

**Wisconsin Department of Agriculture, Trade and Consumer Protection**

**Regulatory Flexibility Analysis**

***Rule Subject: Milk Haulers***

***Adm. Code Reference: ATCP 82***

***Rules Clearinghouse #: Not assigned***

***DATCP Docket #: 15-R-07***

***Rule Summary***

The following proposed rule changes are needed to bring ch. ATCP 82 in alignment with recent statutory changes that eliminated licensing and license fees for bulk milk tanker operators.

Wisconsin has just under 10,000 licensed dairy farms; the milk from each of these farms is shipped to one of more than 400 licensed dairy plants in the state, or to a licensed dairy plant in another state. Approximately 4,000 bulk milk tankers from Wisconsin and other states deliver milk to Wisconsin dairy plants.

In the past, Wisconsin required the owner of bulk milk tankers used to transport Grade “A” milk and milk products to hold a license and a Grade “A” permit for each tanker. The department charged a licensing fee of \$45 and issued a Grade “A” permit as an endorsement on the license. 2015 Wisconsin Act 55 revised s. 97.21, Stats., eliminating bulk milk tanker licensing and license fee requirements, and aligning Wisconsin with most other states by removing the requirement that bulk milk tanker operators hold both a tanker license and a Grade “A” permit. The department proposes incorporating these revisions into ATCP 82 to reflect these statutory changes.

As part of this rule revision, the department also proposes to remove a confusing provision related to employees of companies that own bulk milk tankers. The current rule states that an employee who drives a bulk milk tanker is not required to obtain a separate Grade “A” permit to drive the truck, if the owner of the bulk milk tanker already has a Grade “A” permit for the tanker. However, this provision is unnecessary as an employee who drives a bulk milk tanker already bearing a Grade “A” permit would never be expected to acquire a separate Grade “A” permit. The original intent of the rule was to exempt an employee who drives a bulk milk tanker transporting and holding Grade “A” milk from the requirement to hold a bulk milk weigher and sampler license if the employee does not weigh or sample the milk. This requirement is implicitly stated in s. ATCP 82.04(1).

Finally, the department is proposing to adopt a modest increase in the reinspection fee. Reinspections are conducted when the department finds that a tanker has a regulatory

violation. Few bulk milk tankers receive reinspections. In the past year, only 13 tankers were reinspected. Currently, the reinspection fee is \$45 and the proposed rule recommends an increase of this fee to \$60.

### ***Small Businesses Affected***

The proposed rule will be clearer and aligned with statutory provisions eliminating licensing and license fee requirements for bulk milk tanker owners, many of which may be small businesses. By eliminating licensing fees, the proposed rule changes will benefit dairy producers, dairy plants, and companies that operate bulk milk tankers, many of which may be small businesses. The proposed rule includes a modest increase in the reinspection fee, from \$45 to \$60. This fee would only be charged if the department finds a regulatory violation. In the past year, only 13 bulk milk tankers were reinspected.

All grade “A” dairy businesses, whether large or small, must meet regulations that are substantially in compliance with the US Food and Drug Administration’s Pasteurized Milk Ordinance (PMO) in order to collect, sample, and transport grade “A” milk and milk products, and no special accommodation may be made for small businesses.

### ***Reporting, Bookkeeping and other Procedures***

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

### ***Professional Skills Required***

The proposed rule does not require any new professional skills.

### ***Accommodation for Small Business***

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. The PMO contains no provision for special accommodation for small businesses.

### ***Conclusion***

The provisions in this proposed rule will benefit Wisconsin’s dairy industry by clarifying Grade “A” permit requirements for milk tankers. It will abolish a fee, previously charged for a bulk milk tanker license. 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.