

Wisconsin Department of Agriculture, Trade and Consumer Protection

Final Regulatory Flexibility Analysis

Rule Subject: Bulk Milk Collection, Sampling, and
Transportation
Adm. Code Reference: ATCP 82
Rules Clearinghouse #: 15-094
DATCP Docket #: 15-R-07

Rule Summary

The following proposed rule changes are needed to bring ch. ATCP 82 in alignment with recent statutory changes that eliminated licensing and license fees for bulk milk tanker operators.

Wisconsin has the nation's largest number of 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 each owner of a bulk milk tanker used to transport Grade "A" milk and milk products to hold a bulk milk tanker license and a Grade "A" permit for the tanker. The Department charged a licensing fee of \$45 and issued a Grade "A" permit as an endorsement on the license. 2015 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 Department proposes revising ATCP 82 to reflect these statutory changes.

As part of this rule revision, the Department also proposes to remove a confusing provision related to 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 provision 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 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. This requirement is implicitly stated in sub. ATCP 82.04 (1).

More recently, we have revised par. ATCP 82.02 (7) (b) to indicate that a Grade "A" permit cannot be issued to a bulk milk tanker unless that tanker has passed an inspection by the Department or a Wisconsin certified industry inspection within the preceding 24

months. This revision maintains consistency between the rule, the federal Pasteurized Milk Ordinance (PMO), and regulations in neighboring states.

Finally, the Department is proposing to adopt a modest increase in the reinspection fee. Reinspections are conducted when the Department finds that a tanker has a regulatory violation. Few bulk milk tankers receive reinspections. In 2014, only 13 tankers were reinspected. Currently, the reinspection fee is \$45; the proposed rule recommends an increase of this fee to \$60.

Small Businesses Affected

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 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. In 2014, only 13 bulk milk tankers were reinspected.

The decrease in the bulk milk tanker inspection frequency would result in a savings for industry if a company conducted their own bulk milk tanker inspections under the certified industry inspection program described in sub. ATCP 82.02 (8).

All Grade “A” dairy businesses, whether large or small, must meet regulations that are substantially in compliance with the PMO in order to collect, sample, and transport Grade “A” milk and milk 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.

Accommodation for Small Business

All Grade “A” dairy businesses, whether large or small, must meet regulations that are substantially in compliance with the PMO in order to collect, sample, and transport Grade “A” milk and milk products. The PMO contains no provision for special accommodation for small businesses.

Conclusion

The provisions in this proposed rule will benefit Wisconsin’s dairy industry by clarifying Grade “A” permit requirements for milk tankers. It will abolish a fee, previously charged for a bulk milk tanker license. Implementation costs associated are expected to be minimal and the rule does not increase license or permit fees.

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.

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

Dated this _____ day of _____, 2016.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

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