



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: December 3, 2014
TO: Board of Agriculture, Trade and Consumer Protection
FROM: Ben Brancel, Secretary
Steve Ingham, Division of Food Safety Administrator

Ben Brancel

Steve Ingham

SUBJECT: ATCP 65-Milk and Milk Products; Hearing Draft Rule

PRESENTED BY: Steve Ingham

REQUESTED ACTION:

At the December 17, 2014 Board meeting, the department will ask the Board to authorize public hearings on a proposed rule to create ch. ATCP 65, Milk and Milk Products. The proposed rule consolidates ATCP 60, Dairy Farms, and ATCP 80, Dairy Plants and creates a new rule, ATCP 65, Milk and Milk Products. The rule modifies existing provisions of ATCP 60 and ATCP 80 and adopts additional provisions to ensure compliance with the most recent version of the federal Food and Drug Administration's (FDA's) Pasteurized Milk Ordinance (PMO). Although ATCP 60 and ATCP 80 are largely consistent with the PMO, Wisconsin's dairy farm and dairy plant rules must be revised periodically to maintain that consistency and to adapt to new innovations in the dairy industry.

SUMMARY:

Background

Wisconsin operates the nation's largest state dairy inspection program. As of October 1, 2014, Wisconsin had 10,157 licensed milk producers and ranked second nationally in milk production. Milk is shipped from each dairy farm to one of more than 400 licensed dairy plants in the state or to a licensed dairy plant in another state.

About 98% of the milk produced in Wisconsin is Grade "A." Grade "A" unpasteurized milk, along with pasteurized milk and certain other dairy products made from Grade "A" milk, can only be shipped across state and international boundaries if the production, transportation, processing, and regulatory oversight are in accordance with the PMO. Wisconsin does not adopt the PMO directly, but has its own regulations for the dairy industry. These regulations must be at least as stringent, and consistent with, the PMO. The FDA revises the PMO every two years and the version of the PMO to which Wisconsin regulations are compared for compliance must be within two prior editions. This rule revision, which reflects changes found in the 2013 revision of the PMO, is essential for maintaining compliance with the PMO and for allowing Wisconsin farmers and dairy plant operators to ship their Grade "A" milk and milk products in interstate commerce.

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Wisconsin's regulations also establish standards to ensure the quality of Grade "B" milk, which is milk used only to process non-Grade "A" milk products, such as butter, cheese, and ice cream. Wisconsin had 1,280 Grade "B" licensed milk producers, or 13% of its total, on October 1, 2014. Recommended standards for Grade "B" dairy farms are published by the United States Department of Agriculture (USDA). Wisconsin's regulations must be at least as stringent as the USDA standards to ensure access of Wisconsin Grade "B" milk products to international markets.

Wisconsin dairy farm and dairy plant regulations are currently found in chs. ATCP 60, "Dairy Farms" and ATCP 80, "Dairy Plants." The proposed rule repeals chs. ATCP 60 and 80 and consolidates and reorganizes these chapters into a new ch. ATCP 65, "Milk and Milk Products." Consolidation of these two rule chapters will eliminate numerous, and sometimes confusing, cross-references between the two chapters. In recent years, there has been increased interest in the operation of small dairy plants on the same site as the dairy farm supplying the milk. With the proposed rule consolidation, operators of these "farmstead" or "artisanal" dairy plants can now find most of the rules affecting their business in one chapter, rather than two. The rule revises certain existing provisions and creates new provisions, as necessary, to ensure: 1) Wisconsin's Grade "A" and Grade "B" dairy sectors comply with the PMO and USDA standards, respectively, when they meet Wisconsin regulatory requirements, and 2) state regulations do not unnecessarily hinder technological advancement by Wisconsin's internationally recognized dairy industry.

Rule Content

Provisions from ATCP 60, "Dairy Farms," and ATCP 80, "Dairy Plants," were renumbered, consolidated, and reorganized into one rule. Wording was changed throughout to provide greater clarity and modernize terms. For example, references to "milk haulers" now refer to "bulk milk weigher and samplers," using the actual name of the license held by people who collect, sample, and transport milk. References to "inspectors" now refer to "division representatives" to reflect the broader range of staff, *e.g.* sanitarians, food scientists, regulatory specialists, who may conduct inspections. Subchapter, section, and subsection chapter titles were also revised throughout to more clearly reflect the content of the rule. The following is a summary of other changes made to the rule. A complete list of changes may be found as part of the plain language analysis in the hearing draft.

ATCP 65.01 Definitions

ATCP 65.01, as renumbered, includes the following revisions:

- Added definitions for "abnormal milk," "aseptic processing and packaging system," "bulk tank unit," "grade A producer permit," and "sale."
- Repealed and replaced definitions for "C-I-P equipment," "C-I-P milking equipment," and "C-I-P milk pipelines" with a definition of "C-I-P" and numbered as 65.01 (8).

- Updated the definition for “dairy product” to be consistent with a *de facto* change in the definition of a dairy product created under 2011 Wisconsin Act 195, which revised s. 97.20 (2) (e) 5., Wis. Stats., to create an exemption from mandated dairy plant licensing.
- Replaced the term “food safety division” with “division.”
- Expanded the definition for “grade B milk” to clarify that that grade B milk is not processed into fluid milk for consumption; it is only used in the production of non-grade “A” dairy products.
- Broadened the definition for “equipment” to cover equipment used on dairy farms and in dairy plants.
- Repealed the definition from ATCP 60.01 (6) for “dairy plant” and replaced it with the definition from ATCP 80.01 (5) for “dairy plant.”
- Revised the definition of “milk” to be consistent with the PMO definition by including the phrase “practically free of colostrum, obtained by the complete milking of one or more healthy milking animals.”
- Expanded the definition “procure milk” to indicate that procured milk must be acquired directly from a licensed milk producer.
- Updated the definition of “safe temperature” to state that safe refrigerated temperatures for potentially hazardous foods are 41°F. (5° C.) or below and safe heated temperatures for potentially hazardous foods are 135° F. (57°C.) or higher. This definition is now consistent with the Wisconsin Food Code (appendix to ch. ATCP 75, Retail Food Establishments) and ch. ATCP 70, Food Processing Plants.
- Clarified that “sanitizers” shall be in compliance with 21 CFR part 178.1010 or otherwise approved by the division.
- Repealed the definitions “single-service utensil” and “single-service package” and replaced them with a definition for the term “single-service articles.”

ATCP 65.02, Milk producer license and permits; and fees.

ATCP 65.02 includes revised provisions to require a license for each milk producer, for each species of milk animal milked by a single milk producer, and each dairy farm operated by a milk producer at which milk is produced and offered for sale. Previously, not all of these parameters were mentioned. The rule was also revised to clarify that a representative of the dairy plant may submit an application on behalf of a milk producer and that the dairy plant representative shall certify that both the dairy farm and milking operations comply with applicable requirements under the law. The rule allows no more than one milk producer to have a Grade “A” permit at a single dairy farm unless all of the milk shipped from that dairy farm is assigned to one bulk tank unit and each milk producer is licensed. The rule also describes conditions under which more than one Grade “A” milk producer permit may be held on one dairy farm. Finally, the rule adds the due date of April 30 for paying the annual license fee.

ATCP 65.04, Dairy plant licenses and permits; fees.

The rule clarifies that no dairy plant license is required for a farm manufacturing dairy products solely for the owner/operator, members of the farm household, or nonpaying farm guests or employees. It exempts permitted restaurants from a dairy plant license if they prepare or process commercially pasteurized dairy products. However, licensed restaurants are not allowed to package Grade "A" dairy products without holding a dairy plant license. The rule exempts retail food establishments licensed under s. 97.30, Stats., from the requirement to hold a dairy plant license if they process non-Grade "A" dairy products made from commercially pasteurized dairy products solely for retail sale. The rule does not modify dairy plant fees.

ATCP 65.08, Milkhouse.

ATCP 65.08 (2) prohibits locating milkhouse access driveways and doors such that animal waste could be tracked into the milkhouse.

ATCP 65.10, Dairy farm water supply.

ATCP 65.10 (3) requires wells to comply with ch. NR 810, Requirements for the Operation and Maintenance of Public Water Systems, in addition to chs. NR 811, Requirements for the Operation and Design of Community Water Systems, and 812, Well Construction and Pump Installation. ATCP 65.10 (5) (a) requires that if a milk producer has more than one well, water from each well shall be tested at least once every two years. This change brings the provision into conformance with the PMO.

ATCP 65.14, Milking and milk handling systems.

ATCP 65.14 (5) recognizes the increasing adoption of modernized milking systems by incorporating PMO requirements for automatic milking installations, or robotic milking systems.

ATCP 65.22, Farm premises.

ATCP 65.22 (5) (c) prohibits mixing or storage of human waste or septage with animal manure. This provision was added to prevent recurrence of observed situations in which transmission of human fecal pathogens via dairy farm facilities was clearly possible.

ATCP 65.24, Construction and maintenance.

ATCP 65.24 (1) (b) states that a written variance from a construction standard may only be issued for dairy plants that do not hold a grade A permit, *i.e.* Grade "B" plants. The PMO does not allow construction variances for Grade "A" dairy plants. ATCP 65.24 (1) (c) also prohibits dairy plants from being directly connected to a milking barn, milking parlor or animal housing area. This latter provision is intended to minimize transmission of pathogenic microorganisms into the dairy plant.

ATCP 65.24 (4) (a) revises a current exemption of overhead doors and electronic sliding doors in delivery areas from the requirement to be kept closed when not in use. The revised requirement excludes Grade "A" dairy plants from the exemption, while continuing to allow receiving stations and Grade "B" dairy plants to keep overhead and electronic sliding doors open when not in use. This change will bring Wisconsin's regulations in compliance with the PMO.

ATCP 65.24 (8), Dairy plant water supply.

ATCP 65.24 (8) contains a modified requirement that water used in dairy products must comply with ch. NR 810, Requirements for the Operation and Maintenance of Public Systems, in addition to chs. NR 811, Requirements for the Operation and Design of Community Water Systems, and NR 812 Well Construction and Pump installation.

ATCP 65.24 (8) (b) requires that water from a privately owned water system supplying a dairy plant shall be tested to ensure it meets safe drinking requirements under ch. NR 809, Safe Drinking Water, after a repair or alteration. Finally, ATCP 65.24 (8) (h) was created to require Grade "A" dairy plants using water to flush pasteurized milk or milk products from their milk processing systems to use water that is of equivalent microbiological quality to pasteurized milk.

ATCP 65.28, Equipment and utensils.

ATCP 65.28 (7) (e) 5. is created to exempt dairy plants from having to clean certain reverse osmosis equipment after each day's use. ATCP 65.28 (7) (f) contains a modified requirement for a dairy plant operator to consult with FDA before seeking division approval of a proposal for an alternative cleaning and sanitizing schedule for continuously-operated equipment that comes in contact with Grade "A" products. This provision now conforms to the PMO.

ATCP 65.36, Receiving milk and dairy products.

ATCP 65.36 (3) indicates that a bulk milk tanker transporting Grade "A" milk may hold a Grade "A" permit issued by another state's regulatory agency. This change recognizes reciprocity requirements of the PMO and recent changes in ch. ATCP 82, Bulk Milk Collection, Sampling, and Transportation.

ATCP 65.40, Storing and handling milk and dairy products.

ATCP 65.40 (2) allows the division to authorize alternative temperature limits for storing non-Grade "A" milk and milk products.

ATCP 65.40 (2) (d) 7., exempts acid whey with at least a minimum specified percent titratable acidity or no more than a maximum specified pH from storage time and storage temperature requirements applicable to other dairy products. This change is in response to information presented by industry.

ATCP 65.42, Recall plan.

ATCP 65.42 requires dairy plants to have a written plan for identifying and recalling dairy products should a food recall become necessary, and describes the required contents of such a plan. This new requirement is consistent with the recall plan requirements in ch. ATCP 70, Food Processing Plants, and ch. ATCP 88, Eggs.

ATCP 65.54, Pasteurization required.

ATCP 65.54 (2) (j) exempts dairy products, shipped in bulk to a licensed food processing plant for use in manufacturing food products, from the requirement that the product be pasteurized at the dairy plant where the product was manufactured. This exemption only applies if the shipment is accompanied by a bill of lading identifying the product as unpasteurized and if the food processing plant receiving the dairy product uses a recognized treatment process to render the product safe.

ATCP 65.58, Pasteurization time and temperature.

ATCP 65.58 (1) requires that alternative methods of pasteurization of grade A products be recognized by the FDA.

ATCP 65.72, Drug residue testing.

ATCP 65.72 (6) (a) and (k) would allow the dairy plant, at the dairy plant's discretion, to waive recovery of the cost of the rejected bulk load if the load is a direct ship load and contains milk from only one producer, the milk has not been commingled with milk from another producer, the milk has not been unloaded from the tanker in which it was originally loaded, the milk producer properly disposes of the load, and the load of milk is properly reported to the department as positive for drug residues.

ATCP 65.74, Milk and dairy products; quality standards.

ATCP 65.74 (2) (a) states that bacterial counts for nonfat dry milk shall not exceed 10,000 per gram. This provision is in conformance with the PMO.

ATCP 65.910, Inspection of dairy farms; general.

ATCP 65.910 (2) increases the inspection frequency for Grade "B" dairy farms from once every two years to once a year. This provision is made to ensure maintenance of adequate conditions on the Grade "B" dairy farms.

ATCP 65.912, Performance-based farm inspection.

ATCP 65.912 is modified to bring Wisconsin's performance-based farm inspection program into full compliance with Appendix P of the PMO. Specifically, the rule prohibits placing farms in categories requiring inspection once or twice per year under the program if they have been cited during the past year with any

violation that presents an imminent health hazard. The rule also prohibits placing farms in a category requiring inspection once or twice per year if they have received a warning under s. ATCP 65.923 (1) during the past year. ATCP 65.923 (1) continues to require the division to issue a warning notice if an inspection finds a noncompliance with a key violation. However, the definition of a key violation was expanded to include instances when a farm receives one or more identical violations during two consecutive inspections, *i.e.* double debits. Finally, the rule prohibits placing farms in categories requiring inspection once or twice per year if the milk shipped from the farm was found to have had any drug residues during the past year.

ATCP 65.923, Drug residue violations; milk producer sanctions.

ATCP 65.923 requires the department to issue a warning notice whenever a producer milk sample tests positive for a drug residue. Once a milk producer receives a warning notice for drug residues, the milk producer must implement a drug residue prevention program within 21 days of the effective date of the notice or the producer's Grade A permit will be suspended. If the drug residue prevention program isn't completed within 45 days, the milk producer's license will be suspended. The rule already included this requirement, along with a penalty provision to be invoked if the producer has 3 drug residue violations within 12 months. This revision creates ATCP 65.923 (3) (b) to establish requirements for milk producers whose milk samples test positive for drug residues twice within 12 months, requiring the license to be suspended for 10 days and requiring the milk producer to complete participation in a drug residue prevention program and present a certificate of completion for the program within 180 days of the first day of the suspension.

ATCP 65.923 (3) (d) contains a provision created to manage cases where milk producers have been reported on the USDA repeat (at least twice within a year) residue violator list for presenting for slaughter dairy cattle which yield carcasses that are subsequently found to be positive for drug residues. The Division will file a complaint seeking the license suspension, for at least 10 days, of any milk producers who are reported on the list and the milk producer will be required to attend and present a certificate of completion for a drug residue prevention program approved by the department within 180 days of the first day of the license suspension. If the certificate is not presented within 180 days, the department will seek to suspend the milk producer's license until the program is completed. This provision is consistent with recently proposed provisions in ch. ATCP 55, Meat and Meat Food Products, and is intended to further ensure the production of safe milk.

ATCP 65.928, Right of hearing.

ATCP 65.928 (3) contains a revised requirement that the department hold an informal hearing within 20 days, rather than 10 days, of receiving a hearing request. This change will bring the rule into compliance with ch. ATCP 1, Administrative Orders and Contested Cases.

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

One objective of this proposed rule is to modernize current dairy farm and dairy plant inspection rules to ensure compliance with federal PMO requirements. The PMO establishes minimum standards for regulation of Grade "A" dairy farms and milk products. States must set standards equivalent to, or more stringent than, those in the PMO, and each state's milk producers and dairy plants must meet these standards to be allowed to ship Grade

“A” milk and milk products in interstate commerce. These rule changes will bring Wisconsin’s dairy farm and dairy plant regulations into full accordance with the 2013 revision of the PMO.

Comparison with Rules in Adjacent States

Michigan, Minnesota, Iowa and Illinois adopt the PMO as part of their Grade “A” dairy-related statutes and regulations and therefore enforce Grade “A” dairy regulations similar to those enforced by Wisconsin. None of the surrounding states have adopted performance-based farm inspection, as allowed by the PMO.

Summary of Factual Data and Analytical Methodologies

The department reviewed the 2011 and 2013 revisions of the PMO, federal regulations related to standards of identity, 3-A Sanitary Standards and Accepted Practices, results of an FDA audit of Wisconsin’s Grade “A” dairy program, scientific information presented by the dairy industry, and recent changes in Wisconsin statutes and rules to identify potential changes to the rule.

Effect on Small Business

The proposed rule changes will impact dairy producers and dairy plants, many of which may be small businesses. The proposed rule does not substantially alter requirements dairy-related businesses already meet. The rule does not increase license or permit fees. All Grade “A” dairy businesses, whether large or small, must meet regulations that are substantially in compliance with the FDA’s PMO in order to collect, sample, and transport Grade “A” dairy products and no special accommodation may be made for small businesses. The proposed rule does not make accommodations for small Grade “B” dairy businesses. The proposed rule allows Grade “B” businesses to seek variances from some requirements and incorporates more flexibility than for Grade “A” businesses. However, to protect food safety and the quality of Wisconsin milk and milk products, further flexibility based on business size is not possible.

If the proposed rule is adopted, some dairy producers may incur costs if they need to modify access to the milkhouse to avoid contamination with animal waste. A few milk producers may also be required to participate in a drug residue prevention program if they have milk samples test positive twice within 12 months or have been reported on the United States Department of Agriculture (USDA) repeat violator list for presenting for slaughter dairy cattle which yield carcasses that have tested positive for drug residues. Some farms may need to have load-out doors installed to meet requirements for the location of bulk transport containers that receive milk directly from the milking equipment (“direct ship” milking). In general, the rule changes are expected to impact only a small number of dairy farms and dairy plants.

Some of the rule changes may result in cost savings or provide other benefits to industry. For example, the rule contains certain exemptions from dairy plant licensing for permitted restaurants and licensed retail food establishments. The rule also allows the Division of Food Safety (DFS) to authorize alternative temperature limits for storing non-Grade “A” milk or milk products. It exempts acid whey with specified percent titratable

acidity or pH from storage time and storage temperature requirements applicable to other dairy products. This change is in response to information presented by industry. These two exemptions will result in cost savings for approximately 200 dairy plants.

The proposed rule also assists small businesses by consolidating dairy farm and dairy plant regulations into one rule.

Next Steps

If the Board authorizes public hearings on this rule, the department will refer a copy of the rule to the Legislative Council Rules Clearinghouse and publish a hearing notice in the Wisconsin Administrative Register. The department plans to hold hearings in Eau Claire, Mosinee, Sheboygan, and Madison.

Following the public hearings, the department will evaluate all comments received at the hearings and prepare a final draft rule for the Board's consideration. If the Board approves a final draft rule, the department will transmit the final draft rule for the Governor's approval. After the Governor's approval, the final draft will be submitted for legislative committee review. If the Legislature has no objections to the rule, the Secretary will sign the final rulemaking order and transmit it for publication. The rule will take effect upon publication in the Wisconsin Administrative Register unless the final draft rule specifies a later effective date.

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

- 1 The Wisconsin department of agriculture, trade and consumer protection hereby proposes the
2 following rule *to repeal* ATCP 60 and 80 and *to create* ATCP 65 and ATCP 65 Appendix
3 *relating to* dairy farms and plants, and affecting small business.

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

This rule repeals ATCP 60, "Dairy farms," and ATCP 80, "Dairy plants," and consolidates and reorganizes those rules into a newly created ATCP 65, "Milk and milk products." Certain provisions have been revised to modernize dairy farm and dairy plant inspection rules. The rule thereby accommodates advances in dairying and ensures continued industry and regulatory compliance with the Food and Drug Administration's (FDA's) Pasteurized Milk Ordinance (PMO) and federal guidelines for Grade "A" and Grade "B" milk and dairy products.

Statutes Interpreted

Statutes Interpreted: ss. 97.20, Stats., "Dairy plants;" 97.22, Stats., "Milk producers;" 97.23, "Drug residues in milk;" and 97.24, Stats., "Milk products."

Statutory Authority

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

Explanation of Statutory Authority

DATCP has broad general authority, under s. 93.07 (1), Stats., to adopt rules to implement programs under its jurisdiction. DATCP also has general authority under s. 97.09 (4), Stats., to adopt rules specifying standards to protect the public from the sale of adulterated or misbranded foods. DATCP has specific authority, under s. 97.20 (4), Stats., to establish rules to regulate dairy plants and under s. 97.22 (8) to promulgate rules to regulate the operation of dairy farms by milk producers. The department also has authority under 97.24 (3) to adopt rules ensuring compliance with the PMO.

Related Statutes and Rules

Wisconsin's dairy farms, dairy plants, and dairy products are governed by Ch. 97, Stats. Section 97.20, Stats., "Dairy plants" and s. 97.22, Stats., "Milk producers," contain requirements related to milk producer and dairy plant licensing, milk procurement and reinspection fees, and Grade "A" permits. Section 97.23, "Drug residues in milk," allows a dairy plant to recover, from a milk producer, the monetary loss incurred when the plant rejects a milk shipment because it is adulterated with drug residues in milk from the producer's farm. Finally, s. 97.24, Stats., "Milk and milk products," includes Grade "A" requirements for milk and milk products and authorizes DATCP to conduct surveys to verify conformance with the PMO's Grade "A" standards.

Plain Language Analysis

Wisconsin operates the nation's largest state dairy inspection program. As of October 1, 2014, Wisconsin had 10,157 licensed milk producers and ranked second nationally in milk production. Milk is shipped from each dairy farm to one of more than 400 licensed dairy plants in the state or to a licensed dairy plant in another state.

About 98% of the milk produced in Wisconsin is Grade "A." Grade "A" unpasteurized milk, along with pasteurized milk and certain other dairy products made from Grade "A" milk, can only be shipped across state and international boundaries if the production, transportation, processing, and regulatory oversight are in accordance with the PMO. Wisconsin does not adopt the PMO directly, but has its own regulations for the dairy industry. These regulations must be at least as stringent, and consistent with, the PMO. The FDA revises the PMO every two years and the version of the PMO to which Wisconsin regulations are compared for compliance must be within two prior editions. This rule revision, which reflects changes found in the 2013 revision of the PMO, is essential for maintaining compliance with the PMO and for allowing Wisconsin farmers and dairy plant owners to ship their Grade "A" milk and milk products in interstate commerce.

Wisconsin's regulations also establish standards to ensure the quality of Grade "B" milk, which is milk used only to process non-Grade "A" milk products, such as butter, cheese, and ice cream. Wisconsin had 1,280 Grade "B" licensed milk producers, or 13% of its total, on October 1, 2014. Recommended standards for Grade "B" dairy farms are published by the United States Department of Agriculture (USDA). Wisconsin's regulations must be at least as stringent as the USDA standards to ensure access of Wisconsin Grade "B" milk products to international markets.

Wisconsin dairy farm and dairy plant regulations are currently found in chs. ATCP 60, "Dairy Farms" and ATCP 80, "Dairy Plants." The proposed rule repeals chs. ATCP 60 and 80 and consolidates and reorganizes these chapters into a new ch. ATCP 65, "Milk and Milk Products." Consolidation of these two rule chapters will eliminate numerous, and sometimes confusing, cross-references between the two chapters. In recent years, there has been increased interest in the operation of small dairy plants on the same site as the dairy farm supplying the milk. The operators of these "farmstead" or "artisanal" dairy plants can now find most of the rules affecting their business in one chapter, rather than two. The rule revises certain existing provisions and

creates new provisions, as necessary, to ensure: 1) Wisconsin's Grade "A" and Grade "B" dairy sectors comply with the PMO and USDA standards, respectively, when they meet Wisconsin regulatory requirements, and 2) state regulations do not unnecessarily hinder technological advancement by Wisconsin's internationally recognized dairy industry.

Revisions to modernize dairy farm and dairy plant regulations.

The following describes specific revisions made, through the proposed rule, to modernize Wisconsin's dairy farm and dairy plant regulations:

Revisions in General Terminology

Wording was changed throughout to provide greater clarity and modernize terms. For example, references to "milk haulers" were changed to "bulk milk weigher and samplers" to reflect the actual name of the license held by people who collect, sample, and transport milk. References to "inspectors" were changed to "division representatives" to reflect the broader range of staff, e.g. sanitarians, food scientists, regulatory specialists, who may conduct inspections. References to "division" or "department" staff were also changed throughout to more clearly align the rules with the roles and duties performed by each unit. For example, division representatives conduct inspections, while the department issues, suspends, and revokes licenses. Subchapter, section, and subsection chapter titles were also revised throughout to more clearly reflect the content of the rule.

ATCP 65.01, Definitions.

ATCP 65.01, as renumbered, includes the following revisions:

- Added definitions for "abnormal milk," "aseptic processing and packaging system," "bulk tank unit," "grade A producer permit," and "sale."
- Repealed and replaced definitions for "C-I-P equipment," "C-I-P milking equipment," and "C-I-P milk pipelines" with a definition of "C-I-P" and numbered as 65.01 (8).
- Updated the definition for "dairy product" to be consistent with a *de facto* change in the definition of a dairy product created under 2011 Wisconsin Act 195, which revised s. 97.20 (2) (e) 5., Wis. Stats., to create an exemption from mandated dairy plant licensing.
- Replaced the term "food safety division" with "division."
- Expanded the definition for "grade B milk" to clarify that grade B milk is not processed into fluid milk for consumption; it is only used in the production of non-grade "A" dairy products.
- Broadened the definition for "equipment" to cover equipment used on dairy farms and in dairy plants.

- Repealed the definition from ATCP 60.01 (6) for “dairy plant” and replaced it with the definition from ATCP 80.01 (5) for “dairy plant.”
- Revised the definition of “milk” to be consistent with the PMO definition by including the phrase “practically free of colostrum, obtained by the complete milking of one or more healthy milking animals.”
- Expanded the definition “procure milk” to clarify that procured milk must be acquired directly from a licensed milk producer.
- Updated the definition of “safe temperature” to state that safe refrigerated temperatures for potentially hazardous foods are 41°F. (5° C.) or below and safe heated temperatures for potentially hazardous foods are 135° F. (57°C.) or higher. This definition is now consistent with the Wisconsin Food Code (appendix to ch. ATCP 75, Retail Food Establishments) and ch. ATCP 70, Food Processing Plants.
- Clarified that “sanitizers” shall be in compliance with 21 CFR part 178.1010 or otherwise approved by the division.
- Repealed the definitions for “single-service utensil” and “single-service package” and replaced them with a definition for “single-service articles.”

ATCP 65.02, Milk producer license and permits; and fees.

ATCP 65.02 was retitled from “Milk producer license; fees” to “Milk producer license and permits; fees.” This section was revised to consolidate all information about milk producer Grade “A” and Grade “B” licenses, Grade “A” permits, and fees from ATCP 60.02, 60.03, 60.04, and 60.05.

ATCP 65.02 (1) now requires a license for each milk producer, for each species of milk animal milked by a single milk producer, and each dairy farm operated by a milk producer at which milk is produced and offered for sale. Previously, not all of these parameters were mentioned.

ATCP 65.02 (2) was revised to clarify that a representative of the dairy plant may submit an application on behalf of a milk producer and that the dairy plant representative shall certify that both the dairy farm and milking operations comply with applicable requirements under the law.

ATCP 65.02 (4) (b) adds the due date of April 30 for paying the annual license fee.

ATCP 65.02 (8), “Milk produced for custom processing”, was created by consolidating existing requirements for custom processing a producer’s milk. Requirements for custom processing were not otherwise changed.

ATCP 65.02 (11) “Grade A permit”, allows no more than one milk producer to have a Grade “A” permit at a single dairy farm unless all of the milk shipped from that dairy farm is assigned to one bulk tank unit and each milk producer is licensed.

ATCP 65.02 (12) "Grade A permits at a single dairy farm operated by multiple dairy producers", was added to describe conditions under which more than one Grade "A" milk producer permit may be held on one dairy farm.

ATCP 65.04, Dairy plant licenses and permits; fees.

ATCP 65.04 consolidates all dairy plant licensing and Grade "A" permit requirements, and fee information found in ss. ATCP 80.02, 80.04, and 80.06.

ATCP 65.04 (1) (b) 1., clarifies that no dairy plant license is required for a farm manufacturing dairy products solely for the owner/operator, members of the farm household, or nonpaying farm guests or employees.

ATCP 65.04 (2) (b) 2., exempts permitted restaurants from a dairy plant license if they prepare or process commercially pasteurized dairy products. However, permitted restaurants are not allowed to package Grade "A" dairy products without a dairy plant license.

ATCP 65.04 (2) (b) 3., exempts retail food establishments licensed under s. 97.30, Stats., from a dairy plant license if they process non-Grade "A" dairy products made from commercially pasteurized dairy products solely for retail sale.

ATCP 65.08, Milkhouse.

ATCP 65.08 (2) was created to prohibit locating milkhouse access driveways and doors such that animal waste would be tracked into the milkhouse.

ATCP 65.10, Dairy farm water supply.

ATCP 65.10 (3) was updated to require wells to comply with ch. NR 810, Requirements for the Operation and Maintenance of Public Water Systems, in addition to chs. NR 811, Requirements for the Operation and Design of Community Water Systems, and NR 812, Well Construction and Pump Installation.

ATCP 65.10 (5) (a) clarifies that if a milk producer has more than one well, water from each well shall be tested at least once every two years. This change brings the provision into conformance with the PMO.

ATCP 65.14, Milking and milk handling systems.

ATCP 65.14 (5) recognizes the increasing adoption of modernized milking systems by incorporating PMO requirements for automatic milking installations, or robotic milking systems.

ATCP 65.16, Bulk tanks and bulk transport containers.

ATCP 65.16 (5) (f) creates requirements for the location of bulk transport containers which receive milk directly from the milking equipment (“direct ship” milking).

ATCP 65.22, Farm premises.

ATCP 65.22 (5) (c) prohibits mixing or storage of human waste or septage with animal manure. This provision was added to prevent recurrence of observed situations in which transmission of human fecal pathogens via dairy farm facilities was clearly possible.

ATCP 65.24, Construction and maintenance.

ATCP 65.24 (1) (b) requires that a written variance from a construction standard may only be issued for dairy plants that do not hold a grade A permit, i.e. Grade “B” plants. The PMO does not allow construction variances for Grade “A” dairy plants.

ATCP 65.24 (1) (c) prohibits dairy plants from being directly connected to a milking barn, milking parlor or animal housing area. This provision is intended to minimize transmission of pathogenic microorganisms into the dairy plant.

ATCP 65.24 (2) (e) was revised to clarify that floors in rooms used solely for the storage of dry ingredients or packaging materials need not have trap-equipped floor drains.

ATCP 65.24 (4) (a) currently exempts overhead doors and electronic sliding doors in delivery areas from the requirement to be kept closed when not in use. This requirement was revised and excludes Grade “A” dairy plants from the exemption, while continuing to allow receiving stations and Grade “B” dairy plants to keep overhead and electronic sliding doors open when not in use. This change will bring Wisconsin’s regulations in compliance with the PMO.

ATCP 65.24 (8), Dairy plant water supply.

ATCP 65.24 (8) was modified to require that water used in dairy products complies with ch. NR 810, Requirements for the Operation and Maintenance of Public Systems, in addition to chs. NR 811, Requirements for the Operation and Design of Community Water Systems, and NR 812 Well Construction and Pump Installation.

ATCP 65.24 (8) (b) requires that water from a privately owned water system supplying a dairy plant, shall be tested to ensure it meets safe drinking requirements under ch. NR 809, Safe Drinking Water, after a repair or alteration. Testing is to be done by the operator of a Grade “B” plant; a division representative shall sample the water at a Grade “A” plant and have it tested. This requirement is in addition to the current requirement for routine testing conducted every six months. If a water supply comes from multiple wells, the rule also requires that all wells be sampled and tested and that samples be taken upstream from any pressure tank or other water treatment equipment.

Finally, ATCP 65.24 (8) (h) was created to require Grade "A" dairy plants using water to flush pasteurized milk or milk products from their milk processing systems to use water that is of equivalent microbiological quality to pasteurized milk.

ATCP 65.26, Personnel; sanitation standards.

ATCP 65.28 (3) the term "food processing equipment" was changed to "dairy processing equipment."

ATCP 65.28, Equipment and utensils.

ATCP 65.28 (7) (e) 5., is created to exempt dairy plants from having to clean certain reverse osmosis equipment after each day's use.

ATCP 65.28 (7) (f) was modified to require a dairy plant operator to consult with FDA before seeking division approval of a proposal for alternative cleaning and sanitizing schedule for continuously-operated equipment that comes in contact with Grade "A" products. This provision now conforms to the PMO.

ATCP 65.36, Receiving milk and dairy products.

ATCP 65.36 (3) was revised to clarify that a bulk milk tanker transporting Grade "A" milk may hold a Grade "A" permit issued by another state's regulatory agency. This change recognizes reciprocity requirements of the PMO and recent changes in ch. ATCP 82, Bulk Milk Collection, Sampling, and Transportation.

ATCP 65.40, Storing and handling milk and dairy products.

ATCP 65.40 (2) allows the division to authorize alternative temperature limits for storing non-Grade "A" milk and milk products.

ATCP 65.40 (2) (d) 7., exempts acid whey with specified percent titratable acidity or pH from storage time and storage temperature requirements applicable to other dairy products. This change is in response to information presented by industry.

ATCP 65.42, Recall plan.

ATCP 65.42 requires dairy plants to have a written plan for identifying and recalling dairy products should a food recall become necessary, and describes the required contents of such a plan. This new requirement is consistent with the recall plan requirements in ch. ATCP 70, Food Processing Plants, and ch. ATCP 88, Eggs.

ATCP 65.54, Pasteurization required.

ATCP 65.54 (2) (j) exempts dairy products, shipped in bulk to a licensed food processing plant for use in manufacturing food products, from the requirement that the product be pasteurized at

the dairy plant where the product was manufactured. This exemption only applies if the shipment is accompanied by a bill of lading identifying the product as unpasteurized and if the food processing plant receiving the dairy product uses a recognized treatment process to render the product safe.

ATCP 65.58, Pasteurization time and temperature.

ATCP 65.58 (1) requires that alternative methods of pasteurization of grade A products be recognized by the FDA.

ATCP 65.72, Drug residue testing.

ATCP 65.72 (6), requires dairy plants to recover the cost of an entire bulk load of milk from a milk producer responsible for contaminating that load with milk adulterated with drug residues.

ATCP 65.72 (6) (a) and (k) would allow the dairy plant, at the dairy plant's discretion, to waive recovery of the cost of the rejected bulk load if the load is a direct ship load and contains milk from only one producer, the milk has not been commingled with milk from another producer, the milk has not been unloaded from the tanker in which it was originally loaded, the milk producer properly disposes of the load, and the load of milk is properly reported to the department as positive for drug residues.

ATCP 65.74, Milk and dairy products; quality standards.

ATCP 65.74 (2) (a) was revised to state that bacterial counts for nonfat dry milk shall not exceed 10,000 per gram. This provision is in conformance with the PMO.

ATCP 65.910, Inspection of dairy farms; general.

ATCP 65.910 (2) increases the inspection frequency for Grade "B" dairy farms from once every two years to once a year. This provision is made to ensure maintenance of adequate conditions on the Grade "B" dairy farms.

ATCP 65.910 (3), was revised to be consistent with the PMO. The PMO does not allow variances from a dairy farm standard for Grade "A" dairy farms.

ATCP 65.912, Performance-based farm inspection.

ATCP 65.912 is modified to bring Wisconsin's performance-based farm inspection program into full compliance with Appendix P of the PMO. Specifically, the rule prohibits placing farms in categories requiring inspection once or twice per year under the program if they have been cited during the past year with any violation that presents an imminent health hazard. The rule also prohibits placing farms in a category requiring inspection once or twice per year if they have received a warning under s. ATCP 65.923 (1) during the past year. ATCP 65.923 (1) continues to require the division to issue a warning notice if an inspection finds a violation of a key violation. However, the definition of a key violation was expanded to include instances when a

farm receives one or more identical violations during two consecutive inspections, *i.e.* double debits. Finally, the rule prohibits placing farms in categories requiring inspection once or twice per year if the milk shipped from the farm was found to have had any drug residues during the past year.

ATCP 65.923, Drug residue violations; milk producer sanctions.

ATCP 65.923 requires the department to issue a warning notice whenever a producer milk sample tests positive for a drug residue. Once a milk producer receives a warning notice for drug residues, the milk producer must implement a drug residue prevention program within 21 days of the effective date of the notice or the producer's Grade A permit will be suspended. If the drug residue prevention program isn't completed within 45 days, the milk producer's license will be suspended. The rule already included this requirement and a penalty provision to be invoked if the producer has 3 drug residue violations within 12 months. This revision creates ATCP 65.923 (3) (b) to establish requirements for milk producers whose milk sample tests positive for drug residues twice within 12 months, requiring the license to be suspended for 10 days and requiring the milk producer to complete participation in a drug residue prevention program and present a certificate of completion for the program within 180 days of the first day of the suspension.

ATCP 65.923 (3) (d) was also created to manage cases where milk producers have been reported on the USDA repeat (at least twice within a year) residue violator list for presenting for slaughter dairy cattle yielding carcasses that have tested positive for drug residues. The division will file a complaint seeking the license suspension, for at least 10 days, of any milk producers who are reported on the list and the milk producer will be required to attend and present a certificate of completion for a drug residue prevention program approved by the department within 180 days of the first day of the license suspension. If the certificate is not presented within 180 days, the department will seek to suspend the milk producer's license until the program is completed. This provision is consistent with recently proposed provisions in ch. ATCP 55, Meat and Meat Food Products, and is intended to further ensure the production of safe milk.

ATCP 65.928, Right of hearing.

ATCP 65.928 (3) is revised to require the department to hold an informal hearing within 20 days, rather than 10 days, of receiving a hearing request. This change will bring the rule into compliance with ch. ATCP 1, Administrative Orders and Contested Cases.

Appendix A: 3-A Sanitary Standards and Accepted Practices

Appendix A was updated to reflect 3-A Sanitary Standards and Accepted Practices effective on or before October 11, 2014.

Consolidating dairy farm and dairy plant regulations into one rule.

To minimize overlapping requirements and duplicative regulations, improve ease of use, and ensure consistent application of the rules, this rule revision consolidates and renumbers existing provisions from ATCP 60, "Dairy Farms" and ATCP 80, "Dairy Plant Regulations", into the

newly created ch. ATCP 65, "Milk and Milk Products." The following describes how existing chapters were consolidated and renumbered into ch. ATCP 65. Subchapters, sections, and paragraphs were also retitled, as necessary, to maintain clarity.

Chapter ATCP 60, Dairy Farms

- ATCP 60.01, "Definitions," are renumbered as follows:
 - ATCP 60.01 (1) and (1g) as ATCP 65.01 (5) and (7);
 - ATCP 60.01 (4) and (5) as ATCP 65.01 (10) and (11);
 - ATCP 60.01 (7) and (8) as ATCP 65.01 (13) and (15);
 - ATCP 60.01 (9) and (10) as ATCP 65.01 (18) and (16);
 - ATCP 60.01 (11) as ATCP 65.01 (22);
 - ATCP 60.01 (12) as ATCP 65.01 (25);
 - ATCP 60.01 (13) as ATCP 65.01 (29);
 - ATCP 60.01 (14) and (15) as ATCP 65.01 (30) and (33);
 - ATCP 60.01 (16) and (17) as ATCP 65.01 (34) and (37);
 - ATCP 60.01 (18) to (21) as ATCP 65.01 (40) to (44);
 - ATCP 60.01 (22) as ATCP 65.01 (38);
 - ATCP 60.01 (23) as ATCP 65.01 (49);
 - ATCP 60.01 (23m) as ATCP 65.01 (48);
 - ATCP 60.01 (23r) as ATCP 65.01 (54);
 - ATCP 60.01 (24) as ATCP 65.01 (59);
 - ATCP 60.01 (25) as ATCP 65.01 (62);
 - ATCP 60.01 (26) as ATCP 65.01 (63);
 - ATCP 60.01 (27) as ATCP 65.01 (65); and
 - ATCP 60.01 (29) as ATCP 65.01 (69).
- ATCP 60.02, "Milk producer license; fees," is renumbered as ATCP 65.02 and remains largely unchanged except for the following:
 - ATCP 60.02 (2) (am), "Livestock premises registration," has been incorporated into ATCP 65.02 (2)(a);
 - ATCP 60.02 (7) (b) and (c), "Producer shipping milk to more than one plant," is repealed because it is duplicative of other provisions. Portions of ATCP 60.02 (7) (c) is renumbered as ATCP 65.02 (8) (L);
 - ATCP 60.02 (7) (d), "Producer shipping milk to more than one plant", was renumbered as ATCP 65.02 (8) and retitled "Milk produced for custom processing;"
 - ATCP 60.02 (8), "Temporary discontinuation of milk shipments," is renumbered as ATCP 65.02 (9); and
 - ATCP 60.02 (9), "Dairy plant termination of milk producer," is renumbered as ATCP 65.02 (10) and retitled, "Termination of a milk producer license."
- ATCP 60.03 (1), "Grade A permit," is renumbered as ATCP 65.02 (11).
- ATCP 60.03 (2) to (5) (a), "Grade A permit," is renumbered as ATCP 65.02 (13) to (16).
- ATCP 60.03 (5) (b), "Grade A permit" is renumbered as ATCP 65.02 (17).
- ATCP 60.03 (6), "Temporary discontinuation of milk shipments," is renumbered as ATCP 65.02 (18).
- ATCP 60.04 (1) and (2), "Reinspection fees" are renumbered as ATCP 65.02 (19) and (20).

- ATCP 60.05 (2), "Fee payment obligations; enforcement," is renumbered as ATCP 65.02 (21).
- ATCP 60.06, "Milking barn or parlor" is renumbered as ATCP 65.06.
- ATCP 60.07 (1) to (4), "Milkhouse," is renumbered as ATCP 65.08 (1) to (5).
- ATCP 60.08, "Water supply," is renumbered as ATCP 65.10.
- ATCP 60.09, "Equipment and utensils," is renumbered as ATCP 65.12.
- ATCP 60.10, "Milking and milk handling systems," is renumbered as ATCP 65.14.
- ATCP 60.11 (1) to (4), "Bulk tanks and bulk transport containers," is renumbered as ATCP 65.16 (1) to (5).
- ATCP 60.12, "Milking procedure," is renumbered as ATCP 65.18.
- ATCP 60.13, "Abnormal milk; milking diseased animals," is renumbered as ATCP 65.20.
- ATCP 60.14, "Farm premises," is renumbered as ATCP 65.22.
- ATCP 60.15, "Milk quality standards," is renumbered as ATCP 65.70.
- ATCP 60.17 (1) to (3), "Collecting milk samples," is renumbered as ATCP 65.38 (1) to (4).
- ATCP 60.18 (1) to (8), "Bacteriological testing," is renumbered as ATCP 65.70 (2)(a) to (2) (h).
- ATCP 60.19 (1) to (12), "Drug residue testing," is renumbered as ATCP 65.72 (1) to (13).
- ATCP 60.20 (1) to (7), "Testing for somatic cells," is renumbered as ATCP 65.70 (4) (b) to (4) (h).
- ATCP 60.22, "Certified testers; test methods; reporting," is renumbered as ATCP 65.78.
- ATCP 60.23, "Dairy plant operator to furnish producer milk samples to the department upon request," is renumbered as ATCP 65.80 (e).
- ATCP 60.235, "Raw milk sales prohibited; exemptions," is renumbered as ATCP 65.52.
- ATCP 60.24, "Inspection of dairy farms; general," is renumbered as ATCP 65.910.
- ATCP 60.245 (1) to (4), "Performance-based grade A dairy farm inspections," is renumbered as ATCP 65.912 (1) to (5).
- ATCP 60.25, "Suspension or revocation of milk producer license," is renumbered as ATCP 65.920.
- ATCP 60.26, "Suspension or revocation of grade A farm permit; general," is renumbered as ATCP 60.921.
- ATCP 60.27, "Violation of grade A milk quality standards; suspension of grade A farm permit by food division," is renumbered as ATCP 65.922.
- ATCP 60.275, "Drug residue violations; producer sanctions," is renumbered as ATCP 65.923.
- ATCP 60.28, "Violation of grade A farm standards; suspension of grade A farm permit by food division," is renumbered as ATCP 65.924.
- ATCP 60.29, "Suspension notice; requirements," is renumbered as ATCP 65.925.
- ATCP 60.30, "Holding orders; identification and disposal of adulterated milk," is renumbered as ATCP 65.927.
- ATCP 60.31, "Right of hearing," is renumbered as ATCP 65.928.

Chapter 80, Dairy Plants

- ATCP 80.01, "Definitions," are renumbered as follows:
 - ATCP 80.01 (1) as ATCP 65.01 (3);

- ATCP 80.01 (1g) to (4) as ATCP 65.01 (7) to (9);
- ATCP 80.01 (5) to (8) as ATCP 65.01 (12) to (15);
- ATCP 80.01 (9) to (12) as ATCP 65.01 (18) to (21);
- ATCP 80.01 (13) to (15) as ATCP 65.01 (23) to (25);
- ATCP 80.01 (16) and (17) as ATCP 65.01 (27) and (28);
- ATCP 80.01 (18) as ATCP 65.01 (30);
- ATCP 80.01 (19) to (21) as ATCP 65.01 (34) to (36);
- ATCP 80.01 (22), (23), and (23m) as ATCP 65.01 (38), (39), and (42);
- ATCP 80.01 (24) to (31) as ATCP 65.01 (45) to (53);
- ATCP 80.01 (32) to (33j) as ATCP 65.01 (55) to (58);
- ATCP 80.01 (34), (35), and (36), and (39) as ATCP 65.01 (60), (62), and (64); and
- ATCP 80.01 (39) to (42) as ATCP 65.01 (66) to (69).
- ATCP 80.02 (1) to (8), "Dairy plant license," is renumbered as ATCP 65.04 (1) to (7).
- ATCP 80.04 (1) to (7), "Dairy plant fees," is renumbered as ATCP 65.04 (8) to (13).
- ATCP 80.06 (1) to (8), "Grade A dairy plant; permit," is renumbered as ATCP 65.04 (14) to (21).
- ATCP 80.08 (1) to (18), "Construction and maintenance," is renumbered as ATCP 65.24 (1) to (19).
- ATCP 80.10, "Personnel; sanitation standards," is renumbered as ATCP 65.26.
- ATCP 80.12, "Equipment and utensils," is renumbered as ATCP 65.28.
- ATCP 80.14, "C-I-P systems," is renumbered as ATCP 65.30.
- ATCP 80.16, "Dairy product packages," is ATCP 65.32.
- ATCP 80.18, "Sanitizers and sanitizing methods," is renumbered as ATCP 65.34.
- ATCP 80.20, "Receiving milk and dairy products," is renumbered as ATCP 65.36.
- ATCP 80.22, "Storing and handling milk and dairy products," is renumbered as ATCP 65.40.
- ATCP 80.24 (2), (3), and (3m), "Milk and dairy products; quality standards," is renumbered as ATCP 65.74 (1), (2), and (3) and ATCP 80.24 (1) is repealed.
- ATCP 80.28, "Persons authorized to perform milk quality tests," was renumbered as ATCP 65.78.
- ATCP 80.30, "Test samples," is renumbered as ATCP 65.80.
- ATCP 80.32, "Test methods," is renumbered as ATCP 65.82.
- ATCP 80.34, "Milk component testing devices," is renumbered as ATCP 65.84.
- ATCP 80.36, "Milk quality test records and reports," is renumbered as ATCP 65.86.
- ATCP 80.38, "False samples, test results or reports," is renumbered as ATCP 65.88.
- ATCP 80.40 (1) and (2), "Definitions," were renumbered as in ATCP 65.01 (31) and (32).
- ATCP 80.41, "Pasteurization required," is renumbered as ATCP 65.54.
- ATCP 80.42, "Labeling pasteurized and unpasteurized products," is renumbered as ATCP 65.56.
- ATCP 80.44, "Pasteurization time and temperature," is renumbered as ATCP 65.58.
- ATCP 80.46, "Batch pasteurization," is renumbered as ATCP 65.60.
- ATCP 80.48, "HTST and HHST pasteurization," is renumbered as ATCP 65.62.
- ATCP 80.49, "Aseptic processing and packaging," is renumbered as follows:
 - ATCP 80.49 (1), definition of "aseptic processing and packaging system" is moved to ATCP 65.01 (2); and
 - ATCP 80.49 (2) (a) and (b) are renumbered as ATCP 65.64 (1) and (2).

- ATCP 80.50, "Pasteurization records," is renumbered as ATCP 65.66.
- ATCP 80.52, "Pasteurizer testing," is renumbered as ATCP 65.68.
- ATCP 80.54, "Dairy plant records," is renumbered as ATCP 65.44.
- ATCP 80.56, "Dairy plant reports to department," is renumbered as ATCP 65.46.
- ATCP 80.58, "Confidential information," is renumbered as ATCP 65.48.
- ATCP 80.60, "License suspension or revocation," is renumbered as ATCP 65.926.
- ATCP 80.62, "Grade A dairy plant; compliance monitoring," is renumbered as ATCP 65.930.
- ATCP 80.70, "Dairy product labeling," is renumbered as ATCP 65.50.

Federal and Surrounding State Programs

Federal Programs

One objective of this proposed rule is to modernize current dairy farm and dairy plant inspection rules to ensure compliance with federal PMO requirements. The PMO establishes minimum standards for regulation of Grade "A" dairy farms and milk products. States must set standards equivalent to, or more stringent than, those in the PMO and each state's milk producers and dairy plants must meet these standards to be allowed to ship Grade "A" milk and milk products in interstate commerce. These rule changes will bring Wisconsin's dairy farm and dairy plant regulations into further compliance with the 2013 revision of the PMO.

Surrounding State Programs

Michigan, Minnesota, Iowa and Illinois adopt the PMO as part of their Grade "A" dairy-related statutes and regulations and therefore enforce Grade "A" dairy regulations similar to those enforced by Wisconsin. None of the surrounding states have adopted performance-based farm inspection, as allowed by the PMO.

Data and Analytical Methodologies

The department reviewed the 2011 and 2013 revisions of the PMO, federal regulations related to standards of identity, 3-A Sanitary Standards and Accepted Practices, results of an FDA audit of Wisconsin's Grade "A" dairy program, scientific data presented by the dairy industry, and recent changes in Wisconsin statutes and rules to identify potential changes to the rule.

Standards Incorporated by Reference

The following documents are incorporated by reference:

"3-A Accepted Practices for the Design, Fabrication and Installation of Milking and Milk Handling Equipment," 3-A Sanitary Standards, Inc., 6888 Elm Street, Suite 2D McLean, Virginia, 22101-3850, amended 2002.

"3-A Sanitary Standards for Farm Milk Cooling and Holding Tanks," 6888 Elm Street, Suite 2D, McLean, VA 22101-3850, amended 1994.

“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, 3-A Sanitary Standards, Inc., 6888 Elm Street, Suite 2D McLean, Virginia, 22101-3850, amended November 2005.

“Certified Manufacturers of Single-Service Containers and Related Products,” Milk Safety Team, HFS-626, Food and Drug Administration, Public Health Service, US Department of Health and Human Services, 5100 Paint Branch Parkway, College Park, Maryland, 20740.

“Grade “A” Pasteurized Milk Ordinance (Includes provisions from the Grade “A” Condensed and Dry Milk Products and Condensed and Dry Whey—Supplement to the Grade “A” PMO),” Public Health Service, 2013 Revision.

“Official Laboratory Evaluation Forms (FDA-2400 Series),” Food and Drug Administration, US Department of Health and Human Services.
<http://www.fda.gov/AboutFDA/ReportsManualsForms/Forms/default.htm>

“Official Methods of Analysis of AOAC International,” AOAC International, 2275 Research Blvd., Rockville, Maryland, 20850. 18th edition (2005).

Wehr, Michael, “Standard Methods for the Examination of Dairy Products,” American Public Health Association Inc., 800 I Street, NW, Washington, D.C., 20001; 17th edition (June 1, 2004).

Effect on Small Business

The proposed rule changes will impact dairy producers and dairy plants, many of which may be small businesses. The proposed rule does not substantially alter requirements dairy-related businesses already meet. The rule does not increase license or permit fees. All Grade “A” dairy businesses, whether large or small, must meet regulations that are substantially in compliance with the FDA’s PMO in order to collect, sample, and transport Grade “A” dairy products and no special accommodation may be made for small businesses. The proposed rule does not make accommodations for small Grade “B” dairy businesses. The proposed rule allows Grade “B” businesses to seek variances from some requirements and incorporates more flexibility than for Grade “A” businesses. However, to protect food safety and the quality of Wisconsin milk and milk products, further flexibility based on business size is not possible.

If the proposed rule is adopted, some dairy producers may incur costs if they need to modify access to the milking parlor to avoid contamination with animal waste. A few milk producers may also be required to participate in a drug residue prevention program if they have milk samples test positive twice within 12 months or have been reported on the United States Department of Agriculture (USDA) repeat violator list for presenting for slaughter dairy cattle which yield carcasses that have tested positive for drug residues. Some farms may need to have load-out doors installed to meet requirements for the location of bulk transport containers that receive milk directly from the milking equipment (“direct ship” milking). In general, the rule changes

1 **Subchapter II – Dairy Farms**

- 2 ATCP 65.06 Milking barn or parlor
- 3 ATCP 65.08 Milkhouse
- 4 ATCP 65.10 Dairy farm water supply
- 5 ATCP 65.12 Equipment and utensils
- 6 ATCP 65.14 Milking and milk handling systems
- 7 ATCP 65.16 Bulk tanks and bulk transport containers
- 8 ATCP 65.18 Milking procedure
- 9 ATCP 65.20 Abnormal milk; milking diseased animals
- 10 ATCP 65.22 Farm premises

11 **Subchapter III – Dairy Plants**

- 12 ATCP 65.24 Construction and maintenance
- 13 ATCP 65.26 Personnel; sanitation standards
- 14 ATCP 65.28 Equipment and utensils
- 15 ATCP 65.30 C-I-P systems
- 16 ATCP 65.32 Dairy product packages
- 17 ATCP 65.34 Sanitizers and sanitizing methods
- 18 ATCP 65.36 Receiving milk and dairy products
- 19 ATCP 65.38 Collecting milk samples
- 20 ATCP 65.40 Storing and handling milk and dairy products
- 21 ATCP 65.42 Recall plan
- 22 ATCP 65.44 Dairy plant records
- 23 ATCP 65.46 Dairy plant reports to department

- 1 ATCP 65.48 Confidential information
- 2 ATCP 65.50 Dairy product labeling
- 3 **Subchapter IV – Pasteurization**
- 4 ATCP 65.52 Raw milk sales prohibited; exemptions
- 5 ATCP 65.54 Pasteurization required
- 6 ATCP 65.56 Labeling pasteurized and unpasteurized products
- 7 ATCP 65.58 Pasteurization time and temperature
- 8 ATCP 65.60 Batch pasteurization
- 9 ATCP 65.62 HTST and HHST pasteurization
- 10 ATCP 65.64 Aseptic processing and packaging
- 11 ATCP 65.66 Pasteurization records
- 12 ATCP 65.68 Pasteurizer testing
- 13 **Subchapter V – Safety and Quality Standards**
- 14 ATCP 65.70 Milk quality standards for milk collected at a dairy farm
- 15 ATCP 65.72 Drug residue testing
- 16 ATCP 65.74 Milk and dairy products; quality standards
- 17 ATCP 65.76 Milk quality testing
- 18 ATCP 65.78 Certified testers of milk quality and components; test methods
- 19 ATCP 65.80 Test samples
- 20 ATCP 65.82 Test methods
- 21 ATCP 65.84 Milk component testing devices
- 22 ATCP 65.86 Milk quality test records and reports
- 23 ATCP 65.88 False samples, test results or reports

1 **Subchapter VI – Inspection and Enforcement**

2 ATCP 65.910 Inspection of dairy farms; general

3 ATCP 65.912 Performance-based grade A dairy farm inspections

4 ATCP 65.920 Suspension or revocation of milk producer license

5 ATCP 65.921 Suspension or revocation of grade A producer permit; general

6 ATCP 65.922 Violation of grade A milk quality standards; suspension of grade A producer
7 permit by the division

8 ATCP 65.923 Drug residue violations; milk producer sanctions

9 ATCP 65.924 Violation of grade A dairy farm standards; suspension of grade A producer permit
10 by division

11 ATCP 65.925 Suspension notice; requirements

12 ATCP 65.926 Dairy plant license and grade A permit suspension or revocation.

13 ATCP 65.927 Holding orders; identification and disposal of adulterated milk

14 ATCP 65.928 Right of hearing

15 ATCP 65.930 Grade A dairy plants; compliance monitoring and inspection

16

17 **Subchapter I – Definitions and General Requirements**

18 **ATCP 65.01 Definitions.** In this chapter:

19 (1) “Abnormal milk” means milk that is visibly changed in color, odor or texture.

20 (2) “Aseptic processing and packaging system” means a system that is intended to fill

21 commercially sterilized and cooled milk or milk products into pre-sterilized containers, and then

22 hermetically seal each container with a pre-sterilized closure, in an atmosphere free of

23 microorganisms.

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

8 (4) “Bulk milk weigher and sampler” means any person who collects official milk samples
9 and may transport raw milk from a farm, or raw milk or fluid milk products to or from a dairy
10 plant, receiving station or transfer station, and meets the requirements of s. ATCP 82.01 (1).

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

14 (6) “Bulk tank unit” or “BTU” means at least one dairy farm operated by at least one milk
15 producer licensed under this part and holding a grade A permit under this part, from which raw
16 milk for pasteurization is collected by a bulk milk weigher sampler licensed under ATCP 82, and
17 which is rated as a single entity and given a single sanitation compliance and enforcement rating
18 by the division. A dairy farm shall be included in only one bulk tank unit or BTU.

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

21 (8) “C-I-P” means clean-in-place, which is the process by which equipment is cleaned and
22 sanitized without being disassembled and by the mechanical circulation of cleaning and
23 sanitizing solutions onto interior milk contact surfaces.

1 (9) "Composite sample" means a sample of milk which is collected from 2 or more milk
2 shipments from the same milk producer, and which is compiled and preserved according to s.
3 ATCP 65.80 (4).

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

8 (11) "Dairy farm" means a dairy farm as defined in s. 97.22 (1) (a), Stats., operated by a milk
9 producer and includes a milk house.

10 (12) "Dairy plant" means any place where a dairy product is manufactured or processed for
11 sale or distribution as human food, and includes a receiving station or transfer station.

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

16 (14) "Dairy product" means all of the following:

17 (a) Raw or processed milk.

18 (b) A milk product or by-product, including all dairy and nondairy ingredients incorporated
19 into that milk product or by-product, which has a standard of identity under 21 CFR Parts 131,
20 133, 135, 168.122, 184.1979, 1979a, and 1979c; or USC 321a, or 321c.

21 (c) A commodity in which milk or any milk product or by-product as defined in (b) is
22 combined with another dairy product as defined in (b).

1 (15) "Department" means the state of Wisconsin department of agriculture, trade and
2 consumer protection.

3 (16) "Division" means the division of food safety of the state of Wisconsin department of
4 agriculture, trade and consumer protection.

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

7 (18) "Equipment" means either:

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

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

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

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

1 **(21)** “Frozen-dessert mix” means a mixture of frozen dessert ingredients that has not yet been
2 processed and frozen to create a frozen dessert. “Frozen-dessert mix” includes a mix of
3 previously pasteurized dry dairy ingredients that is combined with potable water to create a
4 liquid mix.

5 **(22)** “Grade A dairy farm” means a dairy farm owned or operated by a licensed producer for
6 which a grade A permit is required under s. ATCP 65.02(11) and s. 97.22 (3), Stats.

7 **(23)** “Grade A dairy plant” means a dairy plant required to hold a permit under s. ATCP
8 65.04(14) and s. 97.20(3).

9 **(24)** “Grade A dairy product” means a fluid milk product that is produced from grade A milk
10 and processed and distributed in compliance with grade A standards under this chapter.

11 **(25)** “Grade A milk” means milk produced, processed and distributed in compliance with
12 grade A requirements under this chapter.

13 **(26)** “Grade A producer permit” means a grade A dairy farm permit under s. 97.22 (3) Stats.

14 **(27)** “Grade B dairy plant” means a dairy plant other than a grade A dairy plant.

15 **(28)** “Grade B dairy product” means a dairy product other than a grade A dairy product.

16 **(29)** “Grade B dairy farm” means a dairy farm other than a grade A farm.

17 **(30)** “Grade B milk” means milk other than grade A milk, which is used in the production of
18 dairy products which are not grade A milk products as defined in s. 97.20 (1) (f), Stats.

19 **(31)** “HHST” means “higher heat shorter time” pasteurization of milk, milk products, or
20 dairy products according to ss. ATCP 65.58 and 65.62.

21 **(32)** “HTST” means “high temperature short time” pasteurization of milk, milk products, or
22 dairy products according to ss. ATCP 65.58 and 65.62.

23 **(33)** “Key violation” means any of the following:

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

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

8 1. Unclean milk contact surfaces of equipment or utensils.

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

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

13 4. Filthy conditions in a milkhouse.

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

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

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

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

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

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

1 11. Rodent activity in the milkhouse.

2 12. Dead animals in the milking barn or cowyard.

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

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

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

10 (35) "Milk component test" means a test that determines the amount of milkfat, protein, total
11 solids, solids-not-fat, or other components in milk, and that may affect the price which a dairy
12 plant operator pays a milk producer for milk.

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

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

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

18 (39) "Milk quality test" means a bacteria count, somatic cell count, drug residue test, milk
19 component test, or other analytical test which is used to determine compliance with milk quality
20 standards under s. ATCP 65.70 or 65.74, or which may affect the price that a dairy plant operator
21 pays a milk producer for milk.

22 (40) "Milkhouse" means an enclosed facility, separated from the milking barn or parlor by a
23 self-closing door, in which milk is cooled or stored, and in which equipment and utensils are

1 cleaned, sanitized and stored. "Milkhouse" includes a milkhouse sharing one or more walls with
2 a milking barn or parlor.

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

7 (42) "Milking animals" means all of the following:

8 (a) Cows, sheep, and goats.

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

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

12 (44) "Milking parlor" means either of the following:

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

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

17 (45) "Multi-use package" means a returnable bottle or other package that is designed for
18 repeated use.

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

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

1 (b) A single-service package.

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

4 (47) "Pasteurize" means to thermally process every particle of a dairy product in properly
5 designed and operated equipment according to subch. IV, in order to destroy pathogenic
6 microbes in that dairy product. "Pasteurize" includes batch pasteurization, high-temperature
7 short time (HTST) pasteurization, higher heat short time (HHST) pasteurization, ultra high
8 temperature (UHT) pasteurization, and other equally effective pasteurization processes that are
9 approved by the division in writing.

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

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

15 (50) "Potable water" means water that is microbiologically safe to drink in accordance with
16 ch. NR 809.

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

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

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

22 (54) "Procure milk" means to buy milk or acquire the right to market milk from a milk
23 producer licensed under this part.

1 **(55)** “Product contact surface” means a surface of equipment, or a surface of a utensil or
2 package, with which a dairy product normally comes in direct contact, or from which materials
3 may drain, drip, or be drawn into a dairy product.

4 **(56)** “Receiving station” means a facility which is designed for the receipt and bulk storage
5 of milk, and which is used to receive or store milk in bulk. “Receiving station” does not include
6 a processing plant or a facility used to distribute pasteurized milk in bottled or packaged form to
7 consumers.

8 **(57)** “Recombined dairy product” means a dairy product created by recombining separated
9 dairy product components.

10 **(58)** “Reconstituted dairy product” means a dairy product created by restoring water to
11 dehydrated dairy product ingredients.

12 **(59)** “Reinspection” means any of the following:

13 (a) A dairy farm inspection, other than a regularly scheduled inspection under ss. ATCP
14 65.910(2) or 65.912, which the division makes in response to a key violation.

15 (b) A dairy farm inspection, other than a regularly scheduled inspection under ss. ATCP
16 65.910 (2) or 65.912, for which a fee is chargeable under ss. ATCP 65.70 (2) (g), 65.72 (10),
17 65.920 (4), 65.921, 65.922 (6) (b) 1., or 65.924 (2) or (3).

18 (c) A dairy plant inspection, other than a regularly scheduled inspection under s. ATCP
19 65.930 (2), which the division makes in response to a violation for which a fee is chargeable
20 under s. 65.04 (11).

21 **(60)** “Safe temperatures” as applied to refrigerated potentially hazardous foods means
22 temperatures of 41° F. (5° C.) or below. As applied to heated potentially hazardous foods, “safe

1 temperatures” means temperatures of 135° F. (57° C.) or above. As applied to frozen foods, “safe
2 temperatures” means temperatures of 0° F. (-17° C.) or below.

3 (61) “Sale” means a sale as defined in s. 97.01 (15), Stats.

4 (62) “Sanitize” means to destroy pathogens and other microorganisms to the maximum
5 extent practicable, by applying a sanitizer in compliance with 21 CFR part 178.1010, or a
6 sanitizing method approved by the division, to an otherwise clean surface.

7 (63) “Secretary” means the secretary of the department.

8 (64) “Shipping container” means a box, carton, or similar container in which packaged dairy
9 products are shipped in bulk from a dairy plant.

10 (65) “Single-service articles” means utensils, including containers or packages, filters, and
11 other articles, which are designed to be used only once before disposal.

12 (66) “Standard of identity” means a dairy product standard of identity adopted or
13 incorporated by reference under s. 97.09, Stats.

14 (67) “Transfer station” means a facility that is designed and used solely to transfer milk from
15 one bulk milk tanker to another without intervening storage.

16 (68) “UHT pasteurize” means to thermally process a dairy product according to s. ATCP
17 65.58 (4).

18 (69) “Utensil” means any hand-held or similarly portable container, device, article, or
19 implement which has one or more milk contact surfaces and is used:

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

22 (b) In processing or handling milk or dairy products at a dairy plant.

1 **ATCP 65.02 Milk producer licenses and permits; fees. (1) MILK PRODUCER LICENSE**

2 REQUIREMENT. No person may operate as a milk producer without an annual license from the
3 department, as provided under s. 97.22 (2), Stats. A license expires on April 30 of each year. A
4 separate license is required for each milk producer. A separate license is required for each
5 species of milking animal milked by a single milk producer. A separate license is required for
6 each dairy farm operated by a milk producer at which milk is produced and offered for sale.
7 Whenever the department first issues a milk producer license, that license shall bear a livestock
8 premises code issued under s. ATCP 17.02 (7) for the dairy farm associated with the milk
9 producer license. A license is not transferable between persons or dairy farms. As a condition to
10 licensing, a milk producer shall comply with applicable provisions of this chapter.

11 **(2) LICENSE APPLICATION; RENEWAL. (a) General.** A license application, signed by the milk
12 producer, shall be made on a form provided by the department and shall include the information
13 that is required under s. ATCP 17.02 (4) for the purpose of livestock premises registration. A
14 dairy plant operator or their representative, after inspecting the dairy farm under s. ATCP 65.910
15 (1), shall submit the application on behalf of the milk producer, and shall certify that the dairy
16 farm and milking operations comply with applicable requirements under this chapter. An annual
17 license may be renewed each year upon payment of the required fees under sub. (4), without
18 further application by the milk producer, provided the milk producer is registered under s. ATCP
19 17.02 (4).

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

- 22 1. Grant the application.
- 23 2. Deny the application.

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

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

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

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

14 (b) A dairy plant operator shall pay the annual milk producer license fee under this section on
15 April 30th of each year for each dairy farm from which the dairy plant operator receives milk on
16 that date.

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

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

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

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

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

14 **(7) MILK PRODUCER SHIPPING MILK TO MORE THAN ONE DAIRY PLANT.** A milk producer may
15 concurrently ship milk to more than one dairy plant if the milk producer is assigned, for licensing
16 purposes under this section, to each dairy plant. Each dairy plant's operator shall do all the
17 following on behalf of the milk producer:

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

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

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

22 **(8) MILK PRODUCED FOR CUSTOM PROCESSING.** A dairy plant operator is deemed to be
23 custom processing a producer's milk, if all the following apply:

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

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

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

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

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

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

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

20 (h) The milk producer or the milk producer's agent shall notify the division of the custom
21 processing agreement before shipping milk to the dairy plant operator for custom processing
22 under this paragraph and annually thereafter. The milk producer or milk producer agent shall
23 simultaneously notify the dairy plant operator to whom the producer is assigned for licensing

1 purposes under par. (a) if that dairy plant operator is not the one providing the custom processing
2 services.

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

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

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

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

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

22 (c) If the milk producer does not resume milk shipments within the allowed 180 or 240 days,
23 the department shall summarily revoke the milk producer's license. The department shall give

1 the milk producer a written revocation notice at least 5 business days prior to the effective date
2 of the notice.

3 (10) TERMINATION OF A MILK PRODUCER LICENSE. If a milk producer stops shipment of milk
4 to a dairy plant for any reason, other than a reason identified in sub. (6), sub. (8), or ss. ATCP
5 65.30, 65.70 (2) (f), 65.72 (6) or (7), the dairy plant operator shall notify the department in
6 writing within 3 business days after receiving the last shipment of milk from that producer. The
7 department shall summarily revoke the milk producer's license 30 days after that last milk
8 shipment date unless, by the scheduled revocation date, the milk producer is shipping milk to
9 another dairy plant operator to whom the producer is assigned for licensing purposes under this
10 section. The department shall give the producer a written revocation notice at least 5 business
11 days prior to the effective date of the notice.

12 (11) GRADE A PERMIT REQUIREMENT. No milk producer may sell or distribute milk as grade
13 A milk without obtaining an annual grade A producer permit from the department, as provided
14 under s. 97.22 (3), Stats. A grade A producer permit is not valid unless the producer also holds a
15 valid milk producer license under s. ATCP 65.02. A grade A producer permit expires on April
16 30 of each year. A separate grade A producer permit is required for each milk producer on a
17 dairy farm at which milk is produced for distribution or sale as grade A milk. A grade A
18 producer permit is not transferable between persons or dairy farms. No more than one milk
19 producer shall have a grade A permit at a single dairy farm unless all of the milk shipped from
20 that dairy farm is assigned to one bulk tank unit and each milk producer complies with sub. (12).
21 A grade A permit may be issued by the department in the form of an endorsement on an
22 inspection report given to the milk producer. As a condition to holding a grade A producer
23 permit, a milk producer shall comply with applicable provisions of this chapter.

1 **(12) GRADE A PERMITS AT A SINGLE DAIRY FARM OPERATED BY MULTIPLE MILK PRODUCERS.**

2 More than one grade A producer permit may not be held by persons at one dairy farm unless all
3 of the following apply:

4 (a) All milk producers holding a grade A producer permit ship milk to the same dairy plant.
5 If two or more milk producers at a single dairy farm are shipping milk to different dairy plants,
6 only one milk producer may hold a grade A producer permit.

7 (b) All water test results under s. ATCP 65.10, drug residue test results under s. ATCP
8 65.72, milk quality test results under s. ATCP 65.76, inspection results under ss. ATCP 65.910
9 and 65.912, and enforcement actions taken under ATCP 65, Subchapter VI apply equally to all
10 holders of a milk producer license at a single dairy farm sharing a herd of milking animals;
11 access or use of a barn, milking barn, milking parlor, milking and milk handling system; or any
12 other part of a dairy farm.

13 (c) Inspection of the milk producers shall be conducted simultaneously.

14 **(13) GRADE A PERMIT APPLICATION; RENEWAL.** (a) *General.* A grade A producer permit
15 application, signed by the milk producer, shall be made on a form provided by the department.
16 A dairy plant operator, after inspecting the dairy farm under Subchapter II, shall submit the
17 application on behalf of the milk producer, and shall certify that the dairy farm facilities comply
18 with applicable grade A requirements under this chapter. A grade A producer permit may be
19 renewed each year in connection with the renewal of the milk producer's license under s. ATCP
20 65.02, without further application by the milk producer.

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

23 1. Grant the application after inspecting the dairy farm.

1 2. Deny the application.

2 **(14) PRE-PERMIT INSPECTION.** A division representative, on behalf of the department, may
3 inspect a dairy farm before issuing a grade A producer permit for that dairy producer. If the
4 dairy farm does not meet the minimum standards required for issuance of a grade A producer
5 permit, the department shall deny the grade A producer permit application.

6 **(15) DENIAL OF GRADE A PERMIT APPLICATION.** If the department denies a milk producer's
7 application for a grade A producer permit under this section, the department shall issue the denial
8 in writing and shall state the reasons for the denial. The denial notice shall include a notice of
9 the applicant's right to hearing under s. ATCP 65.928. A representative of the division, after
10 inspecting the applicant's dairy farm, may deny a grade A producer permit application by noting
11 the denial on the inspection report given to the producer, provided that the inspection report
12 includes the required information under this subsection.

13 **(16) TRANSFER OF GRADE A PRODUCERS BETWEEN DAIRY PLANT OPERATORS.** A dairy plant
14 operator shall notify the department in writing within 3 business days after any of the following
15 occurs:

16 (a) The operator begins receiving milk shipments from a grade A producer who has
17 previously shipped milk to another operator. No new grade A permit is required.

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

20 **(17) GRADE A MILK PRODUCER SHIPPING MILK TO MORE THAN ONE DAIRY PLANT.** A milk
21 producer holding a grade A producer permit may concurrently ship milk to more than one dairy
22 plant operator if the milk producer and dairy plant operators comply with s. ATCP 65.02 (7) and
23 only one of the dairy plants accepts the milk producer's milk as grade A milk.

1 **(18) TEMPORARY DISCONTINUATION OF GRADE A MILK SHIPMENTS.** (a) A dairy plant operator
2 shall notify the department if a grade A milk producer temporarily discontinues milk shipments
3 without transferring milk shipments to another dairy plant. The dairy plant operator shall notify
4 the department in writing within 3 business days after the producer discontinues shipments, and
5 within 3 business days after the producer resumes milk shipments.

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

13 **(19) RE-INSPECTION FEE REQUIREMENT.** If a division representative, on behalf of the
14 department, conducts a reinspection as defined in s. ATCP 65.01 (59), the department shall
15 charge a reinspection fee for the reinspection, pursuant to s. 97.22 (4), Stats. A reinspection fee
16 is payable when the reinspection is completed, and is due upon written demand from the
17 department.

18 **(20) RE-INSPECTION FEE AMOUNT.** (a) Except as provided in par. (b), the reinspection fee
19 under sub. (19) is \$30.

20 (b) If a reinspection is required under this chapter for reinstatement of a milk producer's
21 license or grade A producer permit, the reinspection fee under sub. (19) is \$60.

22 **(21) FEE PAYMENT OBLIGATIONS; ENFORCEMENT.** If no dairy plant pays the fees required
23 under this subchapter on behalf of a milk producer, the department may demand payment from

1 the milk producer. If, after reasonable notice and demand for payment, a milk producer fails to
2 pay a fee which was due and payable prior to the current license year, the department may
3 suspend the milk producer's license or grade A producer permit.

4 **ATCP 65.04 Dairy plant licenses and permits; fees. (1) DAIRY PLANT LICENSE REQUIRED.**

5 (a) *License required.* Except as provided under sub. (b), no person may operate a dairy plant
6 without a valid license issued by the department for that dairy plant. A dairy plant license
7 expires on April 30 annually and is not transferable between persons or locations.

8 Note: See s. 97.20, Stats.
9

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

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

14 2. The retail preparation or processing of meals for sale directly to consumers or through
15 vending machines, if the preparation and processing of dairy products, made from commercially
16 pasteurized dairy products, is covered under a restaurant permit or other permit issued under s.
17 254.64, Stats. Packaging of grade A dairy products for retail sale by exempted establishments is
18 prohibited.

19 3. A retail food establishment licensed under s. 97.30, Stats., if the establishment processes
20 non-grade A dairy products made from commercially pasteurized dairy products solely for retail
21 sale at the establishment.

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

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

1 **(2) LICENSE APPLICATION.** An application for a dairy plant license shall be made on a form
2 provided by the department and shall be accompanied by each applicable fee required under s.
3 ATCP 65.04. The application shall include the following information, and any other information
4 reasonably required by the department for licensing purposes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 **Note:** The department is not required to inspect a currently licensed dairy plant before renewing the license of
5 the current operator, or before issuing a license to a new operator of that dairy plant.
6

7 (7) ADDED OPERATIONS. No dairy plant operator may add a new category of operations at a
8 licensed dairy plant during the time period for which the license was issued unless the operator
9 notifies the division and obtains written authorization for the new category of operations. In this
10 subsection, "new category of operations" includes the manufacture or processing of any of the
11 following which was not identified in the operator's most recent license application under sub.
12 (2):

13 (a) Fluid milk products.

14 (b) Cheese and cheese products.

15 (c) Ice cream or frozen desserts.

16 (8) ANNUAL DAIRY PLANT LICENSE FEES. (a) *Fees based on receipts or production.* An
17 applicant for a dairy plant license shall pay an annual license fee. Except as provided under par.
18 (b), license fees are based on the dairy plant's milk receipts or production during the previous
19 calendar year, regardless of who operated that dairy plant in the previous calendar year.

20 (b) *Fees for plants with no milk receipts or production during previous year.* If a dairy plant
21 had no milk receipts or production during the previous calendar year, license fees shall be based
22 on projected milk receipts or production during the license year for which application is made.
23 At the end of that license year, the license holder shall report the actual milk receipts or
24 production during the license year, and the department shall determine the appropriate fee under
25 par. (a) based on actual receipts or production. If the fee based on actual receipts or production

1 differs from the fee based on projected receipts or production, the license holder shall pay the
2 balance due or receive a credit from the department on the next year's license fee.

3 (c) *License fee amounts.* The license fee under par. (a) is \$120 plus the following:

4 1. For a grade A processing plant, a supplementary license fee of \$955 if the plant received
5 more than 2,000,000 pounds of milk from milk producers, or a supplementary license fee of
6 \$735 if the plant received 2,000,000 pounds or less of milk from producers.

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

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

11 (9) SURCHARGE AND PAST FEES FOR OPERATING WITHOUT LICENSE. (a) An applicant for a
12 dairy plant license shall pay a license fee surcharge if the department determines that, within 365
13 days before submitting the license application, the applicant operated the dairy plant without a
14 license in violation of s. ATCP 65.04(1). The amount of the surcharge is \$100, or \$500 if the
15 dairy plant operator procured milk or fluid milk products from milk producers or their agents.

16 (b) In addition to paying the license fee surcharge under subd. 1., an applicant who violated s.
17 ATCP 65.04 (1) shall pay all fees, set forth in a statement from the department, that are due for
18 the license year in which the applicant violated s. ATCP 65.04 (1).

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

22 (10) MILK PROCUREMENT FEE; MONTHLY PAYMENT. (a) *Monthly fee required.* On or before
23 the 25th day of each month, a dairy plant operator shall pay a milk procurement fee in the

1 amount specified under par. (b). The monthly fee shall be based on the amount of milk that was
2 procured from milk producers in the month preceding the month when the fee payment is due,
3 regardless of who procured the milk during that preceding month.

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

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

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

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

11 (11) REINSPECTION FEES. (a) *Dairy plant to pay reinspection fee for milk producer.* A dairy
12 plant operator shall pay the dairy farm reinspection fee under this section for a milk producer if,
13 at the time of the reinspection, the producer was assigned to that operator for licensing purposes
14 under s. ATCP 65.02. The department may issue a statement of reinspection fees payable by a
15 dairy plant operator, and may demand payment from the dairy plant operator when it issues an
16 application form for the renewal of the dairy plant operator's license under s. 97.20, Stats.

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

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

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

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

2 (12) DAIRY PRODUCT GRADING FEE. (a) A person applying for a license to produce gradable
3 butter or cheese at a grade B dairy plant shall pay an annual grading fee.

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

13 (c) For purposes of this subsection, ungraded barrel cheese is not gradable cheese.

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

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

19
20 (14) GRADE A PERMIT REQUIRED. (a) Except as provided under sub. (15), no person operating
21 a dairy plant at which milk or fluid milk products are received, transferred, or processed may sell
22 or distribute that milk or those fluid milk products as grade A milk or grade A milk products
23 unless that person holds a valid grade A dairy plant permit issued by the department for that
24 dairy plant. If a grade A receiving station or transfer station is operated at the same location as a
25 grade B processing plant, a grade A permit is required for that receiving station or transfer
26 station.