

Wisconsin Department of Agriculture, Trade and Consumer Protection

Regulatory Flexibility Analysis

Rule Subject: **Bulk Milk Collection, Sampling, and
Transportation**
Adm. Code Reference: **ATCP 82**
Rules Clearinghouse #: **Not assigned**
DATCP Docket #: **15-R-07**

Rule Summary

The Department of Agriculture, Trade and Consumer Protection (“department”) proposes the following rule changes, needed to align ATCP 82 with statutory changes that eliminated licensing and license fees for bulk milk tankers.

Wisconsin has just under 10,000 licensed dairy farms; the milk from each of these farms is shipped to one of more than 400 licensed dairy plants in the state, or to a licensed dairy plant in another state. Approximately 4,000 bulk milk tankers from Wisconsin and other states deliver milk to Wisconsin dairy plants.

In the past, Wisconsin required the owner of a bulk milk tanker used to transport Grade “A” milk and milk products to hold both a license and a Grade “A” permit for the tanker. The department charged a licensing fee of \$45 and issued the Grade “A” permit as an endorsement on the license. 2015 Wisconsin Act 55 revised s. 97.21, Stats., eliminating bulk milk tanker licensing and license fee requirements and aligning Wisconsin with most other states by removing the requirement that bulk milk tanker operators hold both a tanker license and a Grade “A” permit.

The proposed rule clarifies that a grade “A” permit cannot be issued to a bulk milk tanker unless that tanker has passed an inspection by the department, a Wisconsin certified industry inspector, or a regulator from the relevant agency in another state within the preceding year. Reciprocity of the Grade “A” bulk milk tanker permit is required by the US Food and Drug Administration’s Pasteurized Milk Ordinance (PMO), a cooperative agreement that governs the interstate shipment of Grade “A” milk and milk products, and is the basis of each state’s Grade “A” milk requirements. The department proposes incorporating these revisions into ATCP 82 to reflect these recent statutory changes and remain consistent with the PMO.

As part of this rule revision, the department is also proposing to remove a confusing exemption in the rule for employees of companies that own bulk milk tankers. The current rule states that an employee who drives a bulk milk tanker is not required to obtain a separate Grade “A” permit to drive the truck, if the owner of the bulk milk tanker already has a Grade “A” permit for the tanker. However, this exemption is unnecessary, as an employee who drives a bulk milk tanker already bearing a Grade “A” permit would

never be expected to acquire a separate Grade “A” permit. The original intent of the rule was to exempt an employee who drives a bulk milk tanker transporting and holding Grade “A” milk from the requirement to hold a bulk milk weigher and sampler license if the employee does not weigh or sample the milk.

Finally, the department is proposing to adopt a modest increase in the reinspection fee to cover department costs. Reinspections are conducted by the department to verify that appropriate corrective actions have been taken, after an initial inspection indicates a bulk milk tanker has not met one or more regulatory requirements. In the past year, only 13 tankers required reinspection. The proposed rule raises this fee from \$45 to \$60.

***Summary of, and Comparison with Existing,
Small Businesses Affected***

The proposed rule will clarify in rule statutory provisions eliminating licensing and license fee requirements for bulk milk tanker owners, many of which may be small businesses. By eliminating licensing fees, the proposed rule changes will benefit dairy producers, dairy plants, and companies that operate bulk milk tankers, many of which may be small businesses. The proposed rule does not alter existing requirements for dairy-related businesses. The proposed rule includes a modest increase in the reinspection fee from \$45 to \$60. This fee would only be charged if the department finds a regulatory violation necessitating corrective action and a reinspection. In the past year, only 13 owners of bulk milk tankers were charged a reinspection fee.

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.

Reporting, Bookkeeping and other Procedures

The rule would not require any additional reporting, bookkeeping or other procedures.

Professional Skills Required

The proposed rule does not require any new professional skills by small businesses.

Accommodation for Small Business

All Grade “A” dairy businesses, whether large or small, must meet regulations that are substantially in compliance with the Food and Drug Administration’s Pasteurized Milk Ordinance in order to collect, sample, and transport Grade “A” milk and milk products. No special accommodation for small business may be made.

Conclusion

The provisions in this proposed rule will benefit Wisconsin's dairy industry. If adopted, this rule will provide more flexibility for dairy-related businesses that collect and transport bulk milk. It will clarify and simplify Grade "A" permit requirements for milk tankers. Implementation costs associated are expected to be minimal and the rule does not create a permit fee.

This rule will not have an adverse effect on "small business" and is not subject to the delayed "small business" effective date provided in s. 227.22(2)(e), Stats.

DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule.

Dated this _____ day of _____, 2015.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Steven C. Ingham, Administrator,
Division of Food Safety