Chapter ATCP 60

DAIRY FARMS

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Note: Chapter Ag 60 was renumbered ch. ATCP 60 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448.

Subchapter I — Definitions

ATCP 60.01 Definitions. As used in this chapter:

(1) "Bulk tank" means a permanent or semi–permanent tank or container used to receive, cool or store bulk quantities of milk on a dairy farm. "Bulk tank" does not include milk cans.

(1m) "C–I–P equipment" means any form of equipment which is designed to be cleaned in place by the mechanical circulation of cleaning and sanitizing solutions onto interior milk contact surfaces. "C–I–P equipment" includes C–I–P milking equipment, C–I–P pipelines and C–I–P bulk tanks.

(2) "C–I–P milking equipment" means equipment items including milker claws, inflations, weigh jars, meters, milk hoses, milk receivers, takeoff units and milk pumps, which are designed to be cleaned in place by the mechanical circulation of cleaning and sanitizing solutions onto interior milk contact surfaces.

(3) "C–I–P milk pipelines" means permanently mounted milk pipelines and their appurtenances which are designed to be cleaned in place by the mechanical circulation of cleaning and sanitizing solutions onto interior milk contact surfaces.

(4) "Cowyard" means an enclosed or unenclosed area, approximately adjacent to a milking barn or parlor, in which cows or goats congregate. "Cowyard" includes cow walkways, feeding areas, watering areas, washing areas and housing areas located outside but adjacent to a milking barn or parlor.

(5) "Dairy farm" means a dairy farm as defined in s. 97.22 (1) (a), Stats., operated by a milk producer.

(6) "Dairy plant" means a dairy plant as defined in s. 97.20 (1) (a), Stats.

(7) "Dairy plant operator" means a person required to hold a license for the operation of a dairy plant under s. 97.20, Stats. "Dairy plant operator" includes an employe or agent of the dairy plant operator.

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

(8m) "Drug" has the meaning given in 21 USC 321 (g). "Drug" includes antibiotics and inhibitory substances.

(9) "Equipment" means an implement, vessel, machine or apparatus, other than a utensil, which:

(a) Has one or more milk contact surfaces; and

(b) Is used to draw milk from cows or goats, or to transport, hold, handle, cool or store milk on a dairy farm.

(10) "Food division" means the department's division of food safety.

(11) "Grade A farm" means a dairy farm for which a grade A permit is required under s. ATCP 60.03 and s. 97.22 (3), Stats.

(12) "Grade A milk" means grade A milk as defined in s. 97.24 (1) (b), Stats.

(13) "Grade B farm" means a dairy farm other than a grade A farm.

(14) "Grade B milk" means milk other than grade A milk.

(15) "Key violation" means any of the following:

(a) A repeat violation of any dairy farm standard under subch. III, as determined on 2 consecutive regular inspections of a dairy farm.

(b) An initial violation of any dairy farm standard under subch. III if the violation creates a substantial risk of milk adulteration, whether or not the violation constitutes an imminent health hazard. The following conditions are considered key violations under this paragraph unless the inspector determines, under all of the surrounding circumstances, that they do not create a substantial risk of milk adulteration:

1. Unclean milk contact surfaces of equipment or utensils.

2. Filthy conditions in a milking barn or parlor, such as several days' accumulation of manure in gutters or other areas.

3. Filthy conditions in a cowyard, resulting in very dirty cows.

4. Filthy conditions in a milkhouse.

5. Water supply, water pressure, or water heating facilities fail to comply with this chapter.

6. No access to a toilet facility on the farm premises, or to a handwashing facility in the milkhouse.

7. Violation of standards under this chapter related to well construction or potability of water supply, including any cross connection between potable and non–potable water sources.

8. Lack of an approved sanitizer in the milkhouse or adjacent storage areas to meet the sanitizing requirements under s. ATCP 60.09 (4).

9. Visibly dirty udders and teats on cows being milked.

10. Milk not cooled in compliance with s. ATCP 60.12 (4).

11. Rodent activity in the milkhouse.

12. Dead animals in the milking barn or cowyard.

13. Violations of standards related to the design, construction or installation of equipment or utensils, if the violation creates a substantial risk of adulteration.

(c) Two or more initial violations of dairy farm standards under subch. III which combine to create a substantial risk of milk adulteration, whether or not the violations individually create a substantial risk of adulteration.

(16) "Milk" means milk as defined in s. 97.22 (1) (e), Stats.

(17) "Milk contact surfaces" means all surfaces of equipment or utensils which may come in contact with milk, or from which liquids may drain, splash or be drawn into milk.

(18) "Milkhouse" means an enclosed facility, separate from the milking barn or parlor, in which milk is cooled or stored, and in which equipment and utensils are cleaned, sanitized and stored. "Milkhouse" includes a milkhouse sharing one or more walls with a milking barn or parlor.

(19) "Milking and milk handling system" means an automated system, and all components of that system, used to draw milk from cows or goats, or to transport milk to a bulk tank or other container on a dairy farm. "Milking and milk handling system" includes C–I–P milking equipment and C–I–P milk pipelines.

(20) "Milking barn" means a roofed and enclosed facility, other than a milking parlor, in which cows or goats are milked on a dairy farm.

(21) "Milking parlor" means a roofed and enclosed facility which is designed and used exclusively for the milking of cows or goats, and which is not designed or used to house cows, goats or other animals.

(22) "Milk producer" means a milk producer as defined in s. 97.22 (1) (f), Stats.

(23) "Person" means an individual, partnership, firm, association, corporation or any other business unit or entity.

(24) "Reinspection" means either of the following:

(a) A dairy farm inspection, other than a regularly scheduled inspection under s. ATCP 60.24 (2) or (3), which is made by the department because the department or a special dairy farm inspector finds a key violation of this chapter.

(b) A dairy farm inspection, other than a regularly scheduled inspection under s. ATCP 60.24 (2) or (3), for which a fee is chargeable under s. ATCP 60.18 (5), 60.19 (9), 60.20 (5), 60.25 (4), 60.26, 60.27 (6), or 60.28 (2) or (3).

(25) "Sanitize" means to destroy pathogens and other microorganisms, to the maximum extent practicable, by applying a sanitizer or sanitizing method approved by the department to an otherwise clean surface.

(26) "Secretary" means the secretary of the department.

(27) "Single–service articles" means utensils, including containers, filters and other articles, which are designed to be used only once prior to disposal.

(28) "Special dairy farm inspector" means an employe or agent of a dairy plant operator who is appointed by the department as an inspector under s. ATCP 60.32 to inspect dairy farms as the department's agent.

(29) "Utensil" means any hand–held or similarly portable container, device, article or implement which:

(a) Has one or more milk contact surfaces; and

(b) Is used to draw milk from cows or goats or to transport, hold, strain, handle or store milk on a dairy farm.

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89; cr. (8m) and am. (24) (b), Register, June, 1992, No. 438, eff. 7–1–92; am (10), Register, November, 1994, No. 467, eff. 12–1–94.

Subchapter II — License and Permit Requirements; Fees

ATCP 60.02 Milk producer license; fees. (1) LICENSE REQUIREMENT. No person may operate as a milk producer without an annual license from the department, as provided under s. 97.22 (2), Stats. A license expires on April 30 of each year. A separate license is required for each dairy farm at which milk is produced. A license is not transferable between persons or dairy farms. As a condition to licensing, a milk producer shall comply with applicable provisions of this chapter.

(2) LICENSE APPLICATION; RENEWAL. (a) *General.* A license application, signed by the milk producer, shall be made on a form provided by the department. A dairy plant operator, after inspecting the dairy farm under s. ATCP 60.24 (1), shall submit the application on behalf of the milk producer, and shall certify that the dairy farm facilities comply with applicable requirements under this chapter. An annual license may be renewed each year upon payment of the required fees under sub. (4), without further application by the milk producer.

(b) *Action on license application.* Within 15 days after the department receives a complete license application under par. (a), the department shall do one of the following:

1. Grant the application.

2. Deny the application.

3. Issue a temporary license under par. (c).

(c) *Temporary license.* The department may issue a temporary license, for a period not to exceed 40 business days, pending final action on a producer's application for an annual dairy farm license. The department shall grant or deny the annual license application before the temporary license expires. If the department denies the annual license application before the temporary license expires, the temporary license is automatically terminated when the producer receives written notice of the denial. The holder of a temporary license acquires no rights beyond those conferred by the temporary license under this paragraph.

(3) PRE–LICENSE INSPECTION. The department may inspect a dairy farm, as it deems necessary, before issuing a license to a milk producer. If the dairy farm does not meet the minimum standards required for licensing, the department shall deny the license application.

(4) LICENSE FEE. (a) The annual fee for a milk producer license under this section is $20. A dairy plant operator shall pay the annual milk producer license fee for every dairy farm from which the dairy plant receives milk at the time the fee payment is due. An applicant for an annual dairy plant license under s. 97.20, Stats., shall submit the required producer license fees with the applicant's dairy plant license application.

(b) A dairy plant operator who pays a milk producer license fee under par. (a) may charge that fee back to a milk producer if the dairy plant operator notifies the milk producer in writing of the dairy plant operator's intent to charge the fee to the milk producer, but the dairy plant operator may not deduct the fee from any payment which the dairy plant operator owes the milk producer for milk which the dairy plant operator receives from the milk producer. A dairy plant operator may not discriminate between milk producers with respect to fee charges under this paragraph, but may charge back license fees to all milk producers who cease shipping milk to the operator's dairy plant during the license year.

Note: See s. 97.22 (2) (c), Stats.

(5) DENIAL OF LICENSE APPLICATION. If the food division denies a milk producer's application for a license under this section, the food division shall issue the denial in writing and shall state the reasons for the denial. The denial notice shall include a notice of the applicant's right to hearing under s. ATCP 60.31. If

a food division inspector inspects the applicant's dairy farm, the inspector may deny the application by noting the denial on the inspection report given to the producer, provided that the inspection report includes the required information under this subsection.

(6) TRANSFER BETWEEN DAIRY PLANTS. If a milk producer transfers from one dairy plant to another, the dairy plant which acquires the producer as a patron shall notify the department in writing within 3 business days after receiving any milk from the producer. No new license is required.

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89; am. (4), Register, June, 1992, No. 438, eff. 7–1–92; r. and recr. (4), Register, November, 1994, No. 467, eff. 12–1–94.

ATCP 60.03 Grade A permit; fees. (1) PERMIT REQUIREMENT. No milk producer may sell or distribute milk as grade A milk without an annual grade A permit from the department, as provided under s. 97.22 (3), Stats. A grade A permit is not valid unless the producer also holds a valid milk producer license under s. ATCP 60.02. A grade A permit expires on April 30 of each year. A separate grade A permit is required for each dairy farm at which milk is produced for distribution or sale as grade A milk. A grade A permit is not transferable between persons or dairy farms. A grade A permit may be issued by a department inspector in the form of an endorsement on an inspection report given to the milk producer. As a condition to holding a grade A permit, a milk producer shall comply with applicable provisions of this chapter.

(2) PERMIT APPLICATION; RENEWAL. (a) *General.* A grade A permit application, signed by the milk producer, shall be made on a form provided by the department. A dairy plant operator, after inspecting the dairy farm under s. ATCP 60.24 (1), shall submit the application on behalf of the milk producer, and shall certify that the dairy farm facilities comply with applicable grade A requirements under this chapter. A grade A permit may be renewed each year in connection with the renewal of the milk producer's license under s. ATCP 60.02, without further application by the milk producer.

(b) *Action on permit application.* Within 15 days after the department receives a complete grade A permit application under par. (a), the department shall do one of the following:

1. Grant the application after inspecting the dairy farm.
2. Deny the application.

(3) PRE-PERMIT INSPECTION. The department shall inspect a dairy farm before issuing a grade A permit for that dairy farm. If the dairy farm does not meet the minimum standards required for issuance of a grade A permit, the department shall deny the grade A permit application.

(4) DENIAL OF PERMIT APPLICATION. If the food division denies a milk producer's application for a grade A permit under this section, the food division shall issue the denial in writing and shall state the reasons for the denial. The denial notice shall include a notice of the applicant's right to hearing under s. ATCP 60.31. A food division inspector, after inspecting the applicant's dairy farm, may deny a grade A permit application by noting the denial on the inspection report given to the producer, provided that the inspection report includes the required information under this subsection.

(5) TRANSFER BETWEEN DAIRY PLANTS. If a milk producer transfers from one dairy plant to another, the dairy plant which acquires the producer as a patron shall notify the department in writing within 3 business days after receiving any milk from the producer. No new grade A permit is required.

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89; am. (2) (a), r. (4), renum. (5) and (6) to be (4) and (5), Register, June, 1992, No. 438, eff. 7–1–92.

ATCP 60.04 Reinspection fees. (1) FEE REQUIREMENT. If the department conducts a reinspection as defined in s. ATCP 60.01 (24), the department shall charge a reinspection fee for the reinspection, pursuant to s. 97.22 (4), Stats. A reinspection fee is payable when the reinspection is completed, and is due upon written demand from the department.

(2) FEE AMOUNT. (a) Except as provided under par. (b), the reinspection fee under sub. (1) is $20.

(b) If the department has suspended a milk producer's license or grade A permit, and reinspection is required under this chapter for reinstatement of the producer's license or grade A permit, the reinspection fee is $40.

(3) DAIRY PLANT TO PAY REINSPECTION FEE FOR MILK PRODUCER. A dairy plant operator shall pay the dairy farm reinspection fee under this section for a milk producer if the dairy plant was receiving milk from the reinspected dairy farm when the reinspection was made. The department may issue a statement of reinspection fees payable by a dairy plant operator, and may demand payment from the dairy plant operator when it issues an application form for the renewal of the dairy plant operator's license under s. 97.20, Stats. A dairy plant operator who pays a dairy farm reinspection fee shall charge that fee back to the milk producer. A dairy plant operator shall notify each producer in writing that reinspection fees paid on behalf of the producer will be charged back to the producer.

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89; r. and recr. (2), Register, June, 1992, No. 438, eff. 7–1–92.

ATCP 60.05 Fee payment obligations; enforcement. (1) LICENSED DAIRY PLANT. The department shall not issue or renew a dairy plant license under s. 97.20, Stats., unless the license applicant pays all fees which are due and payable under this subchapter, as set forth in a written statement from the department. The department shall refund a fee paid under protest if the department determines that the fee was not due and payable as a condition to licensing.

(2) UNLICENSED DAIRY PLANT. If a milk producer ships milk to a dairy plant which is not subject to licensing under s. 97.20, Stats., the unlicensed dairy plant may voluntarily submit applications and pay fees required under this subchapter on behalf of a milk producer, provided that the dairy plant is authorized by the milk producer to submit the applications and pay the fees.

(3) MILK PRODUCER. If no dairy plant pays the fees required under this subchapter on behalf of a milk producer, the department may demand payment from the milk producer. If, after reasonable notice and demand for payment, a milk producer fails to pay a fee which was due and payable prior to the current license year, the department may suspend the milk producer's license or grade A farm permit.

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89.

Subchapter III — Dairy Farm Standards

ATCP 60.06 Milking barn or parlor. All milking operations on a dairy farm shall be conducted in a milking barn or parlor, which shall be constructed and maintained in compliance with the following requirements:

(1) FLOORS AND GUTTERS; CONSTRUCTION. Except as authorized by the department in writing, floors, gutters and gutter covers in milking barns and parlors shall be constructed of concrete or other materials which are equally impervious and easy to clean. Floors and gutters shall be constructed and maintained so that they can be kept clean. Floors and gutters shall be sloped to drain properly, and shall be free of excessive breaks or worn areas which may allow pooling of liquid wastes. Except as authorized by the department in writing, floors and gutters constructed after July 1, 1989, shall have a slope of at least one inch per 10 feet to assure proper drainage.

(2) WALLS AND CEILINGS; CONSTRUCTION. Walls and ceilings in milking barns and parlors shall be constructed and maintained so that they can be kept clean. Walls and ceilings shall be painted, whitewashed or otherwise finished so that they are light colored and easy to clean. The ceiling shall be constructed and maintained

to prevent dust and chaff from entering the milking barn or parlor from above.

(3) LIGHTING. Natural or artificial lighting, or both, shall be provided in milking barns and parlors to ensure adequate illumination for daytime and nighttime milking operations. Except where additional lighting is required for milking parlors under sub. (9), there shall be at least 10 foot candles of illumination in all working areas where milking operations are being performed.

(4) VENTILATION. Ventilation in milking barns and parlors shall be adequate to prevent visible condensation on walls and ceilings, and to prevent excessive odors.

(5) ANIMALS EXCLUDED. No swine or fowl may be housed in, or allowed to enter a milking barn or parlor. Nonmilking livestock shall be confined in stalls, stanchions or pens. Areas where cows or goats are being milked shall be kept free of excrement from nonmilking livestock.

(6) MAINTENANCE AND CLEANLINESS; GENERAL. The interior of every milking barn or parlor, and all areas used in connection with milking operations, shall be kept clean and in a good state of repair. Floors, gutters, walls, ceilings, animal confinement facilities, pipelines and equipment shall be kept free of accumulated litter and filth. Bedding material shall be clean and dry. Milk stools, surcingles and anti–kickers shall be kept clean, and shall be stored above the floor when not in use.

Note: To comply with this subsection, producers should remove manure from milking barns daily, and from milking parlors after every milking.

(7) FEED STORAGE AND HANDLING. Dust–tight covered containers or separate storage facilities are required for ground, chopped or concentrated feed. Feed may be stored in the milking portion of the barn only in a manner that does not increase the dust content of the air, attract flies or interfere with the cleaning of the floor. Open feed dollies or carts may be used for distributing feed, but not for storing feed in the milking barn.

(8) OVERCROWDING PROHIBITED. Areas used for milking operations may not be overcrowded.

Note: Inadequate ventilation, excessive odors, livestock in walks or feed alleys, or calves tied between cows in a milking line indicate overcrowded conditions.

(9) MILKING PARLOR; ADDITIONAL REQUIREMENTS. (a) *Cleaning and storage of C–I–P milking equipment.* C–I–P milking equipment may be cleaned, sanitized and stored in a milking parlor if all of the following conditions are met:

1. There are at least 20 foot candles of illumination in all areas of the milking parlor where C–I–P milking equipment is cleaned, sanitized or stored.

2. Doorways to and from the milking parlor are provided with tight–fitting solid doors which are kept closed when the doorways are not in use.

3. Openings to the milking parlor are protected against entry by insects, rodents and other pests.

4. No animals are housed in the milking parlor at any time.

5. Liquid wastes from milking parlor operations are drained and removed in a sanitary manner, so that there are no liquid waste accumulations in the milking parlor.

6. C–I–P milking equipment, if cleaned, sanitized or stored in the milking parlor, is designed, installed, handled and stored so that milk contact surfaces are protected from contamination at all times. Cleaning, handling and storage shall comply with applicable requirements under s. ATCP 60.09.

(b) *Manual cleaning of milk contact surfaces prohibited in milking parlor.* If manual cleaning of milk contact surfaces is necessary, the milk contact surfaces shall be manually cleaned in the milkhouse. Milk contact surfaces may not be manually cleaned in a milking parlor.

(c) *Prep stalls; hot water supply.* If cows or goats are hosed clean in a milking parlor prep stall prior to milking, rather than being manually cleaned at the milking stanchions, hot water under pressure shall be supplied to the prep stall and used for cleaning purposes. There shall be an adequate supply of hot water so that all cows or goats processed through the prep stall can be fully cleaned without impairing the availability of hot water for other milking parlor or milkhouse operations.

(10) DRUG STORAGE. No drug or medicinal item may be kept in a milking barn or parlor unless it is designed or prescribed for use on dairy animals. Drugs and medicinal items stored in a milking barn or parlor shall be stored above the floor, on racks or in a cabinet. Drugs and medicinal items shall be stored in a manner which prevents the contamination of milk, or equipment and utensils coming in contact with milk. Drugs and medicinal items shall be clearly labeled to indicate their identity and intended use. Prescription drugs shall be labeled as provided under s. ATCP 60.13 (6). Drugs and medicinal items intended solely for non–lactating animals shall be kept separate from those used on lactating animals.

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89; cr. (10), Register, June, 1992, No. 438, eff. 7–1–92.

ATCP 60.07 Milkhouse. (1) REQUIREMENT. Every dairy farm shall have a milkhouse which shall be used for cooling and storing milk. A milkhouse shall be separate from a milking barn or parlor, but may share common walls with a milking barn or parlor. All equipment and utensils shall be cleaned, sanitized and stored in the milkhouse. This does not apply to C–I–P milk pipelines which are mechanically cleaned in place in a milking barn or parlor, or to C–I–P milking equipment which is mechanically cleaned and stored in a milking parlor under s. ATCP 60.06 (9) (a).

(2) CONSTRUCTION. (a) *Floors.* A milkhouse floor shall be constructed of concrete or other impervious materials, and shall be easily cleanable. This does not prohibit anti–slip floor surfaces which are easily cleanable. The floor shall be sloped for proper drainage to a floor drain. Floor drains shall be readily accessible. A floor drain shall be trapped if the floor drain is connected to a sanitary sewer system.

(b) *Walls and ceilings.* Milkhouse walls and ceilings shall be constructed and finished so that they are impervious to water, and are light colored and easily cleanable.

(c) *Doors and windows.* A milkhouse shall not open directly into a barn, stable or milking parlor, or into a room used for domestic purposes unless the opening is equipped with a tight–fitting, self–closing and solid door. All milkhouse openings to the outdoors shall be screened or otherwise protected against entry by insects, rodents or other pests. Doors and windows to the outdoors shall be tight–fitting, and shall be kept closed during dusty weather. External doors shall be self–closing. Swinging screen doors, if any, shall open outward.

(d) *Lighting.* Natural or artificial lighting, or both, shall be provided in a milkhouse to ensure adequate illumination for daytime and nighttime operations. There shall be at least 20 foot candles of illumination in all working areas of the milkhouse. Artificial lights located over a bulk tank shall be shielded to protect milk from contamination from broken glass.

(e) *Ventilation.* Ventilation in a milkhouse shall be adequate to prevent excessive odors, and adequate to prevent visible condensation on floors, walls, ceilings, or clean equipment or utensils. Vents shall be screened, and shall be located and maintained to prevent contamination of bulk tanks or clean equipment and utensils.

(f) *Water heating capacity.* Hot water capacity shall be adequate for all milkhouse operations. Hot water heaters or hot water supply systems shall have a capacity of at least 10 gallons for washing equipment and utensils if milk is stored or cooled in cans, 30 gallons for manual washing of bulk tanks, 50 gallons for mechanical washing of bulk tanks,and 75 gallons for cleaning C–I–P equipment. Alternative systems, including heat recovery and continuous flow systems, may be authorized by the department in writing if they provide adequate hot water for all milkhouse operations.

(g) *Wash and rinse vat.* A milkhouse shall be equipped with a two–compartment wash and rinse vat for cleaning equipment and utensils. The vat shall be served by potable hot and cold running water from a faucet or faucets located directly over the vat. Water shall enter and leave the vat by means which preclude splash. A vat designed for mechanical cleaning of C–I–P milking equipment may serve as one compartment of a two–compartment wash and rinse vat under this paragraph, provided that the cleaning–in–place inflation rack and all C–I–P milking equipment are completely removed from the vat while other equipment and utensils are being washed, rinsed and sanitized in the vat.

(h) *Handwashing facility.* A milkhouse shall be equipped with a fixed handwashing facility which is separate from the wash and rinse vat under par. (g). The handwashing facility shall be served by potable hot and cold running water from a faucet or faucets located directly over the facility. Water shall enter and leave the handwashing facility by means which preclude splash. Single service sanitary towels and soap shall be available at all times for use at the handwashing facility. A handwashing facility may be located in a room immediately adjacent to the milkhouse, provided that it is readily accessible from the milkhouse. This paragraph does not apply to grade B dairy farms on which the currently used bulk tank was installed prior to January 1, 1979, or on which milk is stored and cooled only in cans.

Note: A removable basin held by a support ring at least 30 inches above the floor, and installed beneath a water faucet, is minimally adequate to comply with this paragraph.

(i) *Bulk tank hose port.* If a bulk tank is used to receive and hold milk in a milkhouse, the milkhouse shall have a hose port opening in the outside wall to permit the removal of milk from the bulk tank. The hose port opening shall be at least 6 inches above the floor of the milkhouse, and shall be equipped with a tight–fitting door which shall be kept closed except when the hose port is in use. A paved surface of concrete or other readily cleanable material shall be installed adjacent to the outside wall of the milkhouse, immediately under the bulk tank hose port. The surface shall cover sufficient ground area to protect the milk hose from ground contamination.

Note: The paved surface under this paragraph should cover an area of at least 4 ft. by 4 ft.

(3) MAINTENANCE AND SANITATION. The floors, walls, ceilings, windows, hose port assembly, and all equipment of a milkhouse shall be kept clean and in a good state of repair. Liquid wastes from milkhouse operations shall be drained and removed in a sanitary manner. Equipment and utensils shall be cleaned and maintained in compliance with s. ATCP 60.09. A milkhouse shall be kept free of insects, rodents and other pests. Animals shall be kept out of the milkhouse at all times. Potential sources of milk contamination, including materials which may attract or harbor pests, shall be excluded from the milkhouse.

(4) STORAGE. (a) *General.* Articles stored in a milkhouse shall be stored above the floor, on racks or in a cabinet. Articles shall be stored in a manner which prevents contamination of milk, and equipment and utensils coming in contact with milk.

Note: Extraneous articles which are not used in the milkhouse should not be stored in the milkhouse.

(b) *Drugs and medicinal items.* No drug or medicinal item may be kept in a milkhouse unless it is designed or prescribed for use on dairy animals. If drugs or medicinal items are kept in a milkhouse, they shall be stored in an enclosed cabinet, separate from all other articles stored in the milkhouse. Drugs and medicinal items shall be clearly labeled to indicate their identity and intended use, and prescription drugs shall be labeled as provided under s. ATCP 60.13 (6). Drugs and medicinal items intended solely for non–lactating animals shall be kept separate from those used on lactating animals.

(c) *Pesticides.* No pesticide, except for sanitizers, germicides, disinfectants and other pesticides labeled and used for routine milkhouse sanitation purposes, may be stored in a milkhouse. If pesticides are kept in a milkhouse, they shall be stored in an enclosed cabinet, separate from all other articles stored in the milkhouse.

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89; am. (2) (f) and (h), (4) (b), Register, June, 1992, No. 438, eff. 7–1–92.

ATCP 60.08 Water supply. (1) GENERAL. An adequate supply of potable water shall be supplied under pressure for milkhouse and milking operations. Water used for milkhouse and milking operations, including water used to cool milk in a plate or tubular cooler, shall be potable. Potable water shall comply with the health–related drinking water standards under s. NR 809.30.

Note: A properly designed and installed water supply tank which utilizes static head pressure to provide running water to the milkhouse is minimally adequate to comply with this paragraph.

(2) BACKFLOW PROTECTION; CROSS–CONNECTIONS. A potable water supply system on a dairy farm shall be designed, constructed, installed and maintained to prevent contamination of potable water supplies through backflow, backsiphonage, cross–connections or any other connection to the potable water supply system. An air gap shall be maintained between every potable water outlet and the flood rim of the fixture which it supplies, and between the potable water outlet and every other source of potential contamination, unless alternative protection is approved under s. Comm 82.41 (1) (j).

Note: Comm 82 is a rule administered by the department of commerce.

(3) WELL CONSTRUCTION. Wells used to supply water for milkhouse and milking operations on grade A farms shall comply with ch. NR 811 or 812 in the case of a community water system.

Note: Wells on grade A and grade B farms are currently subject to well construction requirements under chs. NR 811 or 812, which are rules administered by the Wisconsin department of natural resources.

(4) WATER TRANSPORTED TO DAIRY FARM. If water in containers or tanks is transported to a dairy farm for milkhouse or milking operations, the containers and tanks shall be sealed and protected from contamination. The containers and tanks shall be thoroughly cleaned and sanitized before being filled with potable water for use at the dairy farm. A suitable pump, hose and fittings shall be used to transfer water from transport containers and tanks to storage tanks at the dairy farm, so that the water is not contaminated during transfer.

(5) WATER QUALITY TESTING BY DAIRY PLANT. A dairy plant operator shall biennially sample the water supply of each milk producer whose milk is sold or delivered to the dairy plant. The dairy plant operator shall have each sample analyzed at a laboratory certified by the department of health and social services to perform water quality analyses. Water samples shall be analyzed for compliance with the health–related drinking water standards under s. NR 809.30. The dairy plant operator shall submit each water quality test result to the department within 30 days after the test result is received by the dairy plant. If the analysis of any water sample indicates that the water supply of a dairy farm may be unsafe, the dairy plant shall report the test results to the department within 3 business days, and shall have the water supply promptly resampled and analyzed.

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89; correction made under s. 13.93 (2m) (b) 1. and 7., Stats., Register, June, 1992, No. 438, eff. 7–1–92; **correction in (2) and (3) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1999, No. 520.**

ATCP 60.09 Equipment and utensils. (1) CONSTRUCTION; GENERAL. Equipment and utensils shall be constructed of smooth, non–absorbent, corrosion–resistant and non–toxic materials. Equipment and utensils shall be designed and constructed so that they can be easily cleaned and shall be durable under repeated conditions of use. Surfaces shall be free of breaks and corrosion. Joints and seams shall be smooth and flush. Milk pails used for hand milking and stripping shall be seamless and of a hooded type. Multiple–use woven material shall not be used for straining milk. Milking and milk handling systems shall comply with s. ATCP 60.10.

(2) MILK CONTACT SURFACES; CONSTRUCTION. Milk contact surfaces of equipment and utensils shall be constructed of smooth, non–toxic and non–absorbent materials. Only the following materials may be used on milk contact surfaces, unless another material is specifically authorized by the department in writing:

(a) Stainless steel of the American Iron and Steel Institute 300 Series, or an equally corrosion–resistant metal.

(b) Heat resistant glass.

(c) Plastic, rubber or rubber–like materials which are fat resistant and insoluble; which are resistant to scratching, scoring, decomposition, crazing, chipping and distortion under normal use conditions; which do not impart chemicals, flavor or odor to milk; and which maintain their original properties under repeat use conditions.

(3) MAINTENANCE. Equipment and utensils shall be kept in good repair, and shall be readily accessible for inspection by the department upon request.

(4) CLEANING. Equipment and utensils shall be kept clean. Utensils and milk contact surfaces of equipment shall be rinsed immediately after each use, and then washed with an effective detergent and rinsed clean. C–I–P equipment shall be pre–washed with warm water before being cleaned with a detergent solution, according to manufacturer's instructions. The temperature of pre–wash water shall be from 90° F. to 100° F. For C–I–P equipment, the minimum return temperature of detergent solutions shall be 120° F., unless effective cleaning can be achieved at a lower temperature according to manufacturer's recommendations for the detergent used.

(5) SANITIZING. (a) After being cleaned and rinsed, utensils and milk contact surfaces of equipment shall be sanitized before being used.

Note: A list of currently approved sanitizers and sanitizing methods is available from the department upon request.

(6) STORAGE. Equipment and utensils, unless stored in sanitizing solutions, shall be handled and stored in a manner which will ensure complete drainage and protection from contamination prior to use.

(7) SINGLE SERVICE ARTICLES. Single–service articles shall be clean and sanitary, and shall be packaged, handled and stored in a sanitary manner. Single–service articles shall be stored in their original containers inside a dispensing cabinet. Single service articles may not be reused.

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89; renum. (2) to (6) to be (3) to (7), cr. (2), Register, June, 1992, No. 438, eff. 7–1–92.

ATCP 60.10 Milking and milk handling systems. **(1)** SANITARY REQUIREMENTS; GENERAL. Milking and milk handling systems shall be of sanitary design and construction, and shall be installed and maintained for sanitary operation. Milk contact surfaces shall be accessible for inspection. If it is necessary to disassemble any portion of a milking or milk handling system in order to inspect a milk contact surface, all tools needed for the disassembly shall be readily available in the milkhouse.

Note: Guidelines for the sanitary design and construction of milking and milk handling systems are set forth in the "3–A Accepted Practices for the Design, Fabrication and Installation of Milking and Milk Handling Equipment," published jointly by the International Association of Milk, Food and Environmental Sanitarians, Inc., and the Food and Drug Administration, Public Health Service, U.S. Department of Health and Human Services. Milking and milk handling systems manufactured in compliance with the "3–A Accepted Practices" meet the sanitary design and construction requirements of this subsection. Copies of the "3–A Accepted Practices," as amended effective June 14, 1977, are on file with the department, the secretary of state and the revisor of statutes. Copies may be obtained from the International Association of Milk, Food and Environmental Sanitarians, Inc., P.O. Box 701, Ames, Iowa 50010.

(2) MILK CONTACT SURFACES; CONSTRUCTION. Milk contact surfaces of milking and milk handling systems shall be constructed of smooth, nontoxic and nonabsorbent materials. Materials shall be of the following types, unless another material is specifically authorized by the department in writing:

(a) Stainless steel of the American Iron and Steel Institute 300 series, or an equally corrosion resistant metal;

(b) Heat resistant glass; or

(c) Plastic, rubber or rubber–like materials which are fat resistant and insoluble; which are resistant to scratching, scoring, decomposition, crazing, chipping and distortion under normal use conditions; which do not impart chemicals, flavor or odor to milk; and which maintain their original properties under repeated use conditions.

(3) MILK PIPELINES. (a) Milk contact surfaces of permanently mounted milk pipelines shall be constructed of stainless steel or an equally corrosion resistant metal, or of heat resistant glass. Plastic or rubber–like materials may be used for pipeline gaskets, connections and sealing applications, but not for other purposes. Paper gaskets are prohibited.

(b) All joints of permanently mounted milk pipelines, including joints in solution lines, shall be welded or equipped with fittings designed for cleaning in place. Welded joints shall be smooth and free of pits, cracks or other defects. Removable fittings shall be designed to form substantially flush interior joints. Ferrules shall be properly faced and reamed.

(c) Permanently mounted pipelines shall be supported at intervals of not more than 10 feet so that they remain in constant alignment and position. Permanently mounted pipelines shall be self–draining, and shall have a minimum slope of one inch per 10 feet. The support system shall be designed to prevent electrolytic action between supports and pipelines. Pipeline supports shall be mounted on the floor, except as authorized by the department in writing.

(d) Milk pipeline systems shall be designed and constructed so that cleaning, rinsing and sanitizing solutions cannot enter the pipeline while milk is being transferred through the pipeline.

(4) NON–PIPELINE SYSTEMS. If milk from cows or goats is initially collected in a portable transfer receptacle and pumped to the milkhouse through a flexible tube, rather than being pumped directly to the milkhouse through a permanently mounted pipeline, the transfer receptacle and tube system shall comply with the following requirements:

(a) The portable transfer receptacle shall be constructed of stainless steel or an equally corrosion resistant metal, and shall have an overlapping self–closing cover. The receptacle shall be supported off the floor on a cart or mobile structure which can be easily cleaned.

(b) The tube used to transfer milk from the portable transfer receptacle to the milkhouse shall consist of a single length of transparent tubing material. The milk transfer tube shall be supported off the floor at all times. The interior milk contact surface of the transfer tube shall be mechanically cleaned, sanitized and dried after each use. The opening through which the milk transfer tube enters the milkhouse shall be kept closed when the tube is not in use. A milk transfer tube shall not be left suspended in a milking barn or parlor between uses, but shall be stored in the milkhouse.

(5) MILKING EQUIPMENT. (a) Surfaces of milking equipment, including surfaces of milker claws, inflations, weigh jars, meters, milk hoses, milk receivers, and milk pumps, shall be smooth and readily susceptible to cleaning by mechanical or manual cleaning methods. If thorough cleaning requires the removal of any part, that part shall be easily removable. Milking equipment shall be designed and constructed so that cleaning and sanitizing solutions will drain completely from the equipment.

(b) Milking equipment which deposits milk into a bucket or container, rather than into a permanently mounted pipeline, shall be equipped with a check valve or other device which prevents moisture and contaminants from entering the milk through the vacuum system. The moveable portion of the check valve shall consist of a single piece, or pieces which are permanently bonded to each other.

(6) REVIEW OF PLANS. (a) Before installing, reconstructing or extensively altering a bulk tank, or a milking or milk handling sys-

tem, the installer shall submit plans to the department for review. The department may charge a fee under s. 93.06 (1w), Stats., to cover its cost for providing the review service. The department shall return the plans, together with any comments or objections, within 14 days after the plans are received by the department. No review is required for a portable transfer receptacle or its appurtenances.

(b) No manufacturer or distributor of milking or milk handling systems may sell, or distribute for sale in this state, any portion of a milking or milk handling system unless specifications or prototype equipment are first reviewed by the department. Within 30 days after specifications or prototype equipment are received by the department, the department shall return them with any comments or objections. The department may require field testing of the equipment prior to sale if the department finds that field testing is necessary to determine whether the requirements of this section are met. Field testing shall be conducted under conditions prescribed by the department.

(c) Plans and specifications submitted under this subsection shall be sufficiently detailed to permit reasonable review by the department within the time periods specified under this subsection.

(7) CERTIFICATION OF COMPLIANCE BY INSTALLER. A person who installs, reconstructs or extensively alters a milking or milk handling system shall certify to the owner of the system that the system has been installed or modified in compliance with this section, and in compliance with the plans filed with the department under sub. (6) (a). A signed written statement certifying compliance shall be provided to the owner immediately after the system is installed or modified.

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89; r. and recr. (6) (a), Register, June, 1992, No. 438, eff. 7–1–92.

ATCP 60.11 Bulk tanks. (1) LOCATION. If a bulk tank is used to receive, cool or store milk on a dairy farm, the bulk tank shall be installed in the milkhouse. A bulk tank may be installed so that a portion of the bulk tank protrudes through the wall of a milkhouse, provided that all bulk tank openings are located inside the milkhouse. Agitator seals, other than weatherproof agitator seals approved in writing by the department, shall be located inside the milkhouse. Adequate clearance shall be maintained on the top and all sides of a bulk tank to permit effective cleaning, sanitizing and maintenance of the bulk tank. No bulk tank opening may be located directly under a ventilator. No bulk tank may be located directly over a floor drain.

Note: Clearances of at least 24 inches on the top and the milk outlet side of the bulk tank, and 18 inches on all other sides of the bulk tank, are adequate to comply with this subsection. No clearance is required for that portion of a bulk tank which protrudes through the wall of a milkhouse.

(2) CONSTRUCTION. (a) The lining and milk contact surfaces of a bulk tank shall be constructed of stainless steel or other materials which are equally smooth, nontoxic, stable, non–absorbent, corrosion resistant, and capable of withstanding cleaning and sanitizing treatment. Milk contact surfaces shall be readily accessible for inspection.

(b) A bulk tank shall be self–draining. Openings shall be equipped with self–draining covers. Openings and covers shall be constructed and installed to prevent drainage into milk, or onto milk contact surfaces.

(c) A bulk tank shall be equipped with an accurate thermometer which indicates milk temperatures. The thermometer shall have a minimum range of 32° F. (0° C.) to 80° F. (27° C.).

(d) A bulk tank with a capacity of less than 1,500 gallons shall be equipped with a mechanical agitator which will ensure homogeneity of all milk contained in the bulk tank within 5 minutes after the agitator begins operating. A bulk tank with a capacity of 1,500 gallons or more shall be equipped with an agitator which will ensure homogeneity of all milk contained in the bulk tank within 10 minutes after the agitator begins operating.

(e) A bulk tank which is designed to be cleaned in place by the mechanical circulation of cleaning, rinsing and sanitizing solutions onto interior milk contact surfaces shall be designed and constructed so that cleaning, rinsing and sanitizing solutions cannot enter the bulk tank while it contains milk.

Note: Bulk tanks manufactured in compliance with the "3–A Sanitary Standards for Farm Milk Cooling and Holding Tanks" meet the sanitary design and construction requirements of this subsection. The "3–A Standards" are published jointly by the International Association of Milk, Food and Environmental Sanitarians, Inc., and the Food and Drug Administration, Public Health Service, U.S. Department of Health and Human Services. Copies of the "3–A Standards" as amended effective May 19, 1981, are on file with the department, the secretary of state and the revisor of statutes. Copies may be obtained from the International Association of Milk, Food and Environmental Sanitarians, Inc., P.O. Box 701, Ames, Iowa.

(3) COOLING CAPACITY. A bulk milk tank shall be capable of cooling all milk placed in the tank to a temperature of 50° F. (7° C.) within one hour after the milk is placed in the tank. If uncooled milk from subsequent milkings is added to cooled milk in the bulk tank, the bulk tank shall be capable of maintaining the blend temperature at or below 50° F. (10° C.), and reducing the blend temperature to 45° F. (7° C.) within one hour.

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89.

ATCP 60.12 Milking procedure. (1) PREPARING COWS OR GOATS FOR MILKING. The flanks, udders, bellies and tails of milking cows and goats shall be clipped as often as necessary to facilitate cleaning. Tails, bellies and flanks shall be reasonably free of visible dirt at the time of milking. If flanks and udders are brushed, brushing shall be completed before milking begins. Hair on udders shall be kept short enough so that it is not incorporated with the teat in the milking machine inflation during milking. Udders of milking cows and goats shall be clean at the time of milking. Teats shall be cleaned, sanitized and dried immediately before milking. Wet hand milking is prohibited.

(2) TRANSFER AND PROTECTION OF MILK. Milk shall be protected from contamination at all times. Upon being drawn from cows or goats, milk shall immediately be transferred from the milking barn or parlor to the milkhouse. Containers of milk shall not be stored in the milking barn or parlor. If milk is transferred to the milkhouse in containers, rather than through a pipeline or other vacuum transfer system, the milk producer shall transfer each container of milk to the milkhouse as soon as it is filled. Milk contact surfaces of equipment and utensils used to collect or transfer milk shall be protected from contamination before and during use. Milk containers shall be covered to protect milk from contamination. Milk which overflows, leaks or spills from its proper container or transfer vessel shall be discarded.

(3) PERSONNEL; CLEANLINESS. Milkers and milk handlers shall wash and dry their hands before engaging in milking or milk handling operations, and before resuming operations after engaging in other activities. Outer garments worn by milkers and milk handlers shall not be soiled to the extent that they might contaminate milk, milk contact surfaces, or the hands of a milker or milk handler. No person may engage in milking or milk handling operations if that person is infected with a communicable disease which is transmissible to others as a result of the milking or milking handling operations.

(4) COOLING MILK. (a) Except as provided under par. (b), milk shall be cooled to 45° F. (7° C.) or less within 2 hours after milking. If uncooled milk from subsequent milkings is added to cooled milk, the blend temperature shall not exceed 50° F. (10° C.) at any time, and the blend temperature shall be reduced to not more than 45° F. (7° C.) within 2 hours after the uncooled milk is added.

(b) Grade B can milk shall be cooled to 50° F. (10° C.) or less within 2 hours after milking, and shall be kept at or below 50° F. (10° C.) until it is delivered to the dairy plant. If milk is stored or cooled in cans, milk from a morning milking may not be commingled with milk from an evening milking.

(5) STRAINING MILK. Milk shall be strained before it is deposited in a bulk tank or shipping container. Only clean single–service filters may be used to strain milk. Filters shall not be reused.

(6) COMMINGLING OF COW AND GOAT MILK PROHIBITED. Cow milk shall not be commingled with goat milk on a dairy farm.

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89.

ATCP 60.13 Abnormal milk; milking diseased animals. (1) Cows or goats which appear to be secreting abnormal milk in one or more quarters shall be milked last or with separate equipment, and their milk shall be discarded.

(2) If cows or goats consume or are treated with chemical, medicinal or radioactive agents which may be secreted in milk, and which may be deleterious to human health, the cows or goats shall be milked last or with separate equipment, and the milk shall be discarded.

(3) Milk that is bloody, stringy, off–colored, abnormal to sight or odor, or abnormal in any other respect shall be discarded.

(5) Equipment and utensils used to handle abnormal milk shall not be used to handle milk produced for human consumption unless the equipment and utensils are first thoroughly cleaned and sanitized.

(6) Drugs prescribed by a veterinarian for use on cows or goats shall be clearly labeled with the name of the drug, the active ingredient or ingredients, directions for use, the length of time for which milk must be withheld following the cessation of drug therapy, any applicable warnings or precautions to be observed by the milk producer, and the name and address of the prescribing veterinarian. No drug or medicinal item may be used in a manner inconsistent with label directions, or in a negligent manner.

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89; am. (4), Register, December, 1990, No. 420, eff. 1–1–91; r. (4), Register, June, 1991, No. 426, eff. 7–1–91; am. (6), Register, June, 1992, No. 438, eff. 7–1–92.

ATCP 60.14 Farm premises. (1) GENERAL. Farm premises adjacent to a milking barn, milking parlor, or milkhouse shall be kept free of conditions which may result in the contamination of milk.

(2) MANURE STORAGE AND DISPOSAL. Manure shall be removed and stored in a manner which inhibits the breeding of flies. No milking cow or goat may have access to a manure storage area. This does not prohibit a cold weather manure pack in a cowyard if the manure pack is properly maintained to prevent excessive accumulations of manure on the udders and flanks of cows or goats.

(3) COWYARD. A cowyard shall be graded for proper drainage, and shall be kept free of standing pools of water and accumulations of manure or feed waste. In loafing pens, manure shall be removed or clean bedding added with sufficient frequency to prevent excessive accumulation of manure on the udders and flanks of cows and goats. Accumulations of waste feed shall be promptly removed. Manure packs shall be properly drained and shall provide a reasonably firm footing. Swine shall be kept out of the cowyard.

(4) STATIONARY FEEDERS IN COWYARD. Stationary feeders in a cowyard shall be fully surrounded by a paved surface on which cows stand while feeding. The paved surface shall extend at least 12 feet in all directions from the feeder, except that a paved surface installed before January 1, 1979, shall extend at least 8 feet in all directions from the feeder. If the distance between a feeder and another building or permanent structure is less than the paved surface width prescribed under this subsection, the paved surface shall extend to the building or other permanent structure.

(5) STOCK WATERING DEVICES AND PORTABLE FEEDERS IN COWYARD. Stock watering devices and portable feeders shall be located in an area which is well drained and provides reasonably firm footing for animals using the facilities.

(6) TOILETS. Every dairy farm shall have one or more sanitary toilets conveniently located. Toilets shall be constructed and maintained so that waste is inaccessible to flies and does not pollute the ground surface or contaminate any water supply. Toilets in the residence, other farm buildings or otherwise conveniently located meet the requirements of this subsection.

(7) PEST CONTROL. Insects, rodents and other pests shall be controlled, as necessary, to prevent the contamination of milk and milk contact surfaces of equipment and utensils. Pesticides shall not be stored, handled or used in a manner which might contaminate milk, milk contact surfaces, feed or water.

Note: Pesticide storage and use must comply with ss. 94.67 to 94.71, Stats., and ch. ATCP 29. Pesticides must be registered for use by the U.S. environmental protection agency or by the department. Pesticides shall not be stored, handled or used in a manner inconsistent with label directions, or in a negligent manner.

(8) ANIMAL DRUG STORAGE. No animal drug or medicinal item may be kept in or immediately adjacent to dairy farm facilities used for dairying operations unless the animal drug or medicinal item is designed or prescribed for use on dairy animals. Animal drugs and medicinal items stored immediately adjacent to the milking barn, milking parlor or milkhouse shall be protected from the elements, and shall be stored above the floor, on racks or in a cabinet. Animal drugs and medicinal items shall be stored in a manner which prevents contamination of milk, and equipment and utensils coming in contact with milk. Animal drugs and medicinal items shall be clearly labeled to indicate their identity and intended use, and prescription drugs shall be labeled as provided under s. ATCP 60.13 (6). Animal drugs and medicinal items intended solely for non–lactating animals shall be kept separate from those used on lactating animals.

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89; cr. (8), Register, June, 1992, No. 438, eff. 7–1–92.

Subchapter IV — Milk Quality Standards; Examination of Milk From Dairy Farms

ATCP 60.15 Milk quality standards. Milk received or collected from a dairy farm shall comply with all of the following standards at the time of receipt or collection:

(1) VISIBLE ADULTERATION AND ODORS. The milk shall not be visibly adulterated, or have any objectionable odor, or be abnormal in appearance or consistency.

(2) BACTERIAL COUNT. The bacterial count of grade A milk, as determined by a standard bacterial count or plate loop count under this subchapter, shall not exceed 100,000 per ml. The bacterial count of grade B milk shall not exceed 300,000 per ml. Except as provided under s. ATCP 60.18 (4), a dairy plant is not required to reject milk shipments in response to a violation of this subsection unless the department suspends or revokes the milk producer's license or grade A permit, or issues a holding order or disposal order under s. ATCP 60.30.

(3) DRUG RESIDUES. The milk shall not contain any drug residue.

(4) SOMATIC CELL COUNT. The somatic cell count of cows milk, as determined by a direct microscopic somatic cell count (DMSCC) or an electronic somatic cell count (ESCC) under this subchapter, shall not exceed 750,000 cells per ml. The somatic cell count of goat milk, as determined by the Pyronin Y Methyl green stain test, shall not exceed 1,000,000 cells per ml. Except as provided under s. ATCP 60.20 (4), a dairy plant is not required to reject milk shipments in response to a violation of this subsection unless the department suspends or revokes the milk producer's license or grade A permit, or issues an order affecting the milk shipments under s. ATCP 10.20 (2) or 60.30.

(5) TEMPERATURE. If milk is received or collected from a dairy farm more than 2 hours after the most recent milking, the temperature of the milk shall not exceed 45° F. (7° C), or 50° F. (10° C.) in the case of grade B can milk. If the milk consists of a blend of milk from 2 or more milkings, and the milk is received or collected less than 2 hours after the most recent milking, the blend temperature shall not exceed 50° F.(10° C.).

(6) PESTICIDES AND TOXIC SUBSTANCES. The milk shall be free of pesticides and toxic substances.

(7) OTHER ADULTERATION. The milk shall not be adulterated within the meaning of s. 97.02, Stats., or insanitary within the meaning of s. 97.50, Stats.

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89; am. (4), Register, June, 1991, No. 426, eff. 7–1–91; am. (3), Register, June, 1992, No. 438, eff. 7–1–92.

ATCP 60.16 Examining milk by sight and smell. A person who receives or collects milk from a milk producer shall examine the milk by sight and smell, and shall reject all milk which has an objectionable odor, which is abnormal in appearance or consistency, or which is visibly adulterated. Rejected milk shall not be received or commingled with milk from another producer. If the rejection of milk is disputed, the person who initially rejects the milk shall contact the operator of the dairy plant to which the milk would ordinarily be delivered, and the dairy plant operator shall accept or reject the milk.

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89.

ATCP 60.17 Collecting milk samples. Whenever milk is received or collected from a milk producer, the person receiving or collecting the milk shall obtain a representative sample of the milk for quality testing purposes. If milk is collected from a producer at a dairy farm, and transported in bulk to a dairy plant, the required milk sample shall be obtained at the dairy farm according to ch. ATCP 82. Milk received or collected from a producer shall not be commingled with milk from another producer until a representative milk sample has been obtained under this section. A person who obtains a sample of producer milk under this section shall promptly deliver the sample to the dairy plant which receives the milk from the producer, or to a certified milk testing laboratory designated by the dairy plant operator.

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89; am. Register, November, 1994, No. 467, eff. 12–1–94.

ATCP 60.18 Bacteriological testing. (1) MONTHLY TESTING REQUIRED. During every month in which a dairy plant receives milk from a milk producer, the dairy plant operator shall perform a standard bacterial plate count (SPC) or plate loop count (PLC) on a milk sample obtained from the producer under s. ATCP 60.17.

Note: Bacterial tests must be performed using methods prescribed under s. ATCP 60.22 (2). The maximum time between sample collection and testing depends on the test method used.

(2) REPORTING TEST RESULTS. Within 14 calendar days after a bacteriological test under this section is completed, the dairy plant operator shall report the bacterial count to the producer and the department. If a dairy plant operator performs bacteriological tests on 2 or more samples of milk collected from the same producer during the same month, the dairy plant operator shall report a representative test result to the department. A test is not representative unless it is obtained according to a sampling and testing schedule which is consistently applied to all producers shipping milk to the dairy plant, and unless it is chosen according to standard criteria applied to all producers. If any bacterial count exceeds the immediate response level of 1,000,000 per ml., the dairy plant operator shall report the bacterial count to the producer and the department within 3 business days after the bacteriological test is completed.

(3) IMMEDIATE RESPONSE LEVEL; CONFIRMATORY TEST. If a bacterial count under this section exceeds the immediate response level of 1,000,000 per ml., the dairy plant operator shall perform a confirmatory bacteriological test on at least one more sample of milk collected from the producer's dairy farm. The confirmatory sample shall be collected from the producer within 14 calendar days after the original sample was collected and tested as prescribed under s. ATCP 60.22 (2). The test result shall be reported to the producer and the department within the time period specified under sub. (2).

(4) REJECTION OF MILK SHIPMENTS. If the bacterial count on any confirmatory sample under sub. (3) exceeds 1,000,000 per ml., the dairy plant operator shall reject all further milk shipments from the producer's dairy farm until a sample of milk from that dairy farm is tested and found to have a bacterial count of not more than 1,000,000 per ml. Rejected milk shall not be collected or commingled with milk from any other producer. If milk from a dairy farm is rejected by a dairy plant operator under this subsection, the producer shall not ship milk to any other dairy plant until milk from that dairy farm is tested and found to have a bacterial count of not more than 1,000,000 per ml.

(5) INSPECTION BY DEPARTMENT; REINSPECTION FEE. The department may, in its discretion, inspect a dairy farm in response to any bacterial count reported to the department under this section. If the department inspects a dairy farm in response to a confirmatory bacterial count of more than 1,000,000 per ml. under sub. (3), the department shall charge a reinspection fee for the inspection under s. ATCP 60.04. The department shall not charge a reinspection fee if the confirmatory bacterial count does not exceed 1,000,000 per ml., or if the inspection is made more than 3 weeks after the department receives the confirmatory bacterial count under sub. (3).

Note: Under s. ATCP 60.27, the food division will suspend a producer's grade A farm permit if 3 of the last 5 bacterial counts reported to the department under this section exceed the grade A standard of 100,000 per ml. under s. ATCP 60.15 (2), whether or not any of the bacterial counts exceeds the immediate response level of 1,000,000 per ml. under this section.

Under s. ATCP 60.25, the department may, after notice and opportunity for public hearing under ch. 227, Stats., suspend the license of a milk producer if bacterial counts on the producer's milk continue to exceed the grade B standard of 300,000 per ml. under s. ATCP 60.15 (2), whether or not any of the bacterial counts exceeds the immediate response level of 1,000,000 per ml. under this section. If 2 of the last 4 bacterial counts reported to the department under this section exceed the grade B standard of 300,000 per ml., the department will, at a minimum, send a warning notice to the producer.

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89; am. (1), (2), (3) and (5), Register, June, 1992, No. 438, eff. 7–1–92.

ATCP 60.19 Drug residue testing. (1) TESTING PRODUCER MILK SHIPMENTS. (a) *Monthly testing.* During every month in which a dairy plant receives milk from a milk producer, the dairy plant operator shall perform a drug residue test on a milk sample obtained from that producer under s. ATCP 60.17. The drug residue test shall be sensitive, at a minimum, to beta lactam drug residues.

(b) *New milk producer; initial testing.* Before collecting or receiving a producer's milk for the first time, a dairy plant operator shall sample and test the producer's milk for drug residues. The drug residue test shall be sensitive, at a minimum, to beta lactams and to other drug residues for which testing is required under sub. (2) (b). The dairy plant operator shall not collect or receive the producer's milk until the producer's milk tests negative under this paragraph.

(2) TESTING BULK LOADS. (a) *Beta lactam drug residues; routine bulk load testing.* The operator of every dairy plant shall perform a drug residue test on every bulk load of raw milk received at that dairy plant. The drug residue test shall be sensitive, at a minimum, to beta lactam drug residues.

(b) *Other drug residues; random bulk load testing.* 1. In addition to performing routine beta lactam tests under par. (a), the operator of a dairy plant shall randomly test bulk milk deliveries received at that dairy plant for other drug residues whenever random testing is required by the department under subd. 2. The random testing program shall be designed so that, during any consecutive 6 month period, a milk shipment from each producer is included in at least 4 separate bulk load tests in each of 4 separate months.

2. The department may issue a periodic written notice to dairy plant operators, requiring dairy plant operators to perform random tests under subd. 1 for drug residues specified in the department's notice. The department shall issue the same notice to every dairy plant licensed by the department. The notice shall specify the effective date of the random testing requirements and the period of time during which the random testing requirements remain in effect.

(c) *Bulk load testing procedure.* Whenever a dairy plant operator performs a drug residue test on a bulk load of milk under par. (a) or (b), the operator shall perform the test on a sample taken from the bulk milk tanker. The test shall be completed before the bulk load is commingled with any other milk. For testing purposes under pars. (a) and (b), a milk shipment received in cans is considered a bulk load.

(d) *Responsibility for follow–up testing.* If a bulk load of milk tests positive for drug residue, and if the dairy plant receiving that milk from producers is not the dairy plant to which those producers are assigned for licensing purposes under s. ATCP 60.02, the operator of the receiving dairy plant shall immediately notify the operator of the assigned dairy plant. The assigned dairy plant is responsible for performing follow–up tests on producer samples under sub. (3), and for rejecting producer shipments under sub. (6).

Energy Corr. eff. 4-30-99

(3) DRUG RESIDUE FOUND IN BULK LOAD; FOLLOW–UP TESTING. If a bulk load of milk tests positive for a drug residue under sub. (2), the dairy plant operator shall perform a drug residue test on each of the individual milk producer samples collected for that bulk load under s. ATCP 60.17. The dairy plant operator shall test each producer sample before collecting any further milk from that producer. The drug residue test performed on each producer sample shall be sensitive to the same drug residue that was detected in the bulk load.

(4) DRUG RESIDUE FOUND IN BULK LOAD; LOAD REJECTED. If a bulk load of milk tests positive for a drug residue under sub. (2), the dairy plant operator shall reject the entire bulk load. Milk from a rejected bulk load shall not be used for human food, and shall not be shipped to any other dairy plant or recipient for use as human food.

(5) REJECTED BULK LOAD; DAIRY PLANT RECOVERY FROM PRODUCERS. (a) *Dairy plant may recover loss.* If a dairy plant operator sustains a monetary loss because a bulk load of milk is rejected under sub. (4), the dairy plant operator may recover that monetary loss from producers whose individual milk samples, representing shipments included in that bulk load, test positive under sub. (3). The loss recoverable under this paragraph may include the value of the rejected load before that load tested positive for a drug residue, the cost to dispose of the rejected load, and any additional transportation and testing costs made necessary because the load tested positive for a drug residue.

(b) *Minimum recovery.* Except as provided under par. (e), a dairy plant operator shall, at a minimum, recover the following amount under par. (a) from each producer whose milk sample tests positive under sub. (3):

1. If the producer's milk has not tested positive for any drug residue during the 12 months immediately preceding the positive test under sub. (3), the dairy plant shall recover an amount that is at least equivalent to the value of 2 days milk shipments from the producer, as calculated under par. (c).

2. If the producer's milk has tested positive for any drug residue during the 12 months immediately preceding the positive test under sub. (3), the dairy plant operator shall recover an amount that is at least equivalent to the value of 4 days milk shipments from the producer, as calculated under par. (c).

(c) *Minimum recovery, how calculated.* The minimum recovery under par. (b) shall be based on the volume of milk which the offending producer shipped as part of the rejected bulk load, and the prevailing price for that producer on that day exclusive of quality premiums. The dairy plant operator may not pay an offending producer any quality premiums for milk shipped as part of the rejected bulk load, nor may the operator make any other payment designed to reduce the minimum recovery under par. (b).

(d) *Payroll deduction.* A dairy plant operator may deduct any recovery under par. (a) from the dairy plant operator's payroll obligation to the offending producer. A dairy plant operator shall recover the minimum amount under par. (b) from an offending producer within 60 days after the producer's milk sample tests positive for drug residue under sub. (3).

(e) *Recovery may not exceed dairy plant's loss.* Notwithstanding par. (b), a dairy plant operator's recovery from offending producers may not exceed the amount of the dairy plant operator's loss under par. (a). If the dairy plant operator is entitled to recover from 2 or more offending producers, and if the operator's loss is less than the minimum amount that would otherwise be recoverable from those producers under par. (b), the operator shall recover the loss from producers on a pro rata basis, according to the amount of milk which each producer shipped as part of the rejected bulk load.

(f) *Notice to producer.* Before making any deduction under par. (d), the dairy plant operator shall give the producer written notice of the proposed deduction. The dairy plant operator shall give the notice at least 30 days before making the deduction unless the producer transfers to another dairy plant. The notice shall specify the basis for the deduction, the total amount of the deduction, and the date on which each deduction shall be made. The notice shall also state that a representative of the dairy plant operator will meet with the producer to discuss the proposed deduction, at the producer's request.

(g) *Meeting to discuss proposed deduction.* If requested by an affected producer, a representative of the dairy plant operator shall meet with the producer to discuss any proposed deduction under par. (d). The meeting shall be held within 3 business days unless the producer requests a later meeting. If the producer contests the validity of the deduction, and if the matter is not resolved between the producer and the dairy plant operator, the dairy plant operator shall notify the producer that the producer may request a hearing before the department under par. (i).

(h) *Failure to deduct; notice to department.* If a dairy plant operator fails to deduct the minimum amount required under par. (b) within 30 days after the producer's milk sample tests positive for drug residue under sub. (3), the dairy plant operator shall give the department written notice of that fact. The notice shall explain why the dairy plant operator failed to make the deduction.

(i) *Hearing before department.* 1. If a producer contests the validity of a dairy plant operator's deduction under par. (d), and if the producer has met with a representative of the dairy plant operator under par. (g), the producer may request a hearing before the department. A request for hearing does not automatically stay the dairy plant operator's deduction under par. (d).

2. If a producer requests a hearing under subd. 1., the food division shall hold an informal hearing at the division's nearest regional office or by telephone. The food division shall hold the informal hearing within 3 business days after the division receives the hearing request, unless the producer agrees to a later hearing date. The food division shall include the dairy plant operator as a party to the informal hearing.

3. If a matter is not resolved upon informal hearing under subd. 2., the producer may request a formal contested case hearing before the department under ch. ATCP 1 and ch. 227, Stats. A request for hearing does not automatically stay the dairy plant's deduction under par. (d). If the department grants the producer's request for a formal hearing, the department shall include the dairy plant operator as a party to that hearing.

(j) *Invalid deduction.* If the department determines that a dairy plant operator's deduction under par. (d) is invalid, the department may prohibit the dairy plant operator from making that deduction, or may order the dairy plant operator to repay to the producer the amount deducted. The food division may issue an order under this paragraph after the division holds an informal hearing under par. (i). If the food division issues an order under this paragraph, the dairy plant operator may request a formal hearing before the

department to contest the food division's order. A request for hearing does not automatically stay the food division's order.

(6) PRODUCER MILK SHIPMENTS REJECTED. (a) *Dairy plant to reject.* A dairy plant operator shall immediately notify a milk producer, and shall reject that producer's milk shipments as required under par. (b), if any of the following occurs:

1. A sample of the producer's milk under sub. (1) tests positive for a drug residue.

2. A sample of the producer's milk under sub. (3) tests positive for a drug residue.

3. A sample of the producer's milk tests positive for a drug residue after that milk has been commingled with milk from other producers, regardless of whether the drug residue test is required under this chapter.

(b) *Producer milk rejected.* If a dairy plant operator is required to reject producer milk shipments under par. (a), the dairy plant operator shall reject all milk produced on that dairy farm until a sample of that milk tests negative for that same drug residue which caused the dairy plant to reject the producer's milk.

(c) *Rejected milk; use prohibited.* If a dairy plant operator rejects a producer's milk under par. (b), no person may do any of the following:

1. Ship, collect or use that milk for human food.

2. Commingle that milk with milk from any other producer.

(d) *Transfer between dairy plants.* If a dairy plant operator rejects a producer's milk under par. (b), the milk producer may not ship milk to another dairy plant until a dairy plant operator tests that producer's milk and the milk tests negative for that same drug residue which caused the producer's milk to be rejected.

(7) REPORTING DRUG RESIDUE FINDINGS; BULK LOADS. If any bulk load of milk tests positive for a drug residue under sub. (2), the dairy plant operator shall immediately report the drug test result to the food division by telephone. The dairy plant operator shall confirm the report in writing, in a form approved by the department, within 3 business days after the drug residue test is completed. The report shall indicate the result of the drug residue test, the volume of milk contained in the bulk load, and the dairy plant's disposition of that milk.

(8) REPORTING DRUG RESIDUE FINDINGS; PRODUCER MILK SHIPMENTS. (a) *Dairy plant to report.* Whenever any of the following occurs, the dairy plant operator that performs the drug residue test shall report the test result to the department under par. (b):

1. A milk producer sample under sub. (1) tests positive for a drug residue.

2. A milk producer sample under sub. (3) tests positive for a drug residue.

3. A sample of a producer's milk tests positive for a drug residue after that milk has been commingled with milk from other producers, regardless of whether the drug residue test is required under this chapter.

(b) *Form of report.* Whenever a dairy plant operator is required to report a drug residue test result under par. (a), the dairy plant operator shall immediately report that result to the food division by telephone. The dairy plant operator shall confirm the report in writing within 3 business days after the drug residue test is completed.

(9) INSPECTION BY DEPARTMENT; REINSPECTION FEE. The department may, in its discretion, inspect a dairy farm in response to any positive drug residue test report under sub. (8). The department shall charge a reinspection fee for the inspection under s. ATCP 60.04. The department shall not charge a reinspection fee if it makes its inspection more than 3 weeks after the dairy plant operator reports the drug residue test result to the department.

(10) DRUG RESIDUE TEST RESULTS. (a) *Positive test result; general.* For purposes of this section and s. ATCP 60.275, a drug residue test is considered positive if the detected amount of drug residue exceeds the action level specified for that drug under par. (b) or (c). The action levels under pars. (b) and (c) do not establish legal tolerances for drug residues in milk, nor do they preclude the department from taking enforcement action where drug residues are present at levels below these action levels.

(b) *Bacillus stearothermophilus disc assay test for beta lactams; positive test result.* If the Bacillus stearothermophilus disc assay test is used to test for a beta lactam drug, the action level is exceeded if there is a clear zone of inhibition equal to or greater than 16 mm. in diameter surrounding the disc.

(c) *Other drug tests; positive test result.* In a test for any of the following drugs, the action level is exceeded whenever the drug residue level found in the test exceeds the level specified below:

Drug	Action Level (ppb)
Ampicillin	10
Amoxicillin	10
Cephapirin	20
Cloxacillin	10
Neomycin1	50
Novobiocin	100
Sulfadimethoxine	10
Tylosin	50
Chlortetracycline*	30
Oxytetracycline*	30
Erythromycin*	50
Gentamicin*	30
Dihydrostreptomycin*	125
Sulfachloropyridazine*	10
Sulfadiazine*	10
Sulfamerazine*	10
Sulfamethazine*	10
Sulfamethizole*	10
Sulfanilamide*	10
Sulfapyridine*	10
Sulfaquinoxaline*	10
Sulfathiazole*	10
Tetracycline*	80

Note: Action levels specified under this paragraph are based on tolerances or "safe levels" specified by the United States food and drug administration, and identified in a memorandum from FDA's Milk Safety Branch, HFF–346, dated July 21, 1991. A copy of the memorandum is on file with the department, and is available upon request.

For drugs identified with an asterisk (*), the levels in this paragraph are based on "safe levels" specified by FDA. "Safe levels" are merely enforcement guides and do not constitute legal tolerances. They do not legalize residues found in milk that are below the "safe level." "Safe levels" are not binding on the courts or the department. They do not limit the department's discretion in any way, and they do not protect milk producers or milk itself from enforcement action. "Safe levels" do not constitute animal drug tolerances under section 512 (b) of the federal food, drug and cosmetic act.

(d) *Test result presumed valid.* For purposes of this section and s. ATCP 60.275, whenever a dairy plant operator reports a positive test result to the department under sub. (8), that test result is rebuttably presumed to be valid.

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89; r. and recr., Register, June, 1992, No. 438, eff. 7–1–92; am. (5) (d) and (f), Register, November, 1994, No. 467, eff. 12–1–94.

ATCP 60.20 Testing for somatic cells. (1) MONTHLY TESTING REQUIRED. During every month in which a dairy plant receives milk from a milk producer, the dairy plant operator shall perform a somatic cell count on a milk sample obtained from the producer under s. ATCP 60.17. The somatic cell count shall be made using a direct microscopic somatic cell count (DMSCC) or an optical somatic cell count (OSCC). If the somatic cell count on sheep or goat milk exceeds 1,000,000, the somatic cell count shall be confirmed using the Pyronin Y–Methyl green stain test, unless that test was used to obtain the initial count.

Note: Somatic cell tests must be performed using methods prescribed under s. ATCP 60.22 (2). The maximum time between sample collection and testing depends on the test method used.

(2) REPORTING TEST RESULTS. Within 14 calendar days after a somatic cell count under this section is completed, the dairy plant

operator shall report the somatic cell count to the producer and the department. If a dairy plant operator performs a somatic cell count on more than one sample of milk collected from the same producer during the same month, the dairy plant operator shall report a representative somatic cell count to the department. A test result is not representative unless it is obtained according to a sampling and testing schedule which is consistently applied to all producers shipping milk to the dairy plant, and unless it is chosen according to the same criteria applied to all producers. If any somatic cell count under this section exceeds an immediate response level under sub. (2m), the dairy plant operator shall report the somatic cell count to the producer and the department within 3 business days after the bacteriological test is completed.

(2m) IMMEDIATE RESPONSE LEVEL. The immediate response level under this section is 1,000,000 somatic cells per ml. for cow's milk, and 1,500,000 for sheep and goat milk.

(3) IMMEDIATE RESPONSE LEVEL; CONFIRMATORY TEST. If a somatic cell count under sub. (1) exceeds an immediate response level under sub. (2m), the dairy plant operator shall make a confirmatory somatic cell count on at least one more sample of milk collected from the producer's dairy farm. The confirmatory sample shall be collected from the producer within 14 calendar days after the original sample was collected and tested as prescribed under s. ATCP 60.22 (2). The test result shall be reported to the producer and the department within the time period specified under sub. (2). The confirmatory somatic cell count on sheep or goat milk shall be made using the Pyronin Y–Methyl green stain test.

(4) REJECTION OF MILK SHIPMENTS. If the somatic cell count on any confirmatory sample under sub. (3) exceeds the immediate response level under sub. (2m), the dairy plant operator shall reject all further milk shipments from the producer's dairy farm until a sample of milk produced on that dairy farm is tested and found to have a somatic cell count which does not exceed the immediate response level under sub. (2m). Rejected milk shall not be collected or commingled with milk from any other producer. If milk from a dairy farm is rejected by a dairy plant operator under this subsection, the producer shall not ship milk to any other dairy plant until milk from that dairy farm is tested and found to have a somatic cell count which does not exceed the immediate response level under sub. (2m).

(5) INSPECTION BY DEPARTMENT; REINSPECTION FEE. The department may, in its discretion, inspect a dairy farm in response to any somatic cell count reported to the department under this section. If the department inspects a dairy farm in response to a confirmatory somatic cell count under sub. (3) which exceeds the immediate response level under sub. (2m), the department shall charge a reinspection fee for the inspection under s. ATCP 60.04. The department shall not charge a reinspection fee if the confirmatory somatic cell count does not exceed the immediate response level, or if the inspection is made more than 3 weeks after the department receives the confirmatory somatic cell count under sub. (3).

Note: Under s. ATCP 60.27, the food division will suspend a producer's grade A farm permit if 3 of the last 5 somatic cell counts reported to the department under this section exceed the standard under s. ATCP 60.15 (4), whether or not any of the somatic cell counts exceeds the immediate response level under sub. (2m).

Under s. ATCP 60.25, the department may, after notice and opportunity for public hearing under ch. 227, Stats., suspend the license of a milk producer if somatic cell counts on the producer's milk continue to exceed the standard under s. ATCP 60.15 (4), whether or not any of the somatic cell counts exceeds the immediate response level under sub. (2m). If 2 of the last 4 somatic cell counts reported to the department under this section exceed the standard under s. ATCP 60.15 (4), the department will, at a minimum, send a warning notice to the producer.

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89; am. (1), (2), (3) and (5), Register, June, 1992, No. 438, eff. 7–1–92; am. (1), (2m) and (3), Register, November, 1994, No. 467, eff. 12–1–94.

ATCP 60.21 Sediment testing. A dairy plant operator, or a person collecting milk on behalf of a dairy plant operator, shall regularly test individual producer milk shipments for coarse sediment content, using an appropriate screening test. Sediment test results for each milk producer shall be kept on file at the dairy plant. Sediment test results need not be reported to the department, but shall be made available for inspection and copying by the department upon request.

Note: The Sani–Guide coarse sediment test is an appropriate screening test under this section; however, other suitable screening tests may also comply with this section if approved in writing by the department.

Dairy plants under grading supervision by the United States department of agriculture are subject to sediment standards adopted by the United States department of agriculture under 7 CFR 58.2732. Copies of 7 CFR 58.2732 may be obtained from the department at cost.

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89.

ATCP 60.22 Certified testers; test methods; reporting. (1) CERTIFIED TESTERS. (a) *General.* Except as provided under par. (b), milk testing under ss. ATCP 60.18 to 60.20 shall be performed in a laboratory which is approved by the department, and certified by the state of department under s. 93.12, Stats., to conduct milk quality tests.

(b) *Drug residue tests.* Drug residue tests under s. ATCP 60.19 may be conducted in a certified laboratory under par. (a) or by either of the following:

1. An individual approved by the department and certified by the Wisconsin department of health and social services to conduct drug residue testing.

2. An individual who performs drug residue tests only under the direct supervision of an individual approved and certified under subd. 1.

Note: Approval of individuals to perform drug residue tests will become effective only after a certification program for individuals is developed by the department of health and social services.

(c) *Department may withdraw approval.* The department may withdraw its approval of any laboratory or individual for cause, whether or not the laboratory is certified by the department of health and social services. Cause may include false or inaccurate test results or reports, or failure to conduct tests in compliance with required procedures.

(2) TEST METHODS. Milk testing under ss. ATCP 60.18 to 60.20 shall be conducted using test methods prescribed in "Standard Methods for the Examination of Dairy Products," 15th Edition (1985), or in "Official Methods of Analysis of the Association of Analytical Chemists," 14th Edition (1984). Other tests shall be approved by the department.

Note: The "Standard Methods for the Examination of Dairy Products," 15th Edition (1985), published by the American Public Health Association, Inc., is on file in the offices of the department, the secretary of state and the revisor of statutes. A copy may be purchased from the American Public Health Association, Inc., 1015 Fifteenth Street, N.W. Washington, D.C. 20005.

The "Official Methods of Analysis of the Association of Official Analytical Chemists," 14th Edition (1984), is on file in the offices of the department, the secretary of state and the revisor of statutes. A copy may be purchased from the Association of Official Analytical Chemists, Inc., 1111 North Nineteenth Street, Suite, 210, Arlington, VA 22209.

(3) METHOD FOR REPORTING TEST RESULTS TO DEPARTMENT. Whenever a dairy plant operator is required to report milk quality test results to the department under this subchapter, the test results shall be reported to the department in writing or by means of electronic data transfer. If a dairy plant operator is required to report a test result within 3 business days after a milk quality test is completed, the test result may be reported orally if the report is promptly confirmed in writing or by means of electronic data transfer. The department may prescribe the format in which test results are to be reported to the department.

(4) TEST RESULTS KEPT ON FILE BY DAIRY PLANT. Results of all milk quality tests performed by a dairy plant operator, including but not limited to milk quality tests under this chapter, shall be kept on file at the dairy plant for a period of 2 years, and shall be made available for inspection and copying by the department upon request. No dairy plant operator, nor any agent of a dairy plant operator, may falsify the result of any milk quality test.

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89; r. and recr. (1), Register, June, 1992, No. 438, eff. 7–1–92; correction in (1) (a) made under s. 13.93, (2m) (b) 7., Stats., Register, November, 1994, No. 467; **correction in (1) (a) made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, April, 1999, No. 520.**

ATCP 60.23 Dairy plant operator to furnish producer milk samples to department upon request. Upon reasonable notice from the department, a dairy plant operator shall provide the department with samples of producer milk collected under s. ATCP 60.17. The department may request samples once every 4 months, or more often as the department considers necessary for animal health and milk quality testing. Every sample shall be marked with the identification number of the individual producer from whom the sample was collected, and shall also indicate the date on which the sample was collected. A sample shall be kept at a temperature of 40° F or below until it is transferred to the custody of the department.

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89.

Subchapter V — Inspection and Enforcement

ATCP 60.24 Inspection of dairy farms; general. (1) INSPECTION BY DAIRY PLANT. Before a dairy plant operator submits a milk producer license application under s. ATCP 60.02 or a grade A permit application under s. ATCP 60.03 on behalf of a milk producer, the dairy plant operator shall inspect the dairy farm. The dairy plant operator, when submitting the producer's license or permit application, shall include a copy of the operator's inspection report and shall certify that the dairy farm facilities comply with applicable dairy farm standards under this chapter. The department may, at other times, require a dairy plant operator to inspect a dairy farm as necessary.

(2) INSPECTION BY THE DEPARTMENT. (a) The department shall inspect dairy farms for compliance with applicable standards under this chapter. Except as provided under par. (b), the department shall inspect a grade A farm at least once every 6 months, and a grade B farm at least once every 2 years. For the purpose of conducting a lawful inspection under this chapter, the department may exercise its authority under ss. 93.08, 93.15 (2) and 97.12 (1), Stats.

(b) The department may conduct a pilot program of performance–based grade A dairy farm inspections, under which the department inspects selected grade A dairy farms at a frequency other than the frequency specified under par. (a), if the pilot program is approved by the food and drug administration, public health service, United States department of health and human services.

(3) VARIANCES. The department may issue a written waiver granting a variance from a dairy farm standard under subch. III if the department determines that the variance is reasonable and necessary under the circumstances, and will not compromise the purpose served by the standard. A waiver under this subsection may be issued by the food division administrator or the administrator's designee.

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89; am. (1) and (2), Register, June, 1992, No. 438, eff. 7–1–92; emerg. renum. (2) to be (2) (a), cr. (2) (b), eff. 12–21–93; renum. (2) to be (2) (a), and am., cr. (2) (b), r. and recr. (3), Register, November, 1994, No. 467, eff. 12–1–94.

ATCP 60.25 Suspension or revocation of milk producer license. (1) GENERAL. A milk producer's license may be suspended or revoked for cause, as provided in s. 93.06 (7), Stats. The suspension or revocation of a milk producer's license also suspends or revokes any grade A farm permit held by the producer. Except as provided under sub. (2), a milk producer's license may not be suspended or revoked except by order of the secretary or the secretary's designee, after notice and opportunity for hearing under ch. 227, Stats. The food division may file a written complaint with the department, seeking the suspension or revocation of a milk producer's license. Pending completion of the proceedings, the secretary or the secretary's designee may issue interim orders as necessary to protect the public health, safety and welfare.

Note: Cause for which a milk producer's license may be suspended or revoked may include violations of dairy farm standards under subchapter III; violations of milk quality standards under s. ATCP 60.15; willful interference with, or refusal to permit a lawful dairy farm inspection; or failure to pay a required fee under s. ATCP 60.05.

(2) SUMMARY SUSPENSION BY FOOD DIVISION. The food division may issue a written notice summarily suspending a milk producer's license if the food division makes a written finding in its suspension notice that any of the following circumstances exists, and that the circumstance warrants summary suspension:

(a) The sale or shipment of milk from the producer's dairy farm poses an imminent hazard to public health, and there is a reasonable likelihood that the hazard may continue if the producer's license is not summarily suspended.

Note: The following conditions, individually or in combination, may constitute evidence of an imminent public health hazard under this paragraph:

1. An inspection of the producer's dairy farm reveals gross violations of dairy farms standards under subchapter III, or reveals violations which pose an acute health risk.

2. Confirmed bacterial plate counts or plate loop counts on the producer's milk indicate bacterial counts of more than 1,000,000 per ml. in the milk.

3. Drug tests on the producer's milk indicate that drug residues are present in the milk.

4. Milk from the producer's dairy farm is reliably believed to contain pesticides or toxic substances which may be harmful to humans.

5. An infectious disease, transmissible to humans through milk, is reliably diagnosed in the producer's herd.

(b) The producer has refused to permit inspection or sampling authorized by law.

(c) The producer has physically assaulted an inspector.

(d) Despite reasonable notice and demand for payment, a producer has failed or refused to pay license or reinspection fees for which the producer is liable under s. ATCP 60.05 (3), and which were due and payable prior to the current license year.

(3) SUMMARY SUSPENSION NOTICE; RIGHT OF HEARING. A summary suspension notice under sub. (2) becomes effective when served on the producer. A summary suspension notice shall comply with s. ATCP 60.26. A person adversely affected by a summary suspension notice may request a hearing on the summary suspension notice, as provided in s. ATCP 60.31.

(4) INSPECTION PRIOR TO REINSTATEMENT; REINSPECTION FEE. If an inspection is required for reinstatement of a license which is suspended or revoked under this section, the department shall charge a reinspection fee under s. ATCP 60.04 for the inspection.

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89.

ATCP 60.26 Suspension or revocation of grade A farm permit; general. A milk producer's grade A permit may be suspended or revoked for cause, as provided in s. 93.06 (7), Stats. Except as provided under s. ATCP 60.25, 60.27, 60.275 or 60.28, a grade A permit may not be suspended or revoked except by order of the secretary or the secretary's designee, after notice and opportunity for hearing under ch. 227, Stats. The food division may file a written complaint with the department, seeking the suspension or revocation of a grade A permit. Pending completion of the proceedings, the secretary or the secretary's designee may issue interim orders as necessary to protect the public health, safety and welfare. If an inspection is required for the reinstatement of a grade A permit which is suspended or revoked under this section, the department shall charge a reinspection fee under s. ATCP 60.04 for the inspection.

Note: Cause for which a producer's grade A permit may be suspended or revoked may include violation of a dairy farm standard under subchapter III; violation of a milk quality standard under s. ATCP 60.15; willful interference with, or refusal to permit, a lawful dairy farm inspection; or failure to pay fees for which the producer is liable under s. ATCP 60.05 (3).

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89; am. Register, June, 1992, No. 438, eff. 7–1–92.

ATCP 60.27 Violation of grade A milk quality standards; suspension of grade A farm permit by food division. (1) WARNING NOTICE. The food division shall mail a written warning notice to a grade A milk producer whenever any of the following occurs:

(a) Two of the last 4 bacterial counts reported to the department under s. ATCP 60.18 (2) exceed 100,000 per ml., in violation of the standard for grade A milk under s. ATCP 60.15 (2).

(b) Two of the last 4 somatic cell counts reported to the department under s. ATCP 60.20 (2) exceed 750,000 somatic cells per ml. for cow's milk, or 1,000,000 per ml. for goat milk, in violation of the standard under s. ATCP 60.15 (4).

(2) CONTENTS OF WARNING NOTICE; EFFECTIVE PERIOD. A warning notice under sub. (1) shall warn the producer that the producer's grade A permit will be suspended if milk quality testing indicates a continued violation of the standard under s. ATCP 60.15 to which the warning notice pertains. A copy of the notice shall be mailed to the dairy plant operator. A warning notice becomes effective 3 days after it is mailed, and remains in effect as long as the standard cited in the warning notice is violated on 2 of the last 4 reported tests.

(3) TESTING SUBSEQUENT TO WARNING NOTICE. Not less than 3 calendar days nor more than 21 calendar days after a warning notice under subs. (1) and (2) becomes effective, the dairy plant operator shall obtain and test a sample of the producer's milk for compliance with the milk quality standard cited under sub. (1). A milk sample collected under s. ATCP 60.17 and tested by a dairy plant operator under subchapter IV satisfies this requirement, provided that the sample is obtained and tested within the time period specified under this paragraph, and the dairy plant operator reports the test result to the department within the applicable reporting time specified under subch. IV.

(4) SUSPENSION NOTICE. The food division shall mail a written notice to a milk producer, suspending the milk producer's grade A permit, if any of the following occurs while a warning notice under subs. (1) and (2) remains in effect:

(a) Three out of the last 5 bacterial counts received by the department under s. ATCP 60.18 (2) and sub. (3) exceed 100,000 per ml.

(b) Three out of the last 5 somatic cell counts received by the department under s. ATCP 60.20 (2) and sub. (3) exceed 750,000 per ml. for cow's milk, or 1,000,000 per ml. for goat milk.

Note: This subsection does not prohibit the food division from summarily suspending a milk producer's license and grade A permit under s. ATCP 60.25, without prior warning, if the food division determines that any of the circumstances identified under s. ATCP 60.25 (2) exists.

(5) EFFECTIVE DATE OF SUSPENSION; CONTENTS OF SUSPENSION NOTICE. The suspension of a milk producer's grade A farm permit becomes effective 3 days after a suspension notice under sub. (4) is mailed. The department shall give prior oral or written notice of the suspension to the dairy plant operator, and shall mail or deliver a copy of the suspension notice to the dairy plant operator. The suspension notice shall comply with s. ATCP 60.29.

(6) REINSTATEMENT OF PERMIT. (a) A milk producer whose grade A farm permit is suspended under this section for violation of a milk quality standard may file with the department a written request for reinstatement of the permit. The reinstatement request shall be made on a form provided by the department under s. ATCP 60.29 (4). The reinstatement request shall be accompanied by the result of a milk quality test performed by the dairy plant operator, showing that the relevant milk quality standard is no longer being violated. Within 7 days after the department receives a complete reinstatement request, the department shall inspect the dairy farm. The department shall charge a reinspection fee for the inspection, pursuant to s. ATCP 60.04. If, upon inspection, it appears that all conditions potentially responsible for the milk quality standard violation have been corrected, the inspector shall reinstate the producer's grade A farm permit, and shall notify the dairy plant of the reinstatement.

(b) If a milk producer does not request reinstatement under par. (a) within 6 months after the producer's grade A permit is suspended under this section, the permit is automatically revoked at the end of the 6 month period. Once revoked, the permit may not be reinstated except upon the filing of a new application under s. ATCP 60.03. Written notice to this effect shall be provided to the producer at the time of revocation. This paragraph does not apply if the suspension of the producer's grade A permit has been contested, and the contested case proceedings are still pending.

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89; am. (3), Register, June, 1992, No. 438, eff. 7–1–92.

ATCP 60.275 Drug residue violations; producer sanctions. (1) WARNING NOTICE. (a) *Requirement.* Whenever the food division receives notice under s. ATCP 60.19 (8) that a producer milk sample has tested positive for a drug residue, the food division shall mail a warning notice to that producer. The warning notice takes effect 3 days after it is mailed. The warning notice shall include all of the following:

1. A description of the positive drug residue findings which caused the department to issue the notice.

2. The warnings specified in pars. (b) and (c).

3. Notice of the producer's right to hearing under par. (d).

(b) *Grade A permit suspension; 21–day notice.* The warning notice under par. (a) shall state that, 21 days after the effective date of the warning notice, the food division will suspend the producer's grade A dairy farm permit unless, prior to that date, the producer certifies to the food division that the producer has implemented a drug residue prevention program on the producer's dairy farm in consultation with a licensed veterinarian.

(c) *Dairy farm license suspension; 45–day notice.* The warning notice under par. (a) shall state that, 45 days after the effective date of the warning notice, the food division will initiate action to suspend the producer's dairy farm license unless, prior to that date, the producer certifies to the food division that the producer has implemented a drug residue prevention program on the producer's dairy farm in consultation with a licensed veterinarian.

Note: The drug residue prevention program under this section should conform to the "Milk and Dairy Beef Quality Assurance Program" published by Agri–Education, Inc. A copy of that program which is endorsed by the federal food and drug administration, is on file in the offices of the department, the secretary of state, and the revisor of statutes. A copy may be purchased from Agri–Education, Inc., P.O. Box 497, Stratford, IA 50249.

(d) *Right to informal hearing.* If a producer receiving a warning notice under par. (a) disputes the drug residue findings on which the notice is based, the producer may request an informal hearing to discuss the drug residue findings. A request for hearing does not automatically stay the warning notice. If the producer requests an informal hearing, the food division shall hold an informal hearing at the division's nearest regional office or by telephone. The food division shall hold the informal hearing within 3 business days after the division receives the request for hearing, unless the producer agrees to a later hearing date. The food division may withdraw a warning notice if it appears that the notice was not justified.

(2) GRADE A PERMIT SUSPENSION. (a) *Notice suspending permit.* If the food division does not receive certification from a producer under sub. (1) (b) within 21 days after the effective date of the warning notice under sub. (1) (a), the food division shall mail a notice to the producer suspending the producer's grade A dairy farm permit. The suspension notice shall comply with s. ATCP 60.29. The suspension notice takes effect 3 days after it is mailed. The food division shall notify the dairy plant operator of the suspension, and shall provide the operator with a copy of the suspension notice.

(b) *Permit reinstatement.* 1. If a milk producer's grade A dairy farm permit is suspended under par. (a), the producer may file with the food division a written request for reinstatement of the permit. The reinstatement request shall be made on a form provided by the department under s. ATCP 60.29 (4). The reinstatement request shall be accompanied by the producer's certification stating that the producer has implemented a drug residue prevention program on the producer's dairy farm in consultation with a licensed veterinarian.

2. Within 7 days after the department receives a complete reinstatement request under subd. 1., the department shall inspect

the producer's dairy farm. The department shall charge a reinspection fee for the inspection, pursuant to s. ATCP 60.04. If, upon inspection, it appears that all conditions potentially responsible for the positive drug residue finding have been corrected, the inspector shall reinstate the producer's grade A farm permit, and shall notify the dairy plant of the reinstatement.

3. If a milk producer does not request reinstatement under subd. 1 within 6 months after the producer's grade A permit is suspended under par. (a), the permit is revoked automatically at the end of the 6 month period. A permit, once revoked, may not be reinstated unless the producer files a new application under s. ATCP 60.03. Written notice to this effect shall be included in the suspension notice under par. (a), and shall also be provided to the producer at the time of revocation. This subdivision does not apply if the producer's grade A permit suspension has been contested and the contested case proceeding is pending.

(3) LICENSE SUSPENSION. (a) *License suspension; failure to implement drug residue prevention program.* If the food division does not receive certification from a producer under sub. (1) (c) within 45 days after the effective date of the warning notice under sub. (1) (a), the food division shall file a complaint with the department, asking the department to suspend the producer's dairy farm license until a drug residue prevention program is implemented.

(b) *License suspension; 3 violations within 12 months.* If, within any 12 month period, the food division receives 3 notices under s. ATCP 60.19 (8) that milk samples from the same producer have tested positive for drug residues, the food division shall file a complaint with the department asking the department to suspend the producer's dairy farm license for at least 30 days.

Note: The producer sanctions under this section are in addition to any other sanctions provided under this chapter or ch. 93 or 97, Stats., and do not limit the application of those other sanctions.

History: Cr. Register, June, 1992, No. 438, eff. 7–1–92.

ATCP 60.28 Violation of grade A farm standards; suspension of grade A farm permit by food division. **(1)** WARNING NOTICE. If, upon inspection of a grade A dairy farm, a food division inspector finds a key violation as defined in s. ATCP 60.01 (15), the inspector may issue a warning notice to the producer stating that, if the violation is not corrected by a deadline date specified in the notice, the producer's grade A permit will be suspended. The correction deadline shall be established by the inspector based on the seriousness of the key violation and the time reasonably required to correct the key violation. The correction deadline shall be not less than 3 days nor more than 60 days after a warning notice is issued under this paragraph. The warning notice shall be served in person or by mail, or shall be prominently posted in the milkhouse. A copy of the warning notice shall be mailed or delivered to the dairy plant. The warning notice shall include a notice of the producer's right to hearing under s. ATCP 60.31.

(2) REINSPECTION; SUSPENSION NOTICE. Within 7 days after the correction deadline date specified in the warning notice under sub. (1), a food division inspector shall reinspect the dairy farm to determine whether each key violation cited in the warning notice has been corrected. The department shall charge a reinspection fee for the inspection, pursuant to s. ATCP 60.04. If, upon reinspection, the inspector finds that a key violation cited in the warning notice has not been corrected, the inspector shall issue a written notice suspending the producer's grade A permit. The suspension becomes effective immediately upon service of the suspension notice under s. ATCP 60.29 (6). The inspector shall promptly notify the dairy plant of the suspension, and may tag the bulk tank to notify the milk hauler of the suspension. A copy of the suspension notice shall be mailed or delivered to the dairy plant. A person adversely affected by the suspension notice may request a hearing on the notice as provided under s. ATCP 60.31.

(3) REINSTATEMENT OF PERMIT. (a) A milk producer whose grade A farm permit is suspended under sub. (2) may file a written request for reinstatement with the department. The reinstatement request shall be made on a form provided by the department under s. ATCP 60.29 (4). Within 7 days after the department receives the reinstatement request, the department shall inspect the producer's dairy farm in response to the reinstatement request. The department shall charge a reinspection fee for the inspection, pursuant to s. ATCP 60.04. If, upon inspection, it appears that all violations cited in the suspension notice have been corrected, the inspector shall reinstate the producer's grade A farm permit, and shall notify the dairy plant of the reinstatement.

(b) If a milk producer does not request reinstatement under par. (a) within 6 months after a producer's grade A permit is suspended under sub. (2), the grade A permit is automatically revoked at the end of the 6 month period. Once revoked, the permit may not be reinstated except upon the filing of a new application under s. ATCP 60.03. Written notice to this effect shall be provided to the producer at the time of revocation. This paragraph does not apply if the suspension of the producer's grade A permit has been contested, and the contested case proceedings are still pending.

Note: This subsection does not prohibit the food division from summarily suspending a milk producer's license and grade A permit under s. ATCP 60.25 without prior warning if the food division determines that any of the circumstances identified under s. ATCP 60.25 (2) exists.

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89.

ATCP 60.29 Suspension notice; requirements. Whenever the food division suspends a milk producer license under s. ATCP 60.25 (2), or a grade A farm permit under s. ATCP 60.27 or 60.28, the suspension notice shall comply with the following requirements:

(1) ISSUED BY AUTHORIZED PERSON. A suspension notice shall be signed by the food division administrator, or a person designated in writing by the food division administrator. Persons authorized to issue suspension notices may be designated individually, or by position. A notice suspending a grade A farm permit under s. ATCP 60.28 (2) may be issued by the food division inspector who makes the inspection under that subsection. No suspension notice may be issued by a special dairy farm inspector appointed under s. ATCP 60.32.

(2) REASON FOR SUSPENSION. A suspension notice shall specify the reasons for which the suspension notice is issued.

(3) TERM OF SUSPENSION; REQUIREMENTS FOR REINSTATEMENT OF LICENSE OR PERMIT. A suspension notice shall indicate the term of the suspension or, if the suspension is for an indefinite term, the conditions which must be met in order for the affected milk producer to obtain reinstatement of the milk producer's license or grade A permit. Conditions for reinstatement shall be reasonably related to the reasons for which the license or permit is suspended. If the food division summarily suspends a milk producer license under s. ATCP 60.25 (2), the suspension notice may authorize a dairy plant to receive milk from the producer on a conditional basis, upon completion of specified inspection or testing by the dairy plant, pending full reinstatement by the department.

(4) REINSTATEMENT APPLICATION FORM. A notice suspending a grade A permit under s. ATCP 60.27 or 60.28 shall be accompanied by a reinstatement application form which may be used by the affected milk producer to apply for reinstatement of the milk producer's grade A permit. The form shall include a statement, to be signed by the affected milk producer, that all requirements for the reinstatement of the grade A permit have been met to the best of the milk producer's knowledge. If a milk producer requests a hearing on a suspension under s. ATCP 60.31, a request for reinstatement under this subsection does not constitute an admission or waiver by the milk producer with respect to any fact, issue or cause of action.

(5) NOTICE OF RIGHT TO HEARING. A suspension notice shall include a notice that the producer may request a hearing on the suspension, as provided under s. ATCP 60.31.

(6) SERVICE ON MILK PRODUCER. A suspension notice shall be served on the affected milk producer by one of the following methods:

(a) By delivering the notice in person to the milk producer, or to a competent member of the milk producer's family who is 14 years of age or older.

(b) By mailing the notice to the milk producer. Service may be proved by an affidavit of mailing, or by a return receipt signed by the milk producer. Absent proof of later delivery, a notice served by mail is considered served 3 days after the date of mailing.

(c) For a notice suspending a grade A permit under s. ATCP 60.28, by posting the suspension notice in a prominent location in the producer's milkhouse. A notice posted in the milkhouse under this paragraph is considered served at the time of posting.

(7) COPY PROVIDED TO DAIRY PLANT OPERATOR. A copy of every suspension notice shall be mailed or delivered to the dairy plant operator who normally receives milk from the milk producer. Failure to mail or deliver a copy to the dairy plant operator does not invalidate a suspension notice.

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89.

ATCP 60.30 Holding orders; identification and disposal of adulterated milk. (1) HOLDING ORDER. Whenever a department inspector has reasonable cause to believe that milk examined by the inspector is adulterated or misbranded, and is hazardous to health or misleading to the potential damage or injury of a purchaser or consumer, the inspector may issue a temporary holding order to allow for further testing or examination of the milk or milk product, pursuant to s. 97.12 (2), Stats. A holding order shall be issued in writing, and shall identify the milk which is subject to the holding order. A holding order may be extended or terminated by written notice, as provided in s. 97.12 (2), Stats. Notice extending a holding order may be issued by the food division administrator, or a person authorized in writing by the food division administrator. A holding order and every notice extending a holding order shall include a notice of the recipient's right to hearing under s. ATCP 60.31.

(2) DISPOSAL ORDER. If analysis or examination shows that milk is adulterated or misbranded, and is hazardous to health or misleading to the potential damage or injury of a purchaser or consumer, the food division may issue a summary disposal order under s. 97.12 (2) (c), Stats., requiring the disposal or other disposition of the milk or milk product. A disposal order may be issued by the inspector who examines the milk, or by the food division administrator or a person authorized in writing by the administrator. Where appropriate, an order may require relabeling of misbranded milk in lieu of disposal. A holding order under sub. (1) is not a prerequisite to a disposal order under this subsection. A disposal order shall be issued in writing, and shall include a notice of the recipient's right to hearing under s. ATCP 60.31.

(3) IDENTIFICATION OF ADULTERATED MILK. If milk is found to be adulterated and hazardous to health, a department inspector may identify the milk for disposal or disposition in compliance with a notice under sub. (2). To identify the adulterated milk, the inspector may tag the milk container, and may add a harmless food grade color to the milk to prevent its sale or use for human food purposes.

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89.

ATCP 60.31 Right of hearing. (1) HEARING REQUEST; PERSONS ADVERSELY AFFECTED BY FOOD DIVISION ACTION. A person adversely affected[by] any of the following food division actions may request a hearing on the action:

(a) The denial of a milk producer license application under s. ATCP 60.02, or grade A permit application under s. ATCP 60.03.

(b) The summary suspension of a milk producer license under s. ATCP 60.25 (2).

(c) The issuance of a warning notice under s. ATCP 60.27 (1) or 60.28 (1).

(d) The suspension of a grade A permit under s. ATCP 60.27 (4) or 60.28 (2).

(e) The denial of a reinstatement application under s. ATCP 60.27 (6) or 60.28 (3).

(f) A holding order, disposal order, or other summary action under s. ATCP 60.30.

(2) FORM AND TIMING OF REQUEST; EFFECT PENDING HEARINGS. A request for hearing on a food division action under sub. (1) shall be made in writing, and shall be filed with the department within 10 days after the producer receives notice of the food division action. A request for hearing does not stay the effect of any action under this chapter. The filing deadline under this subsection is waived if the department fails to give the milk producer timely written notice of the filing deadline.

(3) INFORMAL HEARING. (a) If the department receives a written request under this section for a hearing on a food division action, the department shall conduct a prompt informal hearing before a department employe or official who was not personally involved in the investigation or decision to take the action, and who has authority to withdraw or correct the action as necessary. The informal hearing shall be conducted by the food division unless the action was taken by the food division administrator. The informal hearing shall be held within 3 business days after a request for hearing is received by the department, unless the person requesting the hearing agrees to a later date. The informal hearing shall be held by telephone or at the regional office of the department.

(b) At an informal hearing under par. (a), the issue shall be limited to whether there were adequate grounds for the food division action under this chapter. Within 2 business days after the conclusion of the informal hearing, the presiding officer shall issue a brief written memorandum which summarizes the informal hearing, and any decision or action resulting from the informal hearing. A copy of the memorandum shall be provided to the party requesting the hearing. The memorandum shall include notice of a person's right to request a full evidentiary hearing under sub. (4).

(4) FULL EVIDENTIARY HEARING. If a person adversely affected by a food division action files a timely written request for hearing under subs. (1) and (2), and if the matter is not resolved by an informal hearing under sub. (3), the person adversely affected may request a full evidentiary hearing before the department, pursuant to ch. 227, Stats., and ch. ATCP 1. A full evidentiary hearing, if held, shall be held before a hearing examiner appointed by the secretary. A request for a full evidentiary hearing does not stay any action under this chapter.

History: Cr. Register, July, 1989, No. 403, eff. 8–1–89; r. Register, November, 1994, No. 467, eff. 12–1–94.