

 **07hr_CRule_07-006_AC-Ag_pt01a**



Details:

(FORM UPDATED: 07/12/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2007-08

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on ... Agriculture (AC-Ag)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**
- Record of Comm. Proceedings ... **RCP**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt**
- Clearinghouse Rules ... **CRule**
- Hearing Records ... bills and resolutions
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**



State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, 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 RULE #: 07-006



SUBJECT: Safe Production, Processing, Distribution and Sale of Milk and Dairy Products

ADM. CODE REFERENCE: ATCP 60, 69, 77, 80 and 82

DATCP DOCKET #: 05-R-04

Dated this 14th day of September, 2007.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND
CONSUMER PROTECTION

By 
 Rodney J. Nilsestuen
Secretary

Agriculture generates \$51.5 billion for Wisconsin

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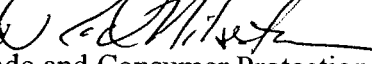
State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

DATE: September 14, 2007

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

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

FROM: Rodney J. Nilsestuen, Secretary 
Department of Agriculture, Trade and Consumer Protection

SUBJECT: Dairy Food Safety; Final Draft Rule
(Clearinghouse Rule #07-006)

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 notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19(2), Stats.

Summary

This rule updates current rules related to dairy farms, dairy plants, milk haulers, milk testing laboratories and other dairy businesses. This rule does all of the following:

- Brings Wisconsin rules into conformity with the Interstate Pasteurized Milk Ordinance ("PMO"). Wisconsin rules must be consistent with the PMO, in order for Wisconsin to ship milk and fluid milk products in interstate commerce. The United States Food and Drug Administration ("FDA") recently audited Wisconsin's dairy regulatory program and recommended a number of changes in Wisconsin's current rules. This rule responds to the FDA audit recommendations.
- Clarifies the current statutory prohibition against the sale of unpasteurized "raw milk," consistent with administrative law judge decisions. Raw milk sales have been implicated in a number of serious food-borne disease outbreaks in Wisconsin and elsewhere.
- Updates current rules to accommodate changing industry technology and practices.

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Background

The United States Food and Drug Administration (“FDA”) recently completed an audit of Wisconsin’s dairy regulatory program. FDA requested a number of changes in current DATCP rules, to make the rules more fully consistent with the current (2005) version of the PMO. This rule makes changes requested by FDA. This rule also makes other changes to update and clarify current rules and to accommodate changing dairy industry technology, organization and practices. The changes in this rule are, for the most part, technical in nature.

DATCP and others are proposing major reforms to modernize and streamline the PMO. DATCP believes that some current PMO requirements (and particularly current routine inspection frequency requirements) divert resources from higher food safety priorities and impose unnecessary costs on the dairy industry. However, those reforms will require action at the national level and by other states. In the meantime, Wisconsin must comply with existing PMO requirements in order to ship milk in interstate commerce.

Rule Contents

Dairy Farms

This rule updates and modifies current rules related to dairy farms. Among other things, this rule does all of the following:

- Incorporates PMO requirements related to gravity flow manure handling systems and liquid manure storage.
- Clarifies milk hauler responsibilities relating to mixing, sampling, and testing milk shipments.
- Spells out standards and procedures related to Wisconsin’s performance-based dairy farm inspection system.
- Updates drug residue action levels and safe levels, consistent with the PMO.
- Clarifies dairy plant and DATCP responsibilities relating to testing milk from dairy farms and reporting test results.
- Spells out new requirements related to the safety of water used in milking and processing operations.
- Clarifies milk temperature monitoring and recording requirements and requires dairy farms to keep milk temperature records for at least 6 months (extended from 90 days under current rules).

- Clarifies drug residue testing procedures, including requiring confirmation of positive screening tests and rejection of milk shipments, pending follow-up testing to show that drug contamination has been eliminated.
- Clarifies producer and installer responsibilities for obtaining DATCP review of dairy farm remodeling plans.
- Expands rule coverage to include all “milking animals,” not just cows, sheep and goats.
- Expands current requirements related to dairy farm and dairy plant cooling systems.
- Clarifies the current statutory prohibition related to the sale of unpasteurized “raw” milk to consumers, consistent with DATCP administrative decisions issued on October 30, 2002, and February 4, 2004. Neither decision was appealed. Raw milk sales have been implicated in a number of serious food-borne disease outbreaks in Wisconsin and elsewhere.
- Eliminates outdated requirement that dairy plants must test for coarse sediment in milk.

Dairy Plants

This rule updates and modifies current rules related to dairy plants. Among other things, this rule does all of the following:

- Strengthens water safety requirements and clarifies that DATCP, rather than the dairy plant operator, must perform certain water safety tests.
- Clarifies cleaning and sanitizing requirements.
- Clarifies milk testing requirements, including drug residue testing requirements for farms that milk directly to bulk milk tankers.
- Updates and clarifies pasteurization standards, procedures, and testing requirements.
- Requires regular DATCP review of pasteurization records and “cleaned-in-place” equipment cleaning records.
- Updates requirements related to calibration of automated milk component testing devices.
- Updates dairy plant recordkeeping requirements. Dairy plants must retain certain cleaning and sanitizing records for at least 6 months and certain documents related to bulk milk shipments for at least 3 years.

Milk Testing Laboratories

DATCP currently certifies laboratories that test milk, food or water for compliance with public health standards. This rule updates and clarifies current rules related to the certification of laboratories and lab analysts. Among other things, this rule:

- Updates the list of tests for which certification is required.
- Clarifies current certification and testing requirements related to drug residue testing in milk, including requirements for timely confirmation of positive screening test results.
- Specifies that the test results and ratings of certified analysts that have been reported to the department are rebuttably presumed to be valid.

Milk Haulers and Bulk Milk Tankers

This rule updates and modifies current requirements related to milk haulers and bulk milk tankers. Among other things, this rule does all of the following:

- Establishes standards for bulk milk tanker cleaning facilities at dairy plants.
- Requires dairy plants to keep bulk milk tanker cleaning and sanitizing records for 15 days, rather than 90 days. When a dairy plant operator cleans a bulk milk tanker, the operator must remove the cleaning tag from the last cleaning and keep the removed tag for at least 15 days.
- Clarifies that out-of-state bulk milk tankers with grade A permits from other jurisdictions are not required to hold Wisconsin grade A permits.
- Requires grade A permit numbers to be clearly displayed on bulk milk tankers.
- Clarifies the responsibilities of milk haulers (bulk milk weighers and samplers) related to weighing, measuring, and sampling milk shipments.

Buttermakers and Cheesemakers

This rule clarifies current professional licensing requirements for individuals engaged as buttermakers and cheesemakers. This rule gives license applicants more options for meeting training and experience requirements.

Public Hearings

DATCP held 4 hearings on this rule. DATCP held the hearings on February 20, 2007, in Appleton, February 21, 2007 in Eau Claire, February 23, 2007, in Monroe and February 26, 2007 in Madison. Twenty-three persons attended the hearings. Ten persons registered to speak (all

spoke in favor of some parts of the rule but in opposition to some parts). Thirteen persons registered without making comments. Five persons submitted written comments that duplicated their oral testimony. DATCP modified the final draft rule in response to hearing comments. A summary of testimony from the hearings is attached.

Changes from Hearing Draft

DATCP made the following changes to the final draft rule:

- Increased the length of time a dairy plant operator has to report test results to the department after rejecting milk due to sight or smell (from 3 to 7 days).
- Required persons seeking to qualify for a cheesemaker license based on prior on-the-job training to show that the training occurred within 5 years prior to the license application (rather than 10 years, as provided in the hearing draft).
- Added a note to clarify that natural cheese is a cultured dairy product, which does not require coliform testing.
- Eliminated phosphatase testing requirements for grade B finished dairy products.
- Modified pasteurization requirements for membrane-processed dairy products to reflect industry needs and current national standards.
- Gave dairy plant operators 5 days (rather than 3 days, as in the hearing draft) to submit formal confirmation reports of broken pasteurizer seals or malfunctioning pasteurizers (operators must make an initial oral or electronic report within 2 hours, just as in the hearing draft).
- Shifted responsibility for bulk milk tanker cleaning from the dairy plant operator to the bulk milk tanker operator.
- Allowed producers who haul their own milk to collect required official samples of bulk milk shipments, if they are licensed to do so.
- Eliminated the obsolete term "optical somatic cell count (OSCC)".
- Included an updated list of drugs and drug residue action levels.
- Clarified exemptions from the statutory prohibition against distribution of unpasteurized milk.
- Changed the option of requiring a 3-month course to qualify for a buttermaker license (because no course currently exists) to a buttermaking course approved by the department.
- Eliminated an evaporator sanitization requirement to accommodate recognized industry practice.
- Changed time period after which re-sanitization of a bulk milk tanker will occur from 72 to 96 hours.
- Modified a bulk milk tanker sealing requirement to specify that the access port must be sealed.

Response to Rules Clearinghouse Comments

The Legislative Council Rules Clearinghouse made a number of comments to the hearing draft rule. DATCP modified the final draft rule to address all of the comments, except the following:

Comment 2.h. DATCP did not create a definition of “division” to mean “division of food safety” because sometimes the term “division” is used in the rule to mean something else, *e.g.*, “The chart on which the thermometer records milk temperatures ... shall have at least one time span division per hour.” (Emphasis added) DATCP did change the rule using the alternate method indicated in the comment.

Comment 2.m. DATCP will consider comment in a future rule.

Comment 5.f. DATCP will make this change in a future rule.

Comment 5.g. DATCP believes that “pathogenic organisms” are distinct from “harmful organisms” and intended to distinguish them in the rule.

Comment 5.h. DATCP believes the rule is sufficiently clear as drafted. Based on industry practice, it is standard to use the term “per ml. or per gram”. Depending on the dairy product being tested, results for fluid products will be expressed per milliliter (mL), while results for non-fluid products will be expressed per gram.

Fiscal Estimate

DATCP currently regulates dairy farms, dairy plants, bulk milk weighers and samplers, bulk milk tankers, milk testing laboratories, laboratory analysts, buttermakers and cheesemakers to protect consumers and facilitate the interstate shipment of Wisconsin grade A milk and dairy products.

This rule will not have a significant fiscal impact on state government, and it will have no effect on local government. This rule updates current rules, but does not make major changes that will increase state government costs. This rule does not change current license fees, and does not have any impact on current state revenues. A fiscal estimate is attached.

Business Impact

DATCP currently regulates dairy farms, dairy plants, bulk milk weighers and samplers, bulk milk tankers, milk testing laboratories, laboratory analysts, buttermakers and cheesemakers to protect consumers and facilitate the interstate shipment of Wisconsin grade A milk and dairy products. Current regulations have an important impact on dairy industry operations, including small business operations. Most dairy farms, and some dairy processing operations, qualify as “small businesses” under s. 227.114, Stats.

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The Honorable Michael Huebsch
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This rule makes a large number of technical changes to existing regulations. For the most part, however, this rule will not have a significant impact on affected businesses. A complete business impact analysis is attached.

This rule changes current recordkeeping requirements, but the changes should not impose a significant burden on affected businesses. This rule will not require affected businesses to obtain any new professional skills or services.

**Hearing Appearance and Registration Log
Department of Agriculture, Trade and Consumer Protection (DATCP)**

CLEARINGHOUSE RULE #: 05-068

SUBJECT: Safe Production, Processing, Distribution and Sale of Milk and Dairy Products

ADM. CODE REFERENCE: ATCP 60, 69, 77, 80 and 82

DATCP DOCKET #: 05-R-04

Hearing Appearances and Testimony

Appleton, Wisconsin
February 20, 2007

Person/Organization	Testified-Y/N	Written-Y/N	Registered	Registration Card Comments and DATCP Responses
Evan Schuh/Wisc. Milkhaulers Assoc., current board member of Milkhaulers Assoc., Past President.	Yes	No	Favor part and oppose part	<p>82.08 Recommends that the rule state the time to resanitize a bulk milk tanker be changed from 72 to 96 hours. Changed "72" to "96" hours.</p> <p>82.12(b) Bulk milk tanker properly sealed. Would like better definition of "properly sealed". Changed "tanker is properly sealed" to "tanker access port is properly sealed."</p> <p>Asked if a list of Grade A Wash Facilities be made available. Not germane to rule. List is available at www.ncims.org.</p> <p>3-A Sanitary Standards for Stainless Steel Automotive Transportation Tanks regarding spray balls on tankers being accessible for inspection, i.e., having them allow the spray balls to be</p>

				manually pulled out. Not germane to rule.
Clint Schuh/Schuh Hauling, Inc.	No	No	Favor part and oppose part	No specific comments given.
Mark Schleitwiler/Belgioioso	Yes	No	Favor part and oppose part Section 118	Concern regarding the requirement that they be pasteurized before entering membrane filtration systems. Section 118 rewritten to meet concerns. Concern that license requirements for cheese makers experience be within last 10 years. Recommend 2 years. Changed to 5 years.
Mike Weiricks	No	No	No position	
Doug Dieterich/Galloway Co. Neenah	Y		Favor part and oppose part Section 118	Concern regarding the requirement that they be pasteurized before entering membrane filtration systems. Section 118 rewritten to meet concerns.

Eau Claire, Wisconsin
February 21, 2007

Person/Organization	Testified-Y/N	Written-Y/N	Registered	Registration Card Comments and DATCP RESPONSES
Jerome Michels/AMPI	No	No	No position	No position stated.
Mark Zech/AMPI	Yes	No	No position Section 118	Concern regarding the requirement that they be pasteurized before entering membrane filtration systems. Section 118 rewritten to meet concerns.
Jeff Hofer/Complete Filtration Resources	No	No	Oppose Section	Concern regarding the requirement that they be

			118	pasteurized before entering membrane filtration systems. Section 118 rewritten to meet concerns.
Willard E. Haigh	Yes	No		Non-germane comments.
Josh Mullins	Yes	No	Section 118	Concern regarding the requirement that they be pasteurized before entering membrane filtration systems. Section 118 rewritten to meet concerns.
Larry Julson	No	No	No position	No position stated.
Megan Parker	No	No	No position	No position - Reporter.

Monroe, Wisconsin
February 23, 2007

Person/Organization	Testified-Y/N	Written-Y/N	Registered	Registration Card Comments and DATCP Responses
John Umhoefer/ Wisconsin Cheese Makers Association	Yes	Yes		WCMA comments – Favor parts and oppose parts. See “Written Comments” below.
Ron Statz/NFO, Inc.	No	No	Favor part and oppose part	Favor parts and oppose parts. No specific comments given.
Matt Mathison, WMMB	No	No	No position	No position stated.
Tim Genthe, SVF	No	No		No position stated.
Jeff Wideman/Maple Leaf Cheese and WCMA	No	No	Favor part and oppose part	Favor parts and oppose parts. No specific comments given.

Madison, Wisconsin
February 26, 2007

Person/Organization	Testified-Y/N	Written-Y/N	Registered	Registration Card Comments and DATCP Responses
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David Beaver/ Saputo Cheese	Yes	Yes	Opposed section 118 as written	Concern regarding the requirement that they be pasteurized before entering membrane filtration systems. Section 118 rewritten to meet concerns.
Steven McWilliams/ Walker Transport	Yes	No	Support	Comment on 3-A address. Address changed.
David J. McClanahan/ UW School of Veterinary Medicine	No	No	No position	No position stated.
Katarzyna Krygowska	No	No	No position	No position stated.
Brad Legreid Wisconsin Dairy Products Association	Yes	Yes		General comments – Favor parts and oppose parts. See “Written Comments” below.
Ed Schaller	Yes	No	Oppose	Opposed to prohibiting a farmer from selling raw milk to a willing consumer. Not germane to rule. Statutory prohibition.

Written Comments Received After Hearings

Greg Siegenthaler Grande Cheese	Opposed Section 158 as written. See “Written Comments” below.
John Manske Wisconsin Federation of Cooperatives	Favor parts and oppose parts. See “Written Comments” below.

Written Comments

The Wisconsin Cheese Makers Association (WCMA), the Wisconsin Dairy Products Association (WDPA) and the Wisconsin Federation of Cooperatives (WFC) submitted written comments. Each association made a significant number of comments, many of which were the same or similar. These comments are summarized in the table below and include comments noted above and the department’s response to the comments.

Section	Comment	WCMA	WDPA	WFC
18	Clarify “prior to first use” Added “at or”.		X	X
18	Define “promptly”			X

	Deleted “promptly”.			
26	Questioned thermometer temperature range No change required.			X
37	Delete obsolete term OSCC Deleted term.		X	X
38	Rejection of milk on farm, reporting time Changed reporting time to 7 days from 3 days and prescribed a form for reporting.	X	X	X
42	Add Penicillin G and Ceftriaxone to drug list Added terms.		X	X
47	Supports efforts to regulate sale of raw milk.		X	
61	Eliminate “3 month course in buttermaking” Changed to “department approved course in buttermaking”.		X	
63	Change “10 years” to “2 years” for obtaining training to qualify for cheesemakers license Changed to “5 years”.	X		
66	Add “microscopic” to be accurate Added word.		X	X
74	Eliminate unnecessary fees No change required. These are current existing fees, not new fees.		X	
84	Definition of pasteurization No change required. Definition is accurate.		X	
93	Change 72 to 96 hours for emptying storage tanks No change required. 72 hours is the standard.		X	
93	Remove “and sanitize” from evaporator cleaning Remove “and sanitize.”	X	X	X
101	Questions on “recombined” dairy product and starter No change required.		X	X
103	Apply phosphatase test to grade A white milk only. No change required for grade A products.	X		
104	Clarify the “natural cheese” is a cultured dairy product and not subject to coliform testing Note added to clarify.	X		
104	Eliminate phosphatase tests on grade B products. Eliminated phosphatase test requirement.	X	X	X
104	Change “grade B” to “non-grade A” No change made.	X		
General	Use “grade A” and “grade B” throughout the		X	

	rule No change made. No consensus.			
116	Clarification sought and combine h and i. No change required. G is a restatement of repealed 80.44(4). Combining h and I makes the exemption too broad.	X		X
118	Language related to pasteurization of dairy products prior to entering into a membrane or condensing processing system is unclear and the ability by industry to comply with the requirement is questioned. Concern regarding the requirement that they be pasteurized before entering membrane filtration systems. Section 118 rewritten to meet concerns including the recommendations of the University of Wisconsin Center for Dairy Research and action of the 2005 National Conference on Interstate Milk Shipments.	X	X	X
121	Replace "or less" with "minimum of one second" No change required. "1 second or less" is the appropriate time measurement for HHST pasteurization.		X	
132	Change "3 business days" to "5 business days" Changed to "5 business days."	X		
132	Define "immediately" Added "within 2 hours after."	X		X
136	Questions 3 year record retention No change required.			X
136	Questions grade of product on bill of lading Changed "whether the product is a grade A or grade B dairy product" to "The grade of product."	X	X	X
156	The dairy plant operator should not be responsible for bulk tanker cleaning. Replaced "dairy plant operator" with "bulk milk tanker operator" where appropriate.	X	X	X
156	Change resanitize time period from 72 hours to 96 hours Changed to 96 hours.	X	X	X
156	Change "cleans and sanitizes the bulk milk tanker after that day's use and before the next day's use." This requires sanitizing twice.			

	Change made.			
158	Eliminate prohibition for producer to sample their own milk. Prohibition removed.		X	X

**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 60.07(4)(a)(note), 60.11(4)(L), 60.21 and (note), 80.44(4) and
3 (5), to renumber ATCP 60.245(2)(e) to (g), to renumber and amend ATCP 80.16(3), to amend
4 60.01(4), (9)(b), (15)(b)3., (15)(b)9., (19), (20), (21) and (29)(b), 60.02(7)(c), (7)(d)4. and 8.,
5 60.06(5) and (9)(c), 60.07(4)(a) and (4)(c), 60.08(6)(a)5. and (b)2., 60.10(1), (1)(note), (4), (6)(a)
6 and (7), 60.11(2)(e)(note), (4)(g) and (4)(j), 60.12(1), (2) and (6), 60.13(1), (2) and (6), 60.14(2),
7 (3) and (4), 60.15(4), 60.16, 60.17(3)(b), 60.18(1), (3), (5) and (5)(b), 60.19(6)(b), (6)(d) and
8 (10)(b) and (note), 60.20(1), (2), (3), (4), (6), (6)(b) and (6)(c), 60.245(3), 60.27(1)(b) and (4)(b),
9 60.275(1)(note), 60.31(4), 77.01(4m), 77.02(intro.), 77.20(2)(b)2., (2)(c)2., (2)(c)3. and (note),
10 77.23(3)(d) and (f), 77.24(2), (5)(e), 77.30(2)(b) and (2)(c), 77.32(2), 77.34(2), 80.01(19) and
11 (26), 80.04(2)(a), 80.08(4)(a), (8)(b), (d)(intro.), (d)4., (8m)(a)(intro.), (a)1., (b)4. , and (b)8.,
12 80.12(1)(a)(note), 80.14(2)(b), 80.16(2)(i), 80.70(7)(c), 80.22(7)(title), (a) and (b) and (8)(note),
13 80.24(4), 80.24(5)(note), 80.26(1)(a)(note) and (1)(b), 80.32(1)(a) and (b), (5), 80.34(2)(c)3. and
14 (note), (4)(b)2., (5)(d) and (note), (6)(c) and (note), (7)(c) and (note), and (8) and (note), 80.40(1)
15 and (2), 80.41(3)(intro.), 80.44(2) Table 2, and (2m)(intro.), 80.46, 80.48 and (note),
16 80.49(2)(b)(note), 80.50(1), (2)(b) to (e) and (g), (3)(b), (c) and (e) to (h), 80.52(2), (2)(note) and
17 (6), 80.54(1)(j) and (2), 80.62(1)(b), (1)(c)(note), (1)(d) and (1)(d)(note), 80.62(3)(a) and (b),
18 82.01(3), 82.02(1)(b), (2)(intro.), (2)(c) and (7), 82.04(1)(a) and (1)(b), 82.06(1) and (1)(note),
19 82.10(2)(intro.), (a), (c), (d) and (f) and (6)(c), 82.12(2)(title), (intro.) and (b), 82.14(3) to repeal
20 and recreate ATCP 60.01(16), 60.06(1), (8)(note), 60.08(5) and (6)(a)4., 60.11(2)(c)2., (4)(h) and

1 (4)(k), 60.22 and (note), 60.245(4), 69.01, 69.02, 77.02(1) and (3), 77.03(1) and (2)(c), 77.23(1),
2 80.12(7), 80.16(2)(i)(note), 80.24(3), 80.32(1)(note), 80.34(2)(d) and (3)(d), 80.49(2),
3 80.52(6)(b)3., 80.62(2), 82.01(5), 82.08, 82.12(1) and to create ATCP 60.01(17m) and (19m),
4 (23m) and (23r), 60.06(1m) and (note), 60.08(7) and (notes), 60.11(2m) and (4)(hm),
5 60.12(6)(note), 60.17(2m), 60.19(12), 60.235, 60.245(1)(g) and (2)(g), 60.27(1)(c) and (4)(c),
6 60.275(1)(a)4. and (4), 69.01(note), 77.03(1)(a)(note) and (2)(c)(note), 77.30(2)(c)(note),
7 77.32(note), 80.01(21m), (23m), (27m), (33g) and (33j), 80.08(8)(g), 80.16(3)(b), 80.20(3)(c),
8 80.24(3m), 80.41(2)(g) to (i), 80.41(4) to (9) and (note), 80.42(note), 80.46(note), 80.50(4),
9 80.52(6)(d), 80.54(1)(n) and (o), 80.62(2)(note) and (3)(c), Subchapter VII of ch. ATCP 80,
10 82.01(1m) and (7m), 82.02(2)(e), (7)(d), (d)(note) and (e), 82.12(2m) relating to safe production,
11 processing, distribution and sale of milk and dairy products.

12

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

This rule updates current rules related to safe production, processing, distribution and sale of milk and dairy products. This rule affects dairy farms, dairy plants, milk haulers, milk testing laboratories, buttermakers, cheesemakers and others. Among other things, this rule:

- Brings Wisconsin rules into conformity with the Interstate Pasteurized Milk Ordinance (“PMO”). Milk and fluid milk products must be produced in compliance with the PMO, in order for Wisconsin to be able to ship those products in interstate commerce.
- Updates current rules to accommodate new dairy industry technology and practices.
- Clarifies current statutory prohibitions against the sale of raw milk to consumers, consistent with administrative law judge decisions.
- Clarifies some rule provisions, so they will be easier to read and understand.

Statutory Authority

Statutory authority: ss. 93.07(1) and (2), 93.09(1), 93.12(3) and (5), 97.09(1) and (4), 97.20(4), 97.21(6), 97.22(8), 97.24(3), and 97.52.

Statutes interpreted: ss. 93.09, 93.12, 97.02, 97.03, 97.09, 97.12, 97.17, 97.175, 97.20, 97.21, 97.22, 97.24, 97.50, 97.52, 98.145 and 98.146.

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) is responsible for administering Wisconsin food safety and labeling laws, including laws related to the safety of milk and dairy products. DATCP licenses and regulates dairy farms, dairy plants, milk haulers, milk testing laboratories and analysts, bulk milk weighers and samplers, and others. DATCP has broad authority to regulate these entities, to ensure safe and wholesome dairy products and fair business practices.

Milk and fluid milk products must be produced and distributed in compliance with grade A standards under the Interstate Pasteurized Milk Ordinance (“PMO”). If Wisconsin fails to comply with the PMO, Wisconsin may be precluded from shipping milk and fluid milk products in interstate commerce. Under s. 97.24, Stats., DATCP must adopt grade A rules that are in substantial accord with the PMO.

DATCP has broad authority, under s. 93.07(1), Stats., to adopt rules needed to interpret and implement laws under its jurisdiction. In addition, DATCP has the following rulemaking authority:

- Under s. 93.07(2), Stats., to prescribe forms used in connection with DATCP programs.
- Under s. 93.09(1), Stats., to adopt grading, packaging and labeling standards for food.
- Under s. 93.12(3) and (5), Stats., to adopt rules for laboratories testing milk and dairy products.
- Under s. 97.09(1), Stats., to adopt food standards of identity, composition and quality.
- Under s. 97.09(4), Stats., to regulate the production, processing, packaging, labeling, transportation, storage, handling, display, sale, and distribution of food to protect the public from adulterated or misbranded foods.
- Under ss. 97.20(4), 97.21(6) and 97.22(8), Stats., to regulate dairy plants, bulk milk tankers and dairy farms.
- Under s. 97.24(3), to adopt rules for the production, processing, pasteurization, distribution and testing of milk and dairy products. Rules for milk and fluid milk products must be in substantial accord with “Grade A” standards under the PMO.

- Under s. 97.52, Stats., to establish sanitary standards for the production, handling and transportation, inspection and testing of milk and dairy products.

Background

The United States Food and Drug Administration (“FDA”) recently completed an audit of Wisconsin’s dairy regulatory program. FDA requested a number of changes in current DATCP rules, to make the rules more fully consistent with the current (2005) version of the PMO. This rule makes changes requested by FDA. This rule also makes other changes to update and clarify current rules and to accommodate changing dairy industry technology, organization and practices. The changes in this rule are, for the most part, technical in nature.

DATCP and others have proposed major reforms to modernize and streamline the PMO. However, those reforms will require action at the national level and by other states. In the meantime, Wisconsin must comply with existing PMO requirements.

Rule Content

Dairy Farms

This rule updates and modifies current rules related to dairy farms. Among other things, this rule does all of the following:

- Incorporates PMO requirements related to gravity flow manure handling systems and liquid manure storage.
- Clarifies milk hauler responsibilities relating to mixing, sampling, and testing milk shipments.
- Spells out standards and procedures related to Wisconsin’s performance-based dairy farm inspection system.
- Updates drug residue action levels and safe levels, consistent with the PMO.
- Clarifies dairy plant and DATCP responsibilities relating to testing milk from dairy farms and reporting test results.
- Spells out new requirements related to the safety of water used in milking and processing operations.
- Clarifies milk temperature monitoring and recording requirements, and requires dairy farms to keep milk temperature records for at least 6 months (extended from 90 days under current rules).
- Clarifies drug residue testing procedures, including requiring confirmation of positive screening tests and rejection of milk shipments pending follow-up testing to show that drug contamination has been eliminated.

- Clarifies producer and installer responsibilities for obtaining DATCP review of dairy farm remodeling plans.
- Expands rule coverage to include all “milking animals,” not just cows, sheep and goats.
- Expands current requirements related to dairy farm and dairy plant cooling systems.
- Clarifies the current statutory prohibition related to the sale of unpasteurized (“raw”) milk to consumers, consistent with DATCP administrative decisions issued on October 30, 2002, and February 4, 2004. Neither decision was appealed. Raw milk sales have been implicated in a number of serious food-borne disease outbreaks in Wisconsin and elsewhere.
- Eliminates outdated requirement that dairy plants must test for coarse sediment in milk.

Dairy Plants

This rule updates and modifies current rules related to dairy plants. Among other things, this rule does all of the following:

- Strengthens water safety requirements and clarifies that DATCP, rather than the dairy plant operator, must perform certain water safety tests.
- Clarifies cleaning and sanitizing requirements.
- Clarifies milk testing requirements, including drug residue testing requirements for farms that milk directly to bulk milk tankers.
- Updates and clarifies pasteurization standards, procedures, and testing requirements.
- Requires regular DATCP review of pasteurization records and “cleaned-in-place” equipment cleaning records.
- Updates requirements related to calibration of automated milk component testing devices.
- Updates dairy plant recordkeeping requirements. Dairy plants must retain certain cleaning and sanitizing records for at least 6 months and keep certain documents related to bulk milk shipments for at least 3 years.

Milk Testing Laboratories

DATCP currently certifies laboratories that test milk, food or water for compliance with public health standards. This rule updates and clarifies current rules related to the certification of laboratories and lab analysts. Among other things, this rule:

- Updates the list of tests for which certification is required.

- Clarifies current certification and testing requirements related to drug residue testing in milk, including requirements for timely confirmation of positive screening test results.
- Specifies that the test results and ratings of certified analysts that have been reported to the department are rebuttably presumed to be valid.

Milk Haulers and Bulk Milk Tankers

This rule updates and modifies current requirements related to milk haulers and bulk milk tankers. Among other things, this rule does all of the following:

- Establishes standards for bulk milk tanker cleaning facilities at dairy plants.
- Requires dairy plants to keep bulk milk tanker cleaning and sanitizing records for 15 days, rather than 90 days. When a dairy plant operator cleans a bulk milk tanker, the operator must remove the cleaning tag from the last cleaning and keep the removed tag for at least 15 days.
- Clarifies that out-of-state bulk milk tankers with grade A permits from other jurisdictions are not required to hold Wisconsin grade A permits.
- Requires grade A permit numbers to be clearly displayed on bulk milk tankers.
- Clarifies the responsibilities of milk haulers (bulk milk weighers and samplers) related to weighing, measuring, and sampling milk shipments.

Buttermakers and Cheesemakers

This rule clarifies current professional licensing requirements for individuals engaged as buttermakers and cheesemakers. This rule gives license applicants more options for meeting training and experience requirements.

Standards Incorporated by Reference

Pursuant to s. 227.21, Stats., DATCP will request permission from the attorney general and revisor of statutes to incorporate the following standards by reference in this rule without reproducing the publications in full. This rule updates titles, publication dates, and supporting information for the following publications:

- “Grade A Pasteurized Milk Ordinance,” published by the Food and Drug Administration, Public Health Service, U.S. Department of Health and Human Services (2005 Revision).
- “3-A Accepted Practices for the Design, Fabrication and Installation of Milking and Milk Handling Equipment,” Number 606-05, published by 3-A Sanitary Standards, Inc. (November 2002).

- “3-A Sanitary Standards for Farm Milk Cooling and Holding Tanks,” Number 13-10, published by 3-A Sanitary Standards, Inc. (November 2003).
- “3-A Accepted Practices for the Sanitary Construction, Installation, Testing, and Operation of High-Temperature Short-Time and Higher-Heat Shorter-Time Pasteurizer Systems,” Number 603-07, published by 3-A Sanitary Standards, Inc. (November 2005).
- “3-A Sanitary Standards for Stainless Steel Automotive Transportation Tanks for Bulk Delivery and Farm Pick-Up Service,” Number 05-15, published by 3-A Sanitary Standards, Inc. (November 2002).
- “Official Methods of Analysis of AOAC International,” published by AOAC International (18th Edition, 2005).
- “Milk and Dairy Beef Residue Prevention Protocol, 2007 Producer Manual of Best Management Practices,” published by Agri-Education, Inc.
- “Standard Methods for the Examination of Dairy Products,” published by the American Public Health Association (17th Edition, 2004).
- “Compendium of Methods for the Microbiological Examination of Foods,” published by the American Public Health Association (4th Edition, 2001).
- “Bacteriological Analytical Manual,” published by AOAC, International (8th Edition, Revision A, 1998).
- “Manual for the Certification of Laboratories Analyzing Drinking Water,” published by the U. S. Environmental Protection Agency (5th Edition, 2005).
- “Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association, the American Water Works Association and the Water Environment Federation (20th Edition, 1998) and (21st Edition, 2005).
- “Methods of Making Sanitation Ratings of Milk Shippers,” published by the Food and Drug Administration, Public Health Service, United States Department of Health and Human Services (2005 Revision).
- “Laboratory Evaluation Forms (FDA-2400 Series),” published by the United States Department of Health and Human Services, Public Health Service, Food and Drug Administration (forms that are effective as of the effective date of this rule).

Copies of these publications will be on file with DATCP and the revisor of statutes. Rule *notes* explain how readers may obtain copies.

Fiscal Estimate

DATCP currently regulates dairy farms, dairy plants, bulk milk weighers and samplers, bulk milk tankers, milk testing laboratories, laboratory analysts, buttermakers and cheesemakers to protect consumers and facilitate the interstate shipment of Wisconsin grade A milk and dairy products.

This rule will not have a significant fiscal impact on state government, and it will have no effect on local government. This rule updates current rules, but does not make major changes that will increase state government costs. This rule does not change current license fees and does not have any impact on current state revenues. A fiscal estimate is attached.

Business Impact

DATCP currently regulates dairy farms, dairy plants, bulk milk weighers and samplers, bulk milk tankers, milk testing laboratories, laboratory analysts, buttermakers and cheesemakers to protect consumers and facilitate the interstate shipment of Wisconsin grade A milk and dairy products. Current regulations have an important impact on dairy industry operations, including small business operations. Most dairy farms, and some dairy processing operations, qualify as “small businesses” under s. 227.114, Stats.

This rule makes a large number of technical changes to existing regulations. For the most part, however, this rule will not have a significant impact on affected businesses. A complete *Business Impact Analysis* is attached.

This rule changes current recordkeeping requirements, but the changes should not impose a significant burden on affected businesses. This rule will not require affected businesses to obtain any new professional skills or services.

Federal Regulations

FDA administers the PMO in cooperation with the National Conference on Interstate Milk Shipments (NCIMS). NCIMS, a cooperative organization of states, develops and adopts PMO provisions subject to approval by FDA. FDA audits state compliance, and may “de-list” individual milk shippers or entire states that fail to comply. Other states may refuse to accept milk shipments from “de-listed” states or shippers.

Wisconsin rules must be consistent with the PMO, in order for Wisconsin to ship milk and fluid milk products in interstate commerce. FDA has requested changes in the Wisconsin rules, to make them consistent with the current version of the PMO. This rule updates Wisconsin rules to be consistent with the PMO.

The United States Department of Agriculture (USDA) recommends standards for non-fluid dairy products (such as cheese), and for grade B milk used in the manufacture of those products. USDA evaluates state programs for consistency with its recommended standards. Unlike PMO standards for grade A milk and fluid milk products, the USDA grade B standards are not mandatory. However, Wisconsin and surrounding state rules are consistent with those standards.

USDA and the United States Environmental Protection Agency administer other programs (such as milk marketing orders, pesticide registration and water pollution regulations) that affect the operation of dairy businesses, but the PMO sets the primary federal or interstate standards relevant to this rule. Further, federal regulations in 21 CFR 1240 mandate pasteurization of milk and prohibit interstate sale of unpasteurized milk and fluid milk products.

Surrounding State Programs

Illinois, Iowa, Michigan and Minnesota are all members of the NCIMS. All 4 states have dairy regulations that are in substantial compliance with the PMO. They also have regulations for grade B milk and non-fluid dairy products (such as cheese) that are substantially equivalent to USDA recommended standards.

Agency Contact for Submitting Comments

Wisconsin Department of Agriculture, Trade and Consumer Protection
Division of Food Safety
2811 Agriculture Drive
P.O. Box 8911
Madison, WI 53708-8911
Attn: Tom Leitzke
Telephone: (608) 224-4711
Tom.Leitzke@datcp.state.wi.us

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- 1 **SECTION 1.** ATCP 60.01(4), (9)(b), (15)(b)3. and (15)(b)9. are amended to read:
- 2 ATCP 60.01(4) “Cowyard” means an enclosed or unenclosed area, approximately
- 3 adjacent to a milking barn or parlor, in which ~~eows, goats or sheep~~ milking animals congregate.
- 4 “Cowyard” includes milking animal walkways, feeding areas, watering areas, washing areas and
- 5 housing areas located outside but adjacent to a milking barn or parlor.
- 6 (9)(b) Is used to draw milk from ~~eows, goats or sheep~~ milking animals or to transport,
- 7 hold, handle, cool or store milk on a dairy farm.
- 8 (15)(b)3. Filthy conditions in a cowyard, resulting in very dirty ~~eows~~ milking animals.
- 9 (15)(b)9. Visibly dirty udders and teats on ~~eows~~ milking animals being milked.
- 10 **SECTION 2.** ATCP 60.01(16) is repealed and recreated to read:

1 ATCP 60.01(16) “Milk” means the lacteal secretion of milking animals, and includes skim
2 milk and cream.

3 **SECTION 3.** ATCP 60.01(17m) is created to read:

4 ATCP 60.01(17m) “Milk hauler” means any person who collects milk at a dairy farm.

5 **SECTION 4.** ATCP 60.01(19) is amended to read:

6 ATCP 60.01(19) “Milking and milk handling system” means an automated system, and
7 all components of that system, used to draw milk from ~~eows, goats or sheep~~ milking animals, or
8 to transport milk to a bulk tank or other container on a dairy farm. “Milking and milk handling
9 system” includes C-I-P milking equipment and C-I-P milk pipelines.

10 **SECTION 5.** ATCP 60.01(19m) is created to read:

11 ATCP 60.01(19m) “Milking animals” means all of the following:

12 (a) Cows, sheep and goats.

13 (b) Other hooved animals whose milk is collected and distributed for human
14 consumption.

15 **SECTION 6.** ATCP 60.01(20) and (21) are amended to read:

16 ATCP 60.01(20) “Milking barn” means a roofed and enclosed facility, other than a
17 milking parlor, in which ~~eows, goats or sheep~~ milking animals are milked on a dairy farm.

18 (21) “Milking parlor” means a roofed and enclosed facility which is designed and used
19 exclusively for the milking of ~~eows, goats or sheep~~ milking animals, and which is not designed or
20 used to house ~~eows, goats, sheep or other~~ any animals.

21 **SECTION 7.** ATCP 60.01(23m) and (23r) are created to read:

1 ATCP 60.01(23m) “PMO” means the grade A pasteurized milk ordinance, 2005 revision,
2 published by the United States department of health and human services, public health service,
3 food and drug administration.

4 (23r) “Procure milk” means to buy milk or acquire the right to market milk.

5 **SECTION 8.** ATCP 60.01(29)(b) is amended to read:

6 ATCP 60.01(29)(b) Is used to draw milk from ~~eows, goats or sheep~~milking animals or to
7 transport, hold, strain, handle or store milk on a dairy farm.

8 **SECTION 9.** ATCP 60.02(7)(c), (d)4. and 8. are amended to read:

9 ATCP 60.02(7)(c) Each operator complies with milk sampling, testing, reporting, and test
10 follow-up requirements under this chapter, as those requirements apply to that operator’s receipt
11 of milk shipments from the producer. A dairy plant operator who custom processes a producer’s
12 milk according to par. (d) is not required to test that producer’s milk under ~~s.ss. ATCP 60.18 to~~
13 ~~60.21~~60.20, except that the operator shall screen each bulk load of milk for drug residues under s.
14 ATCP 60.19(2) and shall reject contaminated loads according to s. ATCP 60.19(4).

15 (d)4. The operator does not commingle producer-owned milk ~~or dairy products~~ with other
16 milk ~~or dairy products~~.

17 (d)8. The producer or the producer’s agent, shall notify the department of the custom
18 processing agreement before shipping milk to the operator for custom processing under this
19 paragraph, ~~notifies the department of the custom processing agreement and annually thereafter.~~

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

23 **SECTION 10.** ATCP 60.06(1) is repealed and recreated to read:

1 ATCP 60.06(1) FLOORS AND GUTTERS; CONSTRUCTION. (a) Except as authorized by the
2 department in writing, floors, gutters and gutter covers in milking barns and parlors shall comply
3 with all of the following requirements:

4 (a) They shall be constructed of concrete or other materials that are equally impervious
5 and easy to clean.

6 (b) They shall be constructed and maintained so they can be kept clean.

7 (c) They shall be sloped to drain properly and shall be free of excessive breaks or worn
8 areas which may allow pooling of liquid wastes. Floors and gutters constructed after July 1,
9 1989, shall have a slope of at least one inch per 10 feet.

10 SECTION 11. ATCP 60.06(1m) and (note) are created to read:

11 ATCP 60.06(1m) MANURE HANDLING SYSTEMS. Gravity flow manure handling systems
12 and liquid manure storage under milking barns shall comply with applicable standards contained
13 in PMO Appendix C, "Dairy Farm Construction Standards and Milk Production."

14 **NOTE:** Copies of the PMO, including Appendix C, are on file with the department and
15 the revisor of statutes. Copies are available online at <http://www.cfsan.fda.gov>.

16 SECTION 12. ATCP 60.06(5) is amended to read:

17 ATCP 60.06(5) ANIMALS EXCLUDED. No swine or fowl may be housed in, or allowed to
18 enter a milking barn or parlor. Nonmilking livestock shall be confined in stalls, stanchions or
19 pens. ~~Areas where cows, goats or sheep are being milked~~ Milking areas shall be kept free of
20 excrement from nonmilking livestock.
21

22 SECTION 13. ATCP 60.06(8)(note) is repealed and recreated to read:

23 **NOTE:** Evidence of overcrowded conditions may include inadequate ventilation,
24 excessive odors, livestock in walks or feed alleys, or nonmilking livestock tied
25 between milking animals in a milking line.
26

27 SECTION 14. ATCP 60.06(9)(c) is amended to read:

1 ATCP 60.06(9)(c) *Prep stalls; hot water supply.* If ~~eows or goats~~ milking animals are
2 hosed clean in a milking parlor prep stall prior to milking, rather than being manually cleaned at
3 the milking stanchions, hot water under pressure shall be supplied to the prep stall and used for
4 cleaning purposes. There shall be an adequate supply of hot water so that all ~~eows or goats~~
5 milking animals processed through the prep stall can be fully cleaned without impairing the
6 availability of hot water for other milking parlor or milkhouse operations.

7 **SECTION 15.** ATCP 60.07(4)(a) is amended to read:

8 ATCP 60.07(4) STORAGE. (a) *General.* No equipment, supplies or other articles may be
9 stored in a milkhouse, unless the articles are used in milkhouse operations. Articles stored in a
10 milkhouse shall be stored above the floor, on racks or in a cabinet. Articles shall be stored in a
11 manner that prevents contamination of milk, and equipment and utensils coming in contact with
12 milk.

13 **SECTION 16.** ATCP 60.07(4)(a)(note) is repealed.

14 **SECTION 17.** ATCP 60.07(4)(c) is amended to read:

15 ATCP 60.07(4)(c) *Pesticides.* No ~~pesticide~~ pesticides, except for sanitizers, germicides,
16 disinfectants and other pesticides labeled and used for routine milkhouse sanitation purposes, may
17 be stored in a milkhouse. If pesticides are kept in a milkhouse, they shall be stored in ~~an enclosed~~
18 ~~cabinet, separate from all other articles stored in the milkhouse~~ a manner that precludes
19 contamination of milk and milk handling equipment.

20 **SECTION 18.** ATCP 60.08(5) is repealed and recreated to read:

21 ATCP 60.08(5) WATER QUALITY TESTING BY DAIRY PLANT. (a) A dairy plant operator
22 shall do all of the following for each milk producer from whom the dairy plant operator procures
23 milk:

1 1: Biennially sample the producer's water supply.

2 2. Sample the producer's water supply whenever the producer installs, alters or repairs the
3 water supply system.

4 3. Sample any transported water supply used by the milk producer at the point of use, at
5 or prior to first use and monthly thereafter.

6 4. Have each water sample under this paragraph analyzed at a laboratory that is certified
7 under ch. ATCP 77 to perform water quality analyses. The laboratory shall analyze the water
8 samples for compliance with the health-related drinking water standards under s. NR 809.30. The
9 dairy plant operator shall submit each water quality test result to the department within 30 days
10 after the dairy plant receives the laboratory report. If the analysis of any water sample indicates
11 that the water supply of a dairy farm may be unsafe, the dairy plant operator, within 3 business
12 days of receiving the analysis, shall report the test result to the department and resample and test
13 the water supply.

14 **SECTION 19.** ATCP 60.08(6)(a)4. is repealed and recreated to read:

15 ATCP 60.08(6)(a)4. The coolant used in the water recirculation system is food or
16 pharmaceutical grade, is non-toxic, and meets the specifications in 21 CFR 184.1666. The dairy
17 plant operator shall test the coolant semi-annually for coliform.

18 **SECTION 20.** ATCP 60.08(6)(a)5. and (b)2. are amended to read:

19 ATCP 60.08(6)(a)5. The ~~milk producer~~ dairy plant operator who procures milk from the
20 milk producer tests the recirculated water for bacterial contamination at least semi-annually.

21 (b)2. The ~~producer~~ dairy plant operator who procures milk from the milk producer retests
22 the recirculated water to determine whether the contamination is eliminated.

23 **SECTION 21.** ATCP 60.08(7) and (notes) are created to read:

1 ATCP 60.08(7) WATER RECLAIMED FROM HEAT EXCHANGER. (a) Except as provided in
2 par. (b), a milk producer may re-use, for milking operations, potable heat exchange water
3 previously used in a heat exchanger or compressor if all of the following conditions are met:

4 1. The water is stored in a vessel that is constructed of non-contaminating material and is
5 designed to protect the water supply from contamination. The storage vessel shall have a drain
6 and access point that allow for cleaning.

7 2. There is no cross-connection between the potable re-used water and any potential
8 contamination source or potentially unsafe water supply.

9 3. There are no submerged inlets through which the potable re-used water may be
10 contaminated.

11 4. The water is of satisfactory organoleptic quality and has no off-flavors or odors.

12 5. The water complies with the health-related drinking water standards in NR 809.30.

13 6. The dairy plant operator who procures milk from the milk producer collects and
14 analyzes samples of the re-used water supply. The dairy plant operator shall collect and analyze
15 samples before the milk producer first uses the water for milking operations, and at least semi-
16 annually thereafter.

17 7. Chemicals used to suppress bacterial growth, off-tastes and odors are registered or
18 permitted for that use under the federal insecticide, fungicide and rodenticide act, as amended (7
19 USC 136 et seq.). Chemicals may not contaminate milk. A milk producer who uses any
20 chemical to suppress bacterial growth, off-tastes or odors shall comply with label instructions, and
21 shall routinely monitor chemical concentrations in treated water.

22 8. Sanitizers used to sanitize equipment, utensils, backflush systems, or teats of milking

1 animals are chemical sanitizers that are approved by the Wisconsin department of health and
2 family services, under s. HFS 196, App. 7-204.11, for use on food contact surfaces. An approved
3 sanitizer may be added by an automatic proportioning device that is located downstream from the
4 storage vessel but upstream from the end-use application of the sanitizer.

5 **NOTE:** A current list of approved sanitizers may be obtained by calling (608) 266-4700.

6 (b) Water obtained directly from the discharge of a raw milk heat exchanger after a
7 milking may be used once to pre-rinse dairy equipment including milk lines, milking claw
8 assemblies and milk receivers if all of the following apply:

9 1. The water is collected directly from the plate heat exchanger into the wash vat or
10 utensil sink.

11 2. The water piping system complies with s. ATCP 60.08(2).

12 3. Following pre-rinse use, the water is discharged to waste.

13 **NOTE:** Paragraph (b) does not limit the use of heat exchanger discharge water for
14 nonpotable uses involving no contact with potable water, milk, milk contact
15 surfaces or potable water contact surfaces. Before using or discharging heat
16 exchanger discharge water, contact the Division of Water, Bureau of Drinking
17 Water and Ground Water, at the Department of Natural Resources, P.O. Box 7921,
18 Madison, WI 53707, telephone 608-266-0821 or TTY access via relay - 711 or
19 <http://www.dnr.state.wi.us/environment/protect/water.html>.

20
21 **SECTION 22.** ATCP 60.10(1) and (note) is amended to read:

22 ATCP 60.10(1) SANITARY REQUIREMENTS; GENERAL. Milking and milk handling systems
23 shall be of sanitary design and construction, and shall be installed and maintained for sanitary
24 operation. Pressurized air that contacts a milk or milk contact surface shall be clean, safe and free
25 of contaminants. The system used to generate and supply pressurized air shall comply with “3-A
26 Accepted Practices for the Design, Fabrication and Installation of Milking and Milk Handling
27 Equipment,” 606-05. Milk contact surfaces shall be accessible for inspection. If it is necessary to

1 disassemble any portion of a milking or milk handling system in order to inspect a milk contact
2 surface, all tools needed for the disassembly shall be readily available in the milkhouse.

3 **NOTE:** Guidelines for the sanitary design and construction of milking and milk handling
4 systems are set forth in the “3-A Accepted Practices for the Design, Fabrication and
5 Installation of Milking and Milk Handling Equipment,” 606-05, as amended
6 effective November 2002, published jointly by ~~the International Association for~~
7 ~~Food Protection, Inc., and the Food and Drug Administration, Public Health~~
8 ~~Service, U.S. Department of Health and Human Services. 3-A Sanitary Standards,~~
9 Inc., 1451 Dolley Madison Boulevard, Suite 210, McLean, VA 22101-3850,
10 telephone (703) 790-0295, website www.3-a.org. Milking and milk handling
11 systems manufactured in compliance with the “3-A Accepted Practices” meet the
12 sanitary design and construction requirements of this subsection. Copies of the “3-
13 A Accepted Practices” ~~as amended effective November 23, 1996~~, are on file with
14 the department, the secretary of state and the revisor of statutes. Copies may be
15 obtained from ~~the International Association for Food Protection, Inc., 6200 Aurora~~
16 ~~Avenue, Suite 200W, Des Moines, IA, 50322-2863; Telephone 1-800-369-2863 3-~~
17 ~~A Sanitary Standards, Inc. Online Store,” at <http://www.techstreet.com>.~~
18

19 **SECTION 23.** ATCP 60.10(4), (6)(a) and (7) are amended to read:

20 ATCP 60.10(4) NON-PIPELINE SYSTEMS. If milk from ~~cows or goats~~ milking animals is
21 initially collected in a portable transfer receptacle and pumped to the milkhouse through a flexible
22 tube, rather than being pumped directly to the milkhouse through a permanently mounted
23 pipeline, the transfer receptacle and tube system shall comply with the following requirements:

24 (6) REVIEW OF PLANS. (a) Before installing, reconstructing or extensively altering a bulk
25 tank, ~~or a milking system, or milk handling system,~~ milk house, milking parlor, or dairy farm
26 water supply system, the installer shall on behalf of the milk producer submit plans to the
27 department for review. The department may charge a fee under s. 93.06 (1w), Stats., to cover its
28 cost for providing the review service. The department shall return the plans, together with any
29 comments or objections, within 14 days after the plans are received by the department. No
30 review is required for a portable transfer receptacle or its appurtenances.

1 (7) CERTIFICATION OF COMPLIANCE BY INSTALLER. A person who installs, reconstructs or
2 extensively alters a milking ~~or system,~~ milk handling system, milkhouse, milking parlor, or dairy
3 farm water supply system shall certify to the owner of the system that the system has been
4 installed or modified in compliance with this section, and in compliance with the plans filed with
5 the department under sub. (6)(a). A The installer, immediately after installing or modifying the
6 system, shall provide to the milk producer and the department a signed written statement
7 certifying compliance shall be provided to the owner immediately after the system is installed or
8 modified. The milk producer shall post a copy of the certificate in the milkhouse for at least 12
9 months.

10 SECTION 24. ATCP 60.11(2)(c)2. is repealed and recreated to read:

11 ATCP 60.11(2)(c)2. A temperature recording device approved by the department, if the
12 bulk tank is manufactured after January 1, 2000. The temperature recording device shall comply
13 with sub. (2m).

14 SECTION 25. ATCP 60.11(2)(e)(note), is amended to read:

15 **NOTE:** Bulk tanks manufactured in compliance with the “3-A Sanitary Standards for
16 Farm Milk Cooling and Holding Tanks” meet the sanitary design and construction
17 requirements of this subsection. The “3-A Standards” are published ~~jointly by the~~
18 ~~International Association for Food Protection, Inc., and the Food and Drug~~
19 ~~Administration, Public Health Service, U.S. Department of Health and Human~~
20 ~~Services. by “3-A Sanitary Standards, Inc., 1451 Dolley Madison Boulevard, Suite~~
21 ~~210, McLean, VA 22101-3850, telephone (703) 790-0295, website www.3-a.org.~~
22 ~~Copies of the “3-A Standards” as amended effective November 20, 1993~~
23 ~~November 16, 2003, are on file with the department, the secretary of state and the~~
24 ~~revisor of statutes. Copies may be obtained from the International Association for~~
25 ~~Food Protection, Inc., 6200 Aurora Avenue, Suite 200W, Des Moines, IA, 50322-~~
26 ~~2863; Telephone 1-800-369-2863. “3-A Sanitary Standards, Inc., Online Store,” at~~
27 ~~<http://www.techstreet.com>.~~

28
29 SECTION 26. ATCP 60.11(2m) is created to read:

1 ATCP 60.11(2m) BULK TANK TEMPERATURE RECORDING DEVICE. All of the following
2 requirements apply to a temperature recording device under sub. (2)(c)2.:

3 (a) The temperature recording device shall have a range of at least 50° F. (28° C.). The
4 range shall include normal storage temperature, plus or minus 5° F. (3° C.).

5 (b) The temperature recording device shall be capable of recording temperatures up to
6 180° F. (83° C.).

7 (c) A temperature recording chart on which the temperature recording device records milk
8 temperatures shall have graduations of not more than 2° F. (1° C.) at temperatures below 100° F.
9 (38° C.) and shall have at least one time span division per hour. The circular chart shall make 1
10 revolution in not more than 7 days and shall be graduated for a maximum record of 7 days.

11 (d) The milk producer shall retain milk temperature records for at least 6 months after the
12 temperature recording device makes those records. Milk temperature records shall identify the
13 milk producer, the date or dates to which the records pertain, the bulk tank to which the records
14 pertain if there is more than one bulk tank on the dairy farm, the signature of the person who
15 removed the temperature records from the temperature recording device, and any unusual
16 occurrences related to milk temperature.

17 (e) The dairy plant operator who procures milk from the milk producer shall calibrate the
18 temperature recording device every 6 months and shall keep complete and accurate records of the
19 calibration. The milk producer shall make the records available to the department for inspection
20 and copying upon request.

21 **SECTION 27.** ATCP 60.11(4)(g) is amended to read:

22 ATCP 60.11(4)(g) The milk producer cools all milk to a temperature of 45° F. (7° C.) or
23 lower before the milk enters the bulk transport container. The producer may use a plate cooler,

1 tube cooler or bulk tank to cool the milk. Coolant used in cooling devices shall be food grade
2 coolant approved by the federal food and drug administration. The ~~milk producer~~ dairy plant
3 operator who procures milk from the milk producer shall test the coolant semi-annually for
4 coliform.

5 **SECTION 28.** ATCP 60.11(4)(h) is repealed and recreated to read:

6 ATCP 60.11(4)(h) A temperature recording device that records milk temperatures
7 downstream from the cooling device under par. (g). The probe of the temperature recording
8 device shall be mounted in a well in the milk pipeline except that, if the producer cools the milk
9 in a bulk tank, the probe may be mounted in the bulk tank. The temperature recording device
10 shall comply with all of the requirements that apply to bulk tank temperature recording devices
11 under sub. (2m).

12 **SECTION 29.** ATCP 60.11(4)(hm) is created to read:

13 ATCP 60.11(4)(hm) An indicating thermometer is installed as close as possible to the
14 temperature recording device under par. (h) to verify recorded temperatures.

15 **SECTION 30.** ATCP 60.11(4)(j) is amended to read:

16 ATCP 60.11(4)(j) The milk producer keeps the bulk milk cooling device, transport hose
17 and bulk transport container outlet valve in clean and sanitary condition. The milk producer shall
18 clean and sanitize the outlet valve before attaching it to the transport hose. The milk producer
19 shall clean and sanitize the bulk milk cooling device and transport hose between milkings, or at
20 least once every ~~48~~ 24 hours if the producer milks continuously.

21 **SECTION 31.** ATCP 60.11(4)(k) is repealed and recreated to read:

1 ATCP 60.11(4)(k) The dairy plant operator who receives the bulk milk shipment does all
2 of the following before unloading any milk from the bulk transport container or commingling it
3 with milk from another producer:

- 4 1. Tests the bulk shipment for drug residues according to s. ATCP 60.19(2).
- 5 2. Ensures that a person licensed under s. 97.17 or 98.146, Stats., has collected a sample
6 from the bulk shipment according to s. ATCP 82.12.

7 **SECTION 32.** ATCP 60.11(4)(L) is repealed.

8 **SECTION 33.** ATCP 60.12(1), (2) and (6) are amended to read:

9 ATCP 60.12(1) ~~PREPARING COWS, GOATS OR SHEEP~~ MILKING ANIMALS FOR MILKING. ~~The~~

10 A milk producer shall clip the flanks, udders, bellies and tails of milking eows, goats and sheep

11 ~~shall be clipped~~ animals as often as necessary to facilitate cleaning. Tails, bellies and flanks shall

12 be reasonably free of visible dirt at the time of milking. If flanks and udders are brushed,

13 brushing shall be completed before milking begins. Hair on udders shall be kept short enough so

14 that it is not incorporated with the teat in the milking machine inflation during milking. Udders of

15 milking ~~eows, goats and sheep~~ animals shall be clean at the time of milking. Teats shall be

16 cleaned, sanitized and dried immediately before milking. Wet hand milking is prohibited.

17 (2) TRANSFER AND PROTECTION OF MILK. Milk shall be protected from contamination at

18 all times. Upon being drawn from ~~eows, goats or sheep~~ milking animals, milk shall immediately

19 be transferred from the milking barn or parlor to the milkhouse. Containers of milk shall may not

20 be stored in the milking barn or parlor. If milk is transferred to the milkhouse in containers,

21 rather than through a pipeline or other vacuum transfer system, the milk producer shall transfer

22 each container of milk to the milkhouse as soon as it is filled. Milk contact surfaces of equipment

23 and utensils used to collect or transfer milk shall be protected from contamination before and

1 during use. Milk containers shall be covered to protect milk and milk contact surfaces from
2 contamination, except when milk is being poured into or out of the container. Milk that
3 overflows, leaks or spills from its proper container or transfer vessel shall be discarded.

4 (6) ~~COMMINGLING OF COW, GOAT OR SHEEP MILK FROM DIFFERENT MILKING SPECIES~~
5 PROHIBITED. A milk producer may not commingle milk from ~~eows, goats or sheep with milk~~
6 ~~from either of the other species~~ one species of milking animal with the milk of another species of
7 milking animal.

8 SECTION 34. ATCP 60.12(6)(note) is created to read:

9 NOTE: Cows are the same species, even if they are of different breeds, so their milk may
10 be commingled. However, cows and goats are different species and their milk may
11 not be commingled.
12

13 SECTION 35. ATCP 60.13(1), (2) and (6) are amended to read:

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

17 (2) If ~~eows, goats or sheep~~ milking animals consume or are treated with chemical,
18 medicinal or radioactive agents which may be secreted in milk, and which may be deleterious to
19 human health, the ~~eows, goats or sheep~~ milking animals shall be milked last or with separate
20 equipment, and the milk shall be discarded.

21 (6) Drugs prescribed by a veterinarian for use on ~~eows or goats~~ milking animals shall be
22 clearly labeled with the name of the drug, the active ingredient or ingredients, directions for use,
23 the length of time for which milk must be withheld following the cessation of drug therapy, any
24 applicable warnings or precautions to be observed by the milk producer, and the name and

1 address of the prescribing veterinarian. No drug or medicinal item may be used in a manner
2 inconsistent with label directions, or in a negligent manner.

3 **SECTION 36.** ATCP 60.14(2), (3) and (4) are amended to read:

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

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 ~~ewes, goats or sheep~~ milking animals.
13 Accumulations of waste feed shall be promptly removed. Manure packs shall be properly drained
14 and shall 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 ~~ewes, goats or sheep~~ milking animals stand while
17 feeding. The paved surface shall extend at least 12 feet in all directions from the feeder, except
18 that a paved surface installed before January 1, 1979, shall extend at least 8 feet in all directions
19 from the feeder. If the distance between a feeder and another building or permanent structure is
20 less than the paved surface width prescribed under this subsection, the paved surface shall extend
21 to the building or other permanent structure.

22 **SECTION 37.** ATCP 60.15(4) is amended to read:

1 ATCP 60.15(4) SOMATIC CELL COUNT. The somatic cell count of cow or sheep milk, as
2 determined by a direct microscopic somatic cell count (~~DMSCC~~), or an electronic somatic cell
3 count (~~ESCC~~) ~~or an optical somatic cell count (OSCC)~~ under this subchapter, shall not exceed
4 750,000 cells per ml. The somatic cell count of goat milk, as determined by the Pyronin Y Methyl
5 green stain test, shall not exceed 1,000,000 cells per ml. Except as provided under s. ATCP
6 ~~60.20(4)~~ ATCP 60.20(6), a dairy plant is not required to reject milk shipments in response to a
7 violation of this subsection unless the department suspends or revokes the milk producer's license
8 or grade A permit, or issues an order affecting the milk shipments under s. ATCP 60.30.

9 **SECTION 38.** ATCP 60.16 is amended to read:

10 **ATCP 60.16 Examining milk by sight and smell.** A person who receives or collects
11 milk from a milk producer shall examine the milk by sight and smell, and shall reject all milk
12 which has an objectionable odor, which is abnormal in appearance or consistency, or which is
13 visibly adulterated. Rejected milk ~~shall~~ may not be received or commingled with milk from
14 another milk producer. If a milk producer disputes the rejection of milk is disputed, the person
15 who initially rejects the milk shall contact the ~~operator of the dairy plant to which the milk would~~
16 ~~ordinarily be delivered~~ dairy plant operator procuring the milk, and the dairy plant operator shall
17 ~~accept or reject the milk.~~ examine or test the milk prior to accepting or rejecting the milk. The
18 dairy plant operator shall report the examination or test results to the department within 7 business
19 days in a form approved by the department.

20 **SECTION 39.** ATCP 60.17(2m) is created to read:

21 ATCP 60.17(2m) SAMPLE COLLECTED FROM BULK TRANSPORT CONTAINER. A person who
22 receives a bulk transport container at a dairy plant shall collect the milk sample under sub. (1) for
23 the dairy plant operator. The person shall collect the sample according to s. ATCP 82.12 and

1 shall promptly deliver the sample to the dairy plant operator, or to a milk testing laboratory
2 designated by the dairy plant operator.

3 SECTION 40. ATCP 60.17(3)(b) is amended to read:

4 ATCP 60.17(3)(b) Reject milk shipments from the producer, if the operator is required to
5 reject those milk shipments under s. ATCP 60.16, 60.18 (5), 60.19 (6) or ~~60.20 (4)~~ 60.20(6)(c).

6 SECTION 41. ATCP 60.18(1), (3), (5) (intro.) and (b) are amended to read:

7 ATCP 60.18(1) MONTHLY TESTING REQUIRED. During every month in which a dairy
8 plant operator receives milk from a milk producer, the dairy plant operator shall perform at least
9 one standard plate count (SPC) or plate loop count (PLC) on a milk sample obtained from the
10 producer under s. ATCP 60.17. A dairy plant operator shall perform tests under this subsection
11 and s. ~~ATCP 80.26 (2)~~ ATCP 80.26 on the same milk samples.

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

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

20 (b) Perform a confirmatory bacteriological test on at least one more sample of milk
21 collected from the milk producer's dairy farm. The operator shall collect the confirmatory sample
22 within ~~14~~ 7 days after the date on which the operator collected the original sample. The operator

1 shall report the confirmatory test result to the department and the milk producer within 3 business
2 days after the operator obtains the test result.

3 **SECTION 42.** ATCP 60.19(6)(b) and (d), (10)(b) and (note) are amended to read:

4 ATCP 60.19(6)(b) *Producer milk rejected.* If a dairy plant operator is required to reject
5 producer milk shipments under par. (a), the dairy plant operator shall reject all milk produced on
6 that dairy farm until a sample of that milk tests negative ~~for that same drug residue which caused~~
7 ~~the dairy plant to reject the producer's milk~~ for drug residues on the same or an equivalent test, at
8 a laboratory that is certified under s. ATCP 77.03(2)(c) to perform confirmatory tests.

9 (d) *Transfer between dairy plants.* If a dairy plant operator rejects a producer's milk
10 under par. (b), the milk producer may not ship milk to another dairy plant until a dairy plant
11 operator tests that producer's milk and the milk tests negative ~~for that same drug residue which~~
12 ~~caused the producer's milk to be rejected~~ for drug residues on the same or an equivalent test, at a
13 laboratory that is certified under s. ATCP 77.03(2)(c) to perform confirmatory tests.

14 (10)(b) *Specified drug tests; positive test result.* In a test for any of the following drugs,
15 the action level is exceeded whenever the drug residue level found in the test exceeds the level
16 specified below:

17	Drug	Action Level (ppb)
18	Ampicillin	10
19	Amoxicillin	10
20	Cephapirin	20
21	Ceftiofur	100
22	Cloxacillin	10
23	Neomycin	150

1	Novobiocin	100
2	Penicillin G	5
3	Sulfadimethoxine	10
4	Tylosin	50
5	Chlortetracycline*	300
6	Oxytetracycline*	300
7	Erythromycin*	50
8	Gentamicin*	30
9	Dihydrostreptomycin*	125
10	Sulfachloropyridazine*	10
11	Sulfadiazine*	10
12	Sulfamerazine*	10
13	Sulfamethazine*	10
14	Sulfamethizole*	10
15	Sulfanilamide*	10
16	Sulfapyridine*	10
17	Sulfaquinoxaline*	10
18	Sulfathiazole*	10
19	Tetracycline* <u>Tetracyclines*</u>	80 <u>300</u>

20 **NOTE:** Action levels specified under this paragraph are based on tolerances or “safe
21 levels” specified by the United States food and drug administration, and identified
22 in a memorandum from FDA’s Milk Safety Branch, HFF-346, dated July 21, 1994
23 M-I-05-5, September 27, 2005. A copy of the memorandum is on file with the
24 department, and is available upon request.

25
26 For drugs identified with an asterisk (*), the levels in this paragraph are based on
27 “safe levels” specified by FDA. “Safe levels” are merely enforcement guides and

1 do not constitute legal tolerances. They do not legalize residues found in milk that
2 are below the "safe level." "Safe levels" are not binding on the courts or the
3 department. They do not limit the department's discretion in any way, and they do
4 not protect milk producers or milk itself from enforcement action. "Safe levels" do
5 not constitute animal drug tolerances under section 512 (b) of the federal food, drug
6 and cosmetic act.

7
8 **SECTION 43.** ATCP 60.19(12) is created to read:

9 ATCP 60.19(12) **TIMELY TESTING.** Drug residue tests required under this section shall be
10 completed within 72 hours after the tested milk, or any portion of the tested milk, was first
11 collected from a dairy farm.

12 **NOTE:** If a drug residue test is performed on a bulk load of milk collected from several
13 dairy farms, the test must be completed within 72 hours after the milk hauler
14 collects milk from the first farm. Confirmation of positive drug residue screening
15 tests, if required under s. ATCP 60.22(1)(b)3., must be completed within the same
16 72-hour period.

17
18 **SECTION 44.** ATCP 60.20(1), (2), (3), (4), (6) (intro.), (b) and (c) are amended to read:

19 ATCP 60.20 (1) **MONTHLY TESTING REQUIRED.** During every month in which a dairy
20 plant operator ~~receives~~ procures milk from a milk producer, the dairy plant operator shall perform
21 at least one somatic cell count on a milk sample obtained from the producer under s. ATCP 60.17.
22 If the operator tests more than one milk sample each month, the operator shall collect the samples
23 at regular intervals throughout the month. A dairy plant operator shall perform tests under this
24 section and s. ~~ATCP 80.26 (2)~~ ATCP 80.26 on the same milk samples

25 (2) **NEW MILK PRODUCER; INITIAL TESTING.** A dairy plant operator shall perform a
26 somatic cell count on a milk sample collected from a milk producer's first milk shipment to that
27 operator. The operator shall report the test result to the department and the producer within ~~14~~ 7
28 days after the operator obtains the test result.

29 (3) **TEST METHODS.** A somatic cell count under this section shall be a direct microscopic
30 somatic cell count (~~DMSCC~~), or an electronic somatic cell count (~~ESCC~~). ~~or an optical somatic~~

1 cell count (OSCC). If the somatic cell count on ~~sheep or~~ goat milk exceeds 1,000,000, the
2 somatic cell count shall be confirmed using the Pyronin Y-Methyl green stain test, unless that test
3 was used to obtain the initial count.

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

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

13 (b) Perform a confirmatory somatic cell count on at least one more sample of milk
14 collected from the milk producer's dairy farm. The operator shall collect the confirmatory sample
15 within ~~14~~ 7 days after the date on which the operator collected the original sample. The operator
16 shall report the confirmatory somatic cell count to the department and the milk producer within 3
17 business days after the operator obtains the confirmatory count. A dairy plant operator shall use
18 the Pyronin Y-Methyl green stain test when performing a confirmatory somatic cell count on
19 ~~sheep or~~ goat milk.

20 (c) Reject milk shipments from the dairy farm if the confirmatory somatic cell count
21 under par. (b) still exceeds 1,000,000 somatic cells per ml. for cow or sheep milk, or 1,500,000
22 for ~~sheep or~~ goat milk. The milk producer may not ship milk from the dairy farm to any dairy

1 plant until a dairy plant operator conducts another somatic cell count and finds that the count no
2 longer exceeds this number.

3 **SECTION 45.** ATCP 60.21 and (note) are repealed.

4 **SECTION 46.** ATCP 60.22 and (note) are repealed and recreated to read:

5 **ATCP 60.22 Certified testers; test methods; reporting.** (1) CERTIFIED LABORATORIES.

6 (a) Except as provided in par. (b), no laboratory may perform a milk test under ss. ATCP 60.18 to
7 60.20 unless the laboratory operator is currently certified by the department under s. ATCP 77.03
8 to perform that test at that laboratory.

9 (b) A laboratory may perform a drug residue test under s. ATCP 60.19 as a screening test,
10 even though the laboratory is not certified under s. ATCP 77.03 to perform that test as a
11 confirmatory test, if all of the following apply:

12 1. The department has approved that laboratory to perform that screening test under s.
13 ATCP 77.23.

14 2. The department has approved the individual who performs the screening test under s.
15 ATCP 77.23(2).

16 3. A different laboratory performs a confirmatory test if the screening test result is
17 positive for drug residue. The laboratory performing the confirmatory test shall be certified to do
18 so under s. ATCP 77.03. The laboratory shall perform the confirmatory test on the same test
19 sample using the same or an equivalent test method, and shall complete the confirmatory test
20 within the time period specified in s. ATCP 60.19(12).

21 (2) CERTIFIED ANALYSTS. (a) Except as provided in par. (b), no individual may perform a
22 milk test under ss. ATCP 60.18 to 60.22 unless the department has certified that individual under
23 s. ATCP 77.22 to perform that test.

1 (b) Pursuant to s. ATCP 77.23(2), the department may approve an individual to perform a
2 drug residue test under s. ATCP 60.19 as a screening test, even though the individual is not
3 certified under s. ATCP 77.22 to perform that test as a confirmatory test.

4 (3) TEST METHODS. Milk testing under ss. ATCP 60.18 to 60.20 shall use test methods
5 prescribed in the applicable FDA 2400 series laboratory evaluation forms, published by the
6 United States department of health and human services, public health service, food and drug
7 administration, which are in effect on *[revisor inserts effective date of this rule]*. If no FDA form
8 applies, testing shall be conducted according to methods prescribed in the “Standard Methods for
9 the Examination of Dairy Products,” 17th Edition (2004), or in “Official Methods of Analysis of
10 AOAC International,” 18th Edition (2005).

11 **NOTE:** Copies of the FDA 2400 series laboratory evaluation forms in effect on *[revisor*
12 *inserts effective date of this rule]* are on file with the department and the revisor of
13 statutes. To find out how to obtain a copy of these forms, you may contact the
14 department at the following address:

15
16 Wisconsin Department of Agriculture, Trade and Consumer Protection
17 Division of Food Safety
18 Laboratory Certification Program
19 P.O. Box 8911, Madison, WI 53708-8911
20 Telephone: (608) 224-4712
21

22 The American Public Health Association’s “Standard Methods for the
23 Examination of Dairy Products,” 17th Edition (2004), is on file with the department
24 and the revisor of statutes and may be obtained from the American Public Health
25 Association, Inc., 800 I Street, NW, Washington, D.C. 20001, telephone 202-777-
26 2742, website www.apha.org.

27
28 The “Official Methods of Analysis of AOAC International,” 18th Edition (2005), is
29 on file with the department and the revisor of statutes and may be obtained from
30 AOAC International, 481 N. Frederick Avenue, Suite 500, Gaithersburg, MD
31 20877-2417, telephone 800-379-2622. website www.aoac.org.

32
33 **SECTION 47.** ATCP 60.235 is created to read:

1 **ATCP 60.235 Raw milk sales prohibited; exemptions.** No person may sell or distribute
2 unpasteurized milk or fluid milk products to consumers, or to any person for resale or
3 redistribution in unpasteurized form to consumers. This section does not prohibit any of the
4 following:

5 (1) The sale or distribution of milk or fluid milk products that are heat sterilized in
6 hermetically sealed containers.

7 (2) The distribution of unpasteurized milk, produced on a dairy farm, to any of the
8 following:

9 (a) The milk producer who is licensed under s ATCP 60.02(1) to operate that dairy farm,
10 and who, as license holder, assumes legal responsibility for dairy farm operations.

11 (b) An individual who has a bona fide ownership interest in the milk producer under par.
12 (a), if the milk producer is a legal entity other than an individual or married couple.

13 (c) A family member or nonpaying household guest who consumes the milk at the home
14 of an individual operator or bona fide owner under par. (a) or (b).

15 (3) The sale or distribution of unpasteurized milk, produced on a dairy farm, to the
16 employees of that dairy farm.

17 (4) The incidental sale of unpasteurized milk to a consumer, for delivery to the consumer
18 at the dairy farm where the milk is produced, for consumption by the consumer, the consumer's
19 family, or the consumer's nonpaying guests. A sale is not incidental if it is made in the regular
20 course of business, or is preceded by any advertising, offer or solicitation made to the general
21 public through any communications media.

22 **SECTION 48.** ATCP 60.245(1)(g) is created to read:

1 ATCP 60.245(1)(g) The milk producer has not violated any milk temperature or cooling
2 standards under this chapter.

3 **SECTION 49.** ATCP 60.245(2)(e) to (g) are renumbered (d) to (f).

4 **SECTION 50.** ATCP 60.245(2)(g) is created to read:

5 ATCP 60.245(2)(g) The milk producer has not violated any milk temperature or cooling
6 standards under this chapter.

7 **SECTION 51.** ATCP 60.245(3) is amended to read:

8 ATCP 60.245(3) **FOUR-MONTH INSPECTION INTERVAL.** The department shall inspect a
9 grade A dairy farm in this category at least once every 4 months. The department shall place a
10 dairy farm in this category if subs. (1), (2) and (4) do not apply, based on dairy farm inspection
11 reports, milk quality tests and department compliance actions during the preceding 12 months.
12 Once the department places a dairy farm in this category, the department may not reassign the
13 dairy farm to any inspection category under sub. (1) or (2) until a date that is at least 12 months
14 after the department's next 3-month evaluation of the dairy farm under this section.

15 **SECTION 52.** ATCP 60.245(4) is repealed and recreated to read:

16 ATCP 60.245(4) **THREE-MONTH INSPECTION INTERVAL.** (a) The department shall inspect
17 a grade A dairy farm in this category at least once every 3 months. The department shall place a
18 dairy farm in this category if subsections (1) and (2) do not apply and if any of the following
19 apply based on dairy farm inspection reports, milk quality tests or department compliance actions
20 during the preceding 12 months:

21 1. The department issued more than one warning to the milk producer under s. ATCP
22 60.27(1).

1 2. The department issued more than one warning to the milk producer under s. ATCP
2 60.275(1).

3 3. The department issued more than one warning to the milk producer under s. ATCP
4 60.28(1).

5 4. The department conducted more than one reinspection of the dairy farm.

6 5. The department suspended the milk producer's dairy farm license or grade A dairy
7 farm permit.

8 (b) Once the department places a dairy farm in the 3-month inspection category under
9 par. (a), the department may not reassign the dairy farm to any inspection category under subs. (1)
10 to (3) until a date that is at least 12 months after the department's next 3-month evaluation of the
11 dairy farm under this section.

12 **SECTION 53.** ATCP 60.27(1)(b) is amended to read:

13 ATCP 60.27(1)(b) Two of the last 4 somatic cell counts reported to the department under
14 s. ATCP 60.20(4) exceed 750,000 somatic cells per ml. for cow or sheep milk, or 1,000,000 per
15 ml. for goat milk, in violation of the standard under s. ATCP 60.15 (4).

16 **SECTION 54.** ATCP 60.27(1)(c) is created to read:

17 ATCP 60.27(1)(c) Two of the last 4 milk temperature readings violate standards for grade
18 A milk under s. ATCP 60.15(5).

19 **SECTION 55.** ATCP 60.27(4)(b) is amended to read:

20 ATCP 60.27(4)(b) Three of the last 5 somatic cell counts reported to the department
21 under s. ATCP 60.20 (4) and sub. (3) exceed 750,000 somatic cells per ml. for cow or sheep milk,
22 or 1,000,000 per ml. for goat milk.

23 **SECTION 56.** ATCP 60.27(4)(c) is created to read:

1 ATCP 60.27(4)(c) Three of the last 5 milk temperature readings violate standards for
2 Grade A milk under s. ATCP 60.15(5).

3 **SECTION 57.** ATCP 60.275(1)(a)4. is created to read:

4 ATCP 60.275(1)(a)4. Notice that the division or its agent will conduct an investigation
5 under sub. (4).

6 **SECTION 58.** ATCP 60.275(1)(note) is amended to read:

7 **NOTE:** The drug residue prevention program under this section should conform to
8 the ~~“Milk and Dairy Beef Residue Prevention Protocol, 2005 Producer~~
9 ~~Manual of Best Management Practices,”~~ “Milk and Dairy Beef Quality
10 Assurance Program” published by Agri-Education, Inc. A copy of that
11 ~~program which is endorsed by the federal food and drug administration,~~
12 ~~manual is on file in the offices of with the department, the secretary of~~
13 ~~state, and the revisor of statutes. A copy may be purchased from Agri-~~
14 ~~Education, Inc., P.O. Box 497, Stratford, IA 50249. and may be obtained~~
15 ~~from the Milk & Dairy Beef Quality Assurance Center, 801 Shakespeare~~
16 ~~Avenue, Stratford, Iowa, 50249, telephone 800-553-2479, website~~
17 ~~www.dqacenter.org/catalog.htm.~~

18
19 **SECTION 59.** ATCP 60.275(4) is created to read:

20 ATCP 60.275(4) INVESTIGATION. Within 30 days after the department issues a warning
21 notice under sub. (1), the food safety division or its agent shall conduct an investigation to
22 determine the cause of the drug residue violation, and to identify milk producer actions that may
23 be needed to prevent future violations. The food safety division may direct the dairy plant
24 operator who procures milk from the producer to conduct the investigation as the division’s agent
25 and report its findings to the division, in writing, within the 30-day time period.

26 **SECTION 60.** ATCP 60.31(4) is amended to read:

27 ATCP 60.31(4) FULL EVIDENTIARY HEARING. If a person adversely affected by a food
28 safety division action files a timely written request for hearing under subs. (1) and (2), and if the
29 matter is not resolved by an informal hearing under sub. (3), the person may request a full

1 evidentiary hearing before the department, pursuant to ch. 227, Stats., and ch. ATCP 1. The
2 person shall make the hearing request within 10 days after the officer presiding at the informal
3 hearing issues the written memorandum under sub. (3)(b) summarizing that informal hearing. A
4 full evidentiary hearing, if any, shall be held before an administrative law judge appointed by the
5 secretary. A request for a full evidentiary hearing does not stay any action under this chapter.

6 **SECTION 61.** ATCP 69.01 is repealed and recreated to read:

7 **ATCP 69.01 Buttermaker license.** (1) LICENSE REQUIRED. No person may operate as
8 a buttermaker, as defined in s. 97.17(1), Stats., without a buttermaker license from the
9 department. A license expires on January 1 of the second calendar year beginning after the
10 license is issued.

11 (2) LICENSE APPLICATION. A person shall apply for a buttermaker license on a form
12 provided by the department. The application shall include all of the following:

13 (a) Documentation of buttermaker qualifications under sub. (3).

14 (b) The fee required under sub. (5).

15 (3) QUALIFICATIONS. A buttermaker license application under sub. (2) shall include
16 documentation approved by the department to show that the applicant meets at least one of the
17 following requirements:

18 (a) The applicant has held a buttermaker license in this state within 10 years prior to the
19 current license application.

20 (b) Within 10 years prior to the current license application, the applicant has worked
21 directly in buttermaking operations for at least 24 months under the direct personal supervision of
22 either a buttermaker licensed in Wisconsin or a buttermaker with similar credentials outside of
23 Wisconsin.

1 (c) The applicant has done all of the following within 10 years prior to the current license
2 application:

3 1. Worked in buttermaking operations for at least 18 months under the direct personal
4 supervision of a licensed buttermaker.

5 2. Successfully completed a department-approved course in buttermaking from an
6 accredited post-secondary educational institution.

7 (d) The applicant has done all of the following:

8 1. Obtained a 4-year or greater degree, with a food science or equivalent major, from an
9 accredited post-secondary educational institution.

10 2. Worked in buttermaking operations for at least 12 months, under the direct personal
11 supervision of a licensed buttermaker, within 10 years prior to the current license application.

12 (4) EXAMINATION. An applicant for a buttermaker's license, other than a renewal
13 license, shall pass a written examination in order to qualify for the license. The license
14 examination shall test the applicant's knowledge of buttermaking and related matters, and may
15 include questions related to any of the following:

16 (a) Laws related to buttermaking, including standards of identity, composition standards,
17 food safety standards, labeling requirements and related matters.

18 (b) The fundamentals of buttermaking, including all of the following:

19 1. Preparation and care of equipment.

20 2. Composition control.

21 3. Preparation and use of starter.

22 4. Pasteurization of milk and cream.

23 5. Problems of acidity control.

1 6. Common butter defects and methods of overcoming them.

2 7. Yeast, mold and bacterial control methods.

3 (c) Relevant arithmetical problems related to dairy plant operations, butter production,
4 plant efficiencies, and dairy product values.

5 (d) Practical working knowledge related to all of the following:

6 1. Testing milk and cream for bacteria, sediment and acidity.

7 2. Grading milk and cream.

8 3. Analysis of butter composition.

9 4. Judging butter samples.

10 5. Fundamentals of pasteurization.

11 (5) LICENSE FEE. An applicant for a buttermaker license shall pay a license fee of \$60.

12 (6) ACTION ON LICENSE APPLICATION. The department shall grant or deny a license
13 application under sub. (2) within 20 days after the applicant submits a complete application and
14 takes any examination required under sub. (4). If an examination is required under sub. (4), the
15 department shall administer the examination within 40 days after the department receives a
16 complete license application under sub. (2) unless the applicant agrees to a later examination date.

17 **SECTION 62.** ATCP 69.01(note) is created to read:

18 *NOTE:* The department may issue a license under s. ATCP 69.01 on a conditional basis,
19 pursuant to s. 93.06(8), Stats.

20
21 **SECTION 63.** ATCP 69.02 is repealed and recreated to read:

22 **ATCP 69.02 Cheesemaker license. (1) LICENSE REQUIRED.** No person may operate as
23 a cheesemaker, as defined in s. 97.17(1), Stats., without a cheesemaker license from the
24 department. A license expires on January 1 of the second calendar year beginning after the
25 license is issued.