
 - * A random herd test reveals one or more Johne's reactors, unless the department classifies the herd as "Johne's preventive management level B" or "C" based on a follow-up whole herd test.
 - * A whole herd or split herd test reveals more than 15% Johne's reactors.
- *Maximum risk for Johne's disease.* A herd is automatically classified "Maximum risk for Johne's disease," without any action by the department, if the herd owner fails to complete a timely annual herd test. "Maximum risk for Johne's disease" is the least desirable herd classification, because it signifies that the herd owner does not have an annual paratuberculosis testing program. A person buying cattle from such a herd faces an unknown, but substantial, risk that the cattle are infected with Johne's disease.

A Johne's preventive management level A, B, C or D classification will also indicate the first year from which the herd has continuously held that classification.

Voluntary Participation

This rule does not require a herd owner to have an annual herd test, or to have the herd classified based on herd testing. But if a herd owner does **not** have the herd classified based on annual herd tests that comply with this rule, the herd is automatically classified "Maximum risk for Johne's disease."

A herd owner is not required to disclose the herd classification when selling animals from the herd. But if the herd owner fails to disclose the herd classification, the owner sells the animals subject to an "implied warranty." If it turns out that the animals were infected with Johne's disease at the time of sale, the seller may then be liable to the buyer for any damages which result. There is no "implied warranty" if the herd owner discloses the herd classification at the time of sale, or sells the animals directly to slaughter or as feeder animals.

A herd owner may elect to test (and cull) animals without having the test results used for herd classification purposes. However, all confirmed Johne's disease reactors must be permanently identified as such. No confirmed reactors may be moved or sold (even to slaughter) unless they are identified as reactors.

Commingled Animals; Classification

Animals added to a herd from a herd with a less desirable classification retain that less desirable herd classification for 120 days but do not affect the classification of the herd to which they are added. Animals from a herd with a more desirable classification immediately lose that classification when they are added to a herd with a less desirable classification.

If animals from herds with different classifications are temporarily assembled for sale or shipment (other than for a consignment sale), the least desirable herd classification applies to all of the temporarily assembled animals. Animals sent by their owners to a consignment sale retain the herd status of the herd of origin, except that if the animals are allowed to have direct contact with other animals for more than 24 hours, the least desirable herd classification applies to all the animals.

Notice to Herd Owner

Whenever the department classifies a herd based on an annual herd test, the department must promptly provide the herd owner with all of the following information in writing:

- The individual test results for each animal included in the herd test. Test results will be identified with each animal's official individual identification.
- The herd classification including the effective date and expiration date of the classification. A herd classification takes effect on the effective date and immediately supersedes any prior classification.

Test Procedure

The person conducting an annual herd test must be an accredited veterinarian, or an employee of the department or USDA-APHIS. The person must select the test group, determine the type of test to be performed, collect an appropriate sample from each test animal, identify each sample with the animal's official individual identification and sample collection date, and transmit the samples to the testing laboratory.

Annual herd test samples must be tested by the department, the federal bureau, or a laboratory approved by the department or the federal bureau. The laboratory must use one of the following tests:

- The enzyme linked immunosorbent assay (ELISA), except that the ELISA test may not be used for goats.
- The fecal culture test.
- Another test approved by the department.

Test Results

A laboratory performing tests on annual herd test samples must report the test results to the department within 10 days. The department will not use the test results to classify a herd unless the herd owner asks the department to do so. If the herd owner asks the department to classify the herd based on the test results (and the test procedure complies with this rule), the department will classify the herd within 30 days.

Johne's Disease Reactors

Under this rule, an animal is a Johne's disease reactor if any of the following applies:

- It tests positive on the enzyme linked immunosorbent assay (ELISA), unless it subsequently tests negative on the fecal culture test. (The ELISA test applies only to cattle, not goats.)
- It tests positive on the fecal culture test.
- It tests positive on any other test which the department approves and deems conclusive.

Current rules prohibit the sale of Johne's disease reactors (except to slaughter). This rule permits the sale of Johne's disease reactors if all of the following apply:

- The seller discloses to the prospective buyer in writing, prior to sale, that the animals are reactors.
- The animals are permanently identified as reactors.

Under this rule, an accredited veterinarian must permanently identify a confirmed Johne's disease reactor, even if the animal is sold to slaughter or is not sold at all. The veterinarian must identify the animal within 30 days after the animal tests positive on an ELISA or fecal culture test. If the herd owner wishes to confirm a positive ELISA test with a fecal culture, the veterinarian must collect the fecal sample within 30 days. If the fecal culture also tests positive, the veterinarian must then identify the animal as a Johne's disease reactor within 30 days.

Herd Vaccination

Under this rule, no person may vaccinate cattle for Johne's disease except under a herd agreement with the department. The department may not authorize vaccination in any herd in which the percentage of reactors in the last whole herd test or split herd test was less than 7%, unless special circumstances warrant vaccination in that herd.

Misrepresenting Herd Classification

Under this rule, no person may misrepresent the classification of the herd from which cattle or goats are being sold. A seller who misrepresents a herd classification is not exempt from the implied warranty under s. 95.195, Stats., and is subject to possible

penalties under s. 95.99, Stats. The department may investigate alleged misrepresentations.

Department Disclosure of Herd Classification

Under this rule, the department may disclose a herd classification to a 3rd party with the written authorization of the herd owner. Under s. 95.232, Stats., information that identifies herds infected, or suspected of being infected, with Johne's disease is not open to inspection under the Public Records Law unless the department determines that disclosure is necessary to protect the public health, safety or welfare.

Interstate Sales of Cattle

Wisconsin's implied warranty law and this rule apply to cattle from outside this state that are sold in Wisconsin (subject to Wisconsin contract law). Wisconsin's implied warranty law and this rule do not apply to cattle sales which occur outside this state (subject to another state's contract law).

Rule Modifications After Public Hearings

In response to hearing comments, the department made the following changes to the final draft rule:

- Exempted animals sold as feeder animals from the implied warranty.
- Changed the age of test eligible cattle:
 - * Under the hearing draft, all bulls over three years of age were test eligible. Under the final draft rule, all bulls 24 months of age or older are test eligible.
 - * Under the hearing draft, all other cattle "over the average age of second lactation in the herd" were test eligible. Under the final draft rule, all other cattle 36 months of age or older are test eligible.
- Clarified that a random herd test may not be used on a herd with less than 30 test eligible animals.
- Created a "split herd testing" option.
- Specified that a Johne's preventive management level A, B, C or D classification will also indicate the first year from which the herd has continuously held that