

**NOTICE OF HEARING
DEPARTMENT OF CORRECTIONS
CHR-02-93 and
Emergency Rule published July 2, 2002.**

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11 (2) (a), 302.02, 301.03(2), Stats., the department of corrections proposes the following rules relating to adult field supervision:

Hearing Information:

On the following dates, public hearings will be held relating to the permanent proposed rule CHR-02-93 relating to adult field supervision as well as the identical emergency rule effective July 2, 2002:

Date & Time

Location

July 29, 2002
Monday
9:00 A.M.-11:00 A.M.

Wood County Courthouse
400 Market Street
Room 210B (Second Floor)
Wisconsin Rapids, Wisconsin

July 30, 2002
Tuesday
9:00 A.M.-11:00 A.M.

State Office Building
141 N.W. Barstow Street
Room 137 A
Waukesha, Wisconsin

The public hearing sites are accessible to people with disabilities.

Analysis Prepared by the Department of Corrections...

Pursuant to sec. 304.074(2) Stats., the department has authority to collect "at least \$1 per day, if appropriate" from offenders on supervision. However, the current proposed budget reform bill, Assembly Bill 1, directs the department to amend supervision fees and provides, in relevant part, the following:

“...the department of corrections shall promulgate the rules that are required under section 304.074(5) of the statutes and that set rates under section 304.074(2) of the statutes. The rules shall take effect on July 1, 2002.”

“...the rules shall require the department to have a goal of receiving at least \$2 per day, if appropriate, from each person who is on probation, parole, or extended supervision and who is not under administrative supervision, as defined in section 304.74(1)(a) of the statutes, or minimum supervision, as defined in section 304.74(1)(b) of the statutes.”

The department published an emergency rule on July 2, 2002 in anticipation of the fore-mentioned statutory requirements. This permanent rule proposal follows.

While the language and potential requirements of Assembly Bill 1 doubles the amount the department may collect in supervision fees, the current Administrative Code limits the department's efforts to do so. The current DOC 328 establishes a set fee schedule with a maximum collection of \$45 per month.

This rule:

- Raises the department's supervision fee goal to at least \$2 per day, if appropriate, from all offenders under supervision by the department.
- Eliminates the distinction between offenders supervised by the department on administrative and minimum supervision and offenders who are deemed medium, maximum and high risk as it relates to supervision fees. All offenders under supervision by the department will pay, based on their ability, according to one supervision-fee scale.

SECTION 1. DOC 328.043 is repealed.

SECTION 2. DOC 328.045(1) , (2) (intro) and (2)(c) are amended to read:

DOC 328.045 ~~Medium, maximum and high risk~~ Offenders under supervision by the department.

- (1) ~~OFFENDER PAYMENT. An offender on medium supervision as defined under s. DOC 328.04(4) (b) or maximum supervision as defined under s. DOC 328.04(4)(a) or high risk who is under supervision by the department shall pay a supervision fee.~~
- (2) **SUPERVISION FEE.** The department shall set a supervision fee for an offender based on the offender's ability to pay with the goal of receiving at least \$1-2 per day, if appropriate, and shall do all of the following:
 - (c) Charge a supervision fee according to the following table:

Table DOC 328.045

Category	Gross Monthly Income	Supervision Fee	Maximum Rate
I	\$0-599.99	\$10.00	\$30.00
II	\$600.00 or more	\$30.00	\$45.00
III	\$1,501.00 or more	\$60.00	

Effective date. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s.227.22 (2) Stats

Dated: _____ Agency: _____
Jon E. Litscher, Secretary

Initial Regulatory Flexibility Analysis:

These rules are not expected to have an effect on small businesses.

Fiscal Estimate:

In FY 01 the DOC collected \$5,884,800 in supervision fees. This revenue is used to provide a variety of essential Division of Community Corrections (DCC) services including rent, vehicles for home visits, extradition of absconders, and upgrading computers utilized by DCC staff.

According to the new rule, offenders at all supervision levels will pay according to one supervision-fee scale. The new fee schedule will range from \$20 to \$60 per month depending on an offender's monthly income. DOC may exempt offenders from the fee schedule if the offender meets certain criteria. It is estimated that the new fee schedule will generate an additional \$5,884,800 annually in supervision fee revenue.

(A full copy of the fiscal estimate may be obtained through the contact person listed below.)

Contact Person:

Julie Kane (608) 240-5015
Office of Legal Counsel
P.O. Box 7925
Madison, Wisconsin 53707-7925

If you are hearing or visually impaired, do not speak English, or have circumstances which might make communication at the hearing difficult and if you, therefore, require

an interpreter or a non-English, large print or taped version of the hearing document, contact the person at the address or phone number above. A person requesting a non-English or sign language interpreter should make that request at least 10 days before the hearing. With less than 10 days notice, an interpreter may not be available.

Written Comments:

Written comments on the proposed rules received at the above address no later than August 5, 2002, will be given the same consideration as testimony presented at the hearing.

ORDER OF THE
DEPARTMENT OF CORRECTIONS
REPEALING AND AMENDING RULES

FINDING OF EMERGENCY

The department of corrections finds that an emergency exists and that rules included in this order are necessary for preservation of the public peace, safety and welfare. A statement of the facts constituting the emergency is: Pursuant to sec. 304.074(2) Stats., the department has authority to collect "at least \$1 per day, if appropriate" from offenders on supervision. However, the current proposed budget reform bill, Assembly Bill 1, directs the department to amend supervision fees and provides, in relevant part, the following:

"...the department of corrections shall promulgate the rules that are required under section 304.074(5) of the statutes and that set rates under section 304.074(2) of the statutes. The rules shall take effect on July 1, 2002."

"...the rules shall require the department to have a goal of receiving at least \$2 per day, if appropriate, from each person who is on probation, parole, or extended supervision and who is not under administrative supervision, as defined in section 304.74(1)(a) of the statutes, or minimum supervision, as defined in section 304.74(1)(b) of the statutes."

While the language and potential requirements of Assembly Bill 1 doubles the amount the department may collect in supervision fees, the current Administrative Code limits the department's efforts to do so. The current DOC 328 establishes a set fee schedule with a maximum collection of \$45 per month.

As proposed, the budget reform bill requires the department to rely upon the collection of an increased amount of supervision fees. If the department remained without administrative rule authority to collect the increased fees on July 1st, the department, and clearly the public, would be significantly impacted by the loss of revenue. The proposed budget has anticipated and relied upon such increase in establishing budgetary guidelines for the department of corrections.

This situation requires the department to effect an emergency rule rather than complying with the notice, hearing, legislative review and publication requirements of the statutes. Complying with the standard promulgation procedures for a permanent rule could easily delay the department's ability to collect the necessary fees by seven months to one year. This delay would have a substantial impact on the department because more than 85% of the department's supplies and services budget will be funded by program revenue generated from supervision fees collected in the next fiscal year. This revenue provides for a variety of essential departmental functions, including rent for approximately 114 probation and parole offices, vehicles that enable probation and parole agents to conduct

home visits on offenders, extradition of absconders, and computers that enable agents to conduct such critical functions as pre-sentence investigation reports. If the department were somehow hindered in the attempt to perform these functions it would obviously affect the department's ability to adequately supervise offenders and ultimately result in a breakdown in the department's ability to help protect the public.

This order:

- Raises the department's supervision fee goal to at least \$2 per day, if appropriate, from all offenders under supervision by the department.
- Eliminates the distinction between offenders supervised by the department on administrative and minimum supervision and offenders who are deemed medium, maximum and high risk as it relates to supervision fees. All offenders under supervision by the department will pay, based on their ability, according to one supervision-fee scale.

ORDER

Under the authority vested in the Department of Corrections by ss.301.02, 301.03 (1) (2), and 227.11(2), Stats., the Department of Corrections hereby repeals and amends rules relating to adult field supervision, interpreting ss.304.073 and 304.074, Stats.

SECTION 1. DOC 328.043 is repealed.

SECTION 2. DOC 328.045(1) ,(2) (intro) and (2)(c) are amended to read:

DOC 328.045 ~~Medium, maximum and high risk~~ Offenders under supervision by the department.

- (1) OFFENDER PAYMENT. An offender ~~on medium supervision as defined under s. DOC 328.04(4) (b) or maximum supervision as defined under s. DOC 328.04(4)(a) or high risk~~ who is under supervision by the department shall pay a supervision fee.
- (2) SUPERVISION FEE. The department shall set a supervision fee for an offender based on the offender's ability to pay with the goal of receiving at least ~~\$1~~2 per day, if appropriate, and shall do all of the following:
 - (c) Charge a supervision fee according to the following table:

Table DOC 328.045

Category	Gross Monthly Income	Supervision Fee	Maximum Rate
I	\$0- 599.99 <u>800.00</u>	\$10.00 <u>20.00</u>	\$30.00
II	\$600.00 or more <u>801.00-1,500.00</u>	\$30.00 <u>40.00</u>	\$45.00
III	\$1,501.00 or more	\$60.00	

The rules contained in this order shall take effect as emergency rules upon publication in the official state newspaper, as provided in s. 227.24(1)(c), Stats.

Wisconsin Department of Corrections

Date: 6/26/02

By Jon E. Litscher
Jon E. Litscher
Secretary

Seal:

**PROPOSED ADMINISTRATIVE RULES – DOC 328,
RELATING TO ADULT FIELD SUPERVISION.
ANALYSIS FOR LEGISLATIVE STANDING COMMITTEES
PURSUANT TO S. 227.19 (3) STATS.**

Need for Rule

2001 Wisconsin Act 109 requires the department to amend rules relating to supervision fees and provides, in relevant part, the following:

“...the department of corrections shall promulgate the rules that are required under section 304.074(5) of the statutes and that set rates under section 304.074(2) of the statutes. The rules shall take effect on July 1, 2002.”

“...the rules shall require the department to have a goal of receiving at least \$2 per day, if appropriate, from each person who is on probation, parole, or extended supervision and who is not under administrative supervision, as defined in section 304.74(1)(a) of the statutes, or minimum supervision, as defined in section 304.74(1)(b) of the statutes.”

2001 Wisconsin Act 109 doubles the amount the department may collect in supervision fees, while the current Administrative Code limits the department's efforts to do so.

Responses to Clearinghouse Recommendations

This rule was originally submitted to Legislative Council on June 27, 2002. All but the following recommendations were accepted:

1.a. Under s. 304.073(2), Stats., for an offender on administrative or minimum supervision, the department must charge the offender a fee that is sufficient to cover the cost of the offender's supervision. Other offenders on supervision are required to pay a fee that is based on the offender's ability to pay in order to partially reimburse the costs of supervision. [s/304.074(2), Stats.] The proposed rule eliminates this distinction and requires all offenders on supervision to pay a fee that is based upon their gross income. How does this change meet the current statutory fee requirements for offenders on administrative or minimum supervision?

RESPONSE: The proposed rule complies with statutory requirements. S. 304.073(2) Stats. requires the department to charge a fee to any probationer, parolee or person on extended supervision who is under minimum or administrative supervision and is supervised by the department. The fee shall be sufficient to cover the cost of supervision. The fee schedule in the proposed rule does just that. The fees established, at a rate of \$20 to \$60 per month, are set at an amount sufficient to cover the cost of supervising offenders on administrative or minimum supervision.

In addition, s. 304.074(2) Stats., requires the department to charge a fee to probationers, parolees, and persons on extended supervision to partially reimburse the department for the costs of providing supervision and services. Because it costs more to supervise offenders on medium, maximum and high risk supervision, the fee schedule of \$20 to \$60 per month is set at an amount that covers only a portion of the costs of supervision and services, as required by statute.

Public Hearings

This rule received two public hearings. The schedule and location is as follows:

<u>Date & Time</u>	<u>Location</u>
July 29, 2002 Monday 9:00 A.M.-11:00 A.M.	Wood County Courthouse 400 Market Street Room 210B (Second Floor) Wisconsin Rapids, Wisconsin
July 30, 2002 Tuesday 9:00 A.M.-11:00 A.M.	State Office Building 141 N.W. Barstow Street Room 137 A Waukesha, Wisconsin

There were no appearances at the public hearings.

Written Comments

One written comment was received and is summarized as follows:

Louie Aiello

Mr. Aiello states that this fee increase operates the same way a penalty does and should not be applied to a person who is released to supervision prior to enactment of the new fee. Mr. Aiello also requests the department to clearly spell out what "if appropriate" means by using clear and unambiguous language.

RESPONSE:

Supervision fees are not a penalty, they are a requirement for supervision. This concern is not properly addressed in this rule proposal. This rule proposal merely follows statutory guidelines and requirements. Any comments relate to the legality or legitimacy of the statutes is more appropriately addressed in other forums.

The proposed rule uses the language "if appropriate" as it is used in the statute. In fact, s. 304.074(3) Stats. does add circumstances under which the department may decide that it is not appropriate to charge a supervision fee, including when an offender is unemployed, in school,

undergoing treatment or medically unable to work. The department also maintains internal policy related to establishing guidelines for setting supervision fees.

Modifications Made as a Result of Public Hearings

No modifications were made as a result of public hearings.

Final Regulatory Flexibility Analysis

This proposed rule is not expected to impact on small businesses as defined in s. 227.114 (1.)

Emergency Rule ATCP 96

Relating to milk producer security.

The Department of Agriculture, Trade, and Consumer Protection has requested a second extension to this rule. This rule expires November 24th, 2002, permanent rule expected in January, 2003



State of Wisconsin

Scott McCallum, Governor

Department of Agriculture, Trade and Consumer Protection

James E. Harsdorf, Secretary

October 23, 2002

The Honorable Judy Robson, Co-Chair
Joint Committee for
the Review of Administrative Rules
15 South -- State Capitol
PO Box 7882
Madison, WI 53707-7882

The Honorable Glenn Grothman, Co-Chair
Joint Committee for
the Review of Administrative Rules
15 North -- State Capitol
PO Box 8952
Madison, WI 53708-8952

Dear Senator Robson and Representative Grothman:

Re: **Emergency Rule Extension – Milk Producer Security**

The Department of Agriculture, Trade and Consumer Protection asks the Joint Committee for the Review of Administrative Rules (JCRAR) to grant a second extension of the above emergency rule. This rule was originally scheduled to expire on September 27, 2002, but JCRAR has already extended the rule for 60 days, until November 26, 2002. If JCRAR grants a second 60 day extension, the rule will remain in effect until January 25, 2003.

This emergency rule implements Wisconsin's new agricultural producer security law (ch. 126, Stats.) as it applies to milk contractors. The new law is designed to protect milk producers against catastrophic financial defaults by milk contractors who procure producer milk in this state. The Legislature enacted the new law in 2001 Wis. Act 16.

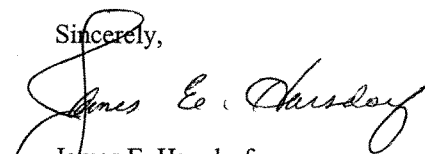
We are enclosing copies of the emergency rule, fiscal estimate and hearing notice. The emergency rule includes a *Finding of Emergency* that explains the need for this rule. The department has started "permanent" rulemaking proceedings, but will not be able to complete those proceedings before the emergency rule expires. The department is therefore asking JCRAR to extend the emergency rule.

The department held a public hearing on the emergency rule on May 16, 2002. A total of 6 persons attended, but there were no verbal comments on the rule. The department received one written comment asking the department to revise the wording of a required "notice to producer" statement that milk contractors must make under the rule.

The department held hearings on the "permanent" rule in October. We plan to submit a final draft rule for DATCP Board approval in January, 2003. If the DATCP Board approves the final draft rule, we will refer it to the Legislature for review.

The department will have staff available to answer questions at the JCRAR meeting on this matter.

Sincerely,



James E. Harsdorf
Secretary

Enclosures

Wisconsin Food and Agricultural Products - \$40 Billion for Wisconsin's Economy

2811 Agriculture Drive • PO Box 8911 • Madison, WI 53708-8911 • 608-224-5012 • Wisconsin.gov

State Of Wisconsin
Department Of Agriculture, Trade And Consumer Protection

NOTICE OF HEARING

Emergency Rule Related to Milk Producer Security

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces it will hold a public hearing on an emergency rule relating to milk producer security. The department invites the public to attend and comment on the emergency rule. Following the public hearing, the hearing record will remain open until June 16, 2002 to receive additional written comments.

You may obtain a free copy of this emergency rule by contacting Kevin LeRoy, Division of Trade and Consumer Protection, P.O. Box 8911, Madison WI 53708, or by calling (608) 224-4928. Copies will also be available at the hearing.

Hearing impaired persons may request an interpreter for this hearing. Please make reservations for a hearing interpreter by May 9, 2002 either by writing to Kevin LeRoy, Division of Trade and Consumer Protection, PO Box 8911, Madison, WI 53708-8911 (telephone 608-224-4928) or by calling the Department TDD at 224-5058

The hearing is scheduled at:

Thursday, May 16, 1:30 p.m.
Wisconsin Department of Agriculture, Trade and Consumer Protection
Board Room
2811 Agriculture Drive
Madison, WI 53718
Handicapped accessible

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

Statutory Authority: ss. 93.07(1), 126.51, 126.81(1) and (2), and 227.24,
Stats.
Statutes Interpreted: ch.126, Stats.

This emergency rule implements Wisconsin's new agricultural producer security law (ch. 126, Stats.), as it applies to milk contractors. The new law is designed to protect milk

producers against catastrophic financial defaults by milk contractors who procure producer milk in this state. The Legislature enacted the new law in 2001 Wis. Act 16.

The new law applies to milk contractors, including dairy plant operators, producer agents and other milk handlers. Among other things, the new law creates an agricultural producer security fund, financed by milk contractor fees. The Department of Agriculture, Trade and Consumer Protection (DATCP) administers this law. The law takes effect, for milk contractors, on May 1, 2002.

This emergency rule:

- Clarifies the treatment of dairy plant operators who provide *custom processing* services for milk producers, without marketing or taking title to milk or processed dairy products.
- Clarifies the treatment of *producer agents* who market milk and collect milk payments on behalf of producers, without taking title to the milk.
- Clarifies the treatment of persons who market only *processed dairy products* for producers, without procuring, marketing or processing any *raw producer milk*.
- Clarifies the method by which milk contractors calculate and report milk payment obligations, for the purpose of calculating fund assessments and security requirements.
- Requires milk contractors to disclose their security and fund contribution status to producers.

Background

Under the agricultural producer security law, a milk contractor who procures producer milk in this state must be licensed by DATCP. To be licensed, a contractor must do one of the following:

- Contribute to the agricultural producer security fund ("fund"). If a contributing milk contractor defaults on payments to producers, the fund may partially compensate those producers. *Producer agents* (who market milk and collect milk payments for producers *without taking title to the milk*) may have lower fund participation requirements than other milk contractors. If a producer agent defaults, the fund may also make smaller payments to producers.
- File security with DATCP, to secure a portion of the contractor's milk payment obligations to producers. *Producer agents* may file a smaller amount of security than other milk contractors, so there may be less security if a producer agent defaults.

- File financial statements with DATCP, showing that the milk contractor meets minimum financial standards. If a milk contractor is licensed on the basis of the contractor's financial statement, the contractor is not required to contribute to the fund or file security with DATCP. The fund will not pay producers if the contractor defaults, nor will DATCP have any security to pay producers.

Custom Processing for Milk Producers

This emergency rule clarifies that ch. 126, Stats., does not apply to a dairy plant operator who takes temporary custody of producer milk for the sole purpose of providing *custom processing* services to milk producers, provided that all the following apply:

- The producers retain title to the milk and to the processed dairy products made from that milk.
- The operator does not market the milk or processed dairy products, but promptly delivers the processed dairy products to the producers or their agent for consumption or marketing.
- The operator does not commingle producer-owned milk or dairy products with other milk or dairy products.
- The operator provides the custom processing services under a written contract with each producer or the producer's agent. The contract must clearly and conspicuously disclose that:
 - The producer retains title to the milk and dairy products.
 - The producer's milk shipments are not secured under ch. 126, Stats.

Producer Agents

This emergency rule clarifies that a milk contractor does not qualify as a *producer agent*, for purposes of ch. 126, Stats., unless all the following apply:

- The milk contractor procures producer milk in this state solely as the agent of the milk producers.
- The milk contractor does not take title to the producer milk, or to any dairy products made from the producer milk.
- The milk contractor markets the producer milk under a written contract with each milk producer. The contract must clearly and conspicuously disclose all the following:
 - That the milk contractor does not take title to the producer's milk, or any dairy products made from that milk.

- That the milk contractor receives payments on behalf of the producer, and holds them in trust for the producer.
 - The terms and conditions of payment to the producer.
 - The procedure by which the milk contractor will receive payment on behalf of the producer and make payments to the producer, including any trust fund arrangement.
 - The milk contractor's compensation for serving as the producer's agent, and the method by which the milk contractor will receive that compensation from the milk producer.
 - A milk security disclosure statement (see below).
- The milk contractor does not process, as a producer agent, more than 5 million pounds of producer milk in any month.
 - The milk contractor gives, to each recipient of producer milk marketed by the contractor, a written invoice stating that the milk is producer milk not owned by the milk contractor.
 - The milk contractor files a monthly report with DATCP. The milk contractor must file the report on or before the 25th day of the month. The report must include all the following:
 - The name and address of each person to whom the milk contractor marketed, in the preceding month, producer milk procured in this state.
 - The total pounds of producer milk that the milk contractor marketed to each person in the preceding month.
 - The milk contractor's total milk payment obligation to milk producers for producer milk that the contractor marketed in the preceding month.

Persons Marketing Processed Dairy Products for Milk Producers

This emergency rule clarifies that ch. 126, Stats., does not apply to a person who markets only *processed dairy products* for milk producers, provided that the person does not procure, market or process any *raw producer milk*.

Milk Payment Report by License Applicant

Under the new law, an applicant for an annual milk contractor license must report (1) the applicant's total annual payment obligation to milk producers, and (2) the largest obligation incurred at any time during the applicant's last fiscal year. The reported amounts are used to determine fund assessments and security requirements, if any. This rule clarifies that the applicant must report (1) the total amount paid for milk procured during the applicant's last fiscal year, and (2) the largest amount paid for milk procured in any single month during the last fiscal year.

Milk Security Disclosure Statement

This emergency rule requires milk contractors to make milk security disclosures to milk producers, pursuant to s. 126.81(4), Stats., so that producers understand the extent to which milk payments are backed by the agricultural producer security program. The milk contractor must give the disclosure when the milk contractor first procures milk from the producer, and again in June of each year. The disclosure must consist of one of the following written statements:

- The following statement if the milk contractor contributes to the fund (and is not a *producer agent* who also files security):

IMPORTANT NOTICE

***[Name of milk contractor]* contributes to Wisconsin's Agricultural Producer Security Fund. This fund helps ensure that milk producers will be paid for the milk they ship to contributing contractors. If a contributing contractor fails to pay a producer, the fund may pay up to 80% of the first \$60,000 of the producer's unpaid milk payment claim, and up to 75% of any additional unpaid milk payroll claim.**

- The following statement if the milk contractor is required to file security with DATCP and is not a *producer agent*:

IMPORTANT NOTICE

***[Name of milk contractor]* does not participate in Wisconsin's Agricultural Producer Security Fund. We have filed security with the State of Wisconsin to cover part, but not all, of our milk payment obligations to milk producers. The security equals at least 75% of the largest amount that we owed producers at any time during our last completed fiscal year. The security is in the following form(s): *[specify forms of security]*.**

- The following statement if the milk contractor does not contribute to the fund or file security with DATCP, but is licensed solely on the basis of the contractor's financial statement:

IMPORTANT NOTICE

***[Name of milk contractor]* does not participate in Wisconsin's Agricultural Producer Security Fund, and has not filed security with the State of Wisconsin to secure payments to milk producers. Our financial statement shows positive equity, a current ratio of at least 1.25 to 1.0, and a debt-to-equity ratio of no more than 2.0 to 1.0.**

- The following statement if the milk contractor is a *producer agent* who does not contribute to the fund and is required to file security with DATCP:

IMPORTANT NOTICE

[Name of milk contractor] does not participate in Wisconsin's Agricultural Producer Security Fund. We have filed security with the State of Wisconsin to cover part, but not all, of our milk payment obligations to milk producers. The security equals 15% of the largest amount that we owed to producers at any time during our last completed fiscal year. The security is in the following form(s): *[specify forms of security]*.

- The following statement if the milk contractor is a *producer agent* who contributes to the fund and files security with DATCP:

IMPORTANT NOTICE

[Name of milk contractor] contributes to Wisconsin's Agricultural Producer Security Fund as a *producer agent*. If we fail to pay a producer, the fund may pay up to 15% of the producer's allowed claim.

Fiscal Estimate

The department does not expect this emergency rule to have any material fiscal effect.

Regulatory Flexibility Analysis

The department will prepare and publish its proposed regulatory flexibility analysis permanent rule to create ch. ATCP 96, Wis. Adm. Code.

Dated this 15th day of April, 2002

State of Wisconsin
Department of Agriculture, Trade and Consumer
Protection

By Leslie F. H.
James E. Harsdorf
Secretary

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

EMERGENCY RULE

- 1 The state of Wisconsin department of agriculture, trade and consumer protection hereby
- 2 adopts the following emergency rule to create chapter ATCP 96 relating to milk producer
- 3 security.

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

Statutory Authority: ss. 93.07(1), 126.51, 126.81(1) and (2), and 227.24,
Stats.
Statutes Interpreted: ch.126, Stats.

This emergency rule implements Wisconsin's new agricultural producer security law (ch. 126, Stats.), as it applies to milk contractors. The new law is designed to protect milk producers against catastrophic financial defaults by milk contractors who procure producer milk in this state. The Legislature enacted the new law in 2001 Wis. Act 16.

The new law applies to milk contractors, including dairy plant operators, producer agents and other milk handlers. Among other things, the new law creates an agricultural producer security fund, financed by milk contractor fees. The Department of Agriculture, Trade and Consumer Protection (DATCP) administers this law. The law takes effect, for milk contractors, on May 1, 2002.

This emergency rule:

- Clarifies the treatment of dairy plant operators who provide *custom processing* services for milk producers, without marketing or taking title to milk or processed dairy products.
- Clarifies the treatment of *producer agents* who market milk and collect milk payments on behalf of producers, without taking title to the milk.

- Clarifies the treatment of persons who market only *processed dairy products* for producers, without procuring, marketing or processing any *raw producer milk*.
- Clarifies the method by which milk contractors calculate and report milk payment obligations, for the purpose of calculating fund assessments and security requirements.
- Requires milk contractors to disclose their security and fund contribution status to producers.

Background

Under the agricultural producer security law, a milk contractor who procures producer milk in this state must be licensed by DATCP. To be licensed, a contractor must do one of the following:

- Contribute to the agricultural producer security fund (“fund”). If a contributing milk contractor defaults on payments to producers, the fund may partially compensate those producers. *Producer agents* (who market milk and collect milk payments for producers *without taking title to the milk*) may have lower fund participation requirements than other milk contractors. If a producer agent defaults, the fund may also make smaller payments to producers.
- File security with DATCP, to secure a portion of the contractor’s milk payment obligations to producers. *Producer agents* may file a smaller amount of security than other milk contractors, so there may be less security if a producer agent defaults.
- File financial statements with DATCP, showing that the milk contractor meets minimum financial standards. If a milk contractor is licensed on the basis of the contractor’s financial statement, the contractor is not required to contribute to the fund or file security with DATCP. The fund will not pay producers if the contractor defaults, nor will DATCP have any security to pay producers.

Custom Processing for Milk Producers

This emergency rule clarifies that ch. 126, Stats., does not apply to a dairy plant operator who takes temporary custody of producer milk for the sole purpose of providing *custom processing* services to milk producers, provided that all the following apply:

- The producers retain title to the milk and to the processed dairy products made from that milk.
- The operator does not market the milk or processed dairy products, but promptly delivers the processed dairy products to the producers or their agent for consumption or marketing.

- The operator does not commingle producer-owned milk or dairy products with other milk or dairy products.
- The operator provides the custom processing services under a written contract with each producer or the producer's agent. The contract must clearly and conspicuously disclose that:
 - The producer retains title to the milk and dairy products.
 - The producer's milk shipments are not secured under ch. 126, Stats.

Producer Agents

This emergency rule clarifies that a milk contractor does not qualify as a *producer agent*, for purposes of ch. 126, Stats., unless all the following apply:

- The milk contractor procures producer milk in this state solely as the agent of the milk producers.
- The milk contractor does not take title to the producer milk, or to any dairy products made from the producer milk.
- The milk contractor markets the producer milk under a written contract with each milk producer. The contract must clearly and conspicuously disclose all the following:
 - That the milk contractor does not take title to the producer's milk, or any dairy products made from that milk.
 - That the milk contractor receives payments on behalf of the producer, and holds them in trust for the producer.
 - The terms and conditions of payment to the producer.
 - The procedure by which the milk contractor will receive payment on behalf of the producer and make payments to the producer, including any trust fund arrangement.
 - The milk contractor's compensation for serving as the producer's agent, and the method by which the milk contractor will receive that compensation from the milk producer.
 - A milk security disclosure statement (see below).
- The milk contractor does not process, as a producer agent, more than 5 million pounds of producer milk in any month.
- The milk contractor gives, to each recipient of producer milk marketed by the contractor, a written invoice stating that the milk is producer milk not owned by the milk contractor.

- The milk contractor files a monthly report with DATCP. The milk contractor must file the report on or before the 25th day of the month. The report must include all the following:
 - The name and address of each person to whom the milk contractor marketed, in the preceding month, producer milk procured in this state.
 - The total pounds of producer milk that the milk contractor marketed to each person in the preceding month.
 - The milk contractor's total milk payment obligation to milk producers for producer milk that the contractor marketed in the preceding month.

Persons Marketing Processed Dairy Products for Milk Producers

This emergency rule clarifies that ch. 126, Stats., does not apply to a person who markets only *processed dairy products* for milk producers, provided that the person does not procure, market or process any *raw producer milk*.

Milk Payment Report by License Applicant

Under the new law, an applicant for an annual milk contractor license must report (1) the applicant's total annual payment obligation to milk producers, and (2) the largest obligation incurred at any time during the applicant's last fiscal year. The reported amounts are used to determine fund assessments and security requirements, if any. This rule clarifies that the applicant must report (1) the total amount paid for milk procured during the applicant's last fiscal year, and (2) the largest amount paid for milk procured in any single month during the last fiscal year.

Milk Security Disclosure Statement

This emergency rule requires milk contractors to make milk security disclosures to milk producers, pursuant to s. 126.81(4), Stats., so that producers understand the extent to which milk payments are backed by the agricultural producer security program. The milk contractor must give the disclosure when the milk contractor first procures milk from the producer, and again in June of each year. The disclosure must consist of one of the following written statements:

- The following statement if the milk contractor contributes to the fund (and is not a *producer agent* who also files security):

IMPORTANT NOTICE

***[Name of milk contractor]* contributes to Wisconsin's Agricultural Producer Security Fund. This fund helps ensure that milk producers will be paid for the milk they ship to contributing contractors. If a contributing contractor fails to pay a producer, the fund may pay up to 80% of the first \$60,000 of the producer's unpaid milk payment claim, and up to 75% of any additional unpaid milk payroll claim.**

- The following statement if the milk contractor is required to file security with DATCP and is not a *producer agent*:

IMPORTANT NOTICE

***[Name of milk contractor]* does not participate in Wisconsin's Agricultural Producer Security Fund. We have filed security with the State of Wisconsin to cover part, but not all, of our milk payment obligations to milk producers. The security equals at least 75% of the largest amount that we owed producers at any time during our last completed fiscal year. The security is in the following form(s): *[specify forms of security]*.**

- The following statement if the milk contractor does not contribute to the fund or file security with DATCP, but is licensed solely on the basis of the contractor's financial statement:

IMPORTANT NOTICE

***[Name of milk contractor]* does not participate in Wisconsin's Agricultural Producer Security Fund, and has not filed security with the State of Wisconsin to secure payments to milk producers. Our financial statement shows positive equity, a current ratio of at least 1.25 to 1.0, and a debt-to-equity ratio of no more than 2.0 to 1.0.**

- The following statement if the milk contractor is a *producer agent* who does not contribute to the fund and is required to file security with DATCP:

IMPORTANT NOTICE

***[Name of milk contractor]* does not participate in Wisconsin's Agricultural Producer Security Fund. We have filed security with the State of Wisconsin to cover part, but not all, of our milk payment obligations to milk producers. The security equals 15% of the largest amount that we owed to producers at any time during our last completed fiscal year. The security is in the following form(s): *[specify forms of security]*.**

- The following statement if the milk contractor is a *producer agent* who contributes to the fund and files security with DATCP:

IMPORTANT NOTICE

***[Name of milk contractor]* contributes to Wisconsin's Agricultural Producer Security Fund as a *producer agent*. If we fail to pay a producer, the fund may pay up to 15% of the producer's allowed claim.**

FINDING OF EMERGENCY

1 (1) The Legislature, in 2001 Wis. Act 16, repealed and recreated Wisconsin's
2 agricultural producer security program. The new program is codified in ch. 126, Stats.
3 (the "new law"). The new law takes effect, for milk contractors, on May 1, 2002. The
4 new law is intended to protect milk producers against catastrophic financial defaults by
5 milk contractors.

6 (2) The new law applies to milk contractors, including dairy plant operators,
7 producer agents and other milk handlers, who procure producer milk in this state. Under
8 the new law, milk contractors must be licensed by the Wisconsin department of
9 agriculture, trade and consumer protection (DATCP). Milk contractors must pay license
10 fees and do one or more of the following:

11 (a) Contribute to Wisconsin's agricultural producer security fund, to help secure
12 milk payments to milk producers.

13 (b) File security with DATCP.

14 (c) File financial statements with DATCP, showing that the contractor meets
15 minimum financial standards specified in ch. 126, Stats.

16 (3) The new law regulates *producer agents* (who market milk and collect
17 payment for milk producers, without taking title to the milk), but treats them differently
18 than other milk contractors. *Producer agents* may have lower fund participation
19 requirements, and may file smaller amounts of security, than other milk contractors. The
20 program may provide correspondingly less compensation to producers if a *producer*
21 *agent* defaults.

1 (4) It is important to clarify the following matters before the new law takes effect
2 for milk contractors on May 1, 2002:

3 (a) The treatment of dairy plant operators who provide custom processing
4 services to milk producers, without marketing or taking title to milk or dairy products.

5 (b) The treatment of *producer agents*. Under s. 126.51, Stats., DATCP must
6 adopt rules for milk contractors who wish to qualify as *producer agents* under the new
7 law.

8 (c) The treatment of persons who market only *processed dairy products* for milk
9 producers, without procuring, marketing or processing raw producer milk.

10 (d) The method by which milk contractors calculate and report milk payment
11 obligations, for the purpose of calculating fund assessments and security requirements
12 under the new law.

13 (5) Under s. 126.81(4), Stats., DATCP may require milk contractors to disclose
14 their security and fund contribution status to milk producers. It is important for milk
15 contractors to begin making these disclosures soon after the new law takes effect, so that
16 producers can evaluate the financial risk associated with milk procurement contracts.
17 Disclosures are important, because not all milk contractors are required to participate in
18 the agricultural security fund or file security with DATCP.

19 (6) It is not possible, by normal rulemaking procedures, to adopt these essential
20 clarifications and disclosure requirements by May 1, 2002. DATCP must, therefore,
21 adopt them by emergency rule. This emergency rule is needed to implement the new
22 law, to protect the financial security of milk producers, to preserve fair competition in the
23 dairy industry, and to avoid unnecessary confusion and expense for dairy businesses.

1 **EMERGENCY RULE**

2 **SECTION 1.** Chapter ATCP 96 is created to read:

3 **CHAPTER ATCP 96**

4 **AGRICULTURAL PRODUCER SECURITY**

5 **ATCP 96.01 Definitions.** In this chapter:

6 (1) "Contributing milk contractor" has the meaning given in s. 126.40(1), Stats.

7 (2) "Dairy plant operator" has the meaning given in s. 126.40(5), Stats.

8 (3) "Milk contractor" has the meaning given in s. 126.40(8), Stats.

9 (4) "Milk producer" has the meaning given in s. 126.40(10), Stats.

10 (5) "Procure producer milk in this state" has the meaning given in s. 126.40(12),

11 Stats.

12 (6) "Producer agent" has the meaning given in s. 126.40(13), Stats.

13 (7) "Producer milk" has the meaning given in s. 126.40(14), Stats. "Producer
14 milk" includes producer-owned dairy products that a producer agent manufactures from
15 raw producer milk.

16 **ATCP 96.02 Custom processing services to milk producers.** Chapter 126,
17 Stats., does not apply to a dairy plant operator who takes temporary custody of producer
18 milk solely to process it for the milk producer, provided that all the following apply:

19 (1) The producer retains title to all of the milk and all of the processed dairy
20 products made from that milk.

21 (2) The operator does not market the milk or processed dairy products, but
22 promptly returns the processed dairy products to the producer or the producer's agent for
23 consumption or marketing.

1 (3) The operator does not commingle producer-owned milk or dairy products
2 with other milk or dairy products.

3 (4) The operator provides the processing services under a written contract with
4 the producer or the producer's agent. The contract shall clearly and conspicuously
5 disclose all the following:

6 (a) That the producer retains title to all the milk shipped for processing, and all
7 the processed dairy products made from that milk.

8 (b) That the producer's milk shipments to the operator are not secured under ch.
9 126, Stats.

10 (5) The operator keeps a copy of the contract under sub. (4) for at least 3 years
11 after the contract ends, and makes it available to the department for inspection and
12 copying upon request.

13 **ATCP 96.03 Producer agents. (1) QUALIFYING AS A PRODUCER AGENT.** A milk
14 contractor does not qualify as a producer agent, for purposes of ch. 126, Stats., unless all
15 the following apply:

16 (a) The milk contractor procures producer milk in this state solely as the agent of
17 the milk producers.

18 (b) The milk contractor does not take title to the producer milk, or to any
19 processed dairy products made from the producer milk.

20 (c) The milk contractor markets the producer milk under a written contract with
21 each milk producer. The contract shall comply with sub. (2).

22 (d) The milk contractor does not process, as a producer agent, more than 5
23 million pounds of producer milk in any month.

1 (e) The milk contractor gives, to each recipient of producer milk marketed by the
2 milk contractor, a written invoice stating that the milk is producer milk not owned by the
3 milk contractor.

4 (f) The milk contractor files a monthly producer agent report with the
5 department, as provided under sub. (3).

6 (2) CONTRACT WITH MILK PRODUCER. The contract under sub. (1)(c) shall clearly
7 specify the terms under which the milk contractor receives, markets and accepts payment
8 for milk on behalf of the producer. The contract shall clearly and conspicuously disclose
9 all the following:

10 (a) That the milk contractor does not take title to the producer's milk, or any
11 dairy products made from that milk.

12 (b) That the milk contractor receives payments on behalf of the producer, and
13 holds them in trust for the producer.

14 (c) The terms and conditions of payment to the producer.

15 (d) The procedure by which the milk contractor will receive payment on behalf of
16 the producer and make payments to the producer, including any trust fund arrangement.

17 (e) The milk contractor's compensation for serving as the producer's agent, and
18 the method by which the milk contractor will receive that compensation from the
19 producer.

20 (f) The appropriate milk security disclosure statement under s. ATCP 96.05.

21 (3) MONTHLY REPORT. A milk contractor who files a monthly producer agent
22 report under sub. (1)(f) shall file the report on or before the 25th day of the month. The
23 report shall include all the following:

1 (a) The name and address of each person to whom the milk contractor marketed,
2 in the preceding month, producer milk procured in this state.

3 (b) The total pounds of producer milk that the milk contractor marketed to each
4 person under par. (a) in the preceding month.

5 (c) The milk contractor's total gross payments to milk producers for producer
6 milk that the contractor marketed under par. (a) in the preceding month.

7 **ATCP 96.04 Persons marketing processed dairy products for milk**
8 **producers.** Chapter 126, Stats., does not apply to a person who markets only processed
9 dairy products for milk producers, provided that the person does not procure, market or
10 process raw producer milk.

11 **ATCP 96.05 Milk security disclosure statement.** A milk contractor shall give
12 a milk security disclosure statement to each milk producer and producer agent from
13 whom the milk contractor procures producer milk in this state. The milk contractor shall
14 give the disclosure statement when the milk contractor first procures producer milk from
15 that producer or producer agent, and again in June of each year. The milk contractor
16 shall give the disclosure statement in writing. The disclosure statement shall be clear and
17 conspicuous, and shall be set apart from any other writing. The disclosure statement shall
18 consist of one of the following verbatim statements, as applicable:

19 (1) The following statement if the milk contractor is a contributing milk
20 contractor, other than a producer agent who is also required to file security under s.
21 126.47(3)(c), Stats.:

1 **IMPORTANT NOTICE**

2 ***[Name of milk contractor]* contributes to Wisconsin's Agricultural Producer**
3 **Security Fund. This fund helps ensure that milk producers will be paid for**
4 **the milk they ship to contributing contractors. If a contributing contractor**
5 **fails to pay a producer, the fund may pay up to 80% of the first \$60,000 of**
6 **the producer's unpaid milk payment claim, and up to 75% of any additional**
7 **unpaid milk payroll claim.**

8
9 (2) The following statement if the milk contractor has filed security under s.
10 126.47, Stats., but is not a producer agent filing security under s. 126.47(3)(b) or (c),
11 Stats.:

12 **IMPORTANT NOTICE**

13 ***[Name of milk contractor]* does not participate in Wisconsin's Agricultural**
14 **Producer Security Fund. We have filed security with the State of Wisconsin**
15 **to cover part, but not all, of our milk payment obligations to milk producers.**
16 **The security equals at least 75% of the largest amount that we owed**
17 **producers at any time during our last completed fiscal year. The security is**
18 **in the following form(s): *[specify forms of security]*.**

19
20 (3) The following statement if the milk contractor is not a contributing milk
21 contractor, and has not filed security, but has filed financial statements that meet the
22 standards under s. 126.45(1)(b), Stats.:

23 **IMPORTANT NOTICE**

24 ***[Name of milk contractor]* does not participate in Wisconsin's Agricultural**
25 **Producer Security Fund, and has not filed security with the State of**
26 **Wisconsin to secure payments to milk producers. Our financial statement**
27 **shows positive equity, a current ratio of at least 1.25 to 1.0, and a debt-to-**
28 **equity ratio of no more than 2.0 to 1.0.**

29
30 (4) The following statement if the milk contractor is a producer agent who is
31 required to file security under s. 126.47, Stats., and does not contribute to the fund:

32 ***[Name of milk contractor]* does not participate in Wisconsin's Agricultural**
33 **Producer Security Fund. We have filed security with the State of Wisconsin**
34 **to cover part, but not all, of our milk payment obligations to milk producers.**
35 **The security equals 15% of the largest amount that we owed to producers at**

1 any time during our last completed fiscal year. The security is in the
2 following form(s): *[specify forms of security]*.

3
4 **NOTE:** The 15% security amount applies during the term of this temporary
5 emergency rule. The required security amount increases in the license
6 year beginning May 1, 2003 and in subsequent license years. See s.
7 126.47(3)(b), Stats.
8

9 (5) The following statement if the milk contractor contributes to the fund as a
10 producer agent, and files security according to s. 126.47(3)(c), Stats.:

11 **IMPORTANT NOTICE**

***[Name of milk contractor]* contributes to Wisconsin's Agricultural Producer Security Fund as a *producer agent*. If we fail to pay a producer, the fund may pay up to 15% of the producer's allowed claim.**

12
13 **NOTE:** The 15% payment amount applies during the term of this temporary
14 emergency rule. The payment amount increases to 20% for producer
15 agent defaults occurring after April 30, 2004. Beginning May 1, 2007,
16 producer agents are treated like other milk contractors. See s.
17 126.71(1)(a), (d) and (e).
18

19 **ATCP 96.06 Milk producer payment report by license applicant.** (a) An
20 applicant for an annual milk contractor license shall include, as part of the license
21 application, the sworn and notarized statement required under s. 126.41(6), Stats.

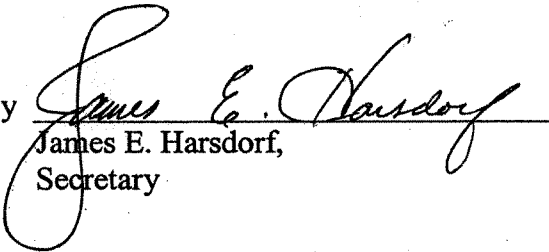
22 (b) The statement under par. (a) shall report, under s. 126.41(6)(a), Stats., the
23 gross amount that the applicant paid for producer milk procured in this state during the
24 applicant's last completed fiscal year. If the applicant has not yet operated as a milk
25 contractor, the applicant shall report the estimated gross amount that the applicant will
26 pay for milk procured in the applicant's first completed fiscal year.

27 (c) The statement under par. (a) shall report, under s. 126.41(6)(b), Stats., the
28 largest gross amount that the applicant paid for producer milk procured in this state in
29 any single month during the applicant's last completed fiscal year.

1 **EFFECTIVE DATE:** This emergency rule take effects effect upon publication in the
2 official state newspaper, and remains in effect for 150 days. The department may seek to
3 extend this emergency rule as provided in s. 227.24, Stats.

Dated this 15 day of April, 07.

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

✓ By 
James E. Harsdorf,
Secretary

NR 47.913 (2)

Relating to Gypsy Moth suppression.

The Department of Natural Resources will present testimony regarding eligibility for the Gypsy Moth program.

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(e) Off-road vehicles such as all-wheel drive trucks of 1 to 5 ton capacity which are used primarily for forest fire suppression. Grant assistance for vehicles is limited to applications from individual fire departments.

(f) Forest fire prevention supplies.

(g) Forest fire training materials.

History: Cr. Register, May, 1998, No. 509, eff. 6-1-98; CR 01-146: cr. (2) (f) and (g) Register May 2002 No. 557, eff. 6-1-02.

NR 47.906 Eligible and ineligible costs. (1) ELIGIBLE COSTS. (a) Reasonable project costs which are necessary for and directly related to accomplishment of the approved project objectives and incurred during the project period are eligible for grant reimbursement.

(b) Eligible costs are limited to actual costs incurred and paid by the grantee and do not include "in-kind" costs or the estimated value of donated labor, materials or equipment.

(2) INELIGIBLE COSTS. (a) Costs not directly associated with and necessary for accomplishment of the approved project objectives are not eligible for grant reimbursement.

(b) Costs incurred before or after the project period are not reimbursable under the grant.

(c) Costs for which payment has been or will be received under another federal or state financial assistance program are not reimbursable under the grant.

(d) Costs incurred in a contract which creates a real or apparent conflict of interest. An apparent conflict of interest arises when an official or employee of a grantee participates in the selection, awarding or administration of a contract supported by this project and:

1. The official or employee, or her or his spouse or partner, has an ownership interest in the firm selected for the contract; or
2. An official or employee of a grantee receives a contract, gratuity or favor from the award of the contract.

History: Cr. Register, May, 1998, No. 509, eff. 6-1-98.

NR 47.907 Grant selection process. In selecting grant application projects, the department shall give priority to the following factors which are listed in no particular order:

(1) Eligible fire departments serving areas within organized forest fire control areas established under ss. NR 30.01 and 30.02.

(2) Fire departments that provide initial attack response to wildfires within their jurisdictions at no cost to the department.

(3) Fire departments with the majority of their members meeting NFPA 1051 standards for wildland fire fighter training.

(4) Other applications or projects.

History: Cr. Register, May, 1998, No. 509, eff. 6-1-98.

NR 47.908 Grant awards; payment. (1) GRANT AWARDS. Grants shall be awarded subject to execution of the department's grant agreement by both the department and the grant applicant.

(2) PAYMENT. Final payment shall be made upon approval of the completed project by the department's regional fire management officer and approval of the completed claim for reimbursement from the grantee. Interim payment may be requested by the grantee and approved by the department where a financial hardship would be imposed by waiting until the project had been completed.

Note: It is expected that interim payments would more often be made to fire suppression organizations who have large grants and limited capacity to pay vendor bills before they receive reimbursement from the department.

(3) FINAL AUDIT. All payments are contingent upon final audit. Financial records including all documentation to support entries in the accounting records shall be kept for review by department auditors for a period of 3 years after final payment.

History: Cr. Register, May, 1998, No. 509, eff. 6-1-98.

Subchapter IX — Rules for Federal Cost Sharing Program to Suppress Gypsy Moth

NR 47.910 Purpose. The purpose of this subchapter is to establish procedures for participation in the state cooperative gypsy moth suppression program consistent with ss. 26.30(2) and (5) and 28.07, Stats., as an alternative to a control program under s. 26.30 (7) to (10), Stats. The suppression program includes awarding and administering federal cost sharing funds to counties for the purpose of aerial insecticide treatment of gypsy moth outbreaks.

History: Emerg. cr. eff. 11-10-00; CR 00-177: cr. Register July 2001, No. 547 eff. 8-1-01.

NR 47.911 Applicability. The provisions of this subchapter are applicable to all county governments applying for cost sharing under this subchapter.

History: Emerg. cr. eff. 11-10-00; CR 00-177: cr. Register July 2001, No. 547 eff. 8-1-01.

NR 47.912 Definitions. In this subchapter:

(1) "Administrative cost" means eligible expenses associated with preparation of applications, notification of residents, collection of funds, maintenance of records and other activities dealing with the preparation and administration of the cost shared suppression program for gypsy moths.

(2) "Applicant" means a Wisconsin county that submits an application for inclusion in the state gypsy moth suppression program and cost sharing for the treatment of and associated administrative costs for suppression of gypsy moth outbreaks.

(3) "Application" means a department form, materials and maps for all areas being proposed for treatment and cost sharing in the state gypsy moth suppression program by an applicant.

(4) "Department" means the Wisconsin department of natural resources.

(5) "Forest service" means the U.S. department of agriculture, forest service.

(6) "Gypsy moth" means the foreign pest, *Lymantria dispar* L.

(7) "High use, public recreational land" means land that is publicly owned, used primarily for recreation and where trees are at a similar density, stress level and individual value to those in residential areas. This category includes campgrounds, urban parks, playgrounds, picnic areas and golf courses.

(8) "Local coordinator" means the person designated to represent and act on behalf of a county for the purpose of applying for cost sharing under this subchapter.

(9) "Local cost share" means the portion of the cost of the project other than federal funds administered by the department.

(10) "Preferred hosts" means tree species listed as Class I and II in the Gypsy Moth Management in the United States: a cooperative approach, Environmental Impact Statement, Appendix G, Table 2-2. This document can be obtained from the USDA Forest Service, Northeastern Area State and Private Forestry, 1992 Folwell Ave., St. Paul, MN 55108.

(11) "Residential land" means land with an average of one or more residences per 5 acres.

(12) "Rural land" means land with an average of less than one residence per 5 acres.

(13) "Treatment" means aerial application of insecticide.

(14) "Treatment block" means an eligible area identified under this subchapter for aerial treatment with insecticide.

History: Emerg. cr. eff. 11-10-00; CR 00-177: cr. Register July 2001, No. 547 eff. 8-1-01.

NR 47.913 Eligibility. (1) ELIGIBLE APPLICANTS. (a) Counties may apply for participation in the state cost shared suppression program.

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(b) An applicant shall designate a local coordinator who will administer requests for treatment from and for all residents of the county. Training shall be provided by the department. Local coordinators shall do all of the following:

1. Respond to requests for assistance from residents.
2. Determine if areas within a county are eligible for treatment.
3. Identify and map treatment blocks.
4. Complete and file applications with the department under this subchapter.
5. Collect local cost share moneys for treatments.
6. Conduct public awareness meetings in September, October or November each year and local notification meetings once blocks are determined to be eligible by the department.
7. Notify residents within eligible treatment blocks and surrounding areas determined by the applicant by mail, publication of a class one legal notice in a local newspaper, a press release and a public meeting.
8. Accommodate residents within the proposed spray block who object to treatment of their property by revising or dropping treatment blocks.
9. Attend training as a ground observer of the Wisconsin aerial spray program and assist as an observer during the treatment.
10. Perform a post treatment evaluation as described in the grant agreement.
11. Develop and submit requests for reimbursement for eligible administrative costs.
12. Maintain records and prepare an annual report to be filed with the department.

(2) **ELIGIBLE TREATMENT BLOCKS.** To be eligible for cost sharing under this subchapter, a proposed treatment block shall comply with the following criteria:

- (a) Be of at least 40 contiguous acres in a compact and regular shape or be of at least 20 acres of publicly owned land surrounded by ineligible land.
- (b) Have a canopy coverage of any of the following:
 1. 25% or more on residential or high use, public recreational land.
 2. 50% or more on rural land.
- (c) 50% or more of the canopy must be preferred hosts.
- (d) Have the following minimum average number of egg masses per acre as determined by surveys done according to directions in the application materials:
 1. 500 egg masses per acre on residential or high use, public recreational land.
 2. 1000 egg masses per acre on rural land.

History: Emerg. cr. eff. 11-10-00; CR 00-177: cr. Register July 2001, No. 547 eff. 8-1-01.

NR 47.914 Application procedures. (1) An eligible applicant, described in s. NR 47.913 (1), may apply for participation in the statewide treatment program and cost sharing for aerial insecticide treatment and associated administrative costs for eligible blocks as described in s. NR 47.913 (2).

(2) Applicants shall submit applications for cost sharing to department staff, identified on the application for the area of the state involved, no later than December 1, along with a map of each proposed treatment block on a 7.5 minute quadrangle map to be eligible for participation in the treatment program for that year. Applications can be obtained by writing to the program manager for the gypsy moth grant program, bureau of community financial assistance, PO Box 7921, Madison, WI 53707-7921.

(3) Applicant shall send a copy of the record of expenses from July 1-December 31 by January 7 to department staff identified on the application.

(4) The department shall review applications and recommend treatment for blocks determined to be eligible to the department of agriculture, trade and consumer protection for inclusion in the state treatment plan. If the department finds that a block is ineligible, the map and basis for the decision of ineligibility shall be identified and returned to the applicant for revision. Revised proposed treatment blocks shall be reconsidered by the department if filed for reconsideration within 2 weeks of the date of service of the decision of ineligibility on the applicant.

(5) The department shall notify applicants of eligibility of proposed blocks.

(6) The applicant shall enter into an agreement with the department regarding cost sharing and continued eligibility under this subchapter to continue its eligibility.

(7) The applicant shall notify landowners and tenants within the eligible proposed treatment blocks and an area surrounding those blocks to be determined by the applicant. All notices will provide information on location of proposed treatment blocks, insecticide to be used, approximate timing of treatment, how to register an objection to treatment of property and the name, address and phone number of the local coordinator. Notification requirements of applicants to landowners and tenants shall include:

(a) A written notification of planned treatment and information listed above mailed to persons owning or renting land in the treatment blocks and an area surrounding the blocks as determined by the applicant. The mailing list shall be retained in the records of the applicant for 3 years subsequent to the treatment and submitted to the department upon its request.

(b) Publication of a class 1 legal notice as defined in s. 985.07, Stats., in a local newspaper at least 10 days prior to a deadline designated in the notice for registering an objection by a landowner or tenant to treatment on the land under the landowner's or tenant's control.

(c) A press release at least 10 days prior to the deadline for objection to treatment of property and which announces the public meeting.

(d) A public meeting conducted by the applicant and held at least 7 days prior to the deadline for objection to treatment of property.

(8) Records of calls and notification mailings, meetings and publications shall be kept by the applicant and submitted to the department in accordance with the grant agreement. Failure to maintain and submit these records required in this paragraph and in the grant agreement shall result in cancellation of treatment blocks from that applicant.

(9) Applicants shall contact objectors who register an objection to treatment of their property before the deadline, determine the cause for objection and attempt to resolve it. Applicants may offer the option of having the objector notified by phone within 24 hours of when the spray will take place as an alternative to removing the property from the treatment. Objectors who take this option will be included in the list described in sub. (11). If objections cannot be resolved, local coordinators shall work with the department's designated staff to remove the property and a 250 foot surrounding buffer zone from treatment. If a treatment block is canceled because accommodating objectors makes the block untreatable in the judgment of the contractor for pesticide application, the local coordinator shall notify residents and return money that has been collected from the landowners or tenants. The applicant shall resolve any objections on the basis of payment and the applicant is responsible for the entire local share of costs of treatment for blocks under its jurisdiction. Treatment blocks will be removed from the program due to nonpayment of the cost share by the applicant.

(10) (a) The department shall provide an estimate of per acre cost for treatment to local coordinators no later than February 15th of each year. The applicant shall collect the entire estimated cost

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for treatment of the blocks the applicant applied for and pay it to the department by April 1 unless otherwise provided on the application. Once the payment for treatment blocks has been received, the boundaries of these treatment blocks shall be considered fixed. Alteration or cancellation of a treatment block may only occur in the event of an irreconcilable conflict with a federally listed threatened or endangered species or where the contractor for pesticide application determines treatment of the block to be hazardous to the contractor. If a block is removed, the department shall return the payment for that treatment block and the local coordinator shall notify residents and return money that has been collected for the spray treatment from the landowners or tenants.

(b) The department shall, under cooperative agreement, work with the department of agriculture, trade and consumer protection to coordinate treatments.

(11) Applicants shall submit no later than April 1 of each year a list of telephone contacts associated with each treatment block to the designated department staff specified in the application. Required contacts for each block include all schools and licensed daycare providers within a treatment block, local government officials, health, police, sheriff and fire departments within whose jurisdiction a treatment block exists, hospital emergency rooms in the area of treatment blocks, persons requesting 24-hour notification and other concerned parties as needed. These lists will be used by department staff to provide daily notification during the aerial treatments.

(12) Applicants shall submit a record of administrative costs incurred in the project period of July 1 through June 30 to the department by July 15.

History: Emerg. cr. eff. 11-10-00; CR 00-177: cr. Register July 2001, No. 547 eff. 8-1-01.

NR 47.915 Grant calculation. (1) A grant under this subchapter shall be no more of the eligible costs of treatment and administration than the maximum for the appropriate category described in the following paragraphs and be based on the amount of cost share funding received from the forest service:

(a) Privately owned lands under 500 acres per owner may be cost shared up to 50%.

(b) Private lands of over 500 acres per owner may be cost shared at up to 33%.

(c) Publicly owned lands may be cost shared at up to 25%.

(2) If full funding from the forest service to cover the maximum share of treatment and administrative expenditures of the applicants is not available, the federal funds shall be applied to treatment and administrative costs on a pro-rata basis based on acreage per applicant. Reimbursement for both treatment and administrative work shall be returned to the counties. Applicants are responsible for all treatment and administration costs that exceed the amount reimbursed. The county may collect adequate funds to cover administrative expenses or treatment expenses and determine how reimbursement of federal cost share is distributed once it is received by the county. Any funds recovered in excess of total program expenses shall be returned to the source of local cost share.

History: Emerg. cr. eff. 11-10-00; CR 00-177: cr. Register July 2001, No. 547 eff. 8-1-01.

NR 47.916 Grant awards. (1) GRANT AWARDS. Grants shall be awarded subject to execution of the department's grant agreement by both the department and the grant applicant.

(2) PAYMENT. Grant payments may be made only upon approval of a claim supported by evidence of cost that the reim-

bursable work has been completed and scheduled match has been met.

(3) AUDIT. All grant records are subject to audit. Records including all documentation to support grant revenues, expenditures, and program compliance shall be kept for review by the department auditors for a period of 4 years after final payment.

History: Emerg. cr. eff. 11-10-00; CR 00-177: cr. Register July 2001, No. 547 eff. 8-1-01.

NR 47.917 Eligible and ineligible costs. (1) ELIGIBLE COSTS. Applicant expenditures eligible for reimbursement under this subchapter shall be documented and provided to the department with any request for cost-share reimbursement. Eligible costs from July 1 to June 30 of each year are subject to cost share reimbursement under this subchapter. Eligible costs of treatment and administration of a block may not be more than the maximum for the appropriate category for the block as described in s. NR 47.915 (1) (a) to (c). The following items are eligible for cost share reimbursement under this subchapter only if aerial treatments are conducted and the costs are eligible under this subchapter and as identified in the grant agreement:

(a) Topographic maps, aerial photos, weather monitoring equipment and personal safety equipment.

(b) Contracts for specialized equipment, including the rental of 2-way radios identified in the agreement between the department and the applicant.

(c) Communication supplies, including the rental of communication equipment used to coordinate the aerial treatment. Costs incurred for cellular phone service is limited to the period of April 20 through June 10 if the expenses are directly related to aerial treatments.

(d) Landowner notification supplies, including supplies and postage for notification letters, costs of publication of legal notices, costs associated with the public meeting to discuss specific proposed spray blocks, phone bills and documented proportion of office rental.

(e) Educational materials, including the costs of producing or reprinting publications, literature and maps necessary to inform the public about the suppression program.

(f) Newspaper advertisements, including the announcement of the fall scoping meeting and the winter public meetings.

(g) Personnel costs, including salary, wage and benefits for time administering the cost sharing program for treated blocks for personnel including the local coordinator, secretarial support, temporary employees and tax office support.

(h) Travel, including mileage accrued in vehicles used in preparation of sprayed blocks and during suppression activities, not to exceed the standard rates set by the department of transportation.

(i) Post-suppression evaluation costs.

(2) INELIGIBLE COSTS. (a) Costs associated with treatment blocks which are not sprayed are ineligible for cost sharing.

(b) The cost of capital equipment that is not directly necessary or dedicated to the completion of the suppression project and identified in the agreement with the department is ineligible for cost sharing.

(c) The cost of surveys and biological evaluations in areas other than the project area are ineligible for cost sharing.

(d) The salaries of temporary and permanent personnel for time not directly related to the suppression project are ineligible for cost sharing.

(e) Professional meetings and conferences are ineligible for cost sharing.

History: Emerg. cr. eff. 11-10-00; CR 00-177: cr. Register July 2001, No. 547 eff. 8-1-01.

TAX 11.12 (7) a

Relating to taxation of game birds.

The Department of Revenue will present testimony regarding the charging of sales tax on the wholesale purchase of game birds.



WISCONSIN LEGISLATURE

P. O. Box 7882 Madison, WI 53707-7882

September 4, 2002

Senator Judith Robson, Co-Chair
Representative Glenn Grothman, Co-Chair
Joint Committee for Review of Administrative Rules
Hand Delivered

Dear Senator Robson and Representative Grothman:

On behalf of hunt clubs, game farms and hunting enthusiasts throughout the state, we respectfully request that your committee hold a public hearing and suspend Section Tax 11.12 (7) (a).

Recently, the Department of Revenue audited many game farms across the state because as an industry they were not charging a sales tax on the wholesale purchase of game birds. Audits from the Department of Revenue reached back four years and charged 12% in interest for back taxes. This would cost many game farmers well over \$100,000 in back taxes, thus putting their small businesses out of business.

The Department of Revenue previously wrote a letter dated September 20, 1989, stating, "Game farms and shooting preserves which transfer birds to their customers as part of a recreational facility and which pay the sales tax on their receipts from the operation can purchase the birds without tax by giving a Resale Certificate to the seller." As a result of this letter, the agency rescinded their potentially devastating assessments.

While this was a major victory for this industry, there still remains the question of the double sales tax collection. The Department of Revenue now plans to begin collecting sales tax on the wholesale purchase of game birds effective January 1, 2003. The result is double taxation. The game farms currently charge hunters sales tax to hunt game birds. We respectfully request that your committee review and suspend Section Tax 11.12 (7) (a) of the Wisconsin Administrative Code immediately so that specific statutory language may be developed to address the appropriate taxation for this vital industry in Wisconsin. The Department of Revenue's interpretation of Section Tax 11.12 (7) (a), created in December of 1988, is that the sale of game birds is taxable both to the game farmer and to the game hunter.

Thank you for your time and consideration of this important issue. Your immediate attention to this matter is greatly appreciated.

Sincerely,

CAROL ROESSLER
State Senator
18th Senate District

CAROL OWENS
State Representative
53rd Assembly District

BOB WELCH
State Senator
14th Senate District

SCOTT GUNDERSON
State Representative
83rd Assembly District

DAVE HANSEN
State Senator
30th Senate District

JUDY KRAWCZYK
State Representative
88th Assembly District

JOANNE HUELSMAN
State Senator
11th Senate District

STEVE NASS
State Representative
31st Assembly District

JIM BAUMGART
State Senator
9th Senate District

JOE LEIBHAM
State Representative
26th Assembly District

ROD MOEN
State Senator
31st Senate District

TERRY MUSSER
State Representative
92nd Assembly District

SCOTT FITZGERALD
State Senator
13th Senate District

JEFF FITZGERALD
State Representative
39th Assembly District

DAVE ZIEN

DAVE ZIEN
State Senator
23rd Senate District

SCOTT SUDER
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State Representative
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State Senator
5th Senate District

JOHN AINSWORTH
JOHN AINSWORTH
State Representative
6th Assembly District

BRIAN BURKE
BRIAN BURKE
State Senator
3rd Senate District

MARTY REYNOLDS
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State Representative
87th Assembly District

J.A. HINES
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State Representative
42nd Assembly District

TERRI McCORMICK
TERRI McCORMICK
State Representative
56th Assembly District

EUGENE HAHN
EUGENE HAHN
State Representative
47th Assembly District

JAMES KREUSER
JAMES KREUSER
State Representative
64th Assembly District



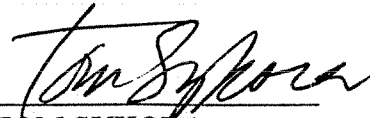
JOHN STEINBRINK
State Representative
65th Assembly District



DON FRISKE
State Representative
35th Assembly District



AL OTT
State Representative
3rd Assembly District



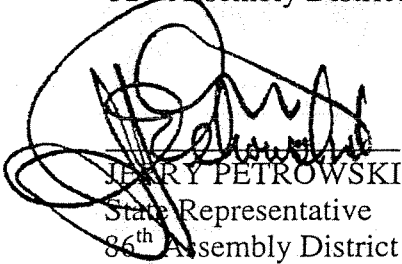
TOM SYKORA
State Representative
67th Assembly District



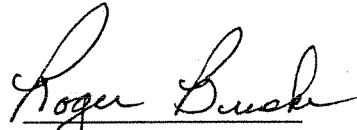
JOHN TOWNSEND
State Representative
52nd Assembly District



RICK SKINDRUD
State Representative
79th Assembly District



JERRY PETROWSKI
State Representative
86th Assembly District



ROGER BRESKE
State Senator
12th Senate District