



State of Wisconsin
Scott McCallum, Governor

Department of Agriculture, Trade and Consumer Protection
James E. Harsdorf, Secretary

DATE: November 13, 2001

TO: State Legislators

FROM: James E. Harsdorf
Secretary

SUBJECT: **Emergency Rule – Certification of Drug Residue Screening Laboratories and Approval of Laboratory Analysts to Perform Drug Residue Screening Tests on Milk**

Pursuant to s. 227.24(3), Stats., the Department of Agriculture, Trade and Consumer Protection is forwarding a copy of an emergency rule related to the certification of drug residue screening laboratories and approval of laboratory analysts to perform drug residue screening tests on milk. We are also enclosing a fiscal estimate on the emergency rule.

Background

The Department of Agriculture, Trade and Consumer Protection (DATCP) currently certifies laboratories that test milk, food and drinking water for compliance with public health standards. Laboratory certification helps ensure that public health lab tests are accurate and reliable. DATCP has adopted laboratory certification rules under ch. ATCP 77, Wis. Adm. Code.

Under current rules, DATCP certifies laboratories and approves analysts who conduct *confirmatory* drug residue tests on milk samples. But DATCP does not currently approve analysts who conduct preliminary drug residue *screening* tests. The U. S. Food and Drug Administration (FDA) recently required states to approve laboratory analysts who conduct drug residue screening tests. States must conduct on-site competency evaluations of analysts who conduct “visual read” screening tests without the aid of a mechanical reader.

Analysts must be approved by March 1, 2002, or dairy plants may no longer be able to ship milk in interstate commerce. This emergency rule implements the new FDA mandate. Under this emergency rule, DATCP will immediately begin to evaluate and approve analysts to perform drug residue screening tests, so that approvals will be in place by the March 1, 2002 deadline. DATCP will conduct on-site competency evaluations of analysts performing “visual read” tests, and will charge fees to cover the cost of the new program.

Why an Emergency Rule is Needed

This emergency rule is needed to protect the public health, safety and welfare. This emergency rule will bring Wisconsin into compliance with federal requirements. Wisconsin must comply with the federal requirements in order for Wisconsin dairy plants to be able to continue shipping

milk interstate. Interstate milk shipments are critical for the state's dairy industry, and for the overall economy and well being of this state.

On July 2, 2001, FDA issued a new directive requiring states to approve laboratories that conduct *screening tests* (not just confirmatory tests) for drug residues in milk. A state must conduct an on-site evaluation before approving a laboratory or analyst to conduct "visual read" screening tests. According to the FDA, the department must complete its evaluations and issue its approvals by March 1, 2002. FDA may de-certify Wisconsin milk shippers if the department fails to carry out this directive, or if milk shipments are not tested by approved laboratories and analysts. De-certification could prevent the movement of Wisconsin milk in interstate commerce.

In order to ensure the continued movement of Wisconsin milk in interstate commerce, the department must adopt rules expanding the current lab certification program under ch. ATCP 77, Wis. Adm. Code. The rules will require certification of laboratories conducting drug residue screening tests. The rules will also require on-site evaluation and approval of individual analysts conducting "visual read" screening tests. The department must adopt these rules as soon as possible, in order to complete the required evaluations and issue the required approvals by March 1, 2002.

Rule Contents

Under this rule, DATCP must certify laboratories that conduct drug residue screening tests on milk samples. A certified laboratory must employ DATCP-approved analysts to conduct the tests. DATCP must perform an on-site evaluation of any laboratory or analysts conducting "visual read" screening tests. The laboratory must pay certification fees to cover DATCP costs.

No individual may conduct a drug residue screening test required under current DATCP rules unless all the following apply:

- The individual conducts that test at a laboratory that DATCP has certified to conduct that test.
- DATCP has approved that individual to conduct that test. Before DATCP approves an individual to conduct a "visual read" screening test, DATCP must perform an on-site evaluation of that individual's competency to perform that test.

An individual's approval to conduct a drug residue screening test expires on December 31 of each year unless, by that date, the laboratory documents to DATCP that the analyst has passed an annual proficiency test. This rule spells out standards and procedures for the annual proficiency test. DATCP may authorize a laboratory administrator to conduct annual proficiency tests of analysts in that laboratory.

Under this rule, a laboratory conducting drug residue screening tests must pay the following fees:

- \$500 for initial certification. This includes on-site evaluation of up to 3 "visual read" analysts, and \$25 for on-site evaluation of each additional "visual read" analyst during the same initial laboratory visit. There is a lower fee of \$150 for certain small laboratories identified in this rule.
- \$150 for any subsequent visit to evaluate "visual read" analysts, regardless of the number of analysts approved on that visit.
- A \$100 annual renewal fee. This fee covers the annual lab certification renewal, and the annual renewal of all existing approvals for individual analysts performing drug residue screening tests at the laboratory. There is a lower annual renewal fee of \$25 per analyst for small laboratories. No site visit is required for an annual renewal.

Public Hearings

Public Hearings on this emergency rule are scheduled as follows:

Thursday, November 29, 2000, 9:30 a.m. until 12:30 p.m.
WDATCP Eau Claire Regional Office
3610 Oakwood Hills Parkway
Eau Claire, WI 54701-7754
Handicapped accessible

Tuesday, December 4, 2001, 9:30 a.m. until 12:30 p.m.
Appleton Public Library
Lower Level Meeting Room
925 So. Oneida Street
Appleton, WI 54911
Handicapped accessible

Wednesday, December 5, 2001, 9:30 a.m. until 12:30 p.m.
Green County Agriculture Bldg.
2841 6th Street
Monroe WI 53566
Handicapped accessible

Thursday, December 6, 2001, 9:30 a.m. until 12:30 p.m.
U. W. Pyle Center
702 Langdon Street
Madison, WI 53706
Handicapped accessible

The hearing in Madison on Thursday, December 6, 2001, will have videoconference connections with three additional locations. The public may participate in the hearing by testifying or registering an appearance at any of the four sites, and see as well as listen to testimony from other persons at all of the sites. Videoconference connections will be available from 9:30 a.m. until 12:30 p.m. at the following locations:

- LaCrosse State Office Building, Room B-29
3550 Morman Coulee Road
LaCrosse WI 54601
Handicapped accessible
- Wisconsin Rapids State Office Building
2610 Industrial Street, Conference Room #4
Wisconsin Rapids WI 54495
Handicapped accessible
- University of Wisconsin – Green Bay
Instructional Services Bldg. Room #1034
Green Bay, WI 54311
Handicapped accessible

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

1 The state of Wisconsin department of agriculture, trade and consumer protection hereby adopts
2 the following emergency rule to amend ATCP 77.06(1)(a) to (c); to renumber ATCP 77.03(2)(c);
3 to repeal and recreate ATCP 77.06(2) and 77.22(1); and to create ATCP 77.01(4m) and (17),
4 77.03(2)(c) 77.06(1)(e) and 77.23; relating to certification of drug residue screening laboratories
5 and approval of laboratory analysts to perform drug residue screening tests on milk.

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

Statutory authority: ss. 93.07(1), 93.12(3), (5) and (7), and 227.24, Stats.
Statute interpreted: s. 93.12, Stats.

Background

The Department of Agriculture, Trade and Consumer Protection (DATCP) currently certifies laboratories that test milk, food and drinking water for compliance with public health standards. Laboratory certification helps ensure that public health lab tests are accurate and reliable. DATCP has adopted laboratory certification rules under ch. ATCP 77, Wis. Adm. Code.

Under current rules, DATCP certifies laboratories and approves analysts who conduct *confirmatory* drug residue tests on milk samples. But DATCP does not currently approve analysts who conduct preliminary drug residue *screening* tests. The U. S. Food and Drug Administration (FDA) recently required states to approve laboratory analysts who conduct drug residue screening tests. States must conduct on-site competency evaluations of analysts who conduct "visual read" screening tests without the aid of a mechanical reader.

Analysts must be approved by March 1, 2002, or dairy plants may no longer be able to ship milk in interstate commerce. This emergency rule implements the new FDA mandate. Under this emergency rule, DATCP will immediately begin to evaluate and approve analysts to perform drug residue screening tests, so that approvals will be in place by the March 1, 2002 deadline. DATCP will conduct on-site competency evaluations of analysts performing "visual read" tests, and will charge fees to cover the cost of the new program.

The emergency rule will expire after 150 days, unless extended. In order to continue the new program, DATCP also proposes to adopt the emergency rule as a "permanent" rule. This will ensure continued compliance with grade A interstate milk shipment requirements.

Rule Contents

Under this rule, DATCP must certify laboratories that conduct drug residue screening tests on milk samples. A certified laboratory must employ DATCP-approved analysts to conduct the tests. DATCP must perform an on-site evaluation of any laboratory or analysts conducting "visual read" screening tests. The laboratory must pay certification fees to cover DATCP costs.

No individual may conduct a drug residue screening test required under current DATCP rules unless all the following apply:

- The individual conducts that test at a laboratory that DATCP has certified to conduct that test.
- DATCP has approved that individual to conduct that test. Before DATCP approves an individual to conduct a "visual read" screening test, DATCP must perform an on-site evaluation of that individual's competency to perform that test.

An individual's approval to conduct a drug residue screening test expires on December 31 of each year unless, by that date, the laboratory documents to DATCP that the analyst has passed an annual proficiency test. This rule spells out standards and procedures for the annual proficiency test. DATCP may authorize a laboratory administrator to conduct annual proficiency tests of analysts in that laboratory.

Under this rule, a laboratory conducting drug residue screening tests must pay the following fees:

- \$500 for initial certification. This includes on-site evaluation of up to 3 "visual read" analysts, and \$25 for on-site evaluation of each additional "visual read" analyst during the same initial laboratory visit. There is a lower fee of \$150 for certain small laboratories identified in this rule.
 - \$150 for any subsequent visit to evaluate "visual read" analysts, regardless of the number of analysts approved on that visit.
 - A \$100 annual renewal fee. This fee covers the annual lab certification renewal, and the annual renewal of all existing approvals for individual analysts performing drug residue screening tests at the laboratory. There is a lower annual renewal fee of \$25 per analyst for small laboratories. No site visit is required for an annual renewal.
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FINDING OF EMERGENCY

1 The Department of Agriculture, Trade and Consumer Protection ("department") finds that an
2 emergency exists and that the following emergency rule is necessary to protect the public
3 welfare. This emergency rule will bring Wisconsin into compliance with federal requirements.
4 Wisconsin must comply with the federal requirements in order for Wisconsin dairy plants to
5 continue shipping milk in interstate commerce. Interstate milk shipments are critical for the
6 state's dairy industry, and for the overall economy and well being of the state. The facts
7 constituting the emergency are as follows:

8 (1) Grade A milk shipments are governed by the Interstate Pasteurized Milk Ordinance
9 (PMO), jointly administered by the United States Food and Drug Administration (FDA) and the
10 National Conference of Interstate Milk Shippers (representing participating states). In order for
11 Wisconsin dairy plants to ship milk in interstate, Wisconsin must comply with the PMO and
12 FDA mandates related to the PMO. Under s. 97.24, Stats., the Wisconsin Legislature has
13 directed the department to adopt rules that conform to the PMO.

14 – (2) Under the PMO and current state rules, all raw milk received by a dairy plant must be
15 tested for certain drug residues (antibiotics from the penicillin family of drugs).

16 (3) FDA approves tests used for drug residue testing. There are 15 different tests that are
17 approved for use. Some of these tests use a mechanical reader that determines the test result and
18 then records it on a printer tape or directly to a computer. But other approved tests are "visually
19 read," and involve no mechanical reader. In these tests, an individual analyst interprets a color
20 change to determine whether drug residues are present.

21 (4) The department currently certifies laboratories and analysts that conduct *confirmatory*
22 drug residue tests on raw milk samples. The department certifies these laboratories and analysts

1 under ch. ATCP 77, Wis. Adm. Code. The department does not currently certify laboratories or
2 analysts that perform only preliminary *screening* tests for drug residues, although it does provide
3 training. Some preliminary screening tests use mechanical readers, while others are “visually
4 read.”

5 (5) On July 2, 2001, FDA issued a new directive requiring states to approve laboratories
6 that conduct *screening tests* (not just confirmatory tests) for drug residues in milk. A state must
7 conduct an on-site evaluation before approving a laboratory or analyst to conduct “visual read”
8 screening tests. According to the FDA, the department must complete its evaluations and issue
9 its approvals by March 1, 2002. FDA may de-certify Wisconsin milk shippers if the department
10 fails to carry out this directive, or if milk shipments are not tested by approved laboratories and
11 analysts. De-certification could prevent the movement of Wisconsin milk in interstate
12 commerce.

13 (6) In order to ensure the continued movement of Wisconsin milk in interstate commerce,
14 the department must adopt rules expanding the current lab certification program under ch. ATCP
15 77, Wis. Adm. Code. The rules will require certification of laboratories conducting drug residue
16 screening tests. The rules will also require on-site evaluation and approval of individual analysts
17 conducting “visual read” screening tests. The rules will create new lab certification fees to pay
18 for the expanded program, including the cost to perform the required on-site evaluations. The
19 department must adopt these rules as soon as possible, in order to complete the required
20 evaluations and issue the required approvals by March 1, 2002.

21 (7) The department cannot create this new program, by normal rulemaking procedures, in
22 time to meet the March 1, 2002 deadline. The department is therefore adopting this temporary
23 emergency rule under s. 227.24, Stats., pending the adoption of “permanent” rules by normal

1 procedures. This emergency rule is needed to ensure the continued movement of Wisconsin
2 milk in interstate commerce, and to prevent the economic disruption that would occur if that
3 movement were interrupted.

EMERGENCY RULE

4 **SECTION 1.** ATCP 77.01(4m) and (17) are created to read:

5 (4m) "Drug residue screening test" means any test under s. ATCP 77.02(1)(f) to (1)(s) or
6 (1)(z), other than a confirmatory test, that a person uses to comply with drug residue testing
7 requirements under s. ATCP 60.19.

8 (17) "Visual read test" means a drug residue screening test performed by an individual
9 who interprets the result without the aid of a mechanical reader.

10 **SECTION 2.** ATCP 77.03(2)(c) is renumbered (b).

11 **SECTION 3.** ATCP 77.03(2)(c) is created to read:

12 ATCP 77.03(2)(c) If the department certifies a laboratory to perform a drug residue test
13 on milk, the department shall specify whether the laboratory is certified to perform that test as a
14 screening test or confirmatory test, or both. A laboratory certified to perform a test as a
15 screening test may not perform that test as a confirmatory test unless the laboratory is also
16 certified to perform the confirmatory test.

17 **SECTION 4.** ATCP 77.06(1)(a) to (c) are amended to read:

18 ATCP 77.06(1)(a) *Milk or food tests.* An annual certification fee of \$336 for each test
19 under s. ATCP 77.02(1) or (2) at each laboratory for which the operator is certified. This fee
20 does not apply to a laboratory that is certified under s. ATCP 77.23 only to conduct drug residue
21 screening tests on milk samples.

1 (b) *Certified analysts; milk or food tests.* An annual certification fee of \$25 for each
2 analyst who performs one or more tests under s. ATCP 77.02(1) or (2). This fee does not apply
3 to an individual approved under s. ATCP 77.23 only to conduct drug residue screening tests on
4 milk samples.

5 (c) *Additional analyst certification; milk or food tests.* A supplemental fee for each
6 requested certification of one or more analysts to conduct any test under s. ATCP 77.02(1) or (2),
7 if the certification occurs at any time other than during a mandatory inspection under s. ATCP
8 77.14(1). This fee does not apply to an individual approved under s. ATCP 77.23 only to
9 conduct drug residue screening tests on milk samples.

10 **SECTION 5.** ATCP 77.06(1)(e) is created to read:

11 ATCP 77.06(1)(e) *Drug residues in milk; screening tests.* The fees provided in s. ATCP
12 77.23(3) if the laboratory performs drug residue screening tests on milk samples.

13 **SECTION 6.** ATCP 77.06(2) is repealed and recreated to read:

14 ATCP 77.06(2) PARTIAL FEES. (a) If the department certifies an operator of a milk or
15 food laboratory to perform a test for less than a full calendar year, the operator shall pay a fee of
16 \$28 for each full month of certification for that test. This fee does not apply to a laboratory that is
17 certified under s. ATCP 77.23 only to conduct drug residue screening tests on milk samples.

18 (b) If the department certifies an operator of a water laboratory to perform a test for less
19 than a full calendar year, the operator shall pay a fee of \$23 for each full month of certification
20 for that test.

21 **SECTION 7.** ATCP 77.22(1) is repealed and recreated to read:

1 ATCP 77.22(1) CERTIFICATION REQUIRED. (a) Except as provided in par. (b), no analyst
2 may perform a test listed under s. ATCP 77.02(1) or (2) unless the department certifies that
3 analyst under this section to perform that test.

4 (b) Paragraph (a) does not apply to an individual who is solely engaged in performing a
5 drug residue screening test, provided that the department has approved that individual under s.
6 ATCP 77.23(2) to perform that test.

7 (c) The department shall certify the analysts employed at a laboratory when it conducts a
8 mandatory inspection of that laboratory under s. ATCP 77.14(1). The department may certify
9 new analysts, or certify analysts to perform other tests, at other times.

10 **SECTION 8.** ATCP 77.23 is created to read:

11 ATCP 77.23 **Drug residues in milk; screening tests.** (1) LABORATORY CERTIFIED.

12 (a) No person may perform a drug residue screening test except at a laboratory that the
13 department certifies under s. ATCP 77.03 to perform that test.

14 (b) The department may not certify a laboratory to perform a drug residue screening test
15 unless the department has approved at least one individual under sub. (2) to perform that test at
16 that laboratory.

17 (c) The department shall inspect a drug residue screening laboratory at all the following
18 times:

19 1. Before certifying the operator to perform a visual read test that the department has not
20 previously certified the operator to perform at that laboratory.

21 2. Before approving a new individual under sub. (2) to perform a visual read test at that
22 laboratory.

1 (2) ANALYSTS APPROVED. (a) No individual may perform a drug residue screening test
2 unless the department approves that individual to perform that test at a laboratory certified under
3 sub. (1).

4 (b) Before the department approves an individual under par. (a) to perform a visual read
5 test, the department shall perform an on-site competency evaluation under sub. (4).

6 (c) The department's approval under par. (a) expires on December 31 of each year
7 unless, by that date, the laboratory operator certifies to the department that the individual has
8 successfully completed an annual proficiency evaluation under sub. (6).

9 (d) The department may suspend or revoke an approval under par. (a) for cause.

10 (3) CERTIFICATION FEES. A laboratory operator shall pay the following fees to acquire
11 and maintain a laboratory certification under sub. (1):

12 (a) An initial certification fee of \$500, except that the fee is \$150 if the laboratory tests
13 milk for only one dairy plant operator and all the following apply:

- 14 1. The dairy plant operator receives only grade B milk.
- 15 2. The dairy plant operator receives milk from not more than 5 producers.
- 16 3. The dairy plant operator receives not more than 10,000 lbs. of raw milk per week.

17 (b) A fee of \$25 for each individual, in excess of 3 individuals, that the department
18 evaluates under sub. (4) at the time of the initial laboratory inspection under sub. (1)(c)1.

19 (c) An annual renewal fee equal to the lesser of the following:

- 20 1. \$100.
- 21 2. \$25 per analyst if the laboratory meets all of the requirements for the reduced initial
22 certification fee under par. (a).

1 (d) A fee of \$150 for each laboratory visit, other than the initial inspection under sub.
2 (1)(c)1, that the department makes for the purpose of evaluating individuals under sub. (4). This
3 single fee of \$150 covers all of the individual evaluations performed during the department's
4 visit, regardless of the number of individuals evaluated.

5 (4) COMPETENCY EVALUATION. Before the department approves an individual to
6 perform a visual read test, the department shall observe and evaluate that individual's
7 competency to perform that test. The department shall use an appropriate FDA 2400 series form
8 to conduct the evaluation.

9 **NOTE:** FDA 2400 series forms are on file with the department, the secretary of state and
10 the revisor of statutes.
11

12 (5) ANNUAL PROFICIENCY EVALUATION. (a) An individual approved to perform a drug
13 residue screening test shall complete an annual proficiency evaluation. An evaluator approved
14 by the department shall administer the proficiency evaluation. The department may approve the
15 laboratory administrator, or the administrator's agent, to serve as evaluator, except for a visual
16 read test. The evaluator shall report the results of each proficiency evaluation to the department
17 within 7 days after the evaluation is completed.

18 (b) In a proficiency evaluation, the evaluated individual shall examine samples prepared
19 by the evaluator. The contents of the samples shall be known only to the evaluator, and not to
20 the evaluated individual. The evaluator shall evaluate the individual's proficiency by comparing
21 the individual's results to the known contents of the samples, and shall report those results to the
22 department.

23 (c) A proficiency evaluation under par. (a) shall be conducted according to a standard
24 evaluation procedure that the department approves in writing. A standard evaluation procedure
25 shall comply with this subsection and shall include standards for all the following:

- 1 1. The evaluator's preparation of proficiency evaluation samples.
- 2 2. The analyst's examination of proficiency evaluation samples.
- 3 3. Deadlines for examining proficiency evaluation samples and reporting test results.
- 4 4. The evaluator's review and rating of the individual's proficiency.

5 (d) For a drug residue screening test other than a visual read test, a proficiency
6 evaluation under par. (a) shall include 3 samples. To pass the proficiency test, the individual
7 shall interpret all 3 sample results correctly.

8 (e) For a visual read test, a proficiency evaluation under par. (a) shall include at least 6
9 but not more than 20 samples. To pass a proficiency evaluation involving 6 to 10 samples, an
10 individual shall interpret no more than one sample result incorrectly. To pass a proficiency
11 evaluation involving 11 to 20 samples, an individual shall interpret no more than 2 sample results
12 incorrectly.

13 (6) FAILED PROFICIENCY EVALUATION; LOSS OF APPROVAL. (a) If an individual
14 approved to perform a drug residue screening test fails his or her first annual proficiency
15 evaluation related to that test, the individual is no longer approved to perform that test.

16 (b) If an individual approved to perform a drug residue screening test passes his or her
17 first annual proficiency evaluation related to that test, but subsequently fails 2 consecutive annual
18 proficiency evaluations, the individual is no longer approved to perform that test.

19 (c) The department may restore an approval lost under par. (a) or (b) if the individual
20 completes a training program approved by the department and passes an on-site competency
21 evaluation under sub. (4). If the individual subsequently fails his or her first annual proficiency
22 evaluation related to the drug residue screening test, the individual may no longer perform that

1 test. The department may again restore the approval if the individual again meets the restoration
2 requirements under this paragraph.

3 (7) LIST OF APPROVED ANALYSTS. The department shall maintain, for each laboratory
4 certified under sub. (1), a list of individuals currently approved to perform drug residue screening
5 tests at that laboratory. The list shall identify the drug residue screening tests that each
6 individual is approved to perform.

7 (8) NOTICE OF STAFFING CHANGES. (a) A laboratory operator shall notify the department
8 within 30 days after any of the following occurs:

9 1. An individual approved under sub. (2) leaves employment with that laboratory.

10 2. There is a change in the name of any individual approved under sub. (2).

11 (b) A laboratory operator shall notify the department within 7 days after a staffing
12 change if, as a result of that change, the laboratory has no individuals approved under sub. (2) to
13 perform a drug residue screening test that the laboratory is certified to perform.

14 **EFFECTIVE DATE.** The emergency rule contained in this order shall take effect on
15 November 15, 2001 or on the date of publication, whichever is later, and shall remain in effect
16 for 150 days, as provided under s. 227.24(1)(c), Stats. The department may seek to extend this
17 emergency rule as provided in s. 227.24(2), Stats.

Dated this 9th of November, 2001

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

By James E. Harsdorf
James E. Harsdorf, Secretary

Fiscal Estimate — 2001 Session

| | | | |
|--|---------------------------------------|-------------|---------------------------------------|
| <input checked="" type="checkbox"/> Original | <input type="checkbox"/> Updated | LRB Number | Amendment Number if Applicable |
| <input type="checkbox"/> Corrected | <input type="checkbox"/> Supplemental | Bill Number | Administrative Rule Number ATCP 77 |

Subject
 Certification of drug residue screening laboratories and approval of laboratory analysts to perform drug residue screening tests on milk.

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 Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations
 20.115 (1)(gb)

Assumptions Used in Arriving at Fiscal Estimate

The emergency rule and proposed rule related to DATCP approval of milk laboratory analysts under ATCP 77, Wis. Adm. Code, will have a fiscal impact on DATCP. Under this rule, DATCP staff must perform additional evaluations of lab analysts, and must process additional approvals and annual renewals. DATCP must conduct on-site evaluations at approximately 30 laboratories throughout the state at a cost of about \$500 each. DATCP will incur some overtime costs in order to complete initial approvals by March 1, 2002. DATCP anticipates that this start-up cost will be approximately \$15,000. In addition, we expect ongoing costs of \$8,400 per year. This reflects the time and support costs for review of annual renewal documentation, processing of certificates, and providing documentation required by the U.S. Food and Drug Administration for all drug residue screening laboratories.

DATCP's laboratory certification program is entirely fee-funded. DATCP will not be able to absorb the additional costs, and will need to charge additional fees to cover the costs. Under this rule, a laboratory conducting "visual read" drug residue screening tests must pay the following fees:

\$500 for initial approval of up to 3 analysts, and \$25 for approval of each additional analyst during the same initial laboratory visit. There is a lower fee of \$150 for certain small laboratories identified in this rule.

\$150 for any subsequent visit to approve new analysts, regardless of the number of analysts approved on that visit.

There will be a \$100 fee for the annual renewal of analyst approvals for all drug residue screening laboratories. A \$100 annual renewal covers all analysts currently approved to perform milk drug residue screening tests at that laboratory. No site visit is required for an annual renewal.

Long-Range Fiscal Implications

DATCP estimates that annual fees will generate approximately \$8,400 in new revenues each year. There will be a \$150 fee for any supplemental visits to approve new analysts at laboratories conducting "visual read" drug residue screening tests. The potential number of these supplemental visits is unknown.

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|--|-------------------------------|---------------------------------|
| Prepared By: Terri L. Wenger | Telephone No. 608/224-4714 | Agency DATCP |
| Authorized Signature <i>Barbara Knapp</i> | Telephone No. 608/224-4746 | Date (mm/dd/ccyy) 11/13/2001 |

Fiscal Estimate Worksheet — 2001 Session
 Detailed Estimate of Annual Fiscal Effect

Original Updated
 Corrected Supplemental

| | |
|-------------|---------------------------------------|
| LRB Number | Amendment Number if Applicable |
| Bill Number | Administrative Rule Number ATCP 77 |

Subject

Certification of drug residue screening laboratories and approval of laboratory analysts to perform drug residue screening tests on milk.

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
 \$ 15,000

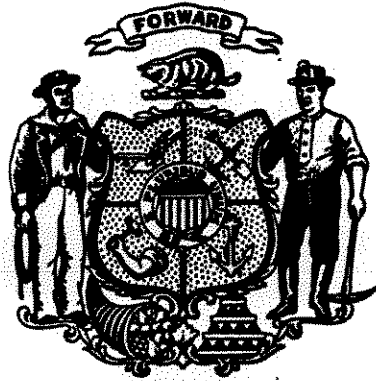
| Annualized Costs: | | Annualized Fiscal Impact on State Funds from: | |
|--|---|---|-------------------|
| | | Increased Costs | Decreased Costs |
| A. State Costs by Category | | | |
| State Operations — Salaries and Fringes | | \$ 8,100 | \$ - |
| (FTE Position Changes) | | (0.13 FTE) | (- FTE) |
| State Operations — Other Costs | | 300 | - |
| Local Assistance | | | - |
| Aids to Individuals or Organizations | | | - |
| Total State Costs by Category | | \$ 8,400 | \$ - |
| B. State Costs by Source of Funds | | | |
| GPR | | \$ | \$ - |
| FED | | | - |
| PRO/PRS | | 8,400 | - |
| SEG/SEG-S | | | - |
| State Revenues | Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.) | Increased Revenue | Decreased Revenue |
| GPR Taxes | | \$ | \$ - |
| GPR Earned | | | - |
| FED | | | - |
| PRO/PRS | | 8,400 | - |
| SEG/SEG-S | | | - |
| Total State Revenues | | \$ 8,400 | \$ - |

Net Annualized Fiscal Impact

| | <u>State</u> | <u>Local</u> |
|------------------------|--------------|--------------|
| Net Change in Costs | \$ 8,400 | \$ |
| Net Change in Revenues | \$ 8,400 | \$ |

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|--|-------------------------------|---------------------------------|
| Prepared By: Terri L. Wenger | Telephone No. 608/224-4714 | Agency DATCP |
| Authorized Signature <i>Barbara Knapp</i> | Telephone No. 608/224-4746 | Date (mm/dd/ccyy) 11/13/2001 |

END



END

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. Harsdorf*
for James E. Harsdorf
Secretary



State of Wisconsin
Scott McCallum, Governor

Department of Agriculture, Trade and Consumer Protection

James E. Harsdorf, Secretary

DATE: April 15, 2002

TO: State Legislators

FROM: James E. Harsdorf, Secretary

SUBJECT: **Milk Producer Security; Emergency Rule**

Pursuant to s. 227.24(3), Stats., the Department of Agriculture, Trade and Consumer Protection is forwarding an emergency rule related to milk producer security (copy attached). 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.

The Legislature enacted the new law in 2001 Wis. Act 16. The new law applies to dairy plant operators, producer agents and other milk contractors. 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 new law takes effect, for milk contractors, on May 1, 2002. This emergency rule is needed to implement the new law by May 1, the annual licensing date for milk contractors. The Board of Agriculture, Trade and Consumer Protection unanimously approved this emergency rule on April 11, 2002. The emergency rule will be published in the official state newspaper and will take effect on April 30, 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.

Public Hearing

A public hearing on this rule is scheduled for 1:30 p.m. on Thursday, May 16, 2002 at the Department of Agriculture, Trade and Consumer Protection headquarters; 2811 Agriculture Drive, Madison.

Fiscal Estimate

A fiscal estimate is attached to the rule. The department does not expect this rule to have any material fiscal impact on the state or local governments.

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:

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- 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.:

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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.**

(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.:

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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]*.**

(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.:

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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.**

(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:

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35

***[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**

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
James E. Harsdorf,
Secretary

| | | | |
|---|--|---|---|
| FISCAL ESTIMATE DOA-2048 (R 10/94) | | <input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL | LRB or Bill No. / Adm. Rule No. ATCP 96 Amendment No. (If Applicable) |
| Subject: Milk producer security; emergency rule | | | |
| Fiscal Effect State: <input checked="" type="checkbox"/> No State Fiscal Effect Check below only if bill makes a direct appropriation or affects a sum sufficient appropriation. <input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation | | <input type="checkbox"/> Increase Costs – May be possible to absorb within agency's budget? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs | |
| Local : <input checked="" type="checkbox"/> No local government costs 1. <input type="checkbox"/> Increase Costs 3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | | 5. Types of Local Gov. Unit Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Counties <input type="checkbox"/> Cities <input type="checkbox"/> Other: <u>County Drainage Boards</u> <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts | |
| Fund Source Affected: <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S | | Affected Ch. 20 Appropriations: | |
| Assumptions Used in Arriving at Fiscal Estimate 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 department does not anticipate any additional fiscal impact from this rule. | | | |
| Long - Range Fiscal Implications | | | |
| Agency/prepared by: (Name & Phone No.) DATCP Kevin LeRoy ph. 608-224-4926 | | Authorized Signature/Telephone No. <i>Barbara Knapp</i> Barbara Knapp, ph. 608-224-4746 | Date April 15, 2002 |



State of Wisconsin
Scott McCallum, Governor

Department of Agriculture, Trade and Consumer Protection
James E. Harsdorf, Secretary

August 16, 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 extend the above emergency rule, which is scheduled to expire on September 27, 2002. The department asks JCRAR to extend the emergency rule for 60 days, until November 26, 2002.

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.

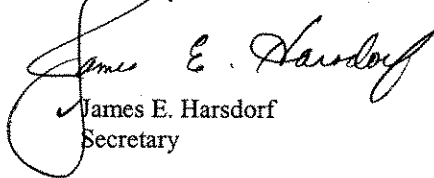
We are enclosing copies of the emergency rule, fiscal estimate and hearing notice. The emergency rule includes a *Finding of Emergency* that explains the need for this rule. The department has started "permanent" rulemaking proceedings, but will not be able to complete those proceedings before the emergency 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 will hold 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. Because of the time required for legislative review, promulgation and publication, the department will need to request a further JCRAR extension before this extension expires.

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

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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.

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

- 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 (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, 08.

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

✓ By James E. Harsdorf
James E. Harsdorf,
Secretary

| | |
|--|---|
| FISCAL ESTIMATE DOA-2048 (R 10/94) <input checked="" type="checkbox"/> ORIGINAL <input type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL | LRB or Bill No. / Adm. Rule No. ATCP 96 Amendment No. (If Applicable) |
|--|---|

Subject:
Milk producer security; emergency rule

| | |
|--|--|
| Fiscal Effect State: <input checked="" type="checkbox"/> No State Fiscal Effect Check below only if bill makes a direct appropriation or affects a sum sufficient appropriation. <input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation | <input type="checkbox"/> Increase Costs – May be possible to absorb within agency's budget? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs |
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| Local : <input checked="" type="checkbox"/> No local government costs 1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 5. Types of Local Gov. Unit Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Counties <input type="checkbox"/> Cities <input type="checkbox"/> Other: <u>County Drainage Boards</u> <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts |
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| Fund Source Affected: <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S | Affected Ch. 20 Appropriations: |
|---|--|

Assumptions Used in Arriving at Fiscal Estimate

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 department does not anticipate any additional fiscal impact from this rule.

Long - Range Fiscal Implications

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|---|--|-------------------------------|
| Agency/prepared by: (Name & Phone No.) DATCP Kevin LeRoy ph. 608-224-4926 | Authorized Signature/Telephone No.  Barbara Knapp, ph. 608-224-4746 | Date April 15, 2002 |
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