

Clearinghouse Rule 13-104

DATCP Docket No. 13-R-03
Rules Clearinghouse No. ____

Proposed Hearing Draft
November 20, 2013

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

1 The Wisconsin department of agriculture, trade and consumer protection hereby proposes the
2 following rule *to repeal* ATCP 82.01 (6), 82.10 (5) (b) and 82.14 (3); *to renumber and amend*
3 82.10 (9), 82.12 (2m), (2m) (b), (3), (4), (4) (d), (5), (6), (6) (a) and (b), and 82.14 (4); *to amend*
4 ATCP 82 (title), 82.02 (7) (a) and (b), 82.04 (6), (7) (b), and (8), 82.08 (1) (a) to (c), (2) (a) and
5 (b), (3), (3) (a), (4) (title) and (a) to (c), 82.10 (1) (a) and (b), (2), (2) (c) to (e), (3), (4) (b), (5)
6 (a), (6) (a) to (d), (7), (8) (a) to (c), (10) and (11) (a), (b), and (c), 82.12 (1) (a) and (b), (2), and
7 (2) (a) to (d); and *to create* ATCP 82.01 (2m) and (4m), 82.02 (8) (title) and (a) to (c), 82.04
8 (2m) and (5) (c), (9) (title) and (a) to (c), 82.08 (4) (d) and (6) (d), 82.10 (9) (b) and (11) (am);
9 *relating to* milk hauler regulations, and affecting small business.

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

Ch. ATCP 82 (Milk Haulers) regulates bulk milk tanker licensing, construction, maintenance, cleaning and sanitizing requirements; bulk milk weigher and sampler requirements, and mandatory procedures for collecting milk from dairy farms and delivering milk to a dairy plant and collecting milk samples for testing. This rule revision will align Wisconsin's regulations with the Food and Drug Administration's (FDA) Pasteurized Milk Ordinance (PMO) by allowing bulk milk weighers and samplers to collect partial loads of milk.

Statutes Interpreted

Statute Interpreted: s. 97.21, Stats., (Milk haulers and milk distributors).

Statutory Authority

Statutory Authority: ss. 93.07 (1), 97.09 (4), and 97.21 (6), Stats.

Explanation of Statutory Authority

DATCP has broad general authority, under s. 93.07 (1), Stats., to adopt rules to implement programs under its jurisdiction. DATCP also has general authority under s. 97.09 (4), Stats., to adopt rules specifying standards to protect the public from the sale of adulterated or misbranded foods. The department has specific authority to promulgate rules related to milk haulers under s. 97.21(6), Stats., which allows the department to establish rules related to: fees and regulations for bulk milk tanker operators and milk distributors; standards for the construction, maintenance and sanitary operation of bulk milk tankers, milk distribution vehicles and milk distribution facilities; the design, installation, cleaning and maintenance of equipment and utensils; personnel sanitation; storage and handling of milk and fluid milk products; identification of bulk milk tankers and milk distribution vehicles; and record keeping.

Related Statutes and Rules

Wisconsin's milk haulers are governed by ch. 97, Stats. (Food Regulation). Milk haulers and milk distributors are regulated under s. 97.21, Stats., (Milk haulers and milk distributors). Chapter 82, Wis. Adm. Code, interprets ch. 97, Stats., as it relates to milk haulers and milk distributors.

Plain Language Analysis

The dairy industry is an important part of Wisconsin's economy. Wisconsin ranks second nationally in milk production and has 10,900 licensed dairy farms. Milk is shipped from each of these farms in a licensed bulk milk tanker (approximately 4,000 in Wisconsin) to one of more than 400 licensed dairy plants in the state or to a licensed dairy plant in another state. Safe and sanitary handling of milk throughout the collection and transportation process is critical for protecting the quality of milk produced in this state. Accurate measurement of collected milk and proper sampling of milk for analysis help ensure fair payment and milk safety, respectively.

The following proposed rule changes are needed to maintain Wisconsin's reputation for its world class dairy products by ensuring that inspection practices are aligned with the Food and Drug Administration's (FDA's) Grade "A" Pasteurized Milk Ordinance (PMO). The PMO establishes minimum standards for Grade "A" dairy products. Wisconsin dairy producers and bulk milk weighers and samplers must meet state regulatory standards equivalent to or more stringent than those in the PMO to be allowed to ship Grade "A" milk in interstate commerce. The PMO standards are established by the National Conference on Interstate Milk Shipments (NCIMS), which consists of voting representatives from dairy regulatory agencies in each state.

Partial Collections of Milk from Bulk Milk Tanks

The rule proposes adopting a provision of the PMO that allows bulk milk weighers and samplers to make partial collections of milk from bulk tanks on dairy farms under certain conditions. Currently, ATCP 82 requires bulk milk weighers and samplers to empty a bulk milk tank each

time they collect milk from the farm. The original intent of the regulation was to ensure that a dairy producer's bulk tank was regularly cleaned and sanitized and to ensure that collection-to-collection transfers of illegal drug residues did not occur, which could result in increased financial losses to dairy producers forced to dump multiple loads of milk.

Despite these worthwhile intentions, the requirement prohibiting partial collection of milk from a bulk tank is outdated. Farm sanitation methods have improved since Wisconsin's rule was first adopted. Frequent testing can allow dairy plants to quickly address problems related to bulk tank cleanliness. As the number of dairy farms has decreased, farms have become larger, and per cow milk production has risen, many farms have purchased larger or additional bulk tanks, thereby creating new challenges for managing milk collection. Allowing partial collection of milk from bulk tanks will provide industry with the tools they need to manage milk collection from farms more efficiently. In the long run, increased flexibility for collection of milk may result in fewer trips required to haul milk, with associated fuel savings, and less wear and tear on roadways.

The PMO allows partial collection of milk provided that certain practices are used to maintain the quality of milk. The proposed rule adopts these practices, which include a requirement that the bulk tank is emptied, cleaned and sanitized within 72 hours and that an acceptable temperature-recording device is installed and operating on the tank. To ensure proper regulatory oversight of partial collections of milk, the proposed rule also requires a bulk milk weigher and sampler to record when a partial pickup is made and when the bulk tank is emptied.

Bulk Milk Tanker Grade "A" Permit Reciprocity

The proposed rule also seeks to clarify and strengthen reciprocity requirements for bulk milk tanker Grade "A" permits. The PMO requires that each bulk milk tank truck, delivering Grade "A" raw milk and milk products, bear a Grade "A" permit. Grade "A" permits may only be issued after satisfactory completion of an inspection that addresses specific items outlined in the PMO. Each bulk milk tanker is required to be inspected once per year and the bulk milk tanker operator must be able to show proof of a current permit and passed inspection to deliver Grade "A" milk and milk products. The PMO requires that each bulk milk tanker only need bear one permit from an appropriate state regulatory agency and that each permit be recognized by the appropriate regulatory agencies in other states under the reciprocal agreements of the NCIMS.

Under s. 97.21 (2) (a) and (b), Stats., any bulk milk tanker that operates in Wisconsin must hold a license and a Grade "A" permit. Under the current rule, a Grade "A" permit is routinely issued for each tanker as an endorsement on the license. Since any tanker that operates in Wisconsin must hold a license, Grade "A" permits are issued both to tankers based in Wisconsin and out-of-state tankers that operate in Wisconsin. However, because Wisconsin-licensed tankers are not necessarily based in Wisconsin, it may not be possible to conduct the annual inspection required to make the Grade "A" permit valid.

The proposed rule will end the practice of routinely providing a Grade "A" permit as part of the licensing process and clarify that a Grade "A" permit will only be granted after completion of the required annual inspection, as required by the PMO. It also clarifies that the department will recognize valid Grade "A" permits issued by another equivalent state regulatory agency if the

bulk milk tanker operator can provide proof of a current passed inspection. These changes will allow out-of-state tankers to seek Grade “A” inspections from the regulatory agency in the state in which their tankers are based and will bring Wisconsin into compliance with reciprocity requirements of the PMO and the NCIMS.

Certified Industry Inspection Program for Bulk Milk Tankers

Often, logistical issues make it difficult for the department to schedule annual bulk milk tanker inspections in a timely manner. Bulk milk tankers must hold a valid Grade “A” permit and demonstrate they’ve passed a recent inspection to deliver Grade “A” milk and milk products. If a Wisconsin tanker tries to deliver Grade “A” milk or milk products without a current inspection, the tanker load may be turned away or another state regulatory agency may conduct an inspection and charge the tanker operator a fee. To ensure that all Wisconsin-based bulk milk tankers receive an annual inspection, the proposed rule will also establish a certified industry inspection program for inspecting bulk milk tankers.

Section 5 of the PMO allows state regulatory agencies to certify certain industry personnel to carry out bulk milk tanker inspections. Certified industry inspections are carried out under a cooperative arrangement with the state regulatory agency. Section 97.32, Stats., also establishes procedures that allow the department to appoint industry personnel to conduct special food and dairy inspections. The proposed rule allows the department to select industry inspection personnel for the certified inspection program in accordance with s. 97.32, Stats., and adopts PMO procedures for conducting certified industry inspections. The PMO establishes stringent procedures for ensuring proper regulatory oversight of industry inspections so that inspections are conducted consistently and that they effectively evaluate bulk milk tanker equipment construction, cleaning, sanitation and repair. The rule authorizes certified industry inspectors to perform all regulatory actions associated with issuing a Grade “A” permit for bulk milk tankers, establishes selection procedures, establishes a certification period of 3 years, and establishes record retention requirements. The proposed rule allows the department to revoke certification if a certified industry inspector fails to meet the requirements of the program. Under the proposed rule, bulk milk tankers must be inspected annually by the department, another equivalent regulatory agency, or a certified industry inspector.

Other changes to modernize ATCP 82

In addition to clarifying practices for recognizing reciprocity with other states for bulk milk tanker Grade “A” permits and allowing partial collection of milk from bulk tanks, the proposed rule also makes other changes designed to modernize the rule and further align the rule with the PMO. The proposed rule:

- Removes the definition of “milk hauler” and use of the term “milk hauler” and replaces the definition and terms with “bulk milk weigher and sampler” to reflect current terminology which more fully encompasses the tasks they perform. The definitions are also revised to clarify that use of the term “department” throughout the rule refers to the Department of Agriculture, Trade and Consumer Protection.

- Removes the requirement that a bulk milk tanker operator must clean and sanitize the milk tankers and instead specifies that the tanker must be cleaned and sanitized adequately. The proposed rule focuses on the task that must be accomplished, rather than who must accomplish it.
- Clarifies that personnel at the entity responsible for cleaning and sanitizing a bulk milk tanker must remove the old cleaning tag and retain it, and put a new cleaning tag on the tanker. Formerly, the tanker operator retained the old tag. The proposed rule thereby keeps the records at the location where the documented action occurred.
- Adds a requirement that, in addition to obtaining a license, a Bulk Milk Weigher and Sampler who seeks to hold the Grade “A” permit necessary for collection of Grade “A” samples must be inspected every two years. This requirement will bring Wisconsin’s bulk milk weigher and sampler requirements into compliance with the PMO. There will be no additional fees for these inspection and permit requirements.
- Removes the requirements that the tanker access port(s) be sealed after the tanker is filled with milk, and that a broken seal(s) must be reported to the department. This requirement was originally added to ATCP 82 in response to industry concerns about intentional adulteration (tampering). However, the PMO does not require tanker access ports to be sealed after filling, and the Wisconsin requirement to report broken seals to the department has only been occasionally invoked. When the requirement has been invoked, it has proven to be superfluous in light of existing industry food defense practices.

Summary of, and Comparison with Existing or Proposed Federal Statutes and Regulations

The PMO establishes minimum standards for regulation of Grade “A” dairy products. States must set standards equivalent to, or more stringent than, those in the PMO to be allowed to ship Grade “A” milk in interstate commerce. These rule changes will bring Wisconsin’s regulations regarding milk pick up, sampling and delivery in line with the 2011 PMO.

Comparison with Rules in Adjacent States

Michigan, Minnesota, Iowa and Illinois adopt the PMO as part of their dairy regulations and therefore already allow partial collection of milk from bulk milk tanks. The proposed rule will also align Wisconsin’s regulations with the PMO and these neighboring states for licensing and permitting of Grade “A” tankers and Bulk Milk Weighers and Samplers. Each of these states licenses milk tankers, and issues a Grade “A” permit after inspection. Some states charge a fee associated with these inspections.

Summary of Factual Data and Analytical Methodologies

Proposed rule changes were developed after consultation with industry, a review of PMO requirements, and a review of practices in neighboring states.

Analysis and Supporting Documents used to Determine Effect on Small Business

The PMO makes no distinction between large and small businesses in establishing requirements for Grade “A” collecting, sampling and transporting milk and milk products. The expected cost for installing a 7-day temperature recording device was determined after consultation with industry.

Effect on Small Business

The proposed rule changes will impact dairy producers, dairy plants, and companies that operate bulk milk tankers, many of which may be small businesses. The proposed rule does not substantially alter requirements dairy-related businesses already meet. The rule does not increase license or permit fees. All Grade “A” dairy businesses, whether large or small, must meet regulations that are substantially in compliance with the FDA’s PMO in order to collect, sample, and transport Grade “A” dairy products and no special accommodation may be made for small businesses. Allowing partial collection of milk from bulk tanks will be voluntary, but will provide management flexibility to businesses of all sizes, including small businesses. Other provisions, such as clarifying reciprocity procedures and adopting a certified industry inspection program for bulk milk tankers, will also benefit small businesses by ensuring the timely inspection of tankers for Grade “A” permits. A valid Grade “A” permit is required to transport and deliver Grade “A” dairy products.

If the proposed rule is adopted, some dairy producers may incur costs if they need to purchase a 7-day temperature recording-device for their bulk milk tank. The PMO requires all bulk milk tanks produced after January 1, 2000 to be equipped with an approved temperature recording device, but dairy producers who own older tanks may need to purchase a temperature recording device to allow partial collection of milk from their bulk tanks. However, partial collection of milk from bulk tanks will be voluntary and individual dairy businesses will determine whether to use this option based on their own business needs. Producers will not be required to install a 7-day temperature recording device if partial collections of milk are not made from the tank. Producers who have partial collections of milk from their bulk tanks may expect to offset some costs through reduced water and chemical use for bulk tank cleaning.

Proposed rule changes related to inspecting and providing Grade “A” permits for bulk milk tankers and bulk milk weighers and samplers who seek to hold a Grade “A” permit will have no impact on small business since bulk milk tankers and bulk milk weighers and samplers are already required to be licensed and inspected. The rule does not increase license or permit fees.

The proposed rule also assists small businesses by simplifying regulations regarding cleaning and sanitizing milk tankers, clarifying procedures for retaining bulk milk tanker cleaning tags, and removing an unnecessary requirement for reporting broken seals on tankers.

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Where and When Comments May Be Submitted

Questions and comments related to this rule may be directed to:

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Rule comments will be accepted up to two weeks after the last public hearing is held on this rule. Hearing dates will be scheduled after this rule is approved by the Board of Agriculture, Trade and Consumer Protection.

1 **SECTION 1.** Chapter 82 (title) is amended to read:

2 Chapter 82 (title) BULK MILK HAULERS—COLLECTION, SAMPLING, AND

3 TRANSPORTATION

4 **SECTION 2.** ATCP 82.01 (2m) and (4m) are created to read:

5 ATCP 82.01 (2m) “Bulk milk weigher and sampler” means any person who collects
6 official samples and may transport raw milk from a farm or raw milk or milk products to or from
7 a dairy plant, receiving station or transfer station.

1 ATCP 82.01 (4m) “Department” means the Wisconsin department of agriculture, trade
2 and consumer protection.

3 **SECTION 3.** ATCP 82.01 (6) is repealed.

4 **SECTION 4.** ATCP 82.02 (7) (a) and (b) are amended to read:

5 ATCP 82.02 (7) (a) Except as provided under par. (c), no person may operate a bulk milk
6 tanker to transport milk or milk products for sale or use as grade A milk or grade A fluid milk
7 products unless that person holds a valid grade A permit issued annually for that bulk milk tanker
8 by the department or an equivalent regulatory agency in another state where that bulk milk
9 tanker is normally based. A grade A permit is not transferable between persons or bulk milk
10 tankers. ~~A grade A permit may be issued in the form of an endorsement on a bulk milk tanker~~
11 ~~license under sub. (1).~~

12 ATCP 82.02 (7) (b) An application for a grade A permit under par. (a) shall be made on a
13 form provided by the department, ~~and may be included with a license application under sub. (2).~~
14 The department shall grant or deny a grade A permit application within 40 days after the
15 department receives a complete application. An application is complete only upon proof,
16 submitted by the bulk milk tanker operator, of a current inspection of the bulk milk tanker by the
17 department, another state’s agency responsible for issuing grade “A” bulk milk tanker permits, or
18 a certified industry inspector as allowed under s. ATCP 82.02(8).

19 **SECTION 5.** ATCP 82.02 (8) (title) and (a) to (c) are created to read:

20 ATCP 82.02 (8) (title) CERTIFIED INDUSTRY INSPECTION OF GRADE A BULK MILK
21 TANKERS.

22 ATCP 82.02 (8) (a) The department may certify industry personnel to inspect bulk milk
23 tankers for the purpose of issuing grade A permits. Certified industry inspectors shall be

1 authorized to perform all regulatory actions associated with issuing grade A permits for bulk
2 milk tankers.

3 ATCP 82.02 (8) (b) Applicants for the certified industry inspection program shall meet
4 requirements for special dairy and food inspection under s. 97.32, Stats. and shall meet additional
5 certified requirements as determined by the department. Certification shall be for a period not
6 exceeding 3 years from the date of formal certification or re-certification. The department may
7 revoke certification at any time for failing to comply with the requirements of the certified dairy
8 inspection program.

9 ATCP 82.02 (8) (c) The department shall maintain a written program describing
10 procedures for implementing the certified industry inspection program. Certified industry
11 inspectors shall maintain copies of certification and inspection records for 3 years and shall file
12 annual bulk milk tanker inspection reports with the department.

13 **SECTION 6.** ATCP 82.04 (2m) and (5) (c) are created to read:

14 ATCP 82.04 (2m) INSPECTION REQUIRED. A licensed bulk milk weigher and sampler may
15 not measure or sample milk at a dairy farm or dairy plant unless they have passed an inspection
16 conducted on their practices during the preceding 24 months. If the bulk milk weigher and
17 sampler has not passed an inspection during the preceding 24 months, an inspection shall be
18 conducted by the department. Only a licensed bulk milk weigher and sampler shall measure or
19 sample milk at a dairy farm or dairy plant.

20 ATCP 82.04 (5) (c) The department may require that the bulk milk weigher sampler pass
21 a written examination, at no charge, in conjunction with a reinspection.

22 **SECTION 7.** ATCP 82.04 (6), (7) (b), and (8) are amended to read:

1 ATCP 82.04 (6) ACTION ON LICENSE APPLICATION. The department shall grant
2 or deny a license application under sub. (4) within ~~60~~ 90 days after the department receives a
3 complete application.

4 ATCP 82.04 (7) (b) Successfully completing a field examination administered by the
5 department within 60 days of passing the written examination.

6 ATCP 82.04 (8) LICENSE RENEWAL. A person applying to renew a bulk milk
7 weigher and sampler license ~~may~~ shall be required to pass a ~~written examination or field~~
8 examination administered by the department within the previous 24 months from the license
9 expiration date.

10 **SECTION 8.** ATCP 82.04 (9) (title) and (a) to (c) are created to read:

11 ATCP 82.04 (9) (title) GRADE A PERMIT.

12 ATCP 82.04 (9) (a) No person may collect grade A official samples unless that person
13 holds a valid grade A permit issued by the department or an equivalent regulatory agency in
14 another state. A grade A permit issued by the department is valid for two years from the date of
15 issuance and is not transferable between persons.

16 ATCP 82.04 (9) (b) An application for a grade A permit under par.(a) shall be made on a
17 form provided by the department and may be included with a license application under sub. (2).
18 The department shall grant or deny a grade A permit application within 40 days after the
19 department receives a complete application.

20 ATCP 82.04 (9) (c) In order for a bulk milk weigher and sampler or another individual
21 licensed under 97.17, Stats., to hold a valid grade A permit, the bulk milk weigher and sampler
22 must be inspected at least once every two years by the department or an equivalent regulatory

1 agency in another state. It is the responsibility of the bulk milk weigher and sampler to provide
2 current proof of inspection

3 **SECTION 9.** ATCP 82.08 (1) (a) to (c), (2) (a) and (b), (3), (3) (a), (4) (title) and (a) to (c)
4 are amended to read:

5 ATCP 82.08 (1) (a) No person may operate a bulk milk tanker unless a the bulk milk
6 ~~tanker operator cleans the bulk milk tanker~~ is cleaned immediately after each day's use and
7 ~~sanitizes the bulk milk tanker~~ sanitized prior to the next day's use. A bulk milk tanker ~~operator~~
8 ~~shall clean and sanitize a bulk milk tanker~~, including all attached dairy product pumps and hoses,
9 shall be cleaned and sanitized according to this section. A bulk milk tanker ~~operator~~ shall ~~re-~~
10 ~~sanitize a bulk milk tanker~~ be re-sanitized if the tanker has not been used for more than 96 hours
11 after last being sanitized.

12 ATCP 82.08 (1) (b) Except as provided in par. (c), a bulk milk tanker ~~operator~~ is not
13 required to ~~clean~~ be cleaned or ~~sanitize a bulk milk tanker~~ sanitized between loads during a 24
14 hour period, provided that a the bulk milk tanker ~~operator cleans the bulk milk tanker~~ is cleaned
15 after that day's use and ~~sanitizes the bulk milk tanker~~ sanitized prior to the next day's use.

16 ATCP 82.08 (1) (c) A bulk milk tanker ~~operator shall clean and sanitize~~ dairy product
17 pumps and hoses ~~attached to the bulk milk tanker~~ shall be cleaned and sanitized whenever those
18 pumps or hoses remain unused for more than 4 hours.

19 ATCP 82.08 (2) (a) A bulk milk tanker, and its pumps and hoses, shall be cleaned and
20 sanitized in a fully enclosed and heated facility. The facility shall have an impervious drained
21 floor. The facility shall be equipped with adequate hot and cold water under pressure, a wash
22 vat, pressure sanitizing facilities and equipment storage racks. Bulk milk tankers may be cleaned
23 and sanitized in the same room where milk is received from those bulk milk tankers.

1 ATCP 82.08 (2) (b) A facility used to clean and sanitize grade A bulk milk tankers,
2 pumps, and hoses shall be covered by a grade A permit under sub. (6) and meet the requirements
3 of sub. (a).

4 ATCP 82.08 (3) CLEANING AND SANITIZING PROCEDURE. Whenever a bulk milk tanker
5 ~~operator cleans~~ is cleaned and ~~sanitizes a bulk milk tanker~~ sanitized, the bulk milk tanker
6 operator or dairy plant employee shall do all of the following:

7 ATCP 82.08 (3) (a) Clean and sanitize every dairy product contact surface on the bulk
8 milk tanker, including product contact surfaces of equipment and accessories used on the tanker.
9 If a bulk milk tanker operator or dairy plant employee is only required to clean tanker pumps and
10 hoses under sub. (1) (c), ~~the operator~~ they shall clean every dairy product contact surface on
11 those pumps and hoses.

12 ATCP 82.08 (4) (title) CLEANING TAG DOCUMENTATION.

13 ATCP 82.08 (4) (a) ~~Whenever a bulk milk tanker operator cleans and sanitizes a bulk~~
14 ~~milk tanker according to sub. (1), the bulk milk tanker operator shall attach to the tanker a~~ No
15 person may operate a bulk milk tanker unless a cleaning tag is attached that includes all of the
16 following information:

- 17 1. The identification number of the bulk milk tanker, including grade A permit number if
18 any.
- 19 2. The date and time of day when the bulk milk tanker ~~operator~~ was cleaned and
20 sanitized ~~the bulk milk tanker~~.
- 21 3. The name and location of the facility where the bulk milk tanker ~~operator~~ was cleaned
22 and sanitized ~~the bulk milk tanker~~, and the facility's grade A permit number under sub.
23 (6) if any.

1 4. The signature or initials of the person who cleaned and sanitized the tanker.

2 ATCP 82.08 (4) (b) The bulk milk tanker ~~operator~~ shall ~~attach the~~ have a tag attached as
3 required under par. (a) to the outlet valve or inside the pump cabinet of the tanker. No person
4 may remove the tag, except as provided in par. (c).

5 ATCP 82.08 (4) (c) Whenever a bulk milk tanker operator or dairy plant employee cleans
6 and sanitizes a bulk milk tanker, ~~the bulk milk tanker operator shall remove~~ the last cleaning tag
7 attached to the bulk milk tanker under this subsection shall be removed before attaching a new
8 tag. The ~~operator removed tag shall retain the removed tag~~ be retained for at least 15 days, at the
9 location where the bulk milk tanker ~~operator~~ was cleaned and sanitized ~~the bulk milk tanker~~.

10 **SECTION 10.** ATCP 82.08 (4) (d) and (6) (d) are created to read:

11 ATCP 82.08 (4) (d) Whenever a bulk milk tanker operator or a dairy plant employee
12 cleans and sanitizes a direct ship tanker, they shall apply seal(s) to the access port(s).

13 ATCP 82.08 (6) (d) In order for a bulk milk tanker cleaning facility to hold a valid grade
14 “A” permit, the bulk milk tanker cleaning facility must be inspected semi-annually by the
15 department.

16 **SECTION 11.** ATCP 82.10 (1) (a) and (b), (2), (2) (c) to (e), (3), (4) (b) and (5) (a) are
17 amended to read:

18 ATCP 82.10 (1) (a) If milk from a grade A or grade B dairy farm violates an applicable
19 standard under s. ATCP 60.15 on any single test, milk from that farm shall be collected at least
20 once every 2 days until a subsequent test shows that the milk from that dairy farm no longer
21 violates that standard. This paragraph does not require a bulk milk hauler weigher and sampler
22 to collect milk if collection would violate ch. ATCP 60.

1 ATCP 82.10 (1) (b) A dairy plant operator receiving milk from a dairy farm shall
2 immediately notify the bulk milk hauler weigher and sampler and milk producer whenever milk
3 from that dairy farm must be collected more frequently in order to comply with par. (a). No
4 dairy plant operator may receive milk collected in violation of par. (a).

5 ATCP 82.10 (2) SUPPLIES REQUIRED FOR MILK COLLECTION AND
6 SAMPLING. A bulk milk hauler weigher and sampler who collects milk in bulk shall have the
7 following supplies available:

8 ATCP 82.10 (2) (c) A sanitizing solution of not less than 100 ppm nor more than 200
9 ppm chlorine or its equivalent. The bulk milk hauler weigher and sampler shall carry a
10 sanitizing solution test kit to test the strength of the sanitizing solution.

11 ATCP 82.10 (2) (d) If a bulk milk hauler weigher and sampler collects milk from a bulk
12 tank at a dairy farm, an insulated carrying case with a rack to hold samples collected under s.
13 ATCP 82.12. The carrying case shall comply with s. ATCP 82.12 (6) (a).

14 ATCP 82.10 (2) (e) A dial or digital thermometer, calibrated for accuracy against a
15 thermometer traceable to a National Institute of Standards and Technology certified thermometer
16 every six months, accurate to plus or minus 2° F., that can be used to check the accuracy of farm
17 bulk tank indicating thermometers under sub. (6) (b).

18 ATCP 82.10 (3) BULK MILK HAULER WEIGHER AND SAMPLER SANITATION.
19 A bulk milk hauler weigher and sampler shall wear clean, ~~light colored~~ clothes ~~and an effective~~
20 ~~hair restraint~~ when measuring, sampling or collecting milk at a dairy farm. A bulk milk hauler
21 weigher and sampler shall maintain a high degree of personal cleanliness, and shall observe good
22 hygienic practices during all working periods. No bulk milk hauler weigher and sampler who

1 has a discharging or infected wound, sore or lesion on his or her hands or exposed arms may
2 measure, sample or collect milk at a dairy farm.

3 ATCP 82.10 (4) (b) A bulk milk hauler weigher and sampler who rejects milk under par.
4 (a) may not collect that milk, or commingle it with milk from any other producer. If a producer
5 disputes a bulk milk hauler's weigher and sampler's rejection of milk, the bulk milk hauler
6 weigher and sampler shall contact the operator of the dairy plant to which the milk would
7 ordinarily be delivered, and the dairy plant operator shall examine the rejected milk to determine
8 whether it was properly rejected.

9 ATCP 82.10 (5) (a) A bulk milk hauler weigher and sampler shall wash and dry ~~his or~~
10 ~~her~~ their hands before performing any of the following operations at a dairy farm:

- 11 1. Using the bulk milk hauler's weigher and sampler's calibrated thermometer to
12 measure the temperature of milk in a dairy farm bulk tank.
- 13 2. Measuring ~~or sampling~~ the milk in the bulk tank.
- 14 3. ~~Connecting-Sampling the bulk milk tanker hose to in~~ the ~~dairy farm~~ bulk tank.

15 **SECTION 12.** ATCP 82.10 (5) (b) is repealed.

16 **SECTION 13.** ATCP 82.10 (6) (a) to (d), (7) and (8) (a) to (c) are amended to read:

17 ATCP 82.10 (6) (a) Before a bulk milk hauler weigher and sampler collects milk at a
18 dairy farm, the bulk milk hauler weigher and sampler shall record the temperature of the milk to
19 be collected, as shown on the dairy farm bulk tank indicating thermometer. If the milk is
20 collected more than 2 hours after the last milking, the bulk milk hauler weigher and sampler shall
21 reject the milk if the milk temperature exceeds 45° F. (7° C.). If milk from 2 or more milkings is
22 collected within 2 hours of the last milking, the bulk milk hauler weigher and sampler shall reject
23 the milk if the milk temperature exceeds 50° F. (10° C.).

1 ATCP 82.10 (6) (b) At least once each month, and more often if necessary, a bulk milk
2 ~~hauler~~ weigher and sampler shall check the accuracy of each dairy farm bulk tank indicating
3 thermometer by measuring the temperature of milk in the bulk tank with the bulk milk hauler's
4 weigher and sampler's dial or digital thermometer. The bulk milk hauler weigher and sampler
5 shall keep a written record comparing the temperatures recorded by the bulk milk hauler's
6 weigher and sampler's thermometer with those recorded by the bulk tank thermometer. The
7 written record shall be kept in the dairy farm milkhouse for at least one year.

8 ATCP 82.10 (6) (c) Before a bulk milk hauler weigher and sampler uses a dial or digital
9 thermometer to measure the temperature of milk in a dairy farm bulk tank, the ~~hauler~~ weigher
10 and sampler shall sanitize the stem of the thermometer in a sanitizing solution of not less than
11 100 ppm nor more than 200 ppm chlorine or its equivalent. The bulk milk hauler weigher and
12 sampler shall use the sanitizing solution according to label directions.

13 ATCP 82.10 (6) (d) A bulk milk hauler weigher and sampler shall immediately notify
14 the milk producer and the dairy plant operator if the bulk milk hauler weigher and sampler finds
15 that a dairy farm bulk tank is not cooling properly, or that the bulk tank thermometer is not
16 recording temperatures accurately.

17 ATCP 82.10 (7) CONNECTING MILK HOSE. Before a bulk milk hauler weigher and
18 sampler connects a bulk milk tanker hose to a dairy farm bulk tank, the bulk milk hauler weigher
19 and sampler shall examine the fittings of the bulk milk tanker hose and the dairy farm bulk tank
20 outlet to ensure that both are clean. Before connecting the hose, the bulk milk hauler weigher
21 and sampler ~~may~~ shall clean and sanitize the bulk tank outlet if the outlet valve is leaking. The
22 bulk milk hauler weigher and sampler shall attach the milk hose to the bulk tank outlet in a

1 manner that does not contaminate the hose or hose cap. The hose shall be connected through the
2 hose port in the milkhouse, and not through the milkhouse door.

3 ATCP 82.10 (8) (a) Before milk is transferred from a dairy farm bulk tank to a bulk milk
4 tanker, the bulk milk hauler weigher and sampler shall accurately measure the amount of milk in
5 the bulk tank. The bulk milk hauler weigher and sampler shall measure the milk using a clean
6 gauge rod ~~or other measuring device~~ that is specifically designed and calibrated to measure milk
7 in the bulk tank. Immediately before using the gauge rod ~~or measuring device~~, the bulk milk
8 hauler weigher and sampler shall ~~rinse the gauge rod or device with warm potable water, and~~
9 wipe it dry with a clean single-service disposable towel.

10 ATCP 82.10 (8) (b) A bulk milk hauler weigher and sampler shall not measure the
11 amount of milk in a dairy farm bulk tank until the milk is motionless. If the milk is being
12 agitated, the bulk milk hauler weigher and sampler shall turn off the agitator and wait for the
13 milk to become completely motionless before measuring the milk.

14 ATCP 82.10 (8) (c) After measuring the milk with a gauge rod or other device, the bulk
15 milk hauler weigher and sampler shall use that measurement to calculate the weight or volume of
16 milk in the bulk tank using the bulk tank manufacturer's conversion chart. The bulk milk hauler
17 weigher and sampler shall record that weight or volume on a written collection record under sub.
18 (10).

19 **SECTION 14.** ATCP 82.10 (9) is renumbered ATCP 82.10 (9) (a) and amended to read:

20 ATCP 82.10 (9) (a) Before milk is transferred from a dairy farm bulk tank to a bulk milk
21 tanker, a bulk milk hauler weigher and sampler shall collect a representative sample of that milk
22 from the bulk tank for testing. The bulk milk hauler weigher and sampler shall collect the test
23 sample according to s. ATCP 82.12.

1 **SECTION 15.** ATCP 82.10 (9) (b) is created to read:

2 ATCP 82.10 (9) (b) No additional milk may be added to the bulk tank until sampling and
3 measuring has occurred, the pick-up of milk is complete, and the pick-up hose is disconnected
4 from the bulk tank.

5 **SECTION 16.** ATCP 82.10 (10) and (11) (a) are amended to read:

6 ATCP 82.10 (10) MILK COLLECTION RECORD. Whenever a bulk milk hauler
7 weigher and sampler collects a milk shipment from a dairy farm, the bulk milk hauler weigher
8 and sampler shall make a written or electronic collection record for that shipment. One duplicate
9 or electronically-printed copy of the collection record shall be posted in the dairy farm
10 milkhouse, and an identical copy shall be provided to the dairy plant operator when the milk is
11 delivered to a dairy plant. The collection record shall be legibly signed or initialed by the bulk
12 milk hauler weigher and sampler and shall include all of the following:

13 (a) The milk producer's dairy plant identification number.

14 (b) The bulk milk hauler's weigher and sampler's license number and license expiration
15 date.

16 (c) The date and time when the milk was sampled and collected.

17 (d) The temperature of the milk when collected, as determined by the bulk milk hauler
18 weigher and sampler under sub. (6).

19 (e) The weight or volume of milk collected, as determined by the bulk milk hauler
20 weigher and sampler under sub. (8).

21 ATCP 82.10 (11) (a) After a bulk milk hauler weigher and sampler has sampled milk
22 from a dairy farm bulk tank under sub. (9) and prepared a complete collection record under sub.
23 (10), the hauler bulk milk weigher and sampler may transfer milk from that bulk tank to the bulk

1 milk tanker. A bulk milk hauler weigher and sampler may not collect milk from any container
2 on a dairy farm, other than from a bulk tank. ~~A milk hauler may not collect any milk from a bulk~~
3 ~~tank unless the hauler collects all of the milk from that bulk tank before any more milk is added~~
4 ~~to the tank.~~ Except as provided in sub. (am), partial removal of milk from the bulk tank shall
5 only be permitted as long as the bulk tank is completely emptied, cleaned, and sanitized prior to
6 the addition of more milk to the bulk tank.

7 **SECTION 17.** ATCP 82.10 (11) (am) is created to read:

8 ATCP 82.10 (11) (am) Partial removal of milk from the bulk tank shall be permitted if
9 all of the following apply:

- 10 1. The bulk tank is equipped with a 7 day recording device acceptable to the
11 department.
- 12 2. The bulk tank is cleaned and sanitized when emptied.
- 13 3. The bulk tank is emptied at least every 72 hours.
- 14 4. The bulk milk weigher and sampler indicates the time and date on the recorder chart
15 when a partial pickup is made and when the bulk tank is emptied.

16 **SECTION 18.** ATCP 82.10 (11) (b) and (c) are amended to read:

17 ATCP 82.10 (11) (b) After a bulk milk hauler weigher and sampler has collected all of
18 the milk from a bulk tank, the bulk milk hauler weigher and sampler shall disconnect the milk
19 hose from the bulk tank, cap the hose, and return the hose to its cabinet in the bulk milk tanker.
20 The bulk milk hauler weigher and sampler shall inspect the bulk tank for abnormal sediments,
21 and shall report any abnormal sediments to the dairy plant operator.

22 ATCP 82.10 (11) (c) After the bulk milk hauler weigher and sampler has disconnected
23 the milk hose and inspected the empty bulk tank for abnormal sediments, the bulk milk hauler

1 weigher and sampler shall rinse the bulk tank and milkhouse floor with cold or lukewarm water
2 unless the bulk tank is self-cleaning and includes a pre-rinse cycle as part of the self-cleaning
3 process.

4 **SECTION 19.** ATCP 82.12 (1) (a) and (b), (2), (2) (a) to (d), are amended to read:

5 ATCP 82.12 (1) (a) A bulk milk hauler weigher and sampler or other individual shall
6 collect a sample of a producer's milk before that milk is commingled with milk from any other
7 producer. The bulk milk hauler weigher and sampler or other individual who collects the
8 sample shall be licensed under s. 98.146 or 97.17, Stats.

9 ATCP 82.12 (1) (b) A bulk milk hauler weigher and sampler who collects milk from a
10 dairy farm bulk tank shall collect the milk sample under par. (a). The bulk milk hauler weigher
11 and sampler shall collect the milk sample from the bulk tank before the milk hauler transfers the
12 bulk tank contents to a bulk milk tanker. The bulk milk hauler weigher and sampler shall collect
13 the sample according to sub. (2). The milk sample may not be commingled with a milk sample
14 from any other bulk tank.

15 ATCP 82.12 (2) SAMPLING PROCEDURE; DAIRY FARM BULK TANKS. A bulk
16 milk hauler weigher and sampler shall comply with the following procedures when collecting a
17 milk sample from a farm bulk tank under sub. (1) (b):

18 ATCP 82.12 (2) (a) The bulk milk hauler weigher and sampler shall collect the sample
19 from the dairy farm bulk tank after the bulk tank contents have been thoroughly mixed to ensure
20 that the sample is representative. If the bulk tank capacity is less than 1500 gallons, milk in the
21 bulk tank shall be agitated in the bulk milk hauler's weigher and sampler's presence for at least
22 5 minutes before a sample is taken. If the bulk tank capacity is 1500 gallons or more, milk in the

1 bulk tank shall be agitated in the bulk milk hauler's weigher and sampler's presence for at least
2 10 minutes before a sample is taken.

3 ATCP 82.12 (2) (b) The bulk milk hauler weigher and sampler shall collect the sample
4 using a sample dipper that is of sanitary design and construction, is clean and in good repair.
5 The dipper shall be cleaned, sanitized, and then dipped at least twice in the bulk tank milk before
6 it is used to collect a sample. The bulk milk hauler weigher and sampler shall sanitize the dipper
7 in a sanitizing solution that is not less than 100 ppm nor more than 200 ppm chlorine or an
8 equivalent sanitizing solution and shall comply with the label directions of the sanitizing
9 solution.

10 ATCP 82.12 (2) (c) After dipping the milk sample from the bulk tank, the bulk milk
11 hauler weigher and sampler shall pour the sample into a sample container under sub. (4), and
12 shall securely close the container. The container shall be labeled with the information required
13 under sub. (5). When pouring the sample into its container, the bulk milk hauler weigher and
14 sampler shall take care not to contaminate the sample or spill milk back into the open bulk tank.
15 The bulk milk hauler weigher and sampler shall handle the sample container and cap aseptically.

16 ATCP 82.12 (2) (d) After collecting a milk sample, the bulk milk hauler weigher and
17 sampler shall immediately rinse the sample dipper with clean potable water.

18 **SECTION 20.** ATCP 82.12 (2m), (3), (4), (5), and (6) are renumbered ATCP 82.12 (3),
19 (4), (5), (6), and (7), and ATCP 82.12 (3) (b), (4), (5) (d), (6), and (7) (a) and (b), as renumbered,
20 are amended to read:

21 ATCP 82.12 (3) (b) Before the individual collects the milk sample, the individual shall
22 verify ~~all of the following:~~

1 ~~1. That the bulk milk tanker access port is properly sealed. A dairy plant operator may not~~
2 ~~accept the bulk milk shipment if the bulk milk tanker is not properly sealed when it arrives at the~~
3 ~~dairy plant.~~

4 ~~2. That that~~ the contents of the bulk milk tanker have been thoroughly mixed, immediately prior
5 to sampling, to ensure that the entire contents are homogeneous at the time of sampling. The
6 contents shall be mixed in a manner that is known to ensure homogeneity.

7 ATCP 82.12 (4) TEMPERATURE CONTROL SAMPLE. A bulk milk hauler weigher
8 and sampler shall collect 2 milk samples under sub. (1) at the first dairy farm where milk is
9 collected for each bulk milk tanker load. The bulk milk hauler weigher and sampler shall mark
10 one of those samples as the temperature control sample for all samples pertaining to that load.
11 The sample container for the temperature control sample shall be marked with the producer's
12 identification number, the bulk milk hauler's weigher and sampler's initials, the date and time
13 when the sample was collected, and the temperature of the milk in the farm bulk tank from which
14 the sample was collected.

15 ATCP 82.12 (5) (d) Labeled with the all of the information required under sub. ~~(5)~~ (6), or
16 designed so that the bulk milk hauler weigher and sampler can easily mark that information on
17 the sample container.

18 ATCP 82.12 (6) SAMPLE IDENTIFICATION. Immediately before a bulk milk hauler
19 weigher and sampler collects a milk sample under sub. (1), but before the bulk milk hauler
20 weigher and sampler opens the sample container, the bulk milk hauler weigher and sampler
21 shall clearly and indelibly label the sample container with all of the following information unless
22 that information is already labeled on the sample container:

1 (a) A producer identification number, assigned by the dairy plant operator, that uniquely
2 identifies the milk producer.

3 (b) The date when the sample was collected.

4 ATCP 82.12 (7) (a) Immediately after a bulk milk hauler weigher and sampler collects a
5 milk sample under sub. (1), the bulk milk hauler weigher and sampler shall place the sample
6 container in a clean refrigerated carrying case in which the bulk milk hauler weigher and sampler
7 shall keep the sample at a temperature of 32 to 40° F. (0 to 4° C.). The carrying case shall be
8 constructed of rigid metal or plastic, shall be effectively insulated and refrigerated to keep
9 samples at the required temperature, and shall have racks designed to hold samples in a proper
10 upright position. If sample containers are packed in ice or cold water to keep the samples
11 refrigerated, the ice or water shall cover no more than 2/3 of each sample container.

12 ATCP 82.12 (7) (b) A bulk milk hauler weigher and sampler who collects a milk sample
13 [under] sub. (1) shall promptly deliver the sample to the dairy plant that receives the milk from
14 the producer, or to a certified testing laboratory designated by the dairy plant operator.

15 **SECTION 21.** ATCP 82.14 (3) is repealed.

16 **SECTION 22.** ATCP 82.14 (4) is renumbered ATCP 82.14(3) and amended to read:

17 ATCP 82.14 (3) ~~After each day's use, a~~ A bulk milk tanker shall be cleaned and sanitized
18 when empty as provided under s. ATCP 82.08.

19 **SECTION 23. EFFECTIVE DATE AND INITIAL APPLICABILITY.** This rule takes effect on
20 the first day of the month following publication in the Wisconsin administrative register, as
21 provided under s. 227.22(2)(intro.).

Dated this _____ day of _____, 2013.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary