

~~DATCP Docket No. 03-R-02 Clearinghouse Rule 04-005~~  
~~Proposed Hearing Draft~~  
DATCP Docket No. 03-R-02  
November 17, 2003

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

1 The state of Wisconsin department of agriculture, trade and consumer protection ~~proposes~~ adopts  
2 the following order to repeal ATCP 80.01(2) and 92.20(3)(d)(note); to amend ATCP  
3 10.21(11)(c)(intro.), 12.01(17)(~~intro.~~), 42.06(3), 42.16(1)(b) and (2)(b), 42.40(4)(b), 42.44(6)(a),  
4 42.54(1)(a), 50.40(9)(L)1., 60.245(1)(a) and (b), ch. ATCP 74(title), 80.16(2)(g), 80.28(1)(b)1.,  
5 80.50(2)(e), (2)(f) and (3)(d), 80.62(1)(a)(intro.) and (c), 92.02(1), 92.02(3)(c), 92.06(1)(a) ~~and~~  
6 ~~(b)~~ and (2), 92.20(3)(d), 92.22(1)(b) and (note), 118.02(2) and 140.40; to repeal and recreate  
7 ATCP 10.21(15)(b), 50.01(31), 60.11(2)(c) and (4)(h), 80.04(6), ch. ATCP 80 Appendix A, and  
8 ch. ATCP 162; and to create ATCP 10.21(15)(bm) and 134.06 (note); relating to technical  
9 changes to current rules, including current rules related to Johne's disease test cost  
10 reimbursement, commercial feed, dairy farms, dairy plants, weights and measures, direct  
11 marketing, and the farm mediation and arbitration program.

---

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

Statutory Authority: ss. 93.07(1), 92.05(3)(c), 92.14(8), 93.50(2)(f),  
94.72(13)(a), 95.197(2), 95.71(8), 97.09(4), 97.20(4),  
97.22(8), 97.41(2) and (5), 98.03(2) and 98.18(2), Stats.

Statutes Interpreted: ss. 92.05, 92.14, 94.72, 95.197, 95.71, 97.20, 97.22, 97.41,  
98.03, 98.18 and 93.50, Stats.

This rule makes minor technical changes to a number of rules administered by the department of agriculture, trade and consumer protection ("DATCP"). This rule does all of the following:

- Changes current DATCP procedures for reimbursing Johne's disease testing costs. This technical change will make it easier for farmers to obtain reimbursement of testing costs.
- Updates technical standards that are incorporated by reference in current feed rules (ch. ATCP 42, Wis. Adm. Code). The updates refer to the latest edition (2004) of the official publication of the Association of American Feed Control Officials. Pursuant to s. 227.21, Stats., DATCP ~~will request~~has requested permission from the Attorney General and the Revisor of Statutes to incorporate the updated technical standards by reference.
- Updates and corrects technical standards that are incorporated by reference in current rules related to soil and water conservation (ch. ATCP 50, Wis. Adm. Code). This rule incorporates the latest release of version 2 of the revised universal soil loss equation ("RUSLE 2 equation") published by the Natural Resource Conservation Service of the United States Department of Agriculture. Pursuant to s. 227.21, Stats., DATCP has requested permission from the Attorney General and the Revisor of Statutes to incorporate the updated technical standards by reference. This rule also clarifies that prior versions of RUSLE 2 used for compliance determinations prior to the effective date of this rule are also legally ~~valid~~acceptable for that purpose.
- Changes current dairy plant rules (ch. ATCP 80, Wis. Adm. Code) to reflect the fact that DATCP, rather than the Department of Health and Family Services (DHFS), is now responsible for all of the following:
  - Certifying dairy laboratories, and approving analysts to perform drug residue tests on milk. See ch. ATCP 77, Wis. Adm. Code. The Legislature transferred this function from DHFS to DATCP (1995 Wis. Act. 27).
  - Performing grade A milk certification audits for purposes of grade A interstate milk shipments. The Legislature transferred this function from DHFS to DATCP (2003 Wis. Act 33).
- Changes current dairy farm and dairy plant rules (chs. ATCP 60 and 80, Wis. Adm. Code) to make the rules consistent with current federal standards. This includes minor technical changes related to thermometers, pasteurization procedures, and multi-use plastic retail containers. This rule also updates technical standards incorporated by reference in the dairy plant rules (ATCP 80 Appendix A). The updates refer to the latest editions of 3-A Sanitary Standards and Accepted Practices published jointly by the International Association of Milk, Food and Environmental Sanitarians, Inc. and the United States Food and Drug Administration. Pursuant to s. 227.21, Stats., DATCP ~~will request~~has requested permission from the Attorney General and the Revisor of Statutes to incorporate the updated technical standards by reference.

Formatted: Bullets and Numbering

- Updates technical standards that are incorporated by reference in current weights and measures rules (ch. ATCP 92, Wis. Adm. Code). The updates refer to the latest editions (2004) of current weights and measures handbooks published by the National Institute of Standards and Technology. Pursuant to s. 227.21, Stats., DATCP ~~will~~has requested permission from the Attorney General and the Revisor of Statutes to incorporate the updated technical standards by reference.

- Allows car rental companies that sell damage waivers to keep company copies of required consumer disclosure forms, signed by consumers, ~~damage waivers in electronic rather than hard-copy form~~. Current rules require companies to give written disclosures to consumers, obtain consumer signatures on the disclosures, give consumers hard-copies, and keep company copies for 6 years (at least 3 years in hard copy form). This rule does not change current requirements, except that it allows companies to keep their copies from the beginning in electronic form (they no longer have to keep hard copies for 3 years). ~~Current rules require the companies to keep hand copies for at least 3 years.~~

Formatted: Bullets and Numbering

- Clarifies, for purposes of DATCP landlord-tenant rules, that landlord notices delivered to residential tenants by means of private courier services have the same effect as notices delivered by the U.S. Mail (ch. ATCP 134, Wis. Adm. Code). DATCP made this change at the invitation of the Wisconsin Court of Appeals, in order to reconcile conflicting court decisions.

Formatted: Bullets and Numbering

- Repeals and recreates current farm mediation and arbitration rules (ch. ATCP 162, Wis. Adm. Code). The farm mediation and arbitration board, which was attached to DATCP for administrative purposes, originally adopted the current rules to govern the farm mediation and arbitration program under s. 93.50, Stats. However, the legislature subsequently abolished the farm mediation and arbitration board, transferred the program to DATCP, and expanded the scope of the program. This rule repeals the current rules and recreates them as DATCP rules. This rule also makes minor modifications to the current rules, to reflect statutory changes in the program and to reflect current policies and practices.
- Corrects typographical errors and cross-references, and makes other non-substantive drafting and organizational changes to current rules.

#### Fiscal Estimate

This rule will have no fiscal effect on the department or local units of government. A fiscal estimate is attached.

#### Business Impact

This rule will have no significant effects on businesses. This rule merely clarifies current rule provisions, or conforms those provisions to current law.

1           **SECTION 1.** ATCP 10.21(11)(c)(intro.) is amended to read:

2           ATCP 10.21(11)(c)(intro.) Within ~~30~~ 45 days after an animal is determined to be a  
3 reactor under sub. (9)(a) or (c), a certified veterinarian shall do one of the following:

4           **SECTION 2.** ATCP 10.21(15)(b) is repealed and recreated to read:

5           ATCP 10.21(15)(b) *Filing a reimbursement claim.* A herd owner shall file a  
6 reimbursement claim under par. (a) on a form provided by the department. The herd owner shall  
7 submit copies of bills from the veterinarian or laboratory that establish the amount of laboratory  
8 test costs that the herd owner incurred.

9           **SECTION 3.** Section ATCP 10.21(15)(bm) is created to read:

10           ATCP 10.21(15)(bm) *Payments authorized; priority.* Subject to the availability of  
11 funds, the department shall reimburse claims filed under par. (b) as follows:

12           1. The department shall reimburse valid claims filed on or before February 1 of the year  
13 following the year in which the claimant's herd is tested and classified. If the sum of all claims  
14 filed by that February 1 exceeds the balance in the appropriation account on that date, the  
15 department shall reimburse those claims pro-rata, based on the amount of each valid claim.

16           2. If funds remain in the appropriation account following the payments under subd. 1, the  
17 department shall reimburse valid claims filed after February 1 but on or before April 30 of the  
18 year following the year in which the claimant's herd is tested and classified. The department  
19 shall pay the claims under this subdivision in the order that the department receives the claims.

20           3. The department shall not pay any claim filed after April 30 of the year following the  
21 year in which the herd is tested and classified.

22           **SECTION 4.** ATCP 12.01(17)(~~intro.~~) is amended to read:  
23

1 ATCP 12.01(17) "Livestock trucker" means an animal trucker as defined under s.  
2 95.71(1)(e), Stats. "Livestock trucker" does not include:

3 (a) ~~Hauling~~ A person who hauls livestock on an occasional basis for persons  
4 participating in a livestock exhibition, fair, trail ride, youth livestock event or similar activity.

5 (b) ~~Hauling~~ A person who hauls livestock on an incidental basis in connection with  
6 another business, such as a veterinary practice or a stable operation, which is operated by that  
7 person and which does not ordinarily involve the sale of livestock.

8 (c) ~~Hauling~~ A person who hauls livestock for others fewer than 6 times per year. ~~Hauling~~  
9 livestock for one's self does not count toward the 6 times per year in the preceding sentence.

10 **SECTION 5.** ATCP 42.06(3) is amended to read:

11 ATCP 42.06(3) SINGLE-INGREDIENT FEEDS. Product names for single-ingredient  
12 commercial feeds shall be consistent with the feed ingredient definitions specified in the ~~1998~~  
13 2004 official publication of the association of American feed control officials.

14 **SECTION 6.** ATCP 42.16(1)(b) and (2)(b) are amended to read:

15 ATCP 42.16(1)(b) Paragraph (a) does not apply to a commercial feed which is defined as  
16 a single ingredient feed product by the ~~1996~~~~1998~~ 2004 official publication of the association of  
17 American feed control officials.

18 (2)(b) The official name of that ingredient as stated in the ~~1998~~ 2004 official publication  
19 of the association of American feed control officials.

20 **SECTION 7.** ATCP 42.40(4)(b) is amended to read:

21 ATCP 42.40(4)(b) By a testing procedure published in the ~~1998~~ 2004 official publication  
22 of the association of American feed control officials.

23 **SECTION 8.** ATCP 42.44(6)(a) is amended to read:

1 ATCP 42.44(6)(a) The dog or cat food, when fed in recommended amounts, meets all  
2 nutrient requirements established in applicable pet nutrient profiles specified in the ~~1998~~ 2004  
3 official publication of the association of American feed control officials.

4 **SECTION 9.** ATCP 42.54(1)(a) is amended to read:

5 ATCP 42.54(1)(a) The non-protein nitrogen ingredients are identified in the ~~1998~~ 2004  
6 official publication of the association of American feed control officials.

7 SECTION 9m. ATCP 50.01(31) is repealed and recreated to read:

8 ATCP 50.01(31) “RUSLE 2 equation” means the following applicable NRCS release of  
9 version 2 of the revised universal soil loss equation:

10 (a) Except as provided in par. (b), the release that is in effect on *[revisor inserts effective*  
11 *date of this subsection]*.

12 (b) For purposes of a compliance determination under ch. NR 151 or this chapter made  
13 prior to *[revisor inserts effective date of this rule]*, the release that was in effect on the date of  
14 the compliance determination.

15 **SECTION 10.** ATCP 50.40(9)(L)1. is amended to read:

16 ATCP 50.40(9)(L)1. \$10,000 if the cost-share contract is signed prior to ~~prior to~~ January  
17 1, 2005.

18 **SECTION 11.** ATCP 60.11(2)(c) and (4)(h) are repealed and recreated to read:

19 ATCP 60.11(2)(c) A bulk tank shall be equipped with all of the following:

- 20 1. An indicating thermometer that has a range of at least ~~of~~ 32° F. to 80° F.  
21 2. A recording thermometer if the bulk tank is manufactured after January 1, 2000. The  
22 recording thermometer shall have a range of at least 27° F. to 180° F. The chart on which the  
23 thermometer records milk temperatures shall have graduations of not more than 2° F. at

1 temperatures below 100° F., and shall have at least one time span division per hour. The milk  
2 producer shall keep milk temperature records for at least 90 days after the thermometer makes  
3 those records. The milk producer shall make the records available to the department for  
4 inspection and copying upon request.

5 (4)(h) A recording thermometer that records milk temperatures downstream from the  
6 cooling device under par. (g). The thermometer probe shall be mounted in a well in the milk  
7 pipeline except that, if the producer cools the milk in a bulk tank, the thermometer probe may be  
8 mounted in the bulk tank. The recording thermometer shall have a range of at least 27° F. to  
9 180° F. The chart on which the thermometer records milk temperatures shall have graduations of  
10 not more than 2° F. at temperatures below 100° F., and shall have at least one time span division  
11 per hour. The milk producer shall keep milk temperature records for at least 90 days after the  
12 thermometer makes those records. The milk producer shall make the records available to the  
13 department for inspection and copying upon request.

14 **SECTION 12.** ATCP 60.245(1)(a) and (b) are amended to read:

15 ATCP 60.245(1)(a) ~~All~~ None of the producer's standard plate counts (SPC) ~~are less than~~  
16 exceed 25,000 per ml., except that one SPC may exceed 25,000 per ml. if it is not more than  
17 100,000 per ml.

18 (b) ~~All~~ None of the producer's somatic cell counts (SCC) ~~are less than~~ exceed 500,000  
19 per ml.

20 **SECTION 13.** Ch. ATCP 74(title) is amended to read:

21 **RETAIL FOOD ESTABLISHMENTS;**  
22 **LOCAL GOVERNMENT REGULATION**

23 **SECTION 14.** ATCP 80.01(2) is repealed.  
24

25 **SECTION 15.** ATCP 80.04(6) is repealed and recreated to read:

1 ATCP 80.04(6) MILK CONTRACTOR LICENSE FEES AND ASSESSMENTS. A dairy plant  
2 operator who operates as a milk contractor under subch. V of ch. 126, Stats., shall pay applicable  
3 milk contractor license fees and assessments required under that subchapter.

4 **SECTION 16.** ATCP 80.16(2)(g) is amended to read:

5 ATCP 80.16(2)(g) No multi-use plastic package may be reused for grade A milk or dairy  
6 products unless that package is tested for the presence of volatile organic compounds before the  
7 package is filled. An automatic testing device, capable of detecting volatile organic compounds  
8 at levels of public health significance, shall be used to test each package. The testing device  
9 shall be installed in conjunction with the dairy product packaging apparatus so that no packages  
10 can be filled unless the testing device is operating properly, and so that packages containing  
11 unsatisfactory levels of volatile organic compounds are automatically made unusable. The dairy  
12 plant operator shall test the system daily with a test solution consisting of 0.5 ppm petroleum  
13 distillate or another test solution approved by the department.

14 **SECTION 17.** ATCP 80.28(1)(b)1. is amended to read:

15 ATCP 80.28(1)(b)1. An individual approved by the department ~~and certified by the~~  
16 ~~Wisconsin department of health and family services~~ to conduct drug residue tests.

17 **SECTION 18.** ATCP 80.50(2)(e), ~~(2)~~ (2) and (f) and (3)(d) are amended to read:

18 ATCP 80.50(2)(e) The temperature reading on the airspace thermometer at the start and  
19 end of the pasteurization holding period, ~~and~~ at a specific ~~time~~ times identified as ~~a point~~ points  
20 on the recorder chart.

21 ~~(2)~~(f) The temperature reading on the indicating thermometer at the start and end of the  
22 pasteurization holding period, ~~and~~ at a specific ~~time~~ times identified as ~~a point~~ points on the  
23 recorder chart.

1 (3)(d) The temperature reading on the indicating thermometer at the start and end of each  
2 pasteurization run, ~~and~~ at a specific ~~time~~ times identified as ~~a point~~ points on the recorder chart.

3 **SECTION 19.** ATCP 80.62(1)(a)(intro.) and (c) are amended to read:

4 ATCP 80.62(1)(a)(intro.) *Requirement.* The ~~certifying agency~~ department shall perform  
5 audit surveys of grade A dairy plants, and the dairy farms shipping milk to those dairy plants, to  
6 establish a grade A sanitation compliance rating under this chapter. The ~~certifying agency~~  
7 department shall survey a grade A dairy plant, and the farms shipping milk to that dairy plant, at  
8 all of the following times:

9 (c) *Survey rating.* Based on a survey under par. (a), the ~~certifying agency~~ department  
10 shall assign an overall grade A sanitation compliance rating to the dairy plant and the dairy farms  
11 that ship milk to that dairy plant.

12 **SECTION 20.** Appendix A to ch. ATCP 80 is repealed and recreated to read:

## Chapter ATCP 80

### APPENDIX A

#### 3-A SANITARY STANDARDS AND ACCEPTED PRACTICES

The following 3-A standards and 3-A accepted practices establish criteria for the sanitary construction and operation of dairy handling and processing equipment. These standards are published jointly by the International Association of Milk, Food and Environmental Sanitarians, Inc., and the Food and Drug Administration, Public Health Service, United States Department of Health and Human Services. Copies are on file with the department, the Secretary of State and the Revisor of Statutes.

You may purchase copies from the 3-A Standards Center (managed by Techstreet, Inc.) by calling (800) 699-9277 or (734) 302-7801. Send fax to (734) 302-7811. You may also search, order and download standards (in PDF format) by visiting <http://www.3-A.org>.

#### 3-A SANITARY STANDARDS

Number	Title	Effective
01-08	Storage Tanks for Milk and Milk Products	11/2001
02-09	Centrifugal and Positive Rotary Pumps for Milk and Milk Products	11/1996
04-04	Homogenizers and Reciprocating Pumps	11/1996
05-15	Stainless Steel Automotive Milk and Milk Product Transportation Tanks for Bulk Delivery and/or Farm Pick-Up Service	11/2002
10-04	Milk and Milk Products Filters Using Single Service Filter Media	11/2000
11-06	Plate-Type Heat Exchangers for Milk and Milk Products	11/2001
12-06	Tubular Heat Exchangers for Milk and Milk Products	5/2002
13-09	Farm Milk Cooling and Holding Tanks	11/1993

16-05	Milk and Milk Products Evaporators and Vacuum Pans	8/1997
17-10	Formers, Fillers, and Sealers of Single-Service Containers for Fluid Milk and Fluid Milk Products	11/2002
18-03	Multiple-Use Rubber and Rubber-Like Materials Used as Product Contact Surfaces in Dairy Equipment	8/1999
19-05	Batch and Continuous Freezers for Ice Cream, Ices, and Similarly Frozen Dairy Foods	11/1999
21-00	Centrifugal Separators and Clarifiers	11/2002
20-22	Multiple-Use Plastic Materials Used as Product Contact Surfaces for Dairy Equipment	6/2003
22-07	Silo-Type Storage Tanks for Milk and Milk Products	11/1996
23-04	Equipment for Packaging Viscous Dairy Products	11/2002
24-02	Non-Coil Type Batch Pasteurizers for Milk and Milk Products	11/1989
25-03	Non-Coil Type Batch Processors for Milk and Milk Products	11/2002
26-04	Sifters for Dry Products	11/2001
27-05	Equipment for Packaging Dry Milk and Dry Milk Products	11/2002
28-03	Flow Meters for Milk and Milk Products	6/2002
29-02	Air Eliminators for Milk and Fluid Milk Products	11/2000
30-01	Farm Milk Storage Tanks	9/1984
31-03	Scraped Surface Heat Exchangers	11/2000

32-02	Uninsulated Tanks for Milk and Milk Products	8/1994
33-01	Polished Metal Tubing for Milk and Milk Products	11/1994
34-02	Portable Bins for Dry Milk and Dry Milk Products	9/1992
35-00	Continuous Blenders	8/1997
36-00	Colloid Mills	8/1997
38-00	Cottage Cheese Vats	8/1997
39-00	Pneumatic Conveyors for Dry Milk and Dry Milk Products	9/1982
40-02	Bag Collectors for Dry Milk and Dry Milk Products	11/2002
41-01	Mechanical Conveyors for Dry Milk and Dry Milk Products	11/1996
42-01	In-Line Strainers for Milk and Milk Products	11/1997
43-00	Wet Collectors for Dry Milk and Dry Milk Products	09/1997
44-03	Diaphragm Pumps	11/2001
45-01	Crossflow Membrane Modules	11/1999
46-03	Refractometers and Energy-Absorbing Optical Sensors for Milk and Milk Products	11/2002
47-00	Centrifugal and Positive Rotary Pumps for Pumping Cleaning and Sanitizing Solutions	11/1996
49-01	Air-Driven Sonic Horns for Dry Products	11/2001

50-01	Level Sensing Devices for Dry Products	11/2001
51-01	Plug-Type Valves for Milk and Milk Products	11/1998
52-02	Plastic Plug-Type Valves for Milk and Milk Products	11/1998
53-02	Compression-Type Valves for Milk and Milk Products	1/2002
54-02	Diaphragm-Type Valves for Milk and Milk Products	11/1997
55-01	Boot Seal-Type Valves for Milk and Milk Products	11/1996
56-00	Inlet and Outlet Leak-Protector Plug-Type Valves for Milk and Milk Products	5/1993
57-01	Tank Outlet Valves for Milk and Milk Products	11/1996
58-00	Vacuum Breakers and Check Valves for Milk and Milk Products	6/1992
59-00	Automatic Positive Displacement Samplers for Fluid Milk and Fluid Milk Products	11/1993
60-00	Rupture Discs for Milk and Milk Products	9/1983
61-00	Steam Injection Heaters for Milk and Milk Products	11/1994
62-01	Hose Assemblies for Milk and Milk Products	11/1996
63-03	Sanitary Fittings for Milk and Milk Products	11/2002
64-00	Pressure Reducing and Back Pressure Regulating Valves for Milk and Milk Products	11/1993
65-00	Sight and/or Light Windows and Sight Indicators in Contact with Milk and Milk Products	11/1994

66-00	Caged-Ball Valves for Milk and Milk Products	11/1995
68-00	Ball-Type Valves for Milk and Milk Products	11/1996
70-01	Italian-Type Pasta Filata Style Cheese Cookers	11/2002
71-01	Italian-Type Pasta Filata Style Cheese Moulders	11/2002
72-01	Italian-Type Pasta Filata Style Moulded Cheese Chillers	11/2002
73-00	Shear Mixers, Mixers, and Agitators	11/1996
74-02	Sensors and Sensor Fittings and Connections Used on Fluid Milk and Milk Products Equipment	11/2002
75-00	Belt-Type Feeders	11/1998
78-00	Spray Devices to Remain in Place	11/1998
81-00	Auger-Type Feeders	11/1998
82-00	Pulsation Dampening Devices	11/2002

### 3-A ACCEPTED PRACTICES

<b>Number</b>	<b>Title</b>	<b>Effective</b>
603-06	Sanitary Construction, Installation, Testing, and Operation of High-Temperature Short-Time and Higher-Heat Shorter-Time Pasteurizer Systems	12/1992
604-04	Supplying Air Under Pressure in Contact with Milk, Milk Products, and Product Contact Surfaces	11/1994
605-04	Permanently Installed Product and Solution Pipelines and Cleaning Systems Used in Milk and Milk Product Processing Plants	8/1994

606-05	Design, Fabrication, and Installation of Milking and Milk Handling Equipment	11/2002
607-04	Milk and Milk Products Spray Drying Systems	11/1998
608-02	Instantizing Systems	11/2001
609-02	Method of Producing Steam of Culinary Quality	11/1996
610-00	Sanitary Construction, Installation, and Cleaning of Crossflow Membrane Processing Systems for Milk and Milk Products	9/1990
611-00	Farm Milk Cooling and Storage Systems	11/1994

1 SECTION 20m. ATCP 92.02(1) is amended to read:

2 ATCP 92.02(1) Except as provided in this chapter, weighing and measuring devices shall  
3 comply with applicable specifications, tolerances and other technical requirements set forth in  
4 the national institute of standards and technology handbook 44 (specification, tolerances and  
5 other technical requirements for weighing and measuring devices), ~~2003~~ 2004 edition.

6 **SECTION 21.** ATCP 92.02(3)(c) is amended to read:

7 ATCP 92.02(3)(c) A commercial weighing or measuring device for which neither the  
8 national institute of standards and technology ~~has yet to adopt~~ nor the national conference of  
9 weights and measures has yet adopted testing and certification procedures, provided that the  
10 department authorizes the sale and use of that device in this state. A person seeking department  
11 authorization shall apply to the department in writing. The application shall include relevant  
12 engineering and use specifications for the device, and shall document that neither the national  
13 institute of standards and technology ~~has yet to adopt~~ nor the national conference on weights and  
14 measures has yet adopted testing and certification procedures for that device. The department  
15 shall grant or deny authorization within 30 days after the department receives a complete  
16 application, including any supplementary information requested by the department.

17 **SECTION 22.** ATCP 92.06(1)(a) ~~and (b) are~~ is amended to read:

18 ATCP 92.06(1)(a) The national institute of standards and technology handbook 44  
19 (specifications, tolerances, and other technical requirements for weighing and measuring  
20 devices), ~~2003~~ 2004 edition.

21 ~~(b)The national institute of standards and technology handbook 133 (checking~~  
22 ~~the net contents of packaged goods), ~~2003~~ 2004 edition.~~

23 **SECTION 23.** ATCP 92.06(2) is amended to read:

Formatted: Bullets and Numbering

1 ATCP 92.06(2) PRICE VERIFICATION SYSTEMS. Inspections of price verification systems  
2 shall comply with section 7 “test procedures” from the chapter titled “examination procedure for  
3 price verification,” national institute of standards and technology handbook 130 (uniform laws  
4 and regulation in the areas of legal metrology and engine fuel quality), ~~2003~~ 2004 edition.

5 **SECTION 24.** ATCP 92.20(3)(d) is amended to read:

6 ATCP 92.20(3)(d) ~~A~~ The late renewal fee of \$50 provided under s. 93.21(5), Stats., if the  
7 applicant is applying for the renewal of a license that has already expired.

8 **SECTION 25.** ATCP 92.20(3)(d)(note) is repealed.

9 **SECTION 26.** ATCP 92.22(1)(b) and (note) are amended to read:

10 ATCP 92.22(1)(b) Comply with applicable requirements contained in the national  
11 institute of standards and technology handbook 44 (specifications, tolerances, and other technical  
12 requirements for weighing and measuring devices), ~~2003~~ 2004 edition.

13 **NOTE:** The national institute of standards and technology handbook 44, ~~2003~~  
14 2004 edition, is on file with the department, the secretary of state and the  
15 revisor of statutes. You may purchase copies of this handbook from the  
16 U.S. Government Printing Office, Stop SSOP, Washington, D.C. 20402-  
17 0001.

18  
19 **SECTION 26m.** ATCP 118.02(2) is amended to read:

20  
21 ATCP 118.02(2) Rental companies that offer or sell a damage waiver shall provide each  
22 renter a written notice having the following form and content. The rental company shall provide  
23 the notice ~~shall be provided~~ to the renter as a separate document, without other text or markings,  
24 before the renter enters into a rental agreement. The rental company shall give the renter one  
25 complete copy of the notice signed by the renter and shall retain one complete signed copy- with  
26 is the company’s copy of the rental agreement for a period of six years. ~~After three years copies~~  
27 Copies may be retained through photographic or electronic procedures. The rental company may  
28

1 ~~retain its copy in photographic or electronic form. Rental companies that maintain photographic~~  
2 ~~or electronic copies.~~ A rental company that retains its copy in photographic or electronic form shall  
3 ~~print that copy for the s shall print copies for the~~ department upon request. The notice shall:

4  
5 **SECTION 27.** ATCP 127.01(21)(c) is amended to read:

6 ATCP 127.01(21)(c) A person who makes ~~home~~ solicitations under arrangement with a  
7 seller.

8 **SECTION 27m.** ATCP 134.06 (note) is created to read:

9  
10 **NOTE:** “Deliver” includes delivery by an agent of the landlord such as a private  
11 courier service.

12  
13 **SECTION 28.** ATCP 140.40 is amended to read:

14  
15 **ATCP 140.40 Articles of incorporation and bylaws.** Every marketing board  
16 shall adopt articles of incorporation and bylaws, as provided in s. 96.10(3), Stats. Proposed  
17 articles of incorporation, bylaws, and amendments to bylaws shall be developed in consultation  
18 with the secretary, and shall be submitted to the secretary for review prior to final adoption. No  
19 articles of incorporation may be filed with the ~~secretary of state~~ department of financial  
20 institutions or become effective until approved by the secretary. The secretary may disapprove  
21 proposed articles of incorporation or bylaws if the secretary determines that the proposed articles  
22 of incorporation or bylaws are inconsistent with ch. 96, Stats., the marketing order or this  
23 chapter, or otherwise violate applicable law. No articles of incorporation may be approved by  
24 the secretary until the articles of incorporation meet the requirements of s. 96.10(3), Stats., and s.  
25 ATCP 140.49(6) concerning procedures for assuring the confidentiality of business information.

26 **SECTION 29.** Chapter ATCP 162 is repealed and recreated to read:



1 (3) MEDIATOR FUNCTIONS. If parties consent to mediation under s. 93.50, Stats., and this  
2 chapter, the appointed mediator shall encourage and assist the parties to reach a voluntary  
3 settlement as provided in s. 93.50(3)(f), Stats. Neither the mediator nor the department may  
4 impose a settlement upon any party.

5 (4) ARBITRATOR FUNCTIONS. If parties consent to arbitration under s. 93.50, Stats., and  
6 this chapter, an arbitrator shall conduct an arbitration proceeding and render an arbitration award.  
7 Arbitration proceedings shall conform to ch. 788, Stats., and this chapter.

8 (5) ADVISING PARTIES. No mediator or arbitrator may provide legal, financial or  
9 therapeutic advice to any party in a mediation or arbitration proceeding. At the request of a  
10 party, a mediator may refer the party to alternative sources of professional consultation or  
11 assistance. A mediator may not solicit or accept any payment or thing of value, either directly or  
12 indirectly, in return for making a referral.

13 (6) CONFIDENTIALITY. Except as otherwise agreed by the parties and the department, or  
14 as provided in s. 904.085, Stats., mediators and arbitrators shall keep confidential all information  
15 and records obtained in connection with a mediation or arbitration proceeding. At the conclusion  
16 of the proceeding, the mediator shall file all records with the department.

17 (7) ETHICS. (a) No mediator or arbitrator may, during a mediation or arbitration  
18 proceeding or within one year after that proceeding is concluded, provide or offer to provide, for  
19 compensation, any service to a person who is a party to that proceeding before that mediator or  
20 arbitrator.

21 (b) No mediator or arbitrator may provide or offer to provide, for compensation, to a  
22 person who is a party to a mediation or arbitration proceeding before that mediator or arbitrator,  
23 any service related to any issue raised in that proceeding.

1 (c) No mediator or arbitrator may solicit or accept, directly or indirectly, from a party to  
2 a mediation or arbitration proceeding, any of the following:

3 1. Anything of value that could reasonably be expected to influence the actions or  
4 judgment of the mediator or arbitrator, in his or her capacity as a mediator or arbitrator.

5 2. Anything of value that could reasonably be considered as a reward for any action or  
6 inaction by the mediator or arbitrator, in his or her capacity as a mediator or arbitrator.

7 (d) No mediator or arbitrator may disclose confidential information gained as a result of  
8 his or her service as a mediator or arbitrator, or use that information in any way that could result  
9 in the receipt of anything of value by the mediator or arbitrator, or any person or organization  
10 with which the mediator or arbitrator is associated.

11 (e) No mediator or arbitrator may use or attempt to use his or her position as a mediator  
12 or arbitrator to gain unlawful benefits, advantages or privileges for himself or herself, or for  
13 others.

14 (f) A mediator or arbitrator shall disclose to the department, and to the parties to a  
15 mediation or arbitration proceeding, every potential conflict of interest and every other matter  
16 which may affect the mediator's or arbitrator's ability to act in a fair and impartial manner in the  
17 proceeding. A mediator or arbitrator shall withdraw from the proceeding if the mediator or  
18 arbitrator is unable to act in a fair and impartial manner.

19 (g) This subsection does not prohibit a mediator or arbitrator from receiving normal  
20 compensation or reimbursement of expenses from the department, pursuant to s. 93.50(2)(b),  
21 Stats.

22 (8) SUBSTITUTION. (a) A party to a mediation or arbitration proceeding may petition the  
23 department for substitution of a mediator or arbitrator. The party shall submit the petition in

1 writing, and shall specify the reason for the petition. The department may require the petitioner  
2 to substantiate his or her claim, and may conduct its own investigation as necessary. The  
3 department may order a substitution if the department determines that a conflict of interest exists,  
4 or that there are reasonable grounds to believe that the mediator or arbitrator cannot act fairly and  
5 impartially in the matter. The department shall issue its decision in writing and shall serve a  
6 copy on all parties to the proceeding. If the department orders a substitution, the department  
7 shall appoint a new mediator according to s. ATCP 162.04(4) or a new arbitrator according to s.  
8 ATCP 162.05(2).

9 (9) IMMUNITY FROM LIABILITY; LIMITATIONS. The civil immunity provided to mediators  
10 and arbitrators under s. 93.50(2)(c), Stats., does not include any of the following:

11 (a) Immunity from liability related to fraud or an intentional violation of sub. (7).

12 (b) Immunity from criminal liability.

13 **ATCP 162.04 Mediation.** (1) REQUEST FOR MEDIATION. A person requesting  
14 mediation shall submit the request to the department in writing, on a form provided by the  
15 department. The request shall include all the following:

16 (a) A statement of the issue or issues that the requester seeks to resolve by mediation.

17 (b) The name and address of each proposed party, or that party's authorized  
18 representative.

19 **NOTE:** You may obtain a mediation request form from the department, and submit a  
20 completed request form to the department, at the following address:

21  
22 Wisconsin Department of Agriculture, Trade and Consumer Protection  
23 Agricultural Development Division, Farm Center  
24 2811 Agriculture Drive  
25 P.O. Box 8911

1 Madison, WI 53708-8911

2 (2) AGREEMENT TO MEDIATE. ~~The parties to a proposed mediation~~ If the parties to a  
3 proposed mediation agree to mediate, they shall sign an mediation -agreement to mediate, on a  
4 form provided by the department. The parties may sign the same form or separate identical  
5 forms that identify all the parties to the proposed mediation. The agreement shall set forth the  
6 terms and conditions of mediation.

7 NOTE: The department will normally provide each party with a copy of the mediation  
8 agreement form prior to the initial mediation session. The mediator will normally  
9 review the agreement with the parties and have them sign the agreement at the  
10 first mediation session. You may obtain a copy of the mediation agreement form  
11 by contacting the department at:

12 Wisconsin Department of Agriculture, Trade and Consumer Protection  
13 Agricultural Development Division, Farm Center  
14 2811 Agriculture Drive  
15 Madison, WI 53708-8911

16  
17 (3) MEDIATION ASSISTANCE. The department may assign an advisor under s. 93.51,  
18 Stats., to help a farmer prepare for mediation. The advisor may help a farmer prepare for  
19 mediation, but may not take a position with respect to the competing claims of the parties in  
20 mediation.

21 (4) MEDIATOR APPOINTMENT. (a) The department may provide the parties with the  
22 names, addresses and qualifications of potential mediators, as provided in s. 93.50(3)(e), Stats.,  
23 or may appoint a mediator with the authorization of the parties.

24 (b) If any party declines to authorize department appointment of a mediator, the parties  
25 shall choose a mediator from among those named by the department. The department shall then  
26 appoint the chosen mediator.

27 (c) When the department appoints a mediator under par. (a) or (b), the department shall  
28 notify all parties of the appointment.

1 (d) The appointed mediator shall enter into a written agreement with the department  
2 under s. ATCP 162.03(2), and shall then assume responsibility for directing the mediation  
3 proceeding.

4 (5) MEDIATION PROCEEDINGS. (a) A mediator shall conduct mediation proceedings at  
5 times and places agreed upon by the parties and the mediator. A mediator may conduct  
6 mediation proceedings with the parties by telephone. The mediator may hold joint or separate  
7 sessions with the parties, as the mediator deems necessary.

8 (b) With the agreement of the parties, the mediator may request other persons to  
9 participate in the mediation proceedings. Parties may have representatives present at mediation  
10 sessions.

11 (c) The mediator may regulate mediation proceedings to prevent disruptions, and may  
12 terminate mediation sessions in his or her discretion.

13 (d) The parties may agree to start or continue mediation proceedings while a court action  
14 is pending between the parties, regardless of whether the court action is stayed under s.  
15 93.50(2m), Stats. Mediation proceedings may not violate a court order or an automatic stay in  
16 bankruptcy.

17 (6) AGREEMENT AFTER MEDIATION. The parties to a mediation proceeding may reduce  
18 their interim and final agreements, if any, to writing. At the conclusion of the mediation  
19 proceedings, the mediator shall provide the department with copies of all written agreements.  
20 Agreements may provide for continued mediation at a future date. The parties are solely  
21 responsible for their agreements and for the enforcement of their agreements. An agreement is  
22 subject to applicable laws and court orders, and is subject to the exercise of rights by persons  
23 who are not parties to the agreement.

1 (7) WITHDRAWING FROM MEDIATION. A party may withdraw from mediation at any time.

2 **ATCP 162.05 Arbitration.** (1) REQUEST FOR ARBITRATION. A person requesting  
3 arbitration shall submit that request to the department in writing, on a form provided by the  
4 department. A request for arbitration shall include all the following:

5 (a) A signed agreement by all parties to participate in arbitration. No person may be  
6 included as a party in an arbitration proceeding without that person's signed agreement.

7 (b) A preliminary statement of the issue or issues the parties seek to resolve by  
8 arbitration.

9 (c) The name and address of each party, or the party's representative in the arbitration  
10 proceeding.

11 (d) An agreed method for appointing an arbitrator under sub. (5).

12 (e) An identification of every court action currently pending between the parties. If any  
13 court action is pending, the request for arbitration shall include a copy of any court order under s.  
14 93.50(2m), Stats., suspending the court action pending arbitration. No issue contested between  
15 the parties in a court action may be arbitrated under this chapter unless the court enters an order  
16 suspending the court action pending arbitration.

17 (f) If no court action is currently pending between the parties, an agreement by the  
18 parties to refrain from initiating any court action against another party for at least 60 days, or  
19 until arbitration is completed, whichever occurs first.

20 **NOTE:** You may obtain an arbitration request form from the department, and  
21 submit a completed request form to the department, at the following  
22 address:

23  
24 Wisconsin Department of Agriculture, Trade and Consumer Protection  
25 Agricultural Development Division, Farm Center  
26 2811 Agriculture Drive  
27 P.O. Box 8911

1 Madison, WI 53708-8911

2  
3 (2) ARBITRATOR APPOINTMENT. (a) The department may provide the parties with the  
4 names, addresses and qualifications of potential arbitrators, as provided in s. 93.50(4)(e), Stats.,  
5 or may appoint an arbitrator with the authorization of the parties.

6 (b) If any party declines to authorize department appointment of an arbitrator, the parties  
7 may choose an arbitrator from among those named by the department under s. 93.50(4)(e), Stats.  
8 The department shall then appoint the chosen arbitrator.

9 (c) When the department appoints an arbitrator under par. (a) or (b), the department shall  
10 give all parties notice of the appointment.

11 (d) The appointed arbitrator shall enter into a written agreement with the department  
12 under s. ATCP 162.03(2), Stats., and shall then assume responsibility for directing the arbitration  
13 proceeding.

14 (3) ARBITRATION AGREEMENT. After the arbitrator is appointed and before the arbitration  
15 proceeding begins, the parties shall enter into a specific arbitration agreement. The department  
16 shall oversee the preparation of the agreement. The agreement shall include all the following:

17 (a) A specific agreement by all parties to arbitrate, and to abide by the arbitration award.

18 (b) A specific statement of the issue or issues to be decided in arbitration.

19 (c) The procedures that the arbitrator will follow.

20 (4) ARBITRATION PROCEEDINGS. An arbitrator shall conduct arbitration proceedings  
21 according to ch. 788, Stats., and the arbitration agreement under sub. (3). Arbitrators have the  
22 authority provided under ch. 788, Stats., and the arbitration agreement. This subsection does not  
23 authorize any proceedings in violation of a court order or an automatic stay in bankruptcy.

1           (5) ARBITRATION AWARD. An arbitrator shall issue an award in writing. The arbitrator  
2 shall serve a copy of the award on each party and on the department.

3           (6) COURT REVIEW AND ENFORCEMENT. A court may confirm, modify, correct or enforce  
4 an arbitration award, as provided in s. 788.03, Stats.

5

1  
2       **EFFECTIVE DATE:** This rule takes effect on the first day of the month following  
3 publication in the Wisconsin administrative register, as provided under s. 227.22(2) (intro.),  
4 Stats.

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

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

By \_\_\_\_\_  
Rodney J. Nilsestuen,  
Secretary