STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection (DATCP)

Rule No.: Ch. ATCP 60, Wis. Adm. Code (Existing)

Relating to: Dairy farms, and affecting small business.

1. Description of the objective of the rule:

The department proposes a comprehensive review and revision of ATCP 60 relating to the inspection of dairy farms in Wisconsin. The objective of this proposed rule is to modernize current dairy farm inspection rules in order to ensure compliance with the most recent version of the Federal Food and Drug Administration's ("FDA's") Pasteurized Milk Ordinance (PMO), accommodate advances in dairying, and continue ensuring the safety and quality of Wisconsin milk. The department will also determine whether, and the extent to which, revisions are needed to improve the efficiency of Grade "A" dairy farm inspections and certain compliance procedures.

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 ranks second nationally in milk production and operates the nation's largest state dairy inspection program. Wisconsin has by far the largest number of dairy farms operated by licensed dairy producers; the milk from each of these farms is shipped to one of the more than 400 licensed dairy plants in the state, or to a licensed dairy plant in another state. Ch. ATCP 60 (Dairy Farms) lists dairy producer license and Grade "A" permit requirements, dairy farm standards, milk quality standards, procedures for examination of milk from dairy farms, and inspection and enforcement practices.

The department proposes working with industry to modernize language, definitions and requirements for consistency with the PMO. The vast majority of dairy producers in Wisconsin have Grade "A" permits, which means that their milk, or pasteurized milk and certain other dairy products made from it, can be shipped across state and international boundaries. Milk moving in this manner, referred to as Grade "A" milk, must be produced, transported, and processed in accordance with the PMO. State regulations governing Grade "A" milk must be at least as stringent, and consistent with, the PMO. FDA revises the PMO every two years. The current ATCP 60 rules, although largely in compliance with the PMO, must be revised periodically to maintain the needed consistency with the latest version of the PMO and adapt to new innovations in the dairy industry. For example, the PMO now specifically addresses automated milking installations ("robotic" milking), while ATCP 60 does not.

The department will consider a variety of potential rule changes which relate to topics such as dairy farm water supply and well testing, reporting by dairy plants of milk quality test results,

procedures and ramifications of Grade A permit suspension, variance procedures, robotic milking, and review of plumbing projects and dairy farm equipment installations. The department will also work with industry to determine whether changes in the Somatic Cell Count (SCC) standard in ATCP 60 are needed for Wisconsin to maintain a competitive position in national and international dairy markets.

As part of its overall review of Ch. ATCP 60, the department will explore alternatives, consistent with the PMO, for conducting Grade A farm inspections more efficiently. The department will also re-evaluate rules that require progressive corrective actions to be taken by dairy producers. For example, the department will assess the adequacy of the current rule specifying a corrective action to be taken after the first milk sample yielding a positive drug residue result. The department may also evaluate whether ATCP 60 provides adequate milk safety regulatory oversight when cattle sold for slaughter by a dairy producer are found to contain drug residues. The department may propose rule changes addressing these topics, as needed.

Policy Alternatives. FDA revises the PMO every two years and the department must periodically revise ATCP 60 to incorporate changes to ensure compliance with the PMO. If the department does not alter the current rule, the rule may not remain consistent with the PMO, which could eventually lead to problems when the FDA audits the Wisconsin dairy inspection program for compliance. A failing regulatory audit score could jeopardize the ability of Wisconsin dairy producers and plants to participate in the Grade "A" program and to maintain Wisconsin's reputation as the Dairy State. Current regulations may not be adequate for addressing emerging economic and food safety issues related to dairy farming. For example, maintaining the current SCC standard may result in many of the state's Grade "A" dairy producers trying to meet different SCC standards if they export Grade "A" dairy products to countries with a more stringent SCC standard than the one currently in place in ATCP 60. Without a rule revision, the department would continue trying to enforce rules that were designed for more traditional milking operations without consideration of innovative dairying practices such as robotic milking. Finally, if the current rules are not revised, the department may miss opportunities to improve the cost-effectiveness of on-site dairy farm inspections.

3. Statutory authority for the rule (including the statutory citation and language): Statutory Authority: ss. 93.07 (1), 97.09 (4), and 97.22 (8), 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.

97.22 Milk producers.

(8) RULE MAKING. The department may promulgate rules to establish the fees required under sub. (2) (b) or (4) (a) or to govern the operation of dairy farms by milk producers. The rules may include standards for any of the following:

(a) The safety, wholesomeness and quality of milk.

(b) The sanitary construction and maintenance of dairy farm facilities used in milk production.

(c) The availability of safe and adequate water supplies for milk production.

(d) The sanitary construction, maintenance and cleaning of equipment and utensils used in milk production.

(e) Personnel sanitation related to milk production.

(f) Sanitary procedures for the production of milk, including but not limited to the handling, transfer and storage of milk on a dairy farm.

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:

DATCP estimates that it will use approximately 0.20 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, holding public hearings and communicating with affected stakeholders. DATCP will use existing staff to develop this rule.

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

Dairy producers and dairy plant operators will benefit from increased consistency of Wisconsin regulations with the PMO. Consumers and the department will benefit from greater cost-effectiveness in conducting on-site dairy farm inspections.

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:

The proposed rule makes ATCP 60 more consistent with the PMO. Although compliance with the PMO is technically a voluntary effort by state regulatory agencies, Wisconsin is periodically evaluated by the FDA for compliance with the PMO. Failure to pass the FDA audit would jeopardize the state's interstate and international dairy industry.

7. Anticipated economic impact

This rule change is anticipated to have no negative impact, but a positive economic impact for Wisconsin's dairy industry. In many respects, it will make Wisconsin's regulations consistent with practices in other states, including those elsewhere in the Upper Midwest which have

adopted the latest version of the PMO by reference. The rule will not modify fees or have an economic impact on local governmental units or public utility taxpayers.

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