STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA 2049 (R 07/2011)

ADMINISTRATIVE RULES
FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis

☒ Original ☐ Updated ☐ Corrected

Administrative Rule Chapter, Title and Number

ATCP 65, Milk and Milk Products. This rule replaces ATCP 60, Dairy Farms, and ATCP 80, Dairy Plants.

Subject

Dairy farms, dairy plants, milk and milk product regulations, and affecting small business.

Fund Sources Affected	Chapter 20 , Stats. Appropriations Affected
☒ GPR ☐ FED ☒ PRO ☐ PRS ☐ SEG SEG-S	20.115 (1)(a) 20.115 (1) (gb)

Fiscal Effect of Implementing the Rule

☐ No Fiscal Effect ☒ Indeterminate	☐ Increase Existing Revenues ☐ Decrease Existing Revenues	☐ Increase Costs ☒ Could Absorb Within Agency's Budget ☐ Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

☒ State's Economy ☐ Local Government Units	☒ Specific Businesses/Sectors ☐ Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than $20 million?

☐ Yes ☒ No

Policy Problem Addressed by the Rule

The Department proposes a comprehensive revision to food safety rules ATCP 60 (Dairy Farms) and ATCP 80 (Dairy Plants.) The objective of this proposed rule is to modernize current dairy farm and dairy plant inspection rules to ensure compliance with the federal Food and Drug Administration's (FDA) Pasteurized Milk Ordinance (PMO), accommodate advances in dairying and manufacturing dairy products, indicate which provisions of new federal regulations implementing the FDA Food Safety Modernization Act (FSMA) must be followed by dairy plant operators, and continue ensuring the safety and quality of Wisconsin milk and milk products. FDA revises the PMO every two years and the Department must periodically revise its dairy farm and dairy plant rules to incorporate changes in the PMO, ensuring compliance with the PMO. States must meet PMO requirements in order for their Grade "A" milk and milk products to be shipped in interstate commerce. The consolidation of ATCP 60 and ATCP 80 into ATCP 65 (Milk and Milk Products) recognizes the growing integration between Wisconsin dairy farms and dairy plants, where dairy plants are sometimes located directly on a dairy farm. The revised rule eliminates duplication between the two previous rule chapters and creates a more user-friendly "one-stop" rule for the dairy industry.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Businesses and Business Sectors

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 the vast majority of 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. The rule proposes an increase in the frequency of inspection for Grade "B" dairy farms to more effectively ensure that farms remain in compliance.

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. 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). Some on-farm dairy plants will have to construct an intervening room with two doors to minimize the likelihood of contaminants being tracked from the milking barn, milking parlor, or animal husbandry areas to the dairy plant. 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. Apart from this exemption, it also exempts Grade "B" whey in specified situations from the storage time and temperature requirements. These changes are in response to information presented by industry.

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

State's Economy

The rule will benefit the state's economy by ensuring Wisconsin's dairy industry meets federal standards for Grade "A" milk and milk products. Wisconsin has over 10,000 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.

Local Governmental Units and Public Utility Rate Payers

The rule will have no impact on local governmental units or public utility rate payers.

Economic Impact Analysis Comments

The Department posted the proposed rule online as required under Wis. Stat. § 227.137 and solicited comments from organizations representing Wisconsin's dairy producers and dairy plants, including the Wisconsin Farm Bureau Federation, Wisconsin Farmers Union, Professional Dairy Producers of Wisconsin, Wisconsin Cheese Makers Association, the Cooperative Network, and the Wisconsin Dairy Products Association. The Department did not receive any comments on the economic impact of the rule.

Fiscal Impact

Since dairy farms and dairy plants are already regulated by the Department, this rule will not have a significant fiscal impact on state government and the Department will absorb any costs with current budget and staff. This rule will have no fiscal effect on local governments or public utility rate payers.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

This rule continues to ensure that Wisconsin's dairy industry meets federal Pasteurized Milk Ordinance (PMO) requirements. Not implementing the rule could jeopardize Wisconsin dairy's world class reputation and Wisconsin could be prohibited from shipping Grade A milk and milk products in interstate commerce.

Long Range Implications of Implementing the Rule

There are no long range negative implications of implementing the rule. In the long run, the rule will continue to allow Wisconsin dairy farms and dairy plants to ship Grade A milk and milk products in interstate commerce.

Compare With Approaches Being Used by Federal Government

The proposed rule makes Wisconsin's dairy farm and dairy plant regulations more consistent with the PMO. Although compliance with the PMO is technically a voluntary effort by state regulatory agencies, Wisconsin is periodically evaluated by the FDA for compliance with the PMO. Failure to pass the FDA audit would jeopardize the state's interstate and international dairy industry. The rule changes will bring Wisconsin's dairy farm and dairy plant regulations into further compliance with the 2013 revision of the PMO.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

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. Unlike Wisconsin, none of the surrounding states have adopted performance-based farm inspection, as allowed by the PMO.

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