

classification. (The hearing draft would have provided the information for preventive management level A, and would have used a more cumbersome system of annual "stars" to indicate length of classification.)

- Clarified that animals from a herd with a more desirable herd classification lose that classification immediately upon being added to a herd with a less desirable herd classification.
- Clarified that, if animals sold through a consignment sale are allowed to have direct contact with other animals for 24 hours or more, all the animals are immediately classified at the least desirable classification represented by any animal in the group. (Under the hearing draft rule, animals sold through a consignment sale would have retained the classification of their herd of origin until they were added to the herd of the buyer.)

#### **Response to Rules Clearinghouse Comments**

The department modified the final draft rule in response to comments from the Legislative Council Rules Clearinghouse. The department incorporated all Rules Clearinghouse comments except the following:

- The Rules Clearinghouse recognized the logic of exempting cattle and goats sold directly to slaughter from the implied warranty, but questioned the department's statutory authority to create the exception. The department drafted the rule in anticipation of enactment of AB-314 which creates an exception for animals sold directly to slaughter and allows the department to specify the types of animals to which the law would apply. AB-314 recently passed the Assembly unanimously. Because of the support for the legislation and this rule, the department retained the rule language as drafted. Since both AB-314 and this proposed rule have an anticipated effective date of July 1, 2000, this action will allow the rule to be in conformity with the statute on their effective dates. If AB-314 is not enacted, the department is aware this particular provision of the proposed rule will be ineffective and it will be repealed.
- The Rules Clearinghouse identified two instances in which this rule permits use of "another test approved by the department" and asked if these tests are identified elsewhere in rule and could they be cross-referenced. These tests are not identified elsewhere in rule. This provision is intended to allow the department to recognize new tests as they are developed and proved to be effective and to permit their use during the lengthy time required to promulgate an administrative rule. The

department will promulgate rules identifying those tests by name after their efficacy is established.

#### **Fiscal Estimate**

This rule will not have a significant fiscal impact on the department in the short run. In the long run, if the department's proposed rules and legislation are successful in promoting more Johne's disease testing, the department may need some additional resources to administer an expanded testing and herd classification program. A fiscal estimate is attached (Appendix A).

#### **Small Business Analysis**

This rule will not have any adverse effect on small business. By itself, this rule will simply make it easier for sellers to participate in the voluntary Johne's disease testing and disclosure program. This rule protects buyers to the same degree as the current rule. The department has proposed legislation to eliminate the "as is" disclaimer option under the "implied warranty" law. This legislative change would give herd owners far more incentive to participate in the voluntary Johne's disease testing and disclosure program. A small business analysis ("final regulatory flexibility analysis") is attached (Appendix B).

#### **Hearing Testimony**

The department held 11 public hearings on this rule. Before each hearing, the department's Animal Health Division and the Wisconsin Veterinary Medical Association provided an educational presentation on Johne's disease and the proposed rule. The presentations and hearings were held on March 16, 17, 23, 24, 30 and 31, 1999, in Fond du Lac, Green Bay, Janesville, Madison, Stevens Point, Wausau, Eau Claire, Barron, Sparta, Richland Center and Lancaster.

The educational presentations attracted 458 people, 212 of whom attended the hearings. Of the people who attended the hearings, 145 registered in support of the rule, 27 of those spoke in support. Nine people registered in opposition to the rule, and 5 of those spoke in opposition. Thus, of the 154 people who attended the hearings and expressed an opinion, 94% registered in support and 6% registered in opposition to the rule. The remaining 58 people who attended the hearings registered neither for nor against the rule. A list of persons who attended or gave testimony at the hearings is attached (Appendix C).

The department received written comments from 23 people. None of the comments opposed the rule and 16 comments supported the rule. The Wisconsin Veterinary

people who wrote suggested a change to the rule, or commented on the Johne's disease situation in general, without stating whether they supported or opposed the rule.

#### **Effective Date**

This rule will take effect on July 1, 2000. By delaying the effective date, the department, the industry and the veterinarians who serve the industry will be able to take appropriate steps to promote successful implementation of this program. The delayed effective date also allows the opportunity to have the statutory changes which are incorporated in AB-314 and the rule changes take effect at the same time. Both will be more effective because their effective dates coincide.

#### **Attached Documents**

The following documents are enclosed in addition to the final draft rule:

- A fiscal estimate (Appendix A).
- A small business analysis (Appendix B).
- A list of persons who attended or gave testimony at the 11 public hearings held in March, 1999 (Appendix C).

1997 Session

FISCAL ESTIMATE

DOA-2048 (R 10/94)

- ORIGINAL     UPDATED ORIGINAL  
 CORRECTED     SUPPLEMENTAL

LRB or Bill No. / Adm. Rule No.  
 DATCP 10 & 11  
 Amendment No. (If Applicable)

Subject  
 Johne's Disease

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(2)(a) & (g)

Assumptions Used in Arriving at Fiscal Estimate

This rule proposal revises current rules related to Johne's disease (paratuberculosis) in cattle and goats. This rule changes the testing and disclosure requirements for Johne's disease and establishes a Johne's disease herd classification system based on the concept of herd risk. This proposal will be effective July 1, 2000.

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

The fiscal impact on the Department of Agriculture, Trade and Consumer Protection (DATCP) will consist of the following:

.10 FTE veterinary specialist to classify herds based on Johne's disease test information and train and educate private veterinarians and animal owners regarding the rules related to Johne's disease and herd classification and .20 FTE program assistant to computer enter test information, issue herd classification certificates, correspond and file at an estimated cost of \$15,500 GPR.

.40 FTE senior laboratory technician to perform Johne's disease tests at the Wisconsin Animal Health Laboratory (WAHL) and related supply expenditures at an estimated cost of \$105,300 PR.

Presently, the WAHL 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 revenue increase of \$105,300 PR.

Long - Range Fiscal Implications

Continued growth in Johne's disease testing of herds and individual animals is anticipated over the next ten years. Department costs and revenues will increase proportionately.

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

Authorized Signature/Telephone No.

Date

DATCP  
 Lynn Jarzombeck (608) 224-4883

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

1/14/99

FISCAL ESTIMATE WORKSHEET

1997 SESSION

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

ORIGINAL  UPDATED  
 CORRECTED  SUPPLEMENTAL

LRB or Bill No/Adm.Rule No. ATCP 10 & 11	Amendment No.
---	---------------

Subject Johne's Disease		
I. One-time Cost or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):		
II. Annualized Cost:		Annualized Fiscal Impact on State funds from:
A. State Costs by Category	Increased Costs	Decreased Costs
State Operations - Salaries and Fringes	\$ 29,000	\$ -
(FTE Position Changes)	(.7 FTE)	(- FTE)
State Operations - Other Costs	91,800	-
Local Assistance		-
Aids to Individuals or Organizations		-
<b>TOTAL State Costs by Category</b>	<b>\$ 120,800</b>	<b>\$ -</b>
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$ 15,500	\$ -
FED		-
PRO/PRS	105,300	-
SEG/SEG-S		-
III. State Revenues - <small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>	Increased Rev.	Decreased Rev.
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS	105,300	-
SEG/SEG-S		-
<b>TOTAL State Revenues</b>	<b>\$ 105,300</b>	<b>\$ -</b>

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ <u>120,800</u>	\$ <u>      </u>
NET CHANGE IN REVENUES	\$ <u>105,300</u>	\$ <u>      </u>

Agency Prepared by: (Name & Phone No.) DATCP Lynn Jarzombek (608) 224-4883	Authorized Signature/Telephone No. <i>Barbara Knapp</i> Barbara Knapp (608) 224-4746	Date 1/14/99
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## Final Regulatory Flexibility Analysis Johne's Disease Rule

### 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 "Johnne's Preventative Management Level A" may be obtained by testing either 30 animals or 10% of the herd, whichever is a larger number, or by testing the whole herd. If all of the animals test negative, the herd will be classified at the "A" level. If any animal tests positive on a test which did not test the whole herd, the herd will be classified at the "D" level. If a whole herd test is conducted and more than 15% of the animals test 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 Johnne's disease. Producers who have experienced the financial impact of having their herd become infected with Johnne'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

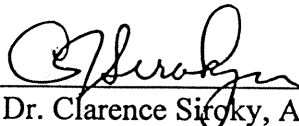
desirable animals or to accept higher risk animals at a price he finds more acceptable. The effect of the rule is to create options for the purchaser, and to provide information the purchaser can use to evaluate the risk associated with purchasing specific animals.

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.

Dated this 27 day of April, 1999.

State of Wisconsin  
Department of Agriculture,  
Trade and Consumer Protection

By   
Dr. Clarence Sircky, Administrator  
Division of Animal Health



## Proposed Rule Relating to Johne's Disease

### List of Persons Who Attended or Gave Testimony at the Eleven Public Hearings Held in March, 1999

#### Testified in Favor:

- Stanley A. Bourdon, DVM, Pro-Active Veterinary Service LLC, Augusta, WI
- Janice Morrow, Cornell, WI
- Charles Price, Menomonie, WI
- Joe Anderson, Frederic, WI
- Richard T. Snyder, Weyerhauser, WI
- Herman Siedschlag, Manitowoc, WI
- Thomas D. Skattebo, Reedsville, WI
- Karl Klessig, Cleveland, WI
- Larry Brickner, National Farmers Org. Wis., Sturgeon Bay, WI
- Vernon Newhouse, Kaukauna, WI
- James P. Mlsna, Hillsboro, WI
- Ray Liska, Hillsboro, WI
- Scott E. Miller, LaFarge, WI
- James Koltes, Koltes Bros., DeForest, WI
- Mike Duerst, Verona, WI
- Kathy Stella, Middleton, WI
- Richard Nyman, Footville, WI
- Tom Oberhaus, Waukesha, WI
- Vance Haagen, Prairie du Chien, WI
- Dr. Mark S. Schroeder, Lancaster, WI
- Peter VanderLoo, Dodgeville, WI
- Pat Kling, Taylor, WI
- Deborah Pollack, Ripon, WI
- Walter Luder, Neosho, WI
- George Roemer, Hartford, WI
- Dale V. Grahl, Dinnerbell Farms, Eden, WI
- Kevin Condon, Oshkosh, WI

#### Testified in Opposition:

- Dennis E. Van Roekel, DVM, Baldwin, WI
- Robert Doray, Genoa, WI

- Terrance Jindrick, Hillsboro, WI
- Jerry L. Meyer, Lone Rock, WI
- Don Steege, Chilton, WI

**Registered in Support:**

- Don Dykhouse, DVM, Glenwood City, WI
- James Hidde, Willard, WI
- Terri A. Ridke, Beldenville, WI
- Steve W. Fetzer, Fetzer Farms Inc., Maiden Rock, WI
- Kenneth Risler, Mondovi, WI
- Robert W. Gatzer, Gatzer Farms Inc., Maiden Rock, WI
- Scott E. Poole, DVM, Ringle, WI
- Scott Bayer, Schofield, WI
- Dr. Thomas L. Beckett, Birnamwood, WI
- Peter R. Schreiner, DVM, Stratford, WI
- Renee Radchiffe, Schofield, WI
- Sandi Cihlar, Cihlar Farms, Mosinee, WI
- Dennis Cihlar, Mosinee, WI
- Jerry Fitzgerald, Mosinee, WI
- Linda Hartl, Stratford, WI
- Mike Hartl, WI
- Victoria Palen, Milladore, WI
- Scott Allenstein, DVM, Weyauwega, WI
- Anna Suvada, Colfax, WI
- Richard Suvada, Colfax, WI
- Russell E. Smith, DVM, Portage, WI
- Karl J. Schillan, Pittsville, WI
- Jerry Schachtschneider, Marion, WI
- Michael Much, Manawa, WI
- Ron Kysilko, Cornell, WI
- Julie Kysilko, Cornell, WI
- Richard Climmene, Tayler Farms, Chetek, WI
- Avery I. Christiansen, Cornell, WI
- Carl Plahvta, Sheldon, WI
- Brad Borreson, Four Mile Creek Dairy LLC, Hillsdale, WI
- B. J. Cadman, DVM, Ridgeland, WI
- Glen Sikorski, Cadott, WI
- Eric Bohl, New Richmond, WI
- Daniel A. Goller, DVM, Cornell, WI
- David Danzinger, Alma, WI
- Chet Rawson, Hazel Green, WI
- Ken Wagner, Manitowoc, WI
- Gary Taucher, Bonduel, WI

- Jeffrey J. McFarlane, DVM, Shawano, WI
- David Mueller, DVM, New Holstein, WI
- Patrick J. Brandl, Manitowoc, WI
- Guy Vogel, Cato, WI
- Greg Cummings, Reedsville, WI
- Russel Strutz, Two Rivers, WI
- Eric Staudinger, Reedsville, WI
- Calvin Edwards, Berlin Vet. Clinic, Berlin, WI
- James Egan, Egan Brothers Inc., Omro, WI
- Dale Birenbaum, Manitowoc, WI
- James Sipiorski, Northstar Select Sires, Green Bay, WI
- Richard Messman, Two Rivers, WI
- Harold Hurda, Manitowoc, WI
- Keith Johnson, Johnson Hills Farms, Valders, WI
- Daniel Vanestie, Brussels, WI
- Paul Dalebroux, Luxemburg, WI
- Brian Moos, Seymour, WI
- Harlan Gries, Valders, WI
- Scott Wiley, Kewaunee, WI
- Paul J. Yatso, DVM, Oconto Falls, WI
- Elizabeth Faulkner, DVM, Lena, WI
- Randy Meyer, Manitowoc, WI
- Jon C. Dees, DVM, Hilbert, WI
- Fred Ballweg, DVM, DePere, WI
- Robert J. Staudinger, Reedsville, WI
- Marilyn Miller, LaFarge, WI
- Mike Kieler, Spring Green, WI
- Kent Frydenlund, DVM, Richland Center, WI
- Marcus Mueller, Plain, WI
- Jeff Mitchell, Hillsboro, WI
- Kent L. Wolf, DVM, Hillsboro, WI
- Beverly Koetes, DeForest, WI
- Elizabeth Yogerst, DVM, Hartford, WI
- Ralph Levzow, Rio, WI
- Kevin K. Frank, Columbus, WI
- Dr. David E. Reeson, Pecatonica Vet. Service, Blanchardville, WI
- Kent D. Pohlman, Sun Prairie, WI
- Mike Maroney, DVM, Mount Horeb, WI
- Jeffrey B. Loomans, Waunakee, WI
- Barry Kleppe, DVM, Waunakee, WI
- Jerome M. Gaska, DVM, Gaska Dairy Health Services, S.C., Columbus, WI
- Becky Levzow, Rio, WI
- Kelly A. Ludwig, McFarland, WI
- Robert M. Kaiser, UW-Extension, Juneau, WI

- Nick Faessler, Juda, WI
- Karol Heller, Orfordville, WI
- Dan Ballmer, Janesville, WI
- William R. Orchard, Eagle, WI
- Wayne Dieckhoff, Hidden Sunset Farm, Brodhead, WI
- Daniel Reheut, Janesville, WI
- Bill Hantke, Orfordville, WI
- Rick Halvorson, DVM, Whitewater, WI
- Roy E. Miller, Fennimore, WI
- Donna Midler, Fennimore, WI
- Robert DeBuhr, Lancaster, WI
- William Braun, DVM, Bagley, WI
- Ken Mergen, Bloomington, WI
- Evelyn A. Hamilton, Cuba City, WI
- Marcus Mueller, Plain, WI
- Kathy Schmitz, Norwalk, WI
- Gail Chapman, Chapman Bros. Farm, Tomah, WI
- Chris Elbe, West Bend, WI
- Scott T. Stotaniok, Lakeview Farms, Belgium, WI
- Douglas Hodorff, Eden, WI
- Randy Marx, Manitowoc, WI
- Allen Abel, Eden, WI
- Ralph Hurda, Manitowoc, WI
- Eugene Neuser, Manitowoc, WI
- David A. Wright, DVM, Campbellsport, WI
- Patricia Ford, Rosendale, WI
- John Hilgeson, Valders, WI
- Mary Leitner, Reedsville, WI
- Linda Linsmeier, Cato, WI
- Dr. Patricia Kuehn, Valders Veterinary Service, Manitowoc, WI
- Jay S. Bailey, DVM, Elkhart Lake, WI
- Bob Falk, Riverback, West Bend, WI
- Gene Hetebrueg, West Bend, WI
- Dale Schuler, Schuler Dairy Farms, Kiel, WI
- Randall Bonde, Newton, WI
- Brenda Kemp, Mequon, WI

**Registered in Opposition:**

- Brian Christensen, Abbotsford, WI
- Rick Bayarski, Green Bay, WI
- Louis Vosberg, Cuba City, WI
- Roger Wiebe, Jr., Grafton, WI

**Registered Neither For nor Against or Other:**

- Kevin J. Gilbertson, Elk Mound, WI
- Dyane Michels, Chippewa Falls, WI
- Dan Michels, Chippewa Falls, WI
- Jane Fyksen, Spencer, WI
- Joel Woodruff, Chippewa Falls, WI
- Don Radtke, Merrill, WI
- Steve Calkins, Abbotsford, WI
- Dennis G. Bardelmeier, Antigo, WI
- Brenda Sikorski, Cadott, WI
- Briana Sechen, Porterfield, WI
- Scott Sechen, Porterfield, WI
- Dean Good, Oconto, WI
- Greg Williamson, Porterfield, WI
- Randy Robertson, Robertson Brothers LLC, DePere, WI
- Mike Reynders, Greenleaf, WI
- Brian Micke, DePere, WI
- Paul R. Calonder, DVM, Reedsville, WI
- Dr. John Brusky, Valders, WI
- Jason Riesterer, Luckow Farms, Newton, WI
- Jon Luckow, Manitowoc, WI
- Dean Aide, Richland Center, WI
- Jesse Riffey, Hillsboro, WI
- Frank Brander, Spring Green, WI
- Paul Zimmerman, Wis. Farm Bureau, Madison, WI
- Armand Bringe, Vernon County Farm Bureau, Viroqua, WI
- Gary Sutherland, Milwaukee Stockyards, Milwaukee, WI
- Suzanne Marx, Helenville, WI
- Eva Dicstelmann, Jefferson, WI
- Donald Loseh, Lancaster, WI
- Donald L. Spink, Rewey, WI
- Harley Troester, Beetown, WI
- John W. Hamilton, Cuba City, WI
- Bob Kliebenstein, The County Today Newspaper, Belmont, WI
- Daniel Frei, Camp Douglas, WI
- Paul Solverson, Viroqua, WI
- Paul Wolf, Allenton, WI
- Jeff Halverson, West Bend, WI
- Jeff Pausma, Fox Lake, WI
- Ray Mueller, Wisconsin State Farmer, Chilton, WI
- Margo Groth, West Bend, WI
- Dean Groth, West Bend, WI
- Colleen Oestreich, Cedarburg, WI

- Carrie Schmidt, Cedarburg, WI
- Marvin Kolbach, Port Washington, WI
- Mark Schleuvogt, Fredonia, WI
- James P. Melichar, Port Washington, WI
- Shawn Maney, Cedarburg, WI
- Doug Rydberg, DATCP, Montello, WI (3)
- Dr. Myron Kibus, DATCP, Madison, WI
- Cindy Partridge, DATCP, McFarland, WI (2)
- Shelby Molina, DVM, DATCP, Whitewater, WI
- Gregg Smith, DATCP, New Glarus, WI
- Robert Ehlenfeldt, DATCP, Madison, WI
- Ellen Hooker, DATCP, Waupaca, WI (2)

Proposed Final Draft

5/17/99

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

The state of Wisconsin department of agriculture, trade and consumer protection proposes the following 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, 11.60(2) and (note); and to create ATCP 11.10(3)(c) and 11.17; relating to paratuberculosis (Johne's disease).

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**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 one of the following applies:

- The animals are being 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.
- 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.

This rule does not require Johne’s disease testing. However, if an animal has been tested and is a reactor, it must be permanently marked. The marking requirement applies even if the animal is not sold, or is sold only to slaughter or as a feeder animal.

## **Test Eligible Animals**

Under this rule, all bulls 24 months of age or older are test eligible animals. All other cattle 36 months of age or older are test eligible. All goats over the age of 18 months are test eligible.

## **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 all 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 in the herd, whichever group is larger. A herd with fewer than 30 test eligible animals is not eligible for a “random herd test.” All 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 within a 12 month

period, the department approves the testing plan before any animals are tested, and the animals are tested according to the plan.

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:

- *Johne's preventive management level A.* The department will classify a herd as "Johne's preventive management level A" if an annual herd test reveals no Johne's disease 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 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 or split 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" or a "split 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.

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 added 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, 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 or origin, except that if the animals are permitted 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 and 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. If the herd owner asks the department to classify a 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 annual 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.

#### **Effective Date**

This proposed rule will take effect on July 1, 2000. The delayed effective date will give producers time to complete testing and receive classifications prior to the date on which they are required to disclose the herd classification to people who purchase their animals.

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

**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. The month and day on which samples are collected for the first annual herd test conducted after July 1, 2000, if no annual herd test was conducted within one year prior to that date. If the first annual herd test conducted after July 1, 2000 is a split herd test, the "anniversary date" is the month and day on which samples are collected from the last group of animals in the split herd test.

2. The month and day between July 1, 1999, and June 30, 2000, on which samples were collected for an annual herd test, if an annual herd test was conducted within that period.

(b) "Annual herd test" means an annual paratuberculosis test conducted on a herd of cattle under this section. An annual herd test includes a random herd test, a split herd test or a whole herd test.

(c) "Herd" means a herd of cattle.

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

(e) "Random herd test" means a paratuberculosis test performed under sub. (5)(b).

(f) "Split herd test" means a paratuberculosis test performed under sub. (5)(c).

(g) "Test eligible animals" means all the following:

1. All cattle, other than bulls, that are 36 months of age or older.
2. All bulls that are 24 months of age or older.

(h) "Whole herd test" means a paratuberculosis test performed under sub.

(5)(a).

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

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

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

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

(3) HERD CLASSIFICATION. (a) *Johne's preventive management level A*. The department shall classify a herd as "Johne's preventive management level A" if an annual herd test reveals no paratuberculosis reactors.

**NOTE:** Animals from a herd classified "Johne's preventive management level A" normally have the lowest risk of transmitting Johne's disease (paratuberculosis). The risk is normally reduced with each additional year that the herd maintains the level A classification. However, no herd classification ensures that an animal is free of Johne's disease.

The department may certify a herd as a voluntary participant in the national Johne's disease program if the herd is classified under par. (a) as "Johne's preventive management level A." To participate in the

national program, a herd owner must enter into a certification contract with the department. In establishing the terms of the contract, the department will be guided by the "U.S. Voluntary Johne's Disease Herd Status Program for Cattle." For more information, contact the department at the following address:

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

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

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

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

1. A random herd test reveals one or more paratuberculosis reactors, unless the department reclassifies the herd under par. (b) or (c) based on a follow-up whole herd test.
2. More than 15% of the animals tested in a whole herd test or a split herd test are paratuberculosis reactors.



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

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

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

**NOTE:** The herd classifications under pars. (a) to (e) are arranged from most desirable (a) to least desirable (e). "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.

(f) *Classification to include year.* A herd classification under pars. (a) to (d) shall indicate the first year from which the herd has continuously held that classification.

(4) **COMMINGLED CATTLE; CLASSIFICATION.** (a) Except as provided in par. (c) cattle added to a herd from a herd with a less desirable classification under sub. (3)

retain that less desirable herd classification for 120 days after being added but do not affect the classification of the herd to which they are added.

(b) Cattle added to a herd from a herd with a more desirable classification are immediately reclassified to the less desirable classification of the herd to which they are added.

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

(d) Cattle from herds classified as "Johne's preventive management level A," "Johne's preventive management level B," "Johne's preventive management level C," or "Johne's preventive management level D" that are sent by their owners to a consignment sale do not constitute a temporarily assembled herd under par. (c), except that animals which are allowed to have direct contact with each other for more than 24 hours constitute a temporarily assembled herd.

(5) ANNUAL HERD TEST. An annual herd test may be any of the following:

(a) *Whole herd test.* A whole herd test is performed on all test eligible animals in the herd. All samples for a whole herd test shall be collected on the same day or on consecutive days. Samples shall be collected on the anniversary date under sub. (1)(a), or within 2 months before or after that date.

(b) *Random herd test.* A random herd test is performed on a group of test eligible animals randomly selected from the test herd by the person who collects the test samples under sub. (6). The randomly selected group shall include at least 30 test

eligible animals, or at least 10% of the test eligible animals in the herd, whichever group is larger. All samples for a random herd test shall be collected on the same day. Samples shall be collected on the anniversary date under sub. (1)(a), or within 2 months before or after that date.

**NOTE:** A herd with less than 30 test eligible animals is not eligible for a random herd test. The department may not classify a herd as "Johne's preventive management level B" or "Johne's preventive management level C" based on a random herd test. If a random herd test reveals one or more reactor animals, the herd is classified as "Johne's preventive management level D" until the herd owner completes a follow-up whole herd test. See sub. (3)(d)1.

(c) *Split herd test.* A split herd test is performed, over the course of not more than 12 months, on all test eligible animals in a herd. A split herd test shall comply with all the following requirements:

1. The department shall approve a herd testing plan before any animals are tested. The department shall grant or deny approval, in writing, within 30 days after the herd owner submits a proposed testing plan to the department.

2. All testing shall be completed according to the plan approved by the department.

3. All test eligible animals in the herd shall be tested at least once during the 12 month period ending on the herd's anniversary date.

(6) COLLECTING TEST SAMPLES. Annual herd test samples shall be collected by an accredited veterinarian, or by an employee of the department or the federal bureau.

The person who collects an annual herd test sample shall do all the following:

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

**NOTE:** A herd owner may have cattle tested for Johne's disease at any time. The department will not use the test results to classify the tested herd under this section unless the test complies with this section and the herd owner asks the department to classify the herd.

This rule does not prohibit a person from collecting test samples from animals that are too young to be "test eligible" under ATCP 10.21 (1)(g), but the department will not consider test results from those animals when determining the appropriate herd classification. To facilitate review of results, the person collecting test samples should separate "test eligible" from "non-test eligible" samples, and should prepare separate test submission forms for each category.

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

- (a) The enzyme linked immunosorbent assay (ELISA).
- (b) The fecal culture test.
- (c) Another test approved by the department.

(8) **TEST RESULTS.** A laboratory performing tests under sub. (7) shall report the test results to the department within 10 days. If the herd owner asks the department

to classify a herd based on the results of an annual herd test, the department shall classify the herd under sub. (3) within 30 days after it receives both the test results and the herd owner's request. The department shall issue a classification notice under sub. (10) to the herd owner.

**NOTE:** Under s. ATCP 10.02 and 10.03, a veterinarian or laboratory that diagnoses or finds evidence of Johne's disease must report that diagnosis or finding to the department within 10 days, in writing or by telefax.

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

- (a) The animal tests positive on the enzyme linked immunosorbent assay (ELISA), unless it subsequently tests negative on the fecal culture test.
- (b) The animal tests positive on the fecal culture test.
- (c) The animal tests positive on any other test which the department approves and deems conclusive.

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

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

(b) *Herd classification.* The herd classification under sub. (3). The classification notice shall include the effective date and expiration date of the classification. A classification takes effect on the effective date specified in the notice, and supersedes any prior classification.

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

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

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

2. The seller first discloses to the prospective buyer, in writing, that the animal is a paratuberculosis reactor unless the reactor is sold directly to slaughter or as a feeder animal.

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

1. Identify the reactor with a permanent paratuberculosis reactor identification approved by the department.

2. Collect a sample from that animal for a fecal culture test.

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

(12) **HERD VACCINATION.** No person may vaccinate cattle for paratuberculosis 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.

(13) **MISREPRESENTING HERD CLASSIFICATION.** No seller may misrepresent the classification, under sub. (3), of the herd from which cattle 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.

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

**NOTE:** See s. 95.232, Stats.

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

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

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

**DEFINITIONS.** In this section:

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

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

herd test, the “anniversary date” is the month and day on which samples are collected from the last group of animals included in test split herd test.

2. The month and day between July 1, 1999, and June 30, 2000, on which samples were collected for an annual herd test, if an annual herd test was conducted within that period.

3. The month and day on which samples were taken to complete the first split herd test under a plan approved by the department under par. (5)(b).

(b) “Annual herd test” means an annual paratuberculosis test conducted on a herd of goats under this section. An annual herd test includes a random herd test, a split herd test or a whole herd test.

(c) “Herd” means a herd of goats.

(d) “Paratuberculosis” means the infectious and communicable disease of domestic ruminants, commonly known as Johne’s disease, which is caused by *Mycobacterium paratuberculosis*.

(e) “Random herd test” means a paratuberculosis test performed under sub. (5)(b).

(f) “Split herd test” means a herd test conducted under sub (5)(c).

(g) “Test eligible animals” means all goats 18 months or age or more.

(h) “Whole herd test” means a paratuberculosis test performed under sub. (5)(a).



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

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

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

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

(3) HERD CLASSIFICATION. (a) *Johne's preventive management level A.* The department shall classify a herd as "Johne's preventive management level A" if an annual herd test reveals no paratuberculosis reactors.

**NOTE:** Animals from a herd classified "Johne's preventive management level A" normally have the lowest risk of transmitting Johne's disease (paratuberculosis). The risk is normally reduced with each additional year that the herd maintains the level A classification. However, no herd classification ensures that an animal is free of Johne's disease.

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

(c) *Johne's preventive management level C.* The department shall classify a herd as "Johne's preventive management level C" if at least 5% but not more than 15%

of the animals tested in an annual whole herd test or split herd test, or in a follow-up whole herd test under par. (d)1., are paratuberculosis reactors.

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

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

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

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

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

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

**NOTE:** The herd classifications under pars. (a) to (e) are arranged from most desirable (a) to least desirable (e). "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 goats from such a herd faces an unknown, but substantial, risk that the goats are infected with Johne's disease.

(f) *Classification to include year.* A herd classification under pars. (a) to (d) shall indicate the first year from which the herd has continuously held that classification.

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

(b) Goats added to a herd from a herd with a more desirable classification are immediately reclassified to the less desirable classification of the herd to which they are added..

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

(d) Goats from herds classified as "Johne's preventive management level A," "Johne's preventive management level B," "Johne's preventive management level C," or "Johne's preventive management level D" that are sent by their owners to a consignment sale do not constitute a temporarily assembled herd under par. (c), except that animals which are allowed to have direct contact with each other for more than 24 hours constitute a temporarily assembled herd.

(5) ANNUAL HERD TEST. An annual herd test may be any of the following:

(a) *Whole herd test.* A whole herd test is performed on all test eligible animals in the herd. All samples for the whole herd test shall be collected on the same day or on consecutive days. Samples shall be collected on the anniversary date under sub. (1)(a), or within 2 months before or after that date

(b) *Random herd test.* A random herd test is performed on a group of test eligible animals randomly selected from the test herd by the person who collects the test samples under sub. (6). The randomly selected group shall include at least 30 test eligible animals, or at least 10% of the test eligible animals in the herd, whichever group is larger. All samples for a random herd test shall be collected on the same day. Samples shall be collected on the anniversary date under sub. (1)(a), or within 2 months before or after that date.

**NOTE:** A herd with less than 30 test eligible animals is not eligible for a random herd test. The department may not classify a herd as "Johne's preventive management level B" or "Johne's preventive management level C" based on a random herd test. If a random herd test reveals one or more reactor animals, the herd is classified as "Johne's preventive management level D" until the herd owner completes a follow-up whole herd test. See sub. (3)(d)1.

(c) *Split herd test.* A split herd test is performed, over the course of not more than 12 months, on all test eligible animals in a herd. A split herd test shall comply with all the following requirements:

1. The department shall approve a herd testing plan before any animals are tested. The department shall grant or deny approval, in writing, within 30 days after the herd owner submits a proposed testing plan to the department.

2. All testing shall be completed according to the plan approved by the department.

3. All test eligible animals in the herd shall be tested at least once during the 12 month period ending on the herd's anniversary date.

(6) COLLECTING TEST SAMPLES. Annual herd test samples shall be collected by an accredited veterinarian, or by an employee of the department or the federal bureau.

The person who collects an annual herd test sample shall do all the following:

- (a) Determine the animals to be tested, under sub. (5).
- (b) Determine the type of test to be performed under sub. (7).
- (c) Collect an appropriate sample from each test animal, based on the type of test to be performed under sub. (7).

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

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

**NOTE:** A herd owner may have animals tested for Johne's disease at any time. The department will not use the test results to classify the tested herd under this section unless the test complies with this section and the herd owner asks the department to classify the herd.

This rule does not prohibit a person from collecting test samples from animals that are too young to be "test eligible" under ATCP 10.63(1)(g), but the department will not consider test results from those animals when determining the appropriate herd classification. To facilitate review of results, the person collecting test samples should separate "test eligible" from "non-test eligible" samples, and should prepare separate test submission forms for each category.

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

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

(8) **TEST RESULTS.** A laboratory performing tests under sub. (7) shall report the test results to the department within 10 days. If the herd owner asks the department to classify a herd based on the results of an annual herd test, the department shall classify the herd under sub. (3) within 30 days after it receives both the test results and the herd owner's request. The department shall issue a classification notice under sub. (10) to the herd owner.

**NOTE:** Under s. ATCP 10.02 and 10.03, a veterinarian or laboratory that diagnoses or finds evidence of Johne's disease must report that diagnosis or finding to the department within 10 days, in writing or by telefax.

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

- (a) The animal tests positive on the fecal culture test.
- (b) The animal tests positive on any other test which the department approves and deems conclusive.

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

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

(b) *Herd classification.* The herd classification under sub. (3). The classification notice shall include the effective date and expiration date of the classification. A classification takes effect on the effective date specified in the notice, and supersedes any prior classification.

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

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

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

2. The seller first discloses to the prospective buyer, in writing, that the animal is a paratuberculosis reactor unless the reactor is sold directly to slaughter.

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

(12) HERD VACCINATION. No person may vaccinate goats for paratuberculosis 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.

(13) **MISREPRESENTING HERD CLASSIFICATION.** No seller may misrepresent the classification, under sub. (3), of the herd from which 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.

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

**NOTE:** See s. 95.232, Stats.

**SECTION 5.** ATPC 11.01(60) is repealed.

**SECTION 6.** ATPC 11.10(3)(c) is created to read:

ATPC 11.10(3)(c) *Paratuberculosis.* Within 30 days after a bovine animal is determined to be a paratuberculosis reactor, an accredited veterinarian shall identify the reactor with a permanent paratuberculosis reactor identification approved by the department.

**SECTION 7.** ATPC 11.17 is created to read:

**ATPC 11.17 Intrastate movement of bovine animals; paratuberculosis reactors.** No person may sell or move an animal determined to be a paratuberculosis reactor under s. ATPC 10.21(9) unless an accredited veterinarian first identifies that reactor with a permanent paratuberculosis reactor identification approved by the department.



**SECTION 8.** ATCP 11.60(2) and (note) are repealed and recreated to read:

ATCP 11.60(2) PARATUBERCULOSIS REACTORS; SALE OR MOVEMENT. No person may sell or move an animal determined to be a paratuberculosis reactor under s. ATCP 10.21(9) or 10.63(9) unless an accredited veterinarian first identifies that animal under s. ATCP 10.21(11)(a) or s. ATCP 10.63(11)(a).

**NOTE:** ATCP 10.21(11) and ATCP 10.63(11) also require the seller of a paratuberculosis reactor to disclose to the buyer, in writing, that the animal is a paratuberculosis reactor unless the animal is sold directly to slaughter or as a feeder animal.

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

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

**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