

ATEP 81 - COLBY/MONTEREY JACK  
98-182  
CHEESES

WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC  
FORM 2

***RULES CLEARINGHOUSE***

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**CLEARINGHOUSE REPORT TO AGENCY**

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[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 98-182**

AN ORDER to amend ATCP 81.50 (2), 81.51 (2) and 81.52, relating to grade standards for colby and monterey (jack) cheese.

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

11-11-98 RECEIVED BY LEGISLATIVE COUNCIL.  
12-10-98 REPORT SENT TO AGENCY.

RNS:RW:kjf;jt

**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)]

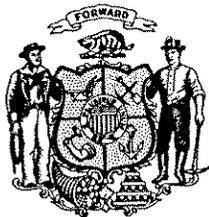
Comment Attached      YES       NO

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 98-182

### 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

In s. ATCP 81.51 (2), the first stricken material should be placed before all of the underscored material. [See s. 1.06 (1), Manual.]

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

a. Under the proposed rule, colby and monterey (jack) cheese may have either mechanical openings or a closed body, depending on the method of manufacture. The existing rule does not define or describe the term "closed body." Is the meaning of this term generally understood in the industry? If not, it is suggested that the agency define or describe the intended scope of the term.

b. The rule permits varied characteristics to be present in colby and monterey (jack) cheeses graded AA or A, "depending on the method of manufacture." It is not clear what methods of manufacture will determine the type of allowable openings. Can this be clarified in the rule?

c. The agency should carefully review the related tables setting forth the standards especially for colby and monterey (jack) cheese, especially Table 6 of subch. V of s. ATCP 81.50, to assure consistency in treatment. For example, the current rule, in s. ATCP 81.50 (2), states that the AA grade cheese may be definitely curdy or partially broken down if it is more than three weeks old, but Table 6 indicates that for AA grades, the condition is not present in the cheese.

**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 81.50 (2), 81.51 (2), and 81.52 (2), relating to grade standards  
3 for colby and monterey (jack) cheese.

---

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

Statutory Authority: ss. 97.09 (1) and 97.177 (1), (2) and (4) , Stats.

Statutes Interpreted: ss. 97.09 and 97.177, Stats.

This proposed rule modifies current rules under ch. ATCP 81, Wis. Adm. Code, related to grade standards for body and texture characteristics of colby and monterey (jack) cheese.

The current standards require the presence of mechanical openings or an "open" body in order for the cheese to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

This proposed rule repeals current grade standards that require mechanical openings in colby and monterey (jack) cheese. Under the proposed rule, the cheese may have either mechanical openings or a closed body, depending on the method of manufacture.

When mechanical openings are present, their size and distribution are two of many factors which determine the specific grade category assigned to the cheese. Wisconsin certified premium grade AA requires that mechanical openings be "evenly distributed" and "small." Wisconsin grade A (Wisconsin state brand) requires that mechanical openings be "evenly distributed," without the added emphasis on "small." Wisconsin grade B has no requirement for mechanical openings to be "evenly distributed."

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4 **SECTION 1.** ATCP 81.50 (2) is amended to read:

5 ATCP 81.50 (2) **BODY AND TEXTURE CHARACTERISTICS.** Wisconsin certified  
6 premium grade AA colby and monterey (jack) cheese shall be reasonably firm ~~and shall have~~

4 ~~numerous small mechanical openings evenly distributed throughout the cheese.~~ Depending on  
5 the method of manufacture, the cheese may have evenly distributed small mechanical openings  
6 or a closed body. The cheese may not contain any sweet holes, yeast holes, or other gas holes.  
7 The cheese may be definitely curdy or partially broken down if it is more than 3 weeks old.  
8 Body and texture standards are shown in the grade AA column of Table 6.

9 **SECTION 2.** ATCP 81.51 (2) is amended to read:

10 ATCP 81.51 (2) BODY AND TEXTURE CHARACTERISTICS. Wisconsin grade A and  
11 Wisconsin state brand colby and monterey (jack) cheese shall be reasonably firm. Depending on  
12 the method of manufacture, the cheese may have evenly distributed mechanical openings or a  
13 closed body. ~~The cheese shall have numerous~~ When present, mechanical openings ~~but they may~~  
14 not be large or connected to other openings. The cheese shall be free from sweet holes, yeast  
15 holes, or other gas holes. The cheese shall be definitely curdy or partially broken down if it is  
16 more than 3 weeks old. Body and texture standards are shown in the grade A column of Table 6  
17 under s. ATCP 81.50 (2).

18 **SECTION 3.** ATCP 81.52 (2) is amended to read:

19 ATCP 81.52 (2) BODY AND TEXTURE CHARACTERISTICS. Wisconsin grade B  
20 colby and monterey (jack) cheese may be loosely knit and open. Depending on the method of  
21 manufacture, the cheese may have mechanical openings or a closed body. There may be a  
22 limited amount of sweet holes, scattered yeast holes and other scattered gas holes, but pinny gas  
23 holes are not permitted. Body and texture standards are shown in the grade B column of Table 6  
24 under s. ATCP 81.50 (2).

1           **SECTION 4. EFFECTIVE DATE.** The rules contained in this order shall take effect  
2 on the first day of the month following publication in the Wisconsin administrative register, as  
3 provided under s. 227.22(2)(intro.), Stats.

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

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

EMERGENCY RULES RELATED TO GRADE STANDARDS OF  
COLBY AND MONTEREY (JACK) CHEESE

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold a public hearing, at the time and place indicated below, on an emergency rule amending Chapter ATCP 81, Wisconsin Administrative Code, relating to grade standards for body and texture characteristics of colby and monterey (jack) cheese. The public is invited to attend the hearing and make comments on the emergency rule. Following the public hearing, the hearing record will remain open **until September 25, 1998** 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 hearing.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter by September 8, 1998, 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 location.

**HEARING DATE, TIME AND LOCATION**

Date and Time: Monday, September 14, 1998  
10:00 a.m. - 1:00 p.m.

Location: Portage County Health and Human Services  
Ruth Gilfrey Building  
Large Conference Room - Lower Level  
817 Whiting Avenue  
Stevens Point, WI

(Access for handicapped persons is available at the main entrance on the east side of the building.)

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

Statutory Authority: ss. 97.09 (1) and 97.177 (1), (2) and (4) , Stats.

Statutes Interpreted: ss. 97.09 and 97.177, Stats.

This emergency rule modifies current rules under ch. ATPC 81, Wis. Adm. Code, related to grade standards for body and texture characteristics of colby and monterey (jack) cheese.

The current standards require the presence of mechanical openings or an “open” body in order for the cheese to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

This emergency rule repeals current grade standards that require mechanical openings in colby and monterey (jack) cheese. Under this emergency rule, the cheese may have either mechanical openings or a closed body, depending on the method of manufacture.

When mechanical openings are present, their size and distribution are two of many factors which determine the specific grade category assigned to the cheese. Wisconsin certified premium grade AA requires that mechanical openings be “evenly distributed” and “small.” Wisconsin grade A (Wisconsin state brand) requires that mechanical openings be “evenly distributed,” without the added emphasis on “small.” Wisconsin grade B has no requirement for mechanical openings to be “evenly distributed.”

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**FISCAL ESTIMATE**

**Assumptions Used in Arriving at Fiscal Estimate**

Rules relating to cheese grading, packaging and labeling are contained in Chapter ATPC 81, Wis. Adm. Code. Subchapter V specifies the Wisconsin grade standards for colby and monterey (jack) cheese. These standards include requirements for particular body and texture characteristics. The current standards require the presence of mechanical openings or an “open” body in order for the cheese to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

This emergency rule amends ch. ATPC 81, Wis. Adm. Code, to eliminate the requirement for mechanical openings from the grade standards for colby and monterey (jack) cheese. The emergency rule further clarifies that for all grade categories the cheese may exhibit either mechanical openings or a closed body, dependent upon the method of manufacture.

One-time costs of approximately \$1600 will be incurred by the department for rule development.

**Long -Range Fiscal Implications**

None anticipated.

Dated this 12 day of August, 1998.

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

By Ben Brancel  
Ben Brancel, Secretary



State of Wisconsin  
Tommy G. Thompson, Governor

**Department of Agriculture, Trade and Consumer Protection**

Ben Brancel, Secretary



October 27, 1998

The Honorable Robert Welch  
State Senator  
Co-Chair, Joint Committee for Review of Administrative Rules  
1 East Main Street, Room 201  
P.O. Box 7882  
Madison, WI 53707

The Honorable Glen Grothman  
State Representative  
Co-Chair, Joint Committee for Review of Administrative Rules  
State Capitol, Room 125 West  
P.O. Box 8952  
Madison, WI 53708

Dear Senator Welch and Representative Grothman:

Pursuant to s. 227.24(2) of the Statutes, the Department of Agriculture, Trade and Consumer Protection (DATCP) requests approval of a 60-day extension of its emergency rule amending ch. ATCP 81.50 (2), 81.51 (2), and 81.52 (2), Wis. Adm. Code, relating to grade standards for colby and monterey (jack) cheese. This rule eliminates provisions requiring mechanical openings in colby and monterey jack cheese. Under this rule, colby and monterey (jack) cheese may have either mechanical openings or a closed body, depending on the method of manufacture.

The emergency rule was adopted on August 5, 1998 and went into effect upon its publication in the Wisconsin State Journal on August 8, 1998. One public hearing was held on the emergency rule on September 14, 1998. The Board of Agriculture, Trade and Consumer Protection approved a scope statement for a permanent rule to implement this grade standards' change at its meeting on October 2, 1998. The hearing draft of the proposed permanent rule will be presented to the Board for its approval on November 10, 1998.

It is anticipated that public hearings will be held on the proposed permanent rule in mid-December, and a final draft rule presented to the Board of Agriculture, Trade and Consumer Protection at its January/February meeting. Referral of the permanent rule to the Legislature for standing committee review can be expected shortly thereafter.

The Honorable Robert Welch  
The Honorable Glen Grothman  
October 27, 1998  
Page 2

We currently anticipate April 1, 1999 as the earliest possible effective date of the permanent rule. As a result, we are requesting a full 60-day extension of the existing emergency rule, and we are also alerting you now to the need for a subsequent request for an extension in March in order to avoid a gap in regulatory coverage between the emergency rule and the effective date of the permanent rule.

Attached is a copy of the emergency rule which went into effect on August 8, 1998. Your consideration of this request is greatly appreciated. I will assign appropriate Department staff to be available at the November meeting of the Joint Committee for Review of Administrative Rules to respond to any questions which you or other members may have regarding the emergency rule.

Sincerely,

A handwritten signature in cursive script that reads "Ben Brancel".

Ben Brancel  
Secretary

Attachment

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

1 The state of Wisconsin department of agriculture, trade and consumer protection hereby adopts  
2 the following emergency rule to amend ATCP 81.50 (2), 81.51 (2), and 81.52 (2), relating to  
3 grade standards for colby and monterey (jack) cheese.

---

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

Statutory Authority: ss. 97.09 (1) and 97.177 (1), (2) and (4) , Stats.

Statutes Interpreted: ss. 97.09 and 97.177, Stats.

This emergency rule modifies current rules under ch. ATCP 81, Wis. Adm. Code, related to grade standards for body and texture characteristics of colby and monterey (jack) cheese.

The current standards require the presence of mechanical openings or an “open” body in order for the cheese to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

This emergency rule repeals current grade standards that require mechanical openings in colby and monterey (jack) cheese. Under this emergency rule, the cheese may have either mechanical openings or a closed body, depending on the method of manufacture.

When mechanical openings are present, their size and distribution are two of many factors which determine the specific grade category assigned to the cheese. Wisconsin certified premium grade AA requires that mechanical openings be “evenly distributed” and “small.” Wisconsin grade A (Wisconsin state brand) requires that mechanical openings be “evenly distributed,” without the added emphasis on “small.” Wisconsin grade B has no requirement for mechanical openings to be “evenly distributed.”

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**FINDING OF EMERGENCY**

4  
5 The state of Wisconsin department of agriculture, trade and consumer protection (DATCP) finds  
6 that an emergency exists and that an emergency rule is necessary for economic reasons to protect  
7 the public welfare of the citizens of Wisconsin. The facts constituting the emergency are as  
8 follows:

1 (1) DATCP has adopted standards for grades of cheese manufactured and sold in  
2 Wisconsin under s. 97.177, Stats., and ch. ATCP 81, Wis. Adm. Code. Any cheese which carries  
3 a state grade mark must conform to the standards and characteristics of the labeled grade.

4 (2) Under current rules, colby and monterey (jack) cheese must contain numerous  
5 mechanical openings in order to be labeled or sold as Wisconsin certified premium grade AA or  
6 Wisconsin grade A (Wisconsin state brand).

7 (3) Changes in cheese manufacturing technology, packaging and equipment have made it  
8 extremely difficult for many processors and packagers to achieve the numerous mechanical  
9 openings or open body character required by these top two grade categories. A majority of  
10 today's wholesale buyers and packagers prefer a closed body cheese for a variety of reasons,  
11 including ease of shredding and the ability to package "exact-weight" pieces with minimal  
12 variation and waste.

13 (4) Currently, a closed body cheese may be labeled or sold as Wisconsin grade B or "not  
14 graded." It cannot be labeled or sold as Wisconsin certified premium grade AA or Wisconsin  
15 grade A (Wisconsin state brand), nor can it command the premium price associated with these  
16 top two grade categories.

17 (5) Wisconsin is the only state with its own grade standards for colby and monterey (jack)  
18 cheese. The United States Department of Agriculture modified its grade standards for colby and  
19 monterey jack cheese in 1995 and 1996, respectively, in response to industry requests to allow an  
20 open or closed body. Buyers who cannot obtain the desired graded product in Wisconsin will  
21 likely switch to suppliers from other states. Once customers are lost they are difficult to regain.

22 (6) Wisconsin's dairy industry plays a major role in our state's economy. Approximately  
23 \$3 billion or 90% of Wisconsin's milk production goes into the manufacture of cheese. Lost

1 business revenues harm the dairy industry, cause increased unemployment, and have a negative  
2 impact on the state's economy.

3 (6) Pending the adoption of rules according to the normal administrative rulemaking  
4 procedures, it is necessary to adopt emergency rules under s. 227.24, Stats. to protect the public  
5 welfare based on an economic emergency for the state's dairy industry and the subsequent  
6 impact on the general economy and citizens of this state.

7 **EMERGENCY RULEMAKING ORDER**

8 **SECTION 1.** ATCP 81.50 (2) is amended to read:

9 ATCP 81.50 (2) BODY AND TEXTURE CHARACTERISTICS. Wisconsin certified  
10 premium grade AA colby and monterey (jack) cheese shall be reasonably firm ~~and shall have~~  
11 ~~numerous small mechanical openings evenly distributed throughout the cheese.~~ Depending on  
12 the method of manufacture, the cheese may have evenly distributed small mechanical openings  
13 or a closed body. The cheese may not contain any sweet holes, yeast holes, or other gas holes.  
14 The cheese may be definitely curdy or partially broken down if it is more than 3 weeks old.  
15 Body and texture standards are shown in the grade AA column of Table 6.

16 **SECTION 2.** ATCP 81.51 (2) is amended to read:

17 ATCP 81.51 (2) BODY AND TEXTURE CHARACTERISTICS. Wisconsin grade A and  
18 Wisconsin state brand colby and monterey (jack) cheese shall be reasonably firm. Depending on  
19 the method of manufacture, the cheese may have evenly distributed mechanical openings or a  
20 closed body. ~~The cheese shall have numerous~~ When present, mechanical openings ~~but they may~~  
21 not be large or connected to other openings. The cheese shall be free from sweet holes, yeast  
22 holes, or other gas holes. The cheese shall be definitely curdy or partially broken down if it is

1 more than 3 weeks old. Body and texture standards are shown in the grade A column of Table 6  
2 under s. ATCP 81.50 (2).

3 **SECTION 3.** ATCP 81.52 (2) is amended to read:

4 ATCP 81.52 (2) BODY AND TEXTURE CHARACTERISTICS. Wisconsin grade B  
5 colby and monterey (jack) cheese may be loosely knit and open. Depending on the method of  
6 manufacture, the cheese may have mechanical openings or a closed body. There may be a  
7 limited amount of sweet holes, scattered yeast holes and other scattered gas holes, but pinny gas  
8 holes are not permitted. Body and texture standards are shown in the grade B column of Table 6  
9 under s. ATCP 81.50 (2).

10 **EFFECTIVE DATE.** The emergency rules contained in this order shall take effect upon  
11 publication. It remains in effect for 150 days, as provided in s. 227.24 (1) (c), Stats., unless  
12 extended by the legislature's joint committee for review of administrative rules under s. 227.24  
13 (2), Stats.

Dated this 5 day of August, 1998.

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

By Ben Brancel  
Ben Brancel, Secretary

**FISCAL ESTIMATE**

DOA-2048 (R 10/94)

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

|  |
|--|
| LRB or Bill No. / Adm. Rule No.<br>ATCP 81 |
| Amendment No. (If Applicable)              |

**Subject**  
Grade Standards for Body and Texture Characteristics of Colby and Monterey (Jack) Cheese

|   |  |
|---|--|
| <p><b>Fiscal Effect</b><br/>State: <input type="checkbox"/> No State Fiscal Effect<br/>Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation</p> <p> <input type="checkbox"/> Increase Existing Appropriation      <input type="checkbox"/> Increase Existing Revenues<br/> <input type="checkbox"/> Decrease Existing Appropriation      <input type="checkbox"/> Decrease Existing Revenues<br/> <input type="checkbox"/> Create New Appropriation                 </p> | <p> <input checked="" type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget      <input checked="" type="checkbox"/> Yes      <input type="checkbox"/> No<br/><br/> <input type="checkbox"/> Decrease Costs                 </p> |
|---|--|

|  |   |  |
|--|---|--|
| <p><b>Local:</b> <input checked="" type="checkbox"/> No local government costs</p> <p>1. <input type="checkbox"/> Increase Costs<br/> <input type="checkbox"/> Permissive      <input type="checkbox"/> Mandatory</p> <p>2. <input type="checkbox"/> Decrease Costs<br/> <input type="checkbox"/> Permissive      <input type="checkbox"/> Mandatory</p> | <p>3. <input type="checkbox"/> Increase Revenues<br/> <input type="checkbox"/> Permissive      <input type="checkbox"/> Mandatory</p> <p>4. <input type="checkbox"/> Decrease Revenues<br/> <input type="checkbox"/> Permissive      <input type="checkbox"/> Mandatory</p> | <p>5. Types of Local Governmental Unit Affected:</p> <p> <input type="checkbox"/> Towns      <input type="checkbox"/> Villages      <input type="checkbox"/> Cities<br/> <input type="checkbox"/> Counties      <input type="checkbox"/> Others _____<br/> <input type="checkbox"/> School Districts      <input type="checkbox"/> WTCS Districts                 </p> |
|--|---|--|

|   |   |
|---|---|
| <p><b>Fund Source Affected</b></p> <p> <input type="checkbox"/> GPR      <input type="checkbox"/> FED      <input checked="" type="checkbox"/> PRO      <input type="checkbox"/> PRS      <input type="checkbox"/> SEG      <input type="checkbox"/> SEG-S                 </p> | <p><b>Affected Ch. 20 Appropriations</b><br/>20.115(1) (gb)</p> |
|---|---|

**Assumptions Used in Arriving at Fiscal Estimate**

Rules relating to cheese grading, packaging and labeling are contained in Chapter ATCP 81, Wis. Adm. Code. Subchapter V specifies the Wisconsin grade standards for colby and monterey (jack) cheese. These standards include requirements for particular body and texture characteristics. The current standards require the presence of mechanical openings or an "open" body in order for the cheese to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

This emergency rule amends ch. ATCP 81, Wis. Adm. Code, to eliminate the requirement for mechanical openings from the grade standards for colby and monterey (jack) cheese. The emergency rule further clarifies that for all grade categories the cheese may exhibit either mechanical openings or a closed body, dependent upon the method of manufacture.

One-time costs of approximately \$1600 will be incurred by the department for rule development.

**Long - Range Fiscal Implications**

None anticipated.

|  |   |                                  |
|--|---|----------------------------------|
| <p><b>Agency/prepared by: (Name &amp; Phone No.)</b></p> <p>DATCP<br/>Terri L. Wenger (608) 224-4714</p> | <p><b>Authorized Signature/Telephone No.</b></p> <p><i>Barbara Knapp</i><br/>Barbara Knapp (608) 224-4746</p> | <p><b>Date</b></p> <p>8/3/98</p> |
|--|---|----------------------------------|

**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.<br>ATCP 81 | Amendment No. |
|--|---------------|

**Subject**

Grade Standards for Body and Texture Characteristics of Colby and Monterey (Jack) Cheese

**I. One-time Cost or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**

Total one-time cost = \$1600

| <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  | \$   | \$ -                   |
| (FTE Position Changes)   | ( FTE)   | (- FTE)                |
| State Operations - Other Costs   |  | -                      |
| Local Assistance   |  | -                      |
| Aids to Individuals or Organizations   |  | -                      |
| <b>TOTAL State Costs by Category</b>   | <b>\$</b>  | <b>\$ -</b>            |
| <b>B. State Costs by Source of Funds</b>   | <b>Increased Costs</b>                               | <b>Decreased Costs</b> |
| GPR  | \$   | \$ -                   |
| FED  |  | -                      |
| PRO/PRS  |  | -                      |
| SEG/SEG-S  |  | -                      |
| <b>III. State Revenues -</b>   | <b>Increased Rev.</b>                                | <b>Decreased Rev.</b>  |
| <small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small> |  |                        |
| GPR Taxes  | \$   | \$ -                   |
| GPR Earned   |  | -                      |
| FED  |  | -                      |
| PRO/PRS  |  | -                      |
| SEG/SEG-S  |  | -                      |
| <b>TOTAL State Revenues</b>  | <b>\$</b>  | <b>\$ -</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><br>DATCP<br>Terri L. Wenger (608) 224-4714 | <b>Authorized Signature/Telephone No.</b><br><i>Barbara Knapp</i><br>Barbara Knapp (608) 224-4746 | <b>Date</b><br>8/3/98 |
|--|---|-----------------------|

STATE OF WISCONSIN

NOV 18 1998

DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

NOTICE OF HEARING

RULES RELATED TO GRADE STANDARDS OF  
COLBY AND MONTEREY (JACK) CHEESE

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 a proposed permanent rule amending Chapter ATCP 81, Wisconsin Administrative Code, relating to grade standards for body and texture characteristics of colby and monterey (jack) cheese. 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 December 18, 1998** 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 4, 1998 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**

Date and Time:       Friday, December 11, 1998  
                          10:00 a.m. - 12:00 noon

Location:             Outagamie County Administration Building  
                          Third Floor, Meeting Room 2  
                          410 S. Walnut Street  
                          Appleton, WI 54911

(Access for handicapped persons is available through the Human Services Building entrance on the north side of the building.)

Date and Time: Wednesday, December 16, 1998  
10:00 a.m. - 12:00 noon

Location: Iowa County Courthouse  
First Floor, Conference Room 111  
222 N. Iowa Street  
Dodgeville, WI 53533

(Access for handicapped persons is available at the back entrance on the west side of the building.)

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

Statutory Authority: ss. 97.09 (1) and 97.177 (1), (2) and (4) , Stats.

Statutes Interpreted: ss. 97.09 and 97.177, Stats.

This proposed rule modifies current rules under ch. ATCP 81, Wis. Adm. Code, related to grade standards for body and texture characteristics of colby and monterey (jack) cheese.

The current standards require the presence of mechanical openings or an "open" body in order for the cheese to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

This proposed rule repeals current grade standards that require mechanical openings in colby and monterey (jack) cheese. Under the proposed rule, the cheese may have either mechanical openings or a closed body, depending on the method of manufacture.

When mechanical openings are present, their size and distribution are two of many factors which determine the specific grade category assigned to the cheese. Wisconsin certified premium grade AA requires that mechanical openings be "evenly distributed" and "small." Wisconsin grade A (Wisconsin state brand) requires that mechanical openings be "evenly distributed," without the added emphasis on "small." Wisconsin grade B has no requirement for mechanical openings to be "evenly distributed."

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## 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. Subchapter V specifies the Wisconsin grade standards for colby and monterey (jack) cheese. These standards include requirements for particular body and texture characteristics. The current standards require the presence of mechanical openings or an "open" body in order for the cheese to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

This rule amends ch. ATCP 81, Wis. Adm. Code, to eliminate the requirement for mechanical openings from the grade standards for colby and monterey (jack) cheese. This rule further clarifies that for all grade categories the cheese may exhibit either mechanical openings or a closed body, dependent upon the method of manufacture.

One-time costs of approximately \$3120 will be incurred by the department for permanent rule development.

### **Long - Range Fiscal Implications**

None anticipated.

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## INITIAL REGULATORY FLEXIBILITY ANALYSIS

The proposed rule modifies current rules under ch. ATCP 81, Wis. Adm. Code, related to grade standards for body and texture characteristics of colby and monterey (jack) cheese. This rule would implement, on a "permanent" basis, the revised grade standards which the department established by emergency rule on August 8, 1998.

Under current DATCP rules, colby and monterey (jack) cheese must have numerous mechanical openings in order to be labeled or sold as Wisconsin certified premium grade AA or Wisconsin grade A (Wisconsin state brand).

The recently adopted emergency rule temporarily eliminated rule provisions requiring mechanical openings in colby and monterey (jack) cheese. Under the emergency rule, colby and monterey (jack) cheese may have either mechanical openings or a closed body, depending upon the method of manufacture. When mechanical openings are present, their size and distribution are two of many factors which determine the specific grade category assigned to the cheese. The proposed rule would make these same rule changes on a permanent basis.

The proposed rule will not impose any direct costs on small businesses. These amendments do not require any additional reporting or recordkeeping. In addition, no other new procedures are proposed. No additional knowledge or professional skills are needed to meet the requirements of these proposed amendments.

High volume manufacturers (typically larger businesses) using newer technology, equipment and packaging have experienced difficulties in manufacturing cheese to meet the current grade requirements for mechanical openings. Small cheese factories and packaging operations using more traditional technology, equipment and packaging could more easily achieve the open body characteristics currently required for Wisconsin certified premium grade AA and Wisconsin grade A (Wisconsin state brand). As a consequence of the rule change and the elimination of the requirement for mechanical openings, these small businesses may now experience increased competition in the marketplace in the sale of Wisconsin graded cheese which may now have an open or closed body. However, an apparent majority of the cheese industry believes that small cheese processors will be able to maintain or grow a niche market for open-bodied colby and monterey (jack) cheese in the retail deli case.

Dated this 11<sup>th</sup> day of November, 1998.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By Ben Brancel  
Ben Brancel, Secretary