

Wisconsin Department of Agriculture, Trade and Consumer Protection

Final Regulatory Flexibility Analysis

Rule Subject: Milk Haulers
Adm. Code Reference: ATCP 82
Rules Clearinghouse #: 13-104
DATCP Docket #: 13-R-03

Rule Summary

The following rule changes are needed to maintain Wisconsin’s reputation for its world class dairy products by ensuring that inspection practices are aligned with the Food and Drug Administration’s (FDA’s) Grade “A” Pasteurized Milk Ordinance (PMO). The PMO establishes minimum standards for Grade “A” dairy products. Wisconsin dairy producers and bulk milk weighers and samplers must meet state regulatory 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. The PMO standards are established by the National Conference on Interstate Milk Shipments (NCIMS), which consists of voting representatives from dairy regulatory agencies in each state.

Partial Collection of Milk from Bulk Milk Tanks

The rule adopts a provision of the PMO that allows, but does not require, bulk milk weighers and samplers to make partial collections of milk from bulk tanks on dairy farms. The PMO allows partial collections if certain practices are used to maintain the quality of milk. The proposed rule adopts these practices, including a requirement that the bulk tank is emptied, cleaned and sanitized within 72 hours of emptying 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 pickup is made and when the bulk tank is emptied.

Bulk Milk Tanker Grade “A” Permit Reciprocity

The rule also clarifies and strengthens reciprocity requirements for bulk milk tanker Grade “A” permits. The PMO requires that each bulk milk tanker truck delivering Grade “A” raw milk and milk products bear a Grade “A” permit, which may only be issued after satisfactory completion of an annual inspection. The bulk milk tanker operator must possess 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 located in Wisconsin and out-of-state tankers that operate in Wisconsin. However, because some 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 current practice of routinely providing a Grade “A” permit as part of the licensing process and clarifies that a Grade “A” permit will only be granted after completion of the annual inspection, as required by the PMO. It also clarifies that the department will recognize valid Grade “A” permits issued by an equivalent regulatory agency in another state 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 located and will bring Wisconsin into compliance with reciprocity requirements of the PMO.

Certified Industry Inspection Program for Bulk Milk Tankers

Logistical issues often make it difficult for the department to schedule annual bulk milk tanker inspections in a timely manner. If a Wisconsin tanker tries to deliver Grade “A” milk or milk products outside Wisconsin without proof of a current inspection, the tanker load may be turned away or another state regulatory agency may conduct an inspection and charge the tanker operator an inspection fee. Section 97.24(3), Stats., authorizes the department to make rules to ensure compliance with PMO standards. To further ensure that all Wisconsin-based bulk milk tankers receive an annual inspection in a timely manner, the rule also establishes a voluntary certified industry inspection program, in accordance with the PMO, for inspecting bulk milk tankers. The PMO requires, and the rule adopts, stringent procedures for ensuring proper regulatory oversight of certified industry inspections so that inspections are conducted consistently and that they effectively evaluate bulk milk tanker equipment, construction, cleaning, sanitation and repair. The rule would allow the department to appoint certified industry inspection personnel who wish to participate in the program in accordance with s. 97.32, Stats., which outlines procedures for the department to appoint special food and dairy inspectors.

Other changes to modernize ATCP 82

The rule also makes other changes designed to modernize and further align the rule with the PMO, including:

- Replacing the term “milk hauler” with “bulk milk weigher and sampler” to reflect current terminology that more fully encompasses the tasks described in the rule. This terminology is consistent with s. 98.146, Stats., which requires persons

performing these tasks to hold a bulk milk weigher and sampler license. The definitions would also be revised to clarify that use of the term “department” throughout the rule refers to the Department of Agriculture, Trade and Consumer Protection.

- Removing the requirement that a bulk milk tanker operator must clean and sanitize the milk tankers, while maintaining the requirement that the tanker must be cleaned and sanitized adequately. The proposed rule focuses on the task that must be accomplished, rather than who must accomplish it.
- Clarifying 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. Under the rule the records would be kept at the location where the documented action occurred.
- Adding 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. There will be no additional fee for the inspection and permit.
- Removing the requirements that the tanker access port(s) be sealed after the tanker is filled with milk, and that a broken seal(s) must be reported to the department. These requirements were originally added to ATCP 82 in response to industry concerns about intentional adulteration (tampering). However, the PMO does not require tanker access ports to be sealed after filling, and 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.

Small Businesses Affected

The rule changes will impact dairy producers, dairy plants, and companies that operate bulk milk tankers, many of which may be small businesses. The proposed rule does not substantially alter requirements dairy-related businesses already must meet. The rule does not increase 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” milk and milk 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 for Grade “A” permits. A valid Grade “A” permit is required to transport and deliver Grade “A” milk and milk products.

If the rule is adopted, 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.

Reporting, Bookkeeping and other Procedures

The rule would require a bulk milk weigher and sampler to record when they make a partial collection of milk from a bulk milk tank. The rule would not require any additional reporting, bookkeeping or other procedures.

Professional Skills Required

The rule does not require any new professional skills by small businesses.

Accommodation for Small Business

All Grade “A” dairy businesses, whether large or small, must meet regulations that are substantially in compliance with the Food and Drug Administration’s Pasteurized Milk Ordinance in order to collect, sample, and transport Grade “A” dairy products. The provision in the rule allowing partial collection of milk from bulk tanks is optional and while it is expected to primarily benefit larger businesses, it could also provide small businesses with more management flexibility. Other provisions in the rule will not substantially alter current practice. No special accommodation for small business may be made.

Conclusion

The provisions in this rule will benefit Wisconsin’s dairy industry. If adopted, this rule will provide more flexibility for dairy-related businesses that collect and transport bulk milk and milk products. It will clarify and simplify Grade “A” permit requirements for

bulk milk tankers and bulk milk weighers and samplers. It will remove an unnecessary reporting requirement. 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.

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

Dated this _____ day of _____, 2014.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

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