

Wisconsin Department of Agriculture, Trade and Consumer Protection

Business Impact Analysis¹

Rule Subject: Dairy Rules Update
Adm. Code Reference: ss. ATCP 60, 69, 77, 80, and 82
Rules Clearinghouse #: Not yet assigned
DATCP Docket #: 05-R-04

This rule addresses issues raised by the United States Food and Drug Administration (“FDA”), which is responsible for ensuring that Wisconsin's dairy regulatory program meets dairy safety standards identified in the “Grade ‘A’ Pasteurized Milk Ordinance” (“PMO”). Wisconsin is one of 50 member states who has agreed that its dairy regulations will be “substantially equivalent” to the sanitary quality and safety standards identified in the PMO. Pursuant to this agreement, the Division of Food Safety (“division”) of the Department of Agriculture, Trade and Consumer Protection (“DATCP”) offers this rule to meet the standards set by the 2005 (most recent) edition of the PMO.

Additionally, this rule makes minor changes to accommodate dairy industry modernization and technical advances. The rule also clarifies the responsibilities of dairy producers, dairy plant operators, milk haulers, the department and others.

Effects on Business

Businesses affected include dairy farms, dairy plants, and laboratories that test milk, food and water. In most cases, the rules do not significantly change existing requirements for these businesses. There are no new professional skills or assistance required by the proposed rules.

It is essential to Wisconsin dairy producers and dairy plants that Wisconsin meet PMO standards. Approximately 96 percent of the milk produced in Wisconsin is grade A. Approximately 85 percent of Wisconsin milk is shipped out of state. This rule will have a generally positive impact on business because it will allow for the unimpeded shipment of milk and milk products to leave Wisconsin. Failure to comply with the PMO could jeopardize Wisconsin's ability to routinely ship grade A milk and milk products in interstate commerce. In general, this rule will have few, if any, negative impacts on business.

The reporting and recordkeeping requirements in the proposed rule include the following:

- Elimination of the dairy plant requirement to keep records of coarse sediment test results.
- The period of time that bulk milk tanker cleaning and sanitizing records will be retained is 15 days, instead of 90 days.

¹ This analysis includes, but is not limited to, a small business analysis (“regulatory flexibility analysis”) under s. 227.114, Stats.

- If a person who normally collects milk rejects the milk due to sight and smell, then the dairy plant operator will test the milk prior to accepting or rejecting the milk and report the test results to the department within 3 business days.
- Instead of 14 days, a dairy plant operator has 7 days to report monthly or new producer bacteriological testing results. The proposed shorter time period is due to the ability of dairy plants to report test results electronically within a few days (to meet previously mandated electronic test reporting requirements).
- Instead of 14 days, a dairy plant operator has 7 days to report monthly or new producer somatic cell counts. The reason for the shorter time period is the same (see above).
- If there appears to be a drug residue violation by a milk producer, the rule provides that the dairy plant operator may be required to perform an investigation of a dairy farm or farms as the division's agent and report its findings in writing within 30 days.
- Increase the retention period of dairy farm milk temperature records from 90 days to 6 months.
- A dairy plant will keep records on an ongoing basis to determine compliance with the cleaning and sanitizing procedure proposed for the cleaning and sanitizing of continuously operated equipment.
- C-I-P ("clean in place") system records will be reviewed by the department during routine inspections.
- Certain cleaning and sanitizing records will be retained by the dairy plant operator for at least 6 months.
- Certain bills of lading and other shipping documents will be kept by the dairy plant operator for at least 3 years.

Effects on Small Business

Many of the businesses affected by this rule are "small businesses." Although this rule will generally benefit most businesses, one rule revision related to pasteurization requirements may have an impact on some small dairy plants. Section ATCP 80.41(5) would impose pasteurization or cooling requirements that could result in the need for additional equipment that some dairy plants currently lack. The actual number of businesses affected is unknown and the actual impact on each affected business would vary greatly due to factors such as differences in processes, equipment, and plant size.

Since the department only tracks small dairy plants by the amount of milk produced annually (less than 1 million pounds), the department does not know the number of plants in Wisconsin that would meet the definition of “small business” as provided in s. 227.114(1), Stats.. However, DATCP believes that perhaps 5 plants would meet the definition. And of the 5 plants, it is possible that none or all five already have a cooling unit or a pasteurizer to comply with this requirement.

The cost of installing and retro-fitting this equipment into an existing operation could cost approximately \$40,000 to \$60,000. This is an issue of food safety that is addressed in the PMO and has been identified as a risk to public health. The continuous heating of raw, unpasteurized milk during the condensing or evaporating process promotes bacterial growth and the formation of toxins, which could lead to serious foodborne illness.

Steps to Assist Small Business

DATCP will help any dairy plant, regardless of size, which is affected by the rule by delaying the date of initial applicability to the first day of the 13th month commencing after the date of publication in the Wisconsin administrative register, which gives any affected dairy plant an entire additional year to implement s. ATCP 80.41(4) and (5).

Further, DATCP will provide an opportunity for all persons, including representatives of small business, to participate in the hearing process by providing the opportunity to appear at a hearing via videoconferencing from a nearby site. DATCP will also include in the notice under s. 227.17 that the rule may have an impact on small businesses.

Conclusion

This rule will benefit Wisconsin’s dairy industry by allowing for the uninterrupted flow of milk and milk products across Wisconsin borders and into interstate commerce.

This rule will generally benefit affected businesses, including “small businesses.” Negative effects, if any, will be few and limited. This rule will not have a significant adverse effect on “small business,” and is not subject to the delayed “small business” effective date provided in s. 227.22(2)(e), Stats.

Under 2003 Wis. Act 145, DATCP and other agencies must adopt rules spelling out their rule enforcement policy for small businesses. DATCP has not incorporated a small business enforcement policy in this rule, but will propose a separate rule on that subject. DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule.

Dated this _____ day of _____, 2006

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
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