STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection

Rule No.: Section ATCP 52 Wis. Adm. Code (New)

Relating to: Producer Led Watershed Protection Grants

Rule Type: Both Permanent and Emergency

1. Description of the objective of the rule:

2015 Wisconsin Act 55 ("Budget Act") authorizes the Department of Agriculture, Trade and Consumer Protection ("department") under s. 93.59, Stats., to make grants for nonpoint source pollution abatement activities that are "conducted with the assistance of producer led groups." The department proposes an emergency and permanent rule that will establish criteria for issuing the grants.

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:

History and background.

Wisconsin currently has many waterways, lakes and water impoundments with significant water quality impairments. These impairments are attributed to a number of sources, including industrial, urban and agricultural. Because attention to water quality concerns has increased over the last decade, so has attention toward finding innovative solutions to address the causes of water quality impacts. To improve water quality in watershed areas, the Wisconsin Legislature recently passed a law that provides matching grant funds to agricultural producers that operate farms within a watershed. Effective July 1, 2015, the Budget Act enacted section 93.59 of the Wisconsin Statutes ("section 93.59"), under which the department may give grants to qualified groups consisting of agricultural producers that wish to voluntarily conduct nonpoint source water pollution abatement activities. Under section 485 of the Budget Act, the amount of funds to be allocated for the program shall not exceed $250,000 annually.

Proposed policies and justification.

Section 93.59 sets forth several conditions that an agricultural producer group must meet to obtain a grant. Initially, a producer group must have at least five agricultural producers, each of whom operates as an eligible farm under s. 91.86(1), Stats., in one watershed. The producer group must also be formed through a memorandum of understanding with at least one of several listed organizations, all of which have expertise in conservation or water

pollution abatement. Additional requirements include that a group generally must contribute matching funds equal to at least 50 percent of eligible costs and must file an annual report with the department.

However, other than setting out basic conditions relating mainly to the composition of the producer group, section 93.59 leaves the criteria for the issuance of grant funds to be developed through department rulemaking. Section 93.59(4) of the statutes states that "[t]he department may promulgate rules that do all of the following: **(a)** Define "legal entity" for the purposes of this section. **(b)** Specify the application process for a grant under this section. **(c)** Specify activities that may be conducted using a grant under this section."

Accordingly, this rule will specify the application process for a grant; identify which activities may be conducted using a grant; and define the term "legal entity," used in section 93.59(1) of the statutes.

Nature of the Emergency Not Required.

Section 9102 of the Budget Act, which is a nonstatutory provision, states, in relevant part:

> Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of a the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection. (Underline added.)

Based on this provision, the Budget Act specifically exempts the department from having to provide evidence or make a finding of emergency before issuing an emergency rule.

Policy Alternatives.

Do nothing. If the department fails to adopt rules that contain the basis for grant determinations, then it will not be able to expend the funds and provide grants to producer led groups as the Legislature directed in the Budget Act.

3. Statutory authority for the rule (including the statutory citation and language):

Sections 93.07 (1) and 93.59, Stats., provide:

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.

93.59 Producer led watershed protection grants.

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(4) The department may promulgate rules that do all of the following:

(a) Define "legal entity" for the purposes of this section.

(b) Specify the application process for a grant under this section.

(c) Specify activities that may be conducted using a grant under this section.

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:

The department estimates that it will use approximately 0.25 FTE staff to develop this rule. This includes time required for the investigation and analysis, rule drafting, preparing related documents, holding public hearings and communicating with affected persons and groups. The department will use existing staff to develop this rule.

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

This rule will enable groups of agricultural producers that operate farms in a watershed to obtain financial assistance to voluntarily conduct nonpoint source water pollution abatement activities. By statute, producer led groups must collaborate with one of the following: the department, the Department of Natural Resources, a county land conservation committee, the University of Wisconsin-Extension, the Discovery Farms Program of the University of Wisconsin-Extension, or a nonprofit conservation organization.

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:

This rule will only establish criteria to issue grants obtained from state funds within a state-created program; there are no existing or proposed federal regulations related to this activity.

7. Anticipated economic impact:

Because participation in the program is voluntary, there will be no negative economic impact produced by the proposed rule. The proposed rule will enable the department to provide grants to producer led groups that wish to assist agricultural producers in a watershed to voluntarily conduct nonpoint source water abatement activities. Grant funds should positively impact businesses that provide goods and services used in abatement activities.

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for Ben Brancel
Secretary
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