

Clearinghouse Rule 95-097

STATE OF WISCONSIN)
) ss. Clearinghouse Rule
DEPARTMENT OF AGRICULTURE,) No. 95-097
TRADE AND CONSUMER PROTECTION)

CERTIFICATION:

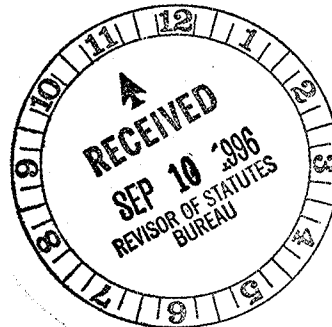
I, Alan T. Tracy, Secretary of the State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, and custodian of the department's official records, hereby certify that the attached rulemaking order relating to egg grading, handling, and labeling was signed and adopted by the Department on September 9, 1996.

I further certify that I have compared the attached copy to the original on file in the department, and that the attached copy is a complete and accurate copy of the original.

Signed and sealed this 9th day of September, 1996.

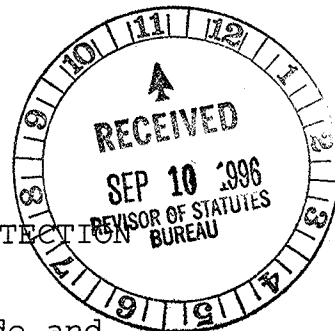
STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 
Alan T. Tracy, Secretary



11-1-96

ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING, AMENDING OR REPEALING RULES



1 The state of Wisconsin department of agriculture, trade and
2 consumer protection adopts the following order to repeal ch.
3 ATCP 89 and to repeal and recreate ch. ATCP 88 relating to egg
4 grading, handling and labeling.

Analysis by the Department of
Agriculture, Trade and Consumer Protection

Statutory authority: ss. 93.07(1), 93.09 and 100.20(2), Stats.

Statutes interpreted: s. 93.09 and 100.20, Stats.

This rule consolidates and updates current rules under chs. ATCP 88 and 89, Wis. Adm. Code, related to egg grading, handling and labeling.

Egg Processing, Handling and Storage

This rule clarifies that persons processing or storing eggs must comply with applicable requirements under chs. ATCP 70 (food processing plants), ATCP 71 (food warehouses) and ATCP 75 (retail food establishments). This rule establishes supplementary requirements for egg processing areas, including candling areas.

Refrigeration and Cool Storage Facility Temperature Standards

Eggs are potentially hazardous if not maintained at safe temperatures. Under this rule, egg storage facilities must have adequate cooling or refrigerating capacity to maintain safe temperatures, and must be equipped with temperature measuring devices to monitor the air temperature at representative locations within the facility.

Under this rule, unpacked eggs held for more than 24 hours after they are laid must be kept at a temperature of 60° F. (16° C.) or below. Packed eggs must be kept at a temperature of 45° F. (7° C.) or below at all times, including while they are being transported.

Egg Cleaning and Shell Egg Protection

Under this rule, compounds used to clean, sanitize or protect shell eggs must be included in the current "List of Proprietary Substances and Nonfood Compounds" published and updated semiannually by the United States department of agriculture.

Grade, Size and Quality Standards

This rule eliminates the current Wisconsin AA Fresh Fancy Quality program. There has been no interest in this program for a number of years and there are no active participants at this time. The U. S. department of agriculture discontinued a similar federal program in 1981.

Under this rule, eggs sold or distributed in this state must be labeled as grade AA, A or B, and must conform to federal standards for those grades. This requirement does not apply to any of the following:

- Ungraded eggs clearly labeled as such.
- Eggs conforming to other federally permitted grades or classifications, and clearly labeled as such.
- Eggs that are exempt from grading under federal law.

Under this rule, eggs sold or distributed in this state must be labeled as Jumbo, Extra Large, Large, Medium, Small or Peewee, and must conform to federal standards for those size labels. This requirement does not apply to any of the following:

- Ungraded eggs clearly labeled as such.
- Eggs conforming to other federally permitted size classifications, and clearly labeled as such.
- Eggs that are exempt from size labeling under federal law.

Under this rule, eggs sold for human food must meet federal minimum standards for grade B eggs, regardless of whether they are labeled as graded or ungraded eggs. This requirement does not apply to either of the following:

- Eggs which the egg producer sells directly to a household consumer on the premises where the eggs are produced.
- Eggs which are exempt from grade B standards under federal law.

Inedible Eggs

This rule prohibits the sale of inedible eggs as human food. Inedible eggs include eggs affected by black rot, yellow rot, white rot, mixed rot (also known as "addled egg"), sour egg, green egg white, stuck yolk, mold, mustiness, a blood ring observable upon candling, an embryo chick at or beyond the blood ring stage, or adulteration under s. 97.02, Stats. Inedible eggs shall be disposed of as provided under the federal act.

Labeling

This rule specifies labeling requirements for egg packages and shipping containers. Egg packages and shipping containers must be labeled with all of the following:

- A declaration of product identity.
- The identity of the responsible person in whose name the eggs are sold or distributed.
- The net quantity of eggs.
- Nutrition labeling required under federal law and ch. ATCP 90 (consumer packages only).
- The grade and size of the eggs, if required under this rule.
- A "keep refrigerated" statement.
- The date on which the eggs were packed.
- An expiration date after which the eggs may not be offered for sale or sold at retail. Alternatively, a processor may label an egg package with a "use by" date which indicates the potential shelf life of the eggs.

The above labeling requirements do not apply to either of the following:

- Eggs which are being shipped from the producer to the packer.
- Eggs which the producer sells directly to consumers on the premises where the eggs are produced.
- Eggs shipped to a breaking plant for processing, provided that they are labeled as specified under the federal act.

Deceptive Practices

Under this rule, no person may do any of the following in connection with the sale or distribution of eggs:

- Misrepresent the grade, size, or quality of the eggs, the date on which the eggs were packed, or the sale expiration date of the eggs.
- Use any term, such as "super jumbo" or "super one dozen," that tends to exaggerate the number or size of eggs.
- Sell, offer to sell, or distribute eggs in any misbranded package or shipping container.
- Sell or offer to sell eggs without clearly indicating the grade and size of the eggs or that they are ungraded.
- Represent that eggs are fresh unless they conform to grade standards specified for grade A or grade AA eggs under the federal act.

Dealers Buying Eggs from Producers; Receipts

Under this rule, a dealer who buys eggs from a producer based on grade or size must give the producer a written receipt showing all of the following:

- The grades and sizes of the eggs purchased from the producer, including the number of dozen and price per dozen purchased in each grade and size category. Grades and sizes must be determined according to this rule.
- The date on which the eggs were graded.
- Whether the eggs were graded by or for the dealer.

The dealer must keep a copy of the receipt for at least one year, and must make the receipt available to the department for inspection and copying upon request.

1 **SECTION 1.** Chapter ATCP 88 is repealed and recreated to
2 read:

CHAPTER ATCP 88

EGG GRADING, HANDLING AND LABELING

5 **ATCP 88.01 DEFINITIONS.** (1) "Candling" means carefully

1 examining, in a dark place, the interior and exterior of a whole
2 egg that is placed in front of a strong light source.

3 (2) "Department" means the state of Wisconsin department of
4 agriculture, trade and consumer protection.

5 (3) "Dirty egg" means an egg, with an unbroken shell, that
6 has either of the following:

7 (a) Dirt or foreign material adhering to the shell's
8 surface.

9 (b) Prominent or moderate stains covering more than 1/32 of
10 the shell surface area if localized, or 1/16 of the shell surface
11 area if scattered.

12 (4) "Egg" means the shell egg of the domestic chicken,
13 G. gallus, domesticus.

14 (5) "Federal act" means the agricultural marketing act of
15 1946, as amended (7 USC 1621 et seq.), the egg products
16 inspection act of 1970 (21 USC 1031-1056), and regulations issued
17 under either act.

18 (6) "Inedible egg" means an egg in which any of the
19 following is present:

20 (a) Black rot.

21 (b) Yellow rot.

22 (c) White rot.

23 (d) Mixed rot, also known as addled egg.

24 (e) Sour egg.

25 (f) Green egg white.

26 (g) Stuck yolk.

- 1 (h) Mold.
- 2 (i) Mustiness.
- 3 (j) A blood ring observable upon candling.
- 4 (k) An embryo chick at or beyond the blood ring stage.
- 5 (l) Adulteration under s. 97.02, Stats.
- 6 (7) "Package" has the meaning given in s. ATCP 90.01(16).

7 NOTE: A "package" of eggs is the retail package in which
8 the eggs are sold to a consumer. A "package" is
9 different from a shipping container.

10 (8) "Person" means an individual, corporation, partnership,
11 limited liability company, cooperative, association or other
12 business entity.

13 (9) "Process" means to grade, size, candle, package or
14 otherwise prepare eggs for sale.

15 (10) "Shipping container" means any box, case, rack or
16 other container used to distribute packages of eggs, or bulk or
17 loose eggs, to a seller or institutional purchaser of eggs.

18 **ATCP 88.02 EGG PROCESSING, HANDLING AND STORAGE.** (1)

19 GENERAL. Except as provided in this chapter:

20 (a) A person who processes eggs in this state shall comply
21 with applicable requirements under chs. ATCP 70 and 75.

22 (b) A person who operates a warehouse used for the storage
23 of eggs shall comply with applicable requirements under ch. ATCP
24 71.

25 (c) A person who sells eggs at retail shall comply with
26 applicable requirements under ch. ATCP 75.

27 (2) EGG PROCESSING FACILITIES. (a) Egg grading rooms

1 shall be kept reasonably clean during grading operations and
2 shall be thoroughly cleaned at the end of each day's operations.

3 (b) Egg candling areas shall be dark enough to permit
4 accurate determinations of egg quality.

5 (c) Egg candling lights shall be strong enough to disclose
6 dirty eggs and to permit accurate determinations of egg quality.

7 (d) If automated grading equipment is used to detect blood
8 inside of eggs or cracked shells or "checks," the equipment shall
9 be calibrated and adjusted for sensitivity so that the processed
10 eggs comply with applicable grade standards.

11 (e) Lighting in egg packing areas shall be adequate to
12 disclose dirty packing materials and packing material defects
13 that may affect the safety or quality of eggs.

14 (f) Equipment used to weigh eggs shall be kept reasonably
15 clean and shall be routinely calibrated for accuracy.

16 (g) Dogs, cats and other domestic animals shall be kept out
17 of egg processing and storage areas.

18 (3) EGG STORAGE FACILITIES. (a) Egg storage facilities
19 shall be capable of maintaining eggs at temperatures required
20 under s. ATCP 88.04, regardless of reasonably foreseeable
21 external temperatures.

22 (b) Every egg storage facility shall be equipped with one
23 or more accurate temperature measuring devices to monitor
24 compliance with temperature standards under s. ATCP 88.04. The
25 air temperature shall be monitored in representative locations of
26 the egg storage facility.

1 (4) EGG CLEANING OPERATIONS. (a) Shell egg cleaning
2 equipment shall be kept in good repair. Equipment shall be
3 cleaned after each day's use and more frequently if necessary.
4 Compounds used to clean or sanitize eggs shall be compounds
5 listed in the current "List of Proprietary Substances and Nonfood
6 Compounds" published semiannually by the United States department
7 of agriculture.

NOTE: The "List of Proprietary Substances and Nonfood
Compounds," published semiannually by the United States
department of agriculture, is on file with the department
and may be obtained from the United States department of
agriculture, agricultural marketing service, poultry
division, grading branch, 100 stockyards road, room 209,
South St. Paul, MN 55075.

1 (b) Water used to clean shell eggs shall be at least 20° F.
2 warmer than the eggs, and shall not be colder than 90° F. Eggs
3 may not be left standing or soaking in cleaning water.

4 (c) Eggs shall be removed from all scanning, washing,
5 rinsing and other processing areas during employe rest periods if
6 they would otherwise be exposed to excessive heat build-up during
7 those periods.

8 (d) Washed eggs shall be reasonably dry before they are
9 placed in packages or shipping containers.

10 (5) SHELL EGG PROTECTION. If an oil is used to protect
11 shell eggs, that oil shall be listed in the current "List of
12 Proprietary Substances and Nonfood Compounds" published
13 semiannually by the United States department of agriculture. A
14 shell egg protection oil treatment, if any, shall be performed in
15 a manner that prevents egg contamination and preserves egg

1 quality.

2 NOTE: The "List of Proprietary Substances and Nonfood
3 Compounds," published semiannually by the United States
4 department of agriculture, is on file with the department
5 and may be obtained from the United States department of
6 agriculture, agricultural marketing service, poultry
7 division, grading branch, 100 stockyards road, room 209,
8 South St. Paul, MN 55075.

9 (6) EGG HANDLING AND PACKING. (a) Eggs shall be handled
10 and packed to minimize the likelihood that condensation will
11 accumulate on the eggs.

12 (b) Eggs shall be packed so that a substantial majority of
13 the packed eggs are placed in the package or shipping container
14 with the small end down.

15 (c) Egg packages and shipping containers shall be all of
16 the following:

- 17 1. Clean and in good condition.
- 18 2. Free of mold, mustiness and off-odors.
- 19 3. Sufficiently strong and durable to protect eggs from
20 damage during normal distribution.

21 **ATCP 88.04 TEMPERATURE STANDARDS.** (1) TEMPERATURE PRIOR
22 TO PROCESSING AND PACKING. Eggs that are held prior to
23 processing and packing for more than 24 hours after they are laid
24 shall be kept at an average ambient temperature of 60° F. (16°
25 C.) or below.

26 Note: It is recommended that eggs be processed and packed
27 as soon as practicable and within 5 days after they are
28 laid.

29 (2) TEMPERATURE AFTER PROCESSING AND PACKING. Eggs which
30 have been processed and packed shall be kept at an average

1 ambient temperature of 45° F. (7° C.) or below at all times,
2 including while they are being transported.

3 NOTE: Mechanical refrigeration is recommended for eggs that
4 are in transport for more than 4 hours.

5 (3) SALE OF FROZEN EGGS PROHIBITED. No person may sell or
6 offer for sale any eggs that have been frozen.

7 **ATCP 88.06 GRADE, SIZE AND QUALITY STANDARDS.** (1) EGG

8 GRADES. (a) Except as provided under par. (b), eggs sold or
9 distributed in this state shall be labeled as grade AA, A or B,
10 and shall conform to the United States grade standards specified
11 for those grades under the federal act.

12 (b) Paragraph (a) does not apply to any of the following:

13 1. Ungraded eggs clearly labeled as such.

14 2. Eggs conforming to other grades or classifications
15 permitted under the federal act, and clearly labeled as such.

16 3. Eggs that are exempt from grading under the federal act.

17 (2) EGG SIZES. (a) Except as provided under par. (b),

18 eggs sold or distributed in this state shall be labeled as Jumbo,
19 Extra Large, Large, Medium, Small or Peewee, and shall conform to
20 the United States size standards specified for those sizes under
21 the federal act.

22 (b) Paragraph (a) does not apply to any of the following:

23 1. Ungraded eggs clearly labeled as such.

24 2. Eggs conforming to other sizes or classifications
25 permitted under the federal act, and clearly labeled as such.

26 3. Eggs that are exempt from size labeling under the
27 federal act.

1 NOTE: United States consumer grades and sizes are described
2 in "United States Standards, Grades, and Weight Classes for
3 Shell Eggs" under title 7, code of federal regulations part
4 56, subpart C. A copy is on file with the department, the
5 secretary of state and the revisor of statutes. A copy may
6 be purchased from the United States department of
7 agriculture, agricultural marketing service, poultry
8 division, grading branch, room 209, 100 stockyards road,
9 South St. Paul, MN 55075.

1 (3) MINIMUM STANDARDS. (a) Except as provided under par.
2 (b) or (c), no person may sell or distribute for sale as human
3 food any eggs that fail to meet United States minimum standards
4 for grade B eggs, regardless of whether the eggs are labeled as
5 graded or ungraded eggs.

6 (b) Paragraph (a) does not apply to either of the
7 following:

8 1. Eggs which the egg producer sells directly to a
9 household consumer on the premises where the eggs are produced.

10 2. Eggs which are exempt from grade B standards under the
11 federal act.

12 (4) INEDIBLE EGGS. Inedible eggs may not be sold or
13 distributed for sale as human food and shall be disposed of as
14 provided under the federal act.

15 **ATCP 88.08 EGG LABELING.** (1) EGG PACKAGES. Except as
16 provided under sub. (3)(a), a package of eggs shall be labeled
17 with all of the following:

18 (a) Information required under ch. ATCP 90, including all
19 of the following:

20 1. A declaration of product identity under s. ATCP 90.02.

21 2. A declaration of responsibility under s. ATCP 90.03. If

1 the responsible person identified on the package is not the egg
2 packer, the package shall also include the packer identification
3 number or shell egg handler registration number assigned by the
4 United States department of agriculture, or the packer
5 identification number assigned by the state in which the packing
6 operation is located. A United States department of agriculture
7 (USDA) packer number shall be preceded by the letter "P". A
8 state packer number shall be preceded by a 2-letter abbreviation
9 which identifies the state.

10 3. A declaration of net quantity under ss. ATCP 90.04 and
11 90.08(16)(c).

12 4. Nutrition labeling under s. ATCP 90.10.

13 (b) The grade and size of the eggs, if required under s.
14 ATCP 88.06. The grade and size shall be printed on the principal
15 display panel in letters not less than 3/16 inch high. If the
16 eggs are not graded, the word "UNGRADED" shall be printed in
17 letters at least 1/4 inch high on the principal display panel.
18 Ungraded eggs may be sold from bulk containers if a sign or
19 placard adjacent to the bulk display identifies the eggs as
20 ungraded eggs.

21 (c) The statement "KEEP REFRIGERATED" or an equivalent
22 statement indicating that the eggs must be refrigerated. The
23 statement shall be printed on the principal display panel in
24 letters not less than 3/16 inch high.

25 (d) The date on which the eggs were packed. The date of
26 packing may be indicated by an abbreviation consisting of one of

1 the following:

2 1. The first three letters of the month and the calendar
3 date.

4 2. The numerically consecutive day of the year, also known
5 as the Julian calendar date.

6 (e) One of the following dates, in addition to the packing
7 date under par. (d):

8 1. An expiration date or "sell by" date after which the
9 eggs may not be offered for sale or sold at retail. The
10 expiration date may not be more than 30 days from the packing
11 date, including the day on which the eggs were packed. The
12 expiration date or "sell by" date shall be designated by at least
13 the first three letters of the month and the date within that
14 month. The date shall be accompanied by a phrase or abbreviation
15 such as "sell by" or "EXP" which clearly identifies it as an
16 expiration date or "sell by" date.

17 2. A "use by" date consisting of at least the first 3
18 letters of the month, and the date within that month. The date
19 shall be accompanied by a phrase such as "use by," "best if used
20 by" or "use before," which indicates that the consumer should use
21 the eggs before that date.

22 (2) SHIPPING CONTAINERS. Except as provided under sub.

23 (3), a shipping container of eggs shall be labeled on one end
24 with all of the following information, in letters not smaller
25 than ½ inch high:

26 (a) A statement identifying the contents of the container.

1 (b) The name and address of the responsible person in whose
2 name the eggs are packed and distributed. If the responsible
3 person is not the egg packer, the shipping container shall also
4 include the packer identification number or shell egg handler
5 registration number under sub. (1)(a)2. If the responsible
6 person is the packer, the packer's identification number or shell
7 egg handler registration number under sub. (1)(a)2 may appear in
8 place of the packer's name and address.

9 (c) The net quantity of eggs contained in the shipping
10 container.

11 (d) The grade and size of the eggs contained in the
12 shipping container, if required under s. ATCP 88.06.

13 (e) The statement "KEEP REFRIGERATED" or an equivalent
14 statement indicating that the eggs must be refrigerated.

15 (f) The date on which the eggs were packed.

16 (g) One of the following dates, in addition to the packing
17 date under par. (f):

18 1. An expiration date or "sell by date" after which the
19 eggs may not be sold or offered for retail sale. The expiration
20 date or "sell by" date may not be more than 30 days from the
21 packing date, including the day on which the eggs were packed.
22 The expiration date shall be designated by at least the first
23 three letters of the month and the date within that month. The
24 date shall be accompanied by a phrase or abbreviation such as
25 "sell by" or "EXP" which clearly identifies it as an expiration
26 date or "sell by" date.

1 2. A "use by" date consisting of at least the first 3
2 letters of the month, and the date within that month. The date
3 shall be accompanied by a phrase such as "use by," "best if used
4 by" or "use before," which indicates that the consumer should use
5 the eggs before that date.

6 (3) EGGS SOLD OR SHIPPED BY PRODUCER; EXEMPTION. (a)
7 Subsections (1) and (2) do not apply to either of the following:

8 1. Eggs which are being shipped from the producer to the
9 packer.

10 2. Eggs which the producer sells directly to household
11 consumers on the premises where the eggs are produced.

12 (b) Subsection (2) does not apply to a shipping container
13 which holds only identical packages of eggs, provided that the
14 packages are identically labeled according to sub. (1) and the
15 label information can be seen through the shipping container.

16 (4) EGGS REMOVED FROM RETAIL SALE. (a) No eggs may be
17 sold as whole eggs at retail after the expiration or "sell by"
18 date specified for those eggs under subs. (1)(e)1 or (2)(g)1. If
19 otherwise used as human food, the eggs shall meet at least grade
20 B egg standards.

21 (b) Eggs labeled with dates under subs. (1)(e) or (2)(g)
22 shall retain those dates and may not be repackaged or relabeled
23 with any other dates.

24 **ATCP 88.10 DECEPTIVE PRACTICES.** No person may do any of
25 the following in connection with the sale or distribution of
26 eggs:

1 (1) Misrepresent the grade, size, or quality of the eggs,
2 the date on which the eggs were packed, or the sale expiration
3 date of the eggs.

4 (2) Use any term, such as "super jumbo" or "super one
5 dozen," that tends to exaggerate the number or size of eggs.

6 (3) Sell, offer for sale, or distribute eggs in any
7 misbranded package or shipping container.

8 (4) Offer for sale or sell eggs without clearly indicating
9 the grade and size of the eggs or that they are ungraded.

10 (5) Represent that eggs are fresh unless they conform to
11 grade standards specified for grade A or grade AA eggs under the
12 federal act.

13 **ATCP 88.12 DEALERS BUYING EGGS FROM PRODUCERS; RECEIPTS.**

14 (1) No person may buy eggs from a producer for resale, where the
15 price paid to the producer is based on the grade or size of the
16 eggs, unless that person provides that producer with a written
17 receipt showing all of the following:

18 (a) The grades and sizes of the eggs purchased from the
19 producer, including the number of dozen and price per dozen
20 purchased in each grade and size category. Grades and sizes
21 shall be determined according to s. ATCP 88.06.

22 (b) The date on which the eggs were graded.

23 (c) Whether the eggs were graded by or for the person
24 purchasing the eggs from the producer.

25 (2) A person required to give a receipt under sub. (1)
26 shall keep a copy of the receipt for at least one year, and shall

1 make the receipt available to the department for inspection and
2 copying upon request.

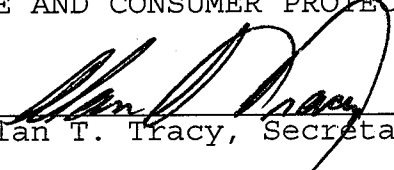
3 NOTE: A person who violates this chapter may be prosecuted
4 under ss. 93.21 and 97.72, Stats.

5 SECTION 2. Chapter ATCP 89 is repealed.

6 EFFECTIVE DATE: The rules contained in this order shall
7 take effect on the first day of the month following publication
8 in the Wisconsin administrative register, as provided under s.
9 27.22(2)(intro.), Stats.

Dated this 9th day of Sept, 1996.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 
Alan T. Tracy, Secretary