

## ADMINISTRATIVE RULES

### Fiscal Estimate & Economic Impact Analysis

<b>1. Type of Estimate and Analysis</b> <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	<b>2. Date</b> 09/16/2024								
<b>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)</b> ATCP 82 Bulk Milk Collection, Sampling, and Transportation									
<b>4. Subject</b> Increase in the reinspection fee and the fee for operating without a license for bulk milk tankers (BMT), increasing the licensing and reinspection fee for Bulk Milk Weigher and Samplers (BMWS), and removing the need for a BMWS license for industry staff completing certain functions on an approved automated sampling device if they are trained by a licensed BMWS.									
<b>5. Fund Sources Affected</b> <input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	<b>6. Chapter 20, Stats. Appropriations Affected</b> 20.115(1)(gb) and 20.115(1)(gm)								
<b>7. Fiscal Effect of Implementing the Rule</b> <table style="width: 100%;"><tr><td><input type="checkbox"/> No Fiscal Effect</td><td><input checked="" type="checkbox"/> Increase Existing Revenues</td><td><input type="checkbox"/> Increase Costs</td><td><input type="checkbox"/> Decrease Costs</td></tr><tr><td><input type="checkbox"/> Indeterminate</td><td><input type="checkbox"/> Decrease Existing Revenues</td><td colspan="2"><input type="checkbox"/> Could Absorb Within Agency's Budget</td></tr></table>		<input type="checkbox"/> No Fiscal Effect	<input checked="" type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs	<input type="checkbox"/> Decrease Costs	<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Could Absorb Within Agency's Budget	
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<b>8. The Rule Will Impact the Following (Check All That Apply)</b> <table style="width: 100%;"><tr><td><input checked="" type="checkbox"/> State's Economy</td><td><input checked="" type="checkbox"/> Specific Businesses/Sectors</td></tr><tr><td><input type="checkbox"/> Local Government Units</td><td><input type="checkbox"/> Public Utility Rate Payers</td></tr><tr><td colspan="2"><input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)</td></tr></table>		<input checked="" type="checkbox"/> State's Economy	<input checked="" type="checkbox"/> Specific Businesses/Sectors	<input type="checkbox"/> Local Government Units	<input type="checkbox"/> Public Utility Rate Payers	<input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)			
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<b>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1).</b> \$18,900 annually									
<b>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No									
<b>11. Policy Problem Addressed by the Rule</b> Since the rule was last updated, significant changes have occurred to industry standards surrounding bulk milk collection, sampling, and transportation. The proposed rule change makes allowances for the new technologies and procedures adopted by industry while maintaining flexibility in the rule to account for future innovations. The current fees for bulk milk weigher and samplers and bulk milk tankers do not cover the costs of inspections.									
<b>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.</b> The proposed rule change generally affects the dairy industry, and specifically affects businesses operating bulk milk tankers. Department staff along with industry representatives from the Wisconsin Association of Dairy Plant Field Representatives, the Wisconsin Milk Haulers Association, the Wisconsin Cheese Makers Association, and private industry representatives participated in a rules advisory committee to draft the proposed rule. No comments on the economic impact of the proposed rule were received.									
<b>13. Identify the Local Governmental Units that Participated in the Development of this EIA.</b> Grade A standards for bulk milk collection, sampling, and transportation are regulated by the State of Wisconsin's Department of Agriculture, Trade, and Consumer Protection. Local governmental units are not impacted by this rule and did not participate in development of this EIA.									
<b>14. 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)</b> The Department believes the changes proposed will have minimal effect on small businesses, as the proposed rule aligns with industry standards. The expanded use of trained industry operators in place of BMWS will reduce the financial burden of obtaining and maintaining a license. The proposed rule includes a modest increase in the licensing and									

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reinspection fee for BMWS (from \$60 to \$75) along with the reinspection fee (\$60 to \$75) and fee for operating without a permit for BMT (\$100 to \$125). In the past 24 months, only seven BMT Reinspections have been conducted. 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.

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#### 15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Implementing the rule would help cover the rising costs of conducting inspections and reinspections across Wisconsin, and would reduce the costs of obtaining and maintaining BMWS licenses for operators conducting functions on an automated sampling device where there is not a significant threat to food safety. The fees associated with reinspections and licensing inspections do not cover the cost incurred in conducting these inspections. Failure to raise the fees would necessitate use of other funding streams to cover costs.

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#### 16. Long Range Implications of Implementing the Rule

Implementing this rule does not impact Wisconsin's substantial compliance with the Food and Drug Administration's (FDA's) Grade A Pasteurized Milk Ordinance (PMO) and, therefore, our ability to continue shipping Grade A milk and milk products in interstate commerce. The economic impact of the additional fees in the proposed rule will not effect Wisconsin's dairy-related businesses ability to fairly compete against dairy businesses in other states.

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#### 17. Compare With Approaches Being Used by Federal Government

The Food and Drug Administration's (FDA's) Grade A Pasteurized Milk Ordinance (PMO) establishes minimum regulatory standards for Grade A dairy products. States must enact standards substantially equivalent to, or more stringent than, those in the PMO to be allowed to ship Grade A milk in interstate commerce. The proposed rule changes are consistent with the PMO.

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

##### Illinois

Illinois regulates licensing and permitting of grade A tankers and bulk milk weigher and samplers under the Illinois Compiled Statutes, Grade A Pasteurized Milk and Milk Products Act, (410 ILCS 635/). Illinois completes inspections, and issues a grade A permit after inspection. Illinois charges fees associated with these grade A inspections. Section 5.1 of the Grade A Pasteurized Milk and Milk Products Act states the Illinois Department of Public Health shall charge a fee of \$100 for each permit issued to a milk plant, \$50 for each permit issued to a receiving station, \$25 for each permit issued for a milk tank truck, and \$100 for each certified pasteurizer sealer. In addition to such fees, the Illinois Department of Public Health shall assess a late fee if an application for renewal is received after the expiration date of the existing permit. The late fee shall be \$50 for a permit issued to a milk plant, \$25 for a permit issued to a receiving station, transfer station, or cleaning and sanitizing facility, and \$15 for a permit issued to a milk hauler-sampler. Illinois adopts the PMO as part of their dairy regulations under Illinois Administrative Code Title 77, Chapter I, Part 775.20. The PMO allows for regulatory agencies to impose a monetary penalty in lieu of permit suspension.

##### Iowa

Iowa adopts the PMO and regulates licensing and permitting of grade A tankers and bulk milk weigher and samplers under the Iowa Grade 'A' Milk Inspection Law (91 Acts, ch. 74, §11). Iowa completes inspections, and issues a grade A permit after inspection. Iowa charges fees associated with these grade A inspections. The Iowa Grade 'A' Milk Inspection Law states the Department shall charge a fee no greater than \$2,000 for each permit issued to a milk plant, no greater than \$400 for a receiving station, no greater than \$20 for a milk hauler, and no greater than \$50 for bulk milk tankers. A reinspection fee exists for all permits required that shall not be greater than \$40. A person who renews a permit and submits any accompanying renewal fee more than 30 days after the date that the renewal period expires shall pay a late fee equal to 10% of the of the permit renewal fee - however, in no instance shall the fee be less than \$25. Iowa adopts the PMO as part of their dairy regulations under Section 192.102 of the Iowa Grade 'A' Milk Inspection Law. The PMO allows for regulatory agencies to impose a monetary penalty in lieu of permit suspension.

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#### Michigan

Michigan adopts the PMO and regulates licensing and permitting of grade A tankers and bulk milk weighers and samplers under the Michigan Compiled Laws (MCL), Grade A Milk Law of 2001 (Act 266 of 2001). Michigan completes inspections, and issues a grade A permit after inspection. Michigan charges fees associated with these grade A inspections. Sections 288.501 and 288.503 of the Grade A Milk Law of 2001 state the Michigan Department of Agriculture shall charge a license or renewal fee annually for dairy plants. The fee varies by the amount of production at the plant, but the fee shall not exceed \$1,600 per year. A \$10 late fee may be imposed each business day the application is late; however, the fee shall not exceed \$100. Each receiving station or transfer station must be licensed or permitted at a rate of \$250 per year. Each milk tank truck cleaning facility that cleans milk contract surfaces of milk tank trucks that is not a part of a dairy plant will be licensed or permitted at a rate of \$250 per year - facilities that are a part of a dairy plant do not have to pay a separate licensing fee. Each milk transportation company must be licensed at a rate of \$50 per year. Each milk tank truck must be licensed or permitted at a rate of \$20 each year. A hauler/sampler license shall be issued to anyone picking up and sampling grade A milk, and this license shall incur a fee of \$50 every two years, with an allowance for the initial license fee to be paid in two \$25 installments. The Michigan Department of Agriculture may assess a \$300 fee on any licensee or permittee requiring the performance of two or more consecutive reinspections or for compliance of items found in violation. Michigan adopts the PMO as part of their dairy regulations under Section 288.490 of the Grade A Milk Law of 2001. The PMO allows for regulatory agencies to impose a monetary penalty in lieu of permit suspension.

#### Minnesota

Minnesota adopts the PMO and regulates licensing and permitting of grade A tankers and bulk milk weighers and samplers under the Minnesota Statutes, Dairy Law (chapter 32D). Minnesota completes inspections, and issues a grade A permit after inspection. Minnesota charges fees associated with these grade A inspections. The Dairy Law states a person collecting milk from a dairy farm and transporting the milk by bulk pickup from farm to plant must obtain a bulk milk hauler and sampler license, which shall include an initial and annual renewal fee of \$60. A \$30 late fee shall be imposed if a late renewal occurs. All farm bulk milk pickup tankers, milk transports, and tankers used to transport milk products must obtain a permit every twelve months at a fee of \$25 per tanker. A pasteurization plant requesting grade A inspection must pay an annual inspection fee of no more than \$500. A manufacturing plant that pasteurized milk or milk by-products must pay an annual fee based on the number of pasteurization units, but the fee must not exceed \$140 per unit. A dairy plant operator must pay a monthly fee of 1.1 cents per hundredweight of milk purchased the previous month. Michigan adopts the PMO as part of their dairy regulations under Section 32D.02(8)(b) of the Dairy Law. The PMO allows for regulatory agencies to impose a monetary penalty in lieu of permit suspension.

19. Contact Name

Troy Sprecker - Director, Bureau of Food and Recreational Business

20. Contact Phone Number

(608) 234-2977

This document can be made available in alternate formats to individuals with disabilities upon request.

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#### **ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

A biennial licensing fee of \$75 (formerly \$60) is proposed for bulk milk weigher and samplers. This will be issued to each of the approximately 2,500 licenses across the state. Annually, this will cause an increased cost of approximately \$18,750 distributed across all license holders.

A reinspection fee of \$75 (formerly \$60) is proposed for bulk milk weigher and samplers and for bulk milk tankers. In the past 24 months, 20 combined reinspections have been conducted for these license types. Annually, this will cause an increased cost of approximately \$150.

An operating without a permit fee of \$125 (formerly \$100) is proposed for bulk milk tankers. The department has not issued a fee for this violation in the past 24 months, so there is no estimated cost increase related to this fee change.

An exception to licensing requirements for certain industry staff when a trained industry supervisor exists at the facility is proposed for bulk milk weigher and samplers. In addition, industry staff who are completing certain tasks on an automated sampling device will no longer need to hold a bulk milk weigher and sampler license. Since the department is unable to determine the number of industry representatives who will be impacted by these rule changes, the exceptions were not accounted for in the economic impact calculations.

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

The department used licensing and inspection data available in their CRM system to determine the Rule's impact on small businesses.

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- ☒ Less Stringent Compliance or Reporting Requirements
- ☐ Less Stringent Schedules or Deadlines for Compliance or Reporting
- ☒ Consolidation or Simplification of Reporting Requirements
- ☐ Establishment of performance standards in lieu of Design or Operational Standards
- ☐ Exemption of Small Businesses from some or all requirements
- ☐ Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

An exception to licensing requirements for certain industry staff when a trained industry supervisor exists at the facility is proposed for bulk milk weigher and samplers. This will reduce the number of staff at a facility that need to hold and maintain a bulk milk weigher and sampler license when a trained industry supervisor exists at the facility.

Industry staff who are completing certain tasks on an automated sampling device will no longer need to hold a bulk milk weigher and sampler license under the proposed rule. This change will alleviate the licensing fee for staff who are performing basic tasks that do not have an impact on food safety or the validity of samples.

An update to the reporting requirements is proposed in all relevant sections of the rule to more clearly define the rules regarding electronic record keeping. These changes also reduce or eliminate the requirements for industry representatives to keep and maintain equipment related to paper record keeping (writing utensils, paper, physical records, etc.). This change will allow for industry representatives to maintain their current record keeping procedures if they wish, or allow them to pursue a wider variety of record keeping options that may be more time efficient or cost effective.

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5. Describe the Rule's Enforcement Provisions

Wis. Stat. ss. 93.21 details penalties for obstructing officers, violation of order or regulation, failure to obey orders, and late filing fees.

Wis Stat. ss. 97.71 details the suspension or revocation of licenses. Wis. Stat. ss. 97.72 details criminal and civil penalties for violations of Wis. Stat. ch. 97. Wis. Stat. ss. 97.73 details injunctions.

Wis. Stat. ss. 98.26 details penalties and injunctions under Wis. Stat. ch. 98.

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

☐ Yes    ☒ No

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