



State of Wisconsin  
Tommy G. Thompson, Governor

25ms-24

Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary



DATE: April 9, 1999  
TO: Members of the Senate and Assembly  
FROM: Ben Brancel, Secretary *Ben Brancel*  
SUBJECT: Security of Payments to Milk Producers; Emergency Rules

In compliance with s. 227.24, Stats., the Department of Agriculture, Trade and Consumer Protection is providing you with a copy of the department's emergency rules related to security of payments to milk producers.

The department currently administers a dairy plant licensing and security program under ss. 97.20 and 100.06, Stats. The department has adopted rules under ch. ATPC 100, Wis. Adm. Code (Dairy Plant Payments to Milk Producers; Security).

Dairy plant operators are currently licensed under s. 97.20, Stats., with an annual license year beginning May 1. As a condition of licensing, dairy plant operators must comply with financial requirements under s. 100.06, Stats. These financial requirements are designed to provide "reasonable assurance" that dairy farmers will be paid for the milk which they produce and ship to dairy plants.

Currently, under s. 100.06, Stats., and ch. ATPC 100, Wis. Adm. Code, no dairy plant may purchase milk from producers unless the dairy plant does one of the following:

- Files audited financial statements with the department showing that the operator meets minimum financial standards.
- Files security with the department.
- Enters into a dairy plant trusteeship. (A trusteeship is not a viable option for many plants.)

Under s. ATPC 100.45(5), Wis. Adm. Code, if a dairy plant is required to file security, the security must be equal to at least 75% of the operator's "maximum liability to producers." An operator's "maximum liability to producers" is based on the operator's highest monthly producer payroll during the *preceding* license year.

Because of record high prices during the last quarter of 1998, dairy plants had unusually high monthly producer payrolls during that period. The Basic Formula Price ("BFP") reached an all-time record of \$17.34 per hundredweight in December 1998. Since then, the average price for

milk has fallen by approximately 41 percent. (Dairy economists expect the average BFP for 1999 to be 12 to 16.2% below last year's average of \$14.20.)

As a result of this dramatic price drop, dairy plant producer payrolls have decreased sharply. Current dairy plant security requirements, calculated according to last year's "maximum liability to producers" are therefore excessive in relation to current payrolls. (Security amounts are 31 to 48% higher than they would be if calculated at current milk prices.)

Prices received by Wisconsin dairy plants for processed dairy products have also fallen dramatically since the end of last year. This has created serious financial hardships for many dairy plant operators, and has impaired the ability of some operators to meet financial standards under s. 100.06, Stats., or to file security in the (excessive) amount currently required. If a dairy plant operator fails to meet minimum financial standards, and is unable to file the required security, the dairy plant may be forced to close. The forced closing of a plant may, in turn, result in serious financial losses to producer patrons.

Excessive security requirements, based on last year's milk prices, impose an added burden on financially stressed plant operators. This emergency rule reduces security requirements by 15% for the license year beginning May 1, 1999, to reflect the reduction in milk prices and producer payrolls. This will make it easier for dairy plants operators to meet the minimum security requirements and stay in business.

This emergency rule will continue to provide reasonable protection for milk producers. Security levels are merely being adjusted so that they are commensurate with current milk prices and producer payrolls. This emergency rule will relieve financially stressed dairy plants from unnecessary financial burdens, and will make it easier for those plants to file security with the department. That will reduce the risk of dairy plant financial failures, or forced closings of unsecured plants, which may adversely affect milk producers.

Under current rules, if the amount of security filed by a dairy plant operator falls below 75% of the operator's current monthly producer payroll, the operator must immediately notify the department. The department may require the operator to file additional security. This emergency rule does not change these current rule provisions.

The department is adopting these emergency rules on a one-time basis, in order to respond to the current conditions in the dairy industry. The emergency rules will take effect on May 1, following publication in the official state newspaper. The rule will remain in effect for 150 days. The department may ask the Legislature's Joint Committee for Administrative Rules to extend the emergency rule for up to 120 days. This emergency rule was approved by the Board of Agriculture, Trade and Consumer Protection on April 8, 1999.

**EMERGENCY ORDER OF THE  
STATE OF WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION  
ADOPTING RULES**

The state of Wisconsin department of agriculture, trade and consumer protection hereby adopts the following emergency order to amend ATCP 100.45(5) and create ATCP 100.45(5m), relating to the security of dairy plant payments to milk producers.

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

Statutory authority: ss. 93.07(1), 97.20 and 100.06, Stats.

Statutes interpreted: ss. 97.20 and 100.06, Stats.

This emergency rule reduces the amount of security which dairy plant operators file with the department to secure payment of milk producer payrolls. This adjustment reflects a large decline in producer payrolls resulting from the recent sharp drop in milk prices. This emergency rule will restore security requirements to normal levels, and will relieve dairy plant operators of excessive security requirements based on last year's high milk prices. This adjustment will save dairy processors millions of dollars which they can put to other productive uses. It will maintain normal protection for milk producers, based on this year's milk prices, and will help Wisconsin's dairy processing industry to remain financially viable.

**Dairy Plant Security Program**

The Department of Agriculture, Trade and Consumer Protection ("department") currently administers a dairy plant licensing and security program under ss. 97.20 and 100.06, Stats. The department has adopted rules under ch. ATCP 100, Wis. Adm. Code (Dairy Plant Payments to Milk Producers; Security).

Dairy plant operators are currently licensed under s. 97.20, Stats., with an annual license year beginning May 1. As a condition to licensing, dairy plant operators must comply with financial requirements under s. 100.06, Stats. These financial requirements are designed to provide "reasonable assurance" that dairy farmers will be paid for the milk which they produce and ship to dairy plants.

Currently, under ss. 97.20(2)(d)2 and 100.06, Stats., no dairy plant operator may purchase milk from producers in this state unless the dairy plant operator does one of the following:

- Files audited financial statements with the department showing that the operator meets minimum financial standards.
- Files security with the department.
- Enters into a dairy plant trusteeship. (A trusteeship is not a viable option for many plants.)

### **Current Security Requirements**

Under s. ATCP 100.45(5), Wis. Adm. Code, if a dairy plant operator is required to file security, the security must be equal to at least 75% of the operator's "maximum liability to producers." An operator's "maximum liability to producers" is based on the operator's highest monthly producer payroll during the *preceding* license year.

Because of record high prices during the last quarter of 1998, dairy plants had unusually high producer payrolls during that period. The Basic Formula Price ("BFP") reached an all time record high of \$17.34 per hundredweight in December 1998. Since then, the average market price for raw milk has fallen by approximately 41 percent. (Dairy economists expect an average BFP for 1999 to be 12% to 16.2% below last year's average of \$14.20.)

As a result of this dramatic price drop, dairy plant producer payrolls have decreased sharply. Current dairy plant security requirements, calculated according to last year's "maximum liability to producers," are therefore excessive in relation to current payrolls. (Security amounts are 31 to 48% higher than they would be if calculated at current prices.)

Prices received by Wisconsin dairy plants for processed dairy products have also fallen dramatically since the end of last year. This has created serious financial hardships for many dairy plant operators, and has impaired the ability of some operators to meet minimum financial standards or file security in the (excessive) amount currently required. If a dairy plant is unable to meet minimum financial standards, and is unable to file security in the amount currently required, the dairy plant may be forced to close. The forced closing of a plant may, in turn, result in serious financial losses to producer patrons.

### **Security Adjustment**

Excessive security requirements, based on last year's milk prices, impose an added burden on financially stressed plant operators. This emergency rule reduces security requirements by 15% for the license year beginning May 1, 1999, to reflect the reduction in milk prices and producer payrolls. This will make it easier for dairy plant operators to meet the minimum security requirements and stay in business.

## **Producer Protection**

This emergency rule will continue to provide reasonable protection for milk producers. The emergency rule merely adjusts current security levels to be commensurate with current milk prices and producer payrolls. This emergency rule will relieve financially stressed dairy plants from unnecessary financial burdens, and will make it easier for those plants to file security with the department. That will reduce the risk of dairy plant financial failures, or forced closings of unsecured plants, which may adversely affect milk producers.

Under current rules, if the amount of security filed by a dairy plant operator falls below 75% of the operator's current monthly producer payroll, the operator must immediately notify the department. The department may require the operator to file additional security. This emergency rule does not change these current rule provisions.

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### **FINDING OF EMERGENCY**

(1) Section 100.06, Stats., is designed to provide "reasonable assurance" that dairy farmers will be paid for the milk they produce. Under ss. 97.20(2)(d)2. and 100.06, Stats., a dairy plant must, as a condition to licensing, comply with applicable security requirements under s. 100.06, Stats., and department rules under ch. ATCP 100, Wis. Adm. Code. Since dairy plant licenses expire on April 30 annually, dairy plants must comply with applicable security requirements in order to qualify for license renewal on May 1 of each year.

(2) Under s. 100.06, Stats., and ch. ATCP 100, a dairy plant operator who purchases milk from producers must do one of the following:

(a) File with the department of agriculture, trade and consumer protection ("department") audited financial statements which show that the operator meets minimum financial standards established by s. 100.06, Stats.

(b) File security with the department in an amount equal to at least 75% of the operator's "maximum liability to producers," as calculated under s. ATCP 100.45(5).

(c) Enter into a dairy plant trusteeship under ch. ATCP 100, Subch. V.

(3) Under s. ATCP 100.45(5), a dairy plant operator's "maximum liability to producers" is based on the plant operator's largest monthly purchase of milk during the *preceding* license year. Milk prices hit all time record highs in 1998, dramatically increasing monthly dairy plant payrolls. Security requirements for the 1999 license year are currently based on these inflated 1998 monthly payrolls, even though 1999 monthly payrolls have dropped dramatically in response to price changes.

(4) Since December 1998, the average market price for raw milk has fallen by approximately 40%. Dairy economists expect BFP average prices to remain at least 12% to 16.2% below last year's average during 1999. Because of the dramatic decline in milk prices, dairy plants have smaller producer payroll obligations than they had in 1998.

(5) Prices received by Wisconsin dairy plants for processed dairy products have also fallen dramatically since December. This has created serious financial hardships for some dairy plants.

(6) Current security requirements, based on 1998 producer prices and payrolls, are excessive in relation to current payroll obligations and impose an added financial burden on dairy plants. Current security requirements under s. ATCP 100.45(5), based on last year's prices, are at least 31 to 48% higher than they would be if calculated at current prices.

(7) Because of the dramatic decline in dairy prices, some dairy plant operators are required to file large amounts of additional security, often amounting to millions of dollars. This is a major expense for affected operators. Operators may find it difficult, financially, to obtain and file the required security. If a dairy plant is unable to file the required security in connection with the May 1, 1999 license renewal, the department will be forced to take action against the dairy plant's license. This could result in the forced closing of some unsecured

dairy plants. The forced closing of an unsecured plant may, in turn, result in serious financial losses to producer patrons.

(8) By requiring excessive security based on last year's prices, current rules are making it unnecessarily difficult and expensive for dairy plants to obtain and file security. This could contribute to the financial failure of some dairy plants, or to the forced closing of some unsecured plants. Dairy plant financial failures or closings, if they occur, may cause serious and widespread financial injury to milk producers in this state. This constitutes a serious and imminent threat to the public welfare.

(9) In order to reduce the risk of dairy plant financial failures or forced closings, rule amendments are urgently needed to adjust dairy plant security requirements to appropriate levels based on current milk prices. The rule amendments will relieve financially stressed dairy plants from unnecessary financial burdens and will make it easier for those dairy plants to file security with the department. That, in turn, will reduce the risk of dairy plant financial failures, or the forced closing of unsecured plants, which may adversely affect milk producers.

(10) Rule amendments, to be effective, must be promulgated prior to the dairy plant license year beginning May 1, 1999. That is not possible under normal rulemaking procedures. Therefore, the following emergency rule is needed to protect the public welfare.

(11) Should milk prices rise beyond the levels currently anticipated for the license year beginning May 1, 1999, so that security filed under this emergency rule is less than 75% of a dairy plant operator's current monthly producer payroll, the operator is required to notify the department of that fact under s. 100.06, Stats., and s. ATCP 100.20(3). The department may demand additional security at that time.

**EMERGENCY RULEMAKING ORDER**

**SECTION 1.** ATCP 100.45(5) is amended to read:

ATCP 100.45(5) AMOUNT OF SECURITY. ~~Security~~ Except as provided under sub. (5m),  
security under this section shall be in an amount equal to at least 75% of the dairy plant  
operator's maximum liability to producers. The operator's maximum liability to producers is  
calculated as follows:

**SECTION 2.** ATCP 100.45(5m) is created to read:

ATCP 100.45(5m) AMOUNT OF SECURITY FOR THE LICENSE YEAR BEGINNING MAY 1,  
1999. For the license year beginning May 1, 1999, security under this section shall be in an  
amount equal to at least 85% of the amount of security calculated under sub. (5).

**EFFECTIVE DATE.** The emergency rules contained in this order shall take effect on  
May 1, 1999, and shall remain in effect for 150 days as provided in s. 227.24(1)(c), Stats.

Dated this \_\_\_\_\_ day of April, 1999.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

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Ben Brancel, Secretary



**FISCAL ESTIMATE**

DOA-2048 (R 10/94)

ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

LRB or Bill No. /Adm. Rule No.  
Ch. ATCP 60

Amendment No. (If Applicable)

**Subject**  
Dairy Farms

**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**

XGPR       FED       PRO       PRS       SEG       SEG-S

Affected Ch. 20 Appropriations

**Assumptions Used in Arriving at Fiscal Estimate**

The proposed rule changes incorporates orders given to the Division of Food Safety by the department secretary and deputy in three contested case decisions. These changes include the following:

1. Requires the dairy plant operator to conduct confirmation testing using positive and negative controls on a producer milk sample that screens positive for the presence of a drug residue.
2. Places the responsibility on the dairy plant operator to either dispose of or denature a bulk load of raw milk that tests positive for the presence of a drug residue.

The changes do not require any additional regulatory activity or record keeping by the department. Therefore, there is no fiscal effect attributed to the adoption of these rule changes, except for one-time costs associated with the rule making of approximately \$500, consisting of printing, mailing and costs of holding hearings.

**Long - Range Fiscal Implications**

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

DATCP - Division of Food Safety  
C. Thomas Leitzke (608) 224-4711

Authorized Signature/Telephone No.

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

Date

3/18/99

**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.  
Ch. ATCP 60

Amendment No.

<b>Subject</b> Dairy Farms		
<b>I. One-time Cost or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):</b> \$500.00		
<b>II. Annualized Cost:</b>	<b>Annualized Fiscal Impact on State funds from:</b>	
<b>A. State Costs by Category</b>	<b>Increased Costs</b>	<b>Decreased Costs</b>
State Operations - Salaries and Fringes	\$ 0	\$ - 0
(FTE Position Changes)	(0 FTE)	(-0 FTE)
State Operations - Other Costs	0	- 0
Local Assistance	0	- 0
Aids to Individuals or Organizations	0	- 0
<b>TOTAL State Costs by Category</b>	<b>\$ 0</b>	<b>\$ - 0</b>
<b>B. State Costs by Source of Funds</b>	<b>Increased Costs</b>	<b>Decreased Costs</b>
GPR	\$ 0	\$ - 0
FED	0	- 0
PRO/PRS	0	- 0
SEG/SEG-S	0	- 0
<b>III. State Revenues -</b> <small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>	<b>Increased Rev.</b>	<b>Decreased Rev.</b>
GPR Taxes	\$ 0	\$ - 0
GPR Earned	0	- 0
FED	0	- 0
PRO/PRS	0	- 0
SEG/SEG-S	0	- 0
<b>TOTAL State Revenues</b>	<b>\$ 0</b>	<b>\$ - 0</b>

**NET ANNUALIZED FISCAL IMPACT**

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

<b>Agency Prepared by: (Name &amp; Phone No.)</b> DATCP C. Thomas Leitzke (608) 224-4711	<b>Authorized Signature/Telephone No.</b> Barbara Knapp (608) 224-4746	<b>Date</b> 3/18/99
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SENATOR JUDITH B. ROBSON  
CO-CHAIR

PO BOX 7882  
MADISON, WI 53707-7882  
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN  
CO-CHAIR

PO BOX 8952  
MADISON, WI 53708-8952  
(608) 264-8486

## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

September 24, 1999

Mr. Ben Brancel  
Secretary, Department of Agriculture, Trade and Consumer Protection  
P.O. Box 8911  
Madison, WI 53708-8911

Dear Secretary Brancel:

We are writing to inform you that the Joint Committee for the Review of Administrative Rules (JCRAR) held a public hearing on September 22, 1999. At that meeting, JCRAR received public testimony regarding **Emergency Rule ATCP 100.45**, relating to security of dairy plant payments to milk producers.

The Joint Committee for the Review of Administrative Rules met in Executive Session on September 22, 1999 and adopted the following motion:

Pursuant to §227.24(2)(a), *Stats.*, the Joint Committee for Review of Administrative Rules extend the effective date of **Emergency Rule ATCP 100.45** by 60 days, at the request of the Department of Agriculture, Trade and Consumer Protection.

Ayes: (8) Senators Grobschmidt, Welch, and Darling\*; Representatives Grothman, Seratti, Gunderson, Kreuser, and Black

Noes: (0)


Absent: (2) Senators Robson and Shibilski. \*Roll held open, voted by phone.

**Motion Carried: Extension Granted.**

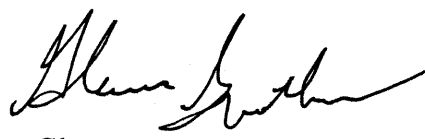
8 Ayes, 0 Noes, 2 Absent.

Pursuant to §227.24(2)(c), *Stats.*, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,



Judith B. Robson  
State Senator  
15<sup>th</sup> Senate District



Glenn Grothman  
State Representative  
59<sup>th</sup> Assembly District

JBR:da

cc: Secretary of State La Follette  
Revisor of Statutes Gary Poulson



State of Wisconsin  
Tommy G. Thompson, Governor

NOV 02 1999

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

November 2, 1999

The Honorable Judy Robson  
State Senator  
Co-Chair, Joint Committee for Review of Administrative Rules  
State Capitol, Room 15 South  
P.O. Box 7882  
Madison, WI 53707

The Honorable Glenn Grothman  
State Representative  
Co-Chair, Joint Committee for Review of Administrative Rules  
State Capitol, Room 15 North  
P.O. Box 8952  
Madison, WI 53708

Dear Senator Robson and Representative Grothman:

Re: **Emergency Rule Extension; Dairy Plant Security**

Pursuant to s. 227.24(2), Stats., the Department of Agriculture, Trade and Consumer Protection (DATCP) asks the Joint Committee for Review of Administrative Rules to approve an additional 60-day extension of DATCP's emergency rule relating to dairy plant security (copy attached). This rule temporarily reduces the amount of security that dairy plant operators must file with the department to secure payment of milk producer payrolls.

This security adjustment reflects a decline in producer payrolls resulting from a drop in milk prices this year. The emergency rule maintains security requirements at reasonable levels, and relieves dairy plant operators of excessive security requirements based on *last year's* high milk prices.

Under s. ATCP 100.45(5), Wis. Adm. Code, if a dairy plant operator is required to file security, the security must be equal to at least 75% of the operator's "maximum liability to producers." An operator's "maximum liability to producers" is based on the operator's highest monthly producer payroll during the *preceding* license year. Because of record high prices during the last quarter of 1998, dairy plants had unusually high monthly producer payrolls during that period. This year, the average market price for raw milk fell significantly.

The Honorable Judy Robson  
The Honorable Glenn Grothman  
November 2, 1999  
Page 2

As a result of this price drop, dairy plant producer payrolls have decreased significantly. Normal dairy plant security requirements, calculated according to last year's "maximum liability to producers," would be excessive in relation to current payrolls. The emergency rule reduces security requirements by 15% to reflect the reduction in milk prices and producer payrolls.

This emergency rule took effect on April 20, 1999 and was scheduled to expire on September 20, 1999. Because milk prices were still well below last year's levels, the department requested and JCRAR granted a 60 day extension. The department now requests an additional 60-day extension. The emergency rule, if extended for an additional 60 days, will keep security requirements in line with program needs into January, 2000. The department assumes that milk prices will eventually rise to more "normal" levels, and does not contemplate any permanent rule change at this time.

We appreciate your consideration of this extension request. I will ask department staff to attend the meeting at which the committee considers the requested extension. Staff will respond to any questions the committee may have. You may contact John Norton (224-4922) concerning the emergency rule or the committee's meeting schedule.

Sincerely,



Ben Brancel  
Secretary



State of Wisconsin  
Tommy G. Thompson, Governor

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

July 27, 1999

JUL 28 REC'D

The Honorable Judy Robson  
State Senator  
Co-Chair, Joint Committee for Review of Administrative Rules  
State Capitol, Room 15 South  
P.O. Box 7882  
Madison, WI 53707

The Honorable Glenn Grothman  
State Representative  
Co-Chair, Joint Committee for Review of Administrative Rules  
State Capitol, Room 15 North  
P.O. Box 8952  
Madison, WI 53708

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Re: **Emergency Rule Extension; Dairy Plant Security**

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This security adjustment reflects a large decline in producer payrolls resulting from the recent sharp drop in milk prices. The emergency rule maintains security requirements at reasonable levels, and relieves dairy plant operators of excessive security requirements based on *last year's* high milk prices.

Under s. ATCP 100.45(5), Wis. Adm. Code, if a dairy plant operator is required to file security, the security must be equal to at least 75% of the operator's "maximum liability to producers." An operator's "maximum liability to producers" is based on the operator's highest monthly producer payroll during the *preceding* license year. Because of record high prices during the last quarter of 1998, dairy plants had unusually high monthly producer payrolls during that period. This year, the average market price for raw milk fell dramatically.


The Honorable Judy Robson  
The Honorable Glenn Grothman  
July 27, 1999  
Page 2

As a result of this dramatic price drop, dairy plant producer payrolls have decreased sharply. Normal dairy plant security requirements, calculated according to last year's "maximum liability to producers," would be excessive in relation to current payrolls. The emergency rule reduces security requirements by 15% to reflect the reduction in milk prices and producer payrolls.

This emergency rule took effect on April 20, 1999 and expires on September 20, 1999. Because milk prices are still well below last year's levels, the department proposes to extend the emergency rule for another 60 days. The department will evaluate price trends to determine whether any further extension is needed. The department assumes that milk prices will eventually rise to more "normal" levels, and does not contemplate any permanent rule change at this time.

We appreciate your consideration of this extension request. I will ask department staff to attend the meeting at which the committee considers the requested extension. Staff will respond to any questions the committee may have. You may contact John Norton (224-4922) concerning the emergency rule or the committee's meeting schedule.

Sincerely,



Ben Brancel  
Secretary

Attachment



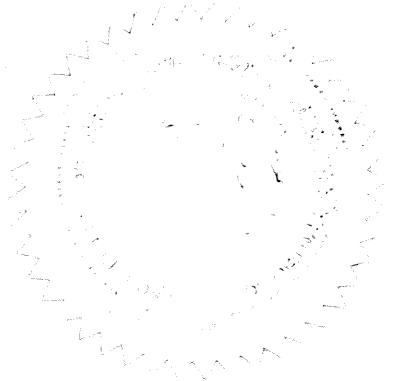
STATE OF WISCONSIN )  
 )  
DEPARTMENT OF AGRICULTURE, )  
TRADE & CONSUMER PROTECTION )

**CERTIFICATION: Order Adopting Emergency Rules Relating to the Security of Dairy Plant Payments to Milk Producers**

I, Ben Brancel, Secretary of the Wisconsin Department of Agriculture, Trade and Consumer Protection, and custodian of the official records of the department, hereby certify that the department issued the attached order adopting emergency rules on April 9, 1999. I further certify that I have compared the attached copy with the original on file with the department, and that the attached copy is a complete and accurate copy of the original.

Signed and sealed at Madison, Wisconsin this 9th day of April, 1999.

By Ben Brancel  
Ben Brancel, Secretary



Department of Agriculture, Trade and Consumer Protection

NOTICE OF HEARING

APR 10 1999

The state of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing on its emergency rule related to dairy plant security. The emergency rule, which is effective on May 1, 1999, amends ch. ATCP 100, Wis. Adm. Code.

The public is invited to attend the hearing and comment on the emergency rule. Following the public hearing, the hearing record will remain open until June 10, 1999.

A copy of the emergency rule may be obtained, free of charge, from the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Trade and Protection, 2811 Agriculture Drive, P. O. Box 8911, Madison, WI 53708, or by calling (608) 224-4934.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter by contacting Judy Jung (608) 224-4972 or by contacting the TDD at the Department at (608) 224-5058.

The hearing is scheduled as follows:

<u>Date and Time</u>	<u>Location</u>
May 18, 1999 10:00 a.m. Commencing at 10:00 a.m. Handicapped accessible	Board Room, #SR-106 State Agriculture Building 2811 Agriculture Drive Madison WI

RULE SUMMARY

Statutory authority: ss. 93.07(1), 97.20(4), and s. 100.06, Stats.

Statutes interpreted: ss. 97.20 and 100.06, Stats.

This emergency rule reduces the amount of security which dairy plant operators file with the department to secure payment of milk producer payrolls. This adjustment reflects a large decline in producer payrolls resulting from the recent drop in milk prices. This emergency rule will restore security requirements to normal levels, and will relieve dairy plant operators of excessive security requirements based on *last year's* high milk prices. This adjustment will save dairy processors millions of dollars which they can put to other productive uses. It will maintain normal protection for milk producers based on this year's milk prices, and will help Wisconsin's dairy processing industry to remain financially viable.

## **Dairy Plant Security Program**

The Department of Agriculture, Trade and Consumer Protection ("department") currently administers a dairy plant licensing and security program under ss. 97.20 and 100.06, Stats. The department adopts rules under ch. ATCP 100, Wis. Adm. Code (Dairy Plant Payments to Milk Producers; Security).

Dairy plant operators are currently licensed under s. 97.20, Stats., with an annual license year beginning May 1. As a condition to licensing, dairy plant operators must comply with financial requirements under s. 100.06, Stats. These financial requirements are designed to provide "reasonable assurance" that dairy farmers will be paid for the milk which they produce and ship to dairy plants.

Currently, under ss. 97.20(2)(d)2 and 100.06, Stats., no dairy plant operator may purchase milk from producers in this state unless the dairy plant operator does one of the following:

- Files audited financial statements with the department showing that the operator meets minimum financial standards.
- Files security with the department.
- Enters into a dairy plant trusteeship. (A trusteeship is not a viable option for many plants.)

## **Current Security Requirements**

Under s. ATCP 100.45(5), Wis. Adm. Code, if a dairy plant operator is required to file security, the security must be equal to at least 75% of the operator's "maximum liability to producers." An operator's "maximum liability to producers" is based on the operator's highest monthly producer payroll during the preceding license year.

Because of record high prices during the last quarter of 1998, dairy plant's had unusually high producer payroll during that period. The Basic Formula Price ("BFP") reached an all time record high of \$17.34 per hundredweight in December 1998. Since then, the average market price for raw milk has fallen by approximately 41 percent. (Dairy economists expect an average BFP for 1999 to be 12 to 16.2% below last year's average of \$14.20.)

As a result of this dramatic price drop, dairy plant producer payrolls have decreased sharply. Current dairy plant security requirements, calculated according to last year's "maximum liability to producers," are therefore excessive in relation to current payrolls.

(Security amounts are 31 to 48% higher than they would be if calculated at current prices.)

Prices received by Wisconsin dairy plants for processed dairy products have also fallen dramatically since the end of last year. This has created serious financial hardships for many dairy plant operators, and has impaired the ability of some operators to meet the financial standards under s. 100.06, Stats., or file security in the (excessive) amount currently required. If a dairy plant operator is unable to meet minimum financial standards, and is unable to file security, the dairy plant may be forced to close. The forced closing of a plant may, in turn, result in serious financial losses to producer patrons.

### **Security Adjustment**

Excessive security requirements, based on last year's milk prices, impose an added burden on financially stressed plant operators. This emergency rule reduces security requirements by 15% for the license year beginning May 1, 1999, to reflect the reduction in milk prices and producer payrolls. This will make it easier for dairy plant operators to meet the minimum security requirements and stay in business.

### **Producer Protection**

The emergency rule will continue to provide reasonable protection for milk producers. The emergency rule merely adjusts security levels to be commensurate with current milk prices and producer payrolls. This emergency rule will relieve financially stressed dairy plants from unnecessary financial burdens, and will make it easier for those plants to file security with the department. That will reduce the risk of dairy plant financial failures, or forced closings of unsecured plants, which may adversely affect milk producers.

Under current rules, if the amount of security filed by a dairy plant operator falls below 75% of the operator's current monthly producer payroll, the dairy plant must immediately notify the department. The department may require the operator to file additional security. This emergency rule does not change these current rule provisions.

### **FINDING OF EMERGENCY**

(1) Section 100.06, Stats., is designed to provide "reasonable assurance" that dairy farmers will be paid for the milk they produce. Under ss. 97.20(2)(d)2 and 100.06, Stats., a dairy plant must, as a condition to licensing, comply with applicable security requirements under s. 100.06, Stats., and department rules. Since dairy plant licenses expire on April 30 annually, dairy plants must comply with applicable security requirements in order to qualify for license renewal on May 1 of each year.

(2) Under s. 100.06, Stats., and ch ATCP 100, a dairy plant operator who purchases milk from producers must do one of the following:

(a) File with the department of agriculture, trade and consumer protection ("department") audited financial statements which show that the operator meets minimum financial standards established by s. 100.06, Stats.

(b) File security with the department in an amount equal to at least 75% of the operator's "maximum liability to producers," as calculated under s. ATCP 100.45(5).

(c) Enter into a dairy plant trusteeship under ch. ATCP 100, Subch. V.

(3) Under s. ATCP 100.45(5), a dairy plant operator's "maximum liability to producers" is based on the plant operator's largest monthly purchase of milk during the preceding license year. Milk prices hit all time record highs in 1998, dramatically increasing monthly dairy plant payrolls. Security requirements for the 1999 license year are currently based on these inflated 1998 monthly payrolls, even though 1999 monthly payrolls have dropped dramatically in response to price changes..

(4) Since December 1998, the average market price for raw milk has fallen by approximately 40%. Dairy economists expect BFP average prices to remain at least 12 to 16.2% below last year's average during 1999. Because of the dramatic decline in milk prices, dairy plants have smaller producer payroll obligations than they had in 1998.

(5) Prices received by Wisconsin dairy plants for processed dairy products have also fallen dramatically since December. This has created serious financial hardships for some dairy plants.

(6) Current security requirements, based on 1998 producer prices and payrolls, are excessive in relation to current payroll obligations and impose an added financial burden on dairy plants. Current security requirements under s. ATCP 100.45(5), based on last year's prices, are at least 31 to 48% higher than they would be if calculated at current prices.

(7) Because of the dramatic decline in dairy prices, some dairy plant operators may be required to file large amounts of additional security, often amounting to millions of dollars. This is a major expense for affected operators. Operators may find it difficult, financially, to obtain and file the required security. If a dairy plant is unable to file the required security in connection with the May 1, 1999 license renewal, the department will be forced to take action against the dairy plant's license. This could result in the forced closing of some unsecured dairy plants. The forced closing of an unsecured plant may, in turn, result in serious financial losses to producer patrons.

(8) By requiring excessive security based on last year's prices, current rules are making it unnecessarily difficult and expensive for dairy plants to obtain and file security. This could contribute to the financial failure of some dairy plants, or to the forced closing of some unsecured plants. Dairy plant financial failures or closings, if they occur, may cause serious and widespread financial injury to milk producers in this state. This constitutes a serious and imminent threat to the public welfare.

(9) In order to reduce the risk of dairy plant financial failures or forced closings, rule amendments are urgently needed to adjust dairy plant security requirements to appropriate levels based on current milk prices. The rule amendments would relieve financially stressed dairy plants from unnecessary financial burdens and will make it easier for those dairy plants to file security with the department. That, in turn, would reduce the risk of dairy plant financial failures, or the forced closing of unsecured plants, which may adversely affect milk producers.

(10) Rule amendments, to be effective, must be promulgated prior to the dairy plant license year beginning May 1, 1999. That is not possible under normal rulemaking procedures. Therefore, the following emergency rules are needed to protect the public welfare.

(11) Should milk prices rise beyond the levels currently anticipated for the license year beginning May 1, 1999, so that security filed under this emergency rules is

less than 75% of a dairy plant operator's current monthly producer payroll, the operator is required to notify the department of that fact under s. 100.06, Stats., and s. ATCP 100.20(3). The department may demand additional security at that time.

EMERGENCY RULEMAKING ORDER

**SECTION 1.** ATCP 100.45(5) is amended to read:

ATCP 100.45(5) AMOUNT OF SECURITY. ~~Security~~ Except as provided under sub. (5m), security under this section shall be in an amount equal to at least 75% of the dairy plant operator's maximum liability to producers. The operator's maximum liability to producers is calculated as follows:

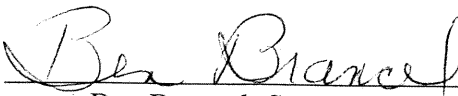
**SECTION 2.** ATCP 100.45(5m) is created to read:

ATCP 100.45(5m) AMOUNT OF SECURITY FOR THE LICENSE YEAR BEGINNING MAY 1, 1999. For the license year beginning May 1, 1999, security under this section shall be in an amount equal to at least 85% of the amount of security calculated under sub. (5).

**EFFECTIVE DATE.** The emergency rules contained in this order shall take effect on May 1, 1999, and shall remain in effect for 150 days as provided in s. 227.24(1)(c), Stats.

Dated this 9 day of April, 1999.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER  
PROTECTION

  
Ben Brancel, Secretary

## FISCAL ESTIMATE

Under current rules, dairy plant operators who are required to file security with the department must maintain minimum security amounts equal to 75% of their maximum liability to producers. Because of recent extraordinary decreases in the price of raw milk, this rule is placing unnecessary financial hardships on dairy plants that are not providing any increased benefit to producers.

This rule would temporarily reduce the amount of security to 85% of current levels. Thereby reducing financial strain on dairy plant operators.

Expenses incurred by the department's dairy plant security program are funded by program revenue fees collected from dairy plants. This proposed emergency rule in no way affects revenues or expenses.

## INITIAL REGULATORY FLEXIBILITY ANALYSIS

This emergency rule reduces the amount of security which dairy plant operators file with the department to secure payment of milk producer payrolls. This adjustment reflects a large decline in producer payrolls resulting from the recent drop in milk prices. This emergency rule will restore security requirements to normal levels, and will relieve dairy plant operators of excessive security requirements based on *last year's* high milk prices.

This adjustment will save dairy processors, many of whom are "small businesses" as defined by s. 227.114(a), Stats., millions of dollars which they can put to other productive uses. It will maintain normal protection for milk producers, many of whom are "small businesses" as defined by s. 227.114(a), Stats., based on this year's milk prices.

It will also help Wisconsin's dairy processing industry to remain financially viable, which benefits processors and milk producers, many of whom are "small businesses" as defined by s. 227.114(a), Stats.,



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**JOINT COMMITTEE FOR  
 REVIEW OF ADMINISTRATIVE RULES**

***Emergency Rule Extension Motion Form***

*Last Modified March, 1999*

Date: September 22, 1999      Location: Room 201 Southeast, State Capitol

Moved by Sen. Welch, Seconded by Rep. Grothman

**THAT**, pursuant to § 227.24(2)(a), *Wisconsin State Statutes*, the Joint Committee for the Review of Administrative Rules extend the effective period of Emergency Rule ATCP 100.45 by 60 days, at the request of the Department of Agriculture, Trade and Consumer Protection.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON			X
2. Senator GROBSCHMIDT	X		
3. Senator SHIBLISKI			X
4. Senator WELCH	X		
5. Senator DARLING	X		
6. Representative GROTHMAN	X		
7. Representative GUNDERSON	X		
8. Representative SERATTI	X		
9. Representative KREUSER	X		
10. Representative BLACK	X		
Totals			

\*by polling

Motion Carried

Motion Failed