

DATE: August 13, 2002

TO: Beata Kalies

Committee on Agriculture

FROM: Patrick Fuller, Assembly Assistant Chief Clerk

RE: Clearinghouse Rules Referral

01-125-1st01  
(25) 50

The following Clearinghouse Rule has been referred to your committee.

### **CLEARINGHOUSE RULE 01-125**

AN ORDER to repeal ATCP ~~60.01 (28)~~, ~~60.05 (2)~~, ~~60.19 (1) (b)~~, ~~60.22 (1) (b)~~ Note and (c) and 60.25 (2) (c) and (d); to renumber ATCP 60.19 (10) (c) Note and (d) and 60.27 (6) (b); to renumber and amend ATCP 60.19 (10) (c); to amend ATCP 60.01 (1), (4), (7), (9b), (10), (15) (b) 8., (19) to (22), (24) and (29) (b), 60.02 (5), 60.03 (4), 60.04 (3), 60.06 (2), (3), (5) and (9) (a) 1., 60.07 (1) and (2) (d) and (f), 60.08 (5), 60.09 (1) and (4), 60.10 (1) Note, 60.11 (title), (1) (title), (2) (title), (c) and (e) Note and (3) (title), 60.12 (1), (2) and (6), 60.13 (1) and (2), 60.14 (2) to (4), 60.15 (2) and (4), 60.19 (7), (8) (b) and (10) (a), 60.22 (2) and (2) Note, 60.24 (3), 60.25 (1) and (2) (title), (intro.) and (a) Note, 60.26, 60.27 (1), (4), (4) Note and (6) (a), 60.275 (1) (a) (intro.) and (b) to (d), (2) (a) and (b) 1. and (3), 60.28 (1), (2) and (3) Note, 60.29 (intro.) and (3), 60.30 (1) and (2) and 60.31 (1) (title) and (intro.) and (2) to (4); to repeal and recreate ATCP 60.02 (6), 60.03 (5), 60.14 (6), 60.17, 60.18 and Notes, 60.19 (1) (b) and (5), 60.20 and Notes, 60.22 (1), 60.24 (2) and 60.29 (1); and to create ATCP 60.01 (1g), 60.02 (7), (7) Note, (8) and (8) Note, 60.03 (6) and (6) Note, 60.08 (6) to (8), 60.11 (4), 60.12 (7), 60.19 (1) Note, (11), (12) and (12) Note, 60.245 and 60.27 (6) (b), relating to dairy farms.

Submitted by **Department of Agriculture, Trade and Consumer Protection.**

Report received from Agency on **August 2, 2002.**

To committee on **Agriculture.**

Referred on **Tuesday, August 13, 2002.**

Last day for action - **Thursday, September 12, 2002.**

Under section 227.19 (4) of the Wisconsin Statutes, your committee has 30 days to take action or get an extension. The day **after** the official referral date is day one of your review period. Therefore, the 30th day should fall four weeks and two days after the referral date. For example, for Clearinghouse Rules referred on a Monday, a Wednesday would be your 30th day. For Clearinghouse Rules referred on a Tuesday, a Thursday would be your 30th day. For Clearinghouse Rules referred on a Wednesday, a Friday would be your 30th day. For Clearinghouse Rules referred on a Thursday or Friday, your 30th day would fall on a weekend. Therefore, your time would expire on the next working day (Monday) as provided for in s. 990.001 of the Wisconsin Statutes. Also, if the 30th day falls on a legal holiday, time would expire on the next working day.

Section 227.19 **requires** you to notify each member of your committee that you have received this Clearinghouse Rule. Although some committee chairs do so, you are not required to send a copy of the text of the rule to each member at this time. Your notice could state that members should contact you if they wish to receive a hard copy of the rule. **(Please note that the text of Clearinghouse Rules beginning with the prefix "01" is now available online in the Clearinghouse Rules infobase in FOLIO.)** Please put a copy of your official notification memo in the rule jacket.

Three copies of the Clearinghouse Rule and its accompanying documents are contained in the jacket. If you wish to have your Legislative Council attorney review the Clearinghouse Rule, send him/her a copy. I only need one copy remaining in the jacket when you report it out of committee at the end of the review period.

The identical process is happening simultaneously in the Senate. Keep track of their action on the rule.

For assistance with the Clearinghouse Rule process, please consult Ken Stigler (6-2406) or your Legislative Council attorney. If you wish to learn more on this subject, read section 227.19 of the Wisconsin Statutes or part 2 of the *Administrative Rules Procedures Manual* written by the Revisor of Statutes Bureau and the Wisconsin Legislative Council staff.



# Al Ott

State Representative • 3rd Assembly District

## Assembly Agriculture Committee

### MEMO

TO: Members of the Assembly Agriculture Committee

FROM: Representative Al Ott, Chair

DATE: August 14, 2002

The following clearinghouse rules have been referred to the Assembly Agriculture Committee for a thirty-day review period:

#### Clearinghouse Rule 01-124

Submitted by DATCP. An order to repeal, amend and/or recreate various sections in ATCP 80 & 69, relating to dairy plants.

This rule updates existing food safety requirements and makes changes in dairy plant operations.

#### Clearinghouse Rule 01-125

Also submitted by DATCP. An order to repeal, renumber, amend and create changes to sections of ATCP 60, relating to dairy farms.

This rule updates current dairy farm rules including items relating to testing, reporting, milk shipments, sheep milk, hot water capacity, re-circulated water, lab certifications, inspections, sanitation issues, and in general clarifies and modernizes current rules.

The deadline for committee action on these two rules is Thursday, September 12, 2002. A brief summary of the rules is enclosed. Please contact Beata via email [Beata.Kalies@legis.state.wi.us](mailto:Beata.Kalies@legis.state.wi.us) or call 6-5831 if you would like a copy of the entire rule or have additional questions. Please note that the text of this rule is also available online in Clearinghouse Rules InfoBase in FOLIO. Thank you.



State of Wisconsin  
Scott McCallum, Governor

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

**PUBLIC NOTICE**

**FINAL DRAFT RULE TO LEGISLATURE**

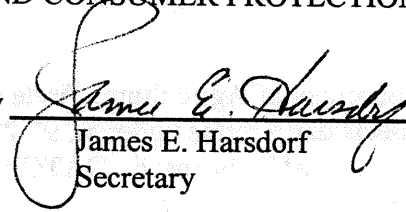
The Department of Agriculture, Trade and Consumer Protection announces that it is submitting the following rule for legislative committee review, pursuant to s. 227.19, Stats.:

CLEARINGHOUSE RULES #: 01-125  
SUBJECT: Dairy Farms  
ADM. CODE REFERENCE: ATCP 60  
DATCP DOCKET #: 98-R-2

Dated this 29 day of July, 2002.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE, TRADE  
AND CONSUMER PROTECTION

By

  
James E. Harsdorf  
Secretary



State of Wisconsin  
Scott McCallum, Governor

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

DATE: July 17, 2002

TO: The Honorable Fred Risser  
President, Wisconsin State Senate  
Room 220 South, State Capitol  
P. O. Box 7882  
Madison, WI 53707-7882

The Honorable Scott R. Jensen  
Speaker, Wisconsin State Assembly  
Room 211 West, State Capitol  
P. O. Box 8952  
Madison, WI 53708-8952

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

SUBJECT: **Dairy Farms; Final Draft Rule**  
**(Clearinghouse Rule # 01-125)**

The Department of Agriculture, Trade and Consumer Protection is transmitting this rule for legislative committee review, as provided in s. 227.19(2) and (3), Stats. The department will publish a notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19(2), Stats.

### **Background**

The Department of Agriculture, Trade and Consumer Protection ("DATCP") currently licenses and inspects dairy farms under ss. 97.22 to 97.24, Stats., and ch. ATCP 60, Wis. Adm. Code. All dairy farms must be licensed. DATCP currently licenses approximately 18,000 dairy farms in this state.

Grade A dairy farms must also hold a grade A permit. Only grade A milk may be sold as fluid milk. Grade B milk may be used to produce cheese and other non-fluid milk products (grade A milk may also be used for this purpose). Grade A milk typically commands a higher price than grade B milk.

All milk must be produced under sanitary conditions. Grade A milk production must also comply with the Interstate Pasteurized Milk Ordinance (PMO). Failure to comply with PMO requirements may jeopardize Wisconsin interstate milk shipments. Current DATCP rules

establish standards for grade A and grade B dairy farms. DATCP rules incorporate PMO standards.

A milk producer typically ships milk to a single dairy plant operator, although this industry custom is changing. DATCP licenses dairy plants located in this state. DATCP does not license out-of-state dairy plants, although it does have authority to regulate out-of-state dairy plants that procure milk in this state from Wisconsin producers. DATCP currently regulates dairy plants under ch. ATCP 80, Wis. Adm. Code. ATCP 60 also spells out dairy plant responsibilities related to milk procurement from dairy farms.

Under current law, a dairy plant operator must submit milk producer license applications, license fees, and grade A permit applications on behalf of the milk producers who ship milk to that operator. A dairy plant operator must also test producer milk shipments for drug residues, bacteria, somatic cells and other adulterants, and must report test results to DATCP. A dairy plant operator must reject milk that fails to meet critical minimum standards.

Bulk milk haulers collect milk shipments from dairy farms, and transport those shipments to dairy plants. Each bulk tanker load typically includes milk shipments from several producers, although some large producer shipments may fill an entire tanker. The milk hauler weighs and measures the milk at the farm (for payment purposes), and collects a sample of each producer's milk before that milk is commingled with milk from other producers. DATCP regulates milk haulers under ch. ATCP 82, Wis. Adm. Code.

The milk hauler transmits producer milk samples to the dairy plant operator's laboratory for testing. The operator regularly tests samples for drug residues, bacteria and somatic cells, and reports test results to DATCP. DATCP certifies milk testing laboratories and analysts under ch. ATCP 77, Wis. Adm. Code.

Under current rules, a dairy plant operator must also screen each bulk load of milk before the operator commingles that load with any other loads. If a bulk load tests positive for drug residues, the dairy plant operator must reject it and test the individual producer samples for that bulk load. If a producer sample tests positive for drug residues, the dairy plant operator may charge that producer for the cost of the bulk load.

DATCP currently inspects dairy farms, and monitors milk quality test reports. DATCP inspects grade A dairy farms at a specified frequency, based on dairy farm performance. DATCP inspects grade B farms less frequently. DATCP may suspend or revoke a producer's license or grade A permit for cause, including violations of farm sanitation or milk quality standards. Current rules spell out compliance procedures, including notice and appeal procedures.

## Rule Contents

This rule updates current dairy farm rules under ch. ATCP 60, Wis. Adm. Code. Among other things, this rule:

- Requires out-of-state dairy plant operators to test milk procured in this state from Wisconsin producers, and report test results. Most out-of-state dairy plant operators already do this voluntarily.
- Authorizes milk producers to ship milk to 2 or more dairy plant operators. *Each operator* must comply with testing, reporting and other requirements related to milk shipped to that operator. *One of the operators* must take responsibility for producer licensing functions. That operator must pay the producer's license, grade A permit and re-inspection fees, and must perform initial dairy farm inspections and biennial water supply tests required for licensing purposes. Operators must report producer transfers. An operator who merely "custom processes" dairy products for producers, without marketing or taking title to those dairy products, is exempt from certain requirements.
- Authorizes milk producers (such as grazers) to discontinue milk shipments temporarily, without jeopardizing their license or permit status.
- Extends current rules to cover farms producing milk from sheep (current rules apply to cows and goats).
- Modifies current hot water capacity requirements for dairy farms.
- Authorizes the use of re-circulated water in plate coolers, subject to conditions specified in this rule.
- Authorizes milk producers to milk directly to bulk transport containers, subject to standards specified in this rule.
- Clarifies milk testing and reporting requirements.
- Requires dairy plant operators to respond immediately if a bacteria test on a producer's milk shows more than 750,000 bacteria per ml. (the current "immediate response" level is 1,000,000 per ml.).
- Requires dairy plant operators to report milk quality test reports in electronic form, beginning one year after the effective date of this rule. Many operators currently submit hard copy written reports. The electronic reporting requirement does not apply to drug residue test reports.

- Requires a dairy plant operator to recover, from producers who contaminate milk with drug residues, the full amount of the operator's loss related to that milk. Under current rules, an operator must test bulk loads of milk, reject contaminated loads, and recover at least part of the loss from offending producers. This rule requires the operator to recover the full value of each rejected load (not just part), plus any additional transportation, testing and disposal costs incurred because of the contamination.
- Tightens the current test standard for beta lactam drug residues in milk, and modifies current standards for Neomycin, Chlortetracycline and Oxytetracycline, per federal standards.
- Requires milk laboratories and laboratory analysts to be certified by DATCP, not the Department of Health and Family Services (DHFS). The Legislature recently transferred dairy, food and water lab certification responsibilities from DHFS to DATCP.
- Codifies DATCP's current program of performance-based dairy farm inspection. Under this program, DATCP inspects different farms with different frequency, depending on their performance.
- Updates current sanitation requirements for dairy farms.
- Updates current DATCP administrative procedures.
- Make drafting and organizational changes to clarify and modernize current rules.

### **Hearings**

DATCP held 4 public hearings on this rule. DATCP held hearings on November 29, 2001 in Eau Claire; December 4, 2001 in Appleton; December 5, 2001 in Monroe; and December 6, 2001 in Madison. The hearing in Madison also had video-conferencing sites at Wisconsin Rapids, LaCrosse and Green Bay.

The following persons appeared at the hearings and spoke in general support of the proposed rule:

- John Umhoeffer, representing the Wis. Cheesemakers Association (Appleton hearing).
- Dean Sommers, representing Alto Dairy (Appleton hearing).
- John Manske, representing the Wisconsin Federation of Cooperatives (Madison hearing).
- Brad Legreid, representing the Wisconsin Dairy Products Association (Madison hearing).
- William Wendorf, Food Science Department, University of Wisconsin – Madison (Madison hearing).

The hearing record remained open for written comments until December 15, 2001. The following persons submitted written comments suggesting some changes to the draft rule:

- Dean Sommers, representing Alto Dairy.
- John Manske, representing the Wisconsin Federation of Cooperatives.
- John Umhoeffer, representing the Wisconsin Cheesemakers Association.
- William Wendorf, Food Science Department, University of Wisconsin - Madison.

### **Changes from Hearing Draft**

#### **Milk Producer Shipping to 2 or More Dairy Plants**

The final draft makes it easier for a milk producer to ship milk to more than one dairy plant operator at the same time. A producer may ship to 2 or more dairy plant operators if all the following apply:

- The producer is assigned, for licensing purposes, to *one of the operators*. That operator must file license and permit applications for the milk producer, and pay producer license and reinspection fees. Under this rule, as under current rules, the operator must charge producer reinspection fees back to the producer.
- *Each operator* pays milk procurement fees related to that operator's receipt of milk shipments from the producer. An operator is not required to pay milk procurement fees on milk that the operator "custom processes" for a producer (see below), provided that the producer pays those fees.
- *Each operator* tests milk shipments shipped to that operator, and reports test results. An operator is not required to perform monthly milk quality tests on milk that the operator "custom processes" for a producer (see below). But the operator must perform drug residue screening tests on that milk.

A dairy plant operator is not required to pay milk procurement fees or perform monthly milk quality tests on milk that the operator "custom processes" for a producer if all the following apply:

- The operator makes that milk into dairy products on behalf of the producer.
- The producer retains title to that milk, and to all of the dairy products made from that milk.
- The operator does not market that milk, or the dairy products made from that milk, but returns them to the producer or the producer's agent for consumption or marketing.
- The operator does not commingle producer-owned milk or dairy products with other milk or dairy products.



- The operator provides the “custom processing” services pursuant to a written agreement with the producer.
- The producer ships, for “custom processing,” not more than 50 percent of the producer’s milk production in any month.
- The operator “custom processes” not more than 5 million pounds of milk in any month.
- The producer notifies the department before shipping any milk for “custom processing.” The producer must also notify the dairy plant operator to whom the producer is assigned for licensing purposes.
- The producer reports, to the department, the monthly volume of milk delivered to the custom processor. The producer must give the same report to the dairy plant operator to whom the producer is assigned for licensing purposes.
- The producer pays any milk procurement fees and milk marketing order assessments that apply, in the manner prescribed by state or federal law.

### **Other Changes**

The final draft also makes the following changes to the hearing draft:

- The final draft requires the milk producer, not the dairy plant operator, to test the producer’s plate cooler (if any) and report the test results to DATCP. The hearing draft had required the dairy plant operator to test and report.
- The final draft clarifies bacteriological test standards for re-circulated cooling water on dairy farms.
- The final draft requires the dairy plant operator to seal the access port on a bulk transport container used by a milk producer to collect and transport milk to a dairy plant operator, after the container is cleaned and sanitized.
- Under the final draft, a dairy plant operator may elect to report positive bulk load drug residue tests by FAX, rather than by telephone (current rules require telephone reporting).
- The final draft requires dairy plant operators to report milk quality test results in electronic form not later than one year after the effective date of this rule. This electronic reporting requirement does not apply to drug residue test results.

### **Response to Rules Clearinghouse Comments**

The department accepted all of the recommendations of LCRC. The suggested changes were non-substantive and only related to form, style and placement in the Administrative Code, and minor changes regarding clarity, grammar, punctuation and use of plain language.

### **Small Business Analysis**

This rule will affect some small businesses, including dairy farmers and dairy plant operators who are small businesses. For the most part, this rule will help small businesses by modernizing current regulations to accommodate changing industry practices. A small business analysis (“final regulatory flexibility analysis”) is attached.

### **Fiscal Estimate**

This rule will not have a major fiscal impact on DATCP or local units of government. A fiscal estimate is attached.

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

1 The state of Wisconsin department of agriculture, trade and consumer protection proposes the  
2 following order to repeal ATCP 60.01(28), 60.05(2), 60.19(10)(b), 60.22(1)(b)(note) and (c), and  
3 60.25(2)(c) and (d); to renumber ATCP 60.19(10)(c)(note) and (d), and 60.27(6)(b); to renumber  
4 and amend ATCP 60.19(10)(c); to amend ATCP 60.01(1), (4), (7), (9b), (10), (15)(b)8., (19) to  
5 (22), (24) and (29)(b), 60.02(5), 60.03(4), 60.04(3), 60.06(2), (3), (5) and (9)(a)1., 60.07(1) and  
6 (2)(d) and (f), 60.08(5), 60.09(1) and (4), 60.10(1)(note), 60.11(title), (1)(title), (2)(title), (c) and  
7 (e)(note) and (3)(title), 60.12(1), (2) and (6), 60.13(1) and (2), 60.14(2) to (4), 60.15(2) and (4),  
8 60.19(7), (8)(b) and (10)(a), 60.22(2) and (2)(note), 60.24(3), 60.25(1) and (2)(title), (intro.) and  
9 (a)(note), 60.26, 60.27(1), (4), (4)(note) and (6)(a), 60.275(1)(a)(intro.) and (b) to (d), (2)(a),  
10 (b)1. and (3), 60.28(1), (2) and (3)(note), 60.29(intro.) and (3), 60.30(1) and (2), and  
11 60.31(1)(title) and (intro.), and (2) to (4); to repeal and recreate ATCP 60.02(6), 60.03(5),  
12 60.14(6), 60.17, 60.18 and (notes), 60.19(1)(b) and (5), 60.20 and (notes), 60.22(1), 60.24(2) and  
13 60.29(1); and to create ATCP 60.01(1g), 60.02(7), (8), (8)(note), (9) and (9)(note), 60.03(6) and  
14 (6)(note), 60.08(6), 60.11(4), 60.12(7), 60.19(11), 60.245, and 60.27(6)(b); relating to dairy  
15 farms.

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

Statutory authority: ss. 93.07(1), 97.09(4), 97.20(4), 97.22(8), 97.24(3) and 97.52,  
Stats.

Statutes interpreted: ss. 93.06(7) and (8), 97.02, 97.03, 97.12, 97.20, 97.22 to 97.24,  
97.50 and 97.52, Stats.

## Overview

The Wisconsin Department of Agriculture, Trade and Consumer Protection (“DATCP”) regulates dairy farms to protect consumers and facilitate interstate shipment of Wisconsin dairy products. This rule updates current dairy farm rules under ch. ATCP 60, Wis. Adm. Code. Among other things, this rule:

- Requires out-of-state dairy plant operators to test milk procured in this state from Wisconsin producers, and report test results.
- Authorizes milk producers to ship milk to 2 or more dairy plant operators. *Each operator* must comply with testing, reporting and other requirements related to milk shipped to that operator. *One of the operators* must take responsibility for producer licensing functions. That operator must pay the producer’s license, grade A permit and re-inspection fees, and must perform initial dairy farm inspections and biennial water supply tests required for licensing purposes. Operators must report producer transfers. An operator who merely custom processes dairy products for producers, without marketing or taking title to those dairy products, is exempt from certain requirements.
- Authorizes milk producers (such as grazers) to discontinue milk shipments temporarily, without jeopardizing their license or permit status.
- Extends current rules to cover farms producing milk from sheep (current rules apply to cows and goats).
- Modifies current hot water capacity requirements for dairy farms.
- Authorizes the use of re-circulated water in plate coolers, subject to conditions specified in this rule.
- Authorizes milk producers to milk directly to bulk transport containers, subject to standards specified in this rule.
- Clarifies milk testing and reporting requirements.
- Requires dairy plant operators to respond immediately if the bacteria count in a producer’s milk is more than 750,000 bacteria per ml. (the current “immediate response” level is 1,000,000 per ml.).
- Requires dairy plant operators to report milk quality test reports in electronic form, beginning one year after the effective date of this rule. Many operators currently submit hard copy written reports. The electronic reporting requirement does not apply to drug residue test reports.
- Authorizes dairy plant operators to report “immediate response” test results by FAX, as well as by telephone.

- Requires a dairy plant operator to recover, from producers who contaminate milk with drug residues, the full amount of the operator's loss related to that milk. Under current rules, an operator must test bulk loads of milk, reject contaminated loads, and recover at least *part* of the loss from offending producers. This rule requires the operator to recover the full value of each rejected load (not just part), plus disposal costs.
- Tightens the current test standard for beta lactam drug residues in milk, and modifies current standards for Neomycin, Chlortetracycline and Oxytetracycline, per federal standards.
- Requires milk laboratories and laboratory analysts to be certified by DATCP, not the Department of Health and Family Services (DHFS). The Legislature recently transferred dairy, food and water lab certification responsibilities from DHFS to DATCP.
- Codifies DATCP's current program of performance-based dairy farm inspection. Under this program, DATCP inspects different farms with different frequency, depending on their performance.
- Updates current sanitation requirements for dairy farms.
- Updates current DATCP administrative procedures.
- Makes drafting and organizational changes to clarify and modernize current rules.

### Background

DATCP currently licenses and inspects dairy farms under ss. 97.22 to 97.24, Stats., and ch. ATCP 60, Wis. Adm. Code. All dairy farms must be licensed. Grade A dairy farms must also hold a grade A permit. Only grade A milk may be sold as fluid milk. Grade B milk (and grade A milk) may be used to produce cheese and other non-fluid milk products. Grade A milk typically commands a higher price.

All milk must be produced under sanitary conditions. Grade A milk production must also comply with the Interstate Pasteurized Milk Ordinance (PMO). Failure to comply with PMO requirements may jeopardize Wisconsin interstate milk shipments. Current DATCP rules establish standards for grade A and grade B dairy farms. DATCP rules incorporate PMO standards.

A milk producer typically ships milk to a single dairy plant operator, although this industry custom is changing. DATCP licenses dairy plants located in this state. DATCP does not license out-of-state dairy plants, although it does have authority to regulate out-of-state dairy plants that procure milk in this state from Wisconsin producers. DATCP currently regulates dairy plants under ch. ATCP 80, Wis. Adm. Code. ATCP 60 also spells out dairy plant responsibilities related to milk procurement from dairy farms.

Under current law, a dairy plant operator must submit milk producer license applications, license fees, and grade A permit applications on behalf of the milk producers who ship milk to that operator. A dairy plant operator must also test producer milk shipments for drug residues, bacteria, somatic cells and other adulterants, and must report test results to DATCP. A dairy plant operator must reject milk that fails to meet critical minimum standards.

Bulk milk haulers collect milk shipments from dairy farms, and transport those shipments to dairy plants. Each bulk tanker load typically includes milk shipments from several producers, although some large producer shipments may fill an entire tanker. The milk hauler weighs and measures the milk at the farm (for payment purposes), and collects a sample of each producer's milk before that milk is commingled with milk from other producers.

The milk hauler transmits producer milk samples to the dairy plant operator's laboratory for testing. The operator tests samples for drug residues, bacteria and somatic cells, and reports test results to DATCP. DATCP regulates milk haulers under ch. ATCP 82, Wis. Adm. Code, and certifies milk testing laboratories under ch. ATCP 77, Wis. Adm. Code.

Under current rules, a dairy plant operator must also screen each bulk load of milk before the operator commingles that load with any other loads. If a bulk load tests positive for drug residues, the dairy plant operator must reject it and test the individual producer samples for that bulk load. If a producer sample tests positive for drug residues, the dairy plant operator may charge that producer for the cost of the bulk load.

DATCP currently inspects dairy farms, and monitors milk quality test reports. DATCP inspects grade A dairy farms at a specified frequency, based on dairy farm performance. DATCP inspects grade B farms less frequently. DATCP may suspend or revoke a producer's license or grade A permit for cause, including violations of farm sanitation or milk quality standards. Current rules spell out compliance procedures, including notice and appeal procedures.

## **Rule Contents**

### **Out-of-State Dairy Plants**

Current rules require licensed dairy plants to file license and permit applications for milk producers, pay producer license and reinspection fees, test producer milk shipments, and report test results to DATCP. Current rules do not apply to out-of-state dairy plants, which are not licensed by DATCP, although most out-of-state plants perform these functions voluntarily when procuring milk from Wisconsin producers. This rule requires out-of-state dairy plants to perform these functions when they procure milk in this state from Wisconsin producers. But this rule does not require out-of-state dairy plants to be licensed in this state.

## **Producer Shipping to More than One Dairy Plant**

A milk producer typically ships milk to a single dairy plant operator, although this industry custom is changing. Some large producers concurrently ship milk to 2 or more dairy plant operators. This rule allows a producer to ship to 2 or more dairy plant operators if all the following apply:

- The producer is assigned, for licensing purposes, to one of the operators. That operator must file license and permit applications for the milk producer, and pay producer license and reinspection fees. Under this rule, as under current rules, the operator must charge producer reinspection fees back to the producer.
- Each operator pays milk procurement fees related to that operator's receipt of milk shipments from the producer. An operator is not required to pay milk procurement fees on milk that the operator "custom processes" for a producer (see below), provided that the producer pays those fees.
- Each operator tests milk shipments shipped to that operator, and reports test results. An operator is not required to perform monthly milk quality tests on milk that the operator "custom processes" for a producer (see below). But the operator must perform drug residue screening tests on that milk.

A dairy plant operator is not required to pay milk procurement fees or perform monthly milk quality tests on milk that the operator "custom processes" for a producer if all the following apply:

- The operator makes that milk into dairy products on behalf of the producer.
- The producer retains title to that milk, and to all of the dairy products made from that milk.
- The operator does not market that milk, or the dairy products made from that milk, but returns them to the producer or the producer's agent for consumption or marketing.
- The operator does not commingle producer-owned milk or dairy products with other milk or dairy products.
- The operator provides the "custom processing" services pursuant to a written agreement with the producer.
- The producer ships, for "custom processing," not more than 50 percent of the producer's milk production in any month.
- The operator "custom processes" not more than 5 million pounds of milk in any month.
- The producer notifies the department before shipping any milk for "custom processing." The producer must also notify the dairy plant operator to whom the producer is assigned for licensing purposes.
- The producer reports, to the department, the monthly volume of milk delivered to the custom processor. The producer must give the same report to the dairy plant operator to whom the producer is assigned for licensing purposes.
- The producer pays any milk procurement fees and milk marketing order assessments that apply, in the manner prescribed by state or federal law.

### **Producer Transferring Between Dairy Plants**

A dairy plant operator must notify DATCP if a producer transfers to that operator, or if the operator assumes license and fee payment responsibilities for that producer.

### **Milk Shipments Discontinued**

This rule authorizes a producer (such as a grazer) to discontinue milk shipments for up to 180 days without jeopardizing the producer's license status, and for up to 60 days without jeopardizing the producer's grade A permit status. A dairy plant operator must report to DATCP when the producer stops and resumes shipments.

If a dairy plant operator terminates a milk producer, the operator must report the termination to DATCP. DATCP will revoke the producer's license 30 days after the termination unless the producer is shipping milk to another operator.

### **Dairy Sheep**

Current dairy farm rules apply to cattle and goats. This rule extends current rules to include sheep.

### **Lighting in Barns, Milking Parlors and Milkhouses**

This rule increases the minimum lighting standard in barns, milking parlors and milkhouses. This rule requires at least 30 foot-candles of illumination in milking parlors and milkhouses (current rules require 20 foot-candles).

### **Water Supply**

Under current rules, a dairy plant operator must biennially sample a milk producer's water supply. The water sample must be tested at a certified laboratory. The Legislature recently transferred water lab certification responsibilities from the Department of Health and Family Services (DHFS) to DATCP. DATCP has adopted laboratory certification rules under ch. ATCP 77, Wis. Adm. Code. This rule updates current dairy farm rules to require lab certification by DATCP, not DHFS.

### **Hot Water**

This rule modifies current capacity requirements for hot water supply systems. This rule eliminates a number of specific capacity requirements, but requires adequate hot water for all milkhouse operations (with a minimum of 10 gallons to clean equipment and utensils). DATCP may approve alternative systems, including heat recovery and continuous flow systems that provide adequate hot water.



## **Recirculated Cooling Water**

Current rules prohibit the use of recirculated water to cool milk. This rule permits the use of recirculated water in plate coolers if all the following apply:

- The recirculated water originates from a safe source that complies with DNR rules.
- The recirculated water is bacteriologically safe, and is protected from contamination. The milk producer must test for bacteria at least twice a year. Test results must meet minimum standards specified in this rule.
- The recirculating system uses non-toxic coolants.

If a recirculating water system becomes contaminated, the milk producer must stop using the system until the producer does all the following:

- Eliminates the contamination source and treats the recirculated water.
- Retests the recirculated water, and determines that the water meets the bacteriological test standards under this rule.

## **Toilet Facilities**

This rule re-states, but does not substantially alter, current standards for toilets on dairy farms. Toilets must comply with applicable DNR and Department of Commerce rules.

## **Milking Directly to Bulk Transport Containers**

Most farmers milk to a permanent bulk tank in the milkhous, where milk is cooled and stored for shipment. A milk hauler then collects the milk from the bulk tank, and transports it in a bulk milk tanker to a dairy plant. However, some large farmers propose to cut costs by milking directly to the bulk transport container (tanker) in which the farmer then transports the milk to the dairy plant. This rule authorizes producers to milk directly to a bulk transport container if all the following apply:

- The producer controls the operation and maintenance of the bulk transport container. The producer may not collect milk from other producers unless the producer operates as a licensed milk hauler under ch. ATCP 82.
- The bulk transport container is constructed and maintained according to bulk milk tanker standards under ch. ATCP 82.
- The bulk transport container has an access port that can be sealed.
- The bulk transport container, while parked at the dairy farm, is kept on a pad of concrete or other impervious material. The pad must be located next to the milkhous, to minimize the length of the transport hose between the milkhous and the bulk transport container.

- All permanent pipelines connecting the bulk transport container to the milk handling system terminate in the milkhouse.
- The milk producer cools all milk to a temperature of 45° F. (7° C.) or lower before the milk enters the bulk transport container. The producer may use a plate cooler, tube cooler or bulk tank to cool the milk. The producer must measure and record milk temperatures.
- The bulk transport container outlet valve is close-coupled and protected with an effective dust cover.
- The producer keeps the bulk milk cooling device, transport hose and bulk transport container outlet valve in clean and sanitary condition.
- The dairy plant operator collects a milk sample, screens for drug residues, and records the temperature and quantity of milk before unloading the bulk transport container.
- The dairy plant operator cleans and sanitizes the bulk transport container after each milk shipment, just as the operator would clean and sanitize a bulk milk tanker under ch. ATCP 82.

### **Milk Testing and Reporting**

Under current rules, dairy plant operators must test milk from dairy farms and report test results to DATCP. This rule clarifies current reporting requirements. Beginning one year after the effective date of this rule, dairy plant operators must report test results (other than drug residue test results) in electronic form.

Under this rule, as under current rules, milk tests must be performed at certified laboratories. Under this rule, milk laboratories and analysts must be certified by DATCP, not the Department of Health and Family Services (DHFS). The Legislature recently transferred dairy, food and water lab certification responsibilities from DHFS to DATCP.

This rule updates current milk test methods. Milk test methods must be those prescribed in "Standard Methods for the Examination of Dairy Products," 16<sup>th</sup> edition (1992), or in the "Official Methods of Analysis of the Association of Analytical Chemists (AOAC) International, 17<sup>th</sup> edition (2000). DATCP will ask the Attorney General and the Revisor of Statutes for permission to incorporate these updated technical standards by reference in this rule. DATCP may approve other test methods.

### **Bacteriological Testing; "Immediate Response" Levels**

Under current rules, a dairy plant operator must take immediate steps if a producer's milk is found to contain more than 1,000, 000 bacteria per ml. This rule lowers the "immediate response" level to 750,000 bacteria per ml.

## **Drug Residue Testing**

Under current rules, a dairy plant operator must screen each bulk load of milk for drug residues, before the operator commingles that load with any other loads. If a bulk load tests positive for drug residues, the dairy plant operator must reject it and test the individual producer samples for that bulk load. If a producer sample tests positive for drug residues, the dairy plant operator may charge that producer for the cost of the bulk load. Under current rules, the operator must recover at least *part* of the operator's loss from the offending producer.

Under this rule, the dairy plant operator must recover the *full value* of each rejected load (not just part) from the offending producer. The operator must also recover any additional transportation, testing and disposal costs caused by the contamination. If there are 2 or more offending producers, the operator must recover *pro rata* from those producers based on the relative size of their milk shipments in the contaminated bulk load.

This rule tightens current test standards for beta lactam drug residues in milk, and modifies current standards for Neomycin, Chlortetracycline and Oxytetracycline, per federal standards.

## **Performance-Based Dairy Farm Inspection**

This rule codifies DATCP's current program of performance-based dairy farm inspection. Under this program, DATCP inspects different grade A dairy farms with different frequency, depending on their performance. The terms of the performance-based inspection are consistent with the requirements of the Interstate Pasteurized Milk Ordinance (PMO).

Under this rule, DATCP must evaluate each grade A dairy farm every 3 months, based on inspection reports, milk quality tests and department compliance actions during the preceding 12 months. Based on this evaluation, DATCP must place the dairy farm in one of the following categories:

- ***Twelve-Month Inspection Category.*** DATCP must inspect a grade A dairy farm in this category at least once every 12 months. DATCP must place a dairy farm in this category if all the following apply, based on dairy farm inspection reports, milk quality tests and DATCP compliance actions during the preceding 12 months:
  - All of the producer's standard plate counts (SPC) are less than 25,000, except that one SPC may exceed 25,000 if it is not more than 100,000.
  - All of the producer's somatic cell counts (SCC) are less than 500,000.
  - DATCP has not issued any warning for drug residue violations or "key" farm inspection violations.
  - No dairy farm inspection report shows more than 5 violations.
  - DATCP has not suspended the producer's grade A dairy farm permit or milk producer license.
  - The producer's latest water supply test complies with this rule.

- ***Six-Month Inspection Category.*** DATCP must inspect a grade A dairy farm in this category at least once every 6 months. DATCP must place a dairy farm in this category if all the following apply, based on dairy farm inspection reports, milk quality tests and DATCP compliance actions during the preceding 12 months:
  - The dairy farm fails to qualify for the 12-month inspection category.
  - DATCP has not issued more than one warning for violations of bacteria or somatic cell test standards.
  - DATCP has not issued any warning for drug residue violations or “key” farm inspection violations.
  - No dairy farm inspection report shows more than 5 violations.
  - DATCP has not suspended the producer’s grade A dairy farm permit or milk producer license.
  - The producer’s latest water supply test complies with this rule.
  
- ***Four-Month Inspection Category.*** DATCP must inspect a grade A dairy farm in this category at least once every 4 months. DATCP must place a dairy farm in this category if the dairy farm does not belong in the 12-month, 6-month or 3-month inspection category, based on dairy farm inspection reports, milk quality tests and DATCP compliance actions during the preceding 12 months.
  
- ***Three-Month Inspection Category.*** DATCP must inspect a grade A dairy farm in this category at least once every 3 months. DATCP must place a dairy farm in this category if all the following apply, based on dairy farm inspection reports, milk quality tests and DATCP compliance actions during the preceding 12 months:
  - The dairy farm does not qualify for the 12-month or 6-month inspection category.
  - DATCP has done any of the following:
    - \* Issued more than one warning for violations of bacteria or somatic cell test standards.
    - \* Issued more than one warning for drug residue violations.
    - \* Issued more than one warning for “key” farm inspection violations.
    - \* Conducted more than one re-inspection of the dairy farm.
    - \* Suspended the producer’s dairy farm license or grade A permit.

### **Compliance Procedures**

This rule clarifies DATCP compliance procedures related to dairy farms. This rule does not make significant changes in current procedures, except that it extends the deadline for holding an informal hearing on a contested drug residue finding. Under current rules, DATCP must hold the informal hearing within 3 business days after the producer requests the hearing, unless the producer requests a later hearing date. Under this rule, DATCP must hold the informal hearing within 10 business days after the producer requests the hearing, unless the producer requests a later hearing date. This new deadline is consistent with the current deadline for holding informal hearings on other contested dairy farm violations.

1           **SECTION 1.** ATCP 60.01(1) is amended to read:

2           ATCP 60.01(1) “Bulk tank” means a permanent or semi-permanent tank or container  
3 used to receive, cool or store bulk quantities of milk on a dairy farm. “Bulk tank” does not  
4 include milk cans or a bulk transport container.

5           **SECTION 2.** ATCP 60.01(1g) is created to read:

6           ATCP 60.01(1g) “Bulk transport container” means a vehicle or container that a milk  
7 producer uses to ship bulk milk from a dairy farm to a dairy plant.

8           **SECTION 3.** ATCP 60.01(4), (7), (9b), (10), (15)(b)8., (19) to (22) and (24) are  
9 amended to read:

10          (4) “Cowyard” means an enclosed or unenclosed area, approximately adjacent to a  
11 milking barn or parlor, in which cows, ~~or~~ goats or sheep congregate. “Cowyard” includes ~~ew~~  
12 milking animal walkways, feeding areas, watering areas, washing areas and housing areas  
13 located outside but adjacent to a milking barn or parlor.

14          (7) “Dairy plant operator” means a person ~~required to hold a license for the operation of~~  
15 who operates a dairy plant under s. 97.20, Stats. “Dairy plant operator” includes ~~an employe or~~  
16 ~~agent of the dairy plant operator~~ the operator of a dairy plant located outside this state if the  
17 operator procures milk from producers located in this state. “Dairy plant operator” does not  
18 include a person identified under s. 97.20(2)(e), Stats.

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

21          (10) “Food safety division” means the department’s division of food safety.

22          (15)(b)8. Lack of an approved sanitizer in the milkhouse or adjacent storage areas to  
23 meet the sanitizing requirements under s. ATCP ~~60.09(4)~~ 60.09(5).

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

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

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

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

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

13 (a) A dairy farm inspection, other than a regularly scheduled inspection under s. ATCP  
14 60.24(2) or ~~(3)~~ 60.245, which is ~~made by the department~~ makes ~~because the department or a~~  
15 ~~special dairy farm inspector finds in response to a key violation of this chapter.~~

16 (b) A dairy farm inspection, other than a regularly scheduled inspection under s. ATCP  
17 60.24(2) or ~~(3)~~ 60.245, for which a fee is chargeable under s. ATCP ~~60.18(5)~~ 60.18(6), 60.19(9),  
18 ~~60.20(5)~~, 60.25(4), 60.26, 60.27(6)(b)1., or 60.28(2) or (3).

19 **SECTION 4.** ATCP 60.01(28) is repealed.

20 **SECTION 5.** ATCP 60.01(29)(b) is amended to read:

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

23 **SECTION 6.** ATCP 60.02(5) is amended to read:

1           ATCP 60.02(5) DENIAL OF LICENSE APPLICATION. If the food safety division denies a  
2 milk producer's application for a license under this section, the food division shall issue the  
3 denial in writing and shall state the reasons for the denial. The denial notice shall include a notice  
4 of the applicant's right to hearing under s. ATCP 60.31. If a food division inspector inspects the  
5 applicant's dairy farm, the inspector may deny the application by noting the denial on the  
6 inspection report given to the producer, provided that the inspection report includes the required  
7 information under this subsection.

8           **SECTION 7.** ATCP 60.02(6) is repealed and recreated to read:

9           ATCP 60.02(6) TRANSFER BETWEEN DAIRY PLANT OPERATORS. A dairy plant operator  
10 shall notify the department in writing within 3 business days after any of the following occurs:

11           (a) The operator begins receiving milk shipments from a licensed producer who has  
12 previously shipped milk to another operator. No new license is required.

13           (b) A licensed producer is re-assigned, for licensing purposes under this section, to that  
14 dairy plant operator.

15           **SECTION 8.** ATCP 60.02(7), (8)(8)(note), (9) and (9)(note) are created to read:

16           ATCP 60.02(7) PRODUCER SHIPPING MILK TO MORE THAN ONE DAIRY PLANT. A milk  
17 producer may concurrently ship milk to more than one dairy plant operator if all the following  
18 apply:

19           (a) The producer is assigned, for licensing purposes under this section, to one of the  
20 operators. That operator shall do all the following on behalf of the milk producer:

21           1. Pay the producer's annual license fees under this section.

22           2. Pay the producer's reinspection fees, if any, under s. ATCP 60.04.

1 3. Fulfill other dairy plant operator obligations under this subchapter, if any, related to  
2 the producer's license or grade A permit.

3 (b) Each operator pays dairy plant license fees and milk procurement fees under s. ATCP  
4 80.04, as those fees apply to that operator's receipt of milk shipments from the producer. A  
5 dairy plant operator who custom processes a producer's milk according to par. (d) is not required  
6 to pay milk procurement fees under s. ATCP 80.04(2) on that milk.

7 (c) Each operator complies with milk sampling, testing, reporting, and test follow-up  
8 requirements under this chapter, as those requirements apply to that operator's receipt of milk  
9 shipments from the producer. A dairy plant operator who custom processes a producer's milk  
10 according to par. (d) is not required to test that producer's milk under s. ATCP 60.18 to 60.21,  
11 except that the operator shall screen each bulk load of milk for drug residues under s. ATCP  
12 60.19(2) and shall reject contaminated loads according to s. ATCP 60.19(4).

13 (d) A dairy plant operator is deemed to be custom processing a producer's milk, for  
14 purposes of pars. (b) and (c), if all the following apply:

15 1. The operator, on behalf of the producer, makes that milk into dairy products.

16 2. The producer retains title to that milk, and to all of the dairy products made from that  
17 milk.

18 3. The operator does not market that milk, or the dairy products made from that milk, but  
19 promptly returns the dairy products to the producer or the producer's agent for consumption or  
20 marketing.

21 4. The operator does not commingle producer-owned milk or dairy products with other  
22 milk or dairy products.



1 5. The operator provides the custom processing services pursuant to a written agreement  
2 with the producer or the producer's agent. The agreement shall clearly state that the producer  
3 retains title to all of the custom processed milk and dairy products, and that the producer's milk  
4 shipments under the custom processing agreement are not secured under ch. 126, Stats.

5 6. The producer ships, for custom processing under this paragraph, not more than 50  
6 percent of the producer's milk production in any month.

7 7. The operator custom processes not more than 5 million pounds of milk under this  
8 paragraph in any month.

9 8. The producer or the producer's agent, before shipping milk to the operator for custom  
10 processing under this paragraph, notifies the department of the custom processing agreement.

11 The producer or producer agent shall simultaneously notify the dairy plant operator to whom the  
12 producer is assigned for licensing purposes under par. (a) if that operator is not the one providing  
13 the custom processing services.

14 9. The producer or the producer's agent files a monthly report with the department, on or  
15 before the 15<sup>th</sup> day of the month, reporting the volume of milk delivered to the custom processor  
16 during the preceding month. The producer or producer agent shall file a copy of the report with  
17 the dairy plant operator to whom the producer is assigned for licensing purposes under par. (a) if  
18 that operator is not the one providing the custom processing services.

19 10. The producer or the producer's agent pays to the department the dairy plant milk  
20 procurement fees under s. ATCP 80.04(2) that apply to the producer's custom processed milk  
21 shipments.

1 11. The producer or the producer's agent pays milk marketing order assessments and  
2 other state or federally mandated assessments that apply to the producer's custom processed milk  
3 shipments, in the manner prescribed by state or federal law.

4 (8) TEMPORARY DISCONTINUATION OF MILK SHIPMENTS. (a) A dairy plant operator shall  
5 notify the department if a milk producer temporarily discontinues milk shipments to the  
6 operator's dairy plant without transferring shipments to another dairy plant. The dairy plant  
7 operator shall notify the department in writing within 3 business days after the producer  
8 discontinues shipments, and within 3 business days after the producer resumes milk shipments.

9 (b) A milk producer's license remains in effect if the producer resumes milk shipments  
10 under par. (a) within 180 days. If the milk producer does not resume milk shipments within 180  
11 days, the department shall summarily revoke the milk producer's license. The department shall  
12 give the producer a written revocation notice at least 5 business days prior to the effective date  
13 of the notice.

14 **NOTE:** See s. ATCP 60.25.

15 (9) DAIRY PLANT TERMINATION OF MILK PRODUCER. If a dairy plant operator stops  
16 collecting milk from a milk producer for any reason, other than a reason identified in sub. (6),  
17 sub. (8), or s. ATCP 60.18(5), 60.19(6), 60.20(6) or 80.20, the dairy plant operator shall notify  
18 the department in writing within 3 business days after receiving the last shipment of milk from  
19 that producer. The department shall summarily revoke the milk producer's license 30 days after  
20 that last milk shipment date unless, by the scheduled revocation date, the milk producer is  
21 shipping milk to another dairy plant operator to whom the producer is assigned for licensing  
22 purposes under this section. The department shall give the producer a written revocation notice  
23 at least 5 business days prior to the effective date of the notice.

1        **NOTE:** See s. ATCP 60.25.

2        **SECTION 9.** ATCP 60.03(4) is amended to read:

3        ATCP 60.03(4) DENIAL OF PERMIT APPLICATION. If the food safety division denies a  
4 milk producer's application for a grade A permit under this section, the ~~food~~ division shall issue  
5 the denial in writing and shall state the reasons for the denial. The denial notice shall include a  
6 notice of the applicant's right to hearing under s. ATCP 60.31. A ~~food~~ division inspector, after  
7 inspecting the applicant's dairy farm, may deny a grade A permit application by noting the denial  
8 on the inspection report given to the producer, provided that the inspection report includes the  
9 required information under this subsection.

10        **SECTION 10.** ATCP 60.03(5) is repealed and recreated to read:

11        ATCP 60.03(5) TRANSFER BETWEEN DAIRY PLANT OPERATORS. (a) A dairy plant  
12 operator shall notify the department in writing within 3 business days after any of the following  
13 occurs:

14            1. The operator begins receiving milk shipments from a grade A producer who has  
15 previously shipped milk to another operator. No new grade A permit is required.

16            2. A grade A producer is re-assigned, for permit purposes under this section, to that dairy  
17 plant operator.

18            (b) A grade A producer may concurrently ship milk to more than one dairy plant  
19 operator if the producer and dairy plant operators comply with s. ATCP 60.02(7).

20        **SECTION 11.** ATCP 60.03(6) and (6)(note) are created to read:

21        ATCP 60.03(6) TEMPORARY DISCONTINUATION OF MILK SHIPMENTS. (a) A dairy plant  
22 operator shall notify the department if a grade A milk producer temporarily discontinues milk  
23 shipments to the operator's dairy plant without transferring milk shipments to another dairy

1 plant. The dairy plant operator shall notify the department in writing within 3 business days  
2 after the producer discontinues shipments, and within 3 business days after the producer  
3 resumes milk shipments.

4 (b) A milk producer's grade A permit remains in effect if the producer resumes milk  
5 shipments under par. (a) within 60 days. If the milk producer does not resume milk shipments  
6 within 60 days, the department shall summarily revoke the milk producer's grade A permit. The  
7 department shall give the producer a written revocation notice at least 5 business days prior to  
8 the effective date of the notice.

9 **NOTE:** See s. ATCP 60.25.

10 **SECTION 12.** ATCP 60.04(3) is amended to read:

11 ~~ATCP 60.04(3) DAIRY PLANT TO PAY REINSPECTION FEE FOR MILK PRODUCER.~~ A dairy  
12 plant operator shall pay the dairy farm reinspection fee under this section for a milk producer if  
13 ~~the dairy plant was receiving milk from the reinspected dairy farm when the reinspection was~~  
14 ~~made, at the time of the reinspection, the producer was assigned to that operator for licensing~~  
15 purposes under s. ATCP 60.02. The department may issue a statement of reinspection fees  
16 payable by a dairy plant operator, and may demand payment from the dairy plant operator when  
17 it issues an application form for the renewal of the dairy plant operator's license under s. 97.20,  
18 Stats. A dairy plant operator who pays a dairy farm reinspection fee shall charge that fee back to  
19 the milk producer. ~~A dairy plant operator shall notify each producer in writing that reinspection~~  
20 ~~fees paid on behalf of the producer will be charged back to the producer.~~

21 **SECTION 13.** ATCP 60.05(2) is repealed.

22 **SECTION 14.** ATCP 60.06(2), (3), (5) and (9)(a)1. are amended to read:

1 ATCP 60.06(2) WALLS AND CEILINGS; CONSTRUCTION. Walls and ceilings in milking  
2 barns and parlors shall be constructed and maintained so that they can be kept clean. Walls and  
3 ceilings shall be painted, whitewashed or otherwise finished so that they are light colored and  
4 easy to clean. The ceiling shall be constructed and maintained to prevent dust and chaff from  
5 entering the milking barn or parlor from above. The wall finish and wall cleaning requirements  
6 under this subsection do not apply to seasonal milking parlors constructed without walls.

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

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

16 (9)(a)1. There are at least ~~20 foot-candles~~ 30 foot-candles of illumination in all areas of  
17 the milking parlor where C-I-P milking equipment is cleaned, sanitized or stored.

18 **SECTION 15.** ATCP 60.07(1), (2)(d) and (2)(f) are amended to read:

19 ATCP 60.07(1) REQUIREMENT. Every dairy farm shall have a milkhouse ~~which shall be~~  
20 ~~used for cooling and storing milk.~~ Except as provided in s. ATCP 60.11(4), a milk producer  
21 shall cool and store milk in the milkhouse. A milkhouse shall be separate from a milking barn or  
22 parlor, but may share common walls with a milking barn or parlor. All equipment and utensils  
23 shall be cleaned, sanitized and stored in the milkhouse. This does not apply to C-I-P milk

1 pipelines which are mechanically cleaned in place in a milking barn or parlor, or to C-I-P  
2 milking equipment which is mechanically cleaned and stored in a milking parlor under s. ATCP  
3 60.06(9)(a).

4 (2)(d) *Lighting.* Natural or artificial lighting, or both, shall be provided in a milkhouse to  
5 ensure adequate illumination for daytime and nighttime operations. There shall be at least 20-foot  
6 ~~candles~~ 30 foot-candles of illumination in all working areas of the milkhouse. Artificial lights  
7 located over a bulk tank shall be ~~of the shatter-proof type~~ shatterproof, or effectively shielded to  
8 protect milk from contamination from broken glass.

9 (2)(f) WATER HEATING CAPACITY. Hot water capacity shall be adequate for all  
10 milkhouse operations. Hot water heaters or hot water supply systems shall have a capacity of at  
11 least 10 gallons for washing equipment and utensils ~~if milk is stored or cooled in cans, 30 gallons~~  
12 ~~for manual washing of bulk tanks, 50 gallons for mechanical washing of bulk tanks, and 75~~  
13 ~~gallons for cleaning C-I-P equipment.~~ Alternative The department may authorize alternative  
14 systems, including heat recovery and continuous flow systems, may be authorized by the  
15 ~~department in writing if they~~ that provide adequate hot water for all milkhouse operations.  
16 Authorization shall be in writing.

17 **SECTION 16.** ATCP 60.08(5) is amended to read:

18 ATCP 60.08(5) WATER QUALITY TESTING BY DAIRY PLANT. A dairy plant operator shall  
19 biennially sample the water supply of each milk producer whose milk is sold or delivered to the  
20 dairy plant. The dairy plant operator shall have each sample analyzed at a laboratory ~~certified by~~  
21 ~~the department of health and social services~~ that the department has certified under ch. ATCP 77  
22 to perform water quality analyses. Water samples shall be analyzed for compliance with the  
23 health-related drinking water standards under s. NR 809.30. The dairy plant operator shall submit

1 each water quality test result to the department within 30 days after the test result is received by  
2 the dairy plant receives the laboratory report. If the analysis of any water sample indicates that  
3 the water supply of a dairy farm may be unsafe, the dairy plant shall report the test results to the  
4 department within 3 business days, and shall ~~have the water supply promptly resampled~~ resample  
5 ~~and analyzed~~ analyze the water supply.

6 **SECTION 17.** ATCP 60.08(6) is created to read:

7 ATCP 60.08(6) RECIRCULATING WATER SYSTEM. (a) A milk producer may use re-  
8 circulated water in a plate cooler used to cool milk on a dairy farm if all of the following apply:

- 9 1. The recirculated water originates from a safe source that complies with ch. NR 811 or  
10 NR 812.
- 11 2. The recirculated water is bacteriologically safe at all times.
- 12 3. The recirculated water is protected from contamination.
- 13 4. Freezing point depressants used in the recirculating water system are nontoxic.
- 14 5. The milk producer tests the recirculated water for bacterial contamination at least  
15 semi-annually.

16 (b) If a recirculating water system under par. (a) becomes contaminated, the milk  
17 producer shall stop using the system until all the following conditions are met:

- 18 1. The producer eliminates the contamination source and treats the recirculated water.
- 19 2. The producer retests the recirculated water to determine whether the contamination is  
20 eliminated.
- 21 3. Retesting shows that the recirculated water complies with the bacteriological  
22 standards under paragraph (c).

23 (c) Recirculated water shall meet all the following bacteriological test standards:

1 1. The most probable number (MPN) of coliform organisms shall be less than 1.1 per  
2 100 ml. using the multiple tube fermentation technique, or less than 1 per 100 ml. using the  
3 membrane filter technique.

4 2. Bacteriological testing using the membrane filter technique shall show not more than  
5 200 total bacteriological colonies per 100 ml.

6 3. Bacteriological testing using a heterotrophic plate count shall show not more than 500  
7 colonies per ml.

8 **SECTION 18.** ATCP 60.09(1) and (4) are amended to read:

9 ATCP 60.09(1) CONSTRUCTION; GENERAL. Equipment and utensils shall be constructed  
10 of smooth, non-absorbent, corrosion-resistant and non-toxic materials. Equipment and utensils  
11 shall be designed and constructed for easy cleaning and durability under repeated conditions of  
12 use. Surfaces shall be free of breaks and corrosion. Joints and seams shall be smooth and flush.  
13 Milk pails used for hand milking and stripping shall be seamless ~~and of a hooded type~~. Multiple-  
14 use woven material shall not be used for straining milk. Milking and milk handling systems  
15 shall comply with s. ATCP 60.10.

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



1           **SECTION 19.** ATCP 60.10(1)(note) is amended to read:

2           **NOTE:** Guidelines for the sanitary design and construction of milking and milk  
3           handling systems are set forth in the "3-A Accepted Practices for the Design,  
4           Fabrication and Installation of Milking and Milk Handling Equipment," published  
5           jointly by the International Association of Milk, Food and Environmental  
6           Sanitarians for Food Protection, Inc., and the Food and Drug Administration,  
7           Public Health Service, U.S. Department of Health and Human Services. Milking  
8           and milk handling systems manufactured in compliance with the "3-A Accepted  
9           Practices" meet the sanitary design and construction requirements of this  
10          subsection. Copies of the "3-A Accepted Practices," as amended effective June  
11          14, 1977, November 23, 1996, are on file with the department, the secretary of  
12          state and the revisor of statutes. Copies may be obtained from the International  
13          Association of Milk, Food and Environmental Sanitarians for Food Protection,  
14          Inc., P.O. Box 701, Ames, Iowa 50010 6200 Aurora Avenue, Suite 200W, Des  
15          Moines, IA, 50322-2863; Telephone 1-800-369-2863.  
16

17          **SECTION 20.** ATCP 60.11(title) is amended to read:

18          **ATCP 60.11(title) Bulk tanks and bulk transport containers.**

19          **SECTION 21.** ATCP 60.11(1)(title) is amended to read:

20          ATCP 60.11(1)(title) BULK TANK LOCATION.

21          **SECTION 22.** ATCP 60.11(2)(title) is amended to read:

22          ATCP 60.11(1)(title) BULK TANK CONSTRUCTION.

23          **SECTION 23.** ATCP 60.11(2)(c) is amended to read:

24          ATCP 60.11(2)(c) A bulk tank shall be equipped with an accurate thermometer which  
25          indicates milk temperatures. The thermometer shall have a minimum range of 32° F. (0° C.) to  
26          80° F. (27° C.). Bulk tanks manufactured after January 1, 2000, shall be equipped with a  
27          recording thermometer. A milk producer shall retain milk temperature records for at least 90  
28          days, and shall make the records available to the department for inspection and copying upon  
29          request.

30          **SECTION 24.** ATCP 60.11(2)(e)(note) is amended to read:  
31

1       **NOTE:** Bulk tanks manufactured in compliance with the "3-A Sanitary Standards for  
2       Farm Milk Cooling and Holding Tanks" meet the sanitary design and construction  
3       requirements of this subsection. The "3-A Standards" are published jointly by the  
4       International Association of Milk, Food and Environmental Sanitarians for Food  
5       Protection, Inc., and the Food and Drug Administration, Public Health Service,  
6       U.S. Department of Health and Human Services. Copies of the "3-A Standards"  
7       as amended effective ~~May 19, 1981~~ November 20, 1993, are on file with the  
8       department, the secretary of state and the reviser of statutes. Copies may be  
9       obtained from the International Association of Milk, Food and Environmental  
10      Sanitarians for Food Protection, Inc., P.O. Box 701, Ames, Iowa 50010 6200  
11      Aurora Avenue, Suite 200W, Des Moines, IA, 50322-2863; Telephone 1-800-  
12      369-2863.

13  
14      **SECTION 25.** ATCP 60.11(3)(title) is amended to read:

15      ATCP 60.11(3)(title) BULK TANK COOLING CAPACITY.

16      **SECTION 26.** ATCP 60.11(4) is created to read:

17      ATCP 60.11(4) MILKING DIRECTLY TO BULK TRANSPORT CONTAINER. A milk producer  
18      may milk directly to a bulk transport container if all the following apply:

19      (a) The producer controls the operation and maintenance of the bulk transport container.

20      **NOTE:** A milk producer may not collect milk from another producer, or commingle that  
21      milk with the producer's milk, unless the producer operates as a milk hauler under  
22      ch. ATCP 82. A producer operating as a milk hauler must hold a bulk milk tanker  
23      license, a grade A bulk tanker permit (if applicable), and a bulk milk weigher and  
24      sampler license. The producer must also collect and sample milk according to ch.  
25      ATCP 82.

26  
27      (b) The bulk transport container is constructed and maintained according to bulk milk  
28      tanker standards under s. ATCP 82.06.

29      (c) The bulk transport container has an access port that can be sealed.

30      (d) The bulk transport container, while parked at the dairy farm, is kept on pad of  
31      concrete or equally impervious material. The pad shall be sloped for proper drainage, and shall  
32      be kept in a clean condition.

1 (e) All permanent pipelines connecting the bulk transport container to the milk handling  
2 system terminate in the milkhouse.

3 (f) The bulk transport container is parked next to the milkhouse, to minimize the length  
4 of the transport hose between the milkhouse and the bulk transport container.

5 (g) The milk producer cools all milk to a temperature of 45° F. (7° C.) or lower before  
6 the milk enters the bulk transport container. The producer may use a plate cooler, tube cooler or  
7 bulk tank to cool the milk. Coolant used in cooling devices shall be food grade coolant approved  
8 by the federal food and drug administration. The milk producer shall test the coolant semi-  
9 annually for coliform.

10 (h) A thermometer records milk temperatures downstream from the cooling device under  
11 par. (g). The thermometer shall be kept in a clean and sanitary condition, and shall have a range  
12 of at least 32° F. (0° C.) to 89° F. (27° C.). The thermometer probe shall be mounted in a well in  
13 the milk pipeline except that, if the producer cools the milk in a bulk tank, the thermometer  
14 probe may be mounted in the bulk tank.

15 (i) The bulk transport container outlet valve is close-coupled and protected with an  
16 effective dust cover.

17 (j) The producer keeps the bulk milk cooling device, transport hose and bulk transport  
18 container outlet valve in clean and sanitary condition. The producer shall clean and sanitize the  
19 outlet valve before attaching it to the transport hose. The producer shall clean and sanitize the  
20 bulk milk cooling device and transport hose between milkings, or at least once every 48 hours if  
21 the producer milks continuously.

1 (k) A person licensed under s. 97.17 or 98.146, Stats. does all the following before the  
2 dairy plant operator unloads the milk from the bulk transport container, or commingles it with  
3 milk from another producer:

4 1. Collects a sample of milk from the bulk transport container, according to s. ATCP  
5 60.17. Before collecting the sample, the sampler shall agitate the milk to ensure that it is  
6 homogeneous.

7 2. Measures and records the temperature and quantity of milk in the bulk transport  
8 container. The person shall give the producer a duplicate copy of the recorded information.

9 (L) The dairy plant operator tests each bulk shipment for drug residues, according to s.  
10 ATCP 60.19.

11 (m) The dairy plant operator cleans and sanitizes the bulk transport container after each  
12 milk shipment, just as the operator would clean and sanitize a bulk milk tanker under s. ATCP  
13 82.08. The dairy plant operator shall seal the access port after cleaning and sanitizing the bulk  
14 transport container.

15 **SECTION 27.** ATCP 60.12(1), (2) and (6) are amended to read:

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

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

11 (6) COMMINGLING OF COW, ~~AND GOAT~~ OR SHEEP MILK PROHIBITED. ~~Cow milk shall not~~  
12 ~~be commingled with goat milk on a dairy farm.~~ A milk producer may not commingle milk from  
13 cows, goats or sheep with milk from either of the other species.

14 **SECTION 28.** ATCP 60.12(7) is created to read:

15 ATCP 60.12(7) MILK COOLING AND STORAGE. Milk cooled or stored on a dairy farm  
16 shall be cooled and stored in facilities that comply with this chapter.

17 **SECTION 29.** ATCP 60.13(1) and (2) are amended to read:

18 ATCP 60.13(1) Cows, ~~or~~ goats or sheep which appear to be secreting abnormal milk in  
19 one or more quarters shall be milked last or with separate equipment, and their milk shall be  
20 discarded.

21 (2) If cows, ~~or~~ goats or sheep consume or are treated with chemical, medicinal or  
22 radioactive agents which may be secreted in milk, and which may be deleterious to human

1 health, the cows, ~~or~~ goats or sheep shall be milked last or with separate equipment, and the milk  
2 shall be discarded.

3 **SECTION 30.** ATCP 60.14(2) to (4) are amended to read:

4 **ATCP 60.14(2) MANURE STORAGE AND DISPOSAL.** Manure shall be removed and stored  
5 in a manner that inhibits the breeding of flies. No milking cow, ~~or~~ goat or sheep may have  
6 access to a manure storage area. This does not prohibit a cold weather manure pack in a cowyard  
7 if the manure pack is properly maintained to prevent excessive accumulations of manure on the  
8 udders and flanks of cows, ~~or~~ goats or sheep.

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

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

22 **SECTION 31.** ATCP 60.14(6) is repealed and recreated to read:

1 ATCP 60.14(6) TOILETS. (a) Every dairy farm shall have one or more sanitary toilets,  
2 conveniently accessible by persons engaged in milking operations. A conveniently accessible  
3 toilet may include a toilet in a farm residence or other farm building.

4 (b) Toilets under par. (a) shall comply with ss. Comm 52.50 to 52.64, Comm 54.12 and  
5 NR 112. Toilets shall be kept in clean and sanitary condition.

6 **SECTION 32.** ATCP 60.15(2) and (4) are amended to read:

7 ATCP 60.15(2) BACTERIAL COUNT. The bacterial count of grade A milk, as determined  
8 by a standard ~~bacterial~~ plate count or plate loop count under this subchapter, shall not exceed  
9 100,000 per ml. The bacterial count of grade B milk shall not exceed 300,000 per ml. Except as  
10 provided under s. ATCP ~~60.18(4)~~ 60.18(5), a dairy plant is not required to reject milk shipments  
11 in response to a violation of this subsection unless the department suspends or revokes the milk  
12 producer's license or grade A permit, or issues a holding order or disposal order under s. ATCP  
13 60.30.

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

22 **SECTION 33.** ATCP 60.17 is repealed and recreated to read:

1 **ATCP 60.17 Collecting milk samples.** (1) **SAMPLE REQUIRED.** A dairy plant operator  
2 who receives a milk shipment from a milk producer shall collect a representative milk sample  
3 from that shipment. A person licensed under s. 97.17 or 98.146, Stats. shall collect the sample  
4 before the dairy plant operator commingles the milk with milk from any other producer or  
5 shipment.

6 (2) **SAMPLE COLLECTED BY MILK HAULER.** A milk hauler who collects a bulk milk  
7 shipment from a dairy farm shall collect the milk sample under sub. (1) for the dairy plant  
8 operator. The milk hauler shall collect the sample at the dairy farm, according to ch. ATCP 82.  
9 The milk hauler shall promptly deliver the sample to the dairy plant operator, or to a milk testing  
10 laboratory designated by the dairy plant operator.

11 (3) **INCREASED SAMPLING FREQUENCY.** If milk from any dairy farm violates a standard  
12 under s. ATCP 60.15 on any single test, the dairy plant operator shall do one of the following:

13 (a) Collect and test a milk sample from that farm at least once every 2 days until a  
14 subsequent test shows that the violation has been corrected.

15 (b) Reject milk shipments from the producer, if the operator is required to reject those  
16 milk shipments under s. ATCP 60.16, 60.18(5), 60.19(6) or 60.20(4).

17 **SECTION 34.** ATCP 60.18 and (notes) are repealed and recreated to read:

18 **ATCP 60.18 Bacteriological testing.** (1) **MONTHLY TESTING REQUIRED.** During every  
19 month in which a dairy plant operator receives milk from a milk producer, the dairy plant  
20 operator shall perform at least one standard plate count (SPC) or plate loop count (PLC) on a  
21 milk sample obtained from the producer under s. ATCP 60.17. A dairy plant operator shall  
22 perform tests under this subsection and s. ATCP 80.26(2) on the same milk samples.



1 (2) NEW MILK PRODUCER; INITIAL TESTING. A dairy plant operator shall perform a  
2 standard plate count (SPC) or plate loop count (PLC) on a milk sample collected from a milk  
3 producer's first milk shipment to that operator. The operator shall report the test result to the  
4 department and the milk producer within 14 days after the operator obtains the test result.

5 (3) MONTHLY REPORTING. For each month in which a dairy plant operator receives milk  
6 shipments from a milk producer, the operator shall report to the department and the milk  
7 producer at least one representative test result under sub. (1) for a milk shipment received in that  
8 month. The operator shall report the test result within 14 days after the operator obtains the test  
9 result.

10 (4) REPRESENTATIVE TEST RESULTS. A test result is not representative, for reporting  
11 purposes under sub. (3), unless all the following apply:

12 (a) The dairy plant operator collects the test sample according to a uniform sampling  
13 schedule that the operator applies to all milk producers who ship milk to the operator's dairy  
14 plant.

15 (b) The operator reports the test result according to standard reporting criteria that the  
16 operator applies to all milk producers who ship milk to the operator's dairy plant.

17 (5) IMMEDIATE RESPONSE LEVEL; REPORTING AND FOLLOW-UP. If a bacterial count under  
18 this section or s. ATCP 80.26(2) exceeds 750,000 per ml., the dairy plant operator shall do all the  
19 following:

20 (a) Report the test result to the department and the milk producer within 3 business days  
21 after the operator obtains the test result.

22 (b) Perform a confirmatory bacteriological test on at least one more sample of milk  
23 collected from the milk producer's dairy farm. The operator shall collect the confirmatory

1 sample within 14 days after the date on which the operator collected the original sample. The  
2 operator shall report the confirmatory test result to the department and the milk producer within  
3 3 business days after the operator obtains the test result.

4 (c) Reject milk shipments from the dairy farm if the confirmatory test under par. (b)  
5 shows a bacterial count still in excess of 750,000 per ml. The milk producer may not ship milk  
6 from the dairy farm to any dairy plant until a dairy plant operator conducts another test and finds  
7 that milk from the farm no longer has a bacterial count in excess of 750,000 per ml.

8 (6) DEPARTMENT INSPECTION; REINSPECTION FEE. The department may inspect a dairy  
9 farm in response to any bacterial count reported to the department under this section. If the  
10 department inspects a dairy farm in response to a confirmatory bacterial count of more than  
11 750,000 per ml. under sub. (5), the department shall charge a reinspection fee under s. ATCP  
12 60.04. The department may not charge a reinspection fee if the confirmatory bacterial count  
13 does not exceed 750,000 per ml., or if the department inspects more than 3 weeks after the  
14 department receives the confirmatory bacterial count.

15 **NOTE:** Under s. ATCP 60.27, the food safety division will suspend a producer's grade  
16 A farm permit if 3 of the last 5 bacterial counts reported to the department under  
17 this section exceed the grade A standard of 100,000 per ml. under  
18 s. ATCP 60.15(2). The division will suspend the producer's grade A permit  
19 regardless of whether any bacterial count exceeds the immediate response level of  
20 750,000 per ml. under this section.

21 Under s. ATCP 60.25, the department may suspend a milk producer's license if  
22 bacterial counts continue to exceed the grade B standard of 300,000 per ml. under  
23 s. ATCP 60.15(2). The department may suspend the producer's license regardless  
24 of whether any bacterial count exceeds the immediate response level of 750,000  
25 per ml. under this section. If 2 of the last 4 bacterial counts reported to the  
26 department under this section exceed the grade B standard of 300,000 per ml., the  
27 department will, at a minimum, send a warning notice to the producer.

28 (6) LABORATORY REPORTING. A laboratory that performs tests under this section for a  
29 dairy plant operator may report the test results for the dairy plant operator.  
30

1 (7) ELECTRONIC REPORTING. Beginning not later than *[revisor inserts date that is one*  
2 *year after the effective date of this recreated section]*, a dairy plant operator or laboratory shall  
3 report test results under this section in an electronic form approved by the department.

4 **SECTION 35.** ATCP 60.19(1)(b) and (5) are repealed and recreated to read:

5 ATCP 60.19(1)(b) *New milk producer; initial testing.* A dairy plant operator shall  
6 perform a drug residue test on a milk sample collected from a milk producer's first milk  
7 shipment to that dairy plant operator. The drug residue test shall be sensitive, at a minimum, to  
8 beta lactam drug residues and other drug residues for which testing is required under sub. (2)(b).  
9 If the sample tests positive for any drug residue, the operator shall report the result to the  
10 department and the producer within the time prescribed in sub. (8).

11 (5) REJECTED BULK LOAD; DAIRY PLANT RECOVERY FROM PRODUCER. (a) *Dairy plant to*  
12 *recover loss.* If a dairy plant operator properly rejects a bulk load of milk under sub. (4), the  
13 operator shall recover the value of that bulk load from producers whose milk samples,  
14 representing milk shipments contained in that bulk load, test positive for drug residue under sub.  
15 (3). The operator shall recover what would have been the value of the bulk load, had the load  
16 not tested positive for drug residue. The operator shall also recover any additional bulk load  
17 disposal, transportation and testing costs that the operator incurs because the bulk load tests  
18 positive for drug residues.

19 (b) *Pro rata recovery.* The dairy plant operator shall recover, from each offending  
20 producer under par. (a), a pro rata share of the total recovery amount under par. (a). The pro rata  
21 recovery from each offending producer shall be based on the size of that producer's shipment  
22 compared to those of other offending producers in the same bulk load. If there is only one  
23 offending producer, the operator shall recover the entire amount from that producer.

1 (c) *Recovery deadline.* The operator shall recover the full amount owed by each  
2 offending producer under par. (b) within 90 days after that producer's milk sample tests positive  
3 for drug residue under sub. (3). If the operator fails to recover the full amount within that time  
4 period, the operator shall give the department a written explanation.

5 (d) *Payroll deduction.* A dairy plant operator may deduct the amount owed by an  
6 offending producer under par. (b) from the operator's payroll obligation to that offending  
7 producer.

8 (e) *Notice of deduction.* A dairy plant operator shall give a producer at least 30 days  
9 prior written notice of any deduction under par. (d), unless the producer transfers to another dairy  
10 plant operator. The notice shall state all the following:

- 11 1. The basis for the deduction.
- 12 2. The total amount of the deduction.
- 13 3. The date on which the operator will make each deduction.
- 14 4. That the operator will meet with the producer to discuss the deduction, at the  
15 producer's request.

16 (f) *Meeting to discuss recovery.* A dairy plant operator shall meet with a producer, at the  
17 producer's request, to discuss the operator's recovery from that producer under this subsection.  
18 The operator shall meet with the producer within 10 days after the producer requests the meeting,  
19 unless the producer requests a later meeting date. If the producer contests the validity of the  
20 recovery, and the matter is not resolved, the operator shall notify the producer that the producer  
21 may request a hearing before the department under par. (g).

22 (g) *Hearing request.* If a producer contests the validity of a dairy plant operator's  
23 recovery under this subsection, and if the parties do not resolve the matter after meeting under

1 par. (f), the producer may request a hearing before the department. A request for hearing does  
2 not automatically stay a recovery under this subsection.

3 (h) *Informal hearing.* If a producer requests a hearing under par. (g), the food safety  
4 division shall hold an informal hearing by telephone or at the division's nearest regional office.  
5 The division shall hold the informal hearing within 10 business days after the division receives  
6 the hearing request, unless the producer agrees to a later hearing date. The division shall include  
7 the producer and the dairy plant operator in the informal hearing.

8 (i) *Formal hearing.* If an informal hearing under par. (h) does not resolve the matter, a  
9 producer may request a contested case hearing before the department under ch. ATCP 1 and ch.  
10 227, Stats. A request for hearing does not automatically stay a recovery under this subsection. If  
11 the department grants a producer's request for hearing, the department shall include the producer  
12 and the dairy plant operator as parties to the hearing.

13 (j) *Invalid recovery.* If the department finds that a dairy plant operator's recovery under  
14 this subsection is invalid, the department may prohibit the recovery or order the dairy plant  
15 operator to repay the producer. The food safety division may issue an order under this paragraph  
16 after the division holds an informal hearing under par. (h). If the division issues an order under  
17 this paragraph, the dairy plant operator may request a contested case hearing under ch. ATCP 1  
18 and ch. 227, Stats., to contest the division's order. A request for hearing does not automatically  
19 stay the division's order.

20 **SECTION 36.** ATCP 60.19(7), (8)(b) and (10)(a) are amended to read:

21 ATCP 60.19(7) REPORTING DRUG RESIDUE FINDINGS; BULK LOADS. If any Within 2  
22 hours after a bulk load of milk tests positive for a drug residue under sub. (2), the dairy plant  
23 operator shall immediately report the drug test result to the food safety division by telephone or  
24 facsimile (FAX) transmission. The dairy plant operator shall confirm the report in writing, in a

1 form approved by the department, within 3 business days after the drug residue test is completed.

2 The report shall indicate the result of the drug residue test, the volume of milk contained in the  
3 bulk load, and the dairy plant's disposition of that milk.

4 (8)(b) *Form of report.* Whenever a dairy plant operator is required to report a drug  
5 residue test result under par. (a), the dairy plant operator shall ~~immediately~~ report that result to  
6 the food safety division by telephone or facsimile (FAX) transmission. The dairy plant operator  
7 shall make the report within 2 hours after the drug residue test is completed. The dairy plant  
8 operator shall confirm the report in writing, in a form approved by the department, within 3  
9 business days after the drug residue test is completed.

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

16 **SECTION 37.** ATCP 60.19(10)(b) is repealed.

17 **SECTION 38.** ATCP 60.19(10)(c) is renumbered (10)(b) and amended to read:

18 ATCP 60.19(10)(b)(title) ~~Other~~ Specified drug tests; positive test result. In a test for any  
19 of the following drugs, the action level is exceeded whenever the drug residue level found in the  
20 test exceeds the level specified below:

21	<b>Drug</b>	<b>Action Level (ppb)</b>
22		
23	Ampicillin	10
24		
25	Amoxicillin	10
26		

1	Cephapirin	20
2		
3	Cloxacillin	10
4		
5	Neomycin+ Neomycin	<del>50</del> 150
6		
7	Novobiocin	100
8		
9	Sulfadimethoxine	10
10		
11	Tylosin	50
12		
13	Chlortetracycline*	<del>30</del> 300
14		
15	Oxytetracycline*	<del>30</del> 300
16		
17	Erythromycin*	50
18		
19	Gentamicin*	30
20		
21	Dihydrostreptomycin*	125
22		
23	Sulfachloropyridazine*	10
24		
25	Sulfadiazine*	10
26		
27	Sulfamerazine*	10
28		
29	Sulfamethazine*	10
30		
31	Sulfamethizole*	10
32		
33	Sulfanilamide*	10
34		
35	Sulfapyridine*	10
36		
37	Sulfaquinoxaline*	10
38		
39	Sulfathiazole*	10
40		
41	Tetracycline*	80

42 **SECTION 39.** ATCP 60.19(10)(c)(note) and (d) are renumbered (b)(note) and (c).

43 **SECTION 40.** ATCP 60.19(11) is created to read:

1           ATCP 60.19(11) LABORATORY REPORTING. A laboratory that performs tests under this  
2 section for a dairy plant operator may report the test results for the dairy plant operator.

3           **SECTION 41.** ATCP 60.20 and (notes) are repealed and recreated to read:

4           **ATCP 60.20 Testing for somatic cells.** (1) MONTHLY TESTING REQUIRED. During  
5 every month in which a dairy plant operator receives milk from a milk producer, the dairy plant  
6 operator shall perform at least one somatic cell count on a milk sample obtained from the  
7 producer under s. ATCP 60.17. If the operator tests more than one milk sample each month, the  
8 operator shall collect the samples at regular intervals throughout the month. A dairy plant  
9 operator shall perform tests under this section and s. ATCP 80.26(2) on the same milk samples.

10           (2) NEW MILK PRODUCER; INITIAL TESTING. A dairy plant operator shall perform a  
11 somatic cell count on a milk sample collected from a milk producer's first milk shipment to that  
12 operator. The operator shall report the test result to the department and the producer within 14  
13 days after the operator obtains the test result.

14           (3) TEST METHODS. A somatic cell count under this section shall be a direct microscopic  
15 somatic cell count (DMSCC), an electronic somatic cell count (ESCC) or an optical somatic cell  
16 count (OSCC). If the somatic cell count on sheep or goat milk exceeds 1,000,000, the somatic  
17 cell count shall be confirmed using the Pyronin Y-Methyl green stain test, unless that test was  
18 used to obtain the initial count.

19           (4) MONTHLY REPORTING. For each month in which a dairy plant operator receives milk  
20 shipments from a milk producer, the operator shall report to the department and the producer at  
21 least one representative somatic cell count under sub. (1) for a milk shipment received in that  
22 month. The operator shall report the somatic cell count within 14 days after the operator obtains  
23 the count.



1 (5) REPRESENTATIVE SOMATIC CELL COUNTS. A somatic cell count is not representative,  
2 for reporting purposes under sub. (4), unless all the following apply:

3 (a) The dairy plant operator collects the test sample according to a uniform sampling  
4 schedule that the operator applies to all milk producers who ship milk to the same dairy plant.

5 (b) The operator reports the somatic cell count according to standard reporting criteria  
6 that the operator applies to all milk producers who ship milk to the same dairy plant.

7 (6) IMMEDIATE RESPONSE LEVEL; REPORTING AND FOLLOW-UP. If a somatic cell count  
8 under this section or s. ATCP 80.26(2) exceeds 1,000,000 somatic cells per ml. for cow milk, or  
9 1,500,000 for sheep or goat milk, the dairy plant operator shall do all the following:

10 (a) Report the somatic cell count to the department and the milk producer within 3  
11 business days after the operator obtains the somatic cell count.

12 (b) Perform a confirmatory somatic cell count on at least one more sample of milk  
13 collected from the milk producer's dairy farm. The operator shall collect the confirmatory  
14 sample within 14 days after the date on which the operator collected the original sample. The  
15 operator shall report the confirmatory somatic cell count to the department and the milk producer  
16 within 3 business days after the operator obtains the confirmatory count. A dairy plant operator  
17 shall use the Pyronin Y-Methyl green stain test when performing a confirmatory somatic cell  
18 count on sheep or goat milk.

19 (c) Reject milk shipments from the dairy farm if the confirmatory somatic cell count  
20 under par. (b) still exceeds 1,000,000 somatic cells per ml. for cow milk, or 1,500,000 for sheep  
21 or goat milk. The milk producer may not ship milk from the dairy farm to any dairy plant until a  
22 dairy plant operator conducts another somatic cell count and finds that the count no longer  
23 exceeds this number.

1 **NOTE:** The food safety division will suspend a grade A farm permit if 3 of the last 5  
2 reported somatic cell counts exceed the standard under s. ATCP 60.15(4),  
3 regardless of whether any somatic cell count exceeds the immediate response  
4 level under this subsection. See s. ATCP 60.27.

5  
6 Under s. ATCP 60.25, The department may suspend a milk producer license if  
7 somatic cell counts continue to exceed the standard under s. ATCP 60.15(4),  
8 regardless of whether any somatic cell count exceeds the immediate response  
9 level under this subsection. If 2 of the last 4 reported somatic cell counts exceed  
10 the standard under s. ATCP 60.15 (4), the department will at least send a warning  
11 notice to the producer. See s. ATCP 60.27.

12  
13 (7) LABORATORY REPORTING. A laboratory that performs somatic cell counts under this  
14 section for a dairy plant operator may report the somatic cell counts for the dairy plant operator.

15 (8) ELECTRONIC REPORTING. Beginning not later than *[revisor inserts date that is one*  
16 *year after the effective date of this recreated section]*, a dairy plant operator or laboratory shall  
17 report test results under this section in an electronic form approved by the department.

18 **SECTION 42.** ATCP 60.22(1) is repealed and recreated to read:

19 ATCP 60.22(1) CERTIFIED TESTERS. (a) *Certified laboratory.* No laboratory may  
20 perform a milk test under ss. ATCP 60.18 to 60.20 unless the laboratory operator is currently  
21 certified by the department under s. ATCP 77.03 to perform that test at that laboratory.

22 (b) *Certified analyst.* No individual may perform a milk test under ss. ATCP 60.18 to  
23 60.20 unless the department has certified that individual under s. ATCP 77.22 to perform that  
24 test. Milk tests shall be performed at a laboratory certified under par. (a), except that a certified  
25 individual may perform a drug residue screening test at another location. Confirmatory drug  
26 residue tests shall be performed at a certified laboratory.

27 **SECTION 43.** ATCP 60.22(1)(b)(note) and (c) are repealed.

28 **SECTION 44.** ATCP 60.22(2) and (note) are amended to read: