Chapter ATCP 65

MILK AND MILK PRODUCTS

Subchapter I — Definitions and General Requirements
ATCP 65.01 Definitions.
ATCP 65.02 Milk producer licenses and permits; fees.
ATCP 65.04 Dairy plant licenses and permits; fees.

Subchapter II — Dairy Farms
ATCP 65.06 Milking barn or parlor.
ATCP 65.08 Milkhouse.
ATCP 65.10 Dairy farm water supply.
ATCP 65.12 Equipment and utensils.
ATCP 65.14 Milking and milk handling systems.
ATCP 65.16 Bulk tanks and bulk transport containers.
ATCP 65.18 Milking procedure.
ATCP 65.20 Abnormal milk; milking diseased animals.
ATCP 65.22 Farm premises.

Subchapter III — Dairy Plants
ATCP 65.23 Federal requirements.
ATCP 65.24 Construction and maintenance.
ATCP 65.26 Personnel; sanitation standards.
ATCP 65.28 Equipment and utensils.
ATCP 65.30 C−I−P systems.
ATCP 65.32 Dairy product packages.
ATCP 65.34 Sanitizers and sanitizing methods.
ATCP 65.36 Receiving milk and dairy products.
ATCP 65.38 Collecting milk samples.
ATCP 65.40 Storing and handling milk and dairy products.
ATCP 65.41 Low−acid or acidified dairy products packaged in hermetically sealed containers for non−refrigerated storage.
ATCP 65.42 Recall plan.
ATCP 65.44 Dairy plant records.
ATCP 65.46 Dairy plant reports to department.
ATCP 65.48 Confidential information.
ATCP 65.50 Dairy product labeling.

Subchapter IV — Pasteurization
ATCP 65.52 Unpasteurized milk sales prohibited; exemptions.
ATCP 65.54 Pasteurization required.
ATCP 65.56 Labeling pasteurized and unpasteurized products.
ATCP 65.58 Pasteurization time and temperature.
ATCP 65.60 Batch pasteurization.
ATCP 65.62 HTST and HHST pasteurization.
ATCP 65.64 Aseptic processing and packaging.
ATCP 65.66 Pasteurization records.
ATCP 65.68 Pasteurizer testing.

Subchapter V — Safety and Quality Standards
ATCP 65.70 Milk quality standards for milk collected from a dairy farm.
ATCP 65.72 Drug residue testing.
ATCP 65.74 Milk and dairy products; quality standards.
ATCP 65.76 Milk quality testing.
ATCP 65.78 Milk quality test samples.
ATCP 65.80 Milk quality test records and reports.
ATCP 65.82 False samples, test results or reports.
ATCP 65.84 Milk component testing.
ATCP 65.86 Milk component test methods.

Subchapter VI — Inspection and Enforcement
ATCP 65.910 Inspection of dairy farms; general.
ATCP 65.912 Performance−based grade A dairy farm inspections.
ATCP 65.920 Suspension or revocation of grade A producer permit or milk producer license.
ATCP 65.922 Enforcement actions taken in response to drug residue violations.
ATCP 65.925 Suspension notice; requirements.
ATCP 65.926 Dairy plant license and grade A permit suspension or revocation.
ATCP 65.927 Holding orders; identification and disposal of adulterated milk.
ATCP 65.928 Right of hearing.
ATCP 65.930 Grade A dairy plants; compliance monitoring and inspection.

Subchapter I — Definitions and General Requirements

ATCP 65.01 Definitions. In this chapter:

(1) "Abnormal milk" means milk that is visibly changed in color, odor, or texture, or milk that contains chemical, medicinal, or radioactive agents, which may be deleterious to human health.

(2) "Aseptic processing and packaging system" means a system that is intended to fill commercially sterilized and cooled milk or milk products into pre−sterilized containers, and then hermetically seal each container with a pre−sterilized closure, in an atmosphere free of microorganisms.

(3) "Automated milking installation" or "AMI" means a robotic milking system that identifies, prepares and milks lactating animals; detects and segregates abnormal milk; and automatically cleans and sanitizes all milk contact surfaces, at least once daily and after the segregation of abnormal milk, such that normal milk is not adulterated.

(4) "Bulk milk tanker" means a mobile bulk container used to transport milk, fluid milk products, whey, or whey cream in bulk from a dairy farm, or to or from a dairy plant, in this state. "Bulk milk tanker" includes a container, which is permanently mounted on a motor vehicle or that is designed to be towed by a motor vehicle, and includes all equipment and accessories related to the container. "Bulk milk tanker" does not include a container that is used by a milk producer solely to transport that producer's own milk to that milk producer's bulk tank or to a licensed dairy plant operated by that milk producer.

(5) "Bulk milk weigher and sampler" means any person who collects official milk samples and may transport raw milk from a farm, or raw milk or fluid milk products to or from a dairy plant, receiving station or transfer station, and is licensed under s. ATCP 82.04.

(6) "Bulk tank" means a permanent or semi−permanent tank, container, or silo used to receive, cool, or store bulk quantities of milk on a dairy farm. "Bulk tank" does not include milk cans.

(7) "Bulk tank unit" or "BTU" means at least one dairy farm that is rated as a single entity and given a single sanitation compliance and enforcement rating by the division.

(8) "Bulk transport container" means a vehicle or container into which milk directly flows during milking and that a milk producer uses to ship the milk from a dairy farm to a dairy plant.

(9) "C−I−P" means clean−in−place, which is the process by which equipment is cleaned and sanitized without being disassembled and by the mechanical circulation of cleaning and sanitizing solutions onto interior milk and dairy product contact surfaces.

(10) "Composite sample" means a sample of milk that is collected from 2 or more milk shipments from the same milk producer and that is compiled and preserved according to s. ATCP 65.78 (4).

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

(12) "Dairy farm" means a dairy farm, as defined in s. 97.22 (1) (a), Stats., operated by a milk producer and includes a milkhouse.

(13) "Dairy plant" means any of the following:

(a) A place where a dairy product is manufactured or processed for sale or distribution as human food.

(b) A receiving station.

(c) A transfer station.

(d) For the purposes of assigning milk producer license application responsibilities, a milk contractor, or any business under par. (a) or (b) of this section, that submits a milk producer license application on behalf of a milk producer and thereby certifies that the milk producer's dairy farm and milking operations comply with applicable requirements under this chapter.

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

(15) "Dairy product" means any product defined as a dairy product in s. 97.20 (1) (b) 1. to 5., Stats.

(16) "Department" means the department of agriculture, trade and consumer protection.

(17) "Division" means the department's division of food and recreational safety.

(18) "Drug" has the meaning given in 21 USC 321(g). "Drug" includes antibiotics and inhibitory substances.

(19) "Equipment" means either:

(a) An implement, vessel, pipeline, machine, or apparatus, other than a utensil, and including C–I–P systems, that has one or more product contact surfaces and is used in moving, handling, storing, or processing dairy products at a dairy plant, or

(b) An implement, vessel, machine, or apparatus, other than a utensil, that has one or more milk contact surfaces that is used to draw milk from milking animals or to transport, hold, handle, cool, or store milk on a dairy farm.

(20) "Fluid milk product" means cream, sour cream, acidified sour cream, half–and–half, sour half–and–half, whipped cream, concentrated milk, concentrated milk products, reduced fat milk, low fat milk, nonfat milk, flavored milk, buttermilk, cultured buttermilk, cultured milk, yogurt, low fat yogurt, nonfat yogurt, eggnog, holiday nog, nog–flavored milk, vitamin and mineral fortified milk or milk products, and any other fluid milk product made by adding any substance to milk or any of these products.

(21) "Facility" has the meaning given in 21 CFR 117.3.

(22) "Frozen dessert" means ice cream, French ice cream, artificially sweetened ice cream, frozen custard, frozen yogurt, frozen concentrates, ice milk, sherbet, gelato, water ice, quiescently frozen confection, quiescently frozen dairy confection, manufactured frozen–dessert mix, and frozen whipped cream confections. "Frozen dessert" includes frozen–dessert mix.

(23) "Frozen–dessert mix" means a mixture of frozen dessert ingredients that has not yet been processed and frozen to create a frozen dessert. "Frozen–dessert mix" includes a mix of previously pasteurized dry dairy ingredients that is combined with potable water to create a liquid mix.

(24) "Grade A dairy farm" means a dairy farm owned or operated by a licensed producer for which a Grade A permit is required under s. ATCP 65.02 (11) and s. 97.22 (3), Stats.

(25) "Grade A dairy plant" means a dairy plant required to hold a permit under s. ATCP 65.04 (14) and s. 97.20 (3), Stats.

(26) "Grade A dairy product" means a fluid milk product that is produced from grade A milk and processed and distributed in compliance with grade A standards under this chapter.

(27) "Grade A milk" means milk produced, processed, and distributed in compliance with Grade A requirements under this chapter.

(28) "Grade A producer permit" means a grade A dairy farm permit under s. 97.22 (3), Stats.

(29) "Grade B dairy plant" means a dairy plant other than a grade A dairy plant.

(30) "Grade B dairy product" means a dairy product other than a grade A dairy product.

(31) "Grade B dairy farm" means a dairy farm other than a grade A farm.

(32) "Grade B milk" means milk other than grade A milk, that is used in the production of dairy products that are not grade A milk products as defined in s. 97.20 (1) (f), Stats.

(33) "HHST" means higher heat shorter time.

(34) "HTST" means high temperature short time.

(35) "Key violation" means any of the following:

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

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

1. Unclean milk contact surfaces of equipment or utensils.

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

3. Filthy conditions in a cowyard that could reasonably be expected to result in milking animals having very dirty flanks, udders, and teats.

4. Filthy conditions in a milkhouse.

5. Water supply, water pressure, or water heating facilities not in compliance with this chapter.

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

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

8. Lack of an approved sanitizer in the milkhouse or adjacent storage areas that could be used to meet the sanitizing requirements under s. ATCP 65.12 (5).

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

10. Milk not cooled in compliance with s. ATCP 65.18 (4).

11. Rodent activity in the milkhouse.

12. Dead animals in the milking barn or cowyard.

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

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

(36) "Milk" means the normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy milking animals, and includes skim milk and cream.

(37) "Milk component test" means a test that determines the amount of milkfat, protein, total solids, solids–not–fat, or other components in milk, and that may affect the price that a dairy plant operator, including a milk contactor that submits a milk producer license application on behalf of a milk producer and thereby certifies that the milk producer's dairy farm and milking operations comply with applicable requirements under this chapter, pays a milk producer for milk.

(38) "Milk component testing device" means an automated testing device used to perform milk component tests.

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

(40) "Milk contractor" means a milk contractor, as defined in s. 126.40 (8), Stats., that may submit a milk producer license application on behalf of a milk producer and thereby certify that

the milk producer's dairy farm and milking operations comply with applicable requirements under this chapter.

(41) "Milk producer" means a milk producer as defined in s. 97.22 (1) (f), Stats.

(42) "Milk quality test" means a bacteria count, somatic cell count, drug residue test, milk component test, or other analytical test, that is used to determine compliance with milk quality standards under s. ATCP 65.70 or 65.74 or that may affect the price that a dairy plant operator, including a milk contractor that submits a milk producer license application on behalf of a milk producer and thereby certifies that the milk producer's dairy farm and milking operations comply with applicable requirements under this chapter, pays a milk producer for milk.

(43) "Milkhouse" means an enclosed facility, separated from the milking barn or parlor by a self−closing door, in which milk is cooled or stored and in which equipment and utensils are cleaned, sanitized, and stored. "Milkhouse" includes a milkhouse sharing one or more walls with a milking barn or parlor.

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

(45) "Milking animals" means all of the following:

(a) Cows, sheep, and goats.

(b) Other hooved or camelid mammals whose milk is collected and distributed for human consumption.

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

(47) "Milking parlor" means either of the following:

(a) A roofed and enclosed facility that is designed and used year−round exclusively for the milking of milking animals, and that is not designed or used to house any animals.

(b) A seasonal facility constructed without walls that is used exclusively for the milking of milking animals and that is not designed or used to house any animals.

(48) "Multi−use package" means a returnable bottle or other package that is designed for repeated use.

(49) "Package" means a container or wrapping, having one or more product contact surfaces, that is designed or used to enclose a dairy product sold or shipped from a dairy plant. "Package" includes package covers and other package components. "Package" includes all of the following:

(a) A returnable bottle or other multi−use package.

(b) A single−service package.

(c) A bulk or shipping container, other than a bulk milk tanker, that has one or more product contact surfaces and is used for the sale or shipment of a dairy product from a dairy plant.

(50) "Pasteurize" and "pasteurization" means to thermally process every particle of a dairy product in properly designed and operated equipment according to subch. IV, in order to destroy pathogenic microbes in that dairy product. "Pasteurize" includes batch pasteurization, HTST pasteurization, HHST pasteurization, UHT pasteurization, and other equally effective pasteurization processes that are approved by the division in writing.

(51) "PMO" means the Grade A Pasteurized Milk Ordinance, 2013 revision, published by the United States department of health and human services, public health service, food and drug administration.

(52) "Person" means an individual, partnership, firm, cooperative, association, or any other business unit or entity.

(53) "Potable water" means water that meets the microbiological standards in ch. NR 809.

(54) "Potentially hazardous food" has the meaning given in Section 1−201−10 (B) (66), ch. ATCP 75 Appendix (Wisconsin Food Code).

(55) "Processing" means pasteurizing, manufacturing, blending, or packaging dairy products, or cooling dairy products previously treated by one of the preceding unit operations.

(56) "Processing plant" means a dairy plant at which dairy products are processed.

(57) "Procure milk" means to buy milk or acquire the right to market milk from a milk producer licensed under this chapter.

(58) "Product contact surface" means a surface of equipment or a surface of a utensil or package with which a dairy product normally comes in direct contact, or from which materials may drain, drip, or be drawn into a dairy product.

(59) "Qualified facility" has the meaning given in 21 CFR 117.3.

(60) "Receive milk from a milk producer" means to receive milk for which payment will be made to a milk producer, or a milk contractor that submits a milk producer license application on behalf of a milk producer and thereby certifies that the milk producer's dairy farm and milking operations comply with applicable requirements under this chapter.

(61) "Receiving station" means a facility that is designed for the receipt and bulk storage of milk and is used to receive or store milk in bulk. "Receiving station" does not include a processing plant or a facility used to distribute pasteurized milk in bottled or packaged form to consumers.

(62) "Recombined dairy product" means a dairy product created by recombining separated dairy product components.

(63) "Reconstituted dairy product" means a dairy product created by restoring water to dehydrated dairy product ingredients.

(64) "Reinspection" means any of the following:

(a) A dairy farm inspection, other than a regularly scheduled inspection under s. ATCP 65.910 (2) or 65.912, the division makes in response to a key violation.

(b) A dairy farm inspection, other than a regularly scheduled inspection under s. ATCP 65.910 (2) or 65.912, for which a fee is chargeable under s. ATCP 65.70 (2) (g), 65.72 (10), 65.920 (4), 65.920 (7), or 65.922 (2) (c).

(c) A dairy plant inspection, other than a regularly scheduled inspection under s. ATCP 65.930 (2), that the division makes in response to a violation for which a fee is chargeable under s. ATCP 65.04 (11).

(65) "Safe temperatures", as applied to refrigerated potentially hazardous foods means temperatures of 45° F. (7° C.) or below. As applied to heated, potentially hazardous foods, "safe temperatures" means temperatures of 135° F. (57° C.) or above. As applied to frozen foods, "safe temperatures" means temperatures of 0° F. (−17° C.) or below.

(66) "Sanitize" means to destroy pathogens and other microorganisms to the maximum extent practicable, by applying a sanitizer at concentrations in compliance with 21 CFR part 178.1010, or by applying a sanitizing method approved by the division, to an otherwise clean surface.

(67) "Secretary" means the secretary of the department.

(68) "Shipping container" means a box, carton, or similar container in which packaged dairy products are shipped in bulk from a dairy plant.

(69) "Single−service articles" means utensils, including containers or packages, filters, and other articles, that are designed to be used only once before disposal.

(70) "Standard of identity" means a dairy product standard of identity in 21 CFR 131, 133, 135.3, 135.110 to 135.140, 168.122, 184.1979, 184.1979a, and 184.1979c; or in 21 USC 321a and 321c.

(71) "Transfer station" means a facility that is designed and used solely to transfer milk from one bulk transport container to another without intervening storage.

(72) "UHT" means ultra−high temperature.

(73) "Utensil" means any hand−held or similarly portable container, device, article, or implement that has one or more milk contact surfaces and is used for any of the following:

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

(b) To process or handle milk or dairy products at a dairy plant.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16; correction in (10) made under s. 13.92 (4) (b) 7., Stats., and correction in (42), (70) made under s. 35.17, Stats., Register August 2016 No. 728

ATCP 65.02 Milk producer licenses and permits; fees. (1) MILK PRODUCER LICENSE REQUIREMENT. (a) No person may operate as a milk producer offering milk for sale without an annual license from the department for each farm operated, as provided under s. 97.22 (2), Stats. A license expires on April 30 of each year. Whenever the department first issues a milk producer license, that license shall bear a livestock premises code issued under s. ATCP 17.02 (7) for the dairy farm associated with the milk producer license. A license is not transferable between persons or dairy farms. As a condition to licensing, a milk producer shall comply with applicable provisions of this chapter.

(b) A separate license is required for any of the following:

1. Each species of milking animal milked by each milk producer on a dairy farm.

2. Each dairy farm operated by a milk producer at which milk is produced and offered for sale.

3. Each dairy plant, if a milk producer is shipping milk to more than one dairy plant, including a milk contractor that submits a milk producer license application on behalf of a milk producer and thereby certifies that the milk producer's dairy farm and milking operations comply with applicable requirements under this chapter.

(2) LICENSE APPLICATION; RENEWAL. (a) *General.* A license application, signed by the milk producer, shall be made on a form provided by the department and shall include the information that is required under s. ATCP 17.02 (4) for the purpose of livestock premises registration. A dairy plant operator, milk contractor, or their representative, after inspecting the dairy farm under s. ATCP 65.910 (1), shall submit the application on behalf of the milk producer and shall certify that the dairy farm and milking operations comply with applicable requirements under this chapter. An annual license may be renewed each year upon payment of the required fees under sub. (4), without further application by the milk producer, provided the milk producer is registered under s. ATCP 17.02 (4).

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

1. Grant the application.

2. Deny the application.

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

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

(3) PRE−LICENSE INSPECTION. (a) A division representative, on behalf of the department, may inspect a dairy farm, as the division deems necessary, before issuing a license to a milk producer. If the dairy farm does not meet the minimum standards required for licensing, the department shall deny the license application.

(b) Automated milking installations must be reviewed and approved by a division representative before a milk producer license is issued by the department.

(4) LICENSE FEE. (a) The annual fee for a milk producer license under this section is $30.

(b) A dairy plant operator, including a milk contractor that submits a milk producer license application on behalf of a milk producer and thereby certifies that the milk producer's dairy farm and milking operations comply with applicable requirements under this chapter, shall pay the annual milk producer license fee under this section by April 30 of each year for each dairy farm from which the dairy plant operator receives milk on that date.

1. A dairy plant operator, including a milk contractor that submits a milk producer license application on behalf of a milk producer and thereby certifies that the milk producer's dairy farm and milking operations comply with applicable requirements under this chapter, who pays a milk producer license fee, under par. (a), may charge that fee back to a milk producer if the dairy plant operator gives prior written notice to the milk producer, but the dairy plant operator may not deduct the fee from any payment that the dairy plant operator owes the milk producer for milk received by the dairy plant operator. A dairy plant operator may not discriminate between milk producers with respect to fee charges under this paragraph, but may charge back license fees to all milk producers who cease shipping milk to the operator's dairy plant during the license year.

2. The license fee in this subsection is non−refundable.

(5) DENIAL OF LICENSE APPLICATION. If the department denies a milk producer's application for a license under this section, the department shall issue the denial in writing and shall state the reasons for the denial. The denial notice shall include a notice of the applicant's right to hearing under s. ATCP 65.928. If a division representative inspects the applicant's dairy farm, the division representative may deny the application by noting the denial on the inspection report given to the producer, provided that the inspection report includes the required information under this subsection.

(6) TRANSFER BETWEEN DAIRY PLANTS. A dairy plant operator, including a milk contractor that submits a milk producer license application on behalf of a milk producer and thereby certifies that the milk producer's dairy farm and milking operations comply with applicable requirements under this chapter, shall notify the department in writing within 3 business days after any of the following occurs:

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

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

(7) MILK PRODUCER SHIPPING MILK TO MORE THAN ONE DAIRY PLANT. A milk producer may concurrently ship milk to more than one dairy plant, including a milk contractor that submits a milk producer license application on behalf of a milk producer and thereby certifies that the milk producer's dairy farm and milking operations comply with applicable requirements under this chapter, if the milk producer is assigned, for licensing purposes under this section, to each dairy plant. Each dairy plant's operator shall do all of the following on behalf of the milk producer:

(a) Pay the producer's annual license fees under this section.

(b) Pay the producer's reinspection fees, if any, under s. ATCP 65.04.

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

(8) MILK PRODUCED FOR CUSTOM PROCESSING. A dairy plant operator shall take ownership and market a milk producer's milk unless the dairy plant operator is deemed to be custom processing a producer's milk and all of the following apply:

(a) The dairy plant operator, on behalf of the milk producer, makes that milk into dairy products.

(b) The milk producer retains title to that milk and to all of the dairy products made from that milk.

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

(d) The dairy plant operator does not commingle milk produced by that milk producer with other milk.

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

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

(g) The dairy plant operator custom processes not more than a total of 5 million pounds of milk from all milk producers entering into written agreements with the dairy plant operator, under par. (e), in any month.

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

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

(j) The milk producer or the milk producer's agent pays to the department the dairy plant milk procurement fees, under s. ATCP 65.04 (10), that apply to the milk producer's custom processed milk shipments.

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

(9) TEMPORARY DISCONTINUATION OF MILK SHIPMENTS. (a) A cow milk producer's license remains in effect if the milk producer resumes milk shipments within 180 days after temporarily discontinuing shipments to the dairy plant to whom the milk producer is assigned, provided shipments were not transferred to another dairy plant.

(b) A sheep or goat milk producer license remains in effect if the milk producer resumes milk shipments within 240 days after temporarily discontinuing shipments to the dairy plant to whom the milk producer is assigned, provided shipments were not transferred to another dairy plant.

(c) If the milk producer does not resume milk shipments within the allowed 180 or 240 days, the department shall summarily revoke the milk producer's license. The department shall give the milk producer a written revocation notice at least 5 business days before the effective date of the notice.

(10) TERMINATION OF A MILK PRODUCER LICENSE. If a milk producer stops shipment of milk to a dairy plant, including a milk contractor that submits a milk producer license application on behalf of a milk producer and thereby certifies that the milk producer's dairy farm and milking operations comply with applicable requirements under this chapter, for any reason, other than a reason identified in sub. (8), or s. ATCP 65.70 (2) (f), or 65.72 (6) or (7), the dairy plant operator shall notify the department in writing within 3 business days after receiving the last shipment of milk from that producer. The department shall summarily revoke the milk producer's license 30 days after that last milk shipment date unless, by the scheduled revocation date, the milk producer is shipping milk to another dairy plant operator to whom the producer is assigned for licensing purposes under this section. The department shall give the producer a written revocation notice at least 5 business days prior to the effective date of the notice.

(11) GRADE A PERMIT REQUIREMENT. No milk producer may sell or distribute milk as grade A milk without obtaining an annual grade A producer permit from the department, as provided under s. 97.22 (3), Stats. A grade A producer permit is not valid unless the producer also holds a valid milk producer license under s. ATCP 65.02. A grade A producer permit expires on April 30 of each year. A separate grade A producer permit is required for each milk producer on a dairy farm at which milk is produced for distribution or sale as grade A milk. A grade A producer permit is not transferable between persons or dairy farms. Except as provided in sub. (12), no more than one milk producer at a dairy farm shall have a grade A permit. A grade A permit may be issued by the department in the form of an endorsement on an inspection report given to the milk producer. As a condition to holding a grade A producer permit, a milk producer shall comply with applicable provisions of this chapter.

(12) GRADE A PERMITS AT A SINGLE DAIRY FARM OPERATED BY MULTIPLE MILK PRODUCERS. More than one milk producer at a farm may hold grade A producer permits if each milk producer holding a grade A producer permit ships milk to the same dairy plant. All water test results under s. ATCP 65.10, drug residue test results under s. ATCP 65.72, milk quality test results under s. ATCP 65.76, inspection results under ss. ATCP 65.910 and 65.912, and enforcement actions taken under Subchapter VI apply equally to all holders of a milk producer license at a single dairy farm sharing a herd of milking animals; access or use of a barn, milking barn, milking parlor, milking and milk handling system; or any other part of a dairy farm. The division shall simultaneously inspect the milking operations of a dairy farm at which more than one grade A producer permit is held. The inspections shall be in accordance with ss. ATCP 65.910 and 65.912.

(13) GRADE A PERMIT APPLICATION; RENEWAL. (a) *General.* A grade A producer permit application, signed by the milk producer, shall be made on a form provided by the department. A dairy plant operator, including a milk contractor that submits a milk producer license application on behalf of a milk producer and thereby certifies that the milk producer's dairy farm and milking operations comply with applicable requirements under this chapter, after inspecting the dairy farm under Subchapter VI shall submit the application on behalf of the milk producer, and shall certify that the dairy farm facilities comply with applicable grade A requirements under this chapter. A grade A producer permit may be renewed each year in connection with the renewal of the milk producer's license under s. ATCP 65.02, without further application by the milk producer.

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

1. Grant the application after inspecting the dairy farm.

2. Deny the application.

(14) PRE–PERMIT INSPECTION. A division representative, on behalf of the department, may inspect a dairy farm before issuing a grade A producer permit for that milk producer.

(15) DENIAL OF GRADE A PERMIT APPLICATION. The department shall deny an application for a grade A producer permit if it determines, under sub. (14), that minimum standards are not met. The department shall issue the denial in writing and shall state the reasons for the denial. The denial notice shall include a notice of the applicant's right to hearing under s. ATCP 65.928. A representative of the division, after inspecting the applicant's dairy farm, may deny a grade A producer permit application by noting the denial on the inspection report given to the producer, provided that the inspection report includes the required information under this subsection.

(16) TRANSFER OF GRADE A PRODUCERS BETWEEN DAIRY PLANT OPERATORS. A dairy plant operator, including a milk contractor that submits a milk producer license application on behalf of a milk producer and thereby certifies that the milk producer's dairy farm and milking operations comply with applicable requirements under this chapter, shall notify the department in writing within 3 business days after any of the following occurs:

(a) The operator begins receiving milk shipments from a grade A producer who has previously shipped milk to another operator.

(b) A grade A producer is re−assigned, for permit purposes under this section, to that dairy plant operator.

Note: No new grade A producer permit is necessary when a producer transfers to a different dairy plant.

(17) GRADE A MILK PRODUCER SHIPPING MILK TO MORE THAN ONE DAIRY PLANT. A milk producer holding a grade A producer permit may concurrently ship milk to more than one dairy plant operator, including a milk contractor that submits a milk producer license application on behalf of a milk producer and thereby certifies that the milk producer's dairy farm and milking operations comply with applicable requirements under this chapter, if the milk producer and dairy plant operators comply with s. ATCP 65.02 (7) and only one of the dairy plants accepts the milk producer's milk as grade A milk.

(18) TEMPORARY DISCONTINUATION OF GRADE A MILK SHIPMENTS. (a) A dairy plant operator, including a milk contractor that submits a milk producer license application on behalf of a milk producer and thereby certifies that the milk producer's dairy farm and milking operations comply with applicable requirements under this chapter, shall notify the department if a grade A milk producer temporarily discontinues milk shipments without transferring milk shipments to another dairy plant. The dairy plant operator shall notify the department in writing within 3 business days after the producer discontinues shipments and within 3 business days after the producer resumes milk shipments.

(b) A milk producer's grade A producer permit remains in effect if the milk producer resumes milk shipments, under par. (a), within 60 days after temporarily discontinuing milk shipments to the dairy plant to whom the milk producer is assigned, provided shipments were not transferred to another dairy plant. If the milk producer does not resume milk shipments within 60 days, the department shall summarily revoke the milk producer's grade A producer permit. The department shall give the producer a written revocation notice at least 5 business days before the effective date of the notice.

(19) RE–INSPECTION FEE REQUIREMENT. If a division representative, on behalf of the department, conducts a reinspection, the department shall charge a reinspection fee of $30 for the reinspection, or $60 if the reinspection is required for reinstatement of a milk producer's license or grade A producer permit pursuant to s. 97.22 (4), Stats. A reinspection fee is payable when the reinspection is completed, and is due upon written demand from the department.

(20) FEE PAYMENT OBLIGATIONS; ENFORCEMENT. If no dairy plant pays the fees required under this subchapter on behalf of a milk producer, the department may demand payment from the milk producer. If, after reasonable notice and demand for payment, a milk producer fails to pay a fee that was due and payable before the current license year, the department may suspend the milk producer's license or grade A producer permit.

(21) BTU REQUIREMENTS. Each farm in a BTU shall be operated by a licensed milk producer who holds a grade A producer permit, shall be included in only one BTU, and shall produce milk for pasteurization that is collected by a bulk milk weigher and sampler licensed under s. ATCP 82.04.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16; correction in (21) made under s. 35.17, Stats., Register August 2016 No. 728.

ATCP 65.04 Dairy plant licenses and permits; fees.

(1) DAIRY PLANT LICENSE REQUIRED. (a) *License required.* Except as provided under par. (b), no person may operate a dairy plant, or act as a milk contractor who submits a milk producer license application on behalf of a milk producer and thereby certifies that the milk producer's dairy farm and milking operations comply with applicable requirements under this chapter, without a valid license issued by the department for that dairy plant or milk contractor. A dairy plant license expires on April 30 annually and is not transferable between persons or locations. A dairy plant receiving or procuring milk from milk producers shall hold a current milk contractor license.

Note: See ss. 97.20, and 126.40, Stats.

(b) *License exemptions.* A dairy plant license is not required, under par. (a), for any of the following:

1. A farm manufacturing or processing dairy products solely for consumption by the owner or operator of the farm, members of the farm household, or nonpaying farm guests or employees.

2. The retail preparation or processing of meals for sale directly to consumers or through vending machines if the preparation and processing of dairy products, made from commercially pasteurized dairy products, is covered under a restaurant license or other license issued under s. 97.605, Stats. Packaging of grade A dairy products for retail sale by exempted establishments under this section is prohibited.

3. A retail food establishment, including a restaurant, licensed under s. 97.30, Stats., if the establishment processes non−grade A dairy products made from commercially pasteurized and packaged dairy products solely for retail sale at the establishment.

4. A milk receiving station or transfer station operated at the same location, and by the same person, as a processing plant licensed under sub. (1).

5. A milk transfer station operated at the same location, and by the same person, as a milk receiving station licensed under sub. (1).

6. A food processing plant licensed, under s. 97.29, Stats., that meets the requirements of s. 97.20 (2) (e) 5., Stats.

7. A dairy plant that is exempted from licensing by department rule.

(2) LICENSE APPLICATION. An application for a dairy plant license shall be made on a form provided by the department and shall be accompanied by each applicable non−refundable fee required under this section. The application shall include the following information, and any other information reasonably required by the department for licensing purposes:

(a) The correct legal name of the dairy plant operator and any trade name used by the operator.

(b) The dairy plant address, including number, street name, and zip code; and telephone number of the dairy plant to which the license application pertains, and the name of a responsible person who may be contacted at that address.

(c) A statement indicating whether the dairy plant is a processing plant, receiving station, or transfer station.

(d) A description of the processing operations, if any, conducted at the dairy plant.

(3) ACTION ON LICENSE APPLICATION; DEADLINE. The department shall grant or deny a license application, under sub. (2), within 40 days after the department receives a complete application, or before the expiration date of any temporary license issued under sub. (5), whichever occurs later.

(4) PREREQUISITES FOR LICENSING. The department shall not issue or renew a dairy plant license, or issue a temporary license under sub. (5), unless all of the following conditions are met:

(a) The license applicant has paid all fees and surcharges, set forth in a statement from the department, that are due and payable by the applicant under this section. The department shall refund a fee or surcharge paid under protest if the department determines that the fee or surcharge is not due and payable under this section.

(b) The license applicant has filed all financial information and security that the department requires of that applicant under ch. ATCP 100. If an applicant has not filed required financial information or security, the department may issue a conditional license that prohibits the licensed operator from buying milk or fluid milk products from producers or their agents, but allows the operator to buy milk or fluid milk products from other sources.

(c) The division has inspected the dairy plant under sub. (6) (b) if the dairy plant is not currently licensed.

(5) TEMPORARY LICENSE. (a) Except as provided under par. (c), the department may issue a temporary dairy plant license to an applicant, under sub. (2), pending the department's final action on that person's license application. A temporary license may be issued for a period of not more than 40 days. If the department denies a license application before the applicant's temporary license expires, the temporary license is automatically terminated when the applicant receives written notice of the denial.

(b) The holder of a temporary license, under par. (a), acquires no rights beyond those conferred by the temporary license. The holder of a temporary license may not purchase milk or fluid milk products from milk producers or their agents, but may purchase milk or fluid milk products from other sources.

(c) The department may not issue a temporary license, under par. (a), in response to a license renewal application by the holder of an existing license.

(6) PRE–LICENSE INSPECTION. (a) The division may inspect a dairy plant, as the department deems necessary, before issuing a license for that dairy plant.

(b) The department may not issue a dairy plant license, under sub. (1), or a temporary license, under sub. (5), for a dairy plant that is not currently licensed until the division inspects that dairy plant for compliance with this chapter.

Note: The department is not required to inspect a currently licensed dairy plant before renewing the license of the current operator, or before issuing a license to a new operator of that dairy plant.

(7) ADDED OPERATIONS. No dairy plant operator may add a new category of operations at a licensed dairy plant during the time period for which the license was issued unless the operator notifies the division and obtains written authorization for the new category of operations. A dairy plant operator adding the processing of low−acid or acidified foods packaged in hermetically sealed containers, seafood or juice, shall comply with the applicable requirements in ch. ATCP 70. In this subsection, "new category of operations" includes the manufacture or processing of any of the following that was not identified in the operator's most recent license application under sub. (2):

(a) Fluid milk products.

(b) Cheese and cheese products.

(c) Ice cream or frozen desserts.

(d) Dairy products dried at the dairy plant.

(e) Multi−ingredient dried dairy products blended at the dairy plant.

(8) ANNUAL DAIRY PLANT LICENSE FEES. (a) *Fees based on receipts or production.* An applicant for a dairy plant license shall pay an annual license fee. The license fees in this subsection are not refundable. Except as provided under par. (b), license fees are based on the dairy plant's milk receipts or production during the previous calendar year, regardless of who operated that dairy plant in the previous calendar year.

(b) *Fees for plants with no milk receipts or production during previous year.* If a dairy plant had no milk receipts or production during the previous calendar year, license fees shall be based on projected milk receipts or production during the license year for which application is made. At the end of that license year, the license holder shall report the actual milk receipts or production during the license year, and the department shall determine the appropriate fee, under par. (a), based on actual receipts or production. If the fee based on actual receipts or production differs from the fee based on projected receipts or production, the license holder shall pay the balance due or receive a credit from the department on the next year's license fee.

(c) *License fee amounts.* The license fee, under par. (a), is $120 plus whichever of the following applies:

1. For a grade A processing plant, a supplementary license fee of $955 if the plant received more than 2,000,000 pounds of milk from milk producers, or a supplementary license fee of $735 if the plant received 2,000,000 pounds or less of milk from producers.

2. For a grade B processing plant that manufactured or processed more than 1,000,000 pounds of dairy products or more than 200,000 gallons of frozen dairy products, a supplementary license fee of $400.

3. For a grade A receiving station, a supplementary license fee of $370.

(9) SURCHARGE AND PAST FEES FOR OPERATING WITHOUT LICENSE. (a) An applicant for a dairy plant license shall pay a license fee surcharge if the department determines that, within 365 days before submitting the license application, the applicant operated the dairy plant without a license in violation of sub. (1). The amount of the surcharge is $100, or $500 if the dairy plant operator procured milk or fluid milk products from milk producers or their agents.

(b) In addition to paying the license fee surcharge under par. (a), an applicant who violated sub. (1) shall pay all fees, set forth in a statement from the department, that are due for the license year in which the applicant violated sub. (1).

(c) Payment of the license fee surcharge and past fees, under pars. (a) and (b), does not relieve the applicant of any other civil or criminal liability that results from the unlicensed operation of a dairy plant, but does not constitute evidence of any violation of law.

(10) MILK PROCUREMENT FEE; MONTHLY PAYMENT. (a) *Monthly fee required.* On or before the 25th day of each month, a dairy plant operator, including a milk contractor that submits a milk producer license application on behalf of a milk producer and thereby certifies that the milk producer's dairy farm and milking operations comply with applicable requirements under this chapter, shall pay a milk procurement fee in the amount specified under par. (b). The monthly fee shall be based on the amount of milk that was procured by the dairy plant or milk contractor, directly from milk producers in the month preceding the month when the fee payment is due, regardless of who procured the milk during that preceding month.

(b) *Fee amounts.* Milk procurement fees, required under par. (a), are as follows:

1. For each 100 pounds of grade A milk procured from milk producers, 1.048 cent.

2. For each 100 pounds of grade B milk procured from milk producers, 0.2 cent.

(c) *Out−of−state milk shipments.* A milk producer who ships milk to an out−of−state dairy plant shall pay a monthly milk procurement fee on that milk, as required under par. (a), in the amount specified under par. (b), unless the operator of that out−of−state dairy plant voluntarily pays that fee for the milk producer.

(11) REINSPECTION FEES. (a) *Dairy plant to pay reinspection fee for milk producer.* A dairy plant operator, including a milk contractor that submits a milk producer license application on behalf of a milk producer and thereby certifies that the milk producer's dairy farm and milking operations comply with applicable requirements under this chapter, shall pay the dairy farm reinspection fee under this section for a milk producer if, at the time of a reinspection, the producer was assigned to that operator for licensing purposes under s. ATCP 65.02. The department may issue a statement of reinspection fees payable by a dairy plant operator and may demand payment from the dairy plant operator when it issues an application form for the renewal of the dairy plant operator's license under s. 97.20, Stats.

(b) *Fee amounts.* The reinspection fee required, under par. (a), includes, for each reinspection, a basic reinspection fee of $60 plus a supplementary reinspection fee as follows:

1. For a grade A processing plant, a supplementary reinspection fee of $240 if the plant received more than 2,000,000 pounds of milk from milk producers during the previous calendar year, or a supplementary reinspection fee of $190 if the plant received 2,000,000 pounds or less of milk from milk producers during the previous calendar year.

2. For a grade B processing plant, a supplementary reinspection fee of $210.

3. For a grade A receiving station, a supplementary reinspection fee of $90.

(12) DAIRY PRODUCT GRADING FEE. (a) A person applying for a license to produce gradable butter, for which grading is required under s. 97.176, Stats., or cheese at a grade B dairy plant shall pay an annual grading fee under s. 97.177, Stats.

(b) The grading fee, under par. (a), is 1.35 cents per 100 pounds of butter and cheese for which grading is required under s. 97.176 or 97.177, Stats., and that is produced at the dairy plant by any operator during the previous calendar year. If the dairy plant was not in operation during the previous calendar year, the license applicant shall pay a grading fee based on estimated production for the calendar year in which the application is made. At the end of the license year, the license holder shall report the actual calendar year production, and the department shall re−calculate the grading fee based on that actual production. If the grading fee based on actual production differs from the fee based on estimated production, the license holder shall pay the balance due or receive a credit from the department on the next year's grading fee.

(c) For purposes of this subsection, ungraded cheese in 55 gallon metal or fiber barrels shall not be graded.

(13) DAIRY TRADE PRACTICES FEE; MONTHLY PAYMENTS. A dairy plant operator shall pay a monthly dairy trade practice fee if required under s. 100.201 (6), Stats.

Note: A dairy plant operator is required to pay a monthly dairy trade practice fee under s. 100.201 (6), Stats., if the operator sells milk, fluid milk products, ice cream, or other frozen desserts at wholesale or retail, in consumer package form, to persons in this state.

(14) GRADE A PERMIT REQUIRED. (a) Except as provided under sub. (15), no person operating a dairy plant at which milk or fluid milk products are received, transferred, or processed may sell or distribute that milk or those fluid milk products as grade A milk or grade A milk products unless that person holds a valid grade A dairy plant permit issued by the department for that dairy plant. If a grade A receiving station or transfer station is operated at the same location as a grade B processing plant, a grade A permit is required for that receiving station or transfer station.

(b) A grade A dairy plant permit expires on April 30 annually and is not transferable between persons or locations. A grade A dairy plant permit may be issued in the form of an endorsement on a dairy plant license under sub. (1).

(15) GRADE A PERMIT EXEMPTIONS. A grade A permit is not required, under sub. (14), for any of the following:

(a) A grade A receiving station or transfer station operated at the same location, and by the same person, as a grade A processing plant covered by a permit under sub. (14).

(b) A grade A transfer station operated at the same location, and by the same person, as a grade A receiving station covered by a permit under sub. (14).

(16) GRADE A PERMIT APPLICATION. An application for a grade A dairy plant permit shall be made on a form provided by the department. A grade A permit application may be made in conjunction with a dairy plant license application under sub. (2).

(17) SURCHARGE FOR OPERATING WITHOUT A GRADE A PERMIT. An applicant for a grade A dairy plant permit shall pay a permit surcharge of $100 if the department determines that, within 365 days before submitting the permit application, the applicant operated the dairy plant as a grade A dairy plant without a grade A permit in violation of sub. (14). Payment of the surcharge does not relieve the applicant of any other civil or criminal liability that results from the operation of a grade A dairy plant without a grade A permit, but does not constitute evidence of any violation of law.

(18) ACTION ON GRADE A PERMIT APPLICATION; DEADLINE. The department shall grant or deny a permit application, under sub. (16), within 40 days after the department receives a complete application or before the expiration of any temporary permit issued under sub. (19), whichever occurs later.

(19) TEMPORARY GRADE A PERMIT. The department may issue a temporary grade A permit to an applicant, under sub. (16), pending final action on that person's permit application. A temporary permit may be issued for a period of not more than 40 days and may not exceed the term of the dairy plant license or temporary license. If the department denies a permit application before the term of the temporary permit expires, the temporary permit is automatically terminated when the applicant receives notice of the denial. The department may not issue a temporary permit in response to a permit renewal application by the holder of an existing permit.

(20) PREREQUISITES FOR GRADE A PERMIT. The department may not issue or renew a grade A dairy plant permit, or issue a temporary permit under sub. (19), unless all of the following conditions are met:

(a) The permit applicant holds a dairy plant license under this section or the department issues the permit and license simultaneously. The department may issue a temporary grade A permit, under sub. (19), to an applicant holding a temporary dairy plant license under sub. (5) or may issue the temporary permit and temporary license simultaneously.

(b) The division inspects the dairy plant if the dairy plant is not currently covered by a grade A dairy plant permit.

(c) The applicant pays any surcharge, set forth in a statement from the department, which is due and payable by the applicant under sub. (9). The department shall refund a surcharge paid under protest if the department determines that the surcharge was not due and payable under sub. (9).

(21) GRADE A STANDARDS. A grade A dairy plant shall comply with standards applicable to the receipt, testing, transfer, processing, and distribution of grade A milk and grade A milk products under this chapter. A grade A dairy plant may not receive, transfer, or process grade B milk unless the receipt, transfer, or processing is authorized by the division in writing.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16; correction in (1) (a), (b) (intro.), 6., (2) (intro.), (7) (intro.), (9) (a), (b), (16), (20) (a) Register August 2016 No. 728.

Subchapter II — Dairy Farms

ATCP 65.06 Milking barn or parlor. All milking operations on a dairy farm shall be conducted in a milking barn or parlor, which shall be constructed and maintained in compliance with the following requirements:

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

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

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

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

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

Note: Copies of the PMO, including Appendix C, are on file with the division and the legislative reference bureau. Copies are available online at www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/milk.

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

(4) LIGHTING. Natural or artificial lighting, or both, shall be provided in milking barns and parlors to ensure illumination that allows evaluation of teat and milking equipment cleanliness for daytime and nighttime milking operations. Except where additional lighting is required for milking parlors under sub. (10), there shall be at least 10 foot−candles of illumination in all working areas where milking operations are being performed.

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

(6) ANIMALS EXCLUDED. No swine, fowl, or non−milking livestock may be housed in, or allowed to enter a milking barn or parlor. Milking areas shall be kept free of excrement from non−milking livestock.

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

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

(9) OVERCROWDING PROHIBITED. Areas used for milking operations shall not be overcrowded.

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

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

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

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

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

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

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

6. C−I−P milking equipment, if cleaned, sanitized, or stored in the milking parlor, is designed, installed, handled, and stored so that milk contact surfaces are protected from contamination at all times. Cleaning, handling, and storage shall comply with applicable requirements under s. ATCP 65.14.

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

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

(11) DRUG STORAGE. No drug or medicinal item, or drug administering device such as a bolus wand or syringe, may be kept in a milkhouse unless it is intended or prescribed for use on dairy animals. If drugs or medicinal items are kept in a milkhouse, they shall be stored in an enclosed cabinet, separate from all other articles stored in the milkhouse. Drugs and medicinal items shall be clearly labeled to indicate their identity and intended use, and prescription drugs shall be labeled as provided under s. ATCP 65.20 (5). Drugs and medicinal items intended solely for treatment of non−lactating milking animals shall be kept separate from those used for treatment of lactating milking animals.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16.

ATCP 65.08 Milkhouse. (1) REQUIREMENT. Every dairy farm shall have a milkhouse. Except as provided in s. ATCP 65.16 (5), a milk producer shall cool and store milk in the milkhouse. A milkhouse shall be separate from a milking barn or parlor, but may share common walls with a milking barn or parlor. All milking equipment and utensils shall be cleaned, sanitized and stored in the milkhouse, except for C−I−P milk pipelines that are mechanically cleaned in place in a milking barn or parlor, or C−I−P milking equipment that is mechanically cleaned and stored in a milking parlor under s. ATCP 65.06 (10) (a).

(2) ACCESS TO MILKHOUSE. Every access driveway and every exterior access door to the milkhouse shall be located in such a manner that no vehicle or a person traveling to the milkhouse must pass through an animal walkway, holding area, or yard where excessive animal waste may accumulate on the ground near these access areas.

(3) CONSTRUCTION. (a) *Floors.* A milkhouse floor shall be constructed of concrete or one or more other impervious materi-

als, and shall be easily cleanable. This requirement does not prohibit construction with anti−slip floor surfaces that are easily cleanable. The floor shall be sloped for drainage to a floor drain. Floor drains shall be readily accessible. A floor drain shall be equipped with a trap if the floor drain is connected to a sanitary sewer system.

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

(c) *Doors and windows.* A milkhouse shall not open directly into a barn, stable or milking parlor, or into a room not used for the operation of the dairy farm unless the opening is equipped with a tight−fitting, self−closing and solid door. All milkhouse external openings shall be screened or otherwise protected against entry of insects, rodents, or other pests. External doors and windows shall be tight−fitting and shall be kept closed during dusty conditions. External doors shall be self−closing. All swinging screen doors on the milkhouse shall open outward.

(d) *Lighting.* Natural or artificial lighting, or both, shall be provided in a milkhouse to ensure adequate illumination for daytime and nighttime operations. There shall be at least 30 foot−candles of illumination in all working areas of the milkhouse. Artificial lights located over a bulk tank shall be shatterproof or shielded to protect milk from contamination with broken glass.

(e) *Ventilation.* Ventilation in a milkhouse shall be adequate to minimize odors and to prevent visible condensation on floors, walls, ceilings, clean equipment, and clean utensils. Vents shall be screened and shall be located and maintained to prevent contamination of bulk tanks or clean equipment and utensils. Exhaust fans shall be screened or louvered to prevent entry of pests when not in operation. Ventilation in an AMI room shall be sufficient to minimize odors from any nearby manure storage.

(f) *Water heating capacity.* Hot water capacity shall be adequate for all milkhouse operations. Hot water heaters or hot water supply systems shall have a capacity of at least 10 gallons for washing equipment and utensils. The division may authorize alternative systems, including heat recovery and continuous flow systems that provide adequate hot water for all milkhouse operations. Authorization shall be in writing and valid for 5 years. Re−authorization for each subsequent 5−year period shall be obtained in writing from the division.

(g) *Wash and rinse vat.* A milkhouse shall be equipped with a 2−compartment wash and rinse vat for cleaning equipment and utensils. The vat shall be served by potable hot and cold running water from a faucet or faucets located directly over the vat. Water shall enter and leave the vat by means that preclude splashing. A vat designed to hold cleaning or sanitizing solutions drawn through C−I−P milking equipment may serve as one compartment of a two−compartment wash and rinse vat under this paragraph, provided that the C−I−P inflation rack and all C−I−P milking equipment are completely removed from the vat while other equipment and utensils are being washed, rinsed, and sanitized in the vat. This paragraph shall apply to an AMI for which manual cleaning and sanitizing of AMI components must be done on a routine basis.

(h) *Handwashing facility.* A milkhouse shall be equipped with a fixed hand washing facility that is separate from the wash and rinse vat under par. (g). The hand washing facility shall be served by potable hot and cold running water from a faucet or faucets located directly over the facility. Water shall enter and leave the handwashing facility by means that preclude splashing. Soap and single service sanitary towels or another approved means of drying hands shall be available at all times for use at the hand washing facility. A hand washing facility may be located in a room immediately adjacent to the milkhouse, provided that it is readily accessible from the milkhouse. This paragraph applies to an AMI room in which the operator's hands will contact milk filters or other milk contact surfaces. This paragraph does not apply to licensed milk producers who do not hold a grade A producer permit but operate a dairy farm on which the currently used bulk tank was installed before January 1, 1979, or on which milk is stored and cooled only in cans.

(i) *Bulk tank hose port.* If a bulk tank is used to receive and hold milk in a milkhouse, the milkhouse shall have a hose port opening in the outside wall to permit the removal of milk from the bulk tank. The hose port opening shall be at least 6 inches above the floor of the milkhouse, and shall be equipped with a tight−fitting door that shall be kept closed except when the hose port is in use. A paved surface of concrete or other readily cleanable material shall be installed adjacent to the outside wall of the milkhouse, immediately under the bulk tank hose port. The paved surface shall be at least a 4 foot by 4 foot square and shall cover as much additional ground area as is necessary to protect the milk hose from ground contamination.

(4) MAINTENANCE AND SANITATION. The floors, walls, ceilings, windows, hose port assembly, and all equipment of a milkhouse shall be kept clean and in a good state of repair. Liquid wastes from milkhouse operations shall be drained and removed in a sanitary manner. Equipment and utensils shall be cleaned and maintained in compliance with s. ATCP 65.12. A milkhouse shall be kept free of insects, rodents, and other pests. Animals shall be kept out of the milkhouse at all times. Potential sources of milk contamination, including materials that may attract or harbor pests, shall be excluded from the milkhouse.

(5) STORAGE. (a) *General.* No equipment, supplies, or other articles may be stored in a milkhouse, unless the articles are used in milkhouse operations. Articles stored in a milkhouse shall be stored above the floor, on racks, or in a cabinet. Articles shall be stored in a manner that prevents both the contamination of milk and contact of equipment or utensils with milk. Washing machines, laundry dryers, and pasteurizers used to prepare milk−replacement formula for calves shall not be stored in the milkhouse.

(b) *Drugs and medicinal items.* No drug or medicinal item, or drug administering device such as a bolus wand or syringe, may be kept in a milkhouse unless it is intended or prescribed for use on dairy animals. If drugs or medicinal items are kept in a milkhouse, they shall be stored in an enclosed cabinet, separate from all other articles stored in the milkhouse. Drugs and medicinal items shall be clearly labeled to indicate their identity and intended use, and prescription drugs shall be labeled as provided under s. ATCP 65.20 (5). Drugs and medicinal items intended solely for treatment of non−lactating milking animals shall be kept separate from those used for treatment of lactating milking animals.

(c) *Pesticides.* No pesticides, except for sanitizers, germicides, disinfectants, or pesticides labeled and used for routine milkhouse sanitation purposes, may be stored in a milkhouse. Any of the chemicals labeled for routine use in a milkhouse must be stored in a manner that precludes contamination of milk and milk handling equipment.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16.

ATCP 65.10 Dairy farm water supply. (1) GENERAL. An adequate supply of potable water shall be supplied under pressure for milkhouse and milking operations. Water used for milkhouse and milking operations, including water used to cool milk in a plate or tubular cooler, shall be potable. Potable water shall comply with the microbiological drinking water standards set forth in s. NR 809.30.

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

(2) BACKFLOW PROTECTION; CROSS−CONNECTIONS. A potable water supply system on a dairy farm shall be designed, constructed, installed, and maintained to prevent contamination of the potable water supply through backflow, backsiphonage, cross−

connections, or any other connection to the potable water supply system. An air gap adequate to prevent the back−siphonage or backflow of any liquids shall be maintained between every potable water outlet and the flood rim of the fixture that it supplies, and between the potable water outlet and every other source of potential contamination, unless alternative protection is approved under s. SPS 382.41.

(3) WELL CONSTRUCTION. Wells used to supply water for milkhouse and milking operations on dairy farms shall comply with ch. NR 810, 811, or 812 in the case of a community water system.

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

(5) WATER QUALITY TESTING BY DAIRY PLANT. A dairy plant operator, including a milk contractor that submits a milk producer license application on behalf of a milk producer and thereby certifies that the milk producer's dairy farm and milking operations comply with applicable requirements under this chapter, shall do all of the following for each milk producer from whom the dairy plant operator procures milk:

(a) Sample the milk producer's water supply at least once every two years. If the water supply system has more than one well, water from each well shall be sampled. The water sample from each well shall be taken from water before it has flowed into a pressure tank or any water treatment equipment.

(b) Sample the milk producer's water supply whenever the milk producer installs, alters, or repairs the water supply system.

(c) Sample any transported water supply used by the milk producer at the point of use, at or before first use and monthly thereafter.

(d) Have each water sample under this subsection analyzed at a laboratory that is certified under ch. ATCP 77 to perform water quality analyses. The laboratory shall analyze the water samples for compliance with the microbiological drinking water standards set forth in s. NR 809.30. The dairy plant operator shall submit each water quality analysis result to the division within 30 days after the dairy plant receives the water quality analysis result. If the analysis of any water sample indicates that the water supply of a dairy farm may be unsafe, the dairy plant operator, within 3 business days of the water quality analysis result being reported to the dairy plant operator, shall report the analysis result to the division and resample the water supply and have it analyzed.

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

1. The recirculated water originates from a safe source that complies with applicable provisions of ch. NR 810, 811, or 812.

2. The recirculated water meets the microbiological standards of s. NR 809.30.

3. The recirculated water is protected from contamination.

4. The coolant used in the water recirculation system is non−toxic food or pharmaceutical grade propylene glycol meeting the specifications in 21 CFR 184.1666, and does not contain coliform bacteria as determined by sampling and analysis done at least semi−annually by the dairy plant operator.

5. The dairy plant operator who procures milk from the milk producer tests the recirculated water for coliform bacterial contamination at least semi−annually.

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

1. The milk producer eliminates the contamination source and treats the recirculated water to make it potable.

2. The dairy plant operator who procures milk from the milk producer retests the recirculated water to determine whether the contamination is eliminated.

3. Retesting shows that the recirculated water complies with the bacteriological standards under par. (c).

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

1. The most probable number (MPN) of coliform organisms shall be less than 1.1 per 100 ml. as determined using the multiple tube fermentation technique, or less than 1.0 per 100 ml. as determined using the membrane filter technique.

2. Bacteriological testing using the membrane filter technique shall show not more than 200 total bacterial colonies per 100 ml.

3. Bacteriological testing using a heterotrophic plate count technique shall show not more than 500 colonies per ml.

(7) WATER RECLAIMED FROM A HEAT EXCHANGER. (a) Water reclaimed from a heat exchanger, may be used for milkhouse and milking operations, including cooling milk in a plate or tubular cooler, if all of the following conditions are met:

1. The water is stored in a cleaned and sanitized vessel that is constructed of non−contaminating materials and is designed to protect the water supply from contamination. The storage vessel shall have a drain and access point that allow for cleaning and sanitizing.

2. There is no cross−connection between the reclaimed water and any potential contamination source or potentially unsafe water supply.

3. There are no submerged inlets through which the reclaimed water may be contaminated.

4. The water is of satisfactory organoleptic quality.

5. The water complies with the microbiological drinking water standards in s. NR 809.30.

6. The dairy plant operator who procures milk from the milk producer collects and analyzes samples of the reclaimed water supply before the milk producer first uses the water for milkhouse and milking operations, and at least semi−annually thereafter.

7. Any chemicals used to suppress bacterial growth, tastes, and odors are registered for that use with the U.S. environmental protection agency. Milk processed in or exposed to any system using chemicals to suppress bacterial growth, tastes, and odors shall not be allowed to become contaminated with those chemicals. A milk producer who uses any chemical to suppress bacterial growth, tastes, or odors shall comply with the chemical label use instructions, and shall routinely monitor chemical concentrations in treated water.

8. Sanitizers used to sanitize equipment, utensils, teats of milking animals, or to backflush systems, shall be chemical sanitizers that comply with 21 CFR 178.1010, are registered with the U.S. environmental protection agency, and are thereby suitable for use on food contact surfaces. An approved sanitizer may be added by an automatic metering device that is located downstream from the storage vessel but upstream from the end−use application of the sanitizer.

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

1. The water is collected directly from the heat exchanger into a cleaned and sanitized wash vat or utensil sink.

2. The water piping system complies with sub. (2).

3. After pre−rinse use, the water is discharged to waste.

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

(8) WATER RECLAIMED FROM SOURCES OTHER THAN A HEAT EXCHANGER. Water reclaimed from a compressor cooling unit, manure treatment, or from other dairy farm systems or processes may be used as non−potable water for milking barn or parlor operations, not to include rinsing, cleaning and sanitizing of milking systems, if all of the following conditions are met:

(a) The water is reclaimed by means of evaporation, reverse osmosis, ultra−filtration, or another method approved by the division.

(b) The water is stored in a cleaned and sanitized vessel that is constructed of non−contaminating materials and is designed to protect the water supply from contamination. The storage vessel shall have a drain and access point that allow for cleaning and sanitizing.

(c) There is no cross−connection between the reclaimed water and potable water supplies or between the reclaimed water and any potential contamination source or potentially unsafe water supply.

(d) There are no submerged inlets through which the reclaimed water may contaminate the potable water system.

(e) Any chemicals used to suppress bacterial growth, tastes, and odors are registered for that use with the U.S. environmental protection agency. A milk producer who uses any chemical to suppress bacterial growth, tastes, or odors shall comply with the chemical label use instructions, and shall routinely monitor chemical concentrations in the treated water.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16; correction in (6) (a) 1., (7) (b) 2. made under s. 35.17, Stats., Register August 2016 No. 728.

ATCP 65.12 Equipment and utensils. (1) CONSTRUCTION; GENERAL. Equipment and utensils shall be constructed of smooth, non−absorbent, corrosion−resistant, and non−toxic materials. Equipment and utensils shall be designed and constructed so that they can be easily cleaned and shall be durable under repeated conditions of use. Surfaces shall be free of breaks and corrosion. Joints and seams shall be smooth and flush. Milk pails used for hand milking and stripping shall be seamless. Multiple−use woven material shall not be used for straining milk. Milking and milk handling systems shall comply with s. ATCP 65.14.

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

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

(b) Heat resistant glass.

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

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

(4) CLEANING. Equipment and utensils shall be kept clean. Utensils and milk contact surfaces of equipment shall be rinsed immediately after each use and then washed with an effective detergent and rinsed clean. C−I−P equipment shall be pre−washed with warm water before being cleaned with a detergent solution, according to manufacturer's instructions.

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

(6) STORAGE. Equipment and utensils, unless stored in sanitizing solutions, shall be handled and stored in a manner that will ensure complete drainage and protection from contamination before use. Equipment and utensils stored in sanitizing solutions shall be rinsed in potable water before use.

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

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16.

ATCP 65.14 Milking and milk handling systems. (1) SANITARY REQUIREMENTS; GENERAL. Milking and milk handling systems shall be of sanitary design and construction, and shall be installed and maintained for sanitary operation. Pressurized air that contacts a milk or milk contact surface shall be clean, safe, and free of contaminants. The milking and milk handling system shall comply with "3−A Accepted Practices for the Design, Fabrication and Installation of Milking and Milk Handling Equipment, 606−05." Milk contact surfaces shall be accessible for inspection. If it is necessary to disassemble any portion of a milking or milk handling system in order to inspect a milk contact surface, all tools necessary for the disassembly shall be readily available in the milkhouse.

Note: Guidelines for sanitary design and construction of milking and milk handling systems are set forth in the "3−A Accepted Practices for the Design, Fabrication and Installation of Milking and Milk Handling Equipment," 606−05, as amended effective November 2002, published by 3−A Sanitary Standards, Inc., 6888 Elm Street, Suite 2D, McLean, VA 22101−3850, telephone (703) 790−0295, website www.3−a.org. Milking and milk handling systems manufactured in compliance with the "3−A Accepted Practices" meet the sanitary design and construction requirements of this subsection. Copies of the "3−A Accepted Practices" are on file with the division and the legislative reference bureau. Copies may be obtained from 3−A Sanitary Standards, Inc. Online Store," at http://www.techstreet.com.

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

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

(b) Heat resistant glass.

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

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

(b) All joints of permanently mounted milk pipelines, including joints in solution lines, shall be welded or equipped with fittings designed for C−I−P. Welded joints shall be smooth and free of pits, cracks, or other defects. Removable fittings shall be designed to form substantially flush interior joints.

(c) Permanently mounted pipelines shall be supported at intervals of not more than 10 feet so that the pipelines remain in constant alignment and position. Permanently mounted pipelines shall be self−draining, and shall have a minimum slope of one inch per 10 feet. The support system shall be designed and constructed to prevent electrolytic reactions between supports and pipelines.

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

(4) NON–PIPELINE SYSTEMS. The transfer of milk to the milkhouse by a method other than a pipeline or vacuum transfer system shall comply with requirements under s. ATCP 65.18 (2). If milk from milking animals is initially collected in a portable transfer receptacle and pumped to the milkhouse through a flexible tube, rather than being pumped directly to the milkhouse through a permanently mounted pipeline, the transfer receptacle and tube system shall comply with the following requirements:

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

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

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

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

(c) Automated milking installations shall comply with the requirements of the Pasteurized Milk Ordinance Appendix Q of the PMO, and all of the following:

1. All equipment shall be designed for effective C–I–P cleaning and sanitizing.

2. Valves and equipment shall effectively prevent the contamination of milk with abnormal milk or chemicals used in cleaning and sanitizing, in accordance with a written testing and verification procedure acceptable to the division. The written procedures shall be kept at the dairy farm and made available to a division representative upon request.

3. The AMI shall ensure the detection, diversion and proper handling of abnormal milk, in accordance with a written testing and verification procedure acceptable to the division. The written procedure shall include a description of the equipment cleaning and sanitizing protocol to be followed after milking of animals whose milk is intended to be excluded from the collected milk, and before milking of animals whose milk will be shipped. The written procedure shall be kept at the dairy farm and made available to a division representative upon request.

4. The AMI operator shall follow a written procedure for verifying the effectiveness of the computer software and hardware. The written procedure shall be acceptable to the division and shall be kept at the dairy farm and made available to a division representative upon request. The written procedure shall include the following items:

a. A description of the location and function of all sensors used to control and monitor the operation of the AMI.

b. A description of changes made to, or maintenance performed on, the AMI software, control and monitoring devices, instrumentation, and sensors; and other hardware associated with the AMI.

c. Instructions on how to obtain operating information stored in the AMI computer system.

5. The AMI operator shall keep a copy of the AMI manufacturer's teat preparation protocol and a written procedure for verifying the effectiveness of this protocol. This protocol shall be accepted by the federal food and drug administration and made available to a division representative upon request.

6. Verification and records review to ensure compliance with subds. 1. to 5. shall be done at a frequency determined by the division.

(6) REVIEW OF PLANS. (a) Before installing, reconstructing, or extensively altering a bulk tank, milking system, milk handling system, milkhouse, milking parlor, or dairy farm water supply system, the installer shall, on behalf of the milk producer, submit plans to the division for review. Plans for a new automated milking installation shall indicate how proper computer performance and compliance with sub. (5) (c) 1. to 3. are to be verified. The department shall charge a fee of $25, as allowed by s. 93.06 (1w), Stats., to recover costs for providing the review service. The division shall return the plans, together with any comments or objections, within 14 days after the plans are received by the division. No review is required for a portable transfer receptacle or its appurtenances.

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

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

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

History: CR 14–073: cr. Register August 2016 No. 728, eff. 9–1–16; correction in (5) (c) 6., (6) (a) made under s. 35.17, Stats., Register August 2016 No. 728; **correction in (5) (c) made under s. 13.92 (4) (b) 7., Stats., Register January 2017 No. 733.**

ATCP 65.16 Bulk tanks and bulk transport containers. (1) BULK TANK LOCATION. If a bulk tank is used to receive, cool, or store milk on a dairy farm, the bulk tank shall be installed in the milkhouse. A bulk tank may be installed so that a portion of the bulk tank protrudes through the wall of a milkhouse, provided that all bulk tank openings are located inside the milkhouse. Agitator seals, other than weatherproof agitator seals approved in

writing by the division, shall be located inside the milkhouse. Clearance of at least 24 inches on the top and milk−outlet side shall be maintained on a bulk tank not protruding through the milkhouse wall to permit effective cleaning, sanitizing, and maintenance of the bulk tank. No bulk tank opening may be located directly under a ventilator. No bulk tank may be located directly over a floor drain.

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

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

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

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

2. A temperature recording device approved by the division, if the bulk tank was manufactured after January 1, 2000. The temperature recording device shall comply with sub. (3).

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

(e) A C−I−P bulk tank shall be designed and constructed so that cleaning, rinsing, and sanitizing solutions cannot enter the bulk tank while it contains milk.

Note: Bulk tanks manufactured in compliance with the "3−A Sanitary Standards for Farm Milk Cooling and Holding Tanks" meet the sanitary design and construction requirements of this subsection. The "3−A Standards" are published by 3−A Sanitary Standards, Inc., 6888 Elm Street, Suite 2D, McLean, VA 22101−3850, telephone (703) 790−0295, website www.3−a.org. Copies of the "3−A Standards" as amended effective July 23, 2012, are on file with the division and the legislative reference bureau. Copies may be obtained from "3−A Sanitary Standards, Inc., Online Store," at http://www.techstreet.com.

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

(a) The temperature recording device shall be capable of accurately recording temperatures between 40°F. (4° C.) and 180°F. (82° C.).

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

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

(d) The dairy plant operator who procures milk from the milk producer, or a milk contractor who procures milk from the producer, shall calibrate the temperature recording device every 6 months, or more often if specified by the manufacturer, and shall keep complete and accurate records of the calibration. The dairy plant operator shall make the records required under this section available to the division for inspection and copying upon request.

(e) A milk producer keeping electronic records in conformance with pars. (b), (c), and (d) shall develop a written procedure for a division representative to use to review the records. The written procedure shall be acceptable to the division and made available to a division representative upon request.

(4) BULK TANK COOLING CAPACITY. A bulk milk tank shall be capable of cooling all milk placed in the tank to 50°F. (10°C.) or less within 4 hours after the start of the first milking, and to 45°F. (7°C) or less within 2 hours after the end of milking. The temperature of the blended milk from the first milking and later milkings shall not exceed 50°F. (10°C.).

(5) MILKING DIRECTLY TO BULK TRANSPORT CONTAINER. A milk producer may milk directly to a bulk milk tanker holding a grade A permit issued by the department or an equivalent regulatory agency in another state, if all the following apply:

(a) The milk producer controls the operation and maintenance of the bulk milk tanker.

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

(b) The bulk milk tanker is constructed and maintained according to bulk milk tanker standards set forth in s. ATCP 82.06.

(c) The bulk milk tanker has an access port that can be sealed.

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

(e) All permanent pipelines connecting the bulk milk tanker to the milk handling system end in the milkhouse.

(f) The bulk milk tanker is parked such that the distance between the back of the tanker and the milkhouse is minimized and the tanker to pipeline connection is made inside the milkhouse.

(g) The milk producer cools all milk to a temperature of 45° F. (7° C.) or lower before the milk enters the bulk milk tanker. The milk producer may use a plate cooler, tube cooler or bulk tank to cool the milk. Coolant used in cooling devices shall comply with the requirements of s. ATCP 65.10 (6).

(h) A temperature recording device that records milk temperatures downstream from the cooling device under par. (g). The probe of the temperature recording device shall be mounted in a well in the milk pipeline except that if the producer cools the milk in a bulk tank the probe may be mounted in the bulk tank. The temperature recording device shall comply with all of the requirements that apply to bulk tank temperature recording devices under sub. (3).

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

(j) The bulk milk tanker outlet valve is close−coupled and protected with an effective dust cover.

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

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

1. Tests the bulk shipment for drug residues according to s. ATCP 65.72.

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

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

History: CR 14–073: cr. Register August 2016 No. 728, eff. 9–1–16; correction in (3) (e) made under s. 35.17, Stats., Register August 2016 No. 728.

ATCP 65.18 Milking procedure. (1) PREPARING MILKING ANIMALS FOR MILKING. A milk producer shall clip the flanks, udder, belly, and tail of each milking animal as often as necessary to facilitate cleaning. The tail, belly, and flanks shall be reasonably free of visible dirt at the time of milking. If flanks and udders are brushed, brushing shall be completed before milking begins. Hair on udders shall be kept short enough so that it is not incorporated with the teat in the milking machine inflation during milking. The udder of each milking animal shall be clean at the time of milking. Teats shall be cleaned, sanitized, and dried immediately before milking. Wet hand milking is prohibited.

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

(3) PERSONNEL; CLEANLINESS. Milkers and milk handlers shall wash and dry their hands before engaging in milking or milk handling operations, and before resuming such operations after engaging in other activities. Milkers and milk handlers shall wear clean outer garments so that milk, milk contact surfaces, or the hands of a milker or milk handler do not become contaminated by contact with soiled outer garments. If outer garments become soiled, they must be changed. No person may engage in milking or milk handling operations if that person exhibits reportable symptoms of a communicable disease as defined in s. ATCP 75 Appendix 2–201.11 (A) (1) or has received a reportable diagnosis of communicable disease as defined in s. ATCP 75 Appendix 2–201.11 (A) (2).

(4) COOLING MILK. (a) Except as provided under par. (b), milk shall be cooled to 50°F. (10°C.) or less within 4 hours after the start of the first milking, and to 45°F. (7°C) or less within 2 hours after the end of milking. The temperature of the blended milk from the first milking and later milkings shall not exceed 50°F. (10°C.).

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

(c) Frozen sheep milk shall be maintained in a frozen state for not more than 60 days from the time it was collected on a dairy farm and shall remain frozen until received by a dairy plant.

(5) STRAINING MILK. Milk shall be strained before it flows into a bulk tank or shipping container. Only clean, single–service filters may be used to strain milk. Filters shall not be reused.

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

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

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

History: CR 14–073: cr. Register August 2016 No. 728, eff. 9–1–16; correction in (3) made under s. 35.17, Stats., Register August 2016 No. 728.

ATCP 65.20 Abnormal milk; milking diseased animals. (1) Milking animals that appear to be secreting abnormal milk from one or more quarters shall be milked last or with separate equipment, and their milk shall be discarded.

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

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

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

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

(6) Abnormal milk or milk from diseased animals shall not be stored or held in the milkhouse or milking parlor after being collected. The milk shall be immediately removed and discarded.

History: CR 14–073: cr. Register August 2016 No. 728, eff. 9–1–16.

ATCP 65.22 Farm premises. (1) GENERAL. Farm premises adjacent to a milking barn, milking parlor, or milkhouse shall be kept free of conditions that may result in the contamination of milk.

(2) MANURE STORAGE AND DISPOSAL. Manure shall be removed and stored in a manner that inhibits the breeding of flies. No milking animals may have access to a manure storage area. This does not prohibit a cold weather manure pack in a cowyard if the manure pack is properly maintained to prevent excessive accumulations of manure on the udders and flanks of milking animals.

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

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

the paved surface shall extend to the building or other permanent structure.

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

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

(b) Toilets, under par. (a), shall comply with ch. SPS 362. Toilets shall be kept in clean and sanitary condition.

(c) There shall be no mixing or storage of human waste or septage with animal manure on a dairy farm.

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

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

(8) ANIMAL DRUG STORAGE. No animal drug or medicinal item may be kept in or immediately adjacent to dairy farm facilities used for dairying operations unless the animal drug or medicinal item is designed or prescribed for use on milking animals. Animal drugs and medicinal items stored immediately adjacent to the milking barn, milking parlor, or milkhouse shall be protected from outdoor conditions and shall be stored above the floor, on racks or in a cabinet. Animal drugs and medicinal items shall be stored in a manner that prevents contamination of milk and equipment and utensils coming in contact with milk. Animal drugs and medicinal items shall be clearly labeled to indicate their identity and intended use and prescription drugs shall be labeled as provided under s. ATCP 65.20 (5). Animal drugs and medicinal items intended solely for non−lactating milking animals shall be stored separately from those used on lactating milking animals.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16; correction in (6) (b) made under s. 35.17, Stats., Register August 2016 No. 728.

Subchapter III — Dairy Plants

ATCP 65.23 Federal requirements. (1) GRADE A DAIRY PLANTS. (a) A grade A dairy plant that is a qualified facility shall comply with the requirements of 21 CFR 117 Subpart B and 21 CFR 117.201.

(b) A grade A dairy plant that is a facility shall comply with the requirements of 21 CFR 117 Subpart B and the PMO.

(2) GRADE B DAIRY PLANTS. (a) A grade B dairy plant that is a qualified facility shall comply with the requirements of 21 CFR Subparts B and F, and 21 CFR 117.201.

(b) A grade B dairy plant that is a facility shall comply with the requirements of 21 CFR Subparts B, C, F, and G.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16; correction in (1) (a), (2) (a) made under s. 35.17, Stats., Register August 2016 No. 728.

ATCP 65.24 Construction and maintenance. (1) GENERAL. (a) Buildings, facilities, and equipment used in the operation of a dairy plant shall be soundly constructed and shall be capable of being maintained in a clean and sanitary condition. The interior and exterior portions of a dairy plant and the premises on which a dairy plant is located shall be kept free of unhealthful and unsanitary conditions and shall be maintained in compliance with this chapter.

(b) The division may issue a written waiver granting a variance from a construction standard under this subchapter if the division finds that the variance is reasonable and necessary under the circumstances, and will not compromise the purpose served by the construction standard and the facility does not hold a grade A permit. A waiver under this paragraph may be issued by the administrator of the division or the administrator's designee.

(c) After the effective date of this chapter, a dairy plant may not be directly connected to a milking barn, milking parlor or animal housing area. A dairy plant may be separated from a milking barn, milking parlor or animal housing area by a room not used for animal husbandry or milking, provided doors between the dairy plant, the room not used for animal husbandry or milking, and the milking barn, milking parlor, or animal housing area are self−closing and kept closed when not in use.

(2) FLOORS. The floors of all rooms in which dairy products are processed, handled, or stored or in which dairy product containers, equipment, or utensils are cleaned and sanitized shall be all of the following:

(a) Kept clean and in good repair.

(b) Smooth enough to be easily cleanable.

(c) Constructed of concrete or equally impervious and easily cleanable materials. This paragraph does not prohibit tightly joined wooden floors in storage rooms used solely for the storage of dry ingredients or packaging materials, or both.

(d) Sloped to provide adequate drainage. This paragraph does not apply to floors in storage rooms used solely for the storage of dry ingredients or packaging materials, or both.

(e) Equipped with an adequate number of trapped floor drains, so that any liquids draining onto the floors are promptly removed. Floors in refrigerated storage rooms need not have floor drains if the floors are sloped to drain to one or more exits to prevent pooling of liquids. This paragraph does not apply to floors in storage rooms used solely for the storage of dry ingredients or packaging materials, or both.

(3) WALLS AND CEILINGS. (a) Walls and ceilings of rooms in which dairy products are handled, processed, or stored, or in which dairy product containers, equipment, or utensils are cleaned and sanitized, shall have a smooth, washable, and light−colored surface, and shall be kept clean and in good repair. Suspended ceiling panels are prohibited in any room where powdered dairy products are packaged or processed if that room was constructed or substantially altered after December 1, 1994.

Note: Walls and ceilings may consist, for example of smooth finished concrete construction panels or cement plaster.

(b) If condensation may accumulate on overhead pipes, ducts, or other fixtures, those fixtures shall be arranged or shielded so that condensation does not drop into dairy products or ingredients, or onto product contact surfaces of equipment, utensils, or packaging materials.

(c) In rooms constructed or substantially altered after the effective date of this chapter, the junctions of walls and floors in processing areas shall be coved to facilitate cleaning.

(4) DOORS, WINDOWS, AND OTHER OPENINGS. (a) Doors, conveyor openings, and other openings to the outside environment shall be kept closed when not in use, and shall at all times be protected against the entry of insects, rodents, and excessive dust. Doors to the outside, other than overhead doors and electronic sliding doors in delivery areas of milk receiving stations and grade B dairy plants, and emergency exit doors routinely used by dairy plant personnel shall be self−closing. External screen doors, if any, shall open outward.

Note: Air curtains, strip curtains, and similar devices may be used to prevent insects and excessive dust from entering through doors and other openings while those openings are in use.

(b) Windows, if not permanently closed, shall be screened against flying insects, rodents, and birds. In dairy plants constructed or substantially altered after the effective date of this chapter, window ledges shall be sloped to an angle of at least 45º below horizontal to facilitate cleaning.

(c) Outside openings of dairy product pipelines shall be tightly capped when not in use. When a pipeline is in use, the pipeline cap shall be tethered or placed on a sanitary hanger or rack to protect

it from contamination. Pipeline openings through walls shall be completely cemented or fitted with tight metal collars.

(d) At each doorway leading from a non−processing area to a processing area in which exposed dairy products are processed, a dairy plant operator shall provide a sanitizing footbath, disposable footwear, dedicated footwear, or other facilities to ensure that footwear worn in the processing area is clean and sanitary.

(5) LIGHTING. (a) Lighting in every area of a dairy plant shall be fully adequate for the purpose for which the area is used. Except as provided under par. (b) or (c), there shall be at least 5 foot candles (54 lux) of illumination, measured at 30 inches above the floor, in every part of a dairy plant.

(b) Except as provided under par. (c), there shall be at least 30 foot candles (323 lux) of illumination at every place where dairy products are processed and at every place where equipment or utensils are cleaned and sanitized.

(c) There shall be at least 50 foot−candles (538 lux) of illumination on every surface where dairy products are graded or examined for condition and quality, and on every surface where multi−use packages are inspected before being reused.

(d) Light bulbs, fluorescent light tubes, skylights, and other overhead glass fixtures shall be shielded to prevent broken glass from falling into dairy products or onto dairy product contact surfaces.

(6) VENTILATION. (a) Every room in a dairy plant shall be adequately ventilated and adequately controlled for temperature and humidity to keep the room reasonably free of fumes, odors, mildew, and excessive condensation.

(b) Ventilation systems, including exhaust fans, intake fans, and ventilation ducts, shall be kept clean and in good repair and shall be screened or louvered to prevent contamination of dairy products, ingredients, equipment, utensils, or packaging materials by dust, insects, or other contaminants. Intake fans shall be equipped with filters that are readily removable for cleaning and replacement. Air intake filters shall be capable of removing at least 85% of particulate matter that is 5 microns or larger in size.

(c) Ventilation systems in a dairy plant shall be positioned so that exhaust air does not contaminate exposed dairy products, clean dairy product packages, or clean equipment or utensils.

(7) ROOMS. (a) Dairy plant rooms shall be large enough so that activities conducted in those rooms can be conducted in a safe and sanitary manner.

(b) Within a dairy plant, all of the following areas shall be located in separate rooms:

1. Raw milk unloading areas.

2. Areas used to clean and sanitize bulk milk tankers or bulk transport containers. Bulk milk tankers and bulk transport containers may be cleaned and sanitized in the same room where they are unloaded.

3. Processing areas.

4. Areas used to clean or sanitize dairy product packages or containers.

5. Areas used to store or fabricate dairy product packages. Packaging materials required for each day's processing operations may be kept in a processing area on that day.

6. Areas used to store dairy product ingredients, other than raw milk. Ingredients required for each day's processing operations may be kept in the processing area on that day.

7. Areas used to receive, handle, or store returned packaged dairy products.

8. Areas used for boiler, heating plant, utility, or maintenance equipment.

9. Employee toilet areas.

10. Employee locker areas, dressing areas, break areas, and lunch areas.

11. Areas, if any, used as living quarters. Processing or storage rooms that are constructed after the effective date of this chapter, and share one or more walls with adjacent living or sleeping quarters, shall have a separate entrance and shall not provide direct access to the living or sleeping quarters.

(c) In dairy plants constructed or licensed after December 1, 1994, raw milk shall be unloaded in a fully enclosed intake room.

(d) Notwithstanding par. (b), a dairy plant operator may store, cool, separate, and clarify raw milk in an area that the operator uses to unload bulk milk shipments if all the following apply:

1. The area is within a fully enclosed room.

2. Containers used to store, cool, separate, and clarify the raw milk are filtered or vented to a separate room to protect the milk from airborne contamination in the unloading area. If containers are vented to a separate room, that room shall comply with processing area sanitation standards under this chapter.

(e) Notwithstanding par. (d), a dairy plant operator may not store, cool, separate, or clarify raw milk in a room used to unload bulk milk shipments if any of the following apply:

1. The dairy plant was constructed or licensed after December 1, 1994.

2. The dairy plant is a grade A dairy plant constructed or licensed after July 1, 1980.

3. The storage, cooling, separating, or clarifying operations were initiated after December 1, 1994.

(f) Rooms, other than rooms adjacent to sleeping or living quarters, are considered separate, for purposes of this subsection, if they are fully separated by permanent floor−to−ceiling partitions and if doorways between the rooms are equipped with solid, tight−fitting, self−closing doors. Rooms adjacent to sleeping or living quarters must comply with sub. (11) above.

(8) DAIRY PLANT WATER SUPPLY. (a) Water used in dairy plant operations, or as an ingredient in dairy products, shall be obtained from a source that complies with applicable provisions of ch. NR 811 or 812. All water obtained for use in a dairy plant shall comply with the microbiological standards in ch. NR 809. Water shall be available in consistently adequate quantity for all dairy plant operations, including processing, cleaning, handwashing, and drinking. The division may grant a conditional waiver for elevated levels of non−microbial contaminants as defined in ch. NR 809 in processing water or ingredient water.

(b) If a dairy plant uses water from a privately owned water system, the dairy plant operator or, in the case of a grade A dairy plant, the division shall, at least once every 6 months, and after a repair or alteration to the water system, collect and analyze a sample of the water for compliance with the microbiological standards under s. NR 809.30. If a dairy plant produces grade A and grade B products, a division representative shall collect and analyze the water samples. If the water supply is from more than one well, each well shall be sampled and tested. Each sample shall be taken upstream from any pressure tank or other water treatment equipment. Microbiological analyses shall be conducted in a laboratory certified under ch. ATCP 77.

(c) At the division's request, a dairy plant operator who receives water from a municipal source shall provide the division with documentation showing that the water complies with the microbiological standards under s. NR 809.30.

(d) Recirculated water may be used in a cooler or heat exchanger that may come in contact with any dairy product if it is all of the following:

1. Obtained from a safe source that complies with par. (a), or reclaimed in compliance with s. ATCP 65.24 (9) (b).

2. Bacteriologically safe, protected from contamination.

3. Tested by the dairy plant operator at least semiannually or, in the case of a grade A dairy plant, by the department at least semiannually.

(e) If a recirculating water system becomes contaminated, that system may not be used until it is properly treated and retested to ensure that the contamination has been eliminated. The freezing point depressants used in recirculating water systems shall be food or pharmaceutical grade, non−toxic propylene glycol, and shall not contain coliform bacteria as determined by sampling and analysis which the dairy plant operator has done at least semi−annually.

(f) A dairy plant operator may use only potable water, or reclaimed water in compliance with sub. (9) (c), to produce culinary steam. In boilers used to produce culinary steam, boiler water additives shall comply with 21 CFR. 173.310.

(g) All of the following requirements apply to water that is transported to a dairy plant in a container or tank, for use in dairy plant operations:

1. The water shall be potable.

2. The container or tank shall be thoroughly cleaned and sanitized before being filled.

3. The container or tank shall be sealed, and the water shall be protected from contamination during transit.

4. A food−contact appropriate, cleaned and sanitized pump, hose, and fittings shall be used to transfer water from the container or tank to a storage tank at the dairy plant, so that the water is not contaminated during transfer.

(h) If a grade A dairy plant uses water to flush pasteurized milk or milk products from milk processing systems, that water shall be of a microbiological quality equivalent to that of pasteurized milk.

(9) RECLAIMED WATER. (a) A dairy plant operator may use water reclaimed from heat exchanger processes or from the condensation of milk or dairy products if all the following apply:

1. The water is reclaimed from a heat exchanger process or by means of evaporation, reverse osmosis, or ultrafiltration.

2. The water meets applicable use conditions under par. (c).

(b) Except as provided in par. (c), reclaimed water may not be used for any purpose requiring potable water unless all the following apply:

1. The department pre−inspects and pre−approves the reclamation system.

2. The reclaimed water contains less than 1 coliform bacterium per 100 ml. of water.

3. The reclaimed water otherwise meets the microbiological standards set forth in s. NR 809.30.

4. The organic content of the water is less than 12 mg. per liter as measured by the chemical oxygen demand or permanganate−consumed test, or the water has a standard turbidity of less than 5 units. The dairy plant operator shall use an automatic fail−safe monitoring device to identify, and automatically divert to a waste water system, any water reclaimed from the condensation of dairy products if that water fails to meet this standard.

5. The reclaimed water is of satisfactory organoleptic quality. The dairy plant operator shall sample and organoleptically test reclaimed water at weekly intervals.

6. Any chemicals used to suppress bacterial growth, tastes, or odors in the reclaimed water are registered for that use with the U.S. environmental protection agency. The dairy plant operator who uses any chemical to suppress bacterial growth, tastes, or odors shall comply with the chemical label instructions. An added chemical may not contain any substance that may contaminate dairy products or limit the use of reclaimed water. An automatic proportioning device shall add the chemicals to the water before the water enters the storage tank. The dairy plant operator shall test reclaimed water at least daily to verify that each added chemical is present at an approved level.

7. The reclaimed water is stored in a properly constructed tank. The tank shall be constructed of a material that can be easily cleaned and sanitized and will not contaminate the water.

8. The dairy plant operator or, in the case of a grade A dairy plant, the division tests the reclaimed water for compliance with microbiological and organic content standards at least semi−annually. The operator shall test the reclaimed water for 14 working days after the department approves the reclamation system under subd. 1., and for at least 7 working days after any repairs or alterations to the system.

9. There are no cross−connections between reclaimed water lines and any public or private water system.

10. Reclaimed water from membrane processing of unpasteurized milk or unpasteurized dairy products shall be heat−treated for a time and at a temperature providing at least the same lethality against microorganisms as milk pasteurization.

(c) Reclaimed water may be used for the limited purposes of producing culinary steam, pre−rinsing food contact surfaces of equipment or utensils, or preparing cleaning solutions if all the following apply:

1. The reclaimed water meets all conditions under par. (b) 1., 2., 4. to 7., and 9.

2. The reclaimed water is used only on the day that it is reclaimed, except that reclaimed water may be stored for later use if it is automatically maintained at a temperature of not less than 145° F. (63° C.), or is chemically treated to suppress bacterial propagation. Chemical treatments shall comply with par. (b) 6.

3. Distribution lines and hose stations used to distribute the reclaimed water are clearly identified as "limited−use reclaimed water."

4. The dairy plant operator posts clear instructions for the use of the reclaimed water. The operator shall post the instructions so that they will be seen by persons using the reclaimed water, and the instructions shall be written in such a way that they will be understood by the persons using the reclaimed water. The instructions shall disclose the limited purposes for which the reclaimed water may be used.

5. Water lines distributing the reclaimed water are not permanently connected to dairy product vessels. If a water line is temporarily connected to a dairy product vessel, there shall be an atmospheric break and automatic controls to prevent the reclaimed water from contacting dairy products.

(d) Reclaimed water that does not qualify for use, under par. (b) or (c), may only be used as boiler feedwater.

(10) PLUMBING SYSTEM; DISPOSAL OF SEWAGE AND LIQUID WASTE. (a) All dairy plant plumbing, plumbing fixtures, and equipment shall comply with state and local plumbing codes and shall be designed, installed, and maintained to prevent backflow, backsiphonage, and cross−connections.

(b) Sewage and liquid waste from a dairy plant shall be removed in a sanitary manner, in compliance with applicable state and local regulations.

Note: Plumbing and plumbing fixtures must comply with applicable rules of the Wisconsin department of safety and professional services under chs. SPS 382 to 386.

(11) CLEANING FACILITIES. (a) If equipment or utensils in a dairy plant are cleaned or sanitized manually, the dairy plant shall be equipped with wash and rinse sinks that are suitable for all manual cleaning and sanitizing operations. Sinks shall be conveniently located and adequate in number, and shall comply with all of the following requirements:

1. Every sink shall be constructed of stainless steel or one or more other materials approved by the division.

2. Every sink shall have at least 2 compartments. If a dairy plant is also engaged in food processing as defined under s. 97.29 (2) (b), Stats., every sink installed in a food processing area after December 1, 1994 shall have at least 3 compartments for washing,

rinsing, and sanitizing equipment and utensils unless the dairy plant operator uses an alternative method for sanitizing equipment and utensils that the division has approved in writing.

3. Every sink compartment shall be large enough so that the largest item cleaned or sanitized in the sink can be halfway immersed in the sink. Every sink compartment shall be served by hot and cold running water and shall be cleaned prior to each use.

(b) Sinks used to clean and sanitize equipment and utensils may not be used as handwashing sinks.

(c) Brushes and other cleaning tools used to clean equipment and utensils shall be cleaned after each use and sanitized prior to their next use. Single−service disposable towels, if used to clean equipment or utensils, shall be discarded after a single use.

(d) If a mechanical system is used to clean or sanitize equipment or utensils, the mechanical system shall be designed, installed, and maintained so that it is fully effective for the purpose used.

(e) A dairy plant shall be equipped with conveniently located hose connections to facilitate cleaning operations in the dairy plant. When hoses are not in use, they shall be neatly stored off the floor on racks or reels.

(12) TOILET FACILITIES. (a) Every dairy plant shall have toilet facilities that comply with chs. SPS 361 to 365.

(b) Toilet rooms shall be conveniently located, but shall not open directly into any room where milk or dairy products are processed. Every toilet room shall be completely enclosed and shall have a tight−fitting, solid, self−closing door. The door shall be kept closed except when in use or when the toilet room is being cleaned or repaired.

(c) Toilet rooms and fixtures shall be kept clean, sanitary, and in good repair. A supply of toilet tissue shall be provided at each toilet at all times.

(d) Every toilet room shall be equipped with hand−washing facilities with hot and cold running water, soap, and single−service towels or air hand−drying equipment. Common towels are prohibited. Easily cleanable, covered receptacles shall be provided for waste materials.

(e) One or more conspicuous signs, directing personnel to wash their hands before returning to work, shall be prominently posted in every toilet and dressing room. Signs shall be clearly printed in a language or languages that can be understood by all dairy plant personnel.

(13) LOCKER AND LINEN FACILITIES. (a) Clothing and personal items of dairy plant personnel, when not being worn or carried, shall be neatly stored in lockers or comparable facilities provided for that purpose. Clothing and personal items may not be stored in areas where milk, dairy products, or ingredients are received, processed, handled, or stored, or in areas where dairy product containers, equipment, or utensils are cleaned or stored.

(b) Work clothing, when not being worn by dairy plant personnel, shall be stored in an orderly and sanitary manner. Soiled linen and clothing shall be kept in nonabsorbent containers or laundry bags until removed for laundering or disposal. Soiled linen and clothing shall be removed as often as necessary to prevent unsanitary conditions.

(14) HANDWASHING SINKS IN PROCESSING AREAS. (a) Handwashing sinks shall be provided for use by all dairy plant personnel working in each processing room or area. The sinks shall be conveniently accessible, and shall be kept in a clean and sanitary condition.

(b) A supply of soap or detergent, and a sanitary, single−service means for drying hands, shall be provided at each handwashing sink at all times. Common towels are prohibited. If disposable towels are used, a clean, covered waste receptacle shall be provided for their disposal.

(c) A handwashing sink may not be used to rinse, wash, or sanitize equipment or utensils.

(d) A handwashing sink installed to serve a processing area shall be located in that processing area. The sink shall be served by potable tempered water, or by potable hot and cold water delivered through a mixing valve or combination faucet. The sink shall not be hand operated. If a self−closing, slow−closing, or metered faucet is used, the faucet shall provide an uninterrupted flow of water for at least 15 seconds before it becomes necessary to reactivate the faucet.

(e) An automatic handwashing device may be substituted for a handwashing sink under this subsection if the automatic handwashing device operates in a safe and effective manner.

(15) INTERIOR PREMISES; CLEANLINESS. Every room of a dairy plant shall be kept in a clean and orderly condition.

(16) EXTERIOR PREMISES; CLEANLINESS. (a) The premises surrounding a dairy plant shall be well drained and shall be kept in an orderly condition. The premises shall be kept free of accumulated trash, garbage, excess vegetation, and other objects that may harbor vermin, be a source of airborne dust or dirt, or hold standing water. Driveways and parking lots shall be surfaced or maintained to minimize airborne dust and dirt.

(b) Every outdoor storage tank used for liquid food ingredients shall be located on a drained impermeable surface. All loading and unloading of liquid food ingredients from that storage tank shall be conducted above a drained impermeable surface.

(17) GARBAGE AND SOLID WASTE DISPOSAL. (a) Garbage and solid waste shall be removed from the dairy plant premises as often as necessary to keep the premises in a clean and sanitary condition.

(b) Garbage and solid waste storage areas shall be constructed and maintained so that they are easily cleanable and do not attract or harbor insects, rodents, or other animals; do not hold standing water, and are not a source of airborne dust or dirt.

(c) Garbage and solid waste shall be held in durable, leak−proof, easily cleanable, and pest−resistant containers. Containers shall be covered with tight−fitting lids, and shall be cleaned when necessary to prevent unsanitary conditions. Waste containers receiving solid waste from packaging and bottle washing operations may be uncovered, if necessary, when those operations are in progress.

(d) No garbage or solid waste may be burned on the dairy plant premises, except in compliance with state and local regulations. No garbage or solid waste may be burned on the premises if the burning may contaminate dairy products.

(18) PEST CONTROL. A dairy plant shall be free of any evidence of insect, rodent, or other pest infestation. A dairy plant operator shall take effective measures to prevent and, if necessary, eradicate pest infestations. No pesticide may be stored, handled, or used in a manner inconsistent with label directions, in a negligent manner, or in a manner that may contaminate dairy products.

Note: Pesticides must be handled, stored, and used in compliance with ss. 94.67 to 94.71, Stats., and ch. ATCP 29.

(19) CONSTRUCTION PLANS; NOTIFICATION; REVIEW. Before constructing, substantially reconstructing, or extensively altering a dairy plant, a dairy plant operator shall provide the division with complete plans and specifications for the construction, reconstruction, or alteration. Within 30 days after a dairy plant operator files plans with the division under this subsection, the division shall return its comments or objections, if any, in writing.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16; correction in (8) (a), (d) 2. made under s. 35.17, Stats., Register August 2016 No. 728.

ATCP 65.26 Personnel; sanitation standards. **(1)** CLEANLINESS AND SANITATION; GENERAL. (a) Within a dairy plant, access to processing areas shall be restricted to dairy plant employees and other authorized personnel.

(b) Persons who handle or process dairy products shall maintain a high degree of personal cleanliness, and shall observe good hygienic practices during all working periods.

(c) Persons who handle or process dairy products shall thoroughly wash their hands before beginning work and before returning to work after using toilet facilities, eating, smoking, or engaging in other activities that may contaminate their hands.

(d) A person with a discharging or infected lesion on a hand or arm may not handle or process unpackaged dairy products without appropriate sanitary protection. Appropriate sanitary protection shall include any of the following:

1. An impermeable bandage on the lesion.

2. Single−use sanitary gloves or, if the lesion is on the arm, a full sleeved garment with tight fitting cuffs.

(e) A person who handles or processes dairy products shall keep his or her fingernails clean and neatly trimmed and shall not wear fingernail polish unless he or she wears sanitary gloves at all times when working.

(f) No person exhibiting reportable symptoms of communicable disease, as defined in ch. ATCP 75 Appendix, 2−201.11 (A) (1), or who has received a reportable diagnosis of communicable disease as defined in ch. ATCP 75 Appendix, 2−201.11 (A) (2) may work in a dairy plant in any capacity that may contaminate dairy products.

(2) CLOTHING AND JEWELRY. (a) Whenever any person is in a processing area or is engaged in handling unpackaged milk or dairy products, that person shall wear clean, washable outer garments and an effective hair restraint, including an effective hair restraint for any beard longer than 1/2 inch. Hair restraints may include hair nets, caps, and snoods, but do not include hairsprays, visors, or headbands.

(b) No person may wear any jewelry while working in a processing area or handling unpackaged dairy products. This paragraph does not apply to plain band wedding rings or medical alert necklaces worn under garments and secured by adhesive tape to the inside of undergarments.

(3) CONSUMPTION OF FOOD AND BEVERAGES, AND USE OF TOBACCO. No person may consume food or beverages, or use tobacco in any processing area or in any area where dairy processing equipment, utensils, or packaging materials are cleaned or stored. Employees may not consume food or beverages or use tobacco except in designated areas that are separated from food storage or processing areas. This subsection does not prohibit a sanitary water fountain in a processing area, nor does it prohibit on−line quality control sampling and organoleptic evaluation according to written quality control procedures established by the dairy plant operator.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16; correction in (1) (f) made under s. 35.17, Stats., Register August 2016 No. 728; **correction in (1) (f) made under s. 13.92 (4) (b) 7., Stats., Register January 2017 No. 733.**

ATCP 65.28 Equipment and utensils. (1) CONSTRUCTION AND MAINTENANCE. (a) Equipment and utensils, including C−I−P systems, shall be of sanitary design and construction. Equipment and utensils, including C−I−P systems installed after the effective date of this chapter, shall comply with applicable "3−A Sanitary Standards" and "3−A Accepted Practices" listed in ch. ATCP 65 Appendix A.

Note: The "3−A Sanitary Standards" and "3−A Accepted Practices" listed in Appendix A are published by 3−A Sanitary Standards, Inc., 1451 Dolley Madison Boulevard, Suite 210, McLean, VA 22101−3850, telephone (703) 790−0295, website www.3−a.org. Copies are on file with the division and the legislative reference bureau and may be obtained from the "3−A Sanitary Standards, Inc. Online Store" at http://www.techstreet.com.

(b) Equipment and utensils shall be readily accessible for cleaning and inspection and shall be designed and constructed so that they can be easily cleaned. Equipment and utensils shall be kept clean and in good repair.

(c) Tanks, vats, separators, and other containers used to store or process dairy products shall be designed or equipped with appropriate devices to prevent surface condensation and drainage from entering the container.

(d) Pipeline systems used to convey dairy products shall contain no dead ends in which dairy products may collect. Pipelines and other equipment shall be designed and constructed to prevent cross−contamination between pasteurized dairy products, unpasteurized dairy products, and cleaning and sanitizing solutions.

(e) If it is necessary to disassemble any equipment or utensil to inspect a product contact surface, all tools needed for the disassembly shall be readily available at the dairy plant.

(f) Water hoses used to wash dairy products or add ingredient water to dairy products shall be constructed of approved food grade materials and shall be used and stored in a sanitary manner.

(g) A dairy plant operator may use sanitary flexible pipelines to transfer partially processed products in the intermediate stages of production or to load and unload bulk loads of milk from transport vehicles, if all the following apply:

1. The use of rigid pipelines for that purpose in a sanitary manner is not possible due to the location of walls, floors, ceiling or other equipment.

2. The dairy plant operator properly cleans and sanitizes the flexible pipeline after completing the transfer of product, or at least once during each day of use.

3. The operator uses only a length of flexible pipeline necessary to conduct the transfer operation.

(2) PRODUCT CONTACT SURFACES. (a) Product contact surfaces of equipment and utensils shall be made of materials that are smooth, impervious, nontoxic, noncorrosive, nonabsorbent, and durable under foreseeable use conditions. A product contact surface shall be constructed of one or more of the following materials unless the division specifically authorizes another material in writing:

1. Stainless steel of the American Iron and Steel Institute 300 series, or an equally corrosion resistant metal.

2. Heat resistant glass.

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

(b) Product contact surfaces shall be easily cleanable and shall be free of breaks, open seams, cracks, or similar defects. Product contact surfaces shall not impart any odor, color, taste, or adulterating substance to food. Product contact surfaces, other than product contact surfaces of approved C−I−P systems, shall be readily accessible for manual cleaning. Joints and fittings shall be of sanitary design and construction.

(3) LOCATION AND INSTALLATION OF DAIRY PROCESSING EQUIPMENT. (a) Dairy processing equipment shall be located and installed to prevent overcrowding and to prevent contamination of dairy products or product contact surfaces by splash, condensation, or manual contact.

(b) Dairy processing equipment that cannot be easily moved shall be installed in a manner that prevents liquid or debris from accumulating under or around the equipment.

(c) Dairy processing equipment shall be installed so that there is adequate clearance on all sides for cleaning and maintenance. This does not apply to that portion of a tank or container that is designed to protrude into or through a wall or the ceiling of a dairy plant.

(4) BULK STORAGE TANKS; VENTING. A tank used for the bulk storage of milk, whey, or liquid food products shall be equipped with an air filter to prevent contamination of tank contents, or shall be vented only to one of the following:

(a) A processing area.

(b) A tank gallery room that complies with processing area sanitation standards under this chapter.

(5) MEASURING DEVICES AND CONTROLS. (a) Every storage tank, freezer, and cold storage compartment used to hold milk or dairy products shall be equipped with a thermometer or other device that accurately indicates the temperature in the storage tank, freezer, or compartment.

(b) Each of the following bulk storage tanks shall be equipped with a 7−day temperature recording device that shows the temperature of dairy products stored in that bulk storage tank:

1. Every bulk storage tank used to store grade A milk or grade A dairy products for longer than 24 hours.

2. A silo tank installed after December 1, 1994.

(c) Instruments and controls used for measuring, regulating, and recording temperature, pH, acidity, water activity, or other conditions that control or prevent the growth of undesirable microorganisms in milk or dairy products shall be accurate, fully functional, and adequate for their intended use.

(6) LUBRICATION. Equipment shall be designed and constructed so that gear and bearing lubricants do not come in contact with milk or dairy products, ingredients, or product contact surfaces. Food grade lubricants shall be used if there is any chance that lubricants may come in contact with milk or dairy products, ingredients or product contact surfaces.

(7) CLEANING AND SANITIZING EQUIPMENT AND UTENSILS. (a) A dairy plant operator shall clean and sanitize product contact surfaces of equipment and utensils to keep them at all times in sanitary condition. Sanitizing methods shall comply with s. ATCP 65.34.

(b) Except as provided in pars. (c) to (f), a dairy plant operator shall at a minimum clean all product contact surfaces of equipment and utensils after each day's use, sanitize those surfaces before each day's use, and clean and sanitize those surfaces before any change in use that may cross−contaminate dairy products with major food allergens, as defined in s. ATCP 70.02 (19m), or other contaminants.

(c) A dairy plant operator shall clean and sanitize tanks used to store liquid dairy products whenever the dairy plant operator empties those tanks. Tanks used to store raw milk or grade A dairy products shall be emptied at least once every 72 hours.

(d) A dairy plant operator shall clean evaporators at the end of a continuous operation, not to exceed 44 hours.

(e) Paragraph (b) does not apply to any of the following equipment, provided that the dairy plant operator cleans and sanitizes the equipment according to manufacturer specifications or a cleaning and sanitizing process approved under par. (f), and complying with par. (a):

1. Drying equipment.

2. Cloth collector systems.

3. Dry product packaging equipment and storage containers.

4. Equipment used in brining, aging, curing, and dry product blending processes.

5. Reverse osmosis equipment that utilizes a permeate stream from a previously pasteurized product that has passed through a nanofiltration system achieving an efficiency of not more than 1,000 daltons.

6. Food contact surfaces of equipment used only to process foods or food ingredients with water activity not exceeding 0.85, or foods that are not potentially hazardous foods.

7. Food contact surfaces located downstream from the sterilization step in an aseptic processing and packaging system, provided that system sterility is maintained. If system sterility is not maintained, the surfaces shall be cleaned, sanitized, and sterilized before processing.

(f) The division may authorize an alternative cleaning and sanitizing schedule for continuously−operated equipment, in lieu of the schedule under par. (b), based on a proposal under par. (g). The division's authorization of a proposal for cleaning and sanitizing of equipment in contact with grade A dairy products is contingent upon consultation with, and acceptance of the proposal by, the US food and drug administration, and shall be valid for 5 years. The division's authorization may be renewed after a review requested in writing by the dairy plant operator. A dairy plant operator shall adhere to the practices described in an approved proposal. A dairy plant operator may not alter practices described in an approved proposal without division approval. Division approval of a proposed changes for cleaning and sanitizing of equipment in contact with grade A dairy products is contingent upon consultation with, and acceptance of the changes by, the US food and drug administration, and shall be valid for 5 years.

(g) A dairy plant operator's proposal, under par. (f), shall include all of the following:

1. A complete description of the continuously−operated equipment covered by the proposal, including relevant design and sanitation features.

2. A complete description of the processing, handling, or storage operations for which the continuously−operated equipment is used. The description shall identify the types of dairy products involved, and the type and duration of continuous operations conducted.

3. A complete description of the cleaning and sanitizing procedure proposed by the dairy plant operator. The description shall include cleaning and sanitizing frequency, cleaning and sanitizing methods and materials, and other relevant process parameters such as time, temperature, and concentration. The description shall include relevant process diagrams and specifications.

4. A certification, by the dairy plant operator, that the proposed cleaning and sanitizing procedure complies with par. (a). The certification shall be based on a thorough hazard analysis and safety assessment by qualified personnel.

(h) A dairy plant operator shall keep records to document, on an ongoing basis, the operator's compliance with this subsection.

(8) STORING CLEAN EQUIPMENT AND UTENSILS. Clean equipment and utensils, unless stored in an approved sanitizing solution, shall be stored so that they drain dry. Utensils and equipment components disassembled for cleaning shall be stored above the floor in metal racks or other storage facilities which allow drainage. Clean equipment and utensils shall be protected from contamination prior to use.

(9) SINGLE−SERVICE UTENSILS. Single−service utensils shall be stored in the original containers in which they were received, or in other closed containers that will protect them from contamination until they are used. Single−service utensils shall not be reused.

(10) CLEANING COMPOUNDS, DETERGENTS, AND SANITIZERS; STORAGE AND LABELING. Cleaning compounds, detergents, and sanitizers used in a dairy plant shall be clearly labeled. When they are not being used, they shall be stored in designated areas and in an appropriate manner so that they do not contaminate dairy products, ingredients, equipment, or utensils.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16; correction in (7) (b) made under s. 13.92 (4) (b) 7., Stats., Register August 2016 No. 728.

ATCP 65.30 C−I−P systems. (1) CONSTRUCTION AND MAINTENANCE; GENERAL. C−I−P systems shall be designed, constructed, installed, and maintained in compliance with s. ATCP 65.28.

(2) CLEANING AND SANITIZING C−I−P SYSTEMS. (a) A dairy plant operator shall clean and sanitize all C−I−P systems in compliance with s. ATCP 65.28 (7). Surfaces that cannot be cleaned and sanitized by C−I−P procedures shall be cleaned and sanitized manually or by a clean−out−of−place mechanical process.

(b) A dairy plant operator shall keep records on the cleaning and sanitizing of all C−I−P systems. The records shall identify every C−I−P system that has been cleaned and sanitized, the date and time when each C−I−P system was cleaned and sanitized, the

temperature of the cleaning and sanitizing solutions, and the length of time for which the C–I–P system was exposed to the cleaning and sanitizing solutions. Records shall be made at the time the cleaning and sanitizing process is completed. Records shall be signed or initialed by a responsible person at the dairy plant. The division shall review the records as part of every routine inspection of the dairy plant.

(3) REVIEW OF PLANS. (a) Before installing a C–I–P system or adding equipment to any existing C–I–P system, the dairy plant operator shall submit to the division a plan for the installation or addition. The plan shall clearly describe each C–I–P circuit at a level of detail sufficient to permit review by the division within the time periods specified under this subsection.

(b) Plans for a C–I–P system, under par. (a), shall include the manufacturer's specifications for the system, including the manufacturer's specifications for operating, maintaining, cleaning, and sanitizing the system.

(c) Within 20 business days after any person files plans with the division under this subsection, the division shall return its comments or objections, if any, in writing.

History: CR 14–073: cr. Register August 2016 No. 728, eff. 9–1–16.

ATCP 65.32 Dairy product packages. (1) GENERAL. (a) Dairy product packages shall be of sanitary design and construction. Packages shall be designed and constructed to protect packaged dairy products from reasonably foreseeable contaminants.

(b) Product contact surfaces of dairy product packages shall be smooth, nontoxic, noncorrosive, nonabsorbent, and durable under foreseeable use conditions. Product contact surfaces shall not impart any odor, color, taste, or adulterating substance to packaged dairy products.

(c) Dairy product packages shall be clean, sanitary, and free of any extraneous or deleterious substance. Dairy products shall not be sold or distributed in packages with a broken seal or that are damaged to the extent that package contents could become adulterated as a result of the damage.

(d) Single–service packages shall be made of clean and sanitary materials, shall be protected from contamination prior to use, shall be handled in a sanitary manner, and shall be clean and sanitary at the time of use. Single service packages shall not be re–used.

(2) GRADE A DAIRY PRODUCT PACKAGES. (a) The residual bacteria count on product contact surfaces of grade A dairy product packages shall not exceed one per milliliter of capacity when the rinse test is used, or 50 per 8 square inches (one per square centimeter) when the swab test is used, in 3 out of 4 samples randomly taken and analyzed on a given day. Product contact surfaces shall be free of coliform bacteria as determined using a rinse test or a swab test.

(b) A grade A dairy product package shall be designed so that the product, the package pouring lip if any, and the package opening rim and area are protected from contamination during handling, storage, and initial opening. A grade A dairy product package shall be designed so that it cannot be opened without breaking the cap or closure seal, or leaving other readily apparent evidence that the package has been opened.

(c) Product contact surfaces of multi–use packages used for grade A milk or dairy products shall be constructed of one or more of the following materials unless the division specifically authorizes another material in writing:

1. Stainless steel of the Iron and Steel Institute 300 series or an equally corrosion resistant metal.

2. Heat resistant glass.

3. Plastic materials that maintain their original properties under repeated use conditions; that are fat resistant and insoluble; and that are resistant to scratching, scoring, decomposition, crazing, chipping, and distortion under normal use conditions.

(d) Product contact surfaces of multi–use packages used to contain grade A milk or dairy products shall have rounded corners, and shall be easily cleanable.

(e) Multi–use packages used to contain grade A milk or dairy products shall be effectively cleaned and sanitized before being reused. Cleaning and sanitizing procedures shall remove all extraneous matter and potential adulterants from each package. Sanitizing procedures shall comply with s. ATCP 65.34. If returnable glass bottles are sanitized in an automatic bottle washer by soaking those bottles in a caustic solution, the sanitizing procedure shall comply with sub. (3).

(f) Multi–use packages used to contain grade A milk or dairy products shall be inspected before they are reused. Inspection shall be adequate to detect extraneous materials, adulterants, and damage to product contact surfaces. Inspection shall be performed on surfaces lighted in compliance with s. ATCP 65.24 (5) (c).

(g) No multi–use plastic package may be reused for grade A milk or dairy products unless that package is tested for the presence of volatile organic compounds using method ASTM D 3530 or an equivalent method approved by the department before the package is filled. An automatic testing device, capable of detecting volatile organic compounds at levels of public health significance, shall be used to test each package. The testing device shall be installed in conjunction with the dairy product packaging apparatus so that no packages can be filled unless the testing device is operating properly, and so that packages containing unsatisfactory levels of volatile organic compounds are automatically made unusable. The dairy plant operator shall test the system daily with a test solution consisting of 0.5 ppm petroleum distillate or another test solution approved in writing by the division.

Note: A copy of ASTM D 3530 may be obtained from ASTM International, P.O. Box C700, West Conshohocken, PA 19428–2959; 1–877–909–2786; www.astm.org.

(h) No plastic multi–use package may be used to contain grade A milk or dairy products unless all of the following requirements are met:

1. The package is identified to show the plant at which the package was manufactured, the date of manufacture, and the type and class of plastic material used. This information may be coded if the code is provided to the division.

2. The phrase "Use only for food" appears on the package.

3. The division has provided a written approval of a prototype of the package.

(i) Single–service packages used to contain grade A milk or dairy products shall be manufactured by a manufacturer listed in the "Certified Manufacturers of Single–Service Containers and Related Products" published online by the Food and Drug Administration, Public Health Service, United States Department of Health and Human Services.

Note: Copies of "Certified Manufacturers of Single–Service Containers and Related Products" are available online at http://www.fda.gov/food/guidanceregulation/federalstatefoodprograms/ucm2007965.htm or from the Milk Safety Team, HFS–626, Food and Drug Administration, Public Health Service, United States Department of Health and Human Services, 5100 Paint Branch Parkway, College Park, MD 20740–3835.

(j) Packaged grade A milk and dairy products shall be conspicuously labeled as grade A milk or dairy products.

(3) AUTOMATIC BOTTLE WASHING. (a) Returnable glass bottles cleaned in an automatic bottle washer shall be sanitized while in the washer. Bottles cleaned in an automatic bottle washer may be sanitized by being soaked in a caustic solution. The causticity of the sanitizing solution shall be monitored and maintained at an appropriate level in relation to solution temperature and soaking time. Table 1 shows minimum causticity levels required for sanitizing solutions, expressed in terms of percent concentration of sodium hydroxide (NaOH) in the sanitizing solution, based on applicable soaking times and temperatures.

(b) After being soaked in caustic solution under par. (a), bottles shall be rinsed with water that has been treated with heat or chemi-

cals to destroy viable pathogenic or other harmful microorganisms that may be present in the rinse water.

Table 1
Minimum Causticity Levels Required for Sanitizing Solutions (% of NaOH), Based on Soaking Time and Temperature

Time in Minutes	F 170 C 77	160 71	150 66	140 60	130 54	120 49	110 43
3	0.57	0.86	1.28	1.91	2.86	4.27	6.39
5	0.43	0.64	0.96	1.43	2.16	3.22	4.80
7	0.36	0.53	0.80	1.19	1.78	2.66	3.98

(4) PACKAGING GRADE A DAIRY PRODUCTS. (a) Grade A dairy products shall be packaged in a sanitary manner at the dairy plant where they are pasteurized.

(b) Grade A dairy products shall be mechanically packaged using mechanical capping, closing, or sealing equipment approved by the division. When mechanical equipment for capping, closing, or sealing containers holding 3 gallons (12.8 liters) or more is not available, manual methods approved by the division may be used. Hand capping is otherwise prohibited.

(c) A drip deflector, designed and adjusted to deflect condensation away from open packages, shall be installed on each filler valve.

(d) Conveyors that feed packages to packaging machines shall have overhead shields to protect open packages from contamination.

(e) If a filled package is imperfectly sealed, the contents of that package shall be emptied into a sanitary container. The contents shall be discarded or shall be examined for physical adulterants, filtered if necessary, and repasteurized before being repackaged.

History: CR 14–073: cr. Register August 2016 No. 728, eff. 9–1–16.

ATCP 65.34 Sanitizers and sanitizing methods. **(1)** SANITIZING METHODS. Cleaned product contact surfaces shall be sanitized by using any of the following methods:

(a) Complete and continuous exposure to clean water at a temperature of at least 170° F. (70° C.) for at least 5 minutes.

(b) Complete and continuous exposure to steam resulting in a food contact surface temperature of at least 170° F. (70° C.) for at least 15 minutes or resulting in a food contact surface temperature of at least 200° F. (93° C.) for at least 5 minutes.

(c) Complete and continuous exposure for at least 2 minutes to a sanitizing solution containing at least 50 ppm of free residual chlorine and having a pH not higher than 8.3, at a temperature not less than 75° F. (24° C.) or more than 110° F. (44° C.)

(d) Complete and continuous exposure for at least one minute to a sanitizing solution containing at least 12.5 ppm of available iodine and having a pH not higher than 5.0, at a temperature of not less than 75° F. (24° C.) or more than 110° F. (44° C.).

(e) Complete and continuous exposure to a caustic sanitizing solution according to s. ATCP 65.32 (3).

(f) Application of chemical sanitizers that comply with 21 CFR 178.1010, are registered with the U.S. environmental protection agency and applied according to manufacturer's instructions.

(g) Application of a chemical sanitizer or sanitizing method that has been shown to be as effective as the methods specified under pars. (a) to (f), and that the division has approved in writing.

(2) SANITIZERS; MAXIMUM CONCENTRATIONS. The use of a sanitizer shall leave no toxic residue on a product contact surface. Sanitizing solutions shall not exceed the maximum concentrations specified by the US food and drug administration, under 21 CFR 178.1010. A test kit or other device that measures the concentration of sanitizing solutions in appropriate units of measurement shall be used as necessary to ensure compliance with this subsection at all times.

History: CR 14–073: cr. Register August 2016 No. 728, eff. 9–1–16.

ATCP 65.36 Receiving milk and dairy products. **(1)** MILK FROM DAIRY FARMS. (a) No dairy plant operator may collect or receive milk from a dairy farm located in this state, unless the milk producer holds a current milk producer license for that dairy farm under s. 97.22 (2), Stats., and s. ATCP 65.02.

(b) No dairy plant operator may collect or receive a milk shipment from a dairy farm in this state unless a person, licensed under s. 97.17 or 98.146, Stats., does all the following before that milk shipment is commingled with milk from any other dairy farm:

1. Collects a sample of milk from the shipment, according to s. ATCP 65.38.

2. Accurately measures and records the temperature and quantity of milk in the shipment.

Note: A dairy plant operator shall comply with applicable requirements under subch. V, which requires dairy plant operators to sample and test producer milk and report test results. Dairy plant operators must reject milk shipments and take follow–up action in some cases.

(2) GRADE A MILK FROM DAIRY FARMS. No dairy plant operator may collect or receive as grade A milk any of the following:

(a) Milk from a dairy farm in this state, unless the milk producer holds a current grade A permit for that dairy farm under s. 97.22 (3), Stats., and s. ATCP 65.02 (10).

(b) Milk from a dairy farm in any other state, unless the milk producer holds a current grade A permit for that dairy farm from the responsible regulatory authority in that state.

(3) BULK MILK TANKER DELIVERIES AND SHIPMENTS. (a) No dairy plant operator may receive or ship any grade A milk or grade A fluid milk products transported in a bulk milk tanker, unless the bulk milk tanker operator holds a current grade A permit for that bulk milk tanker issued under s. 97.21 (2), Stats., and s. ATCP 82.02 (7) or issued by another state's regulatory agency.

(b) Before a dairy plant operator unloads milk from a bulk milk tanker or commingles it with milk from another milk producer, the dairy plant operator shall test the bulk shipment for drug residues according to s. ATCP 65.72 (3).

(c) An on–farm dairy plant may not receive milk from the same dairy farm which is transported by means other than a bulk milk tanker unless each bulk shipment of milk is sampled and the milk is tested for drug residues according to s. ATCP 65.72 (3). After the sampling, all remaining unpasteurized milk shall be pasteurized and all equipment that contacted the unpasteurized milk shall be cleaned and sanitized before the next receipt of unpasteurized milk by the dairy plant. The sample of milk shall be obtained from one of the following locations:

1. The dairy farm bulk milk tank or silo.

2. An unpasteurized milk tank, silo, other unpasteurized milk storage container, or vat pasteurizer raw milk receptacle in the dairy plant.

(4) GRADE A DAIRY PLANT MAY NOT RECEIVE GRADE B MILK. A grade A dairy plant operator may not process grade B milk at a grade A dairy plant unless the division authorizes that processing in writing. A grade A dairy plant operator may not receive, transfer, or process grade A milk or dairy products through the same equipment used to receive, transfer, or process grade B milk or dairy products unless the dairy plant operator first rinses the equipment.

(5) MANUFACTURED DAIRY INGREDIENTS; APPROVED SOURCES. Manufactured dairy ingredients used in the manufacture or processing of dairy products shall originate from dairy plants licensed under s. 97.20, Stats., and this chapter, or licensed or inspected under laws of other states or nations deemed acceptable by the FDA.

(6) RECEIVING FACILITIES. (a) A dairy plant's facilities for receiving milk shipments shall be constructed and maintained in compliance with s. ATCP 65.24 and shall be separated from other areas of the dairy plant as required by s. ATCP 65.24 (7).

(b) An on–farm dairy plant may not receive milk from the same dairy farm unless the milk is transported in a bulk milk tanker and received in a facility complying with s. ATCP 65.24 or stored on the dairy farm in a bulk milk tank or silo that is directly connected to an raw milk tank, silo, other raw milk storage container, or vat pasteurizer raw milk receptacle in the dairy plant.

(7) CLEANING AND SANITIZING BULK MILK TANKERS. A dairy plant operator shall ensure that bulk milk tankers transporting milk or dairy products to or from a dairy plant are cleaned and sanitized after each day's use as required by s. ATCP 82.08.

(8) CLEANING AND SANITIZING MILK CANS. If a dairy plant operator receives raw milk in cans, the dairy plant operator shall clean, sanitize, and thoroughly dry those cans before the cans are removed from the dairy plant for reuse. Can washing equipment shall be kept clean and in good repair.

History: CR 14–073: cr. Register August 2016 No. 728, eff. 9–1–16; correction in (3) (a) made under s. 13.92 (4) (b) 7., Stats., Register August 2016 No. 728.

ATCP 65.38 Collecting milk samples. (1) SAMPLE REQUIRED. A dairy plant operator who receives a milk shipment from a milk producer shall collect a representative milk sample from that shipment. Sufficient agitation or a milk sampling method approved by the division shall be used to ensure that the milk sample is representative of the milk shipment. A person licensed under s. 97.17 or 98.146, Stats., shall collect the sample before the dairy plant operator commingles the milk with milk from any other milk producer.

(2) SAMPLE COLLECTED AT THE DAIRY FARM. A bulk milk weigher and sampler who collects a bulk milk shipment from a dairy farm shall collect the milk sample for the dairy plant operator, under sub. (1), in accordance with ch. ATCP 82. The bulk milk weigher and sampler shall promptly deliver the sample to the dairy plant operator, or to a milk testing laboratory designated by the dairy plant operator.

(3) SAMPLE COLLECTED FROM BULK TRANSPORT CONTAINER. A person who receives a bulk transport container at a dairy plant shall collect the milk sample for the dairy plant operator under sub. (1), in accordance with ch. ATCP 82. The person shall promptly deliver the sample to the dairy plant operator or to a milk testing laboratory designated by the dairy plant operator.

(4) INCREASED SAMPLING FREQUENCY. If milk from any dairy farm violates a standard under s. ATCP 65.70 on any single test, the dairy plant operator shall do any of the following:

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

(b) Reject milk shipments from the producer, if the operator is required to reject those milk shipments under s. ATCP 65.70 (2) (f) or (4) or 82.10 (4).

History: CR 14–073: cr. Register August 2016 No. 728, eff. 9–1–16; correction in (4) (b) made under s. 35.17, Stats., Register August 2016 No. 728.

ATCP 65.40 Storing and handling milk and dairy products. (1) GENERAL. Dairy products shall be protected from contamination and decomposition while being received, processed, handled, conveyed, or held at a dairy plant. Dairy products shall be received, processed, handled, conveyed, and held in a manner that keeps the products in a safe, wholesome, and unadulterated condition.

(2) STORAGE TEMPERATURES. (a) Milk and dairy products shall be stored at temperatures listed in pars. (b) to (e), unless the division has authorized alternative temperature limits in writing. An authorization by the division shall be valid for 5 years, and may be renewed upon a written request from the dairy plant operator.

(b) Except as provided under par. (e), unpasteurized grade A milk and grade A dairy products received for processing at a dairy plant shall be kept at a temperature of 45° F. (7° C.) or less until pasteurized or, if pasteurization is not required, until processed. This paragraph does not apply to unpasteurized grade A milk received at a dairy plant within 2 hours after milking, provided that the unpasteurized milk, after subsequent pasteurization, is held in compliance with par. (d).

(c) Except as provided under par. (e), unpasteurized grade B milk and other grade B dairy products received for processing at a dairy plant shall be kept at a temperature of 50º F. (10º C.) or less until pasteurized or, if pasteurization is not required, until processed. This paragraph does not apply to unpasteurized milk received at a dairy plant within 2 hours after milking, provided that the unpasteurized milk, after subsequent pasteurization, is held in compliance with par. (d).

(d) Except as provided under par. (e), all pasteurized milk and dairy products, after being pasteurized, shall be cooled to a temperature of 45° F. (7° C.) or less and shall then be kept at that temperature at all times. This paragraph does not apply to a grade A cultured dairy product while being cultured, to a dried milk product, or to a grade A dairy product that is sterilized and packaged in a hermetically sealed package.

(e) No milk or dairy product may be held at a dairy plant for more than 4 hours at a temperature that is between 45° F. (7° C.) and 140° F. (60° C.). This paragraph does not apply to any of the following:

1. Grade A cultured dairy products and grade A acidified dairy products while being cultured, provided process controls are monitored and documented by the dairy plant operator in accordance with item 17 (p) of the PMO.

2. Dried dairy products.

3. Butter during micro–fixing.

4. Cheese while being cured, ripened, or tempered for further processing.

5. Pasteurized cream while being ripened for churning into butter.

6. Whey and whey products during the process of crystallization, provided process controls for crystallization of grade A whey and whey products are monitored and documented by the dairy plant operator in accordance with item 17 (p) of the PMO.

7. Acid whey with titratable acidity of not less than 0.40%, expressed as % lactic acid, or a pH of not higher than 4.6.

8. Dairy products that are sterilized and packaged in hermetically sealed packages.

9. Grade B whey originating from pasteurized milk to which one or more starter cultures was added, if the surfaces contacted by that whey have been cleaned and sanitized before holding, transport, and receipt of the whey and the received whey is either pasteurized or cooled to 50° F. or colder not more than 8 hours after its generation at a licensed dairy plant.

(3) PASTEURIZATION. Dairy products shall be pasteurized in compliance with subch. IV.

(4) STORING DAIRY PRODUCTS AND INGREDIENTS. (a) Areas used to store dairy products and ingredients shall be kept in a clean, sanitary, and orderly condition, free from conditions that may adulterate the dairy products or dairy product ingredients.

(b) Dairy products shall be stored at temperatures specified under sub. (2). Other potentially hazardous foods, including potentially hazardous ingredients used in making dairy products, shall be stored at safe temperatures as defined in s. ATCP 65.01 (60).

(c) Dairy products and ingredients shall be stored in an orderly manner, so that storage areas can be easily inspected and cleaned. Dairy products and ingredients may not be stored under conditions that may cause adulteration. Storage areas shall be con-

structed and maintained so that waste liquids do not accumulate in those areas.

(d) Dairy products and ingredients may not be stored in a manner that may attract or harbor pests. No pesticides or other toxic materials may be stored in a manner that may contaminate dairy products, dairy product ingredients, or packaging materials.

(5) REPROCESSING AND DISPOSAL OF DAIRY PRODUCTS. (a) A dairy plant operator may not reprocess, for use in any dairy product, packaged grade A dairy products that have left the custody of the dairy plant or that have originated from another dairy plant. This does not prohibit any of the following:

1. The use, as ingredients, of packaged dairy products that are specifically manufactured and packaged for use as ingredients in other dairy products.

2. Reprocessing dry milk and dry milk products returned to the dairy plant, provided that the product package is intact.

3. Reprocessing dairy products collected from a packaging defoamer system or drained from processing equipment at the end of a run, if those dairy products are collected and handled in a sanitary manner, held at a temperature of 45° F. (7° C.) or less, and re−pasteurized.

4. Reprocessing specifically authorized in writing by the division, under conditions specified by the division.

(b) A dairy plant operator shall discard any packaged grade A dairy products that are returned to a dairy plant by a wholesaler or retailer. Pending disposal, returned grade A dairy products shall be kept in an area that is clearly designated as a holding area for returned products. The holding area shall be separate from other areas used for the receipt, storage, or processing of dairy products.

(c) A dairy plant operator shall discard all milk and dairy products that have spilled, overflowed, or leaked from equipment, utensils, or packages. This paragraph does not apply to milk and dairy products caught and collected in a sanitary manner, in equipment specifically designed for that purpose.

(6) DAIRY PRODUCTS INTENDED FOR NON−FOOD USE. Milk and dairy products not intended for human consumption shall be clearly and conspicuously labeled as being not for use as human food. No person may repackage or sell, for use as human food, any milk or dairy products labeled or intended for non−food use.

Note: The manufacture and sale of animal feed is subject to separate licensing and regulation under s. 94.72, Stats.

(7) RECONSTITUTED OR RECOMBINED DAIRY PRODUCTS; PASTEURIZATION. (a) A dairy plant operator shall pasteurize reconstituted or recombined dairy products after those dairy products are reconstituted or recombined, except when the resulting product is exempt from pasteurization under s. ATCP 65.54 (2).

(b) A dairy plant operator may not commingle pasteurized dairy products with unpasteurized milk or dairy products unless the dairy plant operator pasteurizes the resulting product or the resulting product is exempt from pasteurization under s. ATCP 65.54 (2).

(c) A dairy plant operator shall take effective measures to prevent cross contamination between pasteurized and unpasteurized dairy products.

(8) PRESSURIZED AIR AND STEAM; CONTACT WITH DAIRY PRODUCTS. Pressurized air and steam coming in contact with a dairy product or product contact surface shall be clean, safe, and free of contaminants. The system used to generate and supply pressurized air and steam shall comply with applicable "3−A Sanitary Standards" and "3−A Accepted Practices" listed in ch. ATCP 65 Appendix A.

Note: The "3−A Sanitary Standards" and "3−A Accepted Practices" listed in APPENDIX A are published by 3−A Sanitary Standards, Inc., 1451 Dolley Madison Boulevard, Suite 210, McLean, VA 22101−3850, telephone (703)790−0295, website www.3−a.org. Copies are on file with the division and the legislative reference bureau. Copies may be purchased from the "3−A Sanitary Standards, Inc. Online Store" at http://www.techstreet.com.

(9) FIRE, FLOOD, OR CALAMITY DAMAGE. If a dairy product or ingredient is subjected to possible contamination in a fire, flood, or other calamity, no person may sell or reprocess that product or ingredient for human consumption unless the division first inspects the product or ingredient and authorizes its sale or reprocessing for human consumption. A dairy plant operator shall notify the division whenever dairy products or ingredients in the operator's possession have been subjected to possible damage or contamination because of fire, flood, or other calamity.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16.

ATCP 65.41 Low−acid or acidified dairy products packaged in hermetically sealed containers for non−refrigerated storage. (1) Manufacturing of low−acid dairy products, that have a pH greater than 4.6 and a water activity greater than 0.85, and are packaged in a hermetically sealed container for non−refrigerated storage, shall be done in compliance with 21 CFR 108.35 and 113.

(2) Manufacturing of acidified dairy products, as defined in 21 CFR 114.3(b), that are packaged in a hermetically sealed container for non−refrigerated storage, shall be done in compliance with 21 CFR 108.25 and 114.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16.

ATCP 65.42 Recall plan. (1) PLAN REQUIRED. An operator of a dairy plant at which dairy products are manufactured or processed shall prepare a written plan for identifying and recalling milk and dairy products processed at that dairy plant, and any other food processed at the facility, should a recall become necessary. The dairy plant operator shall update the plan as necessary and shall make it available to the division for inspection and copying upon request. This requirement does not apply to the operator of a receiving station or a transfer station.

(2) PLAN CONTENTS. A plan, written pursuant to sub. (1), shall do all of the following:

(a) Identify key individuals or positions that are responsible for planning, approving, and implementing recalls on behalf of the dairy plant operator.

(b) Identify key individuals or entities to be contacted or consulted in connection with a recall.

(c) Include procedures for the routine identification, dating, and tracking of milk and dairy product lots so that in a recall the affected lots can be identified and distinguished from unaffected lots.

(d) Include procedures to enable routine identification, dating, and tracking of milk and dairy product shipments from the dairy plant. Tracking shall identify shipment recipients and contents, cross−referenced to lots, so that in a recall recipients of affected lots can be contacted.

(e) Include procedures for determining the nature and scope of a recall, including affected milk and dairy product lots, shipments, and shipment recipients.

(f) Include procedures for identifying and communicating with affected persons, including suppliers, milk and dairy product shipment recipients, down−line buyers, consumers, government agencies, and others.

(g) Identify potential target audiences for recall information, including consumers, distributors, and government agencies.

(h) Identify potential methods for communicating with target audiences, under par. (g).

(i) Identify key information, including the identity of the affected milk and dairy products, the reason for the recall, and suggested actions to be taken by affected persons, that may be necessary to communicate to affected persons in a recall.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16.

ATCP 65.44 Dairy plant records. (1) MANDATORY RECORDS. A dairy plant operator, including a milk contractor that submits a milk producer license application on behalf of a milk producer and thereby certifies that the milk producer's dairy farm and milking operations comply with applicable requirements

under this chapter, shall keep all of the following records, as applicable to their operation, and shall retain those records for the period of time specified under this subsection:

(a) Records related to milk receipts and producer payrolls, as required by s. ATCP 100.32 (1). Records under this paragraph shall include milk collection records received from bulk milk weighers and samplers under s. ATCP 82.10 (10). Records under this paragraph shall be retained for at least 3 years.

(b) Records of all dairy product ingredients received at the dairy plant, including the sources from which the ingredients were received. Records under this paragraph shall be retained for at least two years.

(c) Daily records of all finished products produced at the dairy plant. Records under this paragraph shall be retained for at least one year.

(d) Records of all milk quality tests and sediment tests conducted on milk shipments received by the dairy plant operator, including but not limited to tests required under subch. V. Records under this paragraph shall be retained for at least 2 years.

(e) Records of all in−plant tests, performed by a dairy plant operator on milk and dairy products held or processed by the dairy plant operator, to determine bacterial counts or identify possible adulteration of that milk or those dairy products. Records under this paragraph shall be retained for at least 2 years.

(f) Records of private water supply tests, if any, conducted under s. ATCP 65.24 (8). Records under this paragraph shall be retained for at least 2 years.

(g) Cleaning and sanitizing records for all C−I−P systems, as required under s. ATCP 65.30 (2) (b). Records under this paragraph shall be retained for at least 2 years. Records may be stored in electronic form, with or without hard copy printouts, if the electronic records are readily accessible by a division representative.

(h) A record of every calibration, daily performance check, daily reference check, and hourly reference check performed on a milkfat or protein testing device, as required by s. ATCP 65.86 (3) (j). Records under this paragraph shall be retained for at least one year.

(i) Pasteurization records required under s. ATCP 65.66. Records under this paragraph shall be retained for at least 2 years.

(j) Cleaning and sanitizing records for bulk milk tankers cleaned and sanitized at a dairy plant, as required under s. ATCP 82.08 (4). Records under this paragraph shall be retained for at least 15 days.

(k) Temperature monitoring records made by the dairy plant operator, including records of dairy product temperatures, storage temperatures, and processing temperatures. Records under this paragraph shall be retained for at least 2 years.

(L) Inventory control records for vitamin fortification of fluid milk products, including vitamins used and the quantity of fortified fluid milk products produced. Records under this paragraph shall be retained for at least 2 years.

(m) Vitamin assay test results conducted on fortified dairy products under s. ATCP 65.74 (4). Records under this paragraph shall be retained for at least 2 years.

(n) Cleaning and sanitizing records required under s. ATCP 65.28 (7) (g). Records under this paragraph shall be retained for at least 2 years.

(o) Bills of lading or other shipping documents relating to the bulk shipment of dairy products from the dairy plant to another dairy plant, or to the dairy plant from another dairy plant. The dairy plant operator shall retain each shipping document for at least 3 years. Each shipping document shall include all of the following information:

1. The name, address, and license number of the dairy plant from which the shipment originates. If the dairy product is a grade A dairy product, the shipping document shall also include the dairy plant shipper identification number assigned under the PMO.

2. If grade A milk or dairy product was shipped in a bulk milk tanker, the bulk milk tanker grade A permit identification number, assigned under ch. ATCP 82 or the PMO, and the seal number on the bulk milk tanker inlet, outlet, wash connections, and vents.

3. The name of the dairy product shipped.

4. The weight of the dairy product shipped.

5. The temperature of the dairy product when loaded for shipment.

6. The date of shipment.

7. The name of the dairy regulatory agency at the shipment point of origin.

8. Whether the dairy product was raw, pasteurized, or treated with heat to an extent less than pasteurization.

9. The grade of product.

(p) Milk producer affidavits certifying that the milk producers do not use bovine somatotropin, as required under s. ATCP 83.02 (5) and (7).

(2) ACCESSIBILITY OF RECORDS; ELECTRONIC RECORDS. Records under sub. (1) shall be kept at the dairy plant or, for records kept by a milk contractor that submits a milk producer license application on behalf of a milk producer and thereby certifies that the milk producer's dairy farm and milking operations comply with applicable requirements under this chapter, at the milk contractor's business location, and shall be made available to the division for inspection and copying upon request. Records may be kept in electronic form, with or without hard copy printouts, if the electronic records are readily accessible to a division representative and comply with the applicable provision of Appendix H, sections IV and V of the PMO.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16; correction in (1) (h) made under s. 13.92 (4) (b) 7., Stats., and correction in (1) (p) made under s. 35.17, Stats., Register August 2016 No. 728.

ATCP 65.46 Dairy plant reports to department. **(1)** REPORTS RELATED TO LICENSES, PERMITS, FINANCIAL STATEMENTS AND MILK QUALITY. A dairy plant operator, including a milk contractor that submits a milk producer license application on behalf of a milk producer and thereby certifies that the milk producer's dairy farm and milking operations comply with applicable requirements under this chapter, shall submit all of the following reports to the department:

(a) Reports required for the issuance or annual renewal of a dairy plant license or grade A permit under s. ATCP 65.02.

(b) Financial statements and reports required as part of an application for a milk contractor license under ch. ATCP 100, if any.

(c) Monthly milk quality test reports required under subch. V and dairy farm inspection reports required as part of a milk producer or grade A producer permit application under ss. ATCP 65.910 and 65.912.

(2) REPORTS RELATED TO RESULTS OF PRODUCT TESTING FOR MICROBIAL PATHOGENS OR TOXINS. (a) Except as provided in par. (b), a dairy plant operator shall report to the division the result of any microbiological test or laboratory analysis that confirms the presence of a pathogenic organism or toxin in a ready−to−eat dairy product produced by the operator. The operator shall report to the division within 24 hours after the operator obtains the test result. The operator may report orally, electronically, or in writing.

(b) A dairy plant operator is not required to report a test result under par. (a) if all the following apply:

1. The ready−to−eat dairy product is identified by a product code or production lot number and remains under the control or custody of the dairy plant operator.

2. The operator does not sell or distribute any ready−to−eat dairy product that bears the product code or production lot number under subd. 1.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16.

ATCP 65.48 Confidential information. (1) None of the following information, received by the department from a dairy plant operator, including a milk contractor that submits a milk producer license application on behalf of a milk producer and thereby certifies that the milk producer's dairy farm and milking operations comply with applicable requirements under this chapter, is subject to public inspection under s. 19.35, Stats.

(a) Financial information protected from disclosure under s. 126.84 (1) (a), Stats.

(b) Information qualifying as a trade secret as defined in s. 134.90 (1) (c), Stats.

(2) None of the following information received by the department from a dairy plant operator, including a milk contractor that submits a milk producer license application on behalf of a milk producer and thereby certifies that the milk producer's dairy farm and milking operations comply with applicable requirements under this chapter, is subject to public inspection under s. 19.35, Stats., unless the department determines that inspection is necessary to protect the public health, safety, or welfare:

(a) Information that identifies individual milk producers who deliver milk to the dairy plant operator, or sell milk to a milk contractor, if the information is in the form of a composite list identifying those producers with that dairy plant operator or milk contractor, except as provided under s. 126.70 (6) (b) and (c), Stats.

Note: See s. 97.20 (3m), Stats.

(b) Information pertaining to individual milk producer production and milk quality records if that information identifies the producer.

Note: See s. 97.22 (10), Stats.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16.

ATCP 65.50 Dairy product labeling. (1) GENERAL. Dairy product labeling shall comply with applicable requirements in ch. 97, Stats., this chapter, and chs. ATCP 81, 83, 85, and 90.

(2) PRODUCTS NOT FOR HUMAN CONSUMPTION. No dairy plant operator may distribute any dairy product manufactured by that dairy plant operator unless any of the following applies:

(a) The dairy product complies with, and has been produced according to, this chapter and ch. ATCP 82.

(b) The dairy product is prominently labeled as animal feed according to ch. ATCP 42.

(c) The dairy product is prominently labeled as "NOT FOR HUMAN FOOD OR ANIMAL FEED" and is sold only for non−food and non−feed purposes. The label shall include the manufacturer's name and address and the address of the location where the product was manufactured. The label may not include any dairy plant license or identification number issued by the department.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16.

Subchapter IV — Pasteurization

ATCP 65.52 Unpasteurized milk sales prohibited; exemptions. No person may sell or distribute unpasteurized milk or dairy products to consumers or to any person for resale or redistribution in unpasteurized form to consumers. This section does not prohibit any of the following:

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

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

(a) The milk producer who is licensed under s. ATCP 65.02 (1) to operate that dairy farm, and who, as license holder, assumes legal responsibility for dairy farm and milking operations.

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

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

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

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

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16.

ATCP 65.54 Pasteurization required. (1) Except as provided under sub. (2), every dairy product shall be pasteurized at the dairy plant where that dairy product is manufactured.

(2) Subsection (1) does not apply to any of the following:

(a) A dairy product shipped in bulk to another dairy plant for use in manufacturing dairy products, provided that the shipment is accompanied by a bill of lading that identifies the dairy product as unpasteurized.

(b) A dairy product made entirely from dairy products that have been pasteurized at the same dairy plant.

(c) Ice cream or frozen dessert made from pasteurized ice cream mix or pasteurized frozen−dessert mix, provided that no unpasteurized dairy product is added to the pasteurized mix.

(d) A dairy product for which the standard of identity provides that the dairy product and its ingredients need not be pasteurized.

(e) A dairy product that is sterilized and packaged in a hermetically sealed package.

(f) Cream, skim milk, or low−fat milk that have been treated with heat to an extent less than pasteurization, and then shipped in bulk to another dairy plant for use in manufacturing dairy products, provided that the bulk shipment is accompanied by a bill of lading that identifies the contents of the bulk shipment as being unpasteurized and heat−treated. The heat−treated cream, skim milk, or low−fat milk may be heated not more than once for separation purposes, to a temperature that is not less than 125° F. (52° C.) nor more than 161° F. (72° C.). Heat−treated cream may be heated to a greater extent, up to a temperature of 166° F. (75° C.) in a continuing heating process, if further heating is necessary to deactivate enzymes for functional reasons. Cream, skim milk, and low−fat milk, after being heated to an extent less than pasteurization, shall immediately be cooled to a temperature of 45° F. (7° C.) or less.

(g) Dried condensed whey produced by drying condensed whey that was previously pasteurized at another dairy plant, provided that all of the following apply:

1. The pasteurized condensed whey received for drying contained at least 40% total solids, and was partially crystallized by cooling at the dairy plant where it was pasteurized.

2. The partially crystallized condensed whey was kept at a temperature of 45° F. (7° C.) or less prior to drying.

3. The bulk milk tanker used to transport the partially crystallized condensed whey was washed and sanitized immediately before filling, was sealed immediately after filling, and remained sealed until it was unloaded at the receiving dairy plant.

4. The receiving dairy plant unloaded the partially crystallized condensed whey using unloading pumps and pipelines that are used only for that purpose and have been cleaned and sanitized as a separate C−I−P circuit before use in unloading.

(h) Grade B dairy products produced by adding previously pasteurized and dried dairy products with a water activity not greater than 0.85 to previously pasteurized grade B dairy products, if approved in writing by the division.

(i) Grade B dairy products produced by adding previously pasteurized packaged dairy products to previously pasteurized grade B dairy products, if approved in writing by the division.

(3) A dairy product, required to be pasteurized under sub. (1), shall be pasteurized by, or under the direct supervision of, a pasteurizer operator who has successfully completed any of the following:

(a) A pasteurization training course, of at least 8 hours duration, provided by the University of Wisconsin or an equivalent course approved by the division.

(b) A competency examination approved by the division.

(4) If a dairy product standard of identity requires that any ingredient of that product be pasteurized, the ingredient shall be pasteurized according to s. ATCP 65.58.

(5) Except as provided in subs. (6) to (8), a dairy product that is required to be pasteurized under sub. (1) or (4) shall be pasteurized before it is introduced into any membrane or condensing processing system.

(6) Subsection (5) does not apply to grade B whey or whey product if at least one of the following applies:

(a) The whey or whey product is derived from milk pasteurized in the same dairy plant.

(b) The whey is acid whey, which has a pH less than 4.7 when drawn from the curd.

(c) The whey or whey product is processed in a membrane processing system that complies with sub. (9) and is designed and maintained to keep the whey or whey product at a temperature of 65° F. (18.3° C.) or below during processing. If the whey or whey product temperature exceeds 65° F. (18.3° C.) for more than 15 minutes during processing, or exceeds 70° F. (21.1° C.) at any time during processing, the whey or whey product shall be immediately diverted from moving beyond the membrane processing system by means of automatic controls. The diverted product shall be treated in one of the following ways:

1. Recycled through the membrane processing system and subjected to cooling. The diverted product may proceed beyond the membrane processing system when the product temperature falls to 65° F. (18.3° C.) or below.

2. Cooled in a system other than the membrane processing system until the temperature falls to 45° F. (7° C.) or below, and may then be reintroduced into the membrane processing system.

3. Pasteurized in a pasteurization system, and may then be reintroduced into the membrane processing system.

4. Discarded.

(7) Subsection (5) does not apply to grade A whey or whey product that is pasteurized in a membrane processing system that complies with sub. (9) if at least one of the following apply:

(a) The whey is acid whey, which has a pH less than 4.7 when drawn from the curd.

(b) The membrane processing system is designed and maintained to keep the whey or whey product at a temperature of 45° F. (7° C.) or below during processing.

(8) Subsection (5) does not apply to unpasteurized milk that is processed, before pasteurization, in a membrane processing system that complies with sub. (9) and is designed and maintained to keep the milk at a temperature of 65° F. (18.3° C.) or below during processing. If the milk temperature exceeds 65° F. (18.3 ° C.) for more than 15 minutes during processing, or exceeds 70° F. (21.1° C.) at any time during processing, the milk shall be immediately diverted from moving beyond the membrane processing system by means of automatic controls. The diverted milk shall be treated in any of the following ways:

(a) Recycled through the membrane processing system and subjected to cooling. The diverted product may proceed beyond the membrane processing system when the product temperature falls to 65° F. (18.3° C.) or below.

(b) Cooled in a system other than the membrane processing system until the temperature falls to 45° F. (7° C.) or below, and may then be reintroduced into the membrane processing system.

(c) Pasteurized in a pasteurization system, and may then be reintroduced into the membrane processing system.

(d) Discarded.

(9) A membrane processing system under sub. (6) (c), (7), or (8) shall be equipped with temperature monitoring and recording devices that comply with Appendix H, Subsection IV of the PMO. At a minimum, the system shall monitor and record product temperature at all of the following points during processing:

(a) The point at which the dairy product enters the system.

(b) A point immediately preceding each intermediate cooling.

(c) A point immediately preceding final cooling.

(d) The point at which the product exits the system.

Note: PMO Appendix H, Subsection IV is on file with the division and the legislative reference bureau. Copies may be obtained from the division at cost or online at http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Milk.

History: CR 14–073: cr. Register August 2016 No. 728, eff. 9–1–16.

ATCP 65.56 Labeling pasteurized and unpasteurized products. (1) If a dairy product is pasteurized or made exclusively from pasteurized ingredients, the label on every shipping container of that dairy product shall clearly and conspicuously state that the product is "pasteurized" or "UHT pasteurized," as appropriate. Every label under this subsection shall also include the name and address, or the unique identification number, of the dairy plant where the dairy product was pasteurized.

(2) Except as provided under sub. (3) or (4), if a dairy product is not pasteurized or made exclusively from pasteurized ingredients, the label on every shipping container and consumer package of that dairy product shall state that the product is unpasteurized.

(3) Subsection (2) does not apply to cheese that meets all of the following requirements:

(a) The standard of identity for the cheese provides that the cheese may be made from unpasteurized dairy products.

(b) The cheese is held for at least 61 days at a temperature not less than 35° F. before being distributed for retail sale, or for further processing without pasteurization.

(c) The label on every shipping container and consumer package of cheese states that the cheese is "aged over 60 days."

(4) Subsection (2) does not apply to a dairy product that is sterilized and sealed in a hermetically sealed container.

Note: See dairy product labeling requirements in subch. III.

History: CR 14–073: cr. Register August 2016 No. 728, eff. 9–1–16.

ATCP 65.58 Pasteurization time and temperature. (1) If a dairy product is required to be pasteurized under s. ATCP 65.54, the dairy product shall be pasteurized according to this subchapter unless the division authorizes in writing a different but equally effective pasteurization system or method. Alternative times and temperatures for pasteurizing grade A milk and milk products shall be recognized by the United States food and drug administration. All of the dairy product shall be heated to the required temperature and continuously held at or above the required temperature for the required period of time. Pasteurization equipment shall be equipped with accurate measuring, recording, and control devices, as required by ss. ATCP 65.60 and 65.62, to ensure that the time and temperature requirements under this section are met.

(2) Dairy products identified in table 2, unless UHT pasteurized under sub. (3), shall be pasteurized in a batch pasteurizer tested in accordance with s. ATCP 65.68 or HTST pasteurizer tested in accordance with s. ATCP 65.68 at or above the tempera-

ture specified in the table for at least the length of time specified in the table.

Table 2
Pasteurization Requirements for Selected Dairy Products

	Product Group	Batch Pasteurization	HTST Pasteurization
(a)	Milk, skim milk, or buttermilk	145°F. (63° C.) for 30 minutes	161°F. (72°C.) for 15 seconds
(b)	Cream, fluid dairy products, or blends of those products	150°F. (66° C.) for 30 minutes	166°F. (75°C.) for 15 seconds
(c)	Cream for butter	165°F. (74°C.) for 30 minutes	185°F. (85° C.) for 15 seconds
(d)	High total solids products (>18%)	150°F. (66° C.) for 30 minutes	166° F. (75° C.) for 15 seconds
(e)	Frozen−dessert mixes	155° F. (69°C.) for 30 minutes	175°F. (80°C.) for 25 seconds or 180° F. (83°C.) for 15 seconds
(f)	Egg nog	155° F. (69°C.) for 30 minutes	175° F. (80° C.) for 25 seconds or 180° F. (83°C.) for 15 seconds
(g)	Process cheese	150°F. (66° C.) for 30 seconds	–

(3) A dairy plant operator may use an HHST pasteurizer as an alternative to an HTST pasteurizer. An HHST pasteurizer shall heat and hold a dairy product at one of the following temperatures for the corresponding length of time:

(a) 191° F. (89° C.) for 1.0 seconds.

(b) 194° F. (90° C.) for 0.5 seconds.

(c) 201° F. (94° C.) for 0.1 seconds.

(d) 204° F. (96° C.) for 0.05 seconds.

(e) 212° F. (100° C.) for 0.01 seconds.

(4) A UHT pasteurized dairy product shall be thermally processed at or above a temperature of 280° F. (138° C.) for at least 2 seconds.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16; correction in (3) (a) to (e) made under s. 35.17, Stats., Register August 2016 No. 728.

ATCP 65.60 Batch pasteurization. Batch pasteurization equipment shall be of the non−coil type. Batch pasteurization equipment shall be constructed and operated so that pasteurization complies with item 16p (A) of the PMO and with applicable "3−A Sanitary Standards" and "3−A Accepted Practices" listed in ch. ATCP 65 Appendix A. Thermometers shall be constructed and operated in compliance with Appendix H, item IV of the PMO. The temperature of the air space above the pasteurized product shall be at least 5° F. (3° C.) higher than the minimum pasteurization temperature of the pasteurized product.

Note: The "3−A Sanitary Standards" and "3−A Accepted Practices" listed in Appendix A are published by 3−A Sanitary Standards, Inc., 1451 Dolley Madison Boulevard, Suite 210, McLean, VA 22101−3850, telephone (703) 790−0295, website www.3−a.org. Copies are on file with the division and the legislative reference bureau. Copies may be purchased from the "3−A Sanitary Standards, Inc. Online Store" at http://www.techstreet.com. Copies of the PMO are on file with the division and the legislative reference bureau.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16.

ATCP 65.62 HTST and HHST pasteurization. Pasteurization by means of HTST or HHST pasteurization shall comply with the standards set forth in "3−A Accepted Practices for the Sanitary Construction, Installation, Testing and Operation of High−Temperature Short−Time and Higher Heat Shorter Time Pasteurizer Systems," standard 3A 603−07 (November, 2005), published by 3−A Sanitary Standards, Inc.

Note: Copies of the "3−A Accepted Practices for the Sanitary Construction, Installation, Testing, and Operation of High−Temperature Short−Time and Higher Heat Shorter Time Pasteurizer Systems," standard 3A 603−07 (November, 2005) are on file with the division and the legislative reference bureau. Copies may be obtained from the "3−A Sanitary Standards, Inc. Online Store" at http://www.techstreet.com.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16.

ATCP 65.64 Aseptic processing and packaging. (1) GRADE A REQUIREMENTS. Grade A aseptic processing and packaging systems shall comply with standards specified in items 16p (B), (C), and (D) of the PMO and with applicable standards specified in 21 CFR 108.25, 108.35, 113, and 114.

(2) GRADE B REQUIREMENTS. Grade B aseptic processing and packaging systems shall comply with applicable standards specified in 21 CFR 113 and 21 CFR 114.

Note: The PMO is on file with the division and the legislative reference bureau. Copies may be obtained from the division at cost or online at http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Milk.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16.

ATCP 65.66 Pasteurization records. (1) GENERAL. A dairy plant operator shall keep pasteurization records for all dairy products pasteurized by the operator. Records shall cover all types of pasteurization operations, including batch operations, HTST operations, and HHST operations. Records shall comply with this section. The department shall review pasteurization records as part of each routine inspection of a dairy plant.

(2) BATCH PASTEURIZATION RECORDS. Except as provided in sub. (3), batch pasteurization records shall include all the following:

(a) Each date, including the year, on which dairy products are pasteurized.

(b) The identification number or location of each pasteurization time and temperature recording chart, if more than one is used.

(c) A continuous temperature recording chart temperature record for each batch of pasteurized product.

(d) The pasteurization holding time, as shown on the temperature recording chart, for each batch of pasteurized product. Records shall include filling and emptying times, if applicable.

(e) The temperature reading on the airspace thermometer at the start and end of the pasteurization holding period, and at specific times identified as points on the temperature recording chart.

(f) The temperature reading on the indicating thermometer at the start of the pasteurization holding period, and at a specific time identified as a point on the temperature recording chart.

(g) The name and quantity of dairy product included in each pasteurization batch shown on the temperature recording chart.

(h) A record of any unusual circumstances that occurred during each batch pasteurization.

(i) The name of the dairy plant.

(j) The signature or initials of the dairy plant operator, or a responsible employee or agent of the operator.

(3) HTST AND HHST PASTEURIZATION RECORDS. Pasteurization records for HTST and HHST pasteurization operations shall include all the following:

(a) Each date, including the year, on which dairy products are pasteurized.

(b) The identification number or location of each pasteurization time and temperature recording chart, if more than one is used.

(c) A continuous temperature recording chart for each pasteurization run.

(d) The temperature reading on the indicating thermometer at the start of each pasteurization run, and at a specific time identified as a point on the temperature recording chart.

(e) Documentation, on the temperature recording chart, of every time period during which the flow−diversion device on the pasteurizer is in the forward−flow position.

(f) The cut−in and cut−out product temperatures at the beginning of each HTST pasteurization run. The pasteurizer operator shall record these temperatures daily on the temperature recording chart.

(g) The temperature reading on the indicating thermometer whenever the temperature recording chart for the pasteurization system is changed.

(h) The name and quantity of dairy product included in each pasteurization run shown on the temperature recording chart.

(i) A record of any unusual circumstances that occurred during each pasteurization run.

(j) The name of the dairy plant.

(k) The signature or initials of the dairy plant operator, or a responsible employee or agent of the operator.

(4) FLOW RECORDS FOR HTST AND HHST PASTEURIZERS WITH METER BASED TIMING SYSTEMS. In addition to requirements in sub. (3), pasteurization records for HTST and HHST pasteurization operations with meter based timing systems shall include all of the following:

(a) Each date, including the year, on which dairy products are pasteurized.

(b) The identification number or location of each pasteurization time and flow−rate recording chart, if more than one is used.

(c) A continuous flow−rate recording chart record of the flow rate.

(d) A continuous flow−rate recording chart record of the status of the high and low flow/loss of signal alarms.

(e) The name and quantity of dairy product pasteurized in each pasteurization run shown on the flow−rate recording chart.

(f) A record of any unusual circumstances that occurred during each pasteurization run.

(g) The name of the dairy plant.

(h) The signature or initials of the dairy plant operator or a responsible employee or agent of the operator.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16.

ATCP 65.68 Pasteurizer testing. (1) GENERAL. The division shall test and seal pasteurization systems according to this section. Except as provided under sub. (6), no person may use any pasteurization system to pasteurize grade A or grade B dairy products unless that system bears the unbroken seals applied by the department under sub. (5).

(2) TEST PROCEDURE. The division shall test grade A and grade B pasteurization systems according to the procedure specified in Appendix I of the PMO.

Note: PMO Appendix I is on file with the division and the legislative reference bureau. Copies may be obtained from the division at cost or online at http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Milk.

(3) TEST FREQUENCY; GRADE A PASTEURIZERS. The division shall test each grade A pasteurization system at the following times:

(a) Before the pasteurization system is first put into operation.

(b) At least once every 3 months, except that a holding time test may be conducted at least once every 6 months.

(c) Whenever a seal, under sub. (5), is broken.

(4) TEST FREQUENCY; GRADE B PASTEURIZERS. The division shall test a grade B pasteurization system at the following times:

(a) Before the pasteurization system is first put into operation.

(b) At least once every 12 months.

(c) Whenever a seal, under sub. (5), is broken.

(5) DEPARTMENT SEALS. When the division's test confirms that a pasteurization system is operating correctly, the division shall apply seals that prevent any alteration of the system that would allow any unpasteurized milk or dairy product to flow through the system.

(6) BROKEN SEAL. (a) A dairy plant operator shall notify the division by telephone, electronic mail, or facsimile (FAX) transmission within 2 hours after the dairy plant operator breaks a seal applied by the division under sub. (5), or within 2 hours after a pasteurizing system malfunctions to the possible detriment of public health or safety. The dairy plant operator shall also notify the department in writing, on a form provided by the division, within 5 business days after the seal is broken or the system malfunctions.

(b) A dairy plant operator may not operate a pasteurizer after breaking a seal applied by the department under sub. (5), unless all of the following conditions are met:

1. The dairy plant operator notifies the department under par. (a).

2. The dairy plant operator determines and documents that pasteurization time and temperature requirements under s. ATCP 65.58 are met, and that the pasteurization system is repaired and functioning properly. Time and temperature records required by s. ATCP 65.66 shall be retained for at least 6 months.

3. The dairy plant operator conducts phosphatase tests, under par. (d), if the pasteurizer is used to pasteurize milk without added flavors or ingredients other than vitamins. Phosphatase testing shall confirm that pasteurized milk without added flavors or ingredients other than vitamins contains less than 350 milli−units of detectable alkaline phosphatase per liter.

4. A pasteurizer operator qualified under s. ATCP 65.54 (3) is present to operate the pasteurizer, or to supervise its operation.

(c) A dairy plant operator may not operate a pasteurizer for more than 10 calendar days after breaking a seal applied by the department under sub. (5), unless any of the following occurs:

1. The division tests the pasteurizer and replaces the broken seal.

2. A dairy plant operator or employee certified under sub. (7), tests the pasteurizer and replaces the broken seal on an interim basis, pending retesting and resealing by the department.

(d) Phosphatase testing, under par. (b) 3., shall comply with all of the following requirements:

1. The dairy plant operator shall collect and analyze a test sample, directly from the pasteurizer system, at least once during every 4 hours of pasteurizer operations.

2. The dairy plant operator shall store each test sample at a temperature below 45° F. (7° C.) until it is tested and shall analyze each sample within 48 hours after it is collected.

3. The dairy plant operator shall analyze each sample using the Fluorophos ALP method, the Charm Paslite Alkaline Phosphatase method, or another test method approved in writing by the division.

4. Tests shall be performed by an individual who is trained to conduct phosphatase tests on milk. If the dairy plant is a grade A dairy plant, tests shall be performed by a laboratory that the department has certified under ch. ATCP 77 or the PMO.

(7) EMERGENCY TESTING AND SEALING. (a) The division may certify a dairy plant operator or employee to test and seal a pasteurization system in that dairy plant on an emergency basis under par. (b). To be certified under this paragraph, a dairy plant operator or employee shall have successfully completed a training course approved by the division. The division may suspend or revoke certification for cause.

(b) A dairy plant operator or employee certified under par. (a) may test and seal a pasteurization system in that dairy plant on an emergency basis, pending retesting and resealing by the division, under par. (c), if emergency testing and sealing is necessary to continue pasteurizing operations after the department's seal is broken. Testing under this paragraph shall comply with the procedure specified under sub. (2).

(c) The division shall promptly retest and reseal a pasteurization system after the division receives notice, under sub. (6) (a), that its seal applied to that system has been broken. The division shall retest and reseal a pasteurization system, under this paragraph, regardless of whether the pasteurization system has been tested and sealed under par. (b). The division need not retest or reseal a pasteurization system that is withdrawn from service.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16.

Subchapter V — Safety and Quality Standards

ATCP 65.70 Milk quality standards for milk collected from a dairy farm. Milk received or collected from a dairy farm shall comply with all of the following standards at the time of receipt or collection:

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

(2) BACTERIAL COUNT. (a) *Limits*. The bacterial count of grade A milk, as determined by a standard plate count, plate loop count or other method approved by the division under this subchapter, shall not exceed 100,000 per ml. The bacterial count of grade B milk shall not exceed 300,000 per ml. Except as provided under par. (f), a dairy plant operator is not required to reject milk shipments in response to a violation of this subsection unless the division suspends or revokes the milk producer's license or grade A producer permit, or issues an order affecting the milk shipments under s. ATCP 65.927.

(b) *Monthly testing required.* During every month in which a dairy plant operator or a milk contractor licensed as a dairy plant receives milk from a milk producer, the dairy plant operator shall perform at least one standard plate count (SPC) or plate loop count (PLC) on a milk sample obtained from the producer under s. ATCP 82.12. A dairy plant operator shall perform tests under this section and s. ATCP 65.76 on the same milk samples.

(c) *New milk producer; initial testing*. A dairy plant operator or a milk contractor licensed as a dairy plant shall perform a SPC or PLC on a milk sample collected from the first milk shipment received from a milk producer. The dairy plant operator shall report the test result to the department and the milk producer within 7 days after the dairy plant operator obtains the test result.

(d) *Monthly reporting*. For each month in which a dairy plant operator or milk contractor licensed as a dairy plant receives milk from a milk producer, the dairy plant operator shall report to the division and the milk producer at least one representative test result under par. (b) for a milk shipment procured in that month. The dairy plant operator shall report the test result within 7 days after the operator obtains the test result.

(e) *Representative test results*. A test result is not representative, for reporting purposes under this subsection unless all the following apply:

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

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

(f) *Immediate response level; reporting and follow−up.* If a bacterial count under this section or s. ATCP 65.76 exceeds 750,000 per ml., the dairy plant operator shall do all the following:

1. Report the test result to the division and the milk producer within 3 business days after the operator obtains the test result.

2. Perform a confirmatory bacteriological test on at least one more sample of milk collected from the milk producer's dairy farm. The dairy plant operator shall collect the confirmatory sample within 14 days after the date on which the dairy plant operator collected the original sample. The dairy plant operator shall report the confirmatory test result to the division and the milk producer within 3 business days after the operator obtains the test result.

3. Reject milk shipments from the dairy farm if the confirmatory test shows a bacterial count in excess of 750,000 per ml. The milk producer may not ship milk from the dairy farm to any dairy plant until a dairy plant operator conducts another test and finds that milk from the farm has a bacterial count not more than 750,000 per ml.

(g) *Division inspection; reinspection fee*. The division may inspect a dairy farm in response to any bacterial count reported to the division under this section. If the division inspects a dairy farm in response to a confirmatory bacterial count of more than 750,000 per ml. under par. (f), the division shall charge a reinspection fee under s. ATCP 65.02 (19). The division may not charge a reinspection fee if the confirmatory bacterial count does not exceed 750,000 per ml., or if the division inspects more than 3 weeks after the division receives the confirmatory bacterial count.

Note: Under s. ATCP 65.920 the department will suspend a producer's grade A farm permit if 3 of the last 5 bacterial counts reported to the department under this section exceed the grade A standard of 100,000 per ml. under s. ATCP 65.70 (2). The department will suspend the producer's grade A permit regardless of whether any bacterial count exceeds the immediate response level of 750,000 per ml. under this section.

Note: Under s. ATCP 65.920 the department may suspend a milk producer's license if bacterial counts continue to exceed the grade B standard of 300,000 per ml. under s. ATCP 65.70 (2). The department may suspend the producer's license regardless of whether any bacterial count exceeds the immediate response level of 750,000 per ml. under this section. If 2 of the last 4 bacterial counts reported to the department under this section exceed the grade B standard of 300,000 per ml., the department will, at a minimum, send a warning notice to the producer.

(h) *Laboratory reporting*. A laboratory that performs tests under this section for a dairy plant operator may report the test results for the dairy plant operator.

(i) *Electronic reporting*. A dairy plant operator or laboratory shall report test results under this section in an electronic form approved by the division.

(3) DRUG RESIDUES. The milk shall not contain any drug residue. A dairy plant operator or milk contractor licensed as a dairy plant shall test each load of milk received from each milk producer for drug residues in accordance with s. ATCP 65.72.

(4) SOMATIC CELL COUNT. (a) *Limits*. The somatic cell count of cow or sheep milk, as determined by a direct microscopic somatic cell count, an electronic somatic cell count, or other method approved by the division under this subchapter, shall not exceed 750,000 cells per ml. The somatic cell count of goat milk, as determined by the Pyronin Y Methyl green stain test, shall not exceed 1,500,000 cells per ml. Except as provided under par. (g), a dairy plant is not required to reject milk shipments in response to a violation of this subsection unless the department suspends or revokes the milk producer's license or grade A producer permit,

or issues an order affecting the milk shipments under s. ATCP 65.927.

(b) *Monthly Testing Required.* During every month in which a dairy plant operator or milk contractor licensed as a dairy plant receives milk from a milk producer, the dairy plant operator shall perform at least one somatic cell count on a milk sample obtained from the producer under s. ATCP 82.12. If the dairy plant operator tests more than one milk sample each month, the dairy plant operator shall collect the samples at regular intervals throughout the month. A dairy plant operator shall perform tests under this subsection and s. ATCP 65.76 on the same milk samples.

Note: Somatic cell tests must be performed using methods prescribed under s. ATCP 65.78 (3). The maximum time between sample collection and testing depends on the test method used.

(c) *New milk producer; initial testing.* A dairy plant operator or milk contractor licensed as a dairy plant shall perform a somatic cell count on a milk sample collected from the milk shipment received from a milk producer. The operator shall report the test result to the division and the producer within 7 days after the operator obtains the test result.

(d) *Test methods.* A somatic cell count under this subsection shall be a direct microscopic somatic cell count or an electronic somatic cell count. If the somatic cell count on goat milk exceeds 1,500,000 per ml., the somatic cell count shall be confirmed using the Pyronin Y Methyl green stain test, unless that test was used to obtain the initial count.

(e) *Monthly reporting.* For each month in which a dairy plant operator or milk contractor licensed as a dairy plant receives milk shipments from a milk producer, the dairy plant operator shall report to the division and the producer at least one representative somatic cell count under sub. (4) for a milk shipment procured in that month. The dairy plant operator shall report the somatic cell count within 7 days after the dairy plant operator obtains the count.

(f) *Representative somatic cell counts.* A somatic cell count is not representative, for reporting purposes under sub. (4), unless all the following apply:

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

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

(g) *Immediate response level; reporting and follow−up.* If a somatic cell count under this section exceeds 1,000,000 per ml. for cow or sheep milk, the dairy plant operator shall do all the following:

1. Report the somatic cell count to the division and the milk producer within 3 business days after the operator obtains the somatic cell count.

2. Perform a confirmatory somatic cell count on at least one more sample of milk collected from the milk producer's dairy farm. The dairy plant operator shall collect the confirmatory sample within 14 days after the date on which the operator collected the original sample. The dairy plant operator shall report the confirmatory somatic cell count to the division and the milk producer within 3 business days after the dairy plant operator obtains the confirmatory count.

3. Reject milk shipments from the dairy farm if the confirmatory somatic cell count under par. (2) still exceeds 1,000,000 per ml. The milk producer may not ship cow or sheep milk from the dairy farm to any dairy plant until a dairy plant operator conducts another somatic cell count and finds that the count no longer exceeds this number.

Note: The department will suspend a grade A farm permit if 3 of the last 5 reported somatic cell counts exceed the standard under s. ATCP 65.70 (4), regardless of whether any somatic cell count exceeds the immediate response level under this subsection. See s. ATCP 65.920.

Note: Under s. ATCP 65.920, the department may suspend a milk producer license if somatic cell counts continue to exceed the standard under s. ATCP 65.70 (4), regardless of whether any somatic cell count exceeds the immediate response level under this subsection. If 2 of the last 4 reported somatic cell counts exceed the standard under s. ATCP 65.70 (4), the department will at least send a warning notice to the producer. See s. ATCP 65.920.

(h) *Laboratory reporting.* A laboratory that performs somatic cell counts under this subsection for a dairy plant operator may report the somatic cell counts for the dairy plant operator.

(5) TEMPERATURE. The temperature of milk received or collected from a dairy farm more than 2 hours after the most recent milking shall not exceed 45° F. (7° C.), or 50° F. (10° C.) in the case of grade B milk in cans. The temperature of blended milk, consisting of milk from 2 or more milkings, that was received or collected less than 2 hours after the most recent milking shall not exceed 45° F. (7° C.)

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

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16; correction in (4) made under s. 35.17, Stats., Register August 2016 No. 728.

ATCP 65.72 Drug residue testing. (1) MONTHLY TESTING OF PRODUCER MILK SHIPMENTS. During every month in which a dairy plant or milk contractor licensed as a dairy plant receives milk from a milk producer, the dairy plant operator shall perform a drug residue test on a milk sample obtained from that producer under s. ATCP 82.12. The drug residue test shall be sensitive, at a minimum, to beta lactam drug residues.

(2) NEW MILK PRODUCER; INITIAL TESTING. A dairy plant operator or milk contractor licensed as a dairy plant shall perform a drug residue test on a milk sample collected from the first milk shipment received from a milk producer. The drug residue test shall be sensitive, at a minimum, to beta lactam drug residues and any other drug residues for which testing is required under sub. (3) (b) If the sample tests positive for any drug residue, the dairy plant operator shall report the result to the division and the producer within the time prescribed in sub. (9).

(3) TESTING BULK LOADS. (a) *Beta lactam drug residues; routine bulk load testing.* Every dairy plant operator shall perform a drug residue test on every bulk load of raw milk offered for sale upon delivery at that dairy plant. The drug residue test shall be approved by the division and detect, at a minimum, beta lactam drug residues.

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

2. The division may issue a periodic written notice to dairy plant operators, requiring dairy plant operators to perform random tests under subd. 1. for drug residues specified in the division's notice. The division shall issue the same notice to every dairy plant licensed by the department. The notice shall specify the effective date of the random testing requirements and the period of time during which the random testing requirements remain in effect.

3. A dairy plant operator may test a bulk milk delivery to detect residues of one or more drugs for which the division has not required testing under subd. 2. The dairy plant shall follow the procedures in pars. (c), (d), and (e).

(c) *Bulk load testing procedure.* Whenever a dairy plant operator performs a drug residue test on a bulk load of milk under par. (a) or (b), the operator shall perform the test on a sample taken from the bulk milk tanker. Sufficient agitation or a milk sampling method approved by the division shall be used to ensure that the sample is representative of the contents of the tanker. The test shall be completed before the bulk load is commingled with any

other producer's milk and before any of the milk in the bulk load is processed. For testing purposes under pars. (a) and (b), a milk shipment received in cans is considered a bulk load.

(d) *Responsibility for follow−up testing.* If a bulk load of milk yields a confirmed positive test result for drug residue, and if the dairy plant receiving that milk from producers is not the dairy plant to which those producers are assigned for licensing purposes, under s. ATCP 65.02, the operator of the receiving dairy plant shall immediately notify the operator of the assigned dairy plant. The assigned dairy plant is responsible for performing follow−up tests on producer samples under sub. (4), and for rejecting producer shipments under sub. (5).

(e) *Testing with an unapproved method.* If the dairy plant uses a testing method that is not approved by the division and detects residues of one or more drugs for which the division has not required testing, under par. (b), that result shall be treated as a valid test result and reported to the division. The test result shall then either be confirmed under sub. (4) using a drug residue detection method approved by the division or the milk must be discarded under sub. (5). The dairy plant may recover the milk value, under sub. (6), if the confirmatory test result is obtained using a drug residue detection method approved by the division.

(f) Testing of frozen sheep milk for drug residues. A sheep milk producer intending to freeze the sheep milk before shipment must either sample or test the sheep milk for drug residues before bagging and freezing the sheep milk. The sample or test result must remain with the bag or bags of frozen sheep milk to which the sample or test result pertains. Each bag of frozen sheep milk shall be labeled to indicate the grade of milk, the dairy plant receiving the milk, the sheep milk producer, the total number of bags to which the sample or test result pertains, and the date on which the bag was filled with sheep milk. Sheep milk samples must be frozen within 24 hours of sampling, must be maintained at −15° C. (5° F.) or colder (documentation of storage temperature maintained) and must be tested with 60 days of sampling.

(4) DRUG RESIDUE FOUND IN BULK LOAD; FOLLOW−UP TESTING. If a bulk load of milk yields a confirmed positive test result for drug residue under sub. (3), the dairy plant operator shall perform a drug residue test on each of the individual milk producer samples collected for that bulk load under s. ATCP 82.12. The dairy plant operator shall test each milk producer's sample before collecting any further milk from that producer. The drug residue test performed on each producer sample shall be sensitive to the same drug residue that was detected in the bulk load. If a milk producer's sample tests positive for any drug residue, the dairy plant operator shall perform a confirmatory test using the same test method and sample. The dairy plant operator shall perform the confirmatory test in duplicate, with single positive and negative controls. If either confirmatory test result is positive for a drug residue, the milk producer's sample is considered positive for that drug residue.

(5) DRUG RESIDUE FOUND IN BULK LOAD; LOAD REJECTED. If a bulk load of milk from one or more milk producers yields a confirmed positive test result for drug residue under sub. (3), the dairy plant operator shall reject the entire bulk load. Milk from a rejected bulk load may not be used for human food. The dairy plant operator shall denature or take responsibility for disposing of the rejected bulk load in a manner that precludes its use for human food.

(6) REJECTED BULK LOAD; DAIRY PLANT RECOVERY FROM PRODUCERS OR MILK CONTRACTORS. (a) *Dairy plant loss recovery.* If a dairy plant operator properly rejects a bulk load of milk under sub. (5), the dairy plant operator may recover the value of that bulk load from producers whose milk samples, representing milk shipments contained in that bulk load, yield a confirmed positive test result for drug residue under sub. (4). If the milk has been procured by the dairy plant from a milk contractor, the dairy plant operator may recover the value of that bulk load from the milk contractor, who may then recover the value of that bulk load from the milk producers. The dairy plant operator may recover what would have been the value of the bulk load, had the load not yielded a confirmed positive test result for drug residue. The dairy plant operator shall also recover any additional bulk load disposal, transportation, and testing costs that the dairy plant operator incurs because the bulk load yielded a confirmed positive test result for drug residue.

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

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

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

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

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

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

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

(h) *Informal hearing.* If a milk producer requests a hearing under par. (g), the division shall hold an informal hearing by telephone or at the division's nearest office. The division shall hold the informal hearing within 20 days after the division receives the hearing request, unless the milk producer agrees to a later hearing date. The division shall include the producer and the dairy plant operator or milk contractor in the informal hearing.

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

ducer and the dairy plant operator or milk contractor as parties to the hearing.

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

(7) PRODUCER MILK SHIPMENTS REJECTED. (a) *Dairy plant to reject.* A dairy plant operator shall immediately notify a milk producer directly, or via the milk contractor from whom the producer's milk was procured, and shall reject that producer's milk shipments as required under par. (b), if any of the following occurs:

1. A sample of the producer's milk, under sub. (1), yields a confirmed positive test result for drug residue.

2. A sample of the producer's milk, under sub. (4), yields a confirmed positive test result for drug residue.

3. A sample of the producer's milk yields a confirmed positive test result for drug residue after that milk has been commingled with milk from other producers, regardless of whether the drug residue test is required under this chapter.

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

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

1. Ship, collect, or use that milk for human food.

2. Commingle that milk with milk from any other producer.

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

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

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

1. A milk producer sample, under sub. (1), yields a confirmed positive test result for drug residue.

2. A milk producer sample, under sub. (4), yields a confirmed positive test result for drug residue.

3. A sample of a producer's milk yields a confirmed positive test result for drug residue after that milk has been commingled with milk from other producers, regardless of whether the drug residue test is required under this chapter.

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

(10) INSPECTION BY DIVISION; REINSPECTION FEE. The division may, in its discretion, inspect a dairy farm in response to any positive drug residue test report under sub. (8) or (9). The division shall charge a reinspection fee for the inspection under s. ATCP 65.02 (19). The division shall not charge a reinspection fee if it makes its inspection more than 3 weeks after the dairy plant operator reports the drug residue test result to the division.

(11) DRUG RESIDUE TEST RESULTS. (a) *Positive test result; general.* For purposes of this section and s. ATCP 65.922, a drug residue test is considered positive if the detected amount of drug residue exceeds the action level specified for that drug under par. (b). The action levels, under par. (b), do not establish legal tolerances for drug residues in milk, nor do they preclude the department from taking enforcement action where drug residues are present at levels below these action levels.

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

1. Ampicillin 10 ppb
2. Amoxicillin 10 ppb
3. Cephapirin 20 ppb
4. Ceftiofur 100 ppb
5. Cloxacillin 10 ppb
6. Novobiocin 100 ppb
7. Penicillin G 5 ppb
8. Sulfadimethoxine 10 ppb
9. Tetracyclines* 300 ppb

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

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

(c) *Test result presumed valid.* For purposes of this section and s. ATCP 65.922, whenever a dairy plant operator reports a confirmed positive test result to the division under sub. (9), that test result is presumed to be valid. The milk producer may appeal the test result in an informal hearing under s. ATCP 65.928.

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

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

Note: If a drug residue test is performed on a bulk load of milk collected from several dairy farms, the test must be completed within 72 hours after the bulk milk weigher and sampler collects milk from the first farm. Confirmation of positive drug residue screening tests, at a different laboratory than the laboratory which performed the screening tests, as required under s. ATCP 65.72 (3), must be completed within the same 72−hour period.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16; correction in (3) (e) made under s. 35.17, Stats., Register August 2016 No. 728.

ATCP 65.74 Milk and dairy products; quality standards. (1) MILK HELD AT DAIRY PLANT; BACTERIAL COUNT. The

bacterial count of commingled grade A milk held at a dairy plant before pasteurization may not exceed 300,000 per ml. The bacterial count of grade B milk held at a dairy plant before pasteurization or processing may not exceed 750,000 per ml.

(2) PASTEURIZED GRADE A DAIRY PRODUCTS. (a) Bacterial counts in pasteurized grade A dairy products other than cultured dairy products may not exceed the following levels:

1. 20,000 per ml., except as provided in subd. 2. and 3.

2. 10,000 per g. for nonfat dry milk.

3. 30,000 per ml. for condensed milk, whey, whey products, and dried whey.

(b) Coliform counts in pasteurized grade A dairy products may not exceed 10 per ml. or per gram, except that coliform counts in bulk milk tanker shipments of pasteurized grade A dairy products may not exceed 100 per ml.

(c) In pasteurized grade A milk without added flavors or ingredients, other than vitamins, there shall be fewer than 350 milliunits of phosphatase per liter as determined by the Fluorophos ALP method, the Charm Paslite Alkaline Phosphatase method or another test method approved by the department.

(d) The yeast and mold count of pasteurized cottage cheese may not exceed 10 per gram.

(3) PASTEURIZED GRADE B DAIRY PRODUCTS. (a) Bacterial counts in pasteurized grade B dairy products, other than cultured dairy products or frozen desserts containing nuts or other inclusions, may not exceed the following levels:

1. 20,000 per ml., except as provided in subd. 2. or 3.

2. 30,000 per ml. for condensed milk, whey, whey products, dried whey, and nonfat dry milk.

3. 50,000 per gram for frozen desserts, except that the bacterial count for frozen−dessert mixes may not exceed 20,000 per gram.

(b) Coliform counts in pasteurized grade B dairy products, other than grade B dairy products made with natural or added cultures and all natural cheeses, may not exceed 10 per ml. or per gram, except that coliform counts in bulk milk tanker shipments may not exceed 100 per ml.

(4) FORTIFIED DAIRY PRODUCTS. Whenever milk or a fluid milk product is fortified with vitamin A or D the fortification shall comply with Appendix O of the PMO.

(5) PATHOGEN CONFIRMED IN READY−TO−EAT DAIRY PRODUCT; SALE PROHIBITED. A dairy plant operator may not sell or distribute any ready−to−eat dairy product in which a microbiological test or laboratory analysis has confirmed the presence of a pathogenic organism or toxin. Results of the microbiological test or laboratory test shall be reported to the division, under s. ATCP 65.46 (2).

Note: Copies of PMO Appendix O are on file with the department and the legislative reference bureau. Copies may be obtained from the department at cost or online at:www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Milk.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16.

ATCP 65.76 Milk quality testing. (1) REQUIRED TESTING. (a) A dairy plant operator shall test raw milk from dairy farms as required under this chapter.

(b) A dairy plant operator shall test milk and dairy products held or processed at a dairy plant for compliance with standards specified under s. ATCP 65.74 (1) to (4). The dairy plant operator shall test the milk and dairy products as often as necessary to provide reasonable statistical assurance of compliance.

(2) LABORATORY. (a) Except as provided under par. (b), milk quality tests required under this chapter shall be performed in a laboratory that is all of the following:

1. Approved by the department to conduct milk quality tests.

2. Certified by the department under s. ATCP 77.03, or by an equivalent certifying agency in another state, to conduct milk quality tests.

(b) A laboratory that is not certified under s. ATCP 77.03 to perform a drug residue test under s. ATCP 65.72 may perform that test as a screening test if all of the following apply:

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

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

3. A different laboratory performs a confirmatory test if the screening test result is positive for drug residue. The laboratory performing the confirmatory test shall be certified to do so under s. ATCP 77.03. The laboratory shall perform the confirmatory test on the same test sample using the same or an equivalent test method and shall complete the confirmatory test within the time period specified in s. ATCP 65.72 (8).

(c) The department may withdraw its approval under par. (a) or (b) for cause, including false or inaccurate test results or reports, or failure to conduct tests according to required procedures.

(3) ANALYSTS. (a) Except as provided in par. (b) or (c), no individual may perform a milk test under ss. ATCP 65.70 and 65.72 unless the department has certified that individual under s. ATCP 77.22 to perform that test.

(b) Pursuant to s. ATCP 77.23 (2), the department may approve an individual to perform a drug residue test under s. ATCP 65.72 as a screening test, even though the individual is not certified under s. ATCP 77.22 to perform that test as a confirmatory test.

(c) Bulk load tests for drug residues under s. ATCP 65.72 shall be conducted at the receiving dairy plant by any of the following:

1. An individual approved by the department to conduct drug residue tests.

2. An individual who performs drug residue tests only under the direct supervision of an individual approved and certified under subd. 1.

Note: A laboratory performing milk quality tests must be certified under ch. ATCP 77.

(4) TEST METHODS. Milk testing under ss. ATCP 65.70 and 65.72 shall use test methods prescribed in the applicable FDA 2400 series laboratory evaluation forms, published by the United States department of health and human services, public health service, food and drug administration, that are in effect on February 1, 2008. If no FDA form applies, testing shall be conducted according to methods prescribed in the "Standard Methods for the Examination of Dairy Products," 17th Edition (2004), or in "Official Methods of Analysis of AOAC International," 18th Edition (2005).

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

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

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

The "Official Methods of Analysis of AOAC International," 18th Edition (2005), is on file with the department and the legislative reference bureau and may be obtained from AOAC International, 2275 Research Blvd., Rockville, MD 20850, telephone 800−379−2622, website https://www.aoac.org .

(5) BACTERIA COUNTS. Bacteria counts required under s. ATCP 65.70 and bacteria counts that may affect the amount paid to a milk producer shall be obtained by means of a standard plate count, plate loop count, or petrifilm aerobic count method.

(6) DRUG RESIDUES. Drug residue tests required under s. ATCP 65.72 shall be performed according to s. ATCP 65.72.

(7) SOMATIC CELLS. Somatic cell counts required under s. ATCP 65.70 (4) and somatic cell counts that may affect the amount paid to a milk producer shall be obtained by means of a

direct microscopic somatic cell count or an electronic somatic cell count. The Pyronin Y−Methyl green stain test may be used in place of a direct microscopic somatic cell count or electronic somatic cell count for goat milk and shall be used to confirm a direct microscopic somatic cell count or electronic somatic cell count on goat milk that exceeds 1,000,000 per ml.

(8) TESTING DEADLINES. A milk quality test shall be conducted within the time period specified by the test method.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16; correction in (2) (a) 2. made under s. 35.17, Stats., Register August 2016 No. 728.

ATCP 65.78 Milk quality test samples. (1) GENERAL. (a) Whenever a dairy plant operator performs a milk quality test on a bulk milk shipment from a milk producer, the dairy plant operator shall perform that milk quality test on a test sample collected under s. ATCP 82.12.

(b) Whenever a dairy plant operator performs a milk quality test on shipment of milk in cans from a milk producer, the dairy plant operator shall perform that milk quality test on a test sample collected under sub. (3).

(c) Notwithstanding pars. (a) and (b), a dairy plant operator may use a composite sample, under sub. (4), to perform a Babcock test for milkfat or to perform another milk quality test approved by the division under sub. (4). A composite sample shall be compiled from fresh milk samples collected under par. (a) or (b).

(d) This subsection does not apply to a bulk load test for drug residues under s. ATCP 65.72 (3).

(e) Upon reasonable notice from the division, a dairy plant operator shall provide the division with samples of producer milk collected under s. ATCP 65.38. The division may request samples once every 4 months, or more often as the department considers necessary for animal health and milk quality testing. Every sample shall be marked with the identification number of the individual producer from whom the sample was collected, and shall also indicate the date on which the sample was collected. A sample shall be kept at a temperature of 32° to 40° F. (0° F. to 4° C.) until it is transferred to the custody of the department.

(2) TEST SAMPLES REFRIGERATED. At all times prior to testing, a test sample under sub. (1) shall be kept refrigerated at a temperature of 32 to 40° F. (0 to 4° C.). Test samples kept at a dairy plant or testing laboratory shall be kept in a refrigerated storage facility used only for storing test samples and laboratory supplies.

(3) COLLECTING TEST SAMPLES FROM SHIPMENTS OF MILK IN CANS. (a) If a producer ships milk to a dairy plant in cans, rather than in bulk, the dairy plant operator shall collect a test sample from each milk shipment immediately after that milk shipment is transferred to the weigh tank at the dairy plant, and before it is commingled with any other milk shipment. The weigh tank shall be constructed so that milk poured into the weigh tank is completely mixed.

(b) If a weigh tank is not large enough to accommodate a producer's entire milk shipment, so that multiple weighings are needed, the dairy plant operator shall divide the shipment as evenly as possible between weighings and collect a sample from each weighing. The samples shall be of equal volume and shall be combined to form a single sample representing the entire shipment from the producer. The dairy plant operator may not split the contents of any single can of milk between weighings, but shall include all of the contents of that can in the same weighing.

(4) COMPOSITE SAMPLES. (a) A dairy plant operator may use a composite sample to perform a Babcock test for milkfat, but may not perform any other milk quality test on a composite sample except with the division's written authorization. A composite sample shall be compiled according to this subsection.

(b) A composite sample shall include a representative sample of milk from each of 2 or more milk shipments represented by the composite sample. No composite sample may include milk from more than 16 milk shipments. Each component sample included in the composite sample shall have the same volume and shall include at least 10 ml. of milk. A composite sample shall include at least 150 ml. of milk.

(c) A composite sample container shall have a capacity of at least 240 ml. The composite sample container shall include an effective permanent closure that is attached to the container. The composite sample container shall be marked to identify the producer and the milk shipments represented in the composite sample.

(d) A composite sample representing a producer's bulk milk shipments shall be compiled from fresh milk samples collected from those shipments under s. ATCP 82.12. On the same day that a producer's bulk milk shipment is received by the dairy plant operator, or by 12:00 noon of the following day, the dairy plant operator shall transfer, to the composite sample, at least 10 ml. of milk from the sample collected from that milk shipment under s. ATCP 82.12.

(e) A composite sample representing a producer's shipments of milk in cans shall be compiled from milk samples collected from those shipments according to sub. (3).

(f) A dairy plant operator shall preserve a composite sample by adding potassium dichromate, or another preservative approved by the division, to the composite sample. Not less than 100 mg., nor more than 190 mg. of potassium dichromate may be used in each composite sample to obtain a concentration of 20 mg. per 30 ml. of milk in the completed sample.

Note: Potassium dichromate is available in tablets containing 40 mg. of active ingredient per tablet. The use of these tablets at the rate of one tablet per 2 fl. oz. of milk in a completed composite sample is equivalent to the concentration specified under par. (f). Labeling requirements and limitations on the disposal of milk samples preserved with potassium dichromate are contained in s. ATCP 30.15 (2) (b).

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16.

ATCP 65.80 Milk quality test records and reports. (1) TEST RECORDS; GENERAL. (a) A person performing a milk quality test shall immediately record the test result and sign the test record. The test record shall specify the date of the test, including the year, the identification number of the milk producer, and the milk shipment from which the milk sample was collected.

(b) No test record may be altered except that errors, if any, may be corrected by marking a single line through the original entry and inserting the correct entry immediately adjacent to the original. A corrected entry shall be initialed by the person who made the corrected entry.

(c) The division may authorize a dairy plant to keep test records in electronic form if the division finds that all of the following requirements are met:

1. The records are effectively secured against loss or tampering.

2. The records can be readily retrieved for inspection by the dairy plant operator and the division.

3. The person who performs the test identifies himself or herself on the test record, by an electronic method that is equivalent to a personal signature.

4. If an erroneous test record is corrected, the correction is identified so that the reader can easily compare the corrected record to the original record.

(2) RECORDS RETAINED BY DAIRY PLANT OPERATOR. A dairy plant operator shall retain records required under this section for the time period specified under s. ATCP 65.44 and shall make the records available for inspection and copying by the division upon request.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16.

ATCP 65.82 False samples, test results or reports. No person may do any of the following or conspire with another person to do any of the following:

(1) Falsely identify milk samples.

(2) Submit a false milk sample to the department, a dairy plant operator, or a testing laboratory.

(3) Falsify any milk quality test or test result.

(4) Make any false or misleading record or report related to a milk quality test.

(5) Withhold any milk quality test report required under this chapter.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16.

ATCP 65.84 Milk component testing. (1) LICENSING OF PERSON PERFORMING TEST. No person may perform any milk component test unless that person is licensed to perform milk component tests, either as a buttermaker or cheesemaker under s. 97.17, Stats., or as a milk and cream tester under s. 98.145, Stats.

(2) QUALIFICATION OF PERSON USING AUTOMATED TESTING DEVICE. No person may use an automated testing device to perform any milk component test unless that person is trained and qualified to use automated testing devices, and that fact is stated on his or her license under s. 97.17 or 98.145, Stats.

(3) PAYMENT BASED ON MILK COMPONENT TESTS. No dairy plant operator, including a milk contractor that submits a milk producer license application on behalf of a milk producer and thereby certifies that the milk producer's dairy farm and milking operations comply with applicable requirements under this chapter, may adjust the price paid to any milk producer based on the results of any milk component test or somatic cell test unless the dairy plant operator does all of the following:

(a) Bases the price adjustment on either the arithmetic or weighted average of all test results obtained for that producer during the pay period to which the price adjustment applies. The dairy plant operator shall use the same method for computing average test results for all producers shipping milk to the dairy plant.

(b) Tests at least 3 milk shipments from that producer at regular intervals throughout the pay period to which the price adjustment applies or tests composite samples representing all milk shipments from that milk producer during that pay period.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16.

ATCP 65.86 Milk component test methods. (1) GENERAL. Milk component tests shall be performed using any of the following methods, subject to additional requirements under sub. (2) and (3):

(a) A method described in the American Public Health Association., "Standard Methods for the Examination of Dairy Products," 17th edition (2004).

(b) A method described in the "Official Methods of Analysis of AOAC International," 18th edition (2005).

(c) A method approved in writing by the division.

Note: A "milk component test," as defined under s. ATCP 65.01 (35), means a test that determines the amount of milkfat, protein, total solids, solids−not−fat, or other valuable components in milk, and that may affect the price that a dairy plant operator or milk contractor pays a milk producer for milk.

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

The "Official Methods of Analysis of AOAC International," 18th Edition (2005), is on file with the division and the legislative reference bureau. Copies may be obtained from AOAC International, 2275 Research Blvd., Rockville, MD 20850, telephone 800−379−2622, website https://www.aoac.org .

(2) MILKFAT TEST METHODS. (a) Milkfat tests shall be performed using the Babcock method, the ether extraction method, or another test method approved by the division. Babcock and ether extraction tests shall be conducted according to the "Official Methods of Analysis of the Association of Official Analytical Chemists (AOAC) International," 17th edition (2000), except as provided under par. (b).

(b) Each milk sample tested by the Babcock method shall be agitated for at least 3 minutes by the use of a mechanical agitator after pipetting the sample and adding sulfuric acid according to the procedure prescribed under par. (a). A reading device, such as a needlepoint divider or other mechanical divider, that accurately determines milkfat level in a test bottle shall be used in reading all Babcock tests. All Babcock test readings shall be made against a light−colored surface with adequate natural or artificial light. The Babcock test shall be read to the nearest 0.05% by weight.

(3) AUTOMATED MILK COMPONENT TESTING DEVICES. (a) *General calibration requirements.* If an automated testing device is used to perform a milk component test for any milk component, that device shall be calibrated and regularly checked to ensure that it accurately tests for that milk component.

(b) *Specific calibration requirements.* If an automated testing device is used to test for milkfat, protein, total solids, or solids−not−fat in milk, and if the test results may affect the price paid to a milk producer, the testing device shall be calibrated according to this paragraph. The testing device shall be calibrated, for each relevant milk component, by a tester who is licensed under s. 97.17 or 98.145, Stats., to operate that device.

Note: See s. ATCP 65.78 (2).

1. 'Calibration frequency'. A milk component testing device under par. (b) shall be calibrated at all of the following times:

a. Upon installation.

b. At regular 3 month intervals after installation.

c. Immediately after every significant repair or alteration to the testing device.

d. Whenever the mean difference on a daily performance check under par. (c) exceeds plus or minus 0.044% for milkfat or protein or plus or minus 0.084% for total solids or solids−not−fat.

2. 'Calibration procedure'. To calibrate a milk component testing device under par. (b), a tester shall use the device to test a set of calibration samples under subd. 3. The milk component testing device shall be adjusted, as necessary, to satisfy all of the following requirements:

a. The performance error on each calibration sample shall be as near as practicable to zero. The performance error is the difference between the known percentage content of each milk component in the calibration sample, as determined by the sample provider, and the percentage content measured by the testing device.

b. The mean difference for the entire set of calibration samples shall be as near as practicable to zero and shall not exceed plus or minus 0.044% for milkfat or protein or plus or minus 0.084% for total solids or solids−not−fat. The mean difference is the sum of the performance errors for the individual calibration samples divided by the number of samples in the set.

c. The standard deviation of test results, calculated for the set of calibration samples according to the formula set forth in the "Official Methods of Analysis of AOAC International," 18th edition (2005), section 969.16, shall not exceed 0.044% for milkfat or protein, or 0.084% for total solids or solids−not−fat.

Note: The "Official Methods of Analysis of AOAC International," 18th edition (2005), is on file with the division and the legislative reference bureau, and may be obtained from AOAC International, 2275 Research Blvd., Rockville, MD 20850, website https://www.aoac.org .

3. 'Calibration samples'. A set of calibration samples shall be obtained from a sample provider approved by the division. A set of calibration samples shall consist of at least 12 individual samples, each of which complies with all of the following requirements:

a. Each sample shall be not more than 21 days old.

b. Each sample shall be a fresh milk sample preserved with bronopol (2−bromo−2−nitro−1, 3−propanediol) or another approved preservative. Preservative methods, formulations, and concentrations shall be approved by the division.

c. Each sample shall have a known percentage content of each relevant milk component determined by the sample provider under pars. (e) to (h).

(c) *Daily performance check.* 1. If an automated testing device is used to test for milkfat, protein, total solids, or solids−not−fat in milk, and if the test results may affect the price paid to a milk producer, the device shall be subjected to a daily performance check before each day's testing. The daily performance check shall be conducted, for each relevant milk component, by a tester who is licensed under s. 97.17 or 98.145, Stats., to operate the testing device.

2. To conduct a daily performance check under subd. 1., a tester shall test a set of daily performance check samples under subd. 4. Based on the daily performance check, the tester shall do all of the following:

a. Determine the performance error of the testing device with respect to each daily performance check sample. The performance error is the difference between the known percentage content of each milk component in that sample, as determined by the sample provider, and the percentage content measured by the testing device.

b. Based on the performance errors for the individual samples under subdivision paragraph a, calculate the mean difference for the set of daily performance check samples. The mean difference is the sum of the performance errors for the individual samples, divided by the number of samples in the set.

3. If, on a daily performance check under subd. 1., the mean difference calculated under sub. (2) (b) exceeds plus or minus 0.044% for milkfat or protein or plus or minus 0.084% for total solids or solids−not−fat the testing device shall not be used until it is recalibrated under par. (b).

4. A set of daily performance check samples shall be obtained from a sample provider approved by the division. A set shall consist of at least 5 individual samples, each of which complies with all of the following requirements:

a. Each sample shall be not more than 21 days old.

b. Each sample shall be a fresh milk sample preserved with bronopol (2−bromo−2−nitro−1, 3−propanediol) or another approved preservative. Preservative methods, formulations, and concentrations shall be approved by the department.

c. Each sample shall have a known percentage content of each relevant milk component, determined by the sample provider under pars. (e) to (h).

(d) *Reference checks.* 1. If an automated testing device is used to test for milkfat, protein, total solids, or solids−not−fat in milk, and if the test results may affect the price paid to a milk producer, that device shall be subjected to a daily reference check under subd. 2 and hourly reference checks under subd. 3.

2. A daily reference check required under subd. 1 shall be done in accordance with all of the following requirements:

a. A daily reference check shall be conducted before each day's testing, at the same time that the dairy plant operator conducts the daily performance check under par. (c). The daily reference check shall be conducted, for each relevant milk component by a tester who is licensed under s. 97.17 or 98.145, Stats., to operate the testing device.

b. To perform a daily reference check, a tester shall perform 10 tests on a reference sample. The reference sample may be a homogenized milk sample prepared by the dairy plant operator, or it may be a daily performance check sample obtained from a sample provider approved by the department under par. (c) 4. The 10 test results shall be averaged and the average result shall be used as a comparison value for the hourly reference checks under subd. 3.

3. An hourly reference check required under subd. 1 shall be done in accordance with all of the following requirements:

a. An hourly reference check shall be conducted for each milk component before each hour's testing for that component. To conduct an hourly reference check, a tester shall test the same reference sample used for the daily reference check under subd. 2.

b. For each relevant milk component the hourly reference check result shall be compared to the average result obtained on the daily reference check under subd. 2. If an hourly reference check result differs from the average result on the daily reference check by more than 0.034% for milkfat or protein or 0.064% for total solids or solids−not−fat, the testing device shall not be used until the condition causing the difference is found and corrected. Test results obtained before the device is corrected, and after the last previous conforming reference check, shall not be used in determining the amount paid to milk producers.

(e) *Calibration and daily performance check samples; milkfat contents.* 1. The provider of a calibration sample under par. (b) or a daily performance check sample under par. (c) shall determine the known percentage content of milkfat in that sample by averaging the results of 3 milkfat tests using a method specified under subd. 4. The percentage milkfat results from those 3 milkfat tests shall not vary by more than 0.034 percentage points.

2. The known milkfat content of a calibration sample, expressed as a percentage of the sample weight, shall be at least 2.5%. Within a set of calibration samples, the difference in known milkfat content between the lowest milkfat sample and the highest milkfat sample, expressed as a percentage of average sample weight, shall be at least 2.5%.

3. The known milkfat content of a daily performance check sample, expressed as a percentage of the sample weight, shall be at least 2.8%. Within a set of daily performance check samples, the difference in known milkfat content between the lowest milkfat sample and the highest milkfat sample, expressed as a percentage of average sample weight, shall be at least 1.5%.

4. To determine the milkfat content of a calibration sample or daily performance check sample, the sample provider shall use either a manual or robotic version of the Modified Mojonnier method as described in the "Official Methods of Analysis of AOAC International," 18th edition (2005), section 989.05.

Note: The "Official Methods of Analysis of AOAC International," 18th edition (2005), is on file with the division and the legislative reference bureau, and may be obtained from AOAC International, 2275 Research Blvd., Rockville, MD 20850, website https://www.aoac.org .

(f) *Calibration and daily performance check samples; protein contents.* 1. The provider of a calibration sample under par. (b) or a daily performance check sample under par. (c) shall determine the known percentage content of protein in that sample by averaging the results of 3 protein tests using the method specified under subd. 3. The percentage protein results from those 3 tests shall not vary by more than 0.034 percentage points.

2. The known protein content of a calibration or daily performance check sample, expressed as a percentage of sample weight, shall be at least 2.7%. Within a set of calibration samples, the difference in known protein content between the lowest protein sample and the highest protein sample, expressed as a percentage of average sample weight, shall be at least 0.7%. Within a set of daily performance check samples, the difference in known protein content between the lowest protein sample and the highest protein sample, expressed as a percentage of average sample weight, shall be at least 0.5%.

3. To determine the protein content of a calibration sample or daily performance check sample, the sample provider shall use the traditional or block digester/steam distillation Kjeldahl method as described in the "Official Methods of Analysis of AOAC International," 18th edition (2005), section 991.20.

Note: The "Official Methods of Analysis of AOAC International," 18th edition (2005), is on file with the division and the legislative reference bureau, and may be obtained from AOAC International, 2275 Research Blvd., Rockville, MD 20850, website https://www.aoac.org .

(g) *Calibration and daily performance check samples; total solids.* 1. The provider of a calibration sample under par. (b) or

a daily performance check sample under par. (c) shall determine the known percentage content of total solids in that sample by averaging the results of 3 total solids tests using the method specified under subd. 3. The percentage total solids results from those 3 tests shall not vary by more than 0.054 percentage points.

2. The known total solids content of a calibration or daily performance check sample, expressed as a percentage of sample weight, shall be at least 11%. Within a set of calibration samples, the difference in known total solids content between the lowest total solids sample and the highest total solids sample, expressed as a percentage of average sample weight, shall be at least 2.00%. Within a set of daily performance check samples, the difference in known total solids content between the lowest total solids sample and the highest total solids sample, expressed as a percentage of average sample weight, shall be at least 1.5%.

3. To determine the total solids content of a calibration sample or daily performance check sample, the sample provider shall use the direct forced air oven drying method as described in the "Official Methods of Analysis of AOAC International," 18th edition (2005), section 990.20.

Note: The "Official Methods of Analysis of AOAC International," 18th edition (2005), is on file with the division and the legislative reference bureau, and may be obtained from AOAC International, 2275 Research Blvd., Rockville, MD 20850, website https://www.aoac.org .

(h) *Calibration and daily performance check samples; solids−not−fat.* The provider of a calibration sample under par. b or a daily performance check sample under par. (c) shall calculate the known percentage content of solids−not−fat in that sample by subtracting the percent milkfat as determined under par. (e) from the total solids for that sample as determined under par. (g). The calculation method shall be that described in the "Official Methods of Analysis of AOAC International," 18th edition (2005), section 990.21.

Note: The "Official Methods of Analysis of AOAC International," 18th edition (2005), is on file with the division and the legislative reference bureau, and may be obtained from AOAC International, 2275 Research Blvd., Rockville, MD 20850, website http://www.aoac.org .

(i) *Automated testing devices; constant voltage.* A constant voltage regulator shall be connected to, or form a part of, every milk component testing device that is in line with a single phase 115 or 220−volt power supply.

(j) *Records related to calibrations, daily performance checks, and reference checks.* 1. A dairy plant operator shall keep a record of every calibration, performance check, or reference check conducted on a milk component testing device under this section.

2. Every record required under subd. 1 shall be signed by the licensed tester who made the record. Calibration records shall be kept separate from performance check and reference check records.

(k) *Accuracy of devices; division audit.* The division may audit the accuracy of milk component testing devices using test samples prepared by the division under pars. (e) to (h).

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16; correction in (3) (c) 3. made under s. 35.17, Stats., Register August 2016 No. 728.

Subchapter VI — Inspection and Enforcement

ATCP 65.910 Inspection of dairy farms; general. (1) INSPECTION BY DAIRY PLANT OPERATOR. Before a dairy plant operator, including a milk contractor that submits a milk producer license application on behalf of a milk producer and thereby certifies that the milk producer's dairy farm and milking operations comply with applicable requirements under this chapter, submits a milk producer license application or a grade A permit application under s. ATCP 65.02 on behalf of a milk producer, the dairy plant operator shall inspect the dairy farm for compliance with the dairy farm standards under subch. II. The dairy plant operator, when submitting the producer's license or permit application, shall include a copy of the dairy plant operator's inspection report and shall certify that the dairy farm facilities comply with dairy farm standards under subch. II. The department may, at other times, require a dairy plant operator to inspect a dairy farm as necessary.

(2) INSPECTION BY THE DIVISION. The division shall inspect dairy farms for compliance with dairy farm standards under subch. II. The division shall inspect a grade A dairy farm at the frequency given in s. ATCP 65.912 and a grade B dairy farm at least once every year. For the purpose of conducting a lawful inspection under this chapter, the department may exercise its authority under ss. 93.08, 93.15 (2), and 97.12 (1), Stats.

(3) VARIANCES. The division administrator, or the division administrator's designee, may issue a written waiver granting a variance from a dairy farm standard under subch. II if the division determines that the variance is reasonable and necessary under the circumstances, it will not compromise the purpose served by the standard, and the milk producer does not hold a grade A farm permit.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16.

ATCP 65.912 Performance−based grade A dairy farm inspections. (1) GENERAL. The division shall use the performance standards in this section to determine grade A dairy farm inspection frequency. The division shall evaluate each grade A dairy farm every 3 months, on the basis of information including inspection reports, milk quality tests, and department compliance actions taken during the preceding 12 months. As provided in subs. (2) to (5), the division shall place each dairy farm in one of the following categories:

(a) Twelve−month inspection interval.

(b) Six−month inspection interval.

(c) Four−month inspection interval.

(d) Three−month inspection interval.

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

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

(b) None of the milk producer's reported somatic cell count (SCC) results exceed 500,000 per ml.

(c) None of the milk shipped by the milk producer has been found to contain a drug residue, and the department has not issued any warning to the milk producer under s. ATCP 65.920 (5) (c) or 65.922 (1).

(d) No dairy farm inspection report shows more than 5 violations, a violation observed during consecutive inspections, a violation that creates a substantial risk of adulteration, or a violation that creates an imminent health hazard.

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

(f) The producer's latest water supply test does not show any violation of s. ATCP 65.10.

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

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

(a) The dairy farm fails to qualify under sub. (2).

(b) The department has issued no more than one warning to the milk producer under s. ATCP 65.920 (5) (a) 1. to 3.

(c) None of the milk shipped by the milk producer has been found to contain a drug residue, and the department has not issued any warning to the milk producer under ss. ATCP 65.920 (5) (c) or 65.922 (1).

(d) No dairy farm inspection report shows more than 5 violations, a violation observed during consecutive inspections, a violation that creates a substantial risk of adulteration, or a violation that creates an imminent health hazard.

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

(f) The producer's latest water supply test does not show any violation of s. ATCP 65.10.

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

(4) FOUR–MONTH INSPECTION INTERVAL. (a) The division shall inspect a grade A dairy farm in the four−month inspection interval category at least once every 4 months. The division shall place a dairy farm in this category if subs. (2), (3), and (5) do not apply and if any of the following apply based on dairy farm inspection reports, milk quality tests, and department compliance actions, during the preceding 12 months:

1. At least one load of milk shipped by the milk producer has been found to contain a drug residue.

2. At least one violation for improper milk cooling under s. ATCP 65.18 (4), drug use and storage under ss. ATCP 65.20 (5) and 65.22 (8), or cleaning and sanitization of utensils and equipment under s. ATCP 65.12 was noted during the most recent inspection.

(b) Once the division places a dairy farm in the four−month inspection interval category, the division may not reassign the dairy farm to any inspection category under sub. (2) or (3) until a date that is at least 12 months after the division's next 3−month evaluation of the dairy farm under this section.

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

1. The department issued more than one warning to the milk producer under s. ATCP 65.920 (5).

2. The department issued more than one warning to the milk producer under s. ATCP 65.922 (1).

3. The division conducted more than one reinspection of the dairy farm.

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

(b) Once the division places a dairy farm in the 3−month inspection interval category under par. (a), the division may not reassign the dairy farm to any inspection category under subs. (2) to (4) until a date that is at least 12 months after the division's next 3−month evaluation of the dairy farm under this section.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16; correction in (2) (c), (3) (b), (c) made under s. 35.17, Stats., Register August 2016 No. 728.

ATCP 65.920 Suspension or revocation of grade A producer permit or milk producer license. (1) GENERAL. The department may suspend or revoke a milk producer's license, as provided in s. 93.06 (7), Stats. The suspension or revocation of a milk producer's license also suspends or revokes a grade A producer permit held by the milk producer. A dairy plant shall not receive milk from a milk producer whose milk producer's license is suspended or revoked.

(2) ORDER FOR SUSPENSION OR REVOCATION. Except when a summary suspension is ordered as provided under sub. (3), the department may not suspend or revoke a milk producer's license except by order of the secretary or the secretary's designee, as provided in ch. ATCP 1, after notice and opportunity for hearing under subch. III of ch. 227, Stats. The division may file a written complaint with the department, seeking the suspension or revocation of a milk producer's license. Pending completion of the suspension or revocation, the secretary or secretary's designee may issue interim orders as necessary to protect the public health, safety, and welfare.

(3) SUMMARY SUSPENSION BY THE DIVISION. The division may issue a written notice summarily suspending a milk producer's license if the division makes a written finding in its suspension notice that the milk producer has refused to permit inspection or sampling authorized by law, or that one or more conditions in pars. (a) to (e) are present, or one or more conditions indicate the sale or shipment of milk from the milk producer's dairy farm poses an imminent hazard to public health and there is a reasonable likelihood that the hazard will continue if the milk producer's license is not summarily suspended. A summary suspension notice shall comply with s. ATCP 65.925 and becomes effective when served on the milk producer. A milk producer served a summary suspension may request a hearing on the summary suspension notice, as provided in s. ATCP 65.928.

(a) An inspection of the milk producer's dairy farm reveals gross violations of dairy farm standards under subchapter II, or reveals violations that constitute an acute hazard to public health.

(b) A confirmed standard plate count or plate loop count on the milk producer's milk exceeds 1,000,000 per ml.

(c) Milk from the milk producer's dairy farm is reasonably believed to contain pesticides or toxic substances that may be harmful to humans.

(d) An infectious disease, transmissible to humans through milk, is diagnosed by a licensed veterinarian in the milk producer's herd.

(e) The producer has not made an agreement with the division for the disposition of violations, as required in any warning notice issued under s. ATCP 65.922 (4) or (5).

(4) INSPECTION BEFORE REINSTATEMENT; REINSPECTION FEE. If an inspection is required for reinstatement of a grade A producer permit or milk producer license that is suspended or revoked under this section, the department shall charge a reinspection fee under s. ATCP 65.02 (19) for the inspection.

(5) WARNING NOTICE PRECEDING A SUSPENSION OF A GRADE A MILK PRODUCER PERMIT. (a) The division shall mail, serve in person, or prominently post in the milkhouse a written warning to a milk producer holding a Grade A milk producer permit whenever any of the following occurs:

1. Two of the last 4 bacterial counts reported to the division under s. ATCP 65.70 (2) (d) exceed 100,000 per ml., in violation of the standard for grade A milk under s. ATCP 65.70 (2).

2. Two of the last 4 somatic cell counts reported to the division under s. ATCP 65.70 (4) (e) exceed 750,000 per ml., for cow or sheep milk, or 1,000,000 per ml. for goat milk, in violation of the standard under s. ATCP 65.70 (4).

3. Two of the last 4 milk temperature readings violate standards for grade A milk under s. ATCP 65.70 (5).

4. A division representative finds a key violation as defined in s. ATCP 65.01 (33) during an inspection, including one or more repeat violations during 2 consecutive inspections, on a grade A dairy farm.

(b) A warning notice, under par. (a) 1. to 3., shall state that the milk producer's grade A producer permit will be suspended if milk quality testing indicates a subsequent violation of the standard under s. ATCP 65.70 to which the warning notice pertains. A copy of the notice shall be mailed to the dairy plant operator who receives the milk producer's milk. A warning notice becomes effective 3 business days after it is mailed, and remains

in effect as long as the standard cited in the warning notice is violated on 2 of the last 4 reported tests.

(c) A warning notice, under par. (a) 4., shall state that the department will suspend the milk producer's grade A producer permit if the producer does not correct the violation by a deadline date specified in the notice. The division representative shall specify a correction deadline based on the seriousness of the key violation and the time reasonably required to correct the key violation. The correction deadline shall be not less than 3 days nor more than 65 days after the division representative issues the warning notice. The division representative shall mail or deliver a copy of the warning notice to the dairy plant operator or milk contractor who procures milk from the milk producer. The warning notice shall include a notice of the milk producer's right to hearing under s. ATCP 65.928.

(d) Not less than 3 calendar days nor more than 21 calendar days after a warning notice under par. (a) 1. to 3. becomes effective, the dairy plant operator, who receives the milk from the warned milk producer, shall obtain and test a sample of the milk producer's milk for compliance with the milk quality standard cited under par. (a) 1. to 3. A milk sample collected under s. ATCP 65.38 and tested by a dairy plant operator under subchapter V satisfies this requirement, provided that the sample is obtained and tested within the time period specified under this paragraph, and the dairy plant operator reports the test result to the division within the applicable reporting time specified under subch. V.

(6) SUSPENSION OF A GRADE A MILK PRODUCER PERMIT. (a) The division shall mail a written notice to a milk producer suspending the milk producer's grade A producer permit, if any of the following occurs while a warning notice under s. ATCP 65.920 (5) remains in effect:

1. Three of the last 5 bacterial counts reported to the division under ss. ATCP 65.70 (2) (d) and 65.920 (5) (c) exceed 100,000 per ml.

2. Three of the last 5 somatic cell counts reported to the division under ss. ATCP 65.70 (4) (e) and 65.920 (5) (c) exceed 750,000 per ml.

3. Three of the last 5 milk temperature readings violate standards for grade A milk under s. ATCP 65.70 (5).

4. If within 7 days after the correction deadline under sub. (5) (a) 4. the division representative finds that the milk producer has not corrected a key violation cited in the warning notice issued under sub. (5) (a) 4.

(b) The suspension of a milk producer's grade A producer permit becomes effective when the suspension notice is served under s. ATCP 65.925 (6). The department shall give prior oral or written notice of the suspension, and mail or deliver a copy of the suspension notice, to the dairy plant operator who receives the milk producer's milk. The suspension notice shall comply with s. ATCP 65.925. If a suspension notice is served under par. (a) 4., the division representative shall, within 24 hours, notify the dairy plant operator who receives the milk producer's milk, and place a tag indicating that the milk is now to be handled as grade B milk on the outlet valve of the bulk tank or the outlet valve of a bulk milk tanker into which milk is directly transferred by a milking system under s. ATCP 65.16 (5), in order to notify the bulk milk weigher and sampler of the suspension. A person adversely affected by the suspension notice may request a hearing on the notice as provided under s. ATCP 65.928.

(7) REINSTATEMENT OF GRADE A MILK PRODUCER PERMIT. (a) A milk producer may ask the department to reinstate a grade A producer permit suspended under s. ATCP 65.920 (6). The milk producer shall make the request in writing, on a form provided by the department under s. ATCP 65.925 (4). If the suspension occurred because of a violation of sub. (6) (a) 1. to 3., the request shall include the result of a milk quality test performed by the dairy plant operator who receives the milk producer's milk on a milk sample collected after the effective date of the suspension, showing that the milk producer is no longer violating the relevant milk quality standard.

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

1. If the milk producer seeks reinstatement of a grade A producer permit suspended under sub. (6) (a) 1. to 3., the department shall reinstate the grade A producer permit. The department shall notify the milk producer and the dairy plant operator who receives the milk producer's milk of the reinstatement within 24 hours.

2. If the milk producer seeks reinstatement of a grade A producer permit suspended under sub. (6) (a) 4., the department shall inspect the dairy farm and charge a reinspection fee under s. ATCP 65.02 (19). A division representative shall reinstate the grade A producer permit if the division representative finds that the milk producer has corrected all the conditions potentially responsible for the violations cited in the suspension notice. The division representative shall notify the dairy plant operator who receives the milk producer's milk of the reinstatement within 24 hours.

(c) If a milk producer does not request reinstatement, under par. (a), within 6 months after the producer's grade A producer permit is suspended under this section, the permit is automatically revoked at the end of the 6−month period. Once revoked, the grade A producer permit may not be reinstated except upon the filing of a new application under s. ATCP 65.02 (10). Written notice of the reinstatement process shall be provided to the milk producer at the time of suspension. This paragraph does not apply if the suspension of the milk producer's grade A producer permit has been contested, and the contested case proceedings are still pending. The time limit for the reinstatement request is measured from the conclusion of the contested case proceedings concerning the suspension of the milk producer's grade A producer permit.

Note: Subsection (7) does not prohibit the division from summarily suspending a milk producer's license and grade A producer permit under s. ATCP 65.920 without prior warning if the division determines that any of the circumstances identified under s. ATCP 65.920 (3) exist.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16; correction in (5) (b), (c), (6) (a) 4. made under s. 35.17, Stats., Register August 2016 No. 728.

ATCP 65.922 Enforcement actions taken in response to drug residue violations. (1) WARNING NOTICE. Whenever the division receives notice under s. ATCP 65.72 (9) that a milk producer milk sample has yielded a confirmed positive test result for drug residue, the division shall mail a warning notice to that milk producer. The warning notice takes effect 3 business days after it is mailed. The warning notice shall include all of the following:

(a) A description of the positive drug residue findings that caused the division to issue the notice.

(b) The deadlines and penalties specified in subs. (2), (4), or (5).

(c) Notice of the milk producer's right to hearing under sub. (6).

(d) Notice that a division representative will conduct an investigation under sub. (3).

(2) DEADLINES AND PENALTIES AFTER A FIRST VIOLATION IN 12 MONTHS. (a) *Grade A producer permit suspension; 21−day deadline.* The warning notice under par. (a) shall state that, no less than 21 days after the effective date of the warning notice, the department will suspend the milk producer's grade A producer permit unless, prior to that date, the milk producer certifies to the division that the milk producer has implemented a drug residue prevention program on the milk producer's dairy farm in consultation with a licensed veterinarian.

(b) *Notice suspending grade A producer permit.* If the division does not receive a milk producer certification within the 21−day period specified under sub. (2) (a), the department shall mail a notice to the milk producer suspending the milk producer's grade A producer permit. The suspension notice shall comply with s. ATCP 65.925. The suspension notice takes effect when the sus-

pension notice is served under s. ATCP 65.925 (6). The division shall notify the dairy plant operator or milk contractor who procures milk from the milk producer of the suspension, and shall provide that dairy plant operator or milk contractor with a copy of the suspension notice.

(c) *Grade A producer permit reinstatement.* If the department suspends a milk producer's grade A producer permit, under par. (a), the milk producer may request the department to reinstate the permit. Written notice of the reinstatement process shall be included in the suspension notice under par. (a), and shall also be provided to the milk producer at the time of suspension.

1. The milk producer shall file the reinstatement request in writing, on a form provided by the department, under s. ATCP 65.925 (4). The request shall include a certification or attestation that the milk producer has implemented a drug residue prevention program on the milk producer's dairy farm in consultation with a licensed veterinarian.

2. Within 7 business days after the department receives a complete reinstatement request under subd. 1., the division shall inspect the milk producer's dairy farm. The department shall charge a reinspection fee for the inspection, pursuant to s. ATCP 65.02 (19). If, upon inspection, it appears that all conditions potentially responsible for the positive drug residue finding have been corrected and the milk producer has implemented a qualified drug residue prevention program in consultation with a licensed veterinarian, the division representative shall reinstate the milk producer's grade A producer permit and shall notify the dairy plant operator or milk contractor of the reinstatement within 24 hours.

3. If a milk producer does not request reinstatement under subd. 1., within 6 months after the milk producer's grade A producer permit is suspended under par. (a), the permit is revoked automatically at the end of the 6−month period. A permit, once revoked, may not be reinstated unless the milk producer files a new application under s. ATCP 65.02 (11). This subdivision does not apply if the milk producer contests the grade A producer permit suspension and the contested case proceeding is pending. The time limit for the reinstatement request is measured from the conclusion of the contested case proceedings concerning the suspension of the milk producer's grade A producer permit.

(d) *Milk producer license suspension; 45−day deadline.* The warning notice under par. (a) shall state that, no less than 45 days after the effective date of the warning notice, the department will initiate action to suspend the milk producer's license unless, prior to that date, the milk producer certifies to the division that the milk producer has implemented a drug residue prevention program on the milk producer's dairy farm in consultation with a licensed veterinarian.

(e) *Milk producer license suspension; failure to implement drug residue prevention program.* If the division does not receive a milk producer certification within the 45−day period specified under par. (d), the division shall file a complaint asking the department to suspend the milk producer's license until the milk producer implements a drug residue prevention program.

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

(3) INVESTIGATION. After the division issues a warning notice under sub. (1), the division representative shall conduct an investigation to determine the cause of the drug residue violation and to identify milk producer actions that may be necessary to prevent future violations. The division may direct the dairy plant operator or milk contractor who procures milk from the milk producer to conduct the investigation as the division's agent and report its findings to the division, in writing.

(4) DEADLINE AND PENALTIES AFTER A SECOND VIOLATION WITHIN 12 MONTHS. If, at least 24 hours and not more than 12 months after a confirmed positive drug test result is reported to the division, the division receives a notice under s. ATCP 65.72 (9) of another confirmed positive drug residue test result on a milk sample from a shipment received from the dairy farm operating under the same milk producer license, a warning notice under sub. (1) (a) shall be mailed to the milk producer. The warning notice takes effect 3 business days after it is mailed and shall include the information under sub. (1) (a), (c), and (d). The warning notice shall state that the department shall suspend the milk producer license under s. ATCP 65.920 for at least 5 days unless the milk producer agrees within 15 days of the warning notice taking effect to do all of the following:

(a) Discard one shipment of milk, as defined by the department, pursuant to s. ATCP 65.72 (7), or pay a civil forfeiture for the maximum amount, under s. 97.72 (2), Stats., for one violation of this subsection.

(b) Attend and present a certificate of completion for a drug residue prevention course approved by the department within 180 days of the warning notice taking effect. The certificate of course completion shall be signed by the milk producer, a licensed veterinarian, and the field representative of the dairy plant to which the milk producer's milk is shipped.

(5) DEADLINE AND PENALTIES AFTER A THIRD VIOLATION WITHIN 12 MONTHS. If, at least 24 hours after a second confirmed positive drug residue test result is reported to the division under sub. (4), and not more than 12 months after a first confirmed positive drug residue test result is reported to the division under sub. (4), the division receives a notice under s. ATCP 65.72 (9) of another confirmed positive drug residue test result on a milk sample received from the dairy farm operating under the same milk producer license, a warning notice under sub. (1) (a) shall be mailed to the milk producer. The warning notice takes effect 3 business days after it is mailed and shall include the information under sub. (1) (a), (c), and (d). The warning notice shall state that the department shall suspend the milk producer's grade A producer permit, under s. ATCP 65.920, for at least 10 days unless the milk producer agrees within 15 days of the warning notice taking effect to do all of the following:

(a) Discard two shipments of milk, as defined by the department, pursuant to s. ATCP 65.72 (7), or pay a civil forfeiture for the maximum amount, under s. 97.72 (2), Stats., for two violations of this subsection.

(b) Develop and implement a drug residue prevention program approved by the department and present documentation indicating that this program has been implemented for at least 90 days after the warning notice taking effect.

Note: The drug residue prevention course shall cover proper administration of animal medications, be approved by the department, and require collaboration between the milk producer and a licensed veterinarian.

(6) RIGHT TO INFORMAL HEARING. If a milk producer receiving a warning notice under this section disputes the drug residue findings on which the notice is based, the milk producer may request an informal hearing to discuss the drug residue findings. A request for hearing does not automatically stay the warning notice. If the milk producer requests an informal hearing, the division shall hold an informal hearing at the division's office or by telephone. The division shall hold the informal hearing within 20 days after the division receives the request for hearing, unless the milk producer agrees to a later hearing date. The division may withdraw a warning notice if it appears that the notice was not justified.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16; correction in (5) made under s. 35.17, Stats., Register August 2016 No. 728.

ATCP 65.925 Suspension notice; requirements. Whenever the division suspends a milk producer license under s.

ATCP 65.920 (3), or a grade A producer permit, under s. ATCP 65.920 (6) or 65.922 (2) or, the suspension notice shall comply with all of the following requirements:

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

(a) The division administrator.

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

(c) A division representative if the suspension notice is issued under s. ATCP 65.920 (6) (a) 4.

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

(3) TERM OF SUSPENSION; REINSTATEMENT REQUIREMENT. A suspension notice shall indicate the term of the suspension or, if the suspension is for an indefinite term, the conditions that the milk producer must meet in order to obtain reinstatement of the milk producer license or grade A producer permit. Conditions for reinstatement shall be reasonably related to the reasons for which the license or permit is suspended. A summary license suspension notice under s. ATCP 65.920 (2) may authorize a dairy plant operator to receive milk from the suspended milk producer directly or via a milk contractor, on a conditional basis, pending full reinstatement of the milk producer's license, provided that the dairy plant operator or milk contractor performs inspections or tests specified in the suspension order.

(4) REINSTATEMENT APPLICATION FORM. A notice suspending a grade A producer permit, under s. ATCP 65.920 (6) (a), shall be accompanied by a reinstatement application form which may be used by the affected milk producer to apply for reinstatement of the milk producer's grade A producer permit. The form shall include a statement, to be signed by the affected milk producer, that all requirements for the reinstatement of the grade A producer permit have been met to the best of the milk producer's knowledge. If a milk producer requests a hearing on a suspension under s. ATCP 65.928, a request for reinstatement under this subsection does not constitute an admission or waiver by the milk producer with respect to any fact, issue or cause of action.

(5) NOTICE OF RIGHT TO HEARING. A suspension notice shall include a notice that the milk producer may request a hearing on the suspension, as provided under s. ATCP 65.928.

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

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

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

(c) For a notice suspending a grade A producer permit, under s. ATCP 65.920 (6), by posting the suspension notice in a prominent location in the milk producer's milkhouse. A notice posted in the milkhouse under this paragraph is considered served at the time of posting.

(7) COPY PROVIDED TO DAIRY PLANT OPERATOR. A copy of every suspension notice shall be mailed or delivered to the dairy plant operator or milk contractor who normally procures milk from the milk producer at least three days before the start of the suspension. Failure to mail or deliver a copy to the dairy plant operator or milk contractor does not invalidate a suspension notice.

History: CR 14–073: cr. Register August 2016 No. 728, eff. 9–1–16; correction in (intro.) made under s. 35.17, Stats., Register August 2016 No. 728.

ATCP 65.926 Dairy plant license and grade A permit suspension or revocation. (1) The department may suspend or revoke a dairy plant license or grade A dairy plant permit, as provided in s. 93.06 (7), Stats., except as provided under sub. (2), the department may not suspend or revoke a dairy plant license or grade A dairy plant permit except by order of the secretary or the secretary's designee, as provided in ch. ATCP 1, after notice and opportunity for hearing under subch. III of ch. 227, Stats. The division may file a written complaint with the department seeking the suspension or revocation of a dairy plant license or grade A dairy plant permit. Pending completion of the proceedings, the secretary or the secretary's designee may issue interim orders as necessary to protect the public health, safety and welfare. If an inspection is required for the reinstatement of a dairy plant license or grade A dairy plant permit that is suspended or revoked under this section, the department shall charge a reinspection fee, under s. ATCP 65.02 (19), for the inspection.

(2) The department may suspend or revoke a dairy plant license or grade A dairy plant permit, as provided under s. 93.06 (7), Stats., for cause including any of the following:

(a) A violation of this chapter or ch. ATCP 100.

(b) Interference with lawful inspection or sampling by the department or a certifying agency under s. ATCP 65.930, or refusal to permit lawful inspection or sampling by the department or a certifying agency under s. ATCP 65.930.

(c) Refusal to permit the lawful inspection or copying of documents under s. ATCP 65.44 (2).

(d) Failure to pay fees required under s. ATCP 65.04.

Note: The procedure for suspending or revoking a dairy plant license or grade A permit is specified in ch. ATCP 1.

(3) The suspension or revocation of a dairy plant license automatically suspends or revokes any grade A permit that the dairy plant operator holds for that dairy plant.

Note: Violations of this chapter may also result in court prosecution under s. 97.72 or 97.73, Stats.

History: CR 14–073: cr. Register August 2016 No. 728, eff. 9–1–16; correction in (2) (c) made under s. 35.17, Stats., Register August 2016 No. 728.

ATCP 65.927 Holding orders; identification and disposal of adulterated milk. (1) HOLDING ORDER. Whenever a division representative has reasonable cause to believe that milk or a milk product examined by the division representative is adulterated or misbranded and is dangerous to health or misleading to the injury or damage of a purchaser or consumer, the division representative may issue a temporary holding order to allow for further testing or examination of the milk or milk product, pursuant to s. 97.12 (2), Stats. A holding order shall be written and shall identify the milk or milk product that is subject to the holding order. The division may extend or terminate a holding order by written notice, as provided in s. 97.12 (2), Stats. A notice extending a holding order shall be signed by the division administrator, or a person authorized in writing by the division administrator. A holding order and every notice extending a holding order shall include a notice of the recipient's right to hearing under s. ATCP 65.928.

(2) DISPOSAL ORDER. If analysis or examination shows that milk or a milk product is adulterated or misbranded and is dangerous to health or misleading to the injury or damage of a purchaser or consumer, the division may issue a summary disposal order under s. 97.12 (2) (c), Stats., requiring the disposal or other disposition of the milk or milk product. A disposal order may be issued by the division representative who examines the milk, or by the division administrator, or by a person whom the administrator designates in writing. Where appropriate, an order may require relabeling of misbranded milk in lieu of disposal. A holding order under sub. (1) is not a prerequisite to a disposal order under this subsection. A disposal order shall be issued in writing, and shall include a notice of the recipient's right to hearing under s. ATCP 65.928.

(3) IDENTIFICATION OF ADULTERATED MILK. If milk is found to be adulterated and hazardous to health, a division representative

may identify the milk for disposal or disposition in compliance with a notice under sub. (2). To identify the adulterated milk, the division representative may tag the milk container and may add a harmless food grade color to the milk to prevent its sale or use for human food purposes.

History: CR 14–073: cr. Register August 2016 No. 728, eff. 9–1–16.

ATCP 65.928 Right of hearing. (1) HEARING REQUEST. A person adversely affected by any of the following division actions may ask the department to hold a hearing on that action:

(a) The denial of a milk producer license application or grade A producer permit application under s. ATCP 65.02.

(b) The summary suspension of a milk producer license, under s. ATCP 65.920 (3).

(c) The issuance of a warning notice, under s. ATCP 65.920 (5) (a).

(d) The suspension of a grade A producer permit, under s. ATCP 65.920 (6) (a).

(e) The denial of a reinstatement application, under s. ATCP 65.920 (5) (d) or (7).

(f) A holding order, disposal order, or other summary action, under s. ATCP 65.927.

(g) The suspension or revocation of a dairy plant license or grade A permit, under s. ATCP 65.926.

(2) FORM AND TIMING OF REQUEST; EFFECT PENDING HEARINGS. A person requesting an informal hearing, under sub. (3), shall make that request, in writing, within 10 days after the person receives notice of the division action. A request for hearing does not stay the effect of any action under this chapter. The filing deadline under this subsection is waived if the department fails to give the milk producer timely written notice of the filing deadline.

(3) INFORMAL HEARING. (a) Whenever the department receives a hearing request under sub. (2), the department shall conduct an informal hearing on the contested action. The hearing shall be conducted by a presiding officer who is a department employee or official who was not personally involved in the investigation or decision to take the contested action, and who has authority to withdraw or correct the action as necessary. The division shall conduct the informal hearing unless the contested action was taken by the division administrator. The division shall hold the informal hearing within 20 days after it receives the hearing request under sub. (2), unless the person requesting the hearing agrees to a later date. The division may hold the informal hearing by telephone or at the division's office.

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

(4) FULL EVIDENTIARY HEARING. If a person adversely affected by a division action either files a timely written request for hearing under sub. (2), and the matter is not resolved by an informal hearing under sub. (3), or does not want an informal hearing, the person may request a full evidentiary hearing before the department, pursuant to subch. III of ch. 227, Stats., and ch. ATCP 1. The person shall make the hearing request as specified in s. ATCP 1.06. A full evidentiary hearing, if any, shall be held before an administrative law judge appointed by the secretary. A request for a full evidentiary hearing does not stay any action under this chapter.

History: CR 14–073: cr. Register August 2016 No. 728, eff. 9–1–16.

ATCP 65.930 Grade A dairy plants; compliance monitoring and inspection. (1) AUDIT SURVEYS BY CERTIFYING AGENCY. (a) *Requirement.* The division shall perform audit surveys of grade A dairy plants, and the dairy farms shipping milk to those dairy plants, to establish a grade A sanitation compliance rating under this chapter. The division shall survey a grade A dairy plant, and the farms shipping milk to that dairy plant, at all of the following times:

1. Within 20 business days after the department first issues a grade A dairy plant permit to the dairy plant under s. ATCP 65.04.

2. At least once every 2 years after the initial survey under subd. 1.

(b) *Survey method.* A survey, under par. (a), shall include an inspection of the grade A dairy plant, an inspection of a randomly selected statistically representative sample of dairy farms in a BTU shipping grade A milk to that dairy plant, and an evaluation of the division's enforcement methods. A survey shall be conducted in compliance with "Methods of Making Sanitation Ratings of Milk Supplies," 2013 revision, published by the Food and Drug Administration, Public Health Service, United States Department of Health and Human Services.

Note: The "Methods of Making Sanitation Ratings of Milk Supplies" is on file with the division and the legislative reference bureau. Copies may be purchased from the Milk Safety Team, HFS–626, Food and Drug Administration, Public Health Service, United States Department of Health and Human Services, 5100 Paint Branch Parkway, College Park, MD 20740–3835. Also available online at http://www.fda.gov/food/guidanceregulation/federalstatefoodprograms/ucm2007965.htm.

(c) *Survey rating.* Based on a survey under par. (a), the division shall assign an overall grade A sanitation compliance rating to the dairy plant and the dairy farms in the BTU that ship milk to that dairy plant.

(d) *Unsatisfactory survey rating; grade A permit suspension.* The department may suspend or revoke a dairy plant's grade A permit if the sanitation compliance rating for that dairy plant under par. (c) falls below 80%. This subsection does not prohibit the department from suspending or revoking a grade A dairy plant permit for any other reason.

Note: Procedures, related to the suspension or revocation of a grade A dairy plant permit, are set forth in ch. ATCP 1. If a compliance rating falls below 80%, the department may also decertify the dairy plant as an interstate milk shipper. Decertification may prevent the dairy plant operator from shipping grade A dairy products in interstate commerce.

(2) INSPECTION FREQUENCY. (a) Except as provided in par. (b), the division shall inspect every grade A processing plant at least once every 3 months, every grade A receiving station at least once every 3 months, and every grade A transfer station at least once every 6 months.

(b) Paragraph (a) does not apply to a grade A processing plant, receiving station, or transfer station that the United States food and drug administration lists as being enrolled in the program described in PMO Appendix K.

Note: PMO Appendix K describes a voluntary "hazard analysis–critical control point (HACCP)" program for dairy plants. The HACCP program serves as a partial alternative to traditional inspection. If a dairy plant is currently enrolled in the HACCP program, as indicated by the Interstate Milk Shippers List published by the United States food and drug administration, the department is not required to inspect the dairy plant with the normal frequency required under sub. (2)(a). If an enrolled dairy plant fails to comply with HACCP program standards in PMO Appendix H, the food and drug administration may "de–list" the dairy plant from the HACCP program and the department must then inspect the dairy plant at the normal frequency required by sub. (2)(a). PMO Appendix K is on file with the division and the legislative reference bureau. Copies may be obtained from the department at cost or online at http://www.fda.gov/Food/GuidanceRegulation/GuidanceDocumentsRegulatoryInformation/Milk.

(3) DAIRY PRODUCT SAMPLING; FREQUENCY. (a) *Pasteurized milk and dairy products; sample testing.* Except as provided in par. (c), the division in every consecutive 6–month period shall collect from every grade A dairy plant at least 4 samples of each pasteurized grade A dairy product produced by that dairy plant. The division shall collect each sample in a separate month, except that the division may collect 2 of the samples in the same month if it collects those 2 samples at least 20 days apart and collects the other two samples in two other months. Dairy plants producing pasteurized grade A dairy products on an intermittent basis shall notify the division of intended production schedules to facilitate sample collection under this paragraph. The division shall mea-

sure and record the temperature of each pasteurized grade A dairy product from which the samples are collected and shall test the samples for bacteria counts, coliform counts, and beta lactam drug residues. The division may collect additional samples and perform additional tests that the division considers necessary.

(b) *Raw milk held at dairy plant; sample testing*. During every consecutive 6−month period, the division shall collect at least 4 samples of commingled raw milk from each grade A dairy plant that receives raw milk. The division shall collect each sample in a separate month, except that the division may collect 2 of the samples in the same month if it collects those 2 samples at least 20 days apart and collects the other two samples in two other months. The division shall measure and record the temperature of the raw commingled milk from which the division collects each sample and shall test each sample for bacterial counts and beta lactam drug residues. The division may collect additional samples and perform additional tests that the division considers necessary.

(c) Paragraph (a) does not apply to a grade A condensed or dry milk product that is not produced on a continuous monthly basis, provided that the division collects at least 5 samples within each continuous production period.

History: CR 14−073: cr. Register August 2016 No. 728, eff. 9−1−16.