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- 1 3. Drug tests on the producer's milk indicate that drug residues are present in the
- 2 milk.
- 3
- 4 4. Milk from the producer's dairy farm is reliably believed to contain pesticides
- 5 or toxic substances that may be harmful to humans.
- 6
- 7 5. An infectious disease, transmissible to humans through milk, is reliably
- 8 diagnosed in the producer's herd.

9 **SECTION 50.** ATCP 60.25(2)(c) and (d) are repealed.

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

11 **ATCP 60.26 Suspension or revocation of grade A farm permit; general.** A The

12 department may suspend or revoke a milk producer's grade A permit ~~may be suspended or~~

13 ~~revoked~~ for cause, as provided in s. 93.06 (7), Stats. Except as provided under s. ATCP 60.25,

14 60.27, 60.275 or 60.28, the department may not suspend or revoke a grade A permit ~~may not be~~

15 ~~suspended or revoked~~ except by order of the secretary or the secretary's designee, after notice

16 and opportunity for hearing under ch. 227, Stats. The food safety division may file a written

17 complaint with the department, seeking the suspension or revocation of a grade A permit.

18 Pending completion of the proceedings, the secretary or the secretary's designee may issue

19 interim orders as necessary to protect the public health, safety and welfare. If an inspection is

20 required for the reinstatement of a grade A permit ~~which~~ that is suspended or revoked under this

21 section, the department shall charge a reinspection fee under s. ATCP 60.04 for the inspection.

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

23 **ATCP 60.27(1) WARNING NOTICE.** The food safety division shall mail a written warning

24 notice to a grade A milk producer whenever any of the following occurs:

- 25 (a) Two of the last 4 bacterial counts reported to the department under s. ATCP 60.18(2)
- 26 60.18(3) exceed 100,000 per ml., in violation of the standard for grade A milk under s. ATCP
- 27 60.15(2).

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

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

7 (a) Three of the last 5 bacterial counts reported to the department under s. ATCP
8 ~~60.18(2)~~ 60.18(3) and sub. (3) exceed 100,000 per ml.

9 (b) Three of the last 5 somatic cell counts reported to the department under s. ATCP
10 ~~60.20(2)~~ 60.20(4) and sub. (3) exceed 750,000 somatic cells per ml. for ~~cow's~~ cow milk, or
11 1,000,000 per ml. for goat milk.

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

13 **NOTE:** This subsection does not prohibit the food safety division from summarily
14 suspending a milk producer's license and grade A permit under s. ATCP 60.25,
15 without prior warning, if the ~~food~~ division determines that any of the
16 circumstances identified under s. ATCP 60.25 (2) exists.
17

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

19 ATCP 60.27(6)(a) A milk producer ~~whose grade A farm permit is suspended under this~~
20 ~~section for violation of a milk quality standard may file with the department a written request for~~
21 ~~reinstatement of the permit~~ may ask the department to reinstate a grade A farm permit suspended
22 under sub. (4). The producer shall make the reinstatement request shall be made in writing, on a
23 form provided by the department under s. ATCP 60.29(4). The reinstatement request shall be
24 accompanied by request shall include the result of a milk quality test, performed by the dairy
25 plant operator on a milk sample collected after the effective date of the suspension, showing that
26 the milk producer is no longer violating the relevant milk quality standard is no longer being

1 ~~violated. Within 7 days after the department receives a complete reinstatement request, the~~
2 ~~department shall inspect the dairy farm. The department shall charge a reinspection fee for the~~
3 ~~inspection, pursuant to s. ATCP 60.04. If, upon inspection, it appears that all conditions~~
4 ~~potentially responsible for the milk quality standard violation have been corrected, the inspector~~
5 ~~shall reinstate the producer's grade A farm permit, and shall notify the dairy plant of the~~
6 ~~reinstatement.~~

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

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

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

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

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

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

21 ATCP 60.275(1)(a)(intro.) *Requirement.* Whenever the food safety division receives
22 notice under s. ATCP 60.19(8) that a producer milk sample has tested positive for a drug residue,

1 the food division shall mail a warning notice to that producer. The warning notice takes effect 3
2 days after it is mailed. The warning notice shall include all of the following:

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

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

13 (1)(d) *Right to informal hearing.* If a producer receiving a warning notice under par. (a)
14 disputes the drug residue findings on which the notice is based, the producer may request an
15 informal hearing to discuss the drug residue findings. A request for hearing does not
16 automatically stay the warning notice. If the producer requests an informal hearing, the food
17 safety division shall hold an informal hearing at the division's nearest regional office or by
18 telephone. The food division shall hold the informal hearing within ~~3~~ 10 business days after the
19 division receives the request for hearing, unless the producer agrees to a later hearing date. The
20 food division may withdraw a warning notice if it appears that the notice was not justified.

21 (2)(a) *Notice suspending permit.* If the food safety division does not receive a producer
22 certification from a producer within the 21-day period specified under sub. (1)(b) within 21 days
23 after the effective date of the warning notice under sub. (1)(a), the food division shall mail a

1 notice to the producer suspending the producer's grade A ~~dairy farm~~ permit. The suspension
2 notice shall comply with s. ATCP 60.29. The suspension notice takes effect 3 days after it is
3 mailed. The ~~food~~ division shall notify the dairy plant operator of the suspension, and shall
4 provide the operator with a copy of the suspension notice.

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

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

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

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

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

15 (2) REINSPECTION; SUSPENSION NOTICE. Within 7 days after the correction deadline date
16 specified in ~~the~~ a warning notice under sub. (1), a food safety division inspector shall reinspect
17 the dairy farm to determine whether the producer has corrected each key violation cited in the
18 warning notice ~~has been corrected~~. The department shall charge a reinspection fee for the
19 inspection, pursuant to s. ATCP 60.04. ~~If, upon reinspection, the inspector finds that the~~
20 producer has not corrected a key violation cited in the warning notice ~~has not been corrected~~, the
21 inspector shall issue a written notice suspending the producer's grade A permit. The suspension
22 ~~becomes effective immediately upon service of the suspension notice under~~ takes effect when the
23 inspector serves the notice on the producer, according to s. ATCP 60.29(6). The inspector shall

1 promptly notify the dairy plant ~~of the suspension operator~~, and may tag the bulk tank to notify
2 the milk hauler of the suspension. ~~A~~ The inspector shall mail or deliver a copy of the suspension
3 ~~notice shall be mailed or delivered to the dairy plant operator.~~ A person adversely affected by
4 the suspension notice may request a hearing on the notice as provided under s. ATCP 60.31.

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

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

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

12
13 ATCP 60.29(intro.) **Suspension notice; requirements.** Whenever the food safety
14 division suspends a milk producer license under s. ATCP 60.25(2), or a grade A farm permit
15 under s. ATCP 60.27 or 60.28, the suspension notice shall comply with the following
16 requirements:

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

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

20 (a) The food safety division administrator.

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

23 (c) A food safety division inspector if the suspension notice is issued under s. ATCP
24 60.28(2). -

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

26 ATCP 60.29(3) **TERM OF SUSPENSION; REINSTATEMENT REQUIREMENTS FOR**

27 **REINSTATEMENT OF LICENSE OR PERMIT.** A suspension notice shall indicate the term of the

1 suspension or, if the suspension is for an indefinite term, the conditions ~~which must be met in~~
2 ~~order for the affected milk that the producer must meet in order~~ to obtain reinstatement of the
3 ~~milk producer's license or grade A permit.~~ Conditions for reinstatement shall be reasonably
4 related to the reasons for which the license or permit is suspended. ~~If the food safety division~~
5 ~~summarily suspends a milk producer license~~ A summary license suspension notice under s.
6 ATCP 60.25(2), ~~the suspension notice~~ may authorize a dairy plant operator to receive milk from
7 the suspended producer on a conditional basis, ~~upon completion of specified inspection or testing~~
8 ~~by the dairy plant, pending full reinstatement by the department~~ pending full reinstatement of the
9 producer's license, provided that the operator performs specified inspections or tests.

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

11 ATCP 60.30(1) HOLDING ORDER. Whenever a ~~department~~ food safety division inspector
12 has reasonable cause to believe that milk or a milk product examined by the inspector is
13 adulterated or misbranded, and is hazardous to health or misleading to the potential damage or
14 injury of a purchaser or consumer, the inspector may issue a temporary holding order to allow
15 for further testing or examination of the milk or milk product, pursuant to s. 97.12 (2), Stats. A
16 holding order shall be ~~issued~~ in writing, and shall identify the milk ~~which~~ or milk product that is
17 subject to the holding order. ~~A~~ The food safety division may extend or terminate a holding order
18 ~~may be extended or terminated~~ by written notice, as provided in s. 97.12 (2), Stats. Notice A
19 notice extending a holding order ~~may be issued~~ shall be signed by the ~~food~~ division
20 administrator, or a person authorized in writing by the ~~food~~ division administrator. A holding
21 order and every notice extending a holding order shall include a notice of the recipient's right to
22 hearing under s. ATCP 60.31.

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

11 SECTION 64. ATP 60.31(1)(title), (1)(intro.) and (2) to (4) are amended to read:

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

15 (2) FORM AND TIMING OF REQUEST; EFFECT PENDING HEARINGS. A ~~request for hearing on~~
16 ~~a food safety division action~~ person requesting a hearing under sub. (1) shall be made make that
17 request, in writing, and shall be filed with the department within 10 days after the milk producer
18 receives notice of the ~~food~~ division action. A request for hearing does not stay the effect of any
19 action under this chapter. The filing deadline under this subsection is waived if the department
20 fails to give the ~~milk~~ producer timely written notice of the filing deadline.

21 (3) INFORMAL HEARING. (a) ~~If the department receives a written request under this~~
22 ~~section for a hearing on a food division action~~ Whenever the department receives a hearing
23 request under sub. (2), the department shall conduct a prompt informal hearing before on the

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

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

18 (4) FULL EVIDENTIARY HEARING. If a person adversely affected by a food safety division
19 action files a timely written request for hearing under subs. (1) and (2), and if the matter is not
20 resolved by an informal hearing under sub. (3), the person adversely affected may request a full
21 evidentiary hearing before the department, pursuant to ch. 227, Stats., and ch. ATCP 1. A full
22 evidentiary hearing, if held any, shall be held before a hearing examiner an administrative law

1 judge appointed by the secretary. A request for a full evidentiary hearing does not stay any
2 action under this chapter.

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

Dated this _____ day of _____, 2001

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

By _____
James E. Harsdorf, Secretary

Fiscal Estimate — 2001 Session

- Original Updated
 Corrected Supplemental

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

Subject
Dairy Farms

Fiscal Effect

State: No State Fiscal Effect

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

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

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

Local: No Local Government Costs

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

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

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

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

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

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

Long-Range Fiscal Implications

None

Prepared By: C. Thomas Leitzke	Telephone No. (608) 224-4711	Agency DATCP
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)

OCT 31 2001

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER
PROTECTION

NOTICE OF HEARING
RULE RELATED TO DAIRY FARMS

The State of Wisconsin Department of Agriculture, Trade and Consumer Protection announces that it will hold public hearings on a proposed rule to revise ATCP 60, relating to dairy farm standards. The department will hold four hearings at the time and places shown below. The department invites the public to attend the hearings and comment on the proposed rules. Following the public hearing, the hearing record will remain open until December 15, 2001, for additional written comments.

You may obtain a free copy of these rules by contacting the Wisconsin Department of Agriculture, Trade and Consumer Protection, Division of Food Safety, 2811 Agriculture Drive, P.O. Box 8911, Madison WI 53708, or by calling (608) 224-4700. Copies will also be available at the hearings.

Hearing impaired persons may request an interpreter for these hearing. Please make reservations for a hearing interpreter by **November 23, 2001**, by writing to Debbie Mazanec, Division of Food Safety, P.O. Box 8911, Madison, WI 53708-8911, telephone (608) 224-4712. Alternatively, you may contact the Department TDD at (608) 224-5058. Handicap access is available at the hearings.

Hearings are scheduled at:

Thursday, November 29, 2000, 9:30 a.m. until 12:30 p.m.
WDATCP Eau Claire Regional Office
3610 Oakwood Hills Parkway
Eau Claire, WI 54701-7754
Handicapped accessible

Tuesday, December 4, 2001, 9:30 a.m. until 12:30 p.m.
Appleton Public Library
Lower Level Meeting Room
925 So. Oneida Street
Appleton, WI 54911
Handicapped accessible

Wednesday, December 5, 2001, 9:30 a.m. until 12:30 p.m.
Green County Agriculture Bldg.
2841 6th Street
Monroe WI 53566
Handicapped accessible

Thursday, December 6, 2001, 9:30 a.m. until 12:30 p.m.
U. W. Pyle Center
702 Langdon Street
Madison, WI 53706
Handicapped accessible

The hearing in Madison on Thursday, December 6, 2001, will have videoconference connections with three additional locations. The public may participate in the hearing by testifying or registering an appearance at any of the four sites, and see as well as listen to testimony from other persons at all of the sites. Videoconference connections will be available from 9:30 a.m. until 12:30 p.m. at the following locations:

- LaCrosse State Office Building, Room B-29
3550 Morman Coulee Road
LaCrosse WI 54601
Handicapped accessible
- Wisconsin Rapids State Office Building
2610 Industrial Street, Conference Room #4
Wisconsin Rapids WI 54495
Handicapped accessible
- University of Wisconsin – Green Bay
Instructional Services Bldg. Room #1034
Green Bay, WI 54311
Handicapped accessible

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

Statutory authority: ss. 93.07(1), 97.09(4), 97.20(4), 97.22(8), 97.24(3) and 97.52, Wis. Stats.

Statutes interpreted: ss. 93.06(7) and (8), 97.02, 97.03, 97.12, 97.20, 97.22 to 97.24, 97.50 and 97.52, Wis. Stats.

Overview

The Wisconsin Department of Agriculture, Trade and Consumer Protection (“DATCP”) regulates dairy farms to protect consumers and facilitate interstate shipment of Wisconsin

dairy products. This rule updates current dairy farm rules under ch. ATCP 60, Wis. Adm. Code. Among other things, this rule:

- Requires out-of-state dairy plant operators to test milk procured in this state from Wisconsin producers, and report test results.
- Authorizes milk producers to ship milk to 2 or more dairy plant operators. *Each operator* must comply with testing, reporting and other requirements related to milk shipped to that operator. *One of the operators* must take responsibility for producer licensing functions. That operator must pay the producer's license, grade A permit and re-inspection fees, and must perform initial dairy farm inspections and biennial water supply tests required for licensing purposes. Operators must report producer transfers.
- Authorizes milk producers (such as grazers) to discontinue milk shipments temporarily, without jeopardizing their license or permit status.
- Extends current rules to cover farms producing milk from sheep (current rules apply to cows and goats).
- Modifies current hot water capacity requirements for dairy farms.
- Authorizes the use of re-circulated water in plate coolers, subject to conditions specified in this rule.
- Authorizes milk producers to milk directly to bulk transport containers, subject to standards specified in this rule.
- Clarifies milk testing and reporting requirements.
- Requires dairy plant operators to respond immediately if the bacteria count in a producer's milk is more than 750,000 bacteria per ml. (the current "immediate response" level is 1,000,000 per ml.).
- Authorizes electronic reporting of milk test records. Dairy plant operators are encouraged, but not required, to implement electronic reporting by July 1, 2002.
- Requires a dairy plant operator to recover, from producers who contaminate milk with drug residues, the full amount of the operator's loss related to that milk. Under current rules, an operator must test bulk loads of milk, reject contaminated loads, and recover at least *part* of the loss from offending producers. This rule requires the operator to recover the full value of each rejected load (not just part), plus disposal costs.
- Tightens the current test standard for beta lactam drug residues in milk, and modifies current standards for Neomycin, Chlortetracycline and Oxytetracycline, per federal standards.

- Requires milk laboratories and laboratory analysts to be certified by DATCP, not the Department of Health and Family Services (DHFS). The Legislature recently transferred dairy, food and water lab certification responsibilities from DHFS to DATCP.
- Codifies DATCP's current program of performance-based dairy farm inspection. Under this program, DATCP inspects different farms with different frequency, depending on their performance.
- Updates current sanitation requirements for dairy farms.
- Updates current DATCP administrative procedures.
- Make drafting and organizational changes to clarify and modernize current rules.

Background

DATCP currently licenses and inspects dairy farms under ss. 97.22 to 97.24, Stats., and ch. ATCP 60, Wis. Adm. Code. All dairy farms must be licensed. Grade A dairy farms must also hold a grade A permit. Only grade A milk may be sold as fluid milk. Grade B milk (and grade A milk) may be used to produce cheese and other non-fluid milk products. Grade A milk typically commands a higher price.

All milk must be produced under sanitary conditions. Grade A milk production must also comply with the Interstate Pasteurized Milk Ordinance (PMO). Failure to comply with PMO requirements may jeopardize Wisconsin interstate milk shipments. Current DATCP rules establish standards for grade A and grade B dairy farms. DATCP rules incorporate PMO standards.

A milk producer typically ships milk to a single dairy plant operator, although this industry custom is changing. DATCP licenses dairy plants located in this state. DATCP does not license out-of-state dairy plants, although it does have authority to regulate out-of-state dairy plants that procure milk in this state from Wisconsin producers. DATCP currently regulates dairy plants under ch. ATCP 80, Wis. Adm. Code. ATCP 60 also spells out dairy plant responsibilities related to milk procurement from dairy farms.

Under current law, a dairy plant operator must submit milk producer license applications, license fees, and grade A permit applications on behalf of the milk producers who ship milk to that operator. A dairy plant operator must also test producer milk shipments for drug residues, bacteria, somatic cells and other adulterants, and must report test results to DATCP. A dairy plant operator must reject milk that fails to meet critical minimum standards.

Bulk milk haulers collect milk shipments from dairy farms, and transport those shipments to dairy plants. Each bulk tanker load typically includes milk shipments from several producers, although some large producer shipments may fill an entire tanker. The milk hauler weighs and measures the milk at the farm (for payment purposes), and collects a sample of each producer's milk before that milk is commingled with milk from other producers.

The milk hauler transmits producer milk samples to the dairy plant operator's laboratory for testing. The operator tests samples for drug residues, bacteria and somatic cells, and reports test results to DATCP. DATCP regulates milk haulers under ch. ATCP 82, Wis. Adm. Code, and certifies milk testing laboratories under ch. ATCP 77, Wis. Adm. Code.

Under current rules, a dairy plant operator must also screen each bulk load of milk before the operator commingles that load with any other loads. If a bulk load tests positive for drug residues, the dairy plant operator must reject it and test the individual producer samples for that bulk load. If a producer sample tests positive for drug residues, the dairy plant operator may charge that producer for the cost of the bulk load.

DATCP currently inspects dairy farms, and monitors milk quality test reports. DATCP inspects grade A dairy farms at a specified frequency, based on dairy farm performance. DATCP inspects grade B farms less frequently. DATCP may suspend or revoke a producer's license or grade A permit for cause, including violations of farm sanitation or milk quality standards. Current rules spell out compliance procedures, including notice and appeal procedures.

Rule Contents

Out-of-State Dairy Plants

Current rules require licensed dairy plants to file license and permit applications for milk producers, pay producer license and reinspection fees, test producer milk shipments, and report test results to DATCP. Current rules do not apply to out-of-state dairy plants, which are not licensed by DATCP, although most out-of-state plants perform these functions voluntarily when procuring milk from Wisconsin producers. This rule requires out-of-state dairy plants to perform these functions when they procure milk in this state from Wisconsin producers. But this rule does not require out-of-state dairy plants to be licensed in this state.

Producer Shipping to 2 or More Dairy Plants

A milk producer typically ships milk to a single dairy plant operator, although this industry custom is changing. Some large producers concurrently ship milk to 2 or more dairy plant operators. This rule allows a producer to ship to 2 or more dairy plant operators if all the following apply:

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

Producer Transferring Between Dairy Plants

A dairy plant operator must notify DATCP if a producer transfers to that operator, or if the operator assumes license and fee payment responsibilities for that producer.

Milk Shipments Discontinued

This rule authorizes a producer (such as a grazer) to discontinue milk shipments for up to 180 days without jeopardizing the producer's license status, and for up to 60 days without jeopardizing the producer's grade A permit status. A dairy plant operator must report to DATCP when the producer stops and resumes shipments.

If a dairy plant operator terminates a milk producer, the operator must report the termination to DATCP. DATCP will revoke the producer's license 30 days after the termination unless the producer is shipping milk to another operator.

Dairy Sheep

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

Lighting in Barns, Milking Parlors and Milkhouses

This rule increases the minimum lighting standard in barns, milking parlors and milkhouses. This rule requires at least 30 foot-candles of illumination in milking parlors and milkhouses (current rules require 20 foot-candles).

Water Supply

Under current rules, a dairy plant operator must biennially sample a milk producer's water supply. The water sample must be tested at a certified laboratory. The Legislature recently transferred water lab certification responsibilities from the Department of Health and Family Services (DHFS) to DATCP. DATCP has adopted laboratory certification rules under ch. ATCP 77, Wis. Adm. Code. This rule updates current dairy farm rules to require lab certification by DATCP, not DHFS.

Hot Water

This rule modifies current capacity requirements for hot water supply systems. This rule eliminates a number of specific capacity requirements, but requires adequate hot water for all milkhouse operations (with a minimum of 10 gallons to clean equipment and utensils). DATCP may approve alternative systems, including heat recovery and continuous flow systems that provide adequate hot water.

Re-Circulated Cooling Water

Current rules prohibit the use of re-circulated water to cool milk. This rule permits the use of re-circulated water in plate coolers if all the following apply:

- The re-circulated water originates from a safe source that complies with DNR rules.
- The re-circulated water is bacteriologically safe, and is protected from contamination. The milk producer must test for bacteria at least twice a year. Test results must meet minimum standards specified in this rule.

- The re-circulating system uses non-toxic coolants.

If a re-circulating water system becomes contaminated, the milk producer must stop using the system until the producer does all the following:

- Eliminates the contamination source and treats the re-circulated water.
- Re-tests the re-circulated water, and determines that the water meets the bacteriological test standards under this rule.

Toilet Facilities

This rule re-states, but does not substantially alter, current standards for toilets on dairy farms. Toilets must comply with applicable DNR and Department of Commerce rules.

Milking Directly to Bulk Transport Containers

Most farmers milk to a permanent bulk tank in the milkhous, where milk is cooled and stored for shipment. A milk hauler then collects the milk from the bulk tank, and transports it in a bulk milk tanker to a dairy plant. However, some large farmers propose to cut costs by milking directly to the bulk transport container (tanker) in which the farmer then transports the milk to the dairy plant. This rule authorizes producers to milk directly to a bulk transport container if all the following apply:

- The producer controls the operation and maintenance of the bulk transport container. The producer may not collect milk from other producers unless the producer operates as a licensed as a milk hauler under ch. ATPC 82.
- The bulk transport container is constructed and maintained according to bulk milk tanker standards under ch. ATPC 82.
- The bulk transport container has an access port that can be sealed.
- The bulk transport container, while parked at the dairy farm, is kept on a pad of concrete or other impervious material. The pad must be located next to the milkhous, to minimize the length of the transport hose between the milkhous and the bulk transport container.
- All permanent pipelines connecting the bulk transport container to the milk handling system terminate in the milkhous.
- 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. The producer must measure and record milk temperatures.
- The bulk transport container outlet valve is close-coupled and protected with an effective dust cover.
- The producer keeps the bulk milk cooling device, transport hose and bulk transport container outlet valve in clean and sanitary condition.

- The dairy plant operator collects a milk sample, screens for drug residues, and records the temperature and quantity of milk before unloading the bulk transport container.
- 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 ch. ATCP 82.

Milk Testing and Reporting

Under current rules, dairy plant operators must test milk from dairy farms and report test results to DATCP. This rule clarifies current reporting requirements and authorizes electronic reporting. Dairy plant operators are encouraged, but not required, to implement electronic reporting by July 1, 2002.

Under this rule, as under the current rule, milk tests must be performed at certified laboratories. Under this rule, milk laboratories and analysts must be certified by DATCP, not the Department of Health and Family Services (DHFS). The Legislature recently transferred dairy, food and water lab certification responsibilities from DHFS to DATCP.

This rule updates current milk test methods. Milk test methods must be those prescribed in "Standard Methods for the Examination of Dairy Products," 16th edition (1992), or in the "Official Methods of Analysis of the Association of Analytical Chemists (AOAC) International, 17th edition (2000). DATCP will ask the Attorney General and the Revisor of Statutes for permission to incorporate these updated technical standards by reference in this rule. DATCP may approve other test methods.

Bacteriological Testing; "Immediate Response" Levels

Under current rules, dairy plant operators must take immediate steps if a producer's milk is found to contain more than 1,000, 000 bacteria per ml. This rule lowers the "immediate" response level to 750,000 bacteria per ml.

Drug Residue Testing

Under current rules, a dairy plant operator must screen each bulk load of milk for drug residues, before the operator commingles that load with any other loads. If a bulk load tests positive for drug residues, the dairy plant operator must reject it and test the individual producer samples for that bulk load. If a producer sample tests positive for drug residues, the dairy plant operator may charge that producer for the cost of the bulk load. Under current rules, the operator must recover at least *part* of the operator's loss from the offending producer.

Under this rule, the dairy plant operator must recover the *full value* of each rejected load (not just part) from the offending producer. The operator must also recover any additional transportation, testing and disposal costs caused by the contamination. If there are 2 or more offending producers, the operator must recover *pro rata* from those producers based on the relative size of their milk shipments in the contaminated bulk load.

This rule tightens current test standards for beta lactam drug residues in milk, and modifies current standards for Neomycin, Chlortetracycline and Oxytetracycline, per federal standards.

Performance-Based Dairy Farm Inspection

This rule codifies DATCP's current program of performance-based dairy farm inspection. Under this program, DATCP inspects different grade A dairy farms with different frequency, depending on their performance. The terms of the performance-based inspection are consistent with the requirements of the Interstate Pasteurized Milk Ordinance (PMO).

Under this rule, DATCP must 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 this evaluation, DATCP must place the dairy farm in one of the following categories:

Twelve-Month Inspection Category. DATCP must inspect a grade A dairy farm in this category at least once every 12 months. DATCP must place a dairy farm in this category if all the following apply, based on dairy farm inspection reports, milk quality tests and DATCP compliance actions during the preceding 12 months:

- All of the producer's standard plate counts (SPC) are less than 25,000, except one SPC may exceed 25,000 if it is not more than 100,000.
- All of the producer's somatic cell counts (SCC) are less than 500,000.
- DATCP has not issued any warning for drug residue violations or "key" farm inspection violations.
- No dairy farm inspection report shows more than 5 violations.
- DATCP has not suspended the producer's grade A dairy farm permit or milk producer license.
- The producer's latest water supply test complies with this rule.

Six-Month Inspection Category. DATCP must inspect a grade A dairy farm in this category at least once every 6 months. DATCP must place a dairy farm in this category if all the following apply, based on dairy farm inspection reports, milk quality tests and DATCP compliance actions during the preceding 12 months:

- The dairy farm fails to qualify for the 12-month inspection category.
- DATCP has not issued more than one warning for violations of bacteria or somatic cell test standards.
- DATCP has not issued any warning for drug residue violations or "key" farm inspection violations.
- No dairy farm inspection report shows more than 5 violations.
- DATCP has not suspended the producer's grade A dairy farm permit or milk producer license.
- The producer's latest water supply test complies with this rule.

Four-Month Inspection Category. DATCP must inspect a grade A dairy farm in this category at least once every 4 months. DATCP must place a dairy farm in this category if the dairy farm does not belong in the 12-month, 6-month or 3-month inspection

category, based on dairy farm inspection reports, milk quality tests and DATCP compliance actions during the preceding 12 months.

Three-Month Inspection Category. DATCP must inspect a grade A dairy farm in this category at least once every 3 months. DATCP must place a dairy farm in this category if all the following apply, based on dairy farm inspection reports, milk quality tests and DATCP compliance actions during the preceding 12 months:

The dairy farm does not qualify for the 12-month or 6-month inspection category. DATCP has done any of the following:

- * Issued more than one warning for violations of bacteria or somatic cell test standards.
- * Issued more than one warning for drug residue violations.
- * Issued more than one warning for "key" farm inspection violations.
- * Conducted more than one re-inspection of the dairy farm.
- * Suspended the producer's dairy farm license or grade A permit.

Compliance Procedures

This rule clarifies DATCP compliance procedures related to dairy farms. This rule does not make significant changes in current procedures, except that it extends the deadline for holding an informal hearing on a contested drug residue finding. Under current rules, DATCP must hold the informal hearing within 3 business days after the producer requests the hearing, unless the producer requests a later hearing date. Under this rule, DATCP must hold the informal hearing within 10 business days after the producer requests the hearing, unless the producer requests a later hearing date. This new deadline is consistent with the current deadline for holding informal hearings on other contested dairy farm violations.

FISCAL ESTIMATE

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

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

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

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

Initial Regulatory Flexibility Analysis

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) regulates dairy farms to protect consumers and facilitate interstate shipment of Wisconsin dairy products. This rule updates current dairy farm rules under ch. ATCP 60, Wis. Adm. Code.

This rule accommodates recent changes in dairy farm operations and updates existing food safety requirements. It also clarifies the responsibility of dairy plant operators with respect to dairy farms.

The impact of this rule modification will not affect small dairy farms in Wisconsin.

Among proposed changes to ATCP 60 are:

- Requires out-of-state dairy plant operators to test milk procured in this state from Wisconsin producers, and report test results.
- Authorizes milk producers to discontinue milk shipments temporarily, without jeopardizing their license or permit status.
- Extends current rules to cover farms producing milk from sheep (currently rules apply to cows and goats).
- Modifies current hot water capacity requirements for dairy farms.
- Authorizes the use of re-circulated water in plate coolers, subject to conditions specified in this rule.
- Authorizes milk producers to milk directly to bulk transport containers, subject to standards specified in this rule.
- Clarifies milk testing and reporting requirements.
- Authorizes electronic reporting of milk test records.
- Requires a dairy plant operator to recover, from dairy producers who contaminate milk with drug residues, the full amount of the operator's loss related to that milk.
- Requires dairy plant operators to respond immediately if the bacteria count in a producer's milk is more than 750,000 bacteria per ml.

- Codifies DATCP's current program of performance-based dairy farm inspection. Under this program, DATCP inspects different farms with different frequency, depending on their performance.
- Updates current sanitation requirements for dairy farms.
- Updates current DATCP administrative procedures.
- Makes drafting and organizational changes to clarify and modernize current rules.

The impact of the proposed rule change on small business is negligible. It would not be necessary for dairy farms to retain additional professional services such as accounting or legal services to comply with this rule.

Dated this 30th day of October, 2001

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

By


James E. Harsdorf, Secretary



State of Wisconsin
Scott McCallum, Governor

Department of Agriculture, Trade and Consumer Protection
James E. Harsdorf, Secretary

PUBLIC NOTICE

FINAL DRAFT RULE TO LEGISLATURE

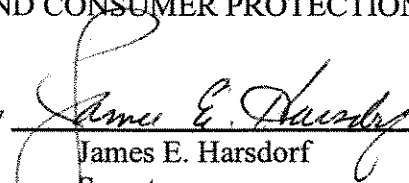
The Department of Agriculture, Trade and Consumer Protection announces that it is submitting the following rule for legislative committee review, pursuant to s. 227.19, Stats.:

CLEARINGHOUSE RULES #: 01-125
SUBJECT: Dairy Farms
ADM. CODE REFERENCE: ATCP 60
DATCP DOCKET #: 98-R-2

Dated this 29 day of July, 2002.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

By


James E. Harsdorf
Secretary



State of Wisconsin
Scott McCallum, Governor

Department of Agriculture, Trade and Consumer Protection
James E. Harsdorf, Secretary

DATE: July 17, 2002

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

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

FROM: James E. Harsdorf, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: Dairy Farms; Final Draft Rule
(Clearinghouse Rule # 01-125)

The Department of Agriculture, Trade and Consumer Protection is transmitting this rule for legislative committee review, as provided in s. 227.19(2) and (3), Stats. The department will publish a notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19(2), Stats.

Background

The Department of Agriculture, Trade and Consumer Protection ("DATCP") currently licenses and inspects dairy farms under ss. 97.22 to 97.24, Stats., and ch. ATCP 60, Wis. Adm. Code. All dairy farms must be licensed. DATCP currently licenses approximately 18,000 dairy farms in this state.

Grade A dairy farms must also hold a grade A permit. Only grade A milk may be sold as fluid milk. Grade B milk may be used to produce cheese and other non-fluid milk products (grade A milk may also be used for this purpose). Grade A milk typically commands a higher price than grade B milk.

All milk must be produced under sanitary conditions. Grade A milk production must also comply with the Interstate Pasteurized Milk Ordinance (PMO). Failure to comply with PMO requirements may jeopardize Wisconsin interstate milk shipments. Current DATCP rules

establish standards for grade A and grade B dairy farms. DATCP rules incorporate PMO standards.

A milk producer typically ships milk to a single dairy plant operator, although this industry custom is changing. DATCP licenses dairy plants located in this state. DATCP does not license out-of-state dairy plants, although it does have authority to regulate out-of-state dairy plants that procure milk in this state from Wisconsin producers. DATCP currently regulates dairy plants under ch. ATCP 80, Wis. Adm. Code. ATCP 60 also spells out dairy plant responsibilities related to milk procurement from dairy farms.

Under current law, a dairy plant operator must submit milk producer license applications, license fees, and grade A permit applications on behalf of the milk producers who ship milk to that operator. A dairy plant operator must also test producer milk shipments for drug residues, bacteria, somatic cells and other adulterants, and must report test results to DATCP. A dairy plant operator must reject milk that fails to meet critical minimum standards.

Bulk milk haulers collect milk shipments from dairy farms, and transport those shipments to dairy plants. Each bulk tanker load typically includes milk shipments from several producers, although some large producer shipments may fill an entire tanker. The milk hauler weighs and measures the milk at the farm (for payment purposes), and collects a sample of each producer's milk before that milk is commingled with milk from other producers. DATCP regulates milk haulers under ch. ATCP 82, Wis. Adm. Code.

The milk hauler transmits producer milk samples to the dairy plant operator's laboratory for testing. The operator regularly tests samples for drug residues, bacteria and somatic cells, and reports test results to DATCP. DATCP certifies milk testing laboratories and analysts under ch. ATCP 77, Wis. Adm. Code.

Under current rules, a dairy plant operator must also screen each bulk load of milk before the operator commingles that load with any other loads. If a bulk load tests positive for drug residues, the dairy plant operator must reject it and test the individual producer samples for that bulk load. If a producer sample tests positive for drug residues, the dairy plant operator may charge that producer for the cost of the bulk load.

DATCP currently inspects dairy farms, and monitors milk quality test reports. DATCP inspects grade A dairy farms at a specified frequency, based on dairy farm performance. DATCP inspects grade B farms less frequently. DATCP may suspend or revoke a producer's license or grade A permit for cause, including violations of farm sanitation or milk quality standards. Current rules spell out compliance procedures, including notice and appeal procedures.

Rule Contents

This rule updates current dairy farm rules under ch. ATCP 60, Wis. Adm. Code. Among other things, this rule:

- Requires out-of-state dairy plant operators to test milk procured in this state from Wisconsin producers, and report test results. Most out-of-state dairy plant operators already do this voluntarily.
- Authorizes milk producers to ship milk to 2 or more dairy plant operators. *Each operator* must comply with testing, reporting and other requirements related to milk shipped to that operator. *One of the operators* must take responsibility for producer licensing functions. That operator must pay the producer's license, grade A permit and re-inspection fees, and must perform initial dairy farm inspections and biennial water supply tests required for licensing purposes. Operators must report producer transfers. An operator who merely "custom processes" dairy products for producers, without marketing or taking title to those dairy products, is exempt from certain requirements.
- Authorizes milk producers (such as grazers) to discontinue milk shipments temporarily, without jeopardizing their license or permit status.
- Extends current rules to cover farms producing milk from sheep (current rules apply to cows and goats).
- Modifies current hot water capacity requirements for dairy farms.
- Authorizes the use of re-circulated water in plate coolers, subject to conditions specified in this rule.
- Authorizes milk producers to milk directly to bulk transport containers, subject to standards specified in this rule.
- Clarifies milk testing and reporting requirements.
- Requires dairy plant operators to respond immediately if a bacteria test on a producer's milk shows more than 750,000 bacteria per ml. (the current "immediate response" level is 1,000,000 per ml.).
- Requires dairy plant operators to report milk quality test reports in electronic form, beginning one year after the effective date of this rule. Many operators currently submit hard copy written reports. The electronic reporting requirement does not apply to drug residue test reports.

- Requires a dairy plant operator to recover, from producers who contaminate milk with drug residues, the full amount of the operator's loss related to that milk. Under current rules, an operator must test bulk loads of milk, reject contaminated loads, and recover at least part of the loss from offending producers. This rule requires the operator to recover the full value of each rejected load (not just part), plus any additional transportation, testing and disposal costs incurred because of the contamination.
- Tightens the current test standard for beta lactam drug residues in milk, and modifies current standards for Neomycin, Chlortetracycline and Oxytetracycline, per federal standards.
- Requires milk laboratories and laboratory analysts to be certified by DATCP, not the Department of Health and Family Services (DHFS). The Legislature recently transferred dairy, food and water lab certification responsibilities from DHFS to DATCP.
- Codifies DATCP's current program of performance-based dairy farm inspection. Under this program, DATCP inspects different farms with different frequency, depending on their performance.
- Updates current sanitation requirements for dairy farms.
- Updates current DATCP administrative procedures.
- Make drafting and organizational changes to clarify and modernize current rules.

Hearings

DATCP held 4 public hearings on this rule. DATCP held hearings on November 29, 2001 in Eau Claire; December 4, 2001 in Appleton; December 5, 2001 in Monroe; and December 6, 2001 in Madison. The hearing in Madison also had video-conferencing sites at Wisconsin Rapids, LaCrosse and Green Bay.

The following persons appeared at the hearings and spoke in general support of the proposed rule:

- John Umhoeffer, representing the Wis. Cheesemakers Association (Appleton hearing).
- Dean Sommers, representing Alto Dairy (Appleton hearing).
- John Manske, representing the Wisconsin Federation of Cooperatives (Madison hearing).
- Brad Legreid, representing the Wisconsin Dairy Products Association (Madison hearing).
- William Wendorf, Food Science Department, University of Wisconsin – Madison (Madison hearing).

The hearing record remained open for written comments until December 15, 2001. The following persons submitted written comments suggesting some changes to the draft rule:

- Dean Sommers, representing Alto Dairy.
- John Manske, representing the Wisconsin Federation of Cooperatives.
- John Umhoeffer, representing the Wisconsin Cheesemakers Association.
- William Wendorf, Food Science Department, University of Wisconsin - Madison.

Changes from Hearing Draft

Milk Producer Shipping to 2 or More Dairy Plants

The final draft makes it easier for a milk producer to ship milk to more than one dairy plant operator at the same time. A producer may ship to 2 or more dairy plant operators if all the following apply:

- The producer is assigned, for licensing purposes, to *one of the operators*. That operator must file license and permit applications for the milk producer, and pay producer license and reinspection fees. Under this rule, as under current rules, the operator must charge producer reinspection fees back to the producer.
- *Each operator* pays milk procurement fees related to that operator's receipt of milk shipments from the producer. An operator is not required to pay milk procurement fees on milk that the operator "custom processes" for a producer (see below), provided that the producer pays those fees.
- *Each operator* tests milk shipments shipped to that operator, and reports test results. An operator is not required to perform monthly milk quality tests on milk that the operator "custom processes" for a producer (see below). But the operator must perform drug residue screening tests on that milk.

A dairy plant operator is not required to pay milk procurement fees or perform monthly milk quality tests on milk that the operator "custom processes" for a producer if all the following apply:

- The operator makes that milk into dairy products on behalf of the producer.
- The producer retains title to that milk, and to all of the dairy products made from that milk.
- The operator does not market that milk, or the dairy products made from that milk, but returns them to the producer or the producer's agent for consumption or marketing.
- The operator does not commingle producer-owned milk or dairy products with other milk or dairy products.

- The operator provides the "custom processing" services pursuant to a written agreement with the producer.
- The producer ships, for "custom processing," not more than 50 percent of the producer's milk production in any month.
- The operator "custom processes" not more than 5 million pounds of milk in any month.
- The producer notifies the department before shipping any milk for "custom processing." The producer must also notify the dairy plant operator to whom the producer is assigned for licensing purposes.
- The producer reports, to the department, the monthly volume of milk delivered to the custom processor. The producer must give the same report to the dairy plant operator to whom the producer is assigned for licensing purposes.
- The producer pays any milk procurement fees and milk marketing order assessments that apply, in the manner prescribed by state or federal law.

Other Changes

The final draft also makes the following changes to the hearing draft:

- The final draft requires the milk producer, not the dairy plant operator, to test the producer's plate cooler (if any) and report the test results to DATCP. The hearing draft had required the dairy plant operator to test and report.
- The final draft clarifies bacteriological test standards for re-circulated cooling water on dairy farms.
- The final draft requires the dairy plant operator to seal the access port on a bulk transport container used by a milk producer to collect and transport milk to a dairy plant operator, after the container is cleaned and sanitized.
- Under the final draft, a dairy plant operator may elect to report positive bulk load drug residue tests by FAX, rather than by telephone (current rules require telephone reporting).
- The final draft requires dairy plant operators to report milk quality test results in electronic form not later than one year after the effective date of this rule. This electronic reporting requirement does not apply to drug residue test results.

Response to Rules Clearinghouse Comments

The department accepted all of the recommendations of LCRC. The suggested changes were non-substantive and only related to form, style and placement in the Administrative Code, and minor changes regarding clarity, grammar, punctuation and use of plain language.

Small Business Analysis

This rule will affect some small businesses, including dairy farmers and dairy plant operators who are small businesses. For the most part, this rule will help small businesses by modernizing current regulations to accommodate changing industry practices. A small business analysis ("final regulatory flexibility analysis") is attached.

Fiscal Estimate

This rule will not have a major fiscal impact on DATCP or local units of government. A fiscal estimate is attached.

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

1 The state of Wisconsin department of agriculture, trade and consumer protection proposes the
2 following order to repeal ATCP 60.01(28), 60.05(2), 60.19(10)(b), 60.22(1)(b)(note) and (c), and
3 60.25(2)(c) and (d); to renumber ATCP 60.19(10)(c)(note) and (d), and 60.27(6)(b); to renumber
4 and amend ATCP 60.19(10)(c); to amend ATCP 60.01(1), (4), (7), (9b), (10), (15)(b)8., (19) to
5 (22), (24) and (29)(b), 60.02(5), 60.03(4), 60.04(3), 60.06(2), (3), (5) and (9)(a)1., 60.07(1) and
6 (2)(d) and (f), 60.08(5), 60.09(1) and (4), 60.10(1)(note), 60.11(title), (1)(title), (2)(title), (c) and
7 (e)(note) and (3)(title), 60.12(1), (2) and (6), 60.13(1) and (2), 60.14(2) to (4), 60.15(2) and (4),
8 60.19(7), (8)(b) and (10)(a), 60.22(2) and (2)(note), 60.24(3), 60.25(1) and (2)(title), (intro.) and
9 (a)(note), 60.26, 60.27(1), (4), (4)(note) and (6)(a), 60.275(1)(a)(intro.) and (b) to (d), (2)(a),
10 (b)1. and (3), 60.28(1), (2) and (3)(note), 60.29(intro.) and (3), 60.30(1) and (2), and
11 60.31(1)(title) and (intro.), and (2) to (4); to repeal and recreate ATCP 60.02(6), 60.03(5),
12 60.14(6), 60.17, 60.18 and (notes), 60.19(1)(b) and (5), 60.20 and (notes), 60.22(1), 60.24(2) and
13 60.29(1); and to create ATCP 60.01(1g), 60.02(7), (8), (8)(note), (9) and (9)(note), 60.03(6) and
14 (6)(note), 60.08(6), 60.11(4), 60.12(7), 60.19(11), 60.245, and 60.27(6)(b); relating to dairy
15 farms.

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

Statutory authority: ss. 93.07(1), 97.09(4), 97.20(4), 97.22(8), 97.24(3) and 97.52,
Stats.

Statutes interpreted: ss. 93.06(7) and (8), 97.02, 97.03, 97.12, 97.20, 97.22 to 97.24,
97.50 and 97.52, Stats.

Overview

The Wisconsin Department of Agriculture, Trade and Consumer Protection ("DATCP") regulates dairy farms to protect consumers and facilitate interstate shipment of Wisconsin dairy products. This rule updates current dairy farm rules under ch. ATCP 60, Wis. Adm. Code. Among other things, this rule:

- Requires out-of-state dairy plant operators to test milk procured in this state from Wisconsin producers, and report test results.
- Authorizes milk producers to ship milk to 2 or more dairy plant operators. *Each operator* must comply with testing, reporting and other requirements related to milk shipped to that operator. *One of the operators* must take responsibility for producer licensing functions. That operator must pay the producer's license, grade A permit and re-inspection fees, and must perform initial dairy farm inspections and biennial water supply tests required for licensing purposes. Operators must report producer transfers. An operator who merely custom processes dairy products for producers, without marketing or taking title to those dairy products, is exempt from certain requirements.
- Authorizes milk producers (such as grazers) to discontinue milk shipments temporarily, without jeopardizing their license or permit status.
- Extends current rules to cover farms producing milk from sheep (current rules apply to cows and goats).
- Modifies current hot water capacity requirements for dairy farms.
- Authorizes the use of re-circulated water in plate coolers, subject to conditions specified in this rule.
- Authorizes milk producers to milk directly to bulk transport containers, subject to standards specified in this rule.
- Clarifies milk testing and reporting requirements.
- Requires dairy plant operators to respond immediately if the bacteria count in a producer's milk is more than 750,000 bacteria per ml. (the current "immediate response" level is 1,000,000 per ml.).
- Requires dairy plant operators to report milk quality test reports in electronic form, beginning one year after the effective date of this rule. Many operators currently submit hard copy written reports. The electronic reporting requirement does not apply to drug residue test reports.
- Authorizes dairy plant operators to report "immediate response" test results by FAX, as well as by telephone.

- Requires a dairy plant operator to recover, from producers who contaminate milk with drug residues, the full amount of the operator's loss related to that milk. Under current rules, an operator must test bulk loads of milk, reject contaminated loads, and recover at least *part* of the loss from offending producers. This rule requires the operator to recover the full value of each rejected load (not just part), plus disposal costs.
- Tightens the current test standard for beta lactam drug residues in milk, and modifies current standards for Neomycin, Chlortetracycline and Oxytetracycline, per federal standards.
- Requires milk laboratories and laboratory analysts to be certified by DATCP, not the Department of Health and Family Services (DHFS). The Legislature recently transferred dairy, food and water lab certification responsibilities from DHFS to DATCP.
- Codifies DATCP's current program of performance-based dairy farm inspection. Under this program, DATCP inspects different farms with different frequency, depending on their performance.
- Updates current sanitation requirements for dairy farms.
- Updates current DATCP administrative procedures.
- Makes drafting and organizational changes to clarify and modernize current rules.

Background

DATCP currently licenses and inspects dairy farms under ss. 97.22 to 97.24, Stats., and ch. ATCP 60, Wis. Adm. Code. All dairy farms must be licensed. Grade A dairy farms must also hold a grade A permit. Only grade A milk may be sold as fluid milk. Grade B milk (and grade A milk) may be used to produce cheese and other non-fluid milk products. Grade A milk typically commands a higher price.

All milk must be produced under sanitary conditions. Grade A milk production must also comply with the Interstate Pasteurized Milk Ordinance (PMO). Failure to comply with PMO requirements may jeopardize Wisconsin interstate milk shipments. Current DATCP rules establish standards for grade A and grade B dairy farms. DATCP rules incorporate PMO standards.

A milk producer typically ships milk to a single dairy plant operator, although this industry custom is changing. DATCP licenses dairy plants located in this state. DATCP does not license out-of-state dairy plants, although it does have authority to regulate out-of-state dairy plants that procure milk in this state from Wisconsin producers. DATCP currently regulates dairy plants under ch. ATCP 80, Wis. Adm. Code. ATCP 60 also spells out dairy plant responsibilities related to milk procurement from dairy farms.

Under current law, a dairy plant operator must submit milk producer license applications, license fees, and grade A permit applications on behalf of the milk producers who ship milk to that operator. A dairy plant operator must also test producer milk shipments for drug residues, bacteria, somatic cells and other adulterants, and must report test results to DATCP. A dairy plant operator must reject milk that fails to meet critical minimum standards.

Bulk milk haulers collect milk shipments from dairy farms, and transport those shipments to dairy plants. Each bulk tanker load typically includes milk shipments from several producers, although some large producer shipments may fill an entire tanker. The milk hauler weighs and measures the milk at the farm (for payment purposes), and collects a sample of each producer's milk before that milk is commingled with milk from other producers.

The milk hauler transmits producer milk samples to the dairy plant operator's laboratory for testing. The operator tests samples for drug residues, bacteria and somatic cells, and reports test results to DATCP. DATCP regulates milk haulers under ch. ATCP 82, Wis. Adm. Code, and certifies milk testing laboratories under ch. ATCP 77, Wis. Adm. Code.

Under current rules, a dairy plant operator must also screen each bulk load of milk before the operator commingles that load with any other loads. If a bulk load tests positive for drug residues, the dairy plant operator must reject it and test the individual producer samples for that bulk load. If a producer sample tests positive for drug residues, the dairy plant operator may charge that producer for the cost of the bulk load.

DATCP currently inspects dairy farms, and monitors milk quality test reports. DATCP inspects grade A dairy farms at a specified frequency, based on dairy farm performance. DATCP inspects grade B farms less frequently. DATCP may suspend or revoke a producer's license or grade A permit for cause, including violations of farm sanitation or milk quality standards. Current rules spell out compliance procedures, including notice and appeal procedures.

Rule Contents

Out-of-State Dairy Plants

Current rules require licensed dairy plants to file license and permit applications for milk producers, pay producer license and reinspection fees, test producer milk shipments, and report test results to DATCP. Current rules do not apply to out-of-state dairy plants, which are not licensed by DATCP, although most out-of-state plants perform these functions voluntarily when procuring milk from Wisconsin producers. This rule requires out-of-state dairy plants to perform these functions when they procure milk in this state from Wisconsin producers. But this rule does not require out-of-state dairy plants to be licensed in this state.

Producer Shipping to More than One Dairy Plant

A milk producer typically ships milk to a single dairy plant operator, although this industry custom is changing. Some large producers concurrently ship milk to 2 or more dairy plant operators. This rule allows a producer to ship to 2 or more dairy plant operators if all the following apply:

- The producer is assigned, for licensing purposes, to one of the operators. That operator must file license and permit applications for the milk producer, and pay producer license and reinspection fees. Under this rule, as under current rules, the operator must charge producer reinspection fees back to the producer.
- Each operator pays milk procurement fees related to that operator's receipt of milk shipments from the producer. An operator is not required to pay milk procurement fees on milk that the operator "custom processes" for a producer (see below), provided that the producer pays those fees.
- Each operator tests milk shipments shipped to that operator, and reports test results. An operator is not required to perform monthly milk quality tests on milk that the operator "custom processes" for a producer (see below). But the operator must perform drug residue screening tests on that milk.

A dairy plant operator is not required to pay milk procurement fees or perform monthly milk quality tests on milk that the operator "custom processes" for a producer if all the following apply:

- The operator makes that milk into dairy products on behalf of the producer.
- The producer retains title to that milk, and to all of the dairy products made from that milk.
- The operator does not market that milk, or the dairy products made from that milk, but returns them to the producer or the producer's agent for consumption or marketing.
- The operator does not commingle producer-owned milk or dairy products with other milk or dairy products.
- The operator provides the "custom processing" services pursuant to a written agreement with the producer.
- The producer ships, for "custom processing," not more than 50 percent of the producer's milk production in any month.
- The operator "custom processes" not more than 5 million pounds of milk in any month.
- The producer notifies the department before shipping any milk for "custom processing." The producer must also notify the dairy plant operator to whom the producer is assigned for licensing purposes.
- The producer reports, to the department, the monthly volume of milk delivered to the custom processor. The producer must give the same report to the dairy plant operator to whom the producer is assigned for licensing purposes.
- The producer pays any milk procurement fees and milk marketing order assessments that apply, in the manner prescribed by state or federal law.

Producer Transferring Between Dairy Plants

A dairy plant operator must notify DATCP if a producer transfers to that operator, or if the operator assumes license and fee payment responsibilities for that producer.

Milk Shipments Discontinued

This rule authorizes a producer (such as a grazer) to discontinue milk shipments for up to 180 days without jeopardizing the producer's license status, and for up to 60 days without jeopardizing the producer's grade A permit status. A dairy plant operator must report to DATCP when the producer stops and resumes shipments.

If a dairy plant operator terminates a milk producer, the operator must report the termination to DATCP. DATCP will revoke the producer's license 30 days after the termination unless the producer is shipping milk to another operator.

Dairy Sheep

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

Lighting in Barns, Milking Parlors and Milkhouses

This rule increases the minimum lighting standard in barns, milking parlors and milkhouses. This rule requires at least 30 foot-candles of illumination in milking parlors and milkhouses (current rules require 20 foot-candles).

Water Supply

Under current rules, a dairy plant operator must biennially sample a milk producer's water supply. The water sample must be tested at a certified laboratory. The Legislature recently transferred water lab certification responsibilities from the Department of Health and Family Services (DHFS) to DATCP. DATCP has adopted laboratory certification rules under ch. ATCP 77, Wis. Adm. Code. This rule updates current dairy farm rules to require lab certification by DATCP, not DHFS.

Hot Water

This rule modifies current capacity requirements for hot water supply systems. This rule eliminates a number of specific capacity requirements, but requires adequate hot water for all milkhouse operations (with a minimum of 10 gallons to clean equipment and utensils). DATCP may approve alternative systems, including heat recovery and continuous flow systems that provide adequate hot water.

Recirculated Cooling Water

Current rules prohibit the use of recirculated water to cool milk. This rule permits the use of recirculated water in plate coolers if all the following apply:

- The recirculated water originates from a safe source that complies with DNR rules.
- The recirculated water is bacteriologically safe, and is protected from contamination. The milk producer must test for bacteria at least twice a year. Test results must meet minimum standards specified in this rule.
- The recirculating system uses non-toxic coolants.

If a recirculating water system becomes contaminated, the milk producer must stop using the system until the producer does all the following:

- Eliminates the contamination source and treats the recirculated water.
- Retests the recirculated water, and determines that the water meets the bacteriological test standards under this rule.

Toilet Facilities

This rule re-states, but does not substantially alter, current standards for toilets on dairy farms. Toilets must comply with applicable DNR and Department of Commerce rules.

Milking Directly to Bulk Transport Containers

Most farmers milk to a permanent bulk tank in the milkhous, where milk is cooled and stored for shipment. A milk hauler then collects the milk from the bulk tank, and transports it in a bulk milk tanker to a dairy plant. However, some large farmers propose to cut costs by milking directly to the bulk transport container (tanker) in which the farmer then transports the milk to the dairy plant. This rule authorizes producers to milk directly to a bulk transport container if all the following apply:

- The producer controls the operation and maintenance of the bulk transport container. The producer may not collect milk from other producers unless the producer operates as a licensed milk hauler under ch. ATCP 82.
- The bulk transport container is constructed and maintained according to bulk milk tanker standards under ch. ATCP 82.
- The bulk transport container has an access port that can be sealed.
- The bulk transport container, while parked at the dairy farm, is kept on a pad of concrete or other impervious material. The pad must be located next to the milkhous, to minimize the length of the transport hose between the milkhous and the bulk transport container.

- All permanent pipelines connecting the bulk transport container to the milk handling system terminate in the milkhouse.
- 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. The producer must measure and record milk temperatures.
- The bulk transport container outlet valve is close-coupled and protected with an effective dust cover.
- The producer keeps the bulk milk cooling device, transport hose and bulk transport container outlet valve in clean and sanitary condition.
- The dairy plant operator collects a milk sample, screens for drug residues, and records the temperature and quantity of milk before unloading the bulk transport container.
- 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 ch. ATCP 82.

Milk Testing and Reporting

Under current rules, dairy plant operators must test milk from dairy farms and report test results to DATCP. This rule clarifies current reporting requirements. Beginning one year after the effective date of this rule, dairy plant operators must report test results (other than drug residue test results) in electronic form.

Under this rule, as under current rules, milk tests must be performed at certified laboratories. Under this rule, milk laboratories and analysts must be certified by DATCP, not the Department of Health and Family Services (DHFS). The Legislature recently transferred dairy, food and water lab certification responsibilities from DHFS to DATCP.

This rule updates current milk test methods. Milk test methods must be those prescribed in "Standard Methods for the Examination of Dairy Products," 16th edition (1992), or in the "Official Methods of Analysis of the Association of Analytical Chemists (AOAC) International, 17th edition (2000). DATCP will ask the Attorney General and the Revisor of Statutes for permission to incorporate these updated technical standards by reference in this rule. DATCP may approve other test methods.

Bacteriological Testing; "Immediate Response" Levels

Under current rules, a dairy plant operator must take immediate steps if a producer's milk is found to contain more than 1,000, 000 bacteria per ml. This rule lowers the "immediate response" level to 750,000 bacteria per ml.

Drug Residue Testing

Under current rules, a dairy plant operator must screen each bulk load of milk for drug residues, before the operator commingles that load with any other loads. If a bulk load tests positive for drug residues, the dairy plant operator must reject it and test the individual producer samples for that bulk load. If a producer sample tests positive for drug residues, the dairy plant operator may charge that producer for the cost of the bulk load. Under current rules, the operator must recover at least *part* of the operator's loss from the offending producer.

Under this rule, the dairy plant operator must recover the *full value* of each rejected load (not just part) from the offending producer. The operator must also recover any additional transportation, testing and disposal costs caused by the contamination. If there are 2 or more offending producers, the operator must recover *pro rata* from those producers based on the relative size of their milk shipments in the contaminated bulk load.

This rule tightens current test standards for beta lactam drug residues in milk, and modifies current standards for Neomycin, Chlortetracycline and Oxytetracycline, per federal standards.

Performance-Based Dairy Farm Inspection

This rule codifies DATCP's current program of performance-based dairy farm inspection. Under this program, DATCP inspects different grade A dairy farms with different frequency, depending on their performance. The terms of the performance-based inspection are consistent with the requirements of the Interstate Pasteurized Milk Ordinance (PMO).

Under this rule, DATCP must 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 this evaluation, DATCP must place the dairy farm in one of the following categories:

- **Twelve-Month Inspection Category.** DATCP must inspect a grade A dairy farm in this category at least once every 12 months. DATCP must place a dairy farm in this category if all the following apply, based on dairy farm inspection reports, milk quality tests and DATCP compliance actions during the preceding 12 months:
 - All of the producer's standard plate counts (SPC) are less than 25,000, except that one SPC may exceed 25,000 if it is not more than 100,000.
 - All of the producer's somatic cell counts (SCC) are less than 500,000.
 - DATCP has not issued any warning for drug residue violations or "key" farm inspection violations.
 - No dairy farm inspection report shows more than 5 violations.
 - DATCP has not suspended the producer's grade A dairy farm permit or milk producer license.
 - The producer's latest water supply test complies with this rule.

- ***Six-Month Inspection Category.*** DATCP must inspect a grade A dairy farm in this category at least once every 6 months. DATCP must place a dairy farm in this category if all the following apply, based on dairy farm inspection reports, milk quality tests and DATCP compliance actions during the preceding 12 months:
 - The dairy farm fails to qualify for the 12-month inspection category.
 - DATCP has not issued more than one warning for violations of bacteria or somatic cell test standards.
 - DATCP has not issued any warning for drug residue violations or “key” farm inspection violations.
 - No dairy farm inspection report shows more than 5 violations.
 - DATCP has not suspended the producer’s grade A dairy farm permit or milk producer license.
 - The producer’s latest water supply test complies with this rule.

- ***Four-Month Inspection Category.*** DATCP must inspect a grade A dairy farm in this category at least once every 4 months. DATCP must place a dairy farm in this category if the dairy farm does not belong in the 12-month, 6-month or 3-month inspection category, based on dairy farm inspection reports, milk quality tests and DATCP compliance actions during the preceding 12 months.

- ***Three-Month Inspection Category.*** DATCP must inspect a grade A dairy farm in this category at least once every 3 months. DATCP must place a dairy farm in this category if all the following apply, based on dairy farm inspection reports, milk quality tests and DATCP compliance actions during the preceding 12 months:
 - The dairy farm does not qualify for the 12-month or 6-month inspection category.
 - DATCP has done any of the following:
 - * Issued more than one warning for violations of bacteria or somatic cell test standards.
 - * Issued more than one warning for drug residue violations.
 - * Issued more than one warning for “key” farm inspection violations.
 - * Conducted more than one re-inspection of the dairy farm.
 - * Suspended the producer’s dairy farm license or grade A permit.

Compliance Procedures

This rule clarifies DATCP compliance procedures related to dairy farms. This rule does not make significant changes in current procedures, except that it extends the deadline for holding an informal hearing on a contested drug residue finding. Under current rules, DATCP must hold the informal hearing within 3 business days after the producer requests the hearing, unless the producer requests a later hearing date. Under this rule, DATCP must hold the informal hearing within 10 business days after the producer requests the hearing, unless the producer requests a later hearing date. This new deadline is consistent with the current deadline for holding informal hearings on other contested dairy farm violations.

1 **SECTION 1.** ATCP 60.01(1) is amended to read:

2 ATCP 60.01(1) "Bulk tank" means a permanent or semi-permanent tank or container
3 used to receive, cool or store bulk quantities of milk on a dairy farm. "Bulk tank" does not
4 include milk cans or a bulk transport container.

5 **SECTION 2.** ATCP 60.01(1g) is created to read:

6 ATCP 60.01(1g) "Bulk transport container" means a vehicle or container that a milk
7 producer uses to ship bulk milk from a dairy farm to a dairy plant.

8 **SECTION 3.** ATCP 60.01(4), (7), (9b), (10), (15)(b)8., (19) to (22) and (24) are

9 amended to read:

10 (4) "Cowyard" means an enclosed or unenclosed area, approximately adjacent to a
11 milking barn or parlor, in which cows, or goats or sheep congregate. "Cowyard" includes eew
12 milking animal walkways, feeding areas, watering areas, washing areas and housing areas
13 located outside but adjacent to a milking barn or parlor.

14 (7) "Dairy plant operator" means a person ~~required to hold a license for the operation of~~
15 who operates a dairy plant under s. 97.20, Stats. "Dairy plant operator" includes ~~an employee or~~
16 ~~agent of the dairy plant operator~~ the operator of a dairy plant located outside this state if the
17 operator procures milk from producers located in this state. "Dairy plant operator" does not
18 include a person identified under s. 97.20(2)(e), Stats.

19 (9)(b) Is used to draw milk from cows, or goats or sheep or to transport, hold, handle,
20 cool or store milk on a dairy farm.

21 (10) "Food safety division" means the department's division of food safety.

22 (15)(b)8. Lack of an approved sanitizer in the milkhouse or adjacent storage areas to
23 meet the sanitizing requirements under s. ATCP 60.09(4) 60.09(5).

1 (19) "Milking and milk handling system" means an automated system, and all
2 components of that system, used to draw milk from cows, or goats or sheep, or to transport milk
3 to a bulk tank or other container on a dairy farm. "Milking and milk handling system" includes
4 C-I-P milking equipment and C-I-P milk pipelines.

5 (20) "Milking barn" means a roofed and enclosed facility, other than a milking parlor, in
6 which cows, or goats or sheep, are milked on a dairy farm.

7 (21) "Milking parlor" means a roofed and enclosed facility which is designed and used
8 exclusively for the milking of cows, or goats or sheep, and which is not designed or used to house
9 cows, or goats, sheep or other animals.

10 (22) "Milk producer" or "producer" means a milk producer as defined in s. 97.22(1)(f),
11 Stats.

12 (24) "Reinspection" means either any of the following:

13 (a) A dairy farm inspection, other than a regularly scheduled inspection under s. ATCP
14 60.24(2) or ~~(3)~~ 60.245, which ~~is made by the department~~ makes because the department or a
15 ~~special dairy farm inspector finds in response to a key violation of this chapter.~~

16 (b) A dairy farm inspection, other than a regularly scheduled inspection under s. ATCP
17 60.24(2) or ~~(3)~~ 60.245, for which a fee is chargeable under s. ATCP ~~60.18(5)~~ 60.18(6), 60.19(9),
18 ~~60.20(5)~~, 60.25(4), 60.26, 60.27(6)(b)1., or 60.28(2) or (3).

19 **SECTION 4.** ATCP 60.01(28) is repealed.

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

21 (29)(b) Is used to draw milk from cows, or goats or sheep or to transport, hold, strain,
22 handle or store milk on a dairy farm.

23 **SECTION 6.** ATCP 60.02(5) is amended to read:

1 ATCP 60.02(5) DENIAL OF LICENSE APPLICATION. If the food safety division denies a
2 milk producer's application for a license under this section, the ~~food~~ division shall issue the
3 denial in writing and shall state the reasons for the denial. The denial notice shall include a notice
4 of the applicant's right to hearing under s. ATCP 60.31. If a ~~food~~ division inspector inspects the
5 applicant's dairy farm, the inspector may deny the application by noting the denial on the
6 inspection report given to the producer, provided that the inspection report includes the required
7 information under this subsection.

8 **SECTION 7.** ATCP 60.02(6) is repealed and recreated to read:

9 ATCP 60.02(6) TRANSFER BETWEEN DAIRY PLANT OPERATORS. A dairy plant operator
10 shall notify the department in writing within 3 business days after any of the following occurs:

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

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

15 **SECTION 8.** ATCP 60.02(7), (8)(8)(note), (9) and (9)(note) are created to read:

16 ATCP 60.02(7) PRODUCER SHIPPING MILK TO MORE THAN ONE DAIRY PLANT. A milk
17 producer may concurrently ship milk to more than one dairy plant operator if all the following
18 apply:

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

21 1. Pay the producer's annual license fees under this section.

22 2. Pay the producer's reinspection fees, if any, under s. ATCP 60.04.

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

3 (b) Each operator pays dairy plant license fees and milk procurement fees under s. ATCP
4 80.04, as those fees apply to that operator's receipt of milk shipments from the producer. A
5 dairy plant operator who custom processes a producer's milk according to par. (d) is not required
6 to pay milk procurement fees under s. ATCP 80.04(2) on that milk.

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

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

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

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

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

21 4. The operator does not commingle producer-owned milk or dairy products with other
22 milk or dairy products.