

MAR 22 2001

Clearinghouse No. 99-151  
Docket No. 99-R-4

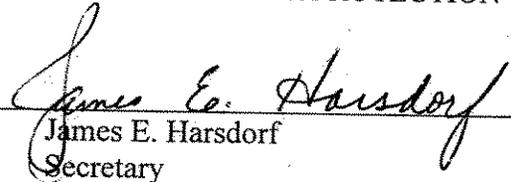
**STATE OF WISCONSIN**  
**DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION**  
**NOTICE OF SUBMISSION OF PROPOSED RULES TO PRESIDING OFFICERS OF**  
**EACH HOUSE OF THE LEGISLATURE**

NOTICE IS HEREBY GIVEN, pursuant to s. 227.19(2), Stats., that the State of Wisconsin Department of Agriculture, Trade and Consumer Protection is submitting a final draft of proposed Clearinghouse Rule Number 99-151 to the presiding officer of each house of the legislature for standing committee review. The proposed rule adopts Chapter ATCP 81 relating to cheese grading, packaging and labeling.

Dated this 22<sup>nd</sup> day of March, 2001.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By

  
James E. Harsdorf  
Secretary

MAY 15 2001

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION

NOTICE OF HEARING

Rules Related To Cheese Grading, Packaging And Labeling

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings, at the times and places indicated below, on proposed amendments to Chapter ATPC 81, Wisconsin Administrative Code, relating to cheese grading, packaging and labeling. The public is invited to attend the hearings and make comments on the proposed rule. Following the public hearings, the hearing record will remain open until June 29, 2001, 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 June 7, 2001 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: Thursday, June 14, 2001  
10:00 a.m. - 12:00 noon

Location: Appleton Public Library  
Lower Level Mtg. Room  
925 S. Oneida Street  
Appleton, WI 54911  
Handicapped accessible

Date and Time: Friday, June 15, 2001  
10:00 a.m. - 12:00 noon

Location: Iowa County Courthouse  
County Board Room, 2<sup>nd</sup> Floor  
222 N. Iowa Street  
Dodgeville, WI 53533  
Handicapped accessible

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

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

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

### **Swiss Cheese Grading Terms**

Under current rules, a cheese grader evaluates Swiss cheese based on eye, texture and other cheese characteristics. The current rule spells out grade standards for eye and texture characteristics in table format, using customary (but undefined) industry terms to identify various physical traits. This rule defines those terms, consistent with industry custom.

### **Swiss Cheese Grading Procedure**

Under current rules, a grader must grade cheese by withdrawing and evaluating sample "plugs" of cheese using an implement known as a "trier." This rule spells out a slightly different procedure for Swiss cheese. Under this rule:

- A cheese grader must determine Swiss cheese *flavor* and *body* characteristics by withdrawing and evaluating "plugs" of cheese. This rule spells out the procedure for withdrawing and evaluating Swiss cheese "plugs" using a trier.
- A grader must normally determine *texture*, *color* and *eye* characteristics by dividing a wheel or block of cheese in half and examining the exposed cut surfaces. If Swiss cheese has been already been cut into smaller pieces, the grader may examine the cut surfaces without making additional cuts. A grader may evaluate "plugs" of cheese, rather than cut pieces, if the cheese owner requests that procedure.

### **Wisconsin Grade Standards; Eye and Texture Characteristics**

This rule changes current grade standards for Wisconsin grade A and Wisconsin state brand Swiss cheese. Under current rules, eyes must be uniformly distributed and a majority of the eyes must be  $\frac{9}{16}$  to  $\frac{13}{16}$  inch in diameter. Under this rule, eyes must be uniformly distributed and relatively uniform in size. A majority of the eyes must be  $\frac{3}{8}$  to  $\frac{13}{16}$  inch in diameter.

This rule establishes an eye size requirement for Wisconsin grade B Swiss cheese that is identical to that for Wisconsin grade A Swiss cheese. Under this rule, the majority of eyes must be  $\frac{3}{8}$  to  $\frac{13}{16}$  inch in diameter.

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## Fiscal Estimate

### **Assumptions Used in Arriving at Fiscal Estimate**

Rules related to cheese grading, packaging and labeling are contained in Chapter ATCP 81, Wis. Adm. Code. Subchapter VII specifies the Wisconsin grade standards for Swiss or Emmentaler cheese. These standards include requirements for particular eye and texture characteristics of the cheese, including eye size. Current standards require that the majority of eyes (or holes) be 9/16 to 13/16 inch in diameter in order for the cheese to be labeled or sold as Wisconsin grade A or state brand Swiss (emmentaler) cheese.

This rule updates the Wisconsin grade standard for Swiss (emmentaler) cheese so that the Wisconsin cheese industry may embrace new cheese manufacturing and packaging technology and meet customer expectations. This rule update will permit smaller eyes in Swiss or emmentaler cheese than the current standard allows by expanding the lower end of the range. This change will facilitate cutting operations with high-speed slicing equipment and help provide a more consistent quantity by weight of cheese in consumer packages. This rule change will also bring the Wisconsin grade standards into conformance with United States Department of Agriculture grade standards for Swiss cheese with regard to eye size, and allow the Wisconsin cheese industry to remain competitive on a nationwide basis.

This rule also defines current and new terms in Subchapter I to help clarify grade standard characteristics with respect to eye and texture characteristics of Swiss cheese. In Subchapter II, cheese grading procedures are modified to allow for better examination of eye and texture characteristics and evaluation of the cheese with respect to the proposed changes in the grade standard.

Currently, there are three multiple product graders employed by the department. No additional staff will be required to enforce these regulations. These amendments will not impose added costs on local government.

One-time costs of approximately \$3640 will be incurred by the department for rule development.

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

None anticipated.

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### Initial Regulatory Flexibility Analysis

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

Under current DATCP rules, the majority of eyes or holes in Swiss (emmentaler) cheese must be 9/16 to 13/16 inch in diameter in order for the cheese to be labeled or sold as Wisconsin grade A

or Wisconsin state brand. There are no eye size specifications in the current standards for Wisconsin grade B Swiss (emmentaler) cheese.

The proposed rule brings the Wisconsin grade standards for Swiss (emmentaler) cheese into conformance with recent changes in the federal grade standards adopted by the United States Department of Agriculture. The proposed rule allows smaller eyes by expanding the lower end of the eye size range and requires that the majority of eyes be 3/8 to 13/16 inch in diameter for Wisconsin grade A (Wisconsin state brand). It also requires the eyes to be relatively uniform in size and uniformly distributed. The proposed rule also establishes the same eye size range of 3/8 to 13/16 inch in diameter for Wisconsin grade B.

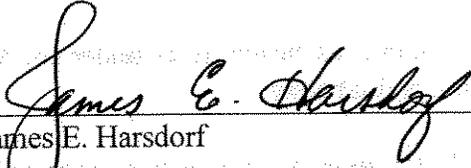
The proposed rule defines current and new terms to help clarify the grade standard characteristics with respect to eye and texture characteristics of Swiss cheese. The proposed rule also modifies grading procedures for Swiss cheese to allow for better examination and evaluation of texture, color, and eye characteristics. For the determination of texture, color, and eye characteristics, the cheese must be divided approximately in half to expose two cut surfaces for examination. Upon request of the owner of the cheese (or the owner's authorized representative), cheese samples for grading purposes may be obtained with the use of a trier in lieu of dividing the cheese in half.

This rule update in the Wisconsin grade standard for Swiss (emmentaler) cheese is necessary to keep pace with changes in manufacturing and packaging technology and meet a variety of customer and consumer preferences. Packers and cut/wrap operations prefer smaller eyes that facilitate cutting operations with high-speed slicing equipment. Smaller eyes also enable the cutter to better control package weight and minimize trim. Delicatessen operators prefer a larger eye size due to customer preference at the retail level. It is believed that cheese manufacturers currently producing Swiss cheese with an eye size range of 9/16 to 13/16 inch in diameter will maintain or grow their market niche.

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

Dated this 15 day of May, 2001.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By   
James E. Harsdorf  
Secretary



State of Wisconsin  
Scott McCallum, Governor

MAR 22 2001

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

DATE: March 20, 2001

TO: The Honorable Fred A. Risser  
President, Wisconsin State Senate  
220 South, State Capitol  
P. O. Box 7882  
Madison, WI 53707-7882

The Honorable Scott Jensen  
Speaker, Wisconsin State Assembly  
211 West, State Capitol  
P. O. Box 8952  
Madison, WI 53708-8952

FROM: Ben Brancel, Secretary *Ben Brancel*  
Department of Agriculture, Trade and Consumer Protection

SUBJECT: **Proposed Rule Relating to Cheese Grading, Packaging and Labeling**  
**(Clearinghouse Rule No. 99-151)**

The Department of Agriculture, Trade and Consumer Protection (DATCP) hereby transmits the above rule for legislative committee review, pursuant to ss. 227.19(2) and (3), Stats. We are enclosing 3 copies of the final draft rule, together with the following report. We will publish a notice of this referral in the Wisconsin Administrative Register, as required by s. 227.19(2), Stats.

**Background**

Current department rules under ch. ATCP 81, Wis. Adm. Code, regulate cheese grading, packaging and labeling. These rules prevent fraud and deception, and help wholesale and retail purchasers make informed value comparisons and purchase decisions. Grade standards set benchmarks for cheese quality.

A DATCP Food Safety Task Force looked at ways to reduce costs and increase efficiency in the department's food safety programs. A subcommittee made recommendations to enhance the dairy product grading program. This rule incorporates subcommittee recommendations, and makes other changes to current grading rules.

## Rule Contents

### Wisconsin Cheese; Manufacturer's Label

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

This rule permits a cheese manufacturer to use bar codes or other electronic labeling methods to display label information while the cheese remains in the manufacturer's custody. However, conventional labeling (not just electronic code labeling) must appear on all bulk cheese that leaves the manufacturer's custody and control. If a cheese manufacturer uses electronic code labeling, the manufacturer must provide a scanner or other device that enables a department employee or agent to decode the information into a readable format at the place where the manufacturer keeps the cheese.

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

### Cheese from other States or Countries; Wisconsin Grade Labeling Prohibited

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

### Age Labeling of Cheese

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

### Grade Labeling Retail Cheese Packages

Under current rules, the department may authorize a licensed food processing plant or retail food establishment to grade label retail packages of cheese. This rule clarifies that a licensed *dairy plant* may also cut, wrap and grade label cheese for retail distribution. A Wisconsin licensed

cheese grader must grade the cheese, and the grade labeling must comply with applicable department rules.

### Swiss Cheese

This rule eliminates current weight and size requirements for rindless blocks of Swiss cheese. This change will give Wisconsin manufacturers greater flexibility to meet customers' demands.

### Recordkeeping

Under current rules, a licensed cheese grader must keep records showing the name of each person for whom cheese is graded, the quantity graded, the grading date, and the grade of each graded lot. This rule also requires the grader to keep records of the name of the cheese, the state and dairy plant identification of the manufacturer, date of manufacture and vat identification for each lot of cheese.

### **Hearing Comments**

The Department held a public hearing from three (3) locations on December 9, 1999. The hearing was conducted in Madison with video conference links to Green Bay and Eau Claire. The hearing record was held open until January 14, 2000 for additional written comments.

The Department received oral or written testimony from the Wisconsin Cheese Makers Association, the Wisconsin Dairy Products Association, the Wisconsin Federation of Cooperatives, Wisconsin Cheeseman, Green Bay Cheese Company, Associated Milk Producers Inc., Oshkosh Cold Storage, and Wisconsin Cheese Group Inc. Hearing participants expressed overall support for the proposed rule, but suggested some modifications. A hearing summary and list of participants is attached as *Appendix A*.

### **Changes from Hearing Draft**

The final draft modified the hearing draft requirement for age labeling of cheese. The labeling requirement applies to any manufacturer or repackager who labels bulk cheese or retail packages of cheese as "aged" or "cured." If the label of any bulk cheese or retail package of cheese states that the cheese is "aged" or "cured," the label must state the minimum length of time in days, months or years that the cheese has been aged or cured since it was manufactured.

The final draft deleted the hearing draft requirement for cheese graders to keep records of fat and moisture content of all cheese which they grade. In its place, the final rule requires licensed graders to keep records showing the name of the cheese, identification of the state and dairy plant where the cheese was manufactured, the date of manufacture and the vat identification of each graded lot. The required manufacturing information will enable traceback in dairy plant records to ascertain fat and moisture content for each lot of cheese if the fat or moisture content is measured.

## Response to Rules Clearinghouse Comments

The Legislative Council Rules Clearinghouse suggested two minor changes in the hearing draft rule and additional explanations in the analysis to the rule. DATCP has incorporated all of these changes in the final draft rule.

## Fiscal Estimate

Electronic code labeling of bulk cheese may cause a small reduction in inspection efficiency, and a small increase in inspection costs. The amount of the increased costs will depend on the number of manufacturers who adopt electronic coding. The department currently estimates that it can absorb the increased costs without increasing inspection fees.

The other rule changes will not have any fiscal impact on DATCP or local units of government. A fiscal estimate is attached as *Appendix B*.

## Small Business Analysis

This rule will not have a major impact on small business. It will not require additional knowledge or professional skills. Additional reporting or recordkeeping will be minimal. This rule modifies and updates ch. ATCP 81 to accommodate changes in cheese technology and customer expectations. The rule changes allow Wisconsin's dairy industry to remain competitive on a nationwide basis and provide benefits to businesses of all sizes. A small business analysis ("final regulatory flexibility analysis") is attached as *Appendix C*.

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

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

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

Statutes Interpreted: s. 97.177, Stats.

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

**Wisconsin Cheese; Manufacturer's Label**

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

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

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

## **Cheese from other States or Countries; Wisconsin Grade Labeling Prohibited**

Under current rules, cheese from other states or countries may be identified with a Wisconsin grade mark or grade label if it is graded by a Wisconsin licensed cheese grader and labeled to identify the state or country of origin. This rule prohibits the use of Wisconsin grade labeling on cheese originating from other states or countries, even if that cheese is graded by a Wisconsin licensed grader. The prohibition eliminates the likelihood of confusion or misunderstanding by buyers and consumers as to the origin of the cheese, since Wisconsin graded cheese is stamped with a Wisconsin grade stamp that includes an outline of the state's borders.

## **Age Labeling of Cheese**

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

## **Grade Labeling of Certain Wisconsin Manufactured Cheese**

This rule clarifies that Wisconsin manufactured cheese must be graded and labeled only if there is a Wisconsin grade standard for that particular cheese variety. There are no Wisconsin grade standards for some cheeses such as Blue cheese, Parmesan, Gorgonzola, Mozzarella and pasteurized process cheeses.

## **Grade Labeling Retail Cheese Packages**

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

## **Swiss Cheese**

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

## **Recordkeeping**

Under current rules, a licensed cheese grader must keep records showing the name of each person for whom cheese is graded, the quantity graded, the grading date, and the grade of each graded lot. This rule also requires the grader to keep records showing the name of the cheese, identification of the state and dairy plant where the cheese was manufactured, the date of manufacture and the vat identification of each graded lot. The required manufacturing information will allow graders to check fat and moisture content for each lot of cheese if the fat or moisture content is measured.

1           **SECTION 1.** ATCP 81.20(intro.) and (4) are amended to read:

2           ATCP 81.20 (intro.) All cheese manufactured in this state shall be labeled at the dairy  
3 plant or cheese factory with all of the items listed under subs. (1) to (5). The labeling of ~~bulk~~  
4 ~~cheese~~ shall remain on the cheese until the cheese is used in the manufacture or processing of  
5 another food, or until it is relabeled by a buyer who cuts and repackages the bulk unit into  
6 consumer size packages. A manufacturer may not use electronic code labeling as the sole means  
7 to display labeling required under this section, except when the cheese is under the  
8 manufacturer's custody and control. If a manufacturer uses electronic code labeling, the  
9 manufacturer shall provide a scanner or other device that enables a department employe or agent  
10 to decode the information into a readable format at the place where the manufacturer keeps the  
11 cheese.

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

16           **SECTION 2.** ATCP 81.20(6) is repealed.

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

18           **NOTE:** A manufacturer's label will substantially comply with this subsection if it uses one of the  
19 following alternative formats for each label requirement under subs. (1) to (5):

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

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

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

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

2           **ATCP 81.215 Age labeling of cheese.** If the label on any bulk cheese or retail package  
3 of cheese states that the cheese is "aged" or "cured," the label shall state the minimum length of  
4 time in days, months or years that the cheese has been aged or cured since it was manufactured.

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

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

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

11           **ATCP 81.24(1) GENERAL.** A retail food establishment licensed under s. 97.30, Stats., or  
12 a food processing plant licensed under s. 97.29 Stats., may obtain a cheese grade labeling permit  
13 from the department. A permit holder may affix a cheese grade label to retail packages of graded  
14 cheese purchased in bulk by the permit holder if the bulk lot has been graded as Wisconsin  
15 Certified Premium Grade AA, Wisconsin Grade A or Wisconsin State Brand and the cheese is  
16 cut, packaged and labeled for retail distribution. No retail food establishment may grade label  
17 retail packages of cheese without a permit from the department. Retail grade labeling shall  
18 comply with this section. A dairy plant licensed under s. 97.20, Stats., may cut, wrap and grade  
19 label cheese for retail distribution if the cheese is graded by a cheese grader licensed under  
20 s. 97.175, Stats., and the retail packages are grade labeled as required under s. ATCP 81.22.

21           **(3) RETAIL PACKAGE GRADE LABELING.** The department shall issue a permit identification  
22 number to each grade labeling permit holder under sub. (1). The identification number shall  
23 consist of the letter prefix "P", followed by a three-digit identification number. When affixing a  
24 grade label to retail packages of graded cheese under this section, the permit holder shall print

1 the specified grade and the permit holder's identification number within a miniature outline map  
 2 of the boundaries of the state of Wisconsin. The type shall be designed and spaced so as to be  
 3 legible and present a symmetrical appearance. ~~Cheese manufactured in a state other than~~  
 4 ~~Wisconsin or in a foreign country, and grade labeled under sub. (1) shall identify the state or~~  
 5 ~~country of origin on the retail package label in a type size not smaller than the type size required~~  
 6 ~~for the net weight statement.~~

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

8 ATCP 81.25(1)(e) The information required under ATCP 81.20(1) to (5).

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

10 ATCP 81.30(2)(chart)

Style	Weight in Pounds	Diameter in Inches	Height in Inches	Length in Inches	Width in Inches
(1) Cheddar	70 to 78	14½	12 to 12¼		
(2) Flat	32 to 37	14½	6½ to 6¾		
(3) Daisy	21 to 24	14	4 to 4¼		
(4) Longhorn	12½ to 13¾	6	12 to 12½		
(5) Midget	11 to 12½	9¾	4¼ to 4¾		
(6) 20-lb. Block	20¼ to 22		3½ to 3¾	14 to 14¼	11 to 11¼
(7) 40-lb. Block	41 to 44		6¾ to 7¼	14 to 14¼	11 to 11¼
(8) 60-lb. Block	61 to 65		10½ to 10¾	14 to 14¼	11 to 11¼
(9) 640-lb. Block	640 (min.)				
(10) Barrel; 55 gal.					
(a) Metal	480 (min.)	22½	33½		
(b) Fiber	480 (min.)	23½	33 to 34		
(11) <del>Swiss Cheese</del>					
<del>Rindless Blocks</del>					
<del>(a) Single</del>	95 to 98		7 to 8½	25 to 26½	15 to 15¾
<del>(b) Double</del>	190 to 196		7 to 8½	25 to 26½	30 to 31½

1        **SECTION 10.** ATCP 81.70(4)(b) is amended to read:

2        ATCP 81.70(4)(b) *Rindless Swiss cheese.* A rindless block of grade A Swiss cheese shall  
3 ~~be not less than 6 ½ inches nor more than 8 ½ inches in height. The cheese block shall be~~  
4 reasonably uniform in size and well shaped. The wrapper or covering shall adequately and  
5 securely envelop the cheese. The wrapper or covering may be slightly wrinkled, but shall be  
6 neat, unbroken and fully protect the surface of the cheese. The surface of the cheese may contain  
7 a very slight amount of mold, but no mold shall have penetrated the interior of the cheese. Finish  
8 and appearance standards are shown in the grade A column of Table 16 under par. (a).

9        **SECTION 11.** ATCP 81.71(4)(b) is amended to read:

10        ATCP 81.71(4)(b) *Rindless Swiss cheese.* ~~A rindless block of Swiss cheese shall be not~~  
11 ~~less than 6 ½ inches nor more than 8 ½ inches in height.~~ The wrapper or covering for a rindless  
12 block of Swiss cheese shall adequately and securely envelop the cheese. The wrapper or  
13 covering may be slightly wrinkled, but it shall be neat and unbroken and shall fully protect the  
14 surface of the cheese. The surface of the cheese may contain a slight amount of mold but no  
15 mold shall penetrate the interior of the cheese. The cheese may contain various undesirable  
16 finish and appearance characteristics to a slight degree for the applicable trait. Finish and  
17 appearance standards are shown in the grade B column of Table 16 under s. ATCP 81.70 (4) (a).

18        **SECTION 12. Effective date.** The rules contained in this order shall take effect on the  
19 first day of the month following publication in the Wisconsin administrative register, as provided  
20 under s. 227.22(2) (intro.), Stats.

Dated this 14th day of February, 2001.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By Ben Brancel, Secretary

## APPENDIX A

### **SUMMARY OF PUBLIC HEARING TESTIMONY PROPOSED AMMENDMENTS TO ATCP 81**

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) held public hearings at 3 locations on December 9, 1999. The hearing was conducted in Madison with video conference links to Green Bay and Eau Claire.

A total of 18 people attended the hearings, of which 8 provided oral testimony and filled out an accompanying appearance card. Nine additional attendees completed cards to register their opinion of the proposed changes. Most people registering "neither" or "other" attended the hearings for informational purposes only. Three people who did not attend the hearings submitted written comments.

#### Testified and Submitted Written Comments in Support of the Proposal with Some Modification

John T. Umhoefer, Executive Director, Wisconsin Cheese Makers Association: WCMA supported the proposed use of bar codes or electronic code dating for bulk cheese if limited to cheese under the custody and control of the manufacturer. WCMA also supported proposals for greater flexibility in the labeling of the date of manufacture, prohibition of Wisconsin grade labeling on cheese manufactured in another state or country, age and grade labeling of retail packages of cheese, and elimination of weight and size requirements for rindless blocks of Swiss cheese. WCMA did not support the proposal that requires licensed graders to keep records of the fat and moisture content of graded cheese. WCMA also wanted the department to eliminate current rules related to age labeling of bulk cheese and to expand the size range for eyes in Grade A Swiss cheese.

Brad Legreid, Executive Director, Wisconsin Dairy Products Association: The majority of the proposed changes were acceptable to WDPA. The association supported the prohibition of Wisconsin grade labeling of cheese from another state or country. WDPA apparently misunderstood the department's proposal for age labeling of cheese and expressed opposition to mandated minimum periods of time to achieve "aged" or "cured" cheese. (Note: this was not addressed in the hearing draft proposal.) WDPA requested that DATCP conduct rulemaking to expand the eye size range of grade A Swiss cheese, and also commented in opposition to the United States Department of Agriculture's proposed specifications for Muenster cheese.

Kenneth E. Neumeier, Oshkosh Cold Storage: Agreed with comments of WCMA. In addition, provided testimony that customers become accustomed to the flavor labeling (sharp, etc.) that individual businesses use to describe their cheese. Also commented that the proposed rule's language regarding barcoding was confusing.

Donald D. Weideman, Associated Milk Producers Inc.: Registered in support of proposal and offered additional comments. Expressed support for future rule changes for Swiss cheese related to range of acceptable eye size that would assist in production of a more consistent package and weight of cheese in the package. Also agreed that labeling of "aged" or "cured" are in reference to time factors, while labeling of "sharp" and "extra sharp" are in reference to the flavor profile.

#### Submitted Written Comments in Support of the Proposal with Some Modification

John Manske, Director of Government Relations, Wisconsin Federation of Cooperatives: WFC generally supported the proposed changes. However, the membership opposed the proposal that requires licensed graders to keep records of the fat and moisture content of graded cheese. WFC also supported future rulemaking to revise the range of eye size suitable for Grade A Swiss cheese.

Ken Brice, Procurement Manager, Marathon Cheese Corporation: Submitted comments in support of the proposal to give the manufacturer more flexibility with block sizes and weights of Swiss cheese. Also supported future rulemaking to allow smaller eyes in the Grade A Swiss cheese standard.

#### Registered Neither For Nor Against, but Offered Testimony on a Portion of the Proposal

Tom Honse, Associated Milk Producers Inc.: Expressed concern regarding the volume of additional records of fat and moisture content to be maintained by licensed graders. Suggested dairy plant records or laboratory records should suffice to meet the information needs of DATCP.

William Schlinsog: Did not see any reason why age labeling would need to appear on bulk cheese since the date of manufacture is already required on the manufacturer's label of bulk cheese.

Nick Voss, The Wisconsin Cheeseman: Expressed desire to pre-package cheese at a younger age than what the label states as long as the manufacturer maintains ownership of the cheese. Cheese must meet stated age at time of shipment.

Jon Krein, Green Bay Cheese Company: Would support a proposal to allow cutting and packaging cheese at a younger age than what the label states, and then holding the packaged cheese until later shipment. This would facilitate pre-cutting orders by his company.

#### Submitted Written Comments in Opposition to the Proposal

Thomas J. Dalmuge, Quality Assurance Manager, Wisconsin Cheese Group Inc.: Wisconsin Cheese Group commented in opposition to the proposed requirements for retail packages of cheese which indicate they are "aged" or "cured" to state the minimum length of time that the cheese was aged or cured on the label. Instead, Wisconsin Cheese Group favors guaranteed minimum age requirements for medium aged, aged, and extra aged cheese.

**Registered in Support of the Proposal (No Testimony)**

Joan Zacharius, Crystal Farms  
William Novak II, Great Lakes Cheese  
Polly Koepp, Associated Milk Producers Inc.

**Registered Neither For Nor Against, or "Other" (No Testimony)**

Robert Aschebrock  
Al Bowers  
Jim Kleva, Associated Milk Producers Inc.  
Mary Thompson, Wisconsin Center for Dairy Research

**APPENDIX B**

**1999 Session**

**FISCAL ESTIMATE**

DOA-2048 N(R 10/98)

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

List both LRB No. and Bill/Adm. Rule No.  
**ATCP 81**  
 Amendment No. (if Applicable)

**Subject**

Cheese Grading, Packaging and Labeling

**Fiscal Effect**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 Create New Appropriation

- Increase Costs - May be possible to Absorb Within Agency's Budget       Yes       No  
 Decrease Costs

Local:  No local government costs

1.  Increase Costs  
      Permissive       Mandatory  
 2.  Decrease Costs  
      Permissive       Mandatory

3.  Increase Revenues  
      Permissive       Mandatory  
 4.  Decrease Revenues  
      Permissive       Mandatory

**5. Types of Local Governmental Unit Affected:**

- Towns       Villages       Cities  
 Counties       Others \_\_\_\_\_  
 School Districts       WTCS Districts

**Fund Source Affected**

- GPR       FED       PRO       PRS       SEG       SEG-S

Affected Ch. 20 Appropriations  
 20.115(1) (gb)

**Assumptions Used in Arriving at Fiscal Estimate**

Rules relating to cheese grading, packaging and labeling are contained in Chapter ATCP 81, Wis. Adm. Code. These rules prevent fraud and deception, and assist wholesale and retail purchasers of cheese in making informed value comparisons and purchase decisions. Grade standards contained in the rules set the benchmarks for determining cheese quality.

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

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

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

**Long - Range Fiscal Implications**

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

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

DATCP  
 Terri L. Wenger (608) 224-4714

Authorized Signature/Telephone No.

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

Date

9/13/99

# FISCAL ESTIMATE WORKSHEET

1999 SESSION

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

ORIGINAL  UPDATED  
 CORRECTED  SUPPLEMENTAL

LRB or Bill No/Adm.Rule No. Amendment No.  
ATCP 81

<b>Subject</b> Cheese Grading, Packaging and Labeling		
<b>I. One-time Cost or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):</b> Total one-time cost = \$5700		
<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> <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	\$	\$ -
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> DATCP Terri L. Wenger (608) 224-4714	<b>Authorized Signature/Telephone No.</b> <i>Barbara Knapp</i> Barbara Knapp (608) 224-4746	<b>Date</b> 9/13/99
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## APPENDIX C

### Final Regulatory Flexibility Analysis

Proposed ch. ATCP 81, Wis. Adm. Code

#### CHEESE GRADING, PACKAGING AND LABELING

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

Under this rule, cheese manufacturers will be permitted to use electronic code labeling as an alternative method to list any or all of the items of information required on the manufacturer's label for bulk cheese, as long as the cheese remains under the control and custody of the manufacturer. The decision to label bulk cheese in this manner will be fully voluntary. Coding methods will not be standardized under one uniform system from company to company. Therefore, the manufacturer must provide a scanner or other appropriate device where the cheese is located that enables an employe or agent of the department to decode the information into a readable format. If the cheese is stored in public warehouse facilities, the warehouse may need to make adjustments in its recordkeeping and warehousing operations.

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

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

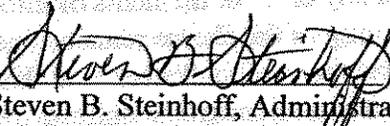
Under the rule, licensed cheese graders must maintain and make their grading records available for inspection. Recordkeeping requirements will now include the name of the cheese, identification of the state and dairy plant where the cheese was manufactured, the date of manufacture and the vat identification of each grade lot. Many graders already record and keep this information on a voluntary basis. The required manufacturing information will enable traceback in dairy plant records to ascertain fat and moisture content for each lot of cheese if the fat or moisture content is measured. This requirement has the potential to decrease the need for official sampling when monitoring compliance with standards of identity and the need to place a product under temporary holding order. It will also enable the department to confirm that out-of-state cheese is not grade-labeled with a Wisconsin grade mark.

At the request of industry, this rule eliminates the weight and size requirements for Swiss cheese rindless blocks to provide greater flexibility for our manufacturers to meet the demand of their customers. Other rule changes are minor and technical in nature and are not expected to require

any additional reporting or recordkeeping, knowledge or professional skills, nor increase costs to small businesses.

Dated this 5<sup>th</sup> day of April, 2000.

State of Wisconsin  
Department of Agriculture,  
Trade and Consumer Protection

By   
Steven B. Steinhoff, Administrator  
Division of Food Safety