

Chapter ATCP 60

DAIRY FARMS

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

Subchapter I — Definitions

ATCP 60.01 Definitions. As used in this chapter:

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

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

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

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

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

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

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

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

(7) “Dairy plant operator” means a person who operates a dairy plant. “Dairy plant operator” includes the operator of a dairy plant located outside this state if the operator procures milk from producers located in this state. “Dairy plant operator” does not include a person identified under s. 97.20 (2) (e), Stats.

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

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

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

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

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

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

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

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

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

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

(15) “Key violation” means any of the following:

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

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

1. Unclean milk contact surfaces of equipment or utensils.

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

3. Filthy conditions in a cowyard, resulting in very dirty milking animals.

4. Filthy conditions in a milkhouse.

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

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

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

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

9. Visibly dirty udders and teats on milking animals being milked.

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

11. Rodent activity in the milkhouse.

12. Dead animals in the milking barn or cowyard.

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

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

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

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

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

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

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

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

(a) Cows, sheep and goats.

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

(20) “Milking barn” means a roofed and enclosed facility, other than a milking parlor, in which milking animals, are milked on a dairy farm.

(21) “Milking parlor” means a roofed and enclosed facility which is designed and used exclusively for the milking of milking animals, and which is not designed or used to house any animals.

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

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

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

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

(24) “Reinspection” means any of the following:

(a) A dairy farm inspection, other than a regularly scheduled inspection under s. ATCP 60.24 (2) or 60.245, which the department makes in response to a key violation.

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

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

(26) “Secretary” means the secretary of the department.

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

(29) “Utensil” means any hand-held or similarly portable container, device, article or implement which:

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

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

History: Cr. Register, July, 1989, No. 403, eff. 8-1-89; cr. (8m) and am. (24) (b), Register, June, 1992, No. 438, eff. 7-1-92; am (10), Register, November, 1994, No. 467, eff. 12-1-94; CR 01-125: am. (1), (4), (7), (9b), (10), (15) (b) 8., (19) to (22), (24) and (29) (b) .cr. (1g), r. (28), Register December 2002 No. 564, eff. 1-1-03; CR 07-006: am. (4), (9) (b), (15) (b) 3. and 9., (19), (20), (21) and (29) (b), r. and recr. (16), cr. (17m), (19m), (23m) and (23r), Register January 2008 No. 625, eff. 2-1-08.

Subchapter II — License and Permit Requirements; Fees

ATCP 60.02 Milk producer license; fees. (1) LICENSE REQUIREMENT. No person may operate as a milk producer without an annual license from the department, as provided under s. 97.22 (2), Stats. A license expires on April 30 of each year. A separate license is required for each dairy farm at which milk is produced. Whenever the department first issues a dairy farm license to a milk producer, that license shall bear a livestock premises code issued under s. ATCP 17.02 (7). A license is not transferable between persons or dairy farms. As a condition to licensing, a milk producer shall comply with applicable provisions of this chapter.

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

(am) *Livestock premises registration.* An application for an initial milk producer license shall include the information that is required under s. ATCP 17.02 (4) for purposes of livestock premises registration.

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

1. Grant the application.

2. Deny the application.

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

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

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

(4) LICENSE FEE. (a) The annual fee for a milk producer license under this section is \$24.

(b) A dairy plant operator shall pay the annual milk producer license fee under this section for each dairy farm from which the dairy plant operator receives milk at the time the fee payment is due. An applicant for an annual dairy plant license under s. ATCP 80.02 shall submit the required milk producer license fees with the applicant's dairy plant license application.

(c) A dairy plant operator who pays a milk producer license fee under par. (a) may charge that fee back to a milk producer if the dairy plant operator gives prior written notice to the milk producer, but the dairy plant operator may not deduct the fee from any payment that the dairy plant operator owes the milk producer for milk received by the dairy plant operator. A dairy plant operator may not discriminate between milk producers with respect to fee charges under this paragraph, but may charge back license fees to all milk producers who cease shipping milk to the operator's dairy plant during the license year.

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

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

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

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

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

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

1. Pay the producer's annual license fees under this section.
2. Pay the producer's reinspection fees, if any, under s. ATCP 60.04.

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

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

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

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

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

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

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

4. The operator does not commingle producer-owned milk with other milk.

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

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

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

8. The producer or the producer's agent shall notify the department of the custom processing agreement before shipping milk to the operator for custom processing under this paragraph and annually thereafter. The producer or producer agent shall simultaneously notify the dairy plant operator to whom the producer is assigned for licensing purposes under par. (a) if that operator is not the one providing the custom processing services.

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

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

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

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

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

Note: See s. ATCP 60.25.

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

Note: See s. ATCP 60.25.

History: Cr. Register, July, 1989, No. 403, eff. 8-1-89; am. (4), Register, June, 1992, No. 438, eff. 7-1-92; r. and recr. (4), Register, November, 1994, No. 467, eff. 12-1-94; CR 01-125: am. (5), r. and recr. (6), cr. (7) to (9), Register December 2002 No. 564, eff. 1-1-03; CR 04-103: am. (1) and cr. (2) (am) Register September 2005 No. 597, eff. 10-1-05; CR 05-044: r. and recr. (4) Register December 2005 No. 600, eff. 1-1-06; **CR 07-006: am. (7) (c) and (d) 4. and 8., Register January 2008 No. 625, eff. 2-1-08.**

ATCP 60.03 Grade A permit. (1) PERMIT REQUIREMENT.

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

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

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

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

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

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

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

1. The operator begins receiving milk shipments from a grade A producer who has previously shipped milk to another operator. No new grade A permit is required.
2. A grade A producer is re-assigned, for permit purposes under this section, to that dairy plant operator.

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

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

shipments, and within 3 business days after the producer resumes milk shipments.

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

Note: See s. ATCP 60.25.

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

ATCP 60.04 Reinspection fees. (1) FEE REQUIREMENT.

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

(2) FEE AMOUNT. (a) Except as provided in par. (b), the reinspection fee under sub. (1) is \$24.

(b) If a reinspection is required under this chapter for reinstatement of a producer's license or grade A permit, the reinspection fee under sub. (1) is \$48.

(3) DAIRY PLANT TO PAY REINSPECTION FEE FOR MILK PRODUCER. A dairy plant operator shall pay the dairy farm reinspection fee under this section for a milk producer if, at the time of the reinspection, the producer was assigned to that operator for licensing purposes under s. ATCP 60.02. The department may issue a statement of reinspection fees payable by a dairy plant operator, and may demand payment from the dairy plant operator when it issues an application form for the renewal of the dairy plant operator's license under s. 97.20, Stats.

History: Cr. Register, July, 1989, No. 403, eff. 8-1-89; r. and recr. (2), Register, June, 1992, No. 438, eff. 7-1-92; CR 01-125: am. (3), Register December 2002 No. 564, eff. 1-1-03; CR 05-044: r. and recr. (2) Register December 2005 No. 600, eff. 1-1-06.

ATCP 60.05 Fee payment obligations; enforcement.

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

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

History: Cr. Register, July, 1989, No. 403, eff. 8-1-89; CR 01-125: r. (2), Register December 2002 No. 564, eff. 1-1-03.

Subchapter III — Dairy Farm Standards

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

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

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

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

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

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

Note: Copies of the PMO, including Appendix C, are on file with the department and the legislative reference bureau. Copies are available online at <http://www.cfsan.fda.gov>.

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

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

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

(5) ANIMALS EXCLUDED. No swine or fowl may be housed in, or allowed to enter a milking barn or parlor. Nonmilking livestock shall be confined in stalls, stanchions or pens. Milking areas shall be kept free of excrement from nonmilking livestock.

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

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

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

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

Note: Evidence of overcrowded conditions may include inadequate ventilation, excessive odors, livestock in walks or feed alleys, or nonmilking livestock tied between milking animals in a milking line.

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

1. There are at least 30 foot-candles of illumination in all areas of the milking parlor where C-I-P milking equipment is cleaned, sanitized or stored.

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

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

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

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

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

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

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

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

History: Cr. Register, July, 1989, No. 403, eff. 8-1-89; cr. (10), Register, June, 1992, No. 438, eff. 7-1-92; CR 01-125: am. (2), (3), (5) and (9) (a) 1., Register December 2002 No. 564, eff. 1-1-03; CR 07-006: r. and recr. (1), cr. (1m), am. (5) and (9) (c), Register January 2008 No. 625, eff. 2-1-08.

ATCP 60.07 Milkhouse. (1) REQUIREMENT. Every dairy farm shall have a milkhouse. Except as provided in s. ATCP 60.11 (4), a milk producer shall cool and store milk in the milkhouse. A milkhouse shall be separate from a milking barn or parlor, but may share common walls with a milking barn or parlor. All equipment and utensils shall be cleaned, sanitized and stored in the milkhouse. This does not apply to C-I-P milk pipelines which are mechanically cleaned in place in a milking barn or parlor, or to C-I-P milking equipment which is mechanically cleaned and stored in a milking parlor under s. ATCP 60.06 (9) (a).

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

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

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

(d) *Lighting.* Natural or artificial lighting, or both, shall be provided in a milkhouse to ensure adequate illumination for daytime

and nighttime operations. There shall be at least 30 foot-candles of illumination in all working areas of the milkhouse. Artificial lights located over a bulk tank shall be shatterproof, or effectively shielded to protect milk from contamination from broken glass.

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

(f) *Water heating capacity.* Hot water capacity shall be adequate for all milkhouse operations. Hot water heaters or hot water supply systems shall have a capacity of at least 10 gallons for washing equipment and utensils. The department may authorize alternative systems, including heat recovery and continuous flow systems, that provide adequate hot water for all milkhouse operations. Authorization shall be in writing.

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

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

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

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

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

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

(4) STORAGE. (a) *General.* No equipment, supplies or other articles may be stored in a milkhouse, unless the articles are used

in milkhouse operations. Articles stored in a milkhouse shall be stored above the floor, on racks or in a cabinet. Articles shall be stored in a manner that prevents contamination of milk, and equipment and utensils coming in contact with milk.

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

(c) *Pesticides.* No pesticides, except for sanitizers, germicides, disinfectants and other pesticides labeled and used for routine milkhouse sanitation purposes, may be stored in a milkhouse. If pesticides are kept in a milkhouse, they shall be stored in a manner that precludes contamination of milk and milk handling equipment.

History: Cr. Register, July, 1989, No. 403, eff. 8-1-89; am. (2) (f) and (h), (4) (b), Register, June, 1992, No. 438, eff. 7-1-92; CR 01-125: am. (1), (2) (d) and (f), Register December 2002 No. 564, eff. 1-1-03; **CR 07-006: am. (4) (a) and (c), Register January 2008 No. 625, eff. 2-1-08.**

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

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

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

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

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

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

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

1. Biennially sample the producer's water supply.
2. Sample the producer's water supply whenever the producer installs, alters or repairs the water supply system.
3. Sample any transported water supply used by the milk producer at the point of use, at or prior to first use and monthly thereafter.
4. Have each water sample under this paragraph analyzed at a laboratory that is certified under ch. ATCP 77 to perform water

quality analyses. The laboratory shall analyze the water samples for compliance with the health-related drinking water standards under s. NR 809.30. The dairy plant operator shall submit each water quality test result to the department within 30 days after the dairy plant receives the laboratory report. If the analysis of any water sample indicates that the water supply of a dairy farm may be unsafe, the dairy plant operator, within 3 business days of receiving the analysis, shall report the test result to the department and resample and test the water supply.

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

1. The recirculated water originates from a safe source that complies with ch. NR 811 or 812.
2. The recirculated water is bacteriologically safe at all times.
3. The recirculated water is protected from contamination.
4. The coolant used in the water recirculation system is food or pharmaceutical grade, is non-toxic, and meets the specifications in 21 CFR 184.1666. The dairy plant operator shall test the coolant semi-annually for coliform.
5. The dairy plant operator who procures milk from the milk producer tests the recirculated water for bacterial contamination at least semi-annually.

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

1. The producer eliminates the contamination source and treats the recirculated water.
2. The dairy plant operator who procures milk from the milk producer retests the recirculated water to determine whether the contamination is eliminated.
3. Retesting shows that the recirculated water complies with the bacteriological standards under par. (c).

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

1. The most probable number (MPN) of coliform organisms shall be less than 1.1 per 100 ml. using the multiple tube fermentation technique, or less than 1 per 100 ml. using the membrane filter technique.
2. Bacteriological testing using the membrane filter technique shall show not more than 200 total bacteriological colonies per 100 ml.
3. Bacteriological testing using a heterotrophic plate count shall show not more than 500 colonies per ml.

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

1. The water is stored in a vessel that is constructed of non-contaminating material and is designed to protect the water supply from contamination. The storage vessel shall have a drain and access point that allow for cleaning.
2. There is no cross-connection between the potable re-used water and any potential contamination source or potentially unsafe water supply.
3. There are no submerged inlets through which the potable re-used water may be contaminated.
4. The water is of satisfactory organoleptic quality and has no off-flavors or odors.
5. The water complies with the health-related drinking water standards in s. NR 809.30.
6. The dairy plant operator who procures milk from the milk producer collects and analyzes samples of the re-used water supply. The dairy plant operator shall collect and analyze samples

before the milk producer first uses the water for milking operations, and at least semi-annually thereafter.

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

8. Sanitizers used to sanitize equipment, utensils, backflush systems, or teats of milking animals are chemical sanitizers that are approved by the Wisconsin department of health and family services, under s. HFS 196, App. 7-204.11, for use on food contact surfaces. An approved sanitizer may be added by an automatic proportioning device that is located downstream from the storage vessel but upstream from the end-use application of the sanitizer.

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

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

1. The water is collected directly from the plate heat exchanger into the wash vat or utensil sink.
2. The water piping system complies with s. ATCP 60.08 (2).
3. Following pre-rinse use, the water is discharged to waste.

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

History: Cr. Register, July, 1989, No. 403, eff. 8-1-89; correction made under s. 13.93 (2m) (b) 1. and 7., Stats., Register, June, 1992, No. 438, eff. 7-1-92; correction in (2) and (3) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 1999, No. 520; CR 01-125: am. (5), cr. (6), Register December 2002 No. 564, eff. 1-1-03; CR 07-006: r. and recr. (5) and (6) (a) 4., am. (6) (a) 5. and (b) 2., cr. (7), Register January 2008 No. 625, eff. 2-1-08.

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

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

- (a) Stainless steel of the American Iron and Steel Institute 300 Series, or an equally corrosion-resistant metal.
- (b) Heat resistant glass.
- (c) Plastic, rubber or rubber-like materials which are fat resistant and insoluble; which are resistant to scratching, scoring, decomposition, crazing, chipping and distortion under normal use conditions; which do not impart chemicals, flavor or odor to milk; and which maintain their original properties under repeat use conditions.

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

(4) CLEANING. Equipment and utensils shall be kept clean. Utensils and milk contact surfaces of equipment shall be rinsed immediately after each use, and then washed with an effective

detergent and rinsed clean. C-I-P equipment shall be pre-washed with warm water before being cleaned with a detergent solution, according to manufacturer's instructions.

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

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

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

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

History: Cr. Register, July, 1989, No. 403, eff. 8-1-89; renum. (2) to (6) to be (3) to (7), cr. (2), Register, June, 1992, No. 438, eff. 7-1-92; CR 01-125: am. (1) and (4), Register December 2002 No. 564, eff. 1-1-03.

ATCP 60.10 Milking and milk handling systems.

(1) **SANITARY REQUIREMENTS; GENERAL.** Milking and milk handling systems shall be of sanitary design and construction, and shall be installed and maintained for sanitary operation. Pressurized air that contacts a milk or milk contact surface shall be clean, safe and free of contaminants. The system used to generate and supply pressurized air shall comply with "3-A Accepted Practices for the Design, Fabrication and Installation of Milking and Milk Handling Equipment," 606-05. Milk contact surfaces shall be accessible for inspection. If it is necessary to disassemble any portion of a milking or milk handling system in order to inspect a milk contact surface, all tools needed for the disassembly shall be readily available in the milkhouse.

Note: Guidelines for sanitary design and construction of milking and milk handling systems are set forth in the "3-A Accepted Practices for the Design, Fabrication and Installation of Milking and Milk Handling Equipment," 606-05, as amended effective November 2002, published by 3-A Sanitary Standards, Inc., 1451 Dolley Madison Boulevard, Suite 210, McLean, VA 22101-3850, telephone (703) 790-0295, website www.3-a.org. Milking and milk handling systems manufactured in compliance with the "3-A Accepted Practices" meet the sanitary design and construction requirements of this subsection. Copies of the "3-A Accepted Practices" are on file with the department and the legislative reference bureau. Copies may be obtained from 3-A Sanitary Standards, Inc. Online Store," at <http://www.techstreet.com>.

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

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

(b) Heat resistant glass; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: Cr. Register, July, 1989, No. 403, eff. 8-1-89; r. and recr. (6) (a), Register, June, 1992, No. 438, eff. 7-1-92; **CR 07-006: am. (1), (4), (6) (a), and (7), Register January 2008 No. 625, eff. 2-1-08.**

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

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

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

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

(c) A bulk tank shall be equipped with all of the following:

1. An indicating thermometer that has a range of at least 32° F. to 80° F.

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

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

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

Note: Bulk tanks manufactured in compliance with the "3-A Sanitary Standards for Farm Milk Cooling and Holding Tanks" meet the sanitary design and construction requirements of this subsection. The "3-A Standards" are published by 3-A Sanitary Standards, Inc., 1451 Dolley Madison Boulevard, Suite 210, McLean, VA 22101-3850, telephone (703) 790-0295, website www.3-a.org. Copies of the "3-A Standards" as amended effective November 16, 2003, are on file with the department

and the legislative reference bureau. Copies may be obtained from "3-A Sanitary Standards, Inc., Online Store," at <http://www.techstreet.com>.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Tests the bulk shipment for drug residues according to s. ATCP 60.19 (2).

2. Ensures that a person licensed under s. 97.17 or 98.146, Stats., has collected a sample from the bulk shipment according to s. ATCP 82.12.

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

History: Cr. Register, July, 1989, No. 403, eff. 8-1-89; CR 01-125: am. (2) (c), cr. (4), Register December 2002 No. 564, eff. 1-1-03; CR 04-005: r. and recr. (2) (c) and (4) (h) Register October 2004 No. 586, eff. 11-1-04; CR 07-006: r. and recr. (2) (c) 2. and (4) (h) and (k), cr. (2m) and (4) hm), am. (4) (g) and (j), r. (4) (L), Register January 2008 No. 625, eff. 2-1-08.

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

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

(3) PERSONNEL; CLEANLINESS. Milkers and milk handlers shall wash and dry their hands before engaging in milking or milk handling operations, and before resuming operations after engaging

in other activities. Outer garments worn by milkers and milk handlers shall not be soiled to the extent that they might contaminate milk, milk contact surfaces, or the hands of a milker or milk handler. No person may engage in milking or milk handling operations if that person is infected with a communicable disease which is transmissible to others as a result of the milking or milking handling operations.

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

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

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

(6) COMMINGLING OF MILK FROM DIFFERENT MILKING SPECIES PROHIBITED. A milk producer may not commingle milk from one species of milking animal with the milk of another species of milking animal.

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

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

History: Cr. Register, July, 1989, No. 403, eff. 8-1-89; CR 01-125: am. (1), (2) and (6), cr. (7), Register December 2002 No. 564, eff. 1-1-03; CR 07-006: am. (1), (2) and (6), Register January 2008 No. 625, eff. 2-1-08.

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

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

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

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

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

History: Cr. Register, July, 1989, No. 403, eff. 8-1-89; am. (4), Register, December, 1990, No. 420, eff. 1-1-91; r. (4), Register, June, 1991, No. 426, eff. 7-1-91; am. (6), Register, June, 1992, No. 438, eff. 7-1-92; CR 01-125: am. (1) and (2), Register December 2002 No. 564, eff. 1-1-03; CR 07-006: am. (1), (2) and (6), Register January 2008 No. 625, eff. 2-1-08.

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

(2) MANURE STORAGE AND DISPOSAL. Manure shall be removed and stored in a manner which inhibits the breeding of flies. No milking animals may have access to a manure storage

area. This does not prohibit a cold weather manure pack in a cowyard if the manure pack is properly maintained to prevent excessive accumulations of manure on the udders and flanks of milking animals.

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

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

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

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

(b) Toilets under par. (a) shall comply with chs. Comm 62 and NR 812. Toilets shall be kept in clean and sanitary condition.

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

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

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

History: Cr. Register, July, 1989, No. 403, eff. 8-1-89; cr. (8), Register, June, 1992, No. 438, eff. 7-1-92; CR 01-125: r. and recr. (6), Register December 2002 No. 564, eff. 1-1-03; corrections in (6) (b) made under s. 13.93 (2m) (b) 7., Stats., Register December 2002 No. 564; CR 07-006: am. (2), (3) and (4), Register January 2008 No. 625, eff. 2-1-08.

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

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

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

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

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

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

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

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

History: Cr. Register, July, 1989, No. 403, eff. 8-1-89; am. (4), Register, June, 1991, No. 426, eff. 7-1-01; am. (3), Register, June, 1992, No. 438, eff. 7-1-92; CR 01-125: am. (2) and (4), Register, December 2002 No. 564, eff. 1-1-03; correction in (4) made under s. 13.93 (2m) (b) 7., Stats., Register December 2002 No. 564; CR 07-006: am. (4) Register January 2008 No. 625, eff. 2-1-08.

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

History: Cr. Register, July, 1989, No. 403, eff. 8-1-89; CR 07-006: am. Register January 2008 No. 625, eff. 2-1-08.

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

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

(2m) SAMPLE COLLECTED FROM BULK TRANSPORT CONTAINER. A person who receives a bulk transport container at a dairy plant shall collect the milk sample under sub. (1) for the dairy plant operator. The person shall collect the sample according to s. ATCP 82.12 and shall promptly deliver the sample to the dairy plant operator, or to a milk testing laboratory designated by the dairy plant operator.

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

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

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

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

History: Cr. Register, July, 1989, No. 403, eff. 8-1-89; am. Register, November, 1994, No. 467, eff. 12-1-94; CR 01-125: r. and recr. Register December 2002 No. 564, eff. 1-1-03; CR 07-006: cr. (2m), am. (3) (b), Register January 2008 No. 625, eff. 2-1-08.

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

(2) NEW MILK PRODUCER; INITIAL TESTING. A dairy plant operator shall perform a standard plate count (SPC) or plate loop count (PLC) on a milk sample collected from a milk producer's first milk shipment to that operator. The operator shall report the test result to the department and the milk producer within 7 days after the operator obtains the test result.

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

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

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

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

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

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

(b) Perform a confirmatory bacteriological test on at least one more sample of milk collected from the milk producer's dairy farm. The operator shall collect the confirmatory sample within 7 days after the date on which the operator collected the original sample. The operator shall report the confirmatory test result to the department and the milk producer within 3 business days after the operator obtains the test result.

(c) Reject milk shipments from the dairy farm if the confirmatory test under par. (b) shows a bacterial count still in excess of

750,000 per ml. The milk producer may not ship milk from the dairy farm to any dairy plant until a dairy plant operator conducts another test and finds that milk from the farm no longer has a bacterial count in excess of 750,000 per ml.

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

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

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

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

(8) ELECTRONIC REPORTING. Beginning not later than January 1, 2004, a dairy plant operator or laboratory shall report test results under this section in an electronic form approved by the department.

History: Cr. Register, July, 1989, No. 403, eff. 8-1-89; am. (1), (2), (3) and (5), Register, June, 1992, No. 438, eff. 7-1-92; CR 01-125: r. and recr. Register December 2002 No. 564, eff. 1-1-03; CR 07-006: am. (1), (3), (5) (intro.) and (b), Register January 2008 No. 625, eff. 2-1-08.

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

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

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

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

2. The department may issue a periodic written notice to dairy plant operators, requiring dairy plant operators to perform random tests under subd. 1. for drug residues specified in the department's notice. The department shall issue the same notice to every dairy

plant licensed by the department. The notice shall specify the effective date of the random testing requirements and the period of time during which the random testing requirements remain in effect.

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

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

(3) DRUG RESIDUE FOUND IN BULK LOAD; FOLLOW-UP TESTING. If a bulk load of milk tests positive for a drug residue under sub. (2), the dairy plant operator shall perform a drug residue test on each of the individual milk producer samples collected for that bulk load under s. ATCP 60.17. The dairy plant operator shall test each producer sample before collecting any further milk from that producer. The drug residue test performed on each producer sample shall be sensitive to the same drug residue that was detected in the bulk load. If a producer sample tests positive for any drug residue, the dairy plant operator shall perform a confirmatory test using the same test method and sample. The dairy plant operator shall perform the confirmatory test in duplicate, with single positive and negative controls. If either confirmatory test result is positive for a drug residue, the milk producer's sample is considered positive for that drug residue.

(4) DRUG RESIDUE FOUND IN BULK LOAD; LOAD REJECTED. If a bulk load of milk from one or more producers tests positive for a drug residue under sub. (2), the dairy plant operator shall reject the entire bulk load. Milk from a rejected bulk load may not be used for human food. The dairy plant operator shall denature or take responsibility for disposing of the rejected bulk load in a manner that precludes its use for human food.

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

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

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

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

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

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

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

(g) *Hearing request.* If a producer contests the validity of a dairy plant operator's recovery under this subsection, and if the parties do not resolve the matter after meeting under par. (f), the producer may request a hearing before the department. A request for hearing does not automatically stay a recovery under this subsection.

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

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

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

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

1. A sample of the producer's milk under sub. (1) tests positive for a drug residue.
2. A sample of the producer's milk under sub. (3) tests positive for a drug residue.
3. A sample of the producer's milk tests positive for a drug residue after that milk has been commingled with milk from other producers, regardless of whether the drug residue test is required under this chapter.

(b) *Producer milk rejected.* If a dairy plant operator is required to reject producer milk shipments under par. (a), the dairy plant

operator shall reject all milk produced on that dairy farm until a sample of that milk tests negative for drug residues on the same or an equivalent test, at a laboratory that is certified under s. ATCP 77.03 (2) (c) to perform confirmatory tests.

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

1. Ship, collect or use that milk for human food.
2. Commingle that milk with milk from any other producer.

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

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

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

1. A milk producer sample under sub. (1) tests positive for a drug residue.
2. A milk producer sample under sub. (3) tests positive for a drug residue.
3. A sample of a producer's milk tests positive for a drug residue after that milk has been commingled with milk from other producers, regardless of whether the drug residue test is required under this chapter.

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

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

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

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

Drug	Action Level (ppb)
Ampicillin	10
Amoxicillin	10

Cephapirin	20
Ceftiofur	100
Cloxacillin	10
Neomycin	150
Novobiocin	100
Penicillin G	5
Sulfadimethoxine	10
Tylosin	50
Erythromycin*	50
Gentamicin*	30
Dihydrostreptomycin*	125
Sulfachloropyridazine*	10
Sulfadiazine*	10
Sulfamerazine*	10
Sulfamethazine*	10
Sulfamethizole*	10
Sulfanilamide*	10
Sulfapyridine*	10
Sulfaquinoxaline*	10
Sulfathiazole*	10
Tetracyclines*	300

Note: Action levels specified under this paragraph are based on tolerances or "safe levels" specified by the United States food and drug administration, and identified in a memorandum from FDA's Milk Safety Branch, M-1-05-5, September 27, 2005. A copy of the memorandum is on file with the department, and is available upon request.

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

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

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

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

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

History: Cr. Register, July, 1989, No. 403, eff. 8-1-89; r. and recr., Register, June, 1992, No. 438, eff. 7-1-92; am. (5) (d) and (f), Register, November, 1994, No. 467, eff. 12-1-94; emerg. am. (3) and (4), eff. 4-30-99; am. (3) and (4), Register, December, 1999, No. 528, eff. 1-1-00; CR 01-125: cr. (11), Register December 2002 No. 564, eff. 1-1-03; **CR 07-006: am. (6) (b) and (d) and (10) (b), cr. (12), Register January 2008 No. 625, eff. 2-1-08.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: Cr. Register, July, 1989, No. 403, eff. 8-1-89; am. (1), (2), (3) and (5), Register, June, 1992, No. 438, eff. 7-1-92; am. (1), (2m) and (3), Register, November, 1994, No. 467, eff. 12-1-94; CR 01-125: r. and recr. Register December 2002 No. 564, eff. 1-1-03; CR 07-006: am. (1), (2), (3), (4), (6) (intro.), (b) and (c), Register January 2008 No. 625, eff. 2-1-08.

ATCP 60.21 Sediment testing. **History:** Cr. Register, July, 1989, No. 403, eff. 8-1-89; CR 07-006: r. Register January 2008 No. 625, eff. 2-1-08.

ATCP 60.22 Certified testers; test methods; reporting. (1) **CERTIFIED LABORATORIES.** (a) Except as provided in par. (b), no laboratory may perform a milk test under ss. ATCP 60.18

to 60.20 unless the laboratory operator is currently certified by the department under s. ATCP 77.03 to perform that test at that laboratory.

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

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

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

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

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

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

(3) **TEST METHODS.** Milk testing under ss. ATCP 60.18 to 60.20 shall use test methods prescribed in the applicable FDA 2400 series laboratory evaluation forms, published by the United States department of health and human services, public health service, food and drug administration, which are in effect on February 1, 2008. If no FDA form applies, testing shall be conducted according to methods prescribed in the "Standard Methods for the Examination of Dairy Products," 17th Edition (2004), or in "Official Methods of Analysis of AOAC International," 18th Edition (2005).

Note: Copies of the FDA 2400 series laboratory evaluation forms in effect on February 1, 2008, are on file with the department and the legislative reference bureau. To find out how to obtain a copy of these forms, you may contact the department at the following address:

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

The American Public Health Association's "Standard Methods for the Examination of Dairy Products," 17th Edition (2004), is on file with the department and the legislative reference bureau and may be obtained from the American Public Health Association, Inc., 800 I Street, NW, Washington, D.C. 20001, telephone 202-777-2742, website www.apha.org.

The "Official Methods of Analysis of AOAC International," 18th Edition (2005), is on file with the department and the legislative reference bureau and may be obtained from AOAC International, 481 N. Frederick Avenue, Suite 500, Gaithersburg, MD 20877-2417, telephone 800-379-2622, website www.aoc.org.

History: Cr. Register, July, 1989, No. 403, eff. 8-1-89; r. and recr. (1), Register June, 1992, No. 438, eff. 7-1-92; correction in (1) (a) made under s. 13.93, (2m) (b) 7., Stats., Register, November, 1994, No. 467; correction in (1) (a) made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, April, 1999, No. 520; CR 01-125: r. and recr. (1), r. (1) (c), am. (2), Register December 2002 No. 564, eff. 1-1-03; CR 07-006: r. and recr., Register January 2008 No. 625, eff. 2-1-08.

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

at a temperature of 40° F or below until it is transferred to the custody of the department.

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

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

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

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

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

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

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

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

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

History: CR 07-006: cr. Register January 2008 No. 625, eff. 2-1-08.

Subchapter V — Inspection and Enforcement

ATCP 60.24 Inspection of dairy farms; general.

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

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

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

History: Cr. Register, July, 1989, No. 403, eff. 8-1-89; am. (1) and (2), Register, June, 1992, No. 438, eff. 7-1-92; emerg. renum. (2) to be (2) (a), cr. (2) (b), eff. 12-21-93; renum. (2) to be (2) (a), and am., cr. (2) (b), r. and recr. (3), Register, November, 1994, No. 467, eff. 12-1-94; CR 01-125: r. and recr. (2), am. (3), Register December 2002 No. 564, eff. 1-1-03.

ATCP 60.245 Performance-based grade A dairy farm inspections. The department shall use the performance standards in this section to determine grade A dairy farm inspec-

tion frequency. The department shall evaluate each grade A dairy farm every 3 months, based on inspection reports, milk quality tests and department compliance actions during the preceding 12 months. Based on the evaluation, the department shall place each dairy farm in one of the following categories:

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

(a) None of the producer's standard plate counts (SPC) exceed 25,000 per ml., except that one SPC may exceed 25,000 per ml. if it is not more than 100,000 per ml.

(b) None of the producer's somatic cell counts (SCC) exceed 500,000 per ml.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: CR 01-125: r. and recr. Register December 2002 No. 564, eff. 1-1-03; CR 04-005: am. (1) (a) and (b) Register October 2004 No. 586, eff. 11-1-04; CR 07-006: cr. (1) (g) and (2) (g), renum. (2) (e) to (g) to be (d) to (f), am. (3), r. and recr. (4), Register January 2008 No. 625, eff. 2-1-08.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ATCP 60.26 Suspension or revocation of grade A farm permit; general. The department may suspend or revoke

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

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

History: Cr. Register, July, 1989, No. 403, eff. 8-1-89; am. Register, June, 1992, No. 438, eff. 7-1-92; CR 01-125: am. Register December 2002 No. 564, eff. 1-1-03.

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

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

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

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

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

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

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

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

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

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

Note: This subsection does not prohibit the food safety division from summarily suspending a milk producer's license and grade A permit under s. ATCP 60.25, with-

out prior warning, if the division determines that any of the circumstances identified under s. ATCP 60.25 (2) exist.

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

(6) **REINSTATEMENT OF PERMIT.** (a) A milk producer may ask the department to reinstate a grade A farm permit suspended under sub. (4). The producer shall make the request in writing, on a form provided by the department under s. ATCP 60.29 (4). The request shall include the result of a milk quality test, performed by the dairy plant operator on a milk sample collected after the effective date of the suspension, showing that the milk producer is no longer violating the relevant milk quality standard.

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

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

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

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

History: Cr. Register, July, 1989, No. 403, eff. 8-1-89; am. (3), Register, June, 1992, No. 438, eff. 7-1-92; CR 01-125: am. (1), (4), (6) (a); renum. (6) (b) to be (c), cr. (6) (b), Register December 2002 No. 564, eff. 1-1-03; **CR 07-006: am. (1) (b) and (4) (b), cr. (1) (c) and (4) (c), Register January 2008 No. 625, eff. 2-1-08.**

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

1. A description of the positive drug residue findings which caused the department to issue the notice.
2. The warnings specified in pars. (b) and (c).
3. Notice of the producer's right to hearing under par. (d).
4. Notice that the division or its agent will conduct an investigation under sub. (4).

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

(c) *Dairy farm license suspension; 45-day notice.* The warning notice under par. (a) shall state that, 45 days after the effective date of the warning notice, the food safety division will initiate action to suspend the producer's dairy farm license unless, prior

to that date, the producer certifies to the division that the producer has implemented a drug residue prevention program on the producer's dairy farm in consultation with a licensed veterinarian.

Note: The drug residue prevention program under this section should conform to the "Milk and Dairy Beef Quality Assurance Program" published by Agri-Education, Inc. A copy of that manual is on file with the department and the legislative reference bureau and may be obtained from the Milk & Dairy Beef Quality Assurance Center, 801 Shakespeare Avenue, Stratford, Iowa, 50249, telephone 800-553-2479, website www.dqacenter.org/catalog.htm.

(d) *Right to informal hearing.* If a producer receiving a warning notice under par. (a) disputes the drug residue findings on which the notice is based, the producer may request an informal hearing to discuss the drug residue findings. A request for hearing does not automatically stay the warning notice. If the producer requests an informal hearing, the food safety division shall hold an informal hearing at the division's nearest regional office or by telephone. The division shall hold the informal hearing within 10 business days after the division receives the request for hearing, unless the producer agrees to a later hearing date. The division may withdraw a warning notice if it appears that the notice was not justified.

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

(b) *Permit reinstatement.* 1. If the department suspends a milk producer's grade A dairy farm permit under par. (a), the producer may ask the food safety division to reinstate the permit. The producer shall file the reinstatement request in writing, on a form provided by the department under s. ATCP 60.29 (4). The request shall certify that the producer has implemented a drug residue prevention program on the producer's dairy farm in consultation with a licensed veterinarian.

2. Within 7 days after the department receives a complete reinstatement request under subd. 1., the department shall inspect the producer's dairy farm. The department shall charge a reinspection fee for the inspection, pursuant to s. ATCP 60.04. If, upon inspection, it appears that all conditions potentially responsible for the positive drug residue finding have been corrected, the inspector shall reinstate the producer's grade A farm permit, and shall notify the dairy plant of the reinstatement.

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

(3) **LICENSE SUSPENSION.** License suspension; failure to implement drug residue prevention program. If the food safety division does not receive a producer certification within the 45-day period specified under sub. (1) (c), the division shall file a complaint asking the department to suspend the producer's dairy farm license until the producer implements a drug residue prevention program.

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

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

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

History: Cr. Register, June, 1992, No. 438, eff. 7-1-92; CR 01-125: am. (1) (a) (intro.), (b) to (d), (2) (a), (b) 1. and (3), Register December 2002 No. 564, eff. 1-1-03; **CR 07-006: cr. (1) (a) 4. and (4), Register January 2008 No. 625, eff. 2-1-08.**

ATCP 60.28 Violation of grade A farm standards; suspension of grade A farm permit by food division.

(1) WARNING NOTICE. If a food safety division inspector finds a key violation on a grade A dairy farm, the inspector may issue a warning notice to the producer. The warning notice shall state that the department will suspend the producer's grade A permit if the producer does not correct the violation by a deadline date specified in the notice. The inspector shall specify a correction deadline based on the seriousness of the key violation and the time reasonably required to correct the key violation. The correction deadline shall be not less than 3 days nor more than 60 days after the inspector issues the warning notice. The inspector shall serve the warning notice in person or by mail, or shall prominently post the notice in the milkhouse. The inspector shall mail or deliver a copy of the warning notice to the dairy plant operator. The warning notice shall include a notice of the producer's right to hearing under s. ATCP 60.31.

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

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

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

if the suspension of the producer's grade A permit has been contested, and the contested case proceedings are still pending.

Note: Subsection (3) does not prohibit the food safety division from summarily suspending a milk producer's license and grade A permit under s. ATCP 60.25 without prior warning if the food division determines that any of the circumstances identified under s. ATCP 60.25 (2) exist.

History: Cr. Register, July, 1989, No. 403, eff. 8-1-89; CR 01-125: am. (1) and (2); Register December 2002 No. 564, eff. 1-1-03.

ATCP 60.29 Suspension notice; requirements.

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

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

(a) The food safety division administrator.

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

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

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

(3) TERM OF SUSPENSION; REINSTATEMENT REQUIREMENT. A suspension notice shall indicate the term of the suspension or, if the suspension is for an indefinite term, the conditions that the producer must meet in order to obtain reinstatement of the license or grade A permit. Conditions for reinstatement shall be reasonably related to the reasons for which the license or permit is suspended. A summary license suspension notice under s. ATCP 60.25 (2), may authorize a dairy plant operator to receive milk from the suspended producer on a conditional basis, pending full reinstatement of the producer's license, provided that the operator performs specified inspections or tests.

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

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

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

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

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

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

(7) COPY PROVIDED TO DAIRY PLANT OPERATOR. A copy of every suspension notice shall be mailed or delivered to the dairy plant operator who normally receives milk from the milk pro-

ducer. Failure to mail or deliver a copy to the dairy plant operator does not invalidate a suspension notice.

History: Cr. Register, July, 1989, No. 403, eff. 8-1-89; CR 01-125: am. (intro.) and (3), r. and recr (1), Register December 2002 No. 564, eff. 1-1-03.

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

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

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

History: Cr. Register, July, 1989, No. 403, eff. 8-1-89; CR 01-125: am. (1) and (2), Register, December 2002 No. 564, eff. 1-1-03.

ATCP 60.31 Right of hearing. (1) **HEARING REQUEST.** A person adversely affected by any of the following food safety division actions may ask the department to hold a hearing on that action:

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

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

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

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

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

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

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

(3) **INFORMAL HEARING.** (a) Whenever the department receives a hearing request under sub. (2), the department shall conduct a prompt informal hearing on the contested action. The hearing shall be conducted by a department employee or official who was not personally involved in the investigation or decision to take the contested action, and who has authority to withdraw or correct the action as necessary. The food safety division shall conduct the informal hearing unless the contested action was taken by the division administrator. The department shall hold the informal hearing within 10 business days after it receives the hearing request under sub. (2), unless the person requesting the hearing agrees to a later date. The department shall hold the informal hearing by telephone or at the department's regional office.

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

(4) **FULL EVIDENTIARY HEARING.** If a person adversely affected by a food safety division action files a timely written request for hearing under subs. (1) and (2), and if the matter is not resolved by an informal hearing under sub. (3), the person may request a full evidentiary hearing before the department, pursuant to ch. 227, Stats., and ch. ATCP 1. The person shall make the hearing request within 10 days after the officer presiding at the informal hearing issues the written memorandum under sub. (3) (b) summarizing that informal hearing. A full evidentiary hearing, if any, shall be held before an administrative law judge appointed by the secretary. A request for a full evidentiary hearing does not stay any action under this chapter.

History: Cr. Register, July, 1989, No. 403, eff. 8-1-89; r. Register, November, 1994, No. 467, eff. 12-1-94; CR 01-125: am. (1) (intro.) and (2) to (4), Register December 2002 No. 564, eff. 1-1-03; CR 07-006: am. (4), Register January 2008 No. 625, eff. 2-1-08.