

Clearinghouse Rule 99-018

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

Docket No. 96-R-16
99-18

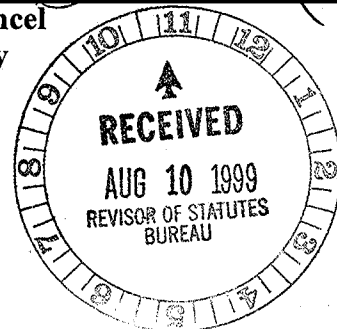
CERTIFICATION:

I, Ben Brancel, Secretary, State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, and custodian of the official records of said Department, do hereby certify that the annexed order repealing, amending, repealing and recreating and creating portions of chapters ATCP 10 and 11, Wisconsin Administrative Code, relating to paratuberculosis (Johne's Disease) was duly approved and adopted by the Department on August 9, 1999.

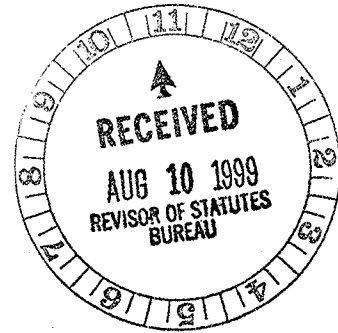
I further certify that said copy has been compared by me with the original on file in the Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Department offices in the city of Madison this 9th day of August, 1999.

Ben Brancel
Ben Brancel
Secretary



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



1 The state of Wisconsin department of agriculture, trade and consumer protection adopts
2 the following order to repeal ATCP 10.01(50) to (54), 10.215, 10.216 and 11.01(60);
3 to amend ATCP 11.60(4); and to repeal and recreate ATCP 10.21, 10.63, 11.60(2) and
4 (note); and to create ATCP 11.10(3)(c) and 11.17; relating to paratuberculosis (Johne's
5 disease).

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

Statutory authority: ss. 93.07(1) and 95.195(2), Stats.

Statutes interpreted: s. 95.195, Stats.

This rule repeals and recreates current rules related to paratuberculosis in cattle and goats. Paratuberculosis is commonly known as Johne's disease.

Background

Johne's disease is a serious and widespread disease of cattle and goats. The disease is slow to develop, and an infected animal may go for years without showing symptoms. An infected animal, which is free of symptoms at the time of sale, may spread the disease to a buyer's herd. The disease has a serious impact on milk production, and is ultimately fatal to infected animals.

There is, at the present time, no test which can definitively rule out Johne's disease in an individual animal or herd of animals. However, annual herd test results can help buyers and sellers assess the risk that symptom-free animals may be infected with Johne's disease. Herd testing can also help herd owners manage or eliminate the disease in their herds.

Currently, under s. 95.195, Stats., there is in every contract for the sale of cattle and goats an “implied warranty” that the animals are free of Johne’s disease. If an animal is infected with Johne’s disease at the time of sale, the buyer may hold the seller liable under this “implied warranty” (even if the seller did not know that the animal was infected) unless the seller does one of the following prior to sale:

- Complies with testing and disclosure requirements prescribed by the department. (Under current department rules, the seller must conduct annual herd tests and disclose test results to the buyer.)
- Gives the buyer a written disclaimer that the animals are being sold “as is,” without any Johne’s disease warranty.

In practice, few sellers have chosen the test and disclosure alternative. Instead, many herd owners have sold their cattle with the “as is” disclaimer (which provides no meaningful herd information to buyers). The current law and rules have thus failed to achieve their goal of promoting Johne’s disease testing. Current DATCP rules also discourage testing by prohibiting the sale of confirmed Johne’s disease reactors, even when the seller discloses that the animals are reactors.

Herd testing is critical for the control of Johne’s disease. If herd owners do not test, this serious disease will continue to spread. The department does not propose to mandate statewide herd testing for Johne’s disease (no other state has taken that step). However, the department proposes the following steps to encourage more voluntary herd testing by sellers who wish to avoid liability under the “implied warranty” law:

- First, the department proposes to change its current testing and disclosure rules. This rule establishes simpler, more realistic testing and disclosure standards, based on the concept of herd risk. This rule also permits the sale of confirmed Johne’s disease reactors, provided that the animals are permanently identified as reactors and the seller discloses that the animals are reactors.
- Second, the department proposes legislation to eliminate the “as is” disclaimer option under s. 95.195, Stats. Such legislation would give herd owners more incentive to test and disclose. Sellers would face a clear choice between the “implied warranty” on one hand, and testing and disclosure on the other.

Rule Contents; General

Under this rule, a sale of cattle or goats is exempt from the “implied warranty” under s. 95.195, Stats., if one of the following applies:

- The animals are being sold directly to slaughter or as feeder cattle. No testing or disclosure is required. However, if a slaughter or feeder animal has been tested and is a reactor, it must be permanently marked.
- The seller discloses all of the following to the buyer in writing:
 - * The current Johne’s disease classification of the herd from which the animals are sold. Herd classifications (see below) are based on annual herd tests. If the source herd is not tested annually, the herd is automatically classified “Maximum risk for Johne’s disease.”
 - * That the animals are confirmed Johne’s disease reactors, if that is the case.

This rule does not require Johne’s disease testing. However, if an animal has been tested and is a reactor, it must be permanently marked. The marking requirement applies even if the animal is not sold, or is sold only to slaughter or as a feeder animal.

Test Eligible Animals

Under this rule, all bulls 24 months of age or older are test eligible animals. All other cattle 36 months of age or older are test eligible. All goats over the age of 18 months are test eligible.

Annual herd test

An annual herd test may be a “whole herd test,” a “random herd test” or a “split herd test.”

- A “whole herd test” must include every test eligible animal in the herd, and all samples must be collected on the same day or consecutive days.
- In a “random herd test,” an accredited veterinarian randomly selects a test group from the whole herd. The test group must include at least 30 test eligible animals, or at least 10 percent of the test eligible animals in the herd, whichever group is larger. A herd with fewer than 30 test eligible animals is not eligible for a “random herd test.” All samples must be collected on the same day.
- A “split herd test” allows the owner to test groups of animals at different times during the year, provided that all test eligible animals are tested within a 12 month

period, the department approves the testing plan before any animals are tested, and the animals are tested according to the plan.

The date of the first annual herd test under this rule establishes an “anniversary date” for each subsequent annual herd test. If the first annual herd test is a “split herd test,” the “anniversary date” is the date on which the last group of animals is tested. Each year’s test must be conducted on the “anniversary date,” or within 2 months before or after the “anniversary date,” except that a “split herd test” must be completed prior to the “anniversary date.”

Herd Classifications

Under this rule, every herd of cattle and goats is classified in one of the following categories, in ascending order of risk for Johne’s disease:

- *Johne’s preventive management level A.* The department will classify a herd as “Johne’s preventive management level A” if an annual herd test reveals no Johne’s disease reactors.
- *Johne’s preventive management level B.* The department will classify a herd as “Johne’s preventive management level B” if fewer than 5% of the animals in a whole herd test or split herd test are Johne’s disease reactors.
- *Johne’s preventive management level C.* The department will classify a herd as “Johne’s preventive management level C” if at least 5% but not more than 15% of the animals in a whole herd test or split herd test are Johne’s disease reactors.
- *Johne’s preventive management level D.* The department will classify a herd as “Johne’s preventive management level D” if any of the following apply:
 - * A “random herd test” reveals one or more Johne’s disease reactors, unless the department classifies the herd as “Johne’s preventive management level B” or “C” based on a follow-up whole herd test.
 - * A “whole herd test” or a “split herd test” reveals more than 15% Johne’s disease reactors.
- *Maximum risk for Johne’s disease.* A herd is automatically classified “Maximum risk for Johne’s disease” without any action by the department, if the herd owner fails to complete a timely annual herd test. “Maximum risk for Johne’s disease” is the least desirable herd classification, because it signifies that the herd owner does not have an annual paratuberculosis testing program. A person buying cattle from such a herd faces an unknown, but substantial, risk that the cattle are infected with Johne’s disease.

A Johne's preventive management level A, B, C or D classification will also indicate the first year from which the herd has continuously held that classification.

Voluntary Participation

This rule does not require a herd owner to have an annual herd test, or to have the herd classified based on herd testing. But if a herd owner does **not** have the herd classified based on annual herd tests that comply with this rule, the herd is automatically classified "Maximum risk for Johne's disease."

A herd owner is not required to disclose the herd classification when selling animals from the herd. But if the herd owner fails to disclose the herd classification, the owner sells the animals subject to an "implied warranty." If it turns out that the animals were infected with Johne's disease at the time of sale, the seller may then be liable to the buyer for any damages which result. There is no "implied warranty" if the herd owner discloses the herd classification at the time of sale, or sells the animals directly to slaughter or as feeder animals.

A herd owner may elect to test (and cull) animals without having the test results used for herd classification purposes. However, all confirmed Johne's disease reactors must be permanently identified as such. No confirmed reactors may be moved or sold (even to slaughter) unless they are identified as reactors.

Commingled Animals; Classification

Animals added to a herd from a herd with a less desirable classification retain that less desirable herd classification for 120 days but do not affect the classification of the herd to which they are added. Animals added from a herd with a more desirable classification immediately lose that classification when they are added to a herd with a less desirable classification.

If animals from herds with different classifications are temporarily assembled for sale or shipment, the least desirable herd classification applies to all of the temporarily assembled animals. Animals sent by their owners to a consignment sale retain the herd status of the herd or origin, except that if the animals are permitted to have direct contact with other animals for more than 24 hours the least desirable herd classification applies to all the animals.

Notice to Herd Owner

Whenever the department classifies a herd based on an annual herd test, the department must promptly provide the herd owner with all of the following information in writing:

- The individual test results for each animal included in the herd test. Test results will be identified with each animal's official individual identification.

- The herd classification and the effective date and expiration date of the classification. A herd classification takes effect on the effective date and immediately supersedes any prior classification.

Test Procedure

The person conducting an annual herd test must be an accredited veterinarian, or an employee of the department or USDA-APHIS. The person must select the test group, determine the type of test to be performed, collect an appropriate sample from each test animal, identify each sample with the animal's official individual identification and sample collection date, and transmit the samples to the testing laboratory.

Annual herd test samples must be tested by the department, the federal bureau, or a laboratory approved by the department or the federal bureau. The laboratory must use one of the following tests:

- The enzyme linked immunosorbent assay (ELISA), except that the ELISA test may not be used for goats.
- The fecal culture test.
- Another test approved by the department.

Test Results

A laboratory performing tests on annual herd test samples must report the test results to the department within 10 days. If the herd owner asks the department to classify a herd based on the test results and the test procedure complies with this rule, the department will classify the herd within 30 days.

Johne's Disease Reactors

Under this rule, an animal is a Johne's disease reactor if any of the following applies:

- It tests positive on the enzyme linked immunosorbent assay (ELISA), unless it subsequently tests negative on the fecal culture test. (The ELISA test applies only to cattle, not goats.)
- It tests positive on the fecal culture test.
- It tests positive on any other test which the department approves and deems conclusive.

Current rules prohibit the sale of Johne's disease reactors (except to slaughter). This rule permits the sale of Johne's disease reactors if all of the following apply:

- The seller discloses to the prospective buyer in writing, prior to sale, that the animals are reactors.
- The animals are permanently identified as reactors.

Under this rule, an accredited veterinarian must permanently identify a confirmed Johne's disease reactor, even if the animal is sold to slaughter or is not sold at all. The veterinarian must identify the animal within 30 days after the animal tests positive on an ELISA or fecal culture test. If the herd owner wishes to confirm a positive ELISA test with a fecal culture, the veterinarian must collect the fecal sample within 30 days. If the fecal culture also tests positive, the veterinarian must then identify the animal as a Johne's disease reactor within 30 days.

Herd Vaccination

Under this rule, no person may vaccinate cattle for Johne's disease except under a herd agreement with the department. The department may not authorize vaccination in any herd in which the percentage of reactors in the last annual whole herd test or split herd test was less than 7%, unless special circumstances warrant vaccination in that herd.

Misrepresenting Herd Classification

Under this rule, no person may misrepresent the classification of the herd from which cattle or goats are being sold. A seller who misrepresents a herd classification is not exempt from the implied warranty under s. 95.195, Stats., and is subject to possible penalties under s. 95.99, Stats. The department may investigate alleged misrepresentations.

Department Disclosure of Herd Classification

Under this rule, the department may disclose a herd classification to a 3rd party with the written authorization of the herd owner.

Effective Date

This rule will take effect on July 1, 2000. The delayed effective date will give producers time to complete testing and receive classifications prior to the date on which they are required to disclose the herd classification to people who purchase their animals.

1 **SECTION 1.** ATCP 10.01(50) to (54) are repealed.

2

3 **SECTION 2.** ATCP 10.21 is repealed and recreated to read:

4 **ATCP 10.21 Johne's Disease Herd Classification; Disclosure. (1)**

5 DEFINITIONS. In this section:

6 (a) "Anniversary date" means, for any herd of cattle, one of the following:

7 1. The month and day on which samples are collected for the first annual herd
8 test conducted after July 1, 2000, if no annual herd test was conducted within one year
9 prior to that date. If the first annual herd test conducted after July 1, 2000 is a split
10 herd test, the "anniversary date" is the month and day on which samples are collected
11 from the last group of animals in the split herd test.

12 2. The month and day between July 1, 1999, and June 30, 2000, on which
13 samples were collected for an annual herd test, if an annual herd test was conducted
14 within that period.

15 (b) "Annual herd test" means an annual paratuberculosis test conducted on a
16 herd of cattle under this section. An annual herd test includes a random herd test, a
17 split herd test or a whole herd test.

18 (c) "Herd" means a herd of cattle.

19 (d) "Paratuberculosis" means the infectious and communicable disease of
20 domestic ruminants, commonly known as Johne's disease, which is caused by
21 *Mycobacterium paratuberculosis*.

22 (e) "Random herd test" means a paratuberculosis test performed under sub.

23 (5)(b).

1 (f) "Split herd test" means a paratuberculosis test performed under sub. (5)(c).

2 (g) "Test eligible animals" means all the following:

3 1. All cattle, other than bulls, that are 36 months of age or older.

4 2. All bulls that are 24 months of age or older.

5 (h) "Whole herd test" means a paratuberculosis test performed under sub.

6 (5)(a).

7 (2) EXEMPTION FROM IMPLIED WARRANTY. (a) The implied warranty
8 under s. 95.195, Stats., does not apply to a sale of cattle if the seller discloses all the
9 following to the buyer in writing, prior to sale:

10 1. The current herd classification, under sub. (3), of the herd from which the
11 cattle are being sold.

12 2. That the cattle are paratuberculosis reactors under sub. (9), if that is the
13 case.

14 (b) The implied warranty under s. 95.195, Stats., does not apply to cattle sold
15 directly to slaughter or as feeder cattle.

16 (3) HERD CLASSIFICATION. (a) *Johne's preventive management level A*. The
17 department shall classify a herd as "Johne's preventive management level A" if an
18 annual herd test reveals no paratuberculosis reactors.

19 **NOTE:** Animals from a herd classified "Johne's preventive management level
20 A" normally have the lowest risk of transmitting Johne's disease
21 (paratuberculosis). The risk is normally reduced with each additional
22 year that the herd maintains the level A classification. However, no herd
23 classification ensures that an animal is free of Johne's disease.

24

25 The department may certify a herd as a voluntary participant in the
26 national Johne's disease program if the herd is classified under par. (a)
27 as "Johne's preventive management level A." To participate in the

1 national program, a herd owner must enter into a certification contract
2 with the department. In establishing the terms of the contract, the
3 department will be guided by the "U.S. Voluntary Johne's Disease Herd
4 Status Program for Cattle." For more information, contact the
5 department at the following address:

6
7 Wisconsin Department of Agriculture, Trade and Consumer
8 Protection
9 Animal Health Division
10 P.O. Box 8911
11 Madison, WI 53708-8911
12 Phone: (608) 224-4872
13

14 (b) *Johne's preventive management level B.* The department shall classify a
15 herd as "Johne's preventive management level B" if fewer than 5% of the animals
16 tested in an annual whole herd test or split herd test, or in a follow-up whole herd test
17 under par. (d)1., are paratuberculosis reactors.

18 (c) *Johne's preventive management level C.* The department shall classify a
19 herd as "Johne's preventive management level C" if at least 5% but not more than 15%
20 of the animals tested in an annual whole herd test or split herd test, or in a follow-up
21 whole herd test under par. (d)1., are paratuberculosis reactors.

22 (d) *Johne's preventive management level D.* The department shall classify a
23 herd as "Johne's preventive management level D" if any of the following apply:

24 1. A random herd test reveals one or more paratuberculosis reactors, unless the
25 department reclassifies the herd under par. (b) or (c) based on a follow-up whole herd
26 test.

27 2. More than 15% of the animals tested in a whole herd test or a split herd test
28 are paratuberculosis reactors.

1 (e) *Maximum risk for Johne's disease.* Every herd in this state, and every herd
2 from which cattle are sold in this state, is automatically classified "maximum risk for
3 Johne's disease" unless one of the following applies:

4 1. The department classifies that herd under pars. (a) to (d). If the owner of
5 the classified herd fails to complete an annual herd test within the time required under
6 sub. (5), that classification expires and the herd is automatically classified "maximum
7 risk for Johne's disease" until the department reclassifies the herd under pars. (a) to
8 (d).

9 2. The department has classified that herd within one year prior to July 1,
10 2000. If the owner of the classified herd fails to complete an annual herd test within
11 the time required under sub. (5), the classification expires and the herd is automatically
12 classified "maximum risk for Johne's disease" until the department reclassifies the herd
13 under pars. (a) to (d).

14 **NOTE:** The herd classifications under pars. (a) to (e) are arranged from most
15 desirable (a) to least desirable (e). "Maximum risk for Johne's disease"
16 is the least desirable herd classification, because it signifies that the herd
17 owner does not have an annual paratuberculosis testing program. A
18 person buying cattle from such a herd faces an unknown, but substantial,
19 risk that the cattle are infected with Johne's disease.
20

21 (f) *Classification to include year.* A herd classification under pars. (a) to (d)
22 shall indicate the first year from which the herd has continuously held that
23 classification.

24 (4) **COMMINGLED CATTLE; CLASSIFICATION.** (a) Except as provided in par. (c)
25 cattle added to a herd from a herd with a less desirable classification under sub. (3)

1 retain that less desirable herd classification for 120 days after being added but do not
2 affect the classification of the herd to which they are added.

3 (b) Cattle added to a herd from a herd with a more desirable classification are
4 immediately reclassified to the less desirable classification of the herd to which they are
5 added.

6 (c) If cattle from herds with different classifications under sub. (3) are
7 temporarily assembled for sale or shipment, the least desirable classification assigned to
8 any of those source herds automatically applies to the temporarily assembled herd.

9 (d) Cattle from herds classified as "Johne's preventive management level A,"
10 "Johne's preventive management level B," "Johne's preventive management level C,"
11 or "Johne's preventive management level D" that are sent by their owners to a
12 consignment sale do not constitute a temporarily assembled herd under par. (c), except
13 that animals which are allowed to have direct contact with each other for more than 24
14 hours constitute a temporarily assembled herd.

15 (5) ANNUAL HERD TEST. An annual herd test may be any of the following:

16 (a) *Whole herd test.* A whole herd test is performed on all test eligible animals
17 in the herd. All samples for a whole herd test shall be collected on the same day or on
18 consecutive days. Samples shall be collected on the anniversary date under sub. (1)(a),
19 or within 2 months before or after that date.

20 (b) *Random herd test.* A random herd test is performed on a group of test
21 eligible animals randomly selected from the test herd by the person who collects the
22 test samples under sub. (6). The randomly selected group shall include at least 30 test
23 eligible animals, or at least 10% of the test eligible animals in the herd, whichever

1 group is larger. All samples for a random herd test shall be collected on the same day.
2 Samples shall be collected on the anniversary date under sub. (1)(a), or within 2
3 months before or after that date.

4
5 **NOTE:** A herd with less than 30 test eligible animals is not eligible for a
6 random herd test. The department may not classify a herd as “Johne’s
7 preventive management level B” or “Johne’s preventive management
8 level C” based on a random herd test. If a random herd test reveals one
9 or more reactor animals, the herd is classified as “Johne’s preventive
10 management level D” until the herd owner completes a follow-up whole
11 herd test. See sub. (3)(d)1.
12

13 (c) *Split herd test.* A split herd test is performed, over the course of not more
14 than 12 months, on all test eligible animals in a herd. A split herd test shall comply
15 with all the following requirements:

16 1. The department shall approve a herd testing plan before any animals are
17 tested. The department shall grant or deny approval, in writing, within 30 days after
18 the herd owner submits a proposed testing plan to the department.

19 2. All testing shall be completed according to the plan approved by the
20 department.

21 3. All test eligible animals in the herd shall be tested at least once during the 12
22 month period ending on the herd’s anniversary date.

23 (6) **COLLECTING TEST SAMPLES.** Annual herd test samples shall be collected by
24 an accredited veterinarian, or by an employee of the department or the federal bureau.

25 The person who collects an annual herd test sample shall do all the following:

26 (a) Determine the animals to be tested, under sub. (5).

27 (b) Determine the type of test to be performed under sub. (7).

1 (c) Collect an appropriate sample from each test animal, based on the type of
2 test to be performed under sub. (7).

3 (d) Identify each sample with the official individual identification of the animal
4 from which it was collected, and the date on which it was collected.

5 (e) Transmit the test samples to the laboratory testing those samples under sub.
6 (7).

7 **NOTE:** A herd owner may have cattle tested for Johne's disease at any time.
8 The department will not use the test results to classify the tested herd
9 under this section unless the test complies with this section and the herd
10 owner asks the department to classify the herd.

11
12 This rule does not prohibit a person from collecting test samples from
13 animals that are too young to be "test eligible" under ATCP 10.21
14 (1)(g), but the department will not consider test results from those
15 animals when determining the appropriate herd classification. To
16 facilitate review of results, the person collecting test samples should
17 separate "test eligible" from "non-test eligible" samples, and should
18 prepare separate test submission forms for each category.

19
20 (7) LABORATORY TESTING. Annual herd test samples shall be tested by the
21 department, the federal bureau, or a laboratory approved by the department or the
22 federal bureau. The laboratory shall use one of the following tests:

23 (a) The enzyme linked immunosorbent assay (ELISA).

24 (b) The fecal culture test.

25 (c) Another test approved by the department.

26 (8) TEST RESULTS. A laboratory performing tests under sub. (7) shall report
27 the test results to the department within 10 days. If the herd owner asks the department
28 to classify a herd based on the results of an annual herd test, the department shall
29 classify the herd under sub. (3) within 30 days after it receives both the test results and

1 the herd owner's request. The department shall issue a classification notice under sub.
2 (10) to the herd owner.

3 **NOTE:** Under s. ATCP 10.02 and 10.03, a veterinarian or laboratory that
4 diagnoses or finds evidence of Johne's disease must report that
5 diagnosis or finding to the department within 10 days, in writing or by
6 telefax.

7
8
9 (9) PARATUBERCULOSIS REACTORS. An animal is a paratuberculosis reactor if
10 any of the following apply:

11 (a) The animal tests positive on the enzyme linked immunosorbent assay
12 (ELISA), unless it subsequently tests negative on the fecal culture test.

13 (b) The animal tests positive on the fecal culture test.

14 (c) The animal tests positive on any other test which the department approves
15 and deems conclusive.

16 (10) NOTICE TO HERD OWNER. Whenever the department classifies a herd
17 under sub. (3) based on an annual herd test, or based on a follow-up whole herd test
18 under sub. (3)(d)1., the department shall promptly provide the herd owner with all the
19 following information in writing:

20 (a) *Individual animal test results.* Individual test results for each animal
21 included in the herd test. Test results shall be identified with each animal's official
22 individual identification.

23 (b) *Herd classification.* The herd classification under sub. (3). The
24 classification notice shall include the effective date and expiration date of the
25 classification. A classification takes effect on the effective date specified in the notice,
26 and supersedes any prior classification.

1 (11) REACTOR IDENTIFICATION. (a) No person may move a paratuberculosis
2 reactor under sub. (9) unless an accredited veterinarian first identifies that reactor with
3 a permanent paratuberculosis reactor identification approved by the department.

4 (b) No person may sell a paratuberculosis reactor under sub. (9) unless both of
5 the following apply:

6 1. An accredited veterinarian first identifies that reactor with a permanent
7 paratuberculosis reactor identification approved by the department.

8 2. The seller first discloses to the prospective buyer, in writing, that the animal
9 is a paratuberculosis reactor unless the reactor is sold directly to slaughter or as a
10 feeder animal.

11 (c) Within 30 days after an animal is determined to be a reactor under sub.
12 (9)(a) or (c), an accredited veterinarian shall do one of the following:

13 1. Identify the reactor with a permanent paratuberculosis reactor identification
14 approved by the department.

15 2. Collect a sample from that animal for a fecal culture test.

16 (d) Within 30 days after an animal tests positive for paratuberculosis on a fecal
17 culture test, an accredited veterinarian shall identify the reactor with a paratuberculosis
18 reactor identification approved by the department.

19 (12) HERD VACCINATION. No person may vaccinate cattle for paratuberculosis
20 except under a herd agreement with the department. The department may not authorize
21 vaccination in any herd in which the percentage of reactors in the last whole herd test
22 or split herd test was less than 7%, unless special circumstances warrant vaccination in
23 that herd.

1 (13) MISREPRESENTING HERD CLASSIFICATION. No seller may misrepresent the
2 classification, under sub. (3), of the herd from which cattle are being sold. A seller
3 who misrepresents a herd classification is not exempt from the implied warranty under
4 s. 95.195, Stats., and is subject to possible penalties under s. 95.99, Stats.

5 (14) DEPARTMENT DISCLOSURE OF HERD CLASSIFICATION. The department may
6 disclose a herd classification under sub. (3) with the written authorization of the herd
7 owner.

8 *NOTE:* See s. 95.232, Stats.

9 **SECTION 3.** ATPC 10.215 and 10.216 are repealed.

10 **SECTION 4.** ATPC 10.63 is repealed and recreated to read:

11 **ATPC 10.63 Johne's Disease in Goats; Herd Classification; Disclosure. (1)**

12 **DEFINITIONS.** In this section:

13 (a) "Anniversary date" means, for any herd of goats, one of the following:

14 1. The month and day on which samples are collected for the first annual herd
15 test conducted after July 1, 2000, if no annual herd test was conducted within one year
16 prior to that date. If the first annual herd test conducted after July 1, 2000 is a split
17 herd test, the "anniversary date" is the month and day on which samples are collected
18 from the last group of animals included in teat split herd test.

19 2. The month and day between July 1, 1999, and June 30, 2000, on which
20 samples were collected for an annual herd test, if an annual herd test was conducted
21 within that period.

22 3. The month and day on which samples were taken to complete the first split
23 herd test under a plan approved by the department under par. (5)(b).

1 (b) "Annual herd test" means an annual paratuberculosis test conducted on a
2 herd of goats under this section. An annual herd test includes a random herd test, a
3 split herd test or a whole herd test.

4 (c) "Herd" means a herd of goats.

5 (d) "Paratuberculosis" means the infectious and communicable disease of
6 domestic ruminants, commonly known as Johne's disease, which is caused by
7 *Mycobacterium paratuberculosis*.

8 (e) "Random herd test" means a paratuberculosis test performed under sub.
9 (5)(b).

10 (f) "Split herd test" means a herd test conducted under sub (5)(c).

11 (g) "Test eligible animals" means all goats 18 months or age or more.

12 (h) "Whole herd test" means a paratuberculosis test performed under sub.
13 (5)(a).

14 (2) EXEMPTION FROM IMPLIED WARRANTY. (a) The implied warranty under s.
15 95.195, Stats., does not apply to a sale of goats if the seller discloses all the following
16 to the buyer in writing, prior to sale:

17 1. The current herd classification, under sub. (3), of the herd from which the
18 goats are being sold.

19 2. That the goats are paratuberculosis reactors under sub. (9), if that is the
20 case.

21 (b) The implied warranty under s. 95.195, Stats., does not apply to goats sold
22 directly to slaughter.

1 (3) HERD CLASSIFICATION. (a) *Johne's preventive management level A.* The
2 department shall classify a herd as "Johne's preventive management level A" if an
3 annual herd test reveals no paratuberculosis reactors.

4 **NOTE:** Animals from a herd classified "Johne's preventive
5 management level A" normally have the lowest risk of transmitting
6 Johne's disease (paratuberculosis). The risk is normally reduced with
7 each additional year that the herd maintains the level A classification.
8 However, no herd classification ensures that an animal is free of Johne's
9 disease.

10
11 (b) *Johne's preventive management level B.* The department shall classify a
12 herd as "Johne's preventive management level B" if fewer than 5% of the animals
13 tested in an annual whole herd test or split herd test, or in a follow-up whole herd test
14 under par. (d)1., are paratuberculosis reactors.

15 (c) *Johne's preventive management level C.* The department shall classify a
16 herd as "Johne's preventive management level C" if at least 5% but not more than 15%
17 of the animals tested in an annual whole herd test or split herd test, or in a follow-up
18 whole herd test under par. (d)1., are paratuberculosis reactors.

19 (d) *Johne's preventive management level D.* The department shall classify a
20 herd as "Johne's preventive management level D" if any of the following apply:

21 1. A random herd test reveals one or more paratuberculosis reactors, unless the
22 department reclassifies the herd under par. (b) or (c) based on a follow-up whole herd
23 test.

24 2. More than 15% of the animals tested in a whole herd test or a split herd test
25 are paratuberculosis reactors.

1 (e) *Maximum risk for Johne's disease.* Every herd in this state, and every herd
2 from which goats are sold in this state, is automatically classified "maximum risk for
3 Johne's disease" unless one of the following applies:

4 1. The department classifies that herd under pars. (a) to (d). If the owner of
5 the classified herd fails to complete an annual herd test within the time required under
6 sub. (5), that classification expires and the herd is automatically classified "maximum
7 risk for Johne's disease" until the department reclassifies the herd under pars. (a) to
8 (d).

9 2. The department has classified that herd within one year prior to July 1,
10 2000. If the owner of the classified herd fails to complete an annual herd test within
11 the time required under sub. (5), the classification expires and the herd is automatically
12 classified "maximum risk for Johne's disease" until the department reclassifies the herd
13 under pars. (a) to (d).

14 **NOTE:** The herd classifications under pars. (a) to (e) are arranged from most
15 desirable (a) to least desirable (e). "Maximum risk for Johne's disease."
16 is the least desirable herd classification, because it signifies that the herd
17 owner does not have an annual paratuberculosis testing program. A
18 person buying goats from such a herd faces an unknown, but substantial,
19 risk that the goats are infected with Johne's disease.

20
21 (f) *Classification to include year.* A herd classification under pars. (a) to (d)
22 shall indicate the first year from which the herd has continuously held that
23 classification.

24 (4) **COMMINGLED GOATS; CLASSIFICATION.** (a) Except as provided in par. (c),
25 goats added to a herd from a herd with a less desirable classification under sub. (3)

1 retain that less desirable herd classification for 120 days after being added but do not
2 affect the classification of the herd to which they are added.

3 (b) Goats added to a herd from a herd with a more desirable classification are
4 immediately reclassified to the less desirable classification of the herd to which they are
5 added..

6 (c) If goats from herds with different classifications under sub. (3) are
7 temporarily assembled for sale or shipment, the least desirable classification assigned to
8 any of those source herds automatically applies to the temporarily assembled herd.

9 (d) Goats from herds classified as "Johne's preventive management level A,"
10 "Johne's preventive management level B," "Johne's preventive management level C,"
11 or "Johne's preventive management level D" that are sent by their owners to a
12 consignment sale do not constitute a temporarily assembled herd under par. (c), except
13 that animals which are allowed to have direct contact with each other for more than 24
14 hours constitute a temporarily assembled herd.

15 (5) ANNUAL HERD TEST. An annual herd test may be any of the following:

16 (a) *Whole herd test.* A whole herd test is performed on all test eligible
17 animals in the herd. All samples for the whole herd test shall be collected on the same
18 day or on consecutive days. Samples shall be collected on the anniversary date under
19 sub. (1)(a), or within 2 months before or after that date

20 (b) *Random herd test.* A random herd test is performed on a group of test
21 eligible animals randomly selected from the test herd by the person who collects the
22 test samples under sub. (6). The randomly selected group shall include at least 30 test
23 eligible animals, or at least 10% of the test eligible animals in the herd, whichever

1 group is larger. All samples for a random herd test shall be collected on the same day.
2 Samples shall be collected on the anniversary date under sub. (1)(a), or within 2
3 months before or after that date.

4 **NOTE:** A herd with less than 30 test eligible animals is not eligible for a
5 random herd test. The department may not classify a herd as "Johne's
6 preventive management level B" or "Johne's preventive management
7 level C" based on a random herd test. If a random herd test reveals one
8 or more reactor animals, the herd is classified as "Johne's preventive
9 management level D" until the herd owner completes a follow-up whole
10 herd test. See sub. (3)(d)1.

11
12 (c) *Split herd test.* A split herd test is performed, over the course of not more
13 than 12 months, on all test eligible animals in a herd. A split herd test shall comply
14 with all the following requirements:

15 1. The department shall approve a herd testing plan before any animals are
16 tested. The department shall grant or deny approval, in writing, within 30 days after
17 the herd owner submits a proposed testing plan to the department.

18 2. All testing shall be completed according to the plan approved by the
19 department.

20 3. All test eligible animals in the herd shall be tested at least once during the 12
21 month period ending on the herd's anniversary date.

22 (6) **COLLECTING TEST SAMPLES.** Annual herd test samples shall be collected by
23 an accredited veterinarian, or by an employee of the department or the federal bureau.
24 The person who collects an annual herd test sample shall do all the following:

25 (a) Determine the animals to be tested, under sub. (5).

26 (b) Determine the type of test to be performed under sub. (7).

1 (c) Collect an appropriate sample from each test animal, based on the type of
2 test to be performed under sub. (7).

3 (d) Identify each sample with the official individual identification of the animal
4 from which it was collected, and the date on which it was collected.

5 (e) Transmit the test samples to the laboratory testing those samples under sub.
6 (7).

7 **NOTE:** A herd owner may have animals tested for Johne's disease at any time.
8 The department will not use the test results to classify the tested herd
9 under this section unless the test complies with this section and the herd
10 owner asks the department to classify the herd.

11
12 This rule does not prohibit a person from collecting test samples from
13 animals that are too young to be "test eligible" under ATCP 10.63(1)(g),
14 but the department will not consider test results from those animals when
15 determining the appropriate herd classification. To facilitate review of
16 results, the person collecting test samples should separate "test eligible"
17 from "non-test eligible" samples, and should prepare separate test
18 submission forms for each category.

19
20 (7) LABORATORY TESTING. Annual herd test samples shall be tested by the
21 department, the federal bureau, or a laboratory approved by the department or the
22 federal bureau. The laboratory shall use one of the following tests:

23 (a) The fecal culture test.

24 (b) Another test approved by the department.

25 (8) TEST RESULTS. A laboratory performing tests under sub. (7) shall report
26 the test results to the department within 10 days. If the herd owner asks the department
27 to classify a herd based on the results of an annual herd test, the department shall
28 classify the herd under sub. (3) within 30 days after it receives both the test results and

1 the herd owner's request. The department shall issue a classification notice under sub.
2 (10) to the herd owner.

3 **NOTE:** Under s. ATCP 10.02 and 10.03, a veterinarian or laboratory that
4 diagnoses or finds evidence of Johne's disease must report that diagnosis
5 or finding to the department within 10 days, in writing or by telefax.
6

7 (9) PARATUBERCULOSIS REACTORS. An animal is a paratuberculosis reactor if
8 any of the following apply:

9 (a) The animal tests positive on the fecal culture test.

10 (b) The animal tests positive on any other test which the department approves
11 and deems conclusive.

12 (10) NOTICE TO HERD OWNER. Whenever the department classifies a herd
13 under sub. (3) based on an annual herd test, or based on a follow-up whole herd test
14 under sub. (3)(d)1., the department shall promptly provide the herd owner with all the
15 following information in writing:

16 (a) *Individual animal test results.* Individual test results for each animal
17 included in the herd test. Test results shall be identified with each animal's official
18 individual identification.

19 (b) *Herd classification.* The herd classification under sub. (3). The
20 classification notice shall include the effective date and expiration date of the
21 classification. A classification takes effect on the effective date specified in the notice,
22 and supersedes any prior classification.

23 (11) REACTOR IDENTIFICATION. (a) No person may move a paratuberculosis
24 reactor under sub. (9) unless an accredited veterinarian first identifies that reactor with
25 a permanent paratuberculosis reactor identification approved by the department.

1 (b) No person may sell a paratuberculosis reactor under sub. (9) unless both of
2 the following apply:

3 1. An accredited veterinarian first identifies that reactor with a permanent
4 paratuberculosis reactor identification approved by the department.

5 2. The seller first discloses to the prospective buyer, in writing, that the animal
6 is a paratuberculosis reactor unless the reactor is sold directly to slaughter.

7 (c) Within 30 days after an animal tests positive for paratuberculosis, an
8 accredited veterinarian shall identify the reactor with a paratuberculosis reactor
9 identification approved by the department.

10 (12) HERD VACCINATION. No person may vaccinate goats for paratuberculosis
11 except under a herd agreement with the department. The department may not authorize
12 vaccination in any herd in which the percentage of reactors in the last whole herd test
13 or split herd test was less than 7%, unless special circumstances warrant vaccination in
14 that herd.

15 (13) MISREPRESENTING HERD CLASSIFICATION. No seller may misrepresent the
16 classification, under sub. (3), of the herd from which goats are being sold. A seller
17 who misrepresents a herd classification is not exempt from the implied warranty under
18 s. 95.195, Stats., and is subject to possible penalties under s. 95.99, Stats.

19 (14) DEPARTMENT DISCLOSURE OF HERD CLASSIFICATION. The department may
20 disclose a herd classification under sub. (3) with the written authorization of the herd
21 owner.

22 *NOTE:* See s. 95.232, Stats.

23 **SECTION 5.** ATCP 11.01(60) is repealed.

1 **SECTION 6.** ATCP 11.10(3)(c) is created to read:

2 ATCP 11.10(3)(c) *Paratuberculosis*. Within 30 days after a bovine animal is
3 determined to be a paratuberculosis reactor, an accredited veterinarian shall identify the
4 reactor with a permanent paratuberculosis reactor identification approved by the
5 department.

6 **SECTION 7.** ATCP 11.17 is created to read:

7 **ATCP 11.17 Intrastate movement of bovine animals; paratuberculosis**
8 **reactors.** No person may sell or move an animal determined to be a paratuberculosis
9 reactor under s. ATCP 10.21(9) unless an accredited veterinarian first identifies that
10 reactor with a permanent paratuberculosis reactor identification approved by the
11 department.

12 **SECTION 8.** ATCP 11.60(2) and (note) are repealed and recreated to read:

13 ATCP 11.60(2) **PARATUBERCULOSIS REACTORS; SALE OR MOVEMENT.** No
14 person may sell or move an animal determined to be a paratuberculosis reactor under s.
15 ATCP 10.21(9) or 10.63(9) unless an accredited veterinarian first identifies that animal
16 under s. ATCP 10.21(11)(a) or s. ATCP 10.63(11)(a).

17 **NOTE:** ATCP 10.21(11) and ATCP 10.63(11) also require the seller of a
18 paratuberculosis reactor to disclose to the buyer, in writing, that the
19 animal is a paratuberculosis reactor unless the animal is sold directly to
20 slaughter or as a feeder animal.

21
22 **SECTION 9.** ATCP 11.60(4) is amended to read:

23 ATCP 11.60(4) **PERMIT TO MOVE.** The department may issue a permit
24 allowing the movement of animals under sub. ~~(2)~~ or (3) for slaughter or other purposes
25 prescribed by the department in the permit. Movement of animals is subject to all

1 terms and conditions prescribed by the department in the permit. The department shall
2 grant or deny a permit under this subsection within 5 business days after the
3 department receives a complete permit application containing all information required
4 by the department.

EFFECTIVE DATE: The rules contained in this order shall take effect on July
1, 2000.

Dated this 9 day of August, 1999

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Ben Brancel
Ben Brancel, Secretary