



---

---

## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

---

---

**Scott Grosz**  
*Clearinghouse Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Margit Kelley**  
*Clearinghouse Assistant Director*

**Jessica Karls-Ruplinger**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE RULE 15-094

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]**

#### 1. Statutory Authority

In s. ATCP 82.02 (2) (dm), the proposed rule provides that an applicant shall submit proof of an inspection by the department, a certified industry inspector, or **“another state’s agency responsible for issuing grade A bulk milk tanker permits”** (emphasis added). Section 97.21 (2), Stats., however, provides that an applicant shall “include with an application ... proof that the bulk milk tanker has passed an inspection conducted within the preceding year **by the department or an individual certified by the department** to conduct bulk milk tanker inspections”. Although s. 97.21 (2), Stats., generally provides reciprocity for persons operating bulk milk tankers that have obtained permits by an equivalent regulatory agency in another state, the statute does not allow an applicant for a Wisconsin permit to submit proof of an out-of-state inspection to obtain a permit from this state.

#### 2. Form, Style and Placement in Administrative Code

a. In the introductory clause, the subunits listed with s. ATCP 82.02 (6) (“(title), (a), (b), and (c)”) should be removed, because the proposed rule amends sub. (6) in its entirety.

b. The introductory clause states that the rule creates s. ATCP 82.02 (5); however, the proposed rule *amends* s. 82.02 (5).

c. The heading and entry for “Analysis Prepared by the Department of Agriculture, Trade and Consumer Protection” may be eliminated because the information it contains appears in the

other parts of the rule summary. This is also not a required section for the rule summary. [s. 1.02 (2) (a), Manual.]

d. Throughout the proposed rule, the department has changed references to “license” to “permit” to reflect the elimination of the requirement to obtain a bulk milk tanker license in addition to a Grade A permit. It appears the department may have missed two additional references. The title of s. ATCP 82.02 (2) should be changed from “LICENSE APPLICATION” to “PERMIT APPLICATION”. Likewise, the department may wish to considering replacing the word “licensing” in s. ATCP 82.02 (2) (d) with “permitting”. The department might also consider changing the reference to “licensing” in the relating clause to “permitting”.

e. SECTIONS 5 and 6 of the proposed rule could be combined. When two or more subunits of the same rule section are affected by the same treatment, and any intervening subunits are unaffected, they may be included in the same SECTION of the proposed rule. Likewise, SECTIONS 8 to 10 could be combined. [s. 1.04 (2) (a) 4., Manual.]

f. A specific deadline should be given for submission of comments on the proposed rule. [s. 1.02 (2) (a) 13., Manual.]

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. The second paragraph in the plain language analysis section of the rule summary is confusing. The proposed rule’s elimination of the exception for employees of permittees is consistent with the changes the proposed rule otherwise makes (prior law required “a person” to hold a permit for a specific bulk milk tanker; but the rule provides that the bulk milk tanker is permitted, so it does seem to make sense to eliminate an exception that pertains to certain “persons”). The explanation the department provides for eliminating this exception, however, is very difficult to follow.

b. In s. ATCP 82.02 (2) (dm), an applicant must provide “proof of an inspection”, but s. 97.21 (2), Stats., requires “proof that the bulk milk tanker **has passed** an inspection”. The proposed rule should be revised to require an applicant to have passed an inspection.