

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



Jane R. Henkel, Acting Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

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 99-151

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

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

10-29-99 RECEIVED BY LEGISLATIVE COUNCIL.

11-29-99 REPORT SENT TO AGENCY.

RS:MM:rv;wu

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

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



Jane R. Henkel,
Acting Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 99-151

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.]

2. Form, Style and Placement in Administrative Code

- a. The analysis to the rule should explain why the rule prohibits Wisconsin grade labeling of cheese from other states or countries.
- b. The analysis to the rule should explain why, in s. ATCP 81.22 (1), the phrase "if there is a Wisconsin grade standard for that variety in subchapters IV to VII" is added.
- c. In the first sentence added to s. ATCP 81.20 (intro.), "cheese" should be changed to "the cheese."
- d. The phrase added to s. ATCP 81.24 (1) should be stated in the affirmative. For example, that phrase could be rewritten as follows: "A dairy plant licensed under s. 97.20, Stats., may cut, wrap and grade label cheese for retail distribution if the cheese is graded by a cheese grader licensed under s. 97.175, Stats., and the retail packages are grade labeled as required under s. ATCP 81.22."

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

- 1 The state of Wisconsin department of agriculture, trade and consumer protection proposes the
- 2 following order to amend ATCP 81.20(intro.) and (4), 81.22(1), 81.24(1) and (3), and
- 3 81.30(2)(chart); to repeal and recreate 81.20(6) and (note) and 81.21(2); and to create 81.215 and
- 4 81.25(1)(e) relating to cheese grading, packaging and labeling.

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

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

Statutes Interpreted: s. 97.177, Stats.

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

Wisconsin Cheese; Manufacturer's Label

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

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

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

Cheese from other States or Countries; Wisconsin Grade Labeling Prohibited

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

Age Labeling of Cheese

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

Grade Labeling Retail Cheese Packages

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

Swiss Cheese

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

Recordkeeping

Under current rules, a licensed cheese grader must keep records showing the name of each person for whom cheese is graded, the quantity graded, the grading date, and the grade of each graded lot. This rule also requires the grader to keep fat and moisture records for each lot of cheese if the fat or moisture content is measured.

-
- 1 **SECTION 1.** ATCP 81.20(intro.) and (4) are amended to read:
- 2 ATCP 81.20 (intro.) All cheese manufactured in this state shall be labeled at the dairy
- 3 plant or cheese factory with all of the items listed under subs. (1) to (5). The labeling of bulk
- 4 cheese shall remain on the cheese until the cheese is used in the manufacture or processing of
- 5 another food, or until it is relabeled by a buyer who cuts and repackages the bulk unit into

1 consumer size packages. A manufacturer may not use electronic code labeling as the sole means
2 to display labeling required under this section, except when cheese is under the manufacturer's
3 custody and control. If a manufacturer uses electronic code labeling, the manufacturer shall
4 provide a scanner or other device that enables a department employee or agent to decode the
5 information into a readable format at the place where the manufacturer keeps the cheese.

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

10 **SECTION 2.** ATCP 81.20(6) is repealed and recreated to read:

11 ATCP 81.20(6) AGE LABELING. Age labeling as required under s. ATCP 81.215.

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

13 *NOTE:* A manufacturer's label will substantially comply with subs. (1) to (5) if it uses one of the
14 following alternative formats for each label requirement:
15

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

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

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

20 **SECTION 5.** ATCP 81.215 is created to read:

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

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

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

*not
exph. in
analysis*

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

7 ATCP 81.24(1) GENERAL. A retail food establishment licensed under s. 97.30, Stats., or
8 a food processing plant licensed under s. 97.29 Stats., may obtain a cheese grade labeling permit
9 from the department. A permit holder may affix a cheese grade label to retail packages of graded
10 cheese purchased in bulk by the permit holder if the bulk lot has been graded as Wisconsin

11 Certified Premium Grade AA, Wisconsin Grade A or Wisconsin State Brand and the cheese is
12 cut, packaged and labeled for retail distribution. No retail food establishment may grade label
13 retail packages of cheese without a permit from the department. Retail grade labeling shall

14 comply with this section. This subsection does not prohibit a dairy plant licensed under s. 97.20,
Instead, state in affirmative

15 Stats., from cutting, wrapping and grade labeling cheese for retail distribution if the cheese is
16 graded by a cheese grader licensed under s. 97.175, Stats., and the retail packages are grade

17 labeled as required under s. ATCP 81.22.

18 (3) RETAIL PACKAGE GRADE LABELING. The department shall issue a permit identification
19 number to each grade labeling permit holder under sub. (1). The identification number shall
20 consist of the letter prefix "P", followed by a three-digit identification number. When affixing a
21 grade label to retail packages of graded cheese under this section, the permit holder shall print
22 the specified grade and the permit holder's identification number within a miniature outline map
23 of the boundaries of the state of Wisconsin. The type shall be designed and spaced so as to be
24 legible and present a symmetrical appearance. ~~Cheese manufactured in a state other than~~

1 ~~Wisconsin or in a foreign country, and grade labeled under sub. (1) shall identify the state or~~
 2 ~~country of origin on the retail package label in a type size not smaller than the type size required~~
 3 ~~for the net weight statement.~~

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

5 ATCP 81.25(1)(e) The fat and moisture content of each lot of cheese, if measured.

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

7 ATCP 81.30(2)(chart)

Style	Weight in Pounds	Diameter in Inches	Height in Inches	Length in Inches	Width in Inches
(1) Cheddar	70 to 78	14½	12 to 12¼		
(2) Flat	32 to 37	14½	6⅞ to 6¼		
(3) Daisy	21 to 24	14	4 to 4¼		
(4) Longhorn	12½ to 13¾	6	12 to 12½		
(5) Midget	11 to 12½	9¾	4¼ to 4⅞		
(6) 20-lb. Block	20¼ to 22		3⅞ to 3⅞	14 to 14¼	11 to 11¼
(7) 40-lb. Block	41 to 44		6⅞ to 7¾	14 to 14¼	11 to 11¼
(8) 60-lb. Block	61 to 65		10⅞ to 10⅞	14 to 14¼	11 to 11¼
(9) 640-lb. Block	640 (min.)				
(10) Barrel; 55 gal.					
(a) Metal	480 (min.)	22½	33½		
(b) Fiber	480 (min.)	23½	33 to 34		
(11) Swiss Cheese					
Rindless Blocks					
(a) Single	95 to 98		7 to 8½	25 to 26½	15 to 15¾
(b) Double	190 to 196		7 to 8½	25 to 26½	30 to 31½

1 **SECTION 10. Effective date.** The rules contained in this order shall take effect on the
2 first day of the month following publication in the Wisconsin administrative register, as provided
3 under s. 227.22(2) (intro.), Stats.

Dated this _____ day of _____, 2000.

**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 CHEESE GRADING, PACKAGING AND LABELING

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings, at the times and places indicated below, on proposed amendments to Chapter ATCP 81, Wisconsin Administrative Code, relating to cheese grading, packaging and labeling. 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 January 14, 2000, for additional written comments.

A copy of this rule may be obtained, free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, PO Box 8911, Madison, WI 53708-8911, or by calling 608-224-4700. Copies will also be available at the public hearings.

An interpreter for the hearing impaired will be available on request for these hearings. Please make reservations for a hearing interpreter by December 2, 1999 either by writing to Debbie Mazanec, Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, PO Box 8911, Madison, WI 53708-8911, (608-224-4712), or by contacting the message relay system (TTY) at 608-224-5058. Handicap access is available at the hearing locations.

HEARING DATES, TIMES AND LOCATIONS

Three (3) hearings are scheduled. The hearings will be held simultaneously by video conferencing at the following locations on Thursday, December 9, 1999, from 1:00 p.m. – 3:00 p.m.

Wisconsin Department of Agriculture, Trade and Consumer Protection
Room 472
2811 Agriculture Drive
Madison, WI 53704
Handicapped accessible

State of Wisconsin Office Building
Room 618
200 North Jefferson Street
Green Bay, WI 54301
Handicapped accessible

State of Wisconsin Office Building
Room 139
718 West Clairemont Avenue
Eau Claire, WI 54701
Handicapped accessible

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

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

Statutes Interpreted: s. 97.177, Stats.

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

Wisconsin Cheese; Manufacturer's Label

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

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

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

Cheese from other States or Countries; Wisconsin Grade Labeling Prohibited

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

Age Labeling of Cheese

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

Grade Labeling Retail Cheese Packages

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

Swiss Cheese

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

Recordkeeping

Under current rules, a licensed cheese grader must keep records showing the name of each person for whom cheese is graded, the quantity graded, the grading date, and the grade of each graded lot. This rule also requires the grader to keep fat and moisture records for each lot of cheese if the fat or moisture content is measured.

FISCAL ESTIMATE

Assumptions Used in Arriving at Fiscal Estimate

Rules relating to cheese grading, packaging and labeling are contained in Chapter ATCP 81, Wis. Adm. Code. These rules prevent fraud and deception, and assist wholesale and retail

purchasers of cheese in making informed value comparisons and purchase decisions. Grade standards contained in the rules set the benchmarks for determining cheese quality.

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

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

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

Long - Range Fiscal Implications

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

INITIAL REGULATORY FLEXIBILITY ANALYSIS

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

Under this rule, cheese manufacturers will be permitted to use electronic code labeling as an alternative method to list any or all of the items of information required on the manufacturer's label for bulk cheese, as long as the cheese remains under the control and custody of the manufacturer. The decision to label bulk cheese in this manner will be fully voluntary. Coding methods will not be standardized under one uniform system from company to company. Therefore, the manufacturer must provide a scanner or other appropriate device where the cheese

is located that enables an employe or agent of the department to decode the information into a readable format. If the cheese is stored in public warehouse facilities, the warehouse may need to make adjustments in its recordkeeping and warehousing operations.

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

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

Under this rule, licensed cheese graders must maintain and make available to inspection any records of test results for fat and moisture content of any lot of cheese for which fat and moisture was measured. This rule does not require any additional testing, but simply requires that any results of tests conducted be made available for inspection to help ensure that the cheese meets the applicable standard of identity.

At the request of industry, this rule eliminates the weight and size requirements for Swiss cheese rindless blocks to provide greater flexibility for our manufacturers to meet the demand of their customers. Other rule changes are minor and technical in nature and are not expected to require any additional reporting or recordkeeping, knowledge or professional skills, nor increase costs to small businesses.

Dated this 27 day of October, 1999.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Ben Brancel
Ben Brancel, Secretary