

JCPAZ CWD  
9-5-02

(1)

Bob Everfeldt:

Request extension.

- Samples.
- Transport of deer.
- Onerous burden of IDing deer on farms.

174 people at hearings

9 for, 15 against

DNR made no changes.

Turner ? Why no amendments to rules?

- Not amendable, they believe.

Record keeping is essential to program

? CWD Source?

- Have investigated illegal movement.

- Transmission and origin are unknown.

Other states are deep into study.

Research is ongoing

MID-OCTOBER 3 Dead Hunt/meal  
Report is due.

Gundersen:

? from Doe farmers. Red doe are not the same. Fal deer, Reindeer, Red deer.

Does affect White, Black, Mule, and these hybrids

No conclusive evidence that others will not get this or have a variant of this.

Gundersen: Says that ER says Red Doe is mentioned as one that can get CWD. He really supports these farmers. They are being forced out of business.

— Test on slaughtered doe requirements.  
Tests cost \$60- each. (approximately)  
Testing a percentage like 1 of 5 leaves a big gap in finding the disease

Robson Test Standards + Lab tests.

National / International Standard requires licensing + credential ~~issues~~ for acceptance.

Not a food safety test. It's a diagnostic screening test.

JCRAR CWD 9-05-02

(3)

APHIS is gate keeper

Private tests not well reviewed by DNR

LAB results from tests will be ~~at~~  
available 3-4 months later.

DNR went looking for CWD 3 years ago.

Rubson Lab. 3-4 months?

What can we do to speed this up?  
Automatic screening tests will speed it  
up 5 fold. U.S. is looking at  
allowing machines. Brain, nodes, console.

Gymph nodes work on deer, not cattle.

Gunderson : Hands tied by Feds. They hold  
timeline for tests.

Gruthman How long in WI?

4-6 years based on models that  
we have. Depends on infection rate  
CO. rates would indicate 15 years.

# CRAR CWD

(4)

Cases are showing up in farm raised animals.

Grothman

Deer farm tagging?

yes for live deer sales.

no for farms that don't sell live ones.

(No id, but yes to test.)

No for Hobby farmer.

At 1 year of age or when they leave premises, whichever ever comes sooner.  
Need the info for census.

Scratts: — Tribal Deer farms required to do this?

No, but all are in program.

— Hard to tag these animals. (Red Deer.)  
Really disturbs them.

ELISA test licenced in Europe.  
awaiting USDA approval, hopefully 60-90 days.

## JCRAR CWD

(5)

Serattis: — ELISA test available to private industry?  
No. concerns about false positive test  
on cattle makes FEDs hesitant.  
Europe is already "Hinky" about trade.

Private labs can open. Can't make  
~~any~~ claims though or they run into  
problems.

Hansen: rule modeled after other states?  
yes.

Hebl: — Glad carcasses are being incinerated.  
Public is happy about that.  
— Applauds DNR being firm on issue  
Understands this will hurt business,  
must take action, error on side of caution.

Turner: We should assist them. (Deer farmers)  
w/ testing

Serattis: Carcass disposal. Costs?

Meat processing problem: Disposal of  
waste. What is FDA going to require?  
Goes to rendering, FDA is undecided.

JERAR CWD 9-5-02

6

Seratti:

Concerns of cross-contamination.

- No worries, Don't batch sausage.
- Don't cut spinal cord.

Food Safety division is providing education/info

Grothman:

Farm deer value Doe \$200-  
DEAD 10 pt buck \$5,000-+

Alive deer 300- thousands.  
EIK 1,000+

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(608) 264-8486

## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

### *Attendance Form*

September 5, 2002

Room 225 Northwest, State Capitol Building

Accounting for:  Public Hearing  Executive Session

COMMITTEE MEMBER	PRESENT	ABSENT	EXCUSED
1. Senator ROBSON	✓		
2. Senator GROBSCHMIDT	✓		
3. Senator HANSEN	✓		
4. Senator WELCH		✓	
5. Senator COWLES	✓		
6. Representative GROTHMAN	✓		
7. Representative SERATTI	✓		
8. Representative GUNDERSON	✓		
9. Representative TURNER	✓		
10. Representative HEBL	✓		
Totals			

Maggie Delaporte, Committee Clerk



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6. Representative GROTHMAN	✓		
7. Representative SERATTI	✓		
8. Representative GUNDERSON	✓		
9. Representative TURNER	✓		
10. Representative HEBL	✓		
Totals	9		1

  
Maggie Delaporte, Committee Clerk





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## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

### *Emergency Rule Extension Motion Form*

September 5, 2002  
225 Northwest  
State Capitol

Moved by Grobschmidt, Seconded by Robson

THAT, pursuant to s. 227.24(2)(a), stats., the Joint Committee for Review of Administrative Rules extend the effective period of emergency rule ATCP 96 by 60 days, at the request of the Department of Agriculture, Trade and Protection.

COMMITTEE MEMBER	Aye	No	Absent
1. Senator ROBSON	✓		
2. Senator GROBSCHMIDT	✓		
3. Senator HANSEN	✓		
4. Senator WELCH			
5. Senator COWLES	✓		
6. Representative GROTHMAN	✓		
7. Representative SERATTI	✓		
8. Representative GUNDERSON	✓		
9. Representative TURNER	✓		
10. Representative HEBL	✓		
Totals			

Motion Carried

Motion Failed

# **Emergency Rule ch. ATCP 96 Relating to Milk Producer Security.**

The Department of Agriculture, Trade, and Consumer Protection requests an extension of this emergency rule by 60 days.



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.

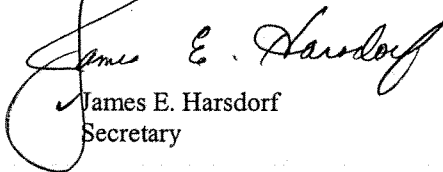
We are enclosing copies of the emergency rule, fiscal estimate and hearing notice. The emergency rule includes a *Finding of Emergency* that explains the need for this rule. The department has started "permanent" rulemaking proceedings, but will not be able to complete those proceedings before the emergency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

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

State Of Wisconsin  
Department Of Agriculture, Trade And Consumer Protection

**NOTICE OF HEARING**

**Emergency Rule Related to Milk Producer Security**

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

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

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

The hearing is scheduled at:

Thursday, May 16, 1:30 p.m.

Wisconsin Department of Agriculture, Trade and Consumer Protection  
Board Room  
2811 Agriculture Drive  
Madison, WI 53718  
Handicapped accessible

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**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 25<sup>th</sup> 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.

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**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 15<sup>th</sup> day of April, 2002

State of Wisconsin  
Department of Agriculture, Trade and Consumer  
Protection

By Leslie F. Harsdorf  
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.

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**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**

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- 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.

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- 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 25<sup>th</sup> day of the month. The report must include all the following:
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### **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 25<sup>th</sup> day of the month. The  
23 report shall include all the following:

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

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

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

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

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

19 (1) The following statement if the milk contractor is a contributing milk  
20 contractor, other than a producer agent who is also required to file security under s.  
21 126:47(3)(c), Stats.:

1 **IMPORTANT NOTICE**

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

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

12 **IMPORTANT NOTICE**

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

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

23 **IMPORTANT NOTICE**

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

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

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

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

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

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

11 **IMPORTANT NOTICE**

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

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

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

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

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

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

Dated this 15 day of April, 07.

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

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

9-5-02 JCRAR

## ATCP 96

ATCP May 1, 2002 was start of licensing permanent rules

Hansen: Pay from Seymour Co-op. Producers still have not gotten remedy. Producers were not covered under old law.  
15% phase in → full level over 4-6 years.

Robson: Where does the \$ come from?  
Fund established from assessments against industry

Cowles: Fed act. How overlap? (None)  
Other states have program? Other states looking to us?

Grothman: Average year how much is put into program?  
- No good answer.

Hebl 60 day limit?  
yes.