

👉 07hr_CRule_07-006_AC-Ag_pt02



Details:

(FORM UPDATED: 07/12/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on ... Agriculture (AC-Ag)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**
- Record of Comm. Proceedings ... **RCP**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt**
 - Clearinghouse Rules ... **CRule**
 - Hearing Records ... bills and resolutions
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution)
 - Miscellaneous ... **Misc**
- (**ajr** = Assembly Joint Resolution)
(**sjr** = Senate Joint Resolution)

Ruby, Erin

From: Rep.Ott
Sent: Wednesday, October 03, 2007 12:55 PM
To: Rep.Garthwaite; Rep.Gronemus; Rep.Jorgensen; Rep.Molepske; Rep.Mursau; Rep.Murtha; Rep.Nerison; Rep.Tauchen; Rep.Vruwink; Rep.WilliamsM
Cc: Arrowood, Craig; Cross, William; Gillis, George; Hoelter, Jon; Houdek, Nathan; Junck, Linda; 'Kent, Christopher'; Kraak, Maureen; Langan, Casey; McKinny, Chris; Palese, Tony; Patronsky, Mark; Peterson2, Ilsa; Potts, Andrew; Rausch, Scott; Smith-Loomans, Sandra; Sweeney, Rebekah; Wolkomir, Jon; Nilsestuen, Joel; Grothman, Jeffrey; Nelson, Elise; 'Moll, Keeley A - DATCP'
Subject: Clearinghouse Rule Referred to Assembly Committee on Agriculture
Attachments: 20071003145338614.pdf; 20071003144815483.pdf

The following Clearinghouse Rule has been referred to the Assembly Committee on Agriculture for a 30 day review period:

Clearinghouse Rule 07-006: Safe production, processing, distribution, and sale of milk and dairy products

A copy of the rule is attached (91 pages). An agency summary is also attached (14 pages).



2007100314533861 2007100314481548
4.pdf (5 MB) 3.pdf (809 KB)...

Please contact my office if you have any questions, need a hard copy of these documents, or would like to request a hearing on this rule.

The initial 30 day deadline for committee review is Wednesday, October 31, 2007.

DATE: October 3, 2007

TO: Erin Ruby

Committee on Agriculture

FROM: Patrick E. Fuller, Assembly Chief Clerk

RE: Clearinghouse Rules Referral

The following Clearinghouse Rule has been referred to your committee.

CLEARINGHOUSE RULE 07-006

AN ORDER to, relating to safe production, processing, distribution, and sale of milk and dairy products.

Submitted by **Department of Agriculture, Trade and Consumer Protection.**

Report received from Agency on **September 17, 2007.**

To committee on **Agriculture.**

Referred on **Monday, October 1, 2007.**

Last day for action - **Wednesday, October 31, 2007.**

Under section 227.19 (4) of the Wisconsin Statutes, your committee has 30 days to take action or get an extension. The day **after** the official referral date is day one of your review period. Therefore, the 30th day should fall four weeks and two days after the referral date. For example, for Clearinghouse Rules referred on a Monday, a Wednesday would be your 30th day. For Clearinghouse Rules referred on a Tuesday, a Thursday would be your 30th day. For Clearinghouse Rules referred on a Wednesday, a Friday would be your 30th day. For Clearinghouse Rules referred on a Thursday or Friday, your 30th day would fall on a weekend. Therefore, your time would expire on the next working day (Monday) as provided for in s. 990.001 of the Wisconsin Statutes. Also, if the 30th day falls on a legal holiday, time would expire on the next working day.

Section 227.19 **requires** you to notify each member of your committee that you have received this Clearinghouse Rule. Although some committee chairs choose to do so, you are not required by law or rule to send a copy of the text of the rule to each member at this time. Instead, your notice could state that members should contact you if they wish to receive a hard copy of the rule. Another option would be to email the rule to members. **(Please note that the text of Rules beginning with the prefix "01" is available online in the Clearinghouse Rules infobase in FOLIO.)** Please put a copy of your official notification memo in the rule jacket.

Three copies of the Clearinghouse Rule and its accompanying documents are contained in the jacket. If you wish to have your Legislative Council attorney review the Clearinghouse Rule, send him/her a copy. I only need one copy remaining in the jacket when you report it out of committee at the end of the review period.

The identical process is happening simultaneously in the Senate. Keep track of their action on the rule.

For assistance with the Clearinghouse Rule process, please consult Kay Inabnet (6-5550) or your Legislative Council attorney. If you wish to learn more on this subject, read *Review of Administrative Rules* which is part of the Legislative Council's Wisconsin Legislator Briefing Book series, section 227.19 of the Wisconsin Statutes or part 2 of the *Administrative Rules Procedures Manual* written by the Revisor of Statutes Bureau and the Wisconsin Legislative Council staff.



Ruby, Erin

From: Cross, William
Sent: Wednesday, October 03, 2007 2:03 PM
To: Rep.Ott; Rep.Garthwaite; Rep.Gronemus; Rep.Jorgensen; Rep.Molepske; Rep.Mursau; Rep.Murtha; Rep.Nerison; Rep.Tauchen; Rep.Vruwink; Rep.WilliamsM
Cc: Arrowood, Craig; Gillis, George; Hoelter, Jon; Houdek, Nathan; Junck, Linda; 'Kent, Christopher'; Kraak, Maureen; Langan, Casey; McKinny, Chris; Palese, Tony; Patronskey, Mark; Peterson2, Ilsa; Potts, Andrew; Rausch, Scott; Smith-Loomans, Sandra; Sweeney, Rebekah; Wolkomir, Jon; Nilsestuen, Joel; Grothman, Jeffrey; Nelson, Elise; 'Moll, Keeley A - DATCP'
Subject: RE: Clearinghouse Rule Referred to Assembly Committee on Agriculture

Al and Erin:

This is the rule that Bobby requests receive a public hearing and review by the committee.

Thanks!

Bill C/ Gronemus Office

From: Rep.Ott
Sent: Wednesday, October 03, 2007 12:55 PM
To: Rep.Garthwaite; Rep.Gronemus; Rep.Jorgensen; Rep.Molepske; Rep.Mursau; Rep.Murtha; Rep.Nerison; Rep.Tauchen; Rep.Vruwink; Rep.WilliamsM
Cc: Arrowood, Craig; Cross, William; Gillis, George; Hoelter, Jon; Houdek, Nathan; Junck, Linda; 'Kent, Christopher'; Kraak, Maureen; Langan, Casey; McKinny, Chris; Palese, Tony; Patronskey, Mark; Peterson2, Ilsa; Potts, Andrew; Rausch, Scott; Smith-Loomans, Sandra; Sweeney, Rebekah; Wolkomir, Jon; Nilsestuen, Joel; Grothman, Jeffrey; Nelson, Elise; 'Moll, Keeley A - DATCP'
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<< File: 20071003145338614.pdf >> << File: 20071003144815483.pdf >>

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The initial 30 day deadline for committee review is Wednesday, October 31, 2007.



CRule
07-006 ?

Ruby, Erin

From: tom-laughlin@att.net
Sent: Monday, October 15, 2007 8:27 PM
To: Rep.Ott
Subject: Raw Milk

*letter
of response*

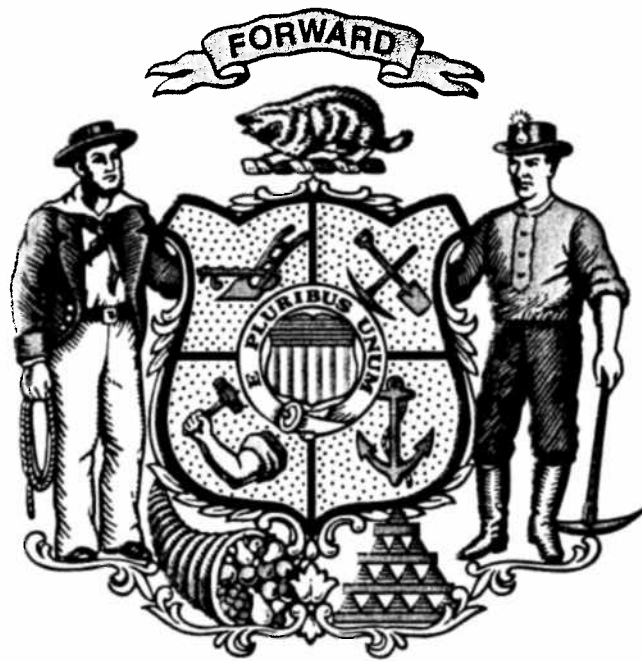
*maybe
not*

Representative Ott;

I'm one of the Wisconsin people wishing I could buy raw milk from local farms -- it doesn't seem right that I can't do that -- we're getting too far from the corn.

Tom Laughlin
N2856 Walden Lane
Lake Geneva WI 53147
kovia@genevaonline.com
262-248-9650

** No letter, not requesting a public hearing*





**STATE OF WISCONSIN
OFFICE OF STATE REPRESENTATIVE BARBARA GRONEMUS**

P.O. BOX 8952
MADISON, WISCONSIN 53708-8952
608-266-7015
TOLL-FREE 1-888-534-0091
FAX: 608-282-3691
E-MAIL: rep.gronemus@legis.state.wi.us

DISTRICT ADDRESS:
P.O. BOX 676
WHITEHALL, WI 54773-0676
715-538-4130
FAX: 715-538-2119

October 18, 2007

Representative Al Ott
Chairman – Assembly Committee on Agriculture
Room 323 North, State Capitol
Madison, WI 53708

Mr. Chairman:

At our discussion meeting yesterday in your office, I expressed my sincere disappointment at your denial of my request as the Ranking and Senior Member of the Assembly Committee on Agriculture for a committee Public Hearing on DATCP Clearinghouse Rule #07-006.

Via this letter, I wish to state to you formally my said disappointment in your denial of my public hearing request, especially to me as the committee Ranking and Senior Member. During my service as chairman of the committee, I honored all requests from committee members, and especially the Ranking Member, for hearings on bills and clearinghouse rules. Further, as chairman, I did not allow my personal attitude towards and position on such legislative matters to dictate whether to approve or deny a said request from a committee member or Ranking Member, as it is very apparent from your comments and verbal denial of my request.

While I am sure a further request is futile, I will for the sake of having some confidence in your chairmanship, renew my public hearing request on Clearinghouse Rule #07-006.

BARBARA GRONEMUS
State Representative – 91st Assembly District
Ranking & Senior Member: Assembly Committee on Agriculture

BG/wrc
C: Committee Members



PHONE CALL

2007 ?

CRule
07-006
?

FOR	DATE 10/18	TIME 7:27	AM/PM
M	Ruth New		
OF	Burlington		
PHONE/ MOBILE	202-713-9952	FAX	
MESSAGE	Supports Sale of Raw Milk		
SIGNED	1154		

- TELEPHONED
- RETURNED YOUR CALL
- PLEASE CALL
- WILL CALL AGAIN
- CAME TO SEE YOU
- WANTS TO SEE YOU





Al Ott

State Representative • 3rd Assembly District

October 19, 2007

Representative Barbara Gronemus
Room 323 North
State Capitol
(Hand Delivered)

Dear Representative Gronemus,

Thank you very much for your letter expressing your disappointment in my decision to not hold a public hearing on Clearinghouse Rule 07-006, relating to the safe production, processing, distribution and sale of milk and dairy products.

I appreciated the opportunity to meet with you, DATCP staff, and Mark Patronsky from the Legislative Council regarding your concerns with the rule. I thought we had a good discussion on the issue of how the rule relates to the current statutory prohibition on the sale of unpasteurized ("raw") milk under s. 97.24 (2).

While I sincerely understand and respect your position on the issue of the sale of raw milk and raw milk products, as stated in our meeting, a public hearing on Clearinghouse Rule 07-006, or any subsequent action on the rule by the committee, will have no impact on current law prohibition of such sales. A statutory change is necessary to allow for anything other than the incidental sale of unpasteurized milk or milk products.

As Chair of the committee, my "personal attitude" on this issue extends only as far as being concerned with public health and safety and the overall well-being of Wisconsin's dairy industry. As I indicated during our meeting, I am concerned that a health issue stemming from the consumption of unpasteurized milk could be detrimental to the dairy industry as a whole. We need only to look to the recent e-coli contamination of spinach to see the harm an industry can suffer in the face of a public health scare.

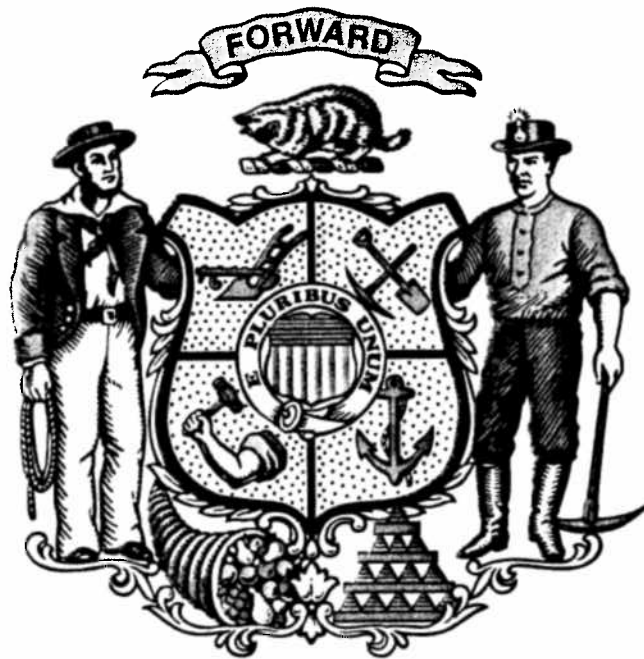
Please find enclosed a memo from Mark Patronsky outlining how this particular section of rule relates to the current statute on unpasteurized milk. Because the rule does not substantively impact the applicability of the statutory prohibition, I do not feel a hearing is necessary at this time.

While I regret your lack of confidence in my chairmanship, I remain sincere in my desire to continue working with you toward the betterment of Wisconsin agriculture, and look forward to doing so as the session continues.

Sincerely,

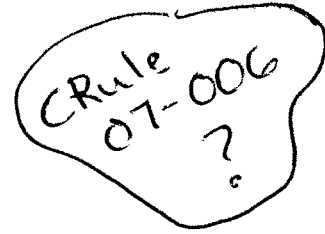
Al Ott
State Representative
3rd Assembly District
Chair, Assembly Committee on Agriculture

cc: Assembly Committee on Agriculture Members



Ruby, Erin

From: Julie Wagner [JWagner@boelterlincoln.com]
Sent: Monday, October 22, 2007 12:23 PM
To: Rep.Ott
Subject: Raw Milk Sales



CRule
07-006
?

Mr. Ott –

I am writing to express my concern for a possible change in the availability of raw milk direct from farmers. I was diagnosed with Crohn's Disease over 10 years ago and had surgery about 4 years ago. After that, I decided to change my diet and lifestyle and not rely on drugs to keep me alive. I now get close to all my food from local farmers – beef, chicken, produce, eggs, turkey, butter and raw milk. I have never been in better shape and I have not been on any meds for over one year.

I visit each farm that I patronize and know and trust each farmer. Raw milk is essential to my good health and the taste is far better than what is available in the grocery store. And I don't even know where that milk came from. I do not want or believe that the government should ban me from supporting what a local farmer has to offer. Raw milk has been consumed safely for decades and the health benefits are enormous.

Thank you for your time. I pray you do not ban raw milk direct from local farmers.

Julie Wagner
303 Pleasant St.
Eagle, WI 53119

10/22/2007



Ruby, Erin

From: Susan Binzel [sbinzel@earthlink.net]
Sent: Monday, October 22, 2007 3:26 PM
To: Rep.Ott
Subject: (no subject)

CRule
07-006
?

Dear Representative Ott,

I have heard that you are connected to a bill that regulates the sales of raw milk.

I am part owner of a herd of cows and while I do not own the farm I pick my raw milk up there. As I read the rules, I don't think your regulations will affect me. However, I wanted to write in an ask for hearings on the matter as it will affect some people.

Within a month after we started drinking raw milk, my daughter's cycle of 'one week well/ one week coming down with a cold/ one week very sick with a cold/ one week well ' ended. She has had some sniffles since then but nothing like she used to. The only times she has thrown up as been when she came in contact with a public pool. Attempts to get her to stop drinking the pool water have helped this problem. I would usually get 2-3 bad colds a year. This has stopped since I started drinking raw milk. I just had a physical and my bone density is better than pre-raw milk...and my cholesterol numbers are great. My doctor was very impressed.

I know where my milk is from. I know the cows are milked using modern technology and are tested for bacteria frequently. They are also raised on grass which makes them much healthier to begin with (have you read the Omnivores Dilemma?) . I also know from owning the cow how hard it is to be a small farmer trying to make a living.

You should be trying to make the small farmer's life easier. Most raw milk producers are small. Most use modern techniques to harvest the milk. Most raise their cows on grass. They have a different mentality than the large factory farms.

Please help the people that want raw milk by making it easier for them to buy it; and please help the small farmer who is trying to make a living by not giving them onerous restrictions.

Thank you for your time.

Susan Binzel
17001 60th St
Bristol WI 53104



Ruby, Erin

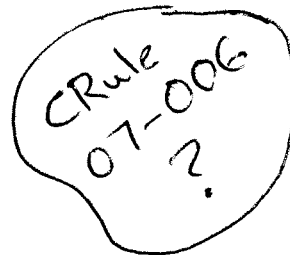
From: William Neu [chirho3@pngusa.net]
Sent: Wednesday, October 24, 2007 8:28 AM
To: Rep.Ott
Subject: ATCP 60.235

Attachments: Greetings Representative Ott.txt



Greetings
representative Ott.t.

Greetings Representative Ott,



I have recently been informed that the proposed language regarding raw milk (ATCP 60.235) in the Department of Agriculture Administrative Rules is highly problematic and will likely present difficulties for dairy farmers who desire to provide raw milk for seeking consumers.

As a consumer of raw milk (6 years, self and family) I am in agreement with those who advocate pasteurization for what is considered conventionally produced milk. I am neither a dairy farmer nor have any vested interest in a dairy farm in any way, but have studied the safety issue of dairying from different angles and conclude without hesitation that pasteurization is necessary for the majority of present day milk stocks.

I would be foolish to offer anyone or consume myself milk derived from a dairy animal that by nature is a forager yet subjected to a high grain and concentrate diet. Agribusiness paradigms of enclosure which offer little or no direct sunlight and generally stale or foul air surely will enhance a pathogenic presence among dollar/unit, space-conscious, commodity driven businessmen.

On the flip side of that coin is the kind of dairy farmer whom we trust for quality raw milk. He or she will provide a forage animal with grass and hay as much as possible which naturally exposes the animal to sunshine and far purer air as much as is possible. Consequently, on average, these lactating animals can easily have double and sometimes triple the life span as the above penned animal. Why so much greater a milking life? If we subject ourselves to the two living condition scenarios, would not our average life spans reflect similar results?

It's logical to expect poor quality from unwise husbandry which results in problematic pathogen levels. I am a staunch supporter of food choice freedom, however I do believe dairy must be regulated so as to ensure safety. I sincerely ask that the Ag department would put into place a protocol for certified raw milk. Milk is like any other food and needs oversight. Please consider this request. In the immediate, I ask that the language of 60.235 be open for public review with a scheduled public hearing.

If possible, I would like to get your opinion regarding raw milk and what should be done to establish safety for consumers, and fairness for all dairy farmers, particularly those farmers who in conscience cannot treat a dairy animal as a disposable commodity, which consequently entails a higher production cost and subjects the farmer to inevitable price

crises if forced into the closed market of pasteurization.

Thank you for listening to my concern.

William Neu

262-763-9952

Chirho3@pngusa.net

P.O.Box 185, Lyons, WI 53148

Text file format attached if needed.



CRule
07-006 ?

11117 Hwy. 59
Whitewater, WI 53190-3319
(262) 473-8852
October 27, 2007

Alvin R. Ott
State Capitol Room 323 North
P.O. Box 8953
Madison, WI 53708-8953

Dear Representative Al Ott:

Needless to say I was surprised when a bill passed the Assembly without public awareness allowing grocery stores to pass out samples of alcoholic beverages and you as Chairman of the Assembly Ag Committee would not hold a hearing to allow more input so a right given to us dairymen in Wisconsin Statute 97.24 was not overly restricted by DATCP.

A member of your staff told me that someone might get sick or even die from drinking raw milk. The wake caused by alcoholism in our society goes far beyond one person to include many innocent victims. If one never takes the first drink, he will never become an alcoholic. Also children who may not ever see drinking can be exposed. The wake from raw milk consumption by an estimated 75,000 people in Wisconsin is non-existent or negligible.

I believe you should give an explanation on how this happened so the people of this state do not make the wrong conclusion. It may not be too late to hold a hearing.

Yours truly,



Arthur W. Johnson



Ruby, Erin

From: Jeff and Lori Noonan [jnoonan1@wi.rr.com]
Sent: Sunday, October 28, 2007 1:10 PM
To: Rep.Ott
Subject: ATCP 60.235

CRule
07-006 ?

Dear Sir,

I respectfully request that you hold a public hearing for review of the language regarding ATCP 60.235 regarding the sale of raw milk. We live in a country where the government is to represent the people, and as such, the people should have the right to decide if they want to purchase raw milk or not. To have the government issue control over what the people should do, is a violation of the place of government. Let the people decide what they want to purchase and please keep our country the "land of the free...."

Sincerely,

Lori Noonan

Address - ?

Respondent will email.





Al Ott

State Representative • 3rd Assembly District

October 29, 2007

Susan Binzel
17001 60th Street
Bristol, WI 53104

Dear Ms. Binzel,

Thank you for contacting my office to request a public hearing on Clearinghouse Rule 07-006, which relates to the safe production, processing, distribution and sale of milk and dairy products.

The sale of unpasteurized (“raw”) milk has been prohibited under s. 97.24 (2) of the Wisconsin State Statutes since 1957. The exception to this prohibition is the, “incidental sales of milk directly to consumers at the dairy farm where the milk is produced.” [s. 97.24 (2)(d)2.] Clearinghouse Rule 07-006 is meant to clarify the applicability of the current law prohibition on the sale of unpasteurized milk.

A public hearing on Clearinghouse Rule 07-006, or any subsequent committee action on the rule, will have no impact on the current law prohibition regarding the sale of unpasteurized milk. A statutory change (by means of passing legislation) is necessary to allow for anything other than incidental sale of unpasteurized milk.

As Chair of the Assembly Committee on Agriculture I must consider all issues before the committee with an eye toward public health and safety and the overall well-being of Wisconsin agriculture. I am concerned that a serious health issue stemming from the consumption of unpasteurized milk could be detrimental to our state’s dairy industry. We need only look to the recent e-coli contamination of spinach to see the harm an industry can suffer in the face of a public health scare.

Please find enclosed a memo from the Wisconsin Legislative Council outlining how Clearinghouse Rule 07-006 relates to the current statutory prohibition on the sale of unpasteurized milk. Because the rule does not substantively impact the applicability of the statutory prohibition, I do not feel a public hearing is warranted at this time. Committee jurisdiction over this rule expires on Wednesday, October 31st.

If a bill is introduced to reverse the prohibition on the sale of unpasteurized milk, hearings on such a bill would be the appropriate forum in which to debate the merits of the consumption of unpasteurized milk. Clearinghouse Rule 07-006 is not the proper forum for that discussion.

Again, thank you for taking the time to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read "Al Ott", with a long horizontal stroke extending to the right.

Al Ott
State Representative
3rd Assembly District
Chair, Assembly Committee on Agriculture

Enclosure



Ruby, Erin

From: Ruby, Erin
Sent: Wednesday, October 31, 2007 2:11 PM
To: 'Pechous, Rebecca A'
Subject: RE: the right to choose raw milk

Attachments: 19ott_mcp.doc



19ott_mcp.doc (77
KB)

Dear Ms. Pechous,

Thank you for contacting my office to request a public hearing on Clearinghouse Rule 07-006, which relates to the safe production, processing, distribution and sale of milk and dairy products.

The sale of unpasteurized ("raw") milk has been prohibited under s. 97.24 (2) of the Wisconsin State Statutes since 1957. The exception to this prohibition is the, "incidental sales of milk directly to consumers at the dairy farm where the milk is produced." [s. 97.24 (2)(d)2.] Clearinghouse Rule 07-006 is meant to clarify the applicability of the current law prohibition on the sale of unpasteurized milk.

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Please find attached a memo from the Wisconsin Legislative Council outlining how Clearinghouse Rule 07-006 relates to the current statutory prohibition on the sale of unpasteurized milk. Because the rule does not substantively impact the applicability of the statutory prohibition, I do not feel a public hearing is warranted at this time. Committee jurisdiction over this rule expires at the end of the day, today - Wednesday, October 31st.

If a bill is introduced to reverse the prohibition on the sale of unpasteurized milk, hearings on such a bill would be the appropriate forum in which to debate the merits of the consumption of unpasteurized milk. Clearinghouse Rule 07-006 is not the proper forum for that discussion.

Again, thank you for taking the time to contact my office.

Sincerely,

Al Ott
State Representative
3rd Assembly District
Chair, Assembly Committee on Agriculture

Attachment

-----Original Message-----

From: Pechous, Rebecca A [mailto:PechousRA12@uww.edu]

Sent: Wednesday, October 31, 2007 9:41 AM
To: Rep.Ott
Subject: the right to choose raw milk

Hello Chairman Ott,

I am a resident of Wisconsin and I feel that the government should not have the right to tell consumers they cannot drink and purchase raw milk. This ought to be a personal decision, not the governments decision. I was raised on a dairy farm and drank raw milk all my life. I would like to request that a public hearing be held for review of the language regarding ATCP 60.235 of the agriculture department administrative rules.

Law makers ought not spend their time micromanaging the lives of citizens.

Thank you!

Sincerely,

Rebecca Pechous
Whitewater, WI
262-473-1600



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: REPRESENTATIVE ALVIN OTT

FROM: Mark C. Patronsky, Senior Staff Attorney

RE: Proposed Rule Regarding Raw Milk Sales

DATE: October 19, 2007

This memorandum is in response to your request for an explanation of the current statute that prohibits raw milk sales (i.e., sale of milk that is not pasteurized) and the rule proposed by the Department of Agriculture, Trade and Consumer Protection (DATCP) to interpret one of the statutory exemptions from this prohibition.

STATUTORY PROHIBITION AND EXCEPTION

The statute prohibits the sale of milk to consumers if the milk is not pasteurized. (See s. 97.24 (2), Stats.) The following are the key parts of the statutory prohibition:

- No person may sell or distribute any milk or milk fluid products which are not grade A milk or grade A milk products to consumers or to any restaurant, institution, or retailer for consumption or resale to consumers.
- No person may sell or distribute milk or milk fluid products which are labeled as grade A milk or grade A milk products unless the milk and fluid milk products comply with all requirements of the statutes and any rules promulgated by DATCP.
- Grade A milk and grade A milk products must be effectively pasteurized and must be produced, processed, and distributed in compliance with DATCP rules.

An exception from the requirements described above is included in s. 97.24 (2) (d) 2.:

97.24 (2) (d) This section does not prohibit...

2. Incidental sales of milk directly to consumers at the dairy farm where the milk is produced.

The statutory prohibitions and the exception were first created by legislation that was enacted in the 1957 session.

PRIOR ADMINISTRATIVE RULE

The Wisconsin Department of Agriculture (the agency's former name) promulgated an administrative rule in 1959 to interpret the meaning of "incidental sales" in the statutory exemption from pasteurization requirements. The administrative rule provided as follows:

Ag 80.15 Enforcement interpretation. ... (3) The exemption in section 97.046 (2) (c), Wis. Stats., for "incidental sales" of ungraded milk and cream to consumers at farms and dairy plants shall not include any sales which are regularly made in the course of business or are preceded by any advertising thereof, or offer to or solicitation of members of the public, but shall include any sales to employees or to persons shipping milk to the dairy plant.

This rule was in effect until 1994, when all DATCP rules were renumbered from the "Ag" prefix to the "ATCP" prefix. At that time, the rule defining "incidental sales" was omitted from the rules. According to DATCP staff, DATCP did not intend to repeal this rule and the agency has continued to interpret the "incidental sales" exemption according to the prior rule.

PROPOSED RULE

Clearinghouse Rule 07-006 contains a provision to interpret the exemption for incidental sales of raw milk from the statutory prohibition. The rule, on page 32, includes the following provisions:

- The current statute allows incidental sales of raw and ungraded milk "directly to consumers at the dairy farm where the milk is consumed." The rule uses the phrase "for delivery to the consumer at the dairy farm." The current statute might be interpreted to allow delivery to consumers at a place other than the dairy farm where the milk is produced. The rule requires that the milk be delivered to the consumer at the farm.
- The current statute authorizes incidental sale of raw milk directly to consumers, but does not indicate what the consumers may do with that milk. The rule adds a provision that the milk may be consumed by the consumer, the consumer's family, or the consumer's nonpaying guests.
- The current statute does not define "incidental sales." There is no statute or Wisconsin court case that interprets the meaning of "incidental sale" in the context of the statutes regarding pasteurized milk. The proposed rule adopts the prior rule, which was repealed in 1994, with two changes. The text of the proposed rule is as follows:

A sale is not incidental if it is made in the regular course of business, or is preceded by any advertising, offer or solicitation made to the general public through any communications media.

The proposed rule adds to the text of the prior rule the word “general” before public, and “through any communications media.”

If I can provide further information on this subject, please feel free to contact me directly at the Legislative Council staff offices.

MCP:wu:ksm



Oct 2007

CRule
07-006

PHONE CALL

FOR _____ DATE 10/26 TIME 3:30 A.M.
P.M.

M. Rick Sallmann

OF 48486 Turtle Lake Rd

PHONE/ MOBILE DELAWARE 5315

MESSAGE

BAWMILK
Request P.H.
BRAXES goods

SIGNED

TELEPHONED
 RETURNED YOUR CALL
 PLEASE CALL
 WILL CALL AGAIN
 CAME TO SEE YOU
 WANTS TO SEE YOU

PHONE CALL

FOR _____ DATE 10/29 TIME 11:01 A.M.
P.M.

M. Lori Christianson

OF W2290 Highway 106

PHONE/ MOBILE Jefferson 53549

MESSAGE

BAWMILK
Request P.H.

SIGNED

TELEPHONED
 RETURNED YOUR CALL
 PLEASE CALL
 WILL CALL AGAIN
 CAME TO SEE YOU
 WANTS TO SEE YOU

PHONE CALL

FOR _____ DATE 10/25 TIME 5:30 A.M.
P.M.

M. Connie Echenbach

OF 106786 Woodford

PHONE/ MOBILE Lake Mills 920-648-5220

MESSAGE

Requests Public Hrg
on BAWMILK
ATCP Co. 2350

SIGNED

TELEPHONED
 RETURNED YOUR CALL
 PLEASE CALL
 WILL CALL AGAIN
 CAME TO SEE YOU
 WANTS TO SEE YOU

Should be Personal Preference