

Milk and Milk Products; Final Rule (Clearinghouse Rule #14-073)

The Department of Agriculture, Trade and Consumer Protection (“Department”) hereby submits the following rule for publication:

Clearinghouse rule #: 14-073

Subject: Milk and Milk Products

Adm. code reference: ATCP 65

DATCP Docket #: 13-R-06 and 13-R-13

We are enclosing a copy of the final rule, as adopted by the Department. We are also providing the following information for publication with the rule, as required by s. 227.114 (6), Stats.

Business Impact Analysis Summary

- The rule changes will impact dairy producers and dairy plants, many of which may be small businesses. 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 produce, transport, and process Grade “A” dairy products and no special accommodation may be made for small businesses. The rule does not make accommodations for small Grade “B” dairy businesses. The rule allows Grade “B” businesses to seek variances from some requirements and incorporates more flexibility than for Grade “A” businesses. However, to protect food safety and the quality of Wisconsin milk and milk products, further flexibility based on business size is not possible.
- Under the rule, some dairy producers may incur costs if they need to modify access to the milkhouse to avoid contamination with animal waste. A few milk producers may also be required to participate in a drug residue prevention program if they have milk samples test positive on two or three dates within 12 months. Some farms may need to have load-out doors installed to meet requirements for the location of bulk transport containers that receive milk directly from the milking equipment (“direct ship” milking). Grade “B” dairy plants will likely incur costs in developing and implementing a food safety plan to comply with the federal Preventive Controls – Human Food rule implementing the FDA Food Safety Modernization Act.
- However, some of the rule changes may result in cost savings or provide other benefits to industry. For example, the rule contains certain exemptions from dairy plant licensing for licensed restaurants and other retail food establishments. The rule also allows the Division of Food Safety (DFS) to authorize alternative temperature limits for storing non-Grade “A” milk or milk products. It exempts acid whey with specified percent titratable acidity or pH, and grade “B” whey produced and handled under certain conditions from

storage time and storage temperature requirements applicable to other dairy products. This change is in response to information presented by industry.

- The rule also assists small businesses by consolidating dairy farm and dairy plant regulations into one rule.
- The rule will benefit the state's economy by ensuring Wisconsin's dairy industry meets federal standards for grade "A" milk and milk products. Wisconsin has over 9,000 licensed milk producers and is ranked second nationally in milk production. Milk is shipped from each dairy farm to one of more than 400 licensed dairy plants in the state or to a licensed dairy plant in another state. About 98% of the milk produced in Wisconsin is grade "A." Grade "A" unpasteurized milk, along with pasteurized milk and certain other dairy products made from grade "A" milk can only be shipped across state and international boundaries if the production, transportation, processing, and regulatory oversight are in accordance with the PMO.

Reporting, Bookkeeping and other Procedures

The proposed rule would not require any additional reporting, bookkeeping or other procedures.

Professional Skills Required

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

Accommodation for Small Business

All Grade "A" dairy farms and dairy plants, 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 produce, transport, and process Grade "A" dairy products. No special accommodation for Grade "A" small dairy businesses may be made. Grade "B" dairy farms and dairy plants have more flexibility than Grade "A" dairy businesses, but Grade "B" dairy businesses also must meet certain requirements in order to produce safe, high-quality milk and milk products.

Conclusion

The provisions in this rule will benefit Wisconsin's dairy industry and are expected to impose minor costs for only a few dairy farms and dairy plants.

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.

Comments from Legislative Committees Summary

The finished rule was submitted to the legislature for review on March 22, 2016. The rule was assigned to the Assembly Committee on Agriculture and the Senate Committee on Agriculture, Small Business and Tourism. Neither committee took action. The Senate referred the rule to the Joint Committee for Review of Administrative Rules (JCRAR) on May 31, 2016, and the Assembly referred it to JCRAR on May 19, 2016. JCRAR also took no action on the rule.