

2015 DRAFTING REQUEST

Bill

Received: **12/30/2014** Received By: **eshea**
Wanted: **As time permits** Same as LRB:
For: **Administration-Budget 266-1103** By/Representing: **Tyler Byrnes**
May Contact: Drafter: **eshea**
Subject: **Agriculture - food safety** Addl. Drafters:
Extra Copies:

Submit via email: **YES**
Requester's email:
Carbon copy (CC) to: **elisabeth.shea@legis.wisconsin.gov**
sbostatlanguage@webapps.wi.gov

Pre Topic:

DOA:.....Tyler Byrnes, BB0379 -

Topic:

Bulk milk tanker licensing requirements

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	eshea 1/6/2015			_____			
/P1		kfollett 1/10/2015	rschluet 1/12/2015	_____	srose 1/12/2015		State

FE Sent For:

<END>

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/?	eshea	1/11/15 1/10	 1/21/15	==			

FE Sent For:

<END>

Shea, Elisabeth

From: CathleneH <cathleneh@gmail.com>
Sent: Tuesday, December 30, 2014 9:45 AM
To: Tradewell, Becky; Shea, Elisabeth
Subject: Fwd: Statutory Language Drafting Request - BB0379
Attachments: Bulk Milk Tanker Paper.pdf

Sent from my iPhone

Begin forwarded message:

From: <Tyler.Byrnes@Wisconsin.gov>
Date: December 30, 2014 at 11:25:45 AM AST
To: <Cathlene.Hanaman@legis.wisconsin.gov>
Cc: <Caitlin.Frederick@wisconsin.gov>, <Tyler.Byrnes@wisconsin.gov>, <Christopher.Connor@wisconsin.gov>
Subject: **Statutory Language Drafting Request - BB0379**

Biennial Budget: 2015-17

Topic: Bulk Milk Tanker Licensing Requirements

Tracking Code: BB0379

SBO Team: AEJ

SBO Analyst: Byrnes, Tyler - DOA
Phone: (608) 266-1103
E-mail: Tyler.Byrnes@Wisconsin.gov

Agency Acronym: DATCP

Agency Number: 115

Priority: High

Intent:

Please prepare a draft that repeals the requirements for bulk milk tankers that deliver Grade "A" milk. Repeal should include elimination of the fee associated with Grade "A" milk licenses. This should instead be replaced by requiring a Grade "A" permit.

Please see attached paper for detailed intent and potential language.

Attachments: True

Please send completed drafts to SBOStatlanguage@webapps.wi.gov

Repealing Wisconsin's Bulk Milk Tanker Licensing Requirements

Biennial Budget Issue Paper

DIN

Request

This request is to repeal licensing and license fee requirements for bulk milk tankers operating in the state of Wisconsin. Section 97.21 (2) (a), Stats., requires that all bulk milk tankers, including those from other states, hold a Wisconsin bulk milk tanker license if they operate in the state. Wisconsin's licensing requirement is in addition to the Food and Drug Administration's Pasteurized Milk Ordinance (PMO) Grade "A" permit requirements, which must be met by tankers to transport and deliver Grade "A" milk and milk products between states. Currently, Wisconsin licenses 3,620 bulk milk tankers, with an annual license fee of \$45 annually. Repealing the licensing and license fee requirement will result in an estimated reduction of fee revenue of \$162,900 annually.

Benefits of the Request

This request will bring Wisconsin's bulk milk tanker licensing practices in line with other states and will simplify administration of licensing and Grade "A" permit requirements for bulk milk tankers located in other states. Bulk milk tanker operators often are not familiar with Wisconsin's licensing requirement, which is substantially different from the permitting requirements used in other states, making it difficult for these businesses to comply with the requirements. Few states require a license fee in addition to a Grade "A" permit for bulk milk tankers. Of the neighboring states, only Michigan requires a license separate from a permit for bulk milk tankers, while other states issue permits.

Background

Appendix B of the PMO requires that each bulk milk tank truck delivering Grade "A" raw milk and milk products between states bear a Grade "A" permit. Grade "A" permits may only be issued after satisfactory completion of an annual inspection that addresses specific items outlined in the PMO. For the Grade "A" permit to be valid, a bulk milk tanker operator must be able to show a current permit and proof of a passed inspection.

The PMO states that bulk milk tankers need only bear one permit from an appropriate regulatory agency and that each permit shall be recognized by other regulatory agencies under the reciprocal agreements of the Interstate Milk Shippers (IMS). While the PMO allows any regulatory agency to conduct an inspection at any time whenever a tanker transports milk and milk products in or out of a particular jurisdiction, the jurisdiction may not charge an inspection fee for an inspection if the tanker operator can provide current proof of inspection. Without such proof, the jurisdiction may charge a fee to cover the cost of the inspection.

Under s. 97.21 (2) (a) and (b), Stats., any bulk milk tanker, including out-of-state tankers, that operate in Wisconsin must hold a license, pay a license fee, and also hold a Grade "A"

permit if they operate a truck transporting Grade "A" raw milk and milk products in the state. Until recently, Wisconsin routinely issued a Grade "A" permit for each tanker as an endorsement on the bulk milk tanker license. DATCP recently revised its regulations and now issues Grade "A" permits separately from the bulk milk tanker license and only after a bulk milk tanker is inspected. Bulk milk tanker owners are not charged a fee for the Grade "A" permit, but the state continues to issue a license and collect licensing fees separate from the Grade "A" permit to cover the cost of inspecting bulk milk tanker inspections. The licensing and licensing fee requirements are required for any bulk milk tanker, including out-of-state tankers that operate in Wisconsin, even if they hold a valid Grade "A" permit from their home jurisdiction.

The PMO's reciprocity requirement was adopted specifically so that bulk milk tankers do not have to be inspected and permitted in multiple jurisdictions. Some argue that Wisconsin's license and licensing fee requirements do not comply with the intent of the PMO's reciprocity requirements because they require bulk milk tanker owners to pay a separate fee and hold a separate license, even though they hold a valid permit from their home jurisdiction.

Consistent with most other states, this proposal will remove the licensing requirement for bulk milk tankers, while maintaining requirements for Grade "A" permits. The amended statute will continue to require a reinspection fee, as allowed under current statute, for bulk milk tankers who are found in violation of Chapter 97 or relevant administrative rules. The language will also be changed to reflect that fees required under 97.21 (4), including the reinspection fee for tankers, are currently established by the department by rule. This change does not result in increased or new fees. Finally, the statute will clarify that grade A permit inspections will be conducted by the department or by an industry inspector certified by the department, consistent with current practice. Changes to Wisconsin Chapter 97, Food Regulation, to repeal bulk milk tanker licensing and license fee requirements are as follows:

97.21 (2) BULK MILK TANKER; LICENSE; GRADE A PERMIT.

~~(a) License.~~

~~1. Except as provided in subd. 2., no person may operate a bulk milk tanker in this state without a valid license issued by the department for that bulk milk tanker. That license expires on April 30 annually and is not transferable between persons or bulk milk tankers. An application for a license shall be made on a form provided by the department and shall be accompanied by applicable fees under sub. (4). The application shall include the applicant's name and address; a description of the bulk milk tanker including make, serial number and capacity; the city, village or town in which the bulk milk tanker is customarily kept; and any other information which the department may reasonably require for proper identification of the bulk milk tanker.~~

~~2. This paragraph does not apply to a person who operates a bulk milk tanker solely as an employee of a person who holds a license under this paragraph for that bulk milk tanker.~~

~~(b) Grade A bulk milk tanker; permit. No person may operate a bulk milk tanker to transport milk or fluid milk products in bulk for sale or distribution as grade A milk or grade A dairy products without a~~

valid grade A bulk milk tanker permit issued annually by the department or an equivalent regulatory agency in another state for that bulk milk tanker. A grade A bulk milk tanker permit is not transferable between persons or bulk milk tankers. ~~A permit may be issued in the form of an endorsement on a bulk milk tanker license under par. (a).~~ An application for a permit shall be made on a form provided by the department, ~~and may be included with a license application under par. (a).~~ A permit shall be issued after an inspection of a grade A bulk milk tanker by the department or by an industry inspector certified by the department. ~~The~~ Except as provided in 97.21(4) (b), the department may not charge a fee for a grade A bulk milk tanker permit issued under this paragraph.

97.21 (4) FEES.

(a) *License fee.* An applicant for a ~~bulk milk tanker or~~ milk distributor license shall pay the license fee specified under sub. (4m).

(c) *Surcharge for operating without a license.* An applicant for a ~~bulk milk tanker operator or~~ milk distributor license shall pay a license fee surcharge of \$100 or twice the amount of the annual license fee specified under sub. (4m), whichever is less if the department determines that, within one year prior to submitting the license application, the applicant operated without a license ~~or grade A permit~~ in violation of this section. Payment of this license fee surcharge does not relieve the applicant of any other civil or criminal liability which results from a violation of sub. (2) or (3), but does not constitute evidence of any violation of law.

97.21 (4m) FEE AMOUNTS. ~~Unless otherwise established by department rule, the~~ The fees required under sub. (4) (a) and (b) are: will be established by department rule.

(a) ~~For a bulk milk tanker under sub. (2), an annual license fee of \$30 and a reinspection fee.~~

(b) ~~For a milk distributor under sub. (3), an annual license fee of \$50 and a reinspection fee of \$20 for each storage facility operated by the milk distributor.~~

97.21(5) LICENSING GRADE A PERMIT FOR BULK MILK TANKERS AND MILK DISTRIBUTORS LICENSING CONTINGENT ON PAYMENT OF FEES. The department may not issue or renew a grade A bulk milk tanker permit or a milk distributor license unless the ~~license~~ applicant pays all fees which are due and payable by the applicant under sub. (4), as set forth in a statement from the department. The department shall refund a fee paid under protest if the department determines that the fee was not due and payable as a condition of receiving a grade A permit or licensing under this section.



State of Wisconsin
2015 - 2016 LEGISLATURE



LRB-1062?

EHS: [handwritten initials]

[handwritten initials] P1
JFRMR

In 1/6/15

DOA:.....Tyler Byrnes, BB0379 – Bulk milk tanker licensing requirements

FOR 2015-2017 BUDGET – NOT READY FOR INTRODUCTION

1/13

D-NOTE

Don't Gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

AGRICULTURE ✓

Current law prohibits the operation of a bulk milk tanker without a valid license issued annually by DATCP. Also under current law, no person may operate a bulk milk tanker to transport milk in bulk for sale or distribution without a valid grade A bulk milk tanker permit issued annually by DATCP (tanker permit).

This bill eliminates the requirement to obtain a license to operate a bulk milk tanker. The bill requires a tanker permit in order to transport milk in bulk for sale or distribution as grade A milk or grade A milk products. The bill requires an applicant for a tanker permit to provide proof that the bulk milk tanker has passed an inspection conducted by DATCP or an individual certified by DATCP. The bill also allows a permit issued by an equivalent regulatory agency in another state to satisfy the tanker permit requirement.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2 SECTION 1. 93.135 (1) (km) of the statutes is amended to read:

1 93.135 (1) (km) A license under s. 97.21 (2) or (3).

History: 1997 a. 191; 1999 a. 9; 2001 a. 16; 2007 a. 20; 2013 a. 20, 276.

2 SECTION 2. 97.21 (2) (a) of the statutes is repealed.

3 SECTION 3. 97.21 (2) (b) (title) of the statutes is repealed.

4 SECTION 4. 97.21 (2) (b) of the statutes is renumbered 97.21 (2) and amended
5 to read:

6 97.21 (2) BULK MILK TANKER; LICENSE; GRADE A PERMIT. No person may operate
7 a bulk milk tanker to transport milk or fluid milk products in bulk for sale or
8 distribution as grade A milk or grade A milk products without a valid grade A bulk
9 milk tanker permit issued annually by the department or an equivalent regulatory
10 agency in another state for that bulk milk tanker. A grade A bulk milk tanker permit
11 is not transferable between persons or bulk milk tankers. ~~A permit may be issued~~
12 ~~in the form of an endorsement on a bulk milk tanker license under par. (a).~~ An
13 application for a permit shall be made on a form provided by the department, ~~and~~
14 ~~may be included with a license application under par. (a).~~ ~~The~~ ^{AA} An applicant shall
15 include with an application for a permit proof that the bulk milk tanker has passed
16 an inspection conducted within the preceding year by the department or an
17 individual certified by the department to conduct bulk milk tanker inspections.
18 Except as provided in sub. (4), the department may not charge a fee for a grade A bulk
19 milk tanker permit issued under this paragraph.

History: 1987 a. 399; 1989 a. 174; 1991 a. 39; 1995 a. 27.

20 SECTION 5. 97.21 (4) (a) of the statutes is amended to read:

21 97.21 (4) (a) *License fee.* An applicant for a ~~bulk milk tanker~~ or milk distributor
22 license shall pay the license fee specified under sub. (4m).

History: 1987 a. 399; 1989 a. 174; 1991 a. 39; 1995 a. 27.

23 SECTION 6. 97.21 (4) (b) of the statutes is amended to read:

1 97.21 (4) (b) *Reinspection fee.* If the department reinspects a bulk milk tanker
 2 or the vehicle or facilities of a milk distributor because the department finds a
 3 violation of this chapter or rules promulgated under this chapter, the department
 4 shall charge the bulk milk tanker operator or milk distributor the reinspection fee
 5 specified under sub. (4m). The reinspection fee is payable when the reinspection is
 6 completed, and is due upon written demand from the department. The department
 7 may issue a demand for payment when it issues a ~~license~~ permit renewal application
 8 to the bulk milk tanker operator or a license renewal application to the milk
 9 distributor.

History: 1987 a. 399; 1989 a. 174; 1991 a. 39; 1995 a. 27.

10 **SECTION 7.** 97.21 (4) (c) of the statutes is amended to read:

11 97.21 (4) (c) *Surcharge for operating without a license.* An applicant for a bulk
 12 ~~milk tanker operator or milk distributor~~ license shall pay a license fee surcharge of
 13 \$100 or twice the amount of the annual license fee specified under sub. (4m),
 14 whichever is less, if the department determines that, within one year prior to
 15 submitting the license application, the applicant operated without a license ~~or grade~~
 16 ~~A permit~~ in violation of this section. Payment of this license fee surcharge does not
 17 relieve the applicant of any other civil or criminal liability which that results from
 18 a violation of sub. ~~(2) or (3)~~, but does not constitute evidence of any violation of law.

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19 **SECTION 8.** 97.21 (4m) (intro.) of the statutes is renumbered 97.21 (4m) and
 20 amended to read:

21 97.21 (4m) FEE AMOUNTS. ~~Unless otherwise established by rule, The~~
 22 department shall establish the fees required under sub. (4) (a) and (b) are: by rule.

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23 **SECTION 9.** 97.21 (4m) (a) of the statutes is repealed.

24 **SECTION 10.** 97.21 (4m) (b) of the statutes is repealed.

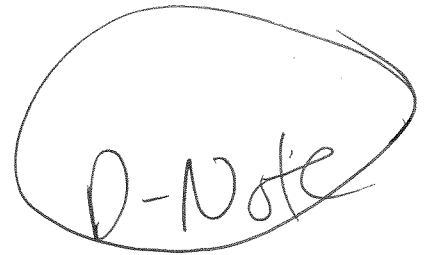
SECTION 11

1 **SECTION 11.** 97.21 (5) of the statutes is amended to read:

2 97.21 (5) LICENSING AND PERMITTING CONTINGENT ON PAYMENT OF FEES. The
3 department may not issue or renew a grade A bulk milk tanker permit or milk
4 distributor license unless the permit or license applicant pays all fees ~~which~~ that are
5 due and payable by the applicant under sub. (4), as set forth in a statement from the
6 department. The department shall refund a fee paid under protest if the department
7 determines that the fee was not due and payable as a condition of permitting or
8 licensing under this section.

9 **History:** 1987 a. 399; 1989 a. 174; 1991 a. 39; 1995 a. 27.

(END)



D-Note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1062/7^{PI}dn

EHS:.....
kf

Date

Tyler:

Note that, currently, bulk milk tankers that transport grade B milk are required to be licensed. Under the draft they will not be required to be licensed or permitted. Let me know if this is not the intent.

Elisabeth Shea
Legislative Attorney
(608) 266-5446
elisabeth.shea@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1062/P1dn
EHS:kjfrs

January 12, 2015

Tyler:

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State of Wisconsin
2015 - 2016 LEGISLATURE



LRB-1062/P1
EHS:kjf:rs

DOA:.....Tyler Byrnes, BB0379 – Bulk milk tanker licensing requirements

FOR 2015-2017 BUDGET -- NOT READY FOR INTRODUCTION

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6 (END)