



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: March 11, 2014

TO: The Honorable Mike Ellis
President, Wisconsin State Senate
Room 220 South, State Capitol
PO Box 7882
Madison, WI 53707

The Honorable Robin Vos
Speaker, Wisconsin State Assembly
Room 211, West, State Capitol
PO Box 8952
Madison, WI 53708

FROM: Ben Brancel, Secretary
Steve Ingham, Division of Food Safety Administrator

**SUBJECT: Bulk Milk Collection, Sampling, and Transportation, ch. ATCP 82;
Final Draft Rule**

Introduction

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) is transmitting this rule for legislative committee review, as provided in s. 227.19 (2) and (3), Stats. DATCP will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19 (2), Stats. Chapter ATCP 82 (Milk Haulers) regulates bulk milk tanker licensing, construction, maintenance, cleaning and sanitizing requirements, establishes requirements for bulk milk weighers and samplers, and mandates procedures for collecting milk from dairy farms, delivering milk to dairy plants and collecting milk samples for testing.

Background

The dairy industry is an important part of Wisconsin’s economy. Wisconsin ranks second nationally in milk production and has 10,900 licensed dairy farms. Milk is shipped from each of these farms in a licensed bulk milk tanker (approximately 4,000 in Wisconsin) to one of more than 400 licensed dairy plants in the state or to a licensed dairy plant in another state. Safe and sanitary handling of milk throughout the collection and transportation process is critical for protecting the quality of milk produced in this state. Accurate measurement of collected milk, and proper sampling and analysis of milk, help ensure fair payment and milk safety, respectively.

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This rule aligns Wisconsin's regulations with the Food and Drug Administration's (FDA) 2011 Revision of the Pasteurized Milk Ordinance (PMO). Wisconsin dairy producers and bulk milk weighers and samplers must meet standards substantially equivalent to, or more stringent than, those in the PMO in order for Wisconsin Grade "A" milk and milk products to enter interstate commerce.

Rule Content

The rule does all of the following:

- Adopts a provision of the PMO that allows bulk milk weighers and samplers to make partial collections of milk from bulk tanks on dairy farms under certain conditions. Currently, ATCP 82 requires bulk milk weighers and samplers to empty a bulk milk tank each time they collect milk from the farm. The original intent of the regulation was to ensure that a dairy producer's bulk tank was regularly cleaned and sanitized and to ensure that collection-to-collection transfers of illegal drug residues did not occur, which could result in increased financial losses to dairy producers forced to dump multiple loads of milk.

Despite these worthwhile intentions, the requirement prohibiting partial collection of milk from a bulk tank is outdated. Farm sanitation methods have improved since Wisconsin's rule was first adopted. Frequent testing can allow dairy plants to quickly address problems related to bulk tank cleanliness. As the number of dairy farms has decreased, farms have become larger, and per cow milk production has risen, many farms have purchased larger or additional bulk tanks, thereby creating new challenges for managing milk collection. Allowing partial collection of milk from bulk tanks will provide industry with the tools they need to manage milk collection from farms more efficiently. In the long run, increased flexibility for collection of milk may result in fewer trips required to haul milk, with associated fuel savings, and less wear and tear on roadways.

The PMO allows partial collection of milk, provided that certain practices are used to maintain the quality of milk. The rule adopts these practices, which include a requirement that the bulk tank is emptied, cleaned and sanitized within 72 hours and that an acceptable temperature-recording device is installed and operating on the bulk tank. To ensure proper regulatory oversight of partial collections of milk, the rule also requires a bulk milk weigher and sampler to record when a partial collection is made and when the bulk tank is emptied.

- Clarifies and strengthens reciprocity requirements for bulk milk tanker Grade "A" permits. The PMO requires that each bulk milk tank truck delivering Grade "A" raw milk and milk products bear a Grade "A" permit. Grade "A" permits may only be issued after satisfactory completion of an inspection that addresses specific items outlined in the PMO. Each bulk milk tanker is required to be inspected once per year and the bulk milk tanker operator must be able to show proof of a current permit and passed inspection to deliver Grade "A" milk and milk products. The PMO requires that each bulk milk tanker only need bear one permit from

an appropriate state regulatory agency and that each permit be recognized by the appropriate regulatory agencies in other states under the reciprocal agreements of the NCIMS.

Under s. 97.21 (2) (a) and (b), Stats., any bulk milk tanker that operates in Wisconsin must hold a license and a Grade "A" permit. Under the current rule, a Grade "A" permit is routinely issued for each tanker as an endorsement on the license. Since any tanker that operates in Wisconsin must hold a license, Grade "A" permits are issued both to tankers based in Wisconsin and out-of-state tankers that operate in Wisconsin. However, because Wisconsin-licensed tankers are not necessarily based in Wisconsin, it may not be possible to conduct the annual inspection required to make the Grade "A" permit valid.

The rule will end the practice of routinely providing a Grade "A" permit as part of the licensing process and clarify that a Grade "A" permit will only be granted after completion of the required annual inspection, as required by the PMO. It also clarifies that the department will recognize valid Grade "A" permits issued by another equivalent state regulatory agency if the bulk milk tanker operator can provide proof of a current passed inspection. These changes will allow out-of-state tankers to seek Grade "A" inspections from the regulatory agency in the state in which their tankers are based and will bring Wisconsin into compliance with reciprocity requirements of the PMO and the NCIMS.

- Establishes a certified industry inspection program to ensure all Wisconsin-based bulk milk tankers receive an annual inspection. Often, logistical issues make it difficult for the department to schedule annual bulk milk tanker inspections in a timely manner. Bulk milk tankers must hold a valid Grade "A" permit and the tanker operator must demonstrate that the tanker passed a recent inspection to deliver Grade "A" milk and milk products. If a Wisconsin tanker operator tries to deliver Grade "A" milk or milk products to another state, but without a current tanker inspection, the tanker load may be turned away or another state regulatory agency may conduct an inspection and charge the tanker operator a fee.

Section 5 of the PMO allows state regulatory agencies to certify certain industry personnel to carry out bulk milk tanker inspections under a cooperative arrangement with the state regulatory agency. Section 97.32, Stats., also establishes procedures that allow the department to appoint industry personnel to conduct special food and dairy inspections. The rule allows the department to select industry inspection personnel for the certified inspection program in accordance with s. 97.32, Stats., and adopts PMO procedures for conducting certified industry inspections. The PMO establishes stringent procedures for ensuring proper regulatory oversight of industry inspections. The rule authorizes certified industry inspectors to inspect bulk milk tankers for the purpose of issuing grade A permits, conduct inspections and reinspections of bulk milk tankers, and issue or deny grade A permits for bulk milk tankers. The rule allows the department to revoke a certification if the industry inspector fails to meet the requirements of the program. Under the rule, bulk milk tankers must be inspected annually by the department, another equivalent regulatory agency, or a certified industry inspector.

- Removes the definition of “milk hauler” and use of the term “milk hauler” and replaces the definition and term with “bulk milk weigher and sampler” to reflect current terminology that more fully encompasses the tasks they perform. This term is also consistent with ch. 98, Stats., which requires licensing of a bulk milk weigher and sampler. The definitions are also revised to clarify that use of the term “department” throughout the rule refers to the Department of Agriculture, Trade and Consumer Protection.
- Removes the requirement that a bulk milk tanker operator must clean and sanitize the milk tankers and instead specifies that the tanker must be cleaned and sanitized adequately. The rule focuses on the task that must be accomplished, rather than who must accomplish it.
- Clarifies that personnel at the entity, responsible for cleaning and sanitizing a bulk milk tanker, must remove the old cleaning tag and retain it, and put a new cleaning tag on the tanker. Formerly, the tanker operator retained the old tag. The rule thereby keeps the records at the location where the documented action occurred.
- Adds a requirement that, in addition to obtaining a license, a bulk milk weigher and sampler, who seeks to hold the Grade “A” permit necessary for collection of Grade “A” samples, must be inspected every two years. This requirement will bring Wisconsin’s bulk milk weigher and sampler requirements into compliance with the PMO. There will be no additional fees associated with meeting these inspection and permit requirements.
- Removes the requirement that, before collecting a milk sample from a direct load tanker, a bulk milk weigher and sampler verify that tanker access ports on direct load tankers are sealed and that they report broken seals on direct load tankers to the department. These requirements were originally added to ATCP 82 in response to industry concerns about intentional adulteration (tampering). However, the Wisconsin requirement to report broken seals to the department has only been occasionally invoked. When the requirement has been invoked, it has proven to be superfluous in light of existing industry food safety practices.

Summary of, and Comparison with Existing or Proposed Federal Statutes and Regulations

The PMO establishes minimum standards for regulation of Grade “A” dairy products. States must set standards equivalent to, or more stringent than, those in the PMO to be allowed to ship Grade “A” milk in interstate commerce. Section 97.24, Stats., authorizes Wisconsin to create rules necessary to ensure compliance with the PMO and this rule will bring Wisconsin’s regulations regarding milk collection, sampling and delivery in line with the 2011 PMO.

Comparison with Rules in Adjacent States

Michigan, Minnesota, Iowa and Illinois adopt the PMO as part of their dairy regulations and therefore already allow partial collection of milk from bulk milk tanks. The proposed rule will also align Wisconsin’s regulations with the PMO and these neighboring states for licensing and

permitting of Grade “A” tankers and Bulk Milk Weighers and Samplers. Each of these states licenses milk tankers, and issues a Grade “A” permit after inspection. Some states charge a fee associated with these inspections.

Effect on Small Business

The rule will impact dairy producers, dairy plants, and companies that operate bulk milk tankers, many of which may be small businesses. The rule does not substantially alter requirements which dairy-related businesses already must meet. The rule does not increase or add new license or permit fees. All Grade “A” dairy businesses, whether large or small, must meet regulations that are substantially in compliance with the FDA’s PMO in order to collect, sample, and transport Grade “A” dairy products and no special accommodation may be made for small businesses. Allowing partial collection of milk from bulk tanks will be voluntary, but will provide management flexibility to businesses of all sizes, including small businesses. Other provisions, such as clarifying reciprocity procedures and adopting a certified industry inspection program for bulk milk tankers, will also benefit small businesses by ensuring the timely inspection of tankers which is required for Grade “A” permits. A valid Grade “A” permit is required to transport and deliver Grade “A” dairy products.

Some dairy producers may incur costs if they need to purchase a 7-day temperature recording-device for their bulk milk tank. The PMO requires all bulk milk tanks produced after January 1, 2000 to be equipped with an approved temperature recording device, but dairy producers who own older tanks may need to purchase a temperature recording device to allow partial collection of milk from their bulk tanks. However, partial collection of milk from bulk tanks will be voluntary and individual dairy businesses will determine whether to use this option based on their own business needs. Producers will not be required to install a 7-day temperature recording device if partial collections of milk are not made from the tank. Producers who have partial collections of milk from their bulk tanks may expect to offset some costs through reduced water and chemical use for bulk tank cleaning and sanitizing.

Rule changes related to inspecting and providing Grade “A” permits for bulk milk tankers and bulk milk weighers and samplers who seek to hold a Grade “A” permit will have no impact on small business since bulk milk tankers and bulk milk weighers and samplers are already required to be licensed and inspected. The rule does not increase license or permit fees.

The rule also assists small businesses by simplifying regulations regarding cleaning and sanitizing milk tankers, clarifying procedures for retaining bulk milk tanker cleaning tags, and removing an unnecessary requirement for reporting broken seals on tankers.

Small Business Regulatory Review Report

The Small Business Regulatory Review Board did not issue a report on this rule.

Public Hearings

DATCP held three public hearings:

January 15, 2014 Eau Claire, Wisconsin
January 16, 2014 Madison, Wisconsin
January 17, 2014 Green Bay, Wisconsin

Following the public hearings, the hearing record remained open until January 31, 2014 for additional written comments. Eight people attended the hearings and we received three written comments. A summary of the oral and written comments may be found in Appendix A.

Changes from the Hearing Draft

We made all technical rule changes suggested by the Legislative Council Rules Clearinghouse, with the following exceptions:

- We retained use of the passive voice in some cases since the focus of some requirements is on the task rather than the person completing the task; and
- We retained the use of the term “bulk milk weigher and sampler” to reflect current terminology and make the rule consistent with language used in s. 98.146, Stats., which authorizes the department to license bulk milk weighers and samplers.

DATCP revised the rule to clarify the difference between a Grade “A” permit issued for a bulk milk tanker and a Grade “A” permit issued for a bulk milk weigher and sampler. We revised and reorganized provisions in ATCP 82.04 related to licensing and issuing Grade “A” permits for bulk milk weighers and samplers to further clarify these requirements. We revised the rule analysis to provide further explanation of the department’s statutory authority for issuing a Grade “A” permit for bulk milk weighers and samplers, and the department’s authority for implementing a certified industry inspection program, in response to questions from the Legislative Clearinghouse.

We also incorporated technical corrections suggested during the public hearing process and made the following additional changes:

- Shortened the length of time in which the department must issue or deny a bulk milk tanker license to an applicant from 40 days to 30 days and the length of time in which the department shall grant or deny a bulk milk weigher and sampler license to an applicant from 60 to 40 days;
- Allowed milk which is over 50° Fahrenheit to be collected if, within 4 hours after collection, the milk is being processed exclusively into milk or dairy products not designated as a Grade “A” dairy product under s. ATCP 80.01(14) and (15); and

- Included milk silos in the definition of “bulk tank”, to allow partial collection of milk from milk silos as well as bulk tanks, and address the concern expressed during the hearing that several large farms are considering using upright milk silos for on farm storage.

Summary of Factual Data and Analytical Methodologies

These rule changes were developed after consultation with industry, a review of PMO requirements, and a review of practices in neighboring states.

Appendix A

RULEMAKING HEARING APPEARANCES AND TESTIMONY

Rule Subject: Milk Haulers
Adm. Code Reference: ATCP 82, Wis. Adm. Code
Rules Clearinghouse #: CR 13-004
DATCP Docket #: 13-R-03

**Eau Claire, Wisconsin
 January 15, 2014**

| Name/Address | Organization | Testified | Written | Position/Comments |
|---------------------------|--|-----------|---------|--|
| Wayne Myren, Eleva, WI | Wisconsin Milk Haulers Association | Yes | Yes | Supported the proposed rule and expressed concern over the need for recording charts on bulk tanks for partial pickups. Recommended allowing additional pickups in a 24 hour period. |

**Madison, Wisconsin
 January 16, 2014**

| Name/Address | Organization | Testified | Written | Position/Comments |
|-------------------------------|--|-----------|---------|---|
| Cherie Houser, Madison, WI | Wisconsin Milk Haulers Association | Yes | No | Supported the proposed rule but expressed some concern over the requirement for chart recorders. Recommended allowing additional pickups in a 24 hour period. |
| David Ward, Madison, WI | Cooperative Network | Yes | Yes | Supported the proposed rule and suggested additional changes that they outlined in written testimony. |
| John Manske, Madison, WI | Cooperative Network | Yes | Yes | Supported the proposed rule and suggested additional changes that they outlined in written testimony. |
| Tom Howells, Madison, WI | Wisconsin Motor Carriers Association | Yes | Yes | Supported the proposed rule as written. |
| Brad Legreid, Madison, WI | Wisconsin Dairy Products Association | No | No | Supported the proposed rule. |

**Green Bay, Wisconsin
 January 17, 2014**

| Name/Address | Organization | Testified | Written | Position/Comments |
|---|---|------------------|----------------|--|
| Jerrold Schroeder, Oconto Falls, WI | Wisconsin Milkhaulers Association | Yes | No | Supported the proposed rule as written. |
| Jacquelyn Machkovich, Black Creek, WI | Saputo Cheese | Yes | No | Supported the proposed rule, but expressed concern about the removal of the requirement for a tanker being sealed after filling, due to upcoming FSMA rules. |

Written Testimony

| Name/Organization | City | Comments | Position |
|---|------------------------|---|---|
| Keith Braun, Director of Milk Procurement and Jeff Montsma, Manager of Producer Services Agropur, Inc. | Appleton, Wisconsin | Support the concept of allowing partial collection of milk because it will create flexibility and opportunity for efficiency of milk pickups. Recommended adding milk silos wherever the proposed rule references bulk milk tanks. | Support |
| David Ward, Dairy Director and John Manske, Director of Government Relations, Cooperative Network | Madison, Wisconsin | Recommended reducing the amount of time allowed for the department to grant or deny tanker and bulk milk weigher and sampler licenses and grade A permits. Suggested that the rule allow milk with a temperature above 50 degrees Fahrenheit to be diverted for cheese processing. Noted a typo in the proposed rule. | Support |
| Bob Carrier Food Scientist- Advanced (Food and Dairy Specialist) Wisconsin Department of Agriculture, Trade and Consumer Protection | Fredonia, Wisconsin | Suggested retaining the wording regarding other measuring devices in ATCP 82.10(8)(a) and encouraged retaining the requirement that direct tanker shipments must be under seal when they arrive at the dairy plant. Suggested possible revisions to ATCP 82.12(2)(b) regarding sampling. | Neither support or oppose. Offered technical suggestions. |