

STATEMENT OF SCOPE

Department of Agriculture, Trade, and Consumer Protection

Rule No.: Chapter ATCP 82, Wis. Adm. Code

Relating to: Bulk Milk Collection, Sampling, and Transportation

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

Not Applicable

2. Detailed description of the objective of the proposed rules

Rule changes are needed because industry processes and needs have changed over the years and portions of the rule need to be modernized to align with these changes. In addition, industry professionals have requested clarification of certain parts of the rule to ensure they are meeting Grade A regulations to ship milk out of the State of Wisconsin.

The objectives of the proposed rule under consideration include:

- a) Consider aligning the definition of milk between chs. ATCP 65 and ATCP 82.
- b) Consider increasing fees to keep pace with the increased cost of performing re-inspections. Fees associated with a re-inspection have not been addressed since 2016.
- c) Consider adding language to clarify that licensed buttermakers and cheesemakers must pass a field inspection of their sampling procedures to continue to be authorized to weigh and sample milk with their buttermaker or cheesemaker license.
- d) Consider updating the reference to the 3-A sanitary standard for tankers to reflect the name change due to the 2016 modifications to the standard.
- e) Consider adding references to align the rule with the ch. NR 812 requirements surrounding water well construction and water pump installation practices and procedures.
- f) Consider adding or modifying language regarding the below items to bring ch. ATCP 82 into further compliance with Pasteurized Milk Ordinance (PMO) requirements:
 - a. Requirements for a tanker cleaning facility.
 - b. Requirements for identification of individuals who complete sampling procedures on weight tickets.
 - c. Requirements for industry plant samplers to be a bulk milk weigher and sampler (BMWS) to take universal samples.
 - d. Requirement for two water samples to be taken annually
- g) Consider editing or removing the current requirement to clean the external surfaces of a bulk milk tanker whenever a tanker is cleaned and sanitized, which is unnecessary from a food safety perspective.
- h) Consider modifying language to clarify when a Grade A permitted facility needs to be used to clean tankers.

- i) Consider adding language that milk and dairy pumps or hoses that remain unused for a period of more than four hours need to be cleaned and sanitized in a licensed facility to align ch. ATCP 82 with ch. ATCP 65. Chapter ATCP 65 states that no milk or dairy product may be held at a dairy plant for more than four hours at a temperature that is between 45 degrees Fahrenheit and 140 degrees Fahrenheit. This is due to the potential for bacterial growth.
- j) Consider adding language to allow for in-line sampling and metering systems on farms.
- k) Consider modifying or removing language to clarify when milk that has been out of temperature controls for an unknown period of time should not be allowed to be picked up as it is a public health risk.
- l) Consider adding or modifying language to clarify how to sample and measure milk on a farm or at a dairy plant if the sampler is only completing a single farm pick up.
- m) Consider adding language to allow sampling and metering to be conducted from the Grade A permitted truck.
- n) Consider adding language to allow scaling of milk at the plant, including information on where the samples are taken and how the weight records get back to the farm.
- o) Consider adding or modifying language to account for silos being used as bulk milk tanks.
- p) Consider modernizing the reference to s. ATCP 65.14 (6) in s. ATCP 82.10 (11) (am) 1. as the referenced section has been modified or moved.
- q) Consider modifying language to require agitation timeframes that follow manufacturer's recommendations for tanks.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Existing Policies Relevant to this Rule

Existing policies and statutes that are relevant to this rule include:

The Department's Single Farm Pick-up Interpretive Memo (DRY-IMO-001) addresses a recent industry practice of storing milk in silos, loading the milk onto bulk milk tankers without following existing measurement and sampling procedures, and performing milk measurement and sampling upon receipt at a dairy plant. These practices are not currently permitted in chs. ATCP 65 and ATCP 82, not because they are inaccurate or inappropriate, but because they were not envisioned at the time these rules were written.

Policy Alternatives

The alternative to updating the rule would be to continue as is, attempting to apply the existing rule to new methods, innovations, and trends not currently addressed or permitted under the existing rule. Industry groups would find this alternative undesirable as they would like the rule to be updated to reflect current industry best practices and trends. Furthermore, the department would need to devote the additional time and resources towards resolving industry issues with the existing code.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 93.06, Stats., Department Powers. The department may:

(7) Deny, suspend or revoke licenses. Deny, suspend or revoke any permit, certificate, registration or license if the applicant therefor or holder thereof is not fit, qualified or equipped or has violated or failed to obey any applicable law, order or regulation, or has misrepresented or intentionally failed to disclose a material fact in making the application. In determining whether any person is fit, qualified or equipped, the department shall consider, among other things, character and conduct, including past compliance or noncompliance with law. The department may follow the procedure provided for special orders in s. 93.18, or the applicant or permit holder, certificate holder, registrant or licensee may, within 10 days after notice of denial, suspension or revocation, demand such procedure. Rehearing and judicial review shall be as provided in ch. 227.

Section 93.07, Stats., Department Duties. It shall be the duty of the department:

(1) REGULATIONS. To make and enforce such regulations, not inconsistent with law, as it may deem necessary for the exercise and discharge of all the powers and duties of the department, and to adopt such measures and make such regulations as are necessary and proper for the enforcement by the state of ch. 93 to 100, which regulations shall have the force of law.

Section 97.12, Stats., Enforcement.

(1) For the purpose of enforcing this chapter, the department and its agents may, at reasonable hours, enter and inspect any premises for which a license is required under this chapter or any farm, factory, warehouse, building, room, establishment or place at or in which foods are manufactured, processed, packed, packaged, stored or held for sale, and may enter any vehicle, including a vehicle used to transport or hold foods in commerce. The department and its agents may also secure samples or specimens, including samples or specimens of food and any product or substance that may affect food, examine and copy relevant documents and records, and obtain photographic and other evidence needed to enforce this chapter or a rule promulgated under this chapter. The department shall examine any samples secured and shall conduct other inspections and examinations needed to determine whether there is a violation of this chapter. The department shall pay or offer to pay the market value of samples taken.

Section 98.146, Stats. Licensing milk weighers and samplers.

(1) All persons except licensed cheesemakers and buttermakers taking weights and samples of milk in bulk tanks or measuring milk in bulk tanks to determine weight, on the farm premises where such milk is produced, shall be licensed by the department under this section or by an equivalent regulatory agency in another state, and no person who is not so licensed shall engage in such activities.

(2) (a) Each application for a license under this section or license renewal shall be made on forms provided by the department and shall be accompanied by the license fee required under sub. (4), except that an individual who is eligible for the veterans fee waiver program under s. 45.44 is not required to pay the fee. The license shall expire biennially on September 30 of the 2nd year commencing after the date of issuance or renewal. The applicant shall not have an arrest or conviction record, subject to ss. 111.321, 111.322 and 111.335, and shall give proof of ability to engage in such weighing and sampling to the satisfaction of the department by satisfactorily passing a written examination pertaining to such activities.

(b) If the department conducts a reinspection of any measurement by a person authorized to take weights and samples or to measure under sub. (1) due to any violation of any federal or state law which the department determines in a regularly scheduled inspection of that measurement, the department shall charge the person the reinspection fee required under sub. (4) for that reinspection.

(3) No dairy plant shall receive any milk required to be weighed and sampled by a person authorized to take weights and samples under sub. (1) unless it has been so weighed and sampled.

(4) The department may establish by rule the amount of license or reinspection fees required under sub. (2). Unless otherwise established by department rule, a license fee under sub. (2) is \$40 and a reinspection fee under sub. (2) is \$40.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

The department estimates that the work associated with developing and promulgating the proposed rule, including conducting advisory group meetings, will require approximately 600 hours.

6. List with description of all entities that may be affected by the proposed rule:

Entities that may be affected by the new rule include:

- Bulk milk weighers and samplers
- Dairy farm, dairy plant field representatives and dairy plant operators
- Bulk milk tanker cleaning facility operators
- Bulk milk tanker operators
- Buttermakers and cheesemakers

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

Existing federal regulations intended to address the activities to be regulated in the proposed rule include:

- The Pasteurized Milk Ordinance (PMO)
- 7 Code of Federal Regulations (CFR) 58
- 21 CFR Parts 7, 11, 101, 108, 113, 114, 117, 130, 131, 133, 173, 174, 175, 176, 177, 178, 179, 182, 184, and 1240
- 40 CFR Parts 141, 152, 156, 158, and 180

The PMO gives guidance to the department on the federal requirements for the dairy sector. The PMO is a set of minimum standards and requirements that are established by the federal Food and Drug Administration (FDA) for regulating the production, processing and packaging of Grade A milk. The CFR sections listed are those referenced in the PMO.

Consider revisiting the PMO to ensure that standards are met and references are up to date and do not conflict with existing rule language. The proposed rule changes are being considered to further bring the department into alignment with the PMO and to assist industry with meeting regulatory compliance.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The department expects the proposed rule to have a minimal economic impact on all stakeholders. Some entities would consider the changes as a positive since they have the potential to allow for more flexibility for industry to comply with rule requirements, provide clarity for industry surrounding specific rules that have caused confusion in the past, and modernize rules to align with the changing landscape of the dairy industry. Feedback from stakeholders shows an interest in updating these rules. There will be an economic impact related to the potential changes in licensing requirements along with the increased cleaning requirements, water sampling requirements, time/temperature control requirements, and agitation time for certain bulk tanks. Other proposed changes to the rule have the potential to offset the additional costs by refining processes to reduce cost and time to industry. Below are cost estimates for the proposed rule changes:

- Possible cost increases that could be attributed to the rule revision include:
 - Increasing fees to keep pace with the increased cost of performing re-inspections.
 - Adding requirements for buttermakers and cheesemakers to pass a field inspection to take milk samples using their buttermaker or cheesemaker license.
 - Adding cost to owners of cleaning facilities that are not currently aligned with PMO requirements.
 - Updating language to require water samples be taken by the bulk milk tanker cleaning facility.
- Possible cost savings that could be attributed to the rule revision include:
 - Reduced travel and time costs due to the lower rate of inspections.

- Allowing in-line sampling and metering systems on certified farms can be cheaper and use less time than current systems.
- Loosening external cleaning requirements can reduce the time and money spent cleaning the exterior of Milk tankers.

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