STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection (DATCP)

Rule No.: Ch. ATCP 82, Wis. Adm. Code (Existing)

Relating to: Bulk milk collection, sampling, and transportation.

1. Description of the objective of the rule:

The department proposes modifying ATCP 82, "Bulk Milk Collection, Sampling, and Transportation," to adopt provisions from 2015 Wisconsin Act 55 eliminating licensing and license fee requirements for bulk milk tankers.

2. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

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.

Prior to the adoption of 2015 Wisconsin Act 55, Wisconsin required the owner of bulk milk tankers used to transport Grade "A" milk 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 recent statutory changes.

2015 Wisconsin Act 55 made other changes to the bulk milk tanker permitting process to bring Wisconsin's statutes in alignment with the Food and Drug Administration's (FDA's) Pasteurized Milk Ordinance (PMO). For example, the statutes were revised to clarify that applicants for a tanker permit must provide proof that the bulk milk tanker has passed an inspection within the preceding year to receive a Grade "A" permit. The statutes also now require the department to recognize a Grade "A" permit issued by an equivalent regulatory agency in another state to satisfy the bulk milk tanker permit requirement. The department already adopted these provisions when it recently revised ATCP 82 to further align the rule with the PMO.

As part of this rule revision, the department will also consider removing a confusing exemption in the rule for employees of companies that own bulk milk tankers. The current rule states that an employee who drives a bulk milk tanker does not need to obtain a separate Grade "A" permit to drive the truck, if the owner of the bulk milk tanker owner already has a Grade "A" permit for

the tanker. However, this exemption is unnecessary as an employee who drives a bulk milk tanker already bearing a Grade "A" permit need not 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.

Finally, the department will consider whether 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. The department will evaluate whether this fee should be increased to better cover the actual costs of conducting a reinspection.

Policy Alternatives. ATCP 82 currently includes provisions for licensing bulk milk tankers. If the department does not revise the rule, ATCP 82 will not reflect current statutory language regarding bulk milk tanker licensing. Business owners who consult the administrative rule for guidance will mistakenly believe they need to purchase a separate bulk milk tanker license. It will also continue to contain confusing language regarding licensing requirements for employees of companies that own and operate bulk milk tankers.

3. Statutory authority for the rule (including the statutory citation and language): Statutory Authority: ss. 93.07 (1), 97.09 (4), and 97.21 (6), Stats.

93.07 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 chs. 93 to 100, which regulations shall have the force of law.

97.09 Rules.

(4) The department may, by rule, establish and enforce standards governing the production, processing, packaging, labeling, transportation, storage, handling, display, sale, including retail sale, and distribution of foods that are needed to protect the public from the sale of adulterated or misbranded foods.

97.21 Milk haulers and milk distributors.

(6) RULE MAKING. The department may promulgate rules to establish amounts of fees required under sub. (4) or to regulate bulk milk tanker operators and milk distributors. The rules may include standards for the construction, maintenance and sanitary operation of bulk milk tankers, milk distribution vehicles and milk distribution facilities; the design, installation, cleaning and maintenance of equipment and utensils; personnel sanitation; storage and handling of milk and fluid milk products; identification of bulk milk tankers and milk distribution vehicles; and record keeping.

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

Since this is a limited rule revision, DATCP estimates that it will use approximately 0.05 FTE staff to develop this rule including time for analysis, drafting rule and related documents, holding public hearings, and communicating with affected persons and groups. DATCP will use existing staff to implement this rule revision.

5. Description of all entities that may be impacted by the rule:

Bulk milk tanker operators will benefit from the rule revision since it will eliminate possible confusion due to inconsistency between ATCP 82 and recently adopted statutory language removing licensing and licensing fee requirements.

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

Federal guidelines for regulating bulk milk tankers, including requirements for issuing a Grade "A" permit to bulk milk tankers, are found in the Food and Drug Administration's Pasteurized Milk Ordinance (PMO). Compliance with the PMO is technically voluntary for state regulatory agencies although this document is the foundation of the nation's Grade "A" milk and milk products industry, and Wisconsin is periodically evaluated by the FDA for compliance with PMO standards. Failure to pass an FDA audit would jeopardize the state's interstate and international dairy industry.

ATCP 82 already includes provisions consistent with the PMO related to issuing a Grade "A" permit for bulk milk tankers. Licensing and license fee requirements are not addressed by the PMO and this rule revision will not negatively impact Wisconsin's compliance with the PMO.

7. Anticipated economic impact

By incorporating statutory provisions eliminating licensing fees for bulk milk tankers, this rule change is anticipated to have a positive economic impact for Wisconsin's dairy industry. It will make Wisconsin's regulations regarding permitting and licensing bulk milk tankers consistent with practices in other states, including those elsewhere in the Upper Midwest. If adopted, a modest increase in the reinspection fee would impact few bulk milk tanker owners. The department only conducted 13 reinspections of bulk milk tankers over the past year.

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