

1 ATCP 60.22(2) TEST METHODS. Milk testing under ss. ATCP 60.18 to 60.20 shall be  
2 conducted using test methods prescribed in "Standard Methods for the Examination of Dairy  
3 Products," ~~15th~~ 16th Edition (~~1985~~) (1992), or in "Official Methods of Analysis of the  
4 Association of Analytical Chemists (AOAC) International," ~~14th~~ 17th Edition (~~1984~~) (2000).  
5 Other tests shall be approved by the department.

6 **NOTE:** The "Standard Methods for the Examination of Dairy Products," ~~15th~~ 16th  
7 Edition (~~1985~~) (1992), published by the American Public Health Association,  
8 Inc., is on file in the offices of the department, the secretary of state and the  
9 revisor of statutes. A copy may be purchased from the American Public Health  
10 Association, Inc., 1015 Fifteenth Street, N.W. Washington, D.C. 20005.

11  
12 The "Official Methods of Analysis of the Association of Analytical Chemists  
13 AOAC International," ~~14th~~ 17th Edition (~~1984~~) (2000), is on file in the offices of  
14 the department, the secretary of state and the revisor of statutes. A copy may be  
15 purchased from the Association of Official Analytical Chemists, Inc., 1111 North  
16 Nineteenth Street, Suite 210, Arlington, VA 22209.

17 **SECTION 45.** ATCP 60.24(2) is repealed and recreated to read:

18 ATCP 60.24(2) INSPECTION BY THE DEPARTMENT. The department shall inspect dairy  
19 farms for compliance with applicable standards under this chapter. Except as provided in s.  
20 ATCP 60.245, the department shall inspect a grade A dairy farm at least once every 6 months  
21 and a grade B dairy farm at least once every 2 years. For the purpose of conducting a lawful  
22 inspection under this chapter, the department may exercise its authority under ss. 93.08, 93.15(2)  
23 and 97.12(1), Stats.

24 **SECTION 46.** ATCP 60.24(3) is amended to read:

25 ATCP 60.24(3) VARIANCES. The department may issue a written waiver granting a  
26 variance from a dairy farm standard under subch. III if the department determines that the  
27 variance is reasonable and necessary under the circumstances, and will not compromise the  
28 purpose served by the standard. A The food safety division administrator, or the administrator's

01-18-08  
28 (28)

1 designee, may issue a waiver under this subsection ~~may be issued by the food division~~  
2 ~~administrator or the administrator's designee.~~

3 SECTION 47. ATCP 60.245 is created to read:

4 **ATCP 60.245 Performance-based grade A dairy farm inspections.** The department  
5 shall use the performance standards in this section to determine grade A dairy farm inspection  
6 frequency. The department shall evaluate each grade A dairy farm every 3 months, based on  
7 inspection reports, milk quality tests and department compliance actions during the preceding 12  
8 months. Based on the evaluation, the department shall place each dairy farm in one of the  
9 following categories:

10 (1) TWELVE-MONTH INSPECTION INTERVAL. The department shall inspect a grade A dairy  
11 farm in this category at least once every 12 months. The department shall place a dairy farm in  
12 this category if all the following apply, based on dairy farm inspection reports, milk quality tests  
13 and department compliance actions during the preceding 12 months:

14 (a) All of the producer's standard plate counts (SPC) are less than 25,000 per ml., except  
15 one SPC may exceed 25,000 per ml. if it is not more than 100,000 per ml.

16 (b) All of the producer's somatic cell counts (SCC) are less than 500,000 per ml.

17 (c) The department has not issued any warning to the milk producer under s. ATCP  
18 60.275(1) or 60.28(1).

19 (d) No dairy farm inspection report shows more than 5 violations.

20 (e) The department has not suspended the producer's grade A dairy farm permit or milk  
21 producer license.

22 (f) The producer's latest water supply test does not show any violation of s. ATCP 60.08.

1 (2) SIX-MONTH INSPECTION INTERVAL. The department shall inspect a grade A dairy  
2 farm in this category at least once every 6 months. The department shall place a dairy farm in  
3 this category if all the following apply, based on dairy farm inspection reports, milk quality tests  
4 and department compliance actions during the preceding 12 months:

5 (a) The dairy farm fails to qualify under sub. (1).

6 (b) The department has issued no more than one warning to the milk producer under s.  
7 ATCP 60.27(1).

8 (c) The department has not issued any warning to the milk producer under s. ATCP  
9 60.275(1) or 60.28(1).

10 (e) No dairy farm inspection report shows more than 5 violations.

11 (f) The department has not suspended the producer's grade A dairy farm permit or milk  
12 producer license.

13 (g) The producer's latest water supply test does not show any violation of s. ATCP  
14 60.08.

15 (3) FOUR-MONTH INSPECTION INTERVAL. The department shall inspect a grade A dairy  
16 farm in this category at least once every 4 months. The department shall place a dairy farm in  
17 this category if subs. (1), (2) and (4) do not apply, based on dairy farm inspection reports, milk  
18 quality tests and department compliance actions during the preceding 12 months.

19 (4) THREE-MONTH INSPECTION INTERVAL. The department shall inspect a grade A dairy  
20 farm in this category at least once every 3 months. The department shall place a dairy farm in  
21 this category if all the following apply, based on dairy farm inspection reports, milk quality tests  
22 and department compliance actions during the preceding 12 months:

23 (a) The dairy farm does not qualify under sub. (1) or (2).

1 (b) The department has done any of the following:

2 1. Issued more than one warning to the milk producer under s. ATPCP 60.27(1).

3 2. Issued more than one warning to the milk producer under s. ATPCP 60.275(1).

4 3. Issued more than one warning to the milk producer under s. ATPCP 60.28(1).

5 4. Conducted more than one reinspection of the dairy farm.

6 5. Suspended the milk producer's dairy farm license or grade A dairy farm permit.

7 **SECTION 48.** ATPCP 60.25(1) and (2)(title) and (intro.) are amended to read:

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

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

22 **SECTION 49.** ATPCP 60.25(2)(a)(note) is amended to read:

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

- 1
- 2 1. An inspection of the producer's dairy farm reveals gross violations of dairy
- 3 farms standards under subchapter III, or reveals violations which pose an
- 4 acute health risk.
- 5 2. Confirmed ~~bacterial~~ standard plate counts or plate loop counts on the
- 6 producer's milk indicate bacterial counts of more than 1,000,000 750,000 per
- 7 ml. in the milk.
- 8
- 9 3. Drug tests on the producer's milk indicate that drug residues are present in the
- 10 milk.
- 11
- 12 4. Milk from the producer's dairy farm is reliably believed to contain pesticides
- 13 or toxic substances that may be harmful to humans.
- 14
- 15 5. An infectious disease, transmissible to humans through milk, is reliably
- 16 diagnosed in the producer's herd.

17 **SECTION 50.** ATCP 60.25(2)(c) and (d) are repealed.

18 **SECTION 51.** ATCP 60.26 is amended to read:

19 **ATCP 60.26 Suspension or revocation of grade A farm permit; general.** A The  
20 department may suspend or revoke a milk producer's grade A permit ~~may be suspended or~~  
21 ~~revoked~~ for cause, as provided in s. 93.06 (7), Stats. Except as provided under s. ATCP 60.25,  
22 60.27, 60.275 or 60.28, the department may not suspend or revoke a grade A permit ~~may not be~~  
23 ~~suspended or revoked~~ except by order of the secretary or the secretary's designee, after notice  
24 and opportunity for hearing under ch. 227, Stats. The food safety division may file a written  
25 complaint with the department, seeking the suspension or revocation of a grade A permit.  
26 Pending completion of the proceedings, the secretary or the secretary's designee may issue  
27 interim orders as necessary to protect the public health, safety and welfare. If an inspection is  
28 required for the reinstatement of a grade A permit ~~which~~ that is suspended or revoked under this  
29 section, the department shall charge a reinspection fee under s. ATCP 60.04 for the inspection.

30 **SECTION 52.** ATCP 60.27(1) and (4) are amended to read:

1 ATCP 60.27(1) WARNING NOTICE. The food safety division shall mail a written warning  
2 notice to a grade A milk producer whenever any of the following occurs:

3 (a) Two of the last 4 bacterial counts reported to the department under s. ATCP ~~60.18(2)~~  
4 60.18(3) exceed 100,000 per ml., in violation of the standard for grade A milk under s. ATCP  
5 60.15(2).

6 (b) Two of the last 4 somatic cell counts reported to the department under s. ATCP  
7 ~~60.20(2)~~ 60.20(4) exceed 750,000 somatic cells per ml. for ~~cow's~~ cow milk, or 1,000,000 per ml.  
8 for goat milk, in violation of the standard under s. ATCP 60.15(4).

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

12 (a) Three of the last 5 bacterial counts reported to the department under s. ATCP  
13 ~~60.18(2)~~ 60.18(3) and sub. (3) exceed 100,000 per ml.

14 (b) Three of the last 5 somatic cell counts reported to the department under s. ATCP  
15 ~~60.20(2)~~ 60.20(4) and sub. (3) exceed 750,000 somatic cells per ml. for ~~cow's~~ cow milk, or  
16 1,000,000 per ml. for goat milk.

17 **SECTION 53:** ATCP 60.27(4)(note) is amended to read:

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

22  
23 **SECTION 54.** ATCP 60.27(6)(a) is amended to read:

24 ATCP 60.27(6)(a) A milk producer whose ~~grade A farm permit is suspended under this~~  
25 ~~section for violation of a milk quality standard may file with the department a written request for~~  
26 reinstatement of the permit may ask the department to reinstate a grade A farm permit suspended

1 ~~under sub. (4). The producer shall make the reinstatement request shall be made in writing, on a~~  
2 ~~form provided by the department under s. ATCP 60.29(4). The reinstatement request shall be~~  
3 ~~accompanied by request shall include the result of a milk quality test, performed by the dairy~~  
4 ~~plant operator on a milk sample collected after the effective date of the suspension, showing that~~  
5 ~~the milk producer is no longer violating the relevant milk quality standard is no longer being~~  
6 ~~violated. Within 7 days after the department receives a complete reinstatement request, the~~  
7 ~~department shall inspect the dairy farm. The department shall charge a reinspection fee for the~~  
8 ~~inspection, pursuant to s. ATCP 60.04. If, upon inspection, it appears that all conditions~~  
9 ~~potentially responsible for the milk quality standard violation have been corrected, the inspector~~  
10 ~~shall reinstate the producer's grade A farm permit, and shall notify the dairy plant of the~~  
11 ~~reinstatement.~~

12 **SECTION 55.** ATCP 60.27(6)(b) is renumbered (c).

13 **SECTION 56.** ATCP 60.27(6)(b) is created to read:

14 ATCP 60.27(6)(b) Within 7 days after the department receives a complete reinstatement  
15 request that complies with par. (a), the department shall do one of the following:

16 1. If the producer seeks reinstatement of a grade A permit suspended under sub. (4)(a),  
17 the department shall inspect the dairy farm and charge a reinspection fee under s. ATCP 60.04.  
18 The inspector shall reinstate the grade A permit if the inspector finds that the producer has  
19 corrected all the conditions potentially responsible for the violations cited in the suspension  
20 notice. The inspector shall notify the dairy plant operator of the reinstatement.

21 2. If the producer seeks reinstatement of a grade A permit suspended under sub. (4)(b),  
22 the department shall reinstate the grade A permit. The department shall notify the producer and  
23 the dairy plant operator of the reinstatement.

1       **SECTION 57.** ATCP 60.275(1)(a)(intro.), (1)(b) to (d), (2)(a), (2)(b)1. and (3) are  
2 amended to read:

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

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

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

17       (1)(d) *Right to informal hearing.* If a producer receiving a warning notice under par. (a)  
18 disputes the drug residue findings on which the notice is based, the producer may request an  
19 informal hearing to discuss the drug residue findings. A request for hearing does not  
20 automatically stay the warning notice. If the producer requests an informal hearing, the food  
21 safety division shall hold an informal hearing at the division's nearest regional office or by  
22 telephone. The ~~food~~ division shall hold the informal hearing within ~~3~~ 10 business days after the

1 division receives the request for hearing, unless the producer agrees to a later hearing date. The  
2 ~~food~~ division may withdraw a warning notice if it appears that the notice was not justified.

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

10 (2)(b)1. If the department suspends a milk producer's grade A dairy farm permit is  
11 ~~suspended~~ under par. (a), the producer may ~~file with~~ ask the food safety division a ~~written~~  
12 ~~request for reinstatement of~~ to reinstate the permit. The ~~reinstatement~~ producer shall file the  
13 reinstatement request ~~shall be made in writing~~, on a form provided by the department under s.  
14 ATCP 60.29(4). The ~~reinstatement request shall be accompanied by the producer's certification~~  
15 stating request shall certify that the producer has implemented a drug residue prevention program  
16 on the producer's dairy farm in consultation with a licensed veterinarian.

17 (3)(a) *License suspension; failure to implement drug residue prevention program.* If the  
18 food safety division does not receive a producer certification ~~from a producer~~ within the 45-day  
19 period specified under sub. (1)(c) ~~within 45 days after the effective date of the warning notice~~  
20 ~~under sub. (1)(a)~~, the ~~food~~ division shall file a complaint with the department, asking the  
21 department to suspend the producer's dairy farm license until the producer implements a drug  
22 residue prevention program ~~is implemented~~.

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

6       **SECTION 58.** ATCP 60.28(1) and (2) are amended to read:

7       ATCP 60.28(1) **WARNING NOTICE.** ~~If, upon inspection of a grade A dairy farm, a food~~  
8 safety division inspector finds a key violation as defined in s. ATCP 60.01(15) on a grade A  
9 dairy farm, the inspector may issue a warning notice to the producer, ~~stating that, if the~~  
10 ~~violation is not corrected~~ The warning notice shall state that the department will suspend the  
11 producer's grade a permit if the producer does not correct the violation by a deadline date  
12 specified in the notice, the producer's grade A permit will be suspended. The inspector shall  
13 specify a correction deadline shall be established by the inspector based on the seriousness of the  
14 key violation and the time reasonably required to correct the key violation. The correction  
15 deadline shall be not less than 3 days nor more than 60 days after a ~~warning notice is issued~~  
16 ~~under this paragraph~~ the inspector issues the warning notice. The inspector shall serve the  
17 warning notice shall be served in person or by mail, or shall be prominently posted prominently  
18 post the notice in the milkhouse. A The inspector shall mail or deliver a copy of the warning  
19 notice shall be mailed or delivered to the dairy plant operator. The warning notice shall include a  
20 notice of the producer's right to hearing under s. ATCP 60.31.

21       (2) **REINSPECTION; SUSPENSION NOTICE.** Within 7 days after the correction deadline date  
22 specified in ~~the~~ a warning notice under sub. (1), a food safety division inspector shall reinspect  
23 the dairy farm to determine whether the producer has corrected each key violation cited in the

1 warning notice ~~has been corrected~~. The department shall charge a reinspection fee for the  
2 inspection, pursuant to s. ATCP 60.04. ~~If, upon reinspection,~~ the inspector finds that the  
3 producer has not corrected a key violation cited in the warning notice ~~has not been corrected~~, the  
4 inspector shall issue a written notice suspending the producer's grade A permit. The suspension  
5 ~~becomes effective immediately upon service of the suspension notice under~~ takes effect when the  
6 inspector serves the notice on the producer, according to s. ATCP 60.29(6). The inspector shall  
7 promptly notify the dairy plant ~~of the suspension operator~~, and may tag the bulk tank to notify  
8 the milk hauler of the suspension. ~~A~~ The inspector shall mail or deliver a copy of the suspension  
9 notice ~~shall be mailed or delivered to the dairy plant operator~~. A person adversely affected by  
10 the suspension notice may request a hearing on the notice as provided under s. ATCP 60.31.

11 **SECTION 59.** ATCP 60.28(3)(note) is amended to read:

12 **NOTE:** ~~This subsection~~ Subsection (3) does not prohibit the food safety division from  
13 summarily suspending a milk producer's license and grade A permit under s.  
14 ATCP 60.25 without prior warning if the division of food safety determines that  
15 any of the circumstances identified under s. ATCP 60.25(2) ~~exists~~ exist.

16  
17 **SECTION 60.** ATCP 60.29(intro.) is amended to read:

18  
19 ATCP 60.29(intro.) **Suspension notice; requirements.** Whenever the food safety  
20 division suspends a milk producer license under s. ATCP 60.25(2), or a grade A farm permit  
21 under s. ATCP 60.27 or 60.28, the suspension notice shall comply with the following  
22 requirements:

23 **SECTION 61.** ATCP 60.29(1) is repealed and recreated to read:

24 ATCP 60.29(1) **ISSUED BY AUTHORIZED PERSON.** A suspension notice shall be issued by  
25 one of the following:

26 (a) The food safety division administrator.

1 (b) A person that the food safety division administrator designates in writing, by name or  
2 position.

3 (c) A food safety division inspector if the suspension notice is issued under s. ATCP  
4 60.28(2).

5 **SECTION 62.** ATCP 60.29(3) is amended to read:

6 ATCP 60.29(3) TERM OF SUSPENSION; REINSTATEMENT REQUIREMENTS FOR  
7 ~~REINSTATEMENT OF LICENSE OR PERMIT.~~ A suspension notice shall indicate the term of the  
8 suspension or, if the suspension is for an indefinite term, the conditions ~~which must be met in~~  
9 ~~order for the affected milk~~ that the producer must meet in order to obtain reinstatement of the  
10 ~~milk producer's~~ license or grade A permit. Conditions for reinstatement shall be reasonably  
11 related to the reasons for which the license or permit is suspended. ~~If the food division~~  
12 ~~summarily suspends a milk producer license~~ A summary license suspension notice under s.  
13 ATCP 60.25(2), ~~the suspension notice~~ may authorize a dairy plant operator to receive milk from  
14 the suspended producer on a conditional basis, ~~upon completion of specified inspection or testing~~  
15 ~~by the dairy plant, pending full reinstatement by the department~~ pending full reinstatement of the  
16 producer's license, provided that the operator performs specified inspections or tests.

17 **SECTION 63.** ATCP 60.30(1) and (2) are amended to read:

18 ATCP 60.30(1) HOLDING ORDER. Whenever a ~~department~~ food safety division inspector  
19 has reasonable cause to believe that milk or a milk product examined by the inspector is  
20 adulterated or misbranded, and is hazardous to health or misleading to the potential damage or  
21 injury of a purchaser or consumer, the inspector may issue a temporary holding order to allow  
22 for further testing or examination of the milk or milk product, pursuant to s. 97.12 (2), Stats. A  
23 holding order shall be issued in writing, and shall identify the milk ~~which~~ or milk product that is

1 subject to the holding order. ~~A~~ The food safety division may extend or terminate a holding order  
2 ~~may be extended or terminated~~ by written notice, as provided in s. 97.12 (2), Stats. ~~Notice~~ A  
3 notice extending a holding order may be issued shall be signed by the ~~food~~ division  
4 administrator, or a person authorized in writing by the ~~food~~ division administrator. A holding  
5 order and every notice extending a holding order shall include a notice of the recipient's right to  
6 hearing under s. ATCP 60.31.

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

17 **SECTION 64.** ATCP 60.31(1)(title), (1)(intro.) and (2) to (4) are amended to read:

18 ATCP 60.31(1)(title) and (intro.) ~~HEARING REQUEST; PERSONS ADVERSELY AFFECTED BY~~  
19 ~~DIVISION OF FOOD SAFETY ACTION.~~ A person adversely affected by any of the following food  
20 safety division actions may request ask the department to hold a hearing on the that action:

21 (2) FORM AND TIMING OF REQUEST; EFFECT PENDING HEARINGS. ~~A request for hearing on~~  
22 ~~a food safety division action~~ person requesting a hearing under sub. (1) shall ~~be made~~ make that  
23 request, in writing, ~~and shall be filed with the department~~ within 10 days after the milk producer

1 receives notice of the ~~food~~ division action. A request for hearing does not stay the effect of any  
2 action under this chapter. The filing deadline under this subsection is waived if the department  
3 fails to give the ~~milk~~ producer timely written notice of the filing deadline.

4 (3) INFORMAL HEARING. (a) ~~If the department receives a written request under this~~  
5 ~~section for a hearing on a food division action~~ Whenever the department receives a hearing  
6 request under sub. (2), the department shall conduct a prompt informal hearing ~~before~~ on the  
7 contested action. The hearing shall be conducted by a department ~~employee~~ employee or official  
8 who was not personally involved in the investigation or decision to take the contested action, and  
9 who has authority to withdraw or correct the action as necessary. The food safety division shall  
10 conduct the informal hearing ~~shall be conducted by the food division unless the contested action~~  
11 was taken by the ~~food~~ division administrator. The department shall hold the informal hearing  
12 shall be held within 10 business days after a request for hearing is received by the department it  
13 receives the hearing request under sub. (2), unless the person requesting the hearing agrees to a  
14 later date. The department shall hold the informal hearing shall be held by telephone or at the  
15 department's regional office of the department.

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

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

8 **EFFECTIVE DATE.** The rules contained in this order shall take effect on the first day  
9 of the month following publication in the Wisconsin administrative register, as provided under  
10 s. 227.22(2)(intro.), Stats.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

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

By \_\_\_\_\_  
James E. Harsdorf, Secretary

### Fiscal Estimate — 2001 Session

- Original     Updated  
 Corrected     Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number ch. ATCP 60

Subject  
Dairy Farms

**Fiscal Effect**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation     Increase Existing Revenues  
 Decrease Existing Appropriation     Decrease Existing Revenues  
 Create New Appropriation

Increase Costs — May be possible to absorb within agency's budget.  
 Yes     No

Decrease Costs

Local:  No Local Government Costs

- |  |   |
|--|---|
| 1. <input type="checkbox"/> Increase Costs<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |
| 2. <input type="checkbox"/> Decrease Costs<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 4. <input type="checkbox"/> Decrease Revenues<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory |

5. Types of Local Governmental Units Affected:

- Towns     Villages     Cities  
 Counties     Others  
 School Districts     WTCS Districts

**Fund Sources Affected**

- GPR     FED     PRO     PRS     SEG     SEG-S

Affected Chapter 20 Appropriations

**Assumptions Used in Arriving at Fiscal Estimate**

The proposed rule to amend current dairy farm rules under ch. ATCP 60, Wis. Adm. Code, will not have a major fiscal effect on DATCP or local government. This rule updates existing food safety requirements, and accommodates recent changes in dairy farm operations. It also clarifies the responsibility of dairy plant operators with respect to dairy farms.

DATCP currently licenses and inspects dairy farms under ss. 97.22 to 97.24, Stats., and ch. ATCP 60. This requirement would not change. All milk must be produced under sanitary conditions.

Under current law, a dairy plant operator must submit milk producer license applications, annual license fees, and grade A permit applications on behalf of the milk producer. The dairy plant operator must also test producer milk shipments for drug residues, bacteria, somatic cells and other adulterants, and requires reporting test results to DATCP. This requirement will not change.

Current rules spell out compliance procedures, including notice and appeal procedures. This rule clarifies DATCP compliance procedures related to dairy farms. This rule does not make significant changes in current procedures.

**Long-Range Fiscal Implications**

None

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## Fiscal Estimate Worksheet — 2001 Session

Detailed Estimate of Annual Fiscal Effect

- Original       Updated  
 Corrected     Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number Ch. ATCP 60

**Subject**

This rule accommodates recent changes in dairy farm operations.

**One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**

None

Annualized Costs:	Annualized Fiscal Impact on State Funds from:	
	Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>		
State Operations — Salaries and Fringes	\$	\$ -
(FTE Position Changes)	( FTE )	( FTE )
State Operations — Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
<b>Total State Costs by Category</b>	<b>\$</b>	<b>\$ -</b>
<b>B. State Costs by Source of Funds</b>		
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
<b>State Revenues</b> <small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>		<b>Increased Revenue</b>
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
<b>Total State Revenues</b>	<b>\$</b>	<b>\$ -</b>

**Net Annualized Fiscal Impact**

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$ _____	\$ _____
Net Change in Revenues	\$ _____	\$ _____

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	608/224-4746	32/12/002

# Wisconsin Department of Agriculture, Trade and Consumer Protection

## Final Regulatory Flexibility Analysis

**Rule Subject:** Dairy Farms  
**Adm. Code Reference:** ATCP 60  
**Rules Clearinghouse #:** 01-125  
**DATCP Docket #:** 98-R-2

### Rule Description

This rule updates food safety requirements, and accommodates recent changes in dairy farm operations. It also clarifies the responsibilities of dairy plant operators with respect to dairy farms. This rule applies to grade A and grade B dairy farms. Grade A dairy farm rules must be consistent with federal requirements under the interstate Pasteurized Milk Ordinance (PMO). 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.

### **Small Businesses Affected by this Rule**

This rule affects milk producers or dairy farms, which are businesses that produce raw milk for processing into dairy products. This includes approximately 18,000 dairy farms in this state that are licensed and inspected by the department. Many of these businesses are "small businesses" as defined in s. 227.114(1)(a), Stats.

## **Effects on Small Business**

This rule will not, by itself, have a major impact on small business. This rule merely implements changes in the interstate Pasteurized Milk Ordinance and redrafts existing requirements for dairy farms so they will be easier to read and understand.

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:

- Each operator tests milk shipments shipped to that operator, and reports test results. The operator must also comply with other requirements related to those shipments.
- One of the operators files license and permit applications for the milk producer, and pays producer license and reinspection fees. Under this rule, as under current rules, the operator must charge producer reinspection fees back to the producer.

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

This rule authorizes producers to milk directly to a bulk transport container under certain conditions, but does not add any significant new requirements. A dairy farmer or milk producer need not hire additional professional services to comply with this rule. Dairy farms can implement this rule with existing personnel.

## **Steps to Assist Small Business**

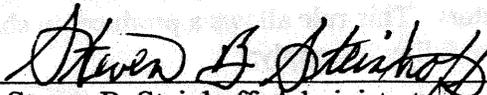
The department will provide training to Wisconsin dairy plant field representatives to help them implement the requirements contained in this rule on the dairy farms that ship milk to their dairy plant. This rule primarily clarifies current requirements, so they will be easier to read and understand.

## **Conclusion**

This rule will not, by itself, have a major impact on small business. For the most part, this rule merely implements changes in the interstate Pasteurized Milk Ordinance. A milk producer will not need additional professional services to comply with this rule.

Dated this 22<sup>nd</sup> day of March, 2002.

STATE OF WISCONSIN  
DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

By   
Steven B. Steinhoff, Administrator,  
Division of Food Safety