STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection (DATCP)

Rule No.: Wis. Admin. Code ch. ATCP 100 (Existing)

Relating to: Milk Contractors

Rule Type: Emergency

1. Finding/nature of emergency:

An emergency rule is necessary to ensure the continuation of the fund assessment exemption for milk contractors. In December 2015, the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) received an actuarial study detailing the need for changes to the Agriculture Producer Security Fund (APSF) to ensure fund stability and to mitigate the impact of large defaults in the future. Without this emergency rule, licensed milk contractors will take on the burden of repaying a large portion of the APSF overall fund balance while new policies are developed and implemented based on the findings of the actuarial study. DATCP recommends maintaining the status quo during this transitional period. An emergency rule effective date of May 1 is necessary, as the next license year (assessment period) for milk contractors begins May 1, 2016.

2. Description of the objective of the rule:

DATCP proposes an emergency rule that will reduce the APSF minimum balance from $11 million set by rule to $5 million which is the minimum set by statute. See Wis. Stat. § 126.88 (1)(a). This decrease will allow the continuation of the fund assessment exemption for milk contractors. The emergency rule is necessitated by the decrease in the APSF overall fund balance due to a default by a large vegetable contractor (see history and background section below).

3. 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.

The APSF is a public trust administered by DATCP. Milk contractors, grain dealers, grain warehouse keepers, and vegetable contractors (collectively known as contractors) must purchase a license to obtain milk, grain, or vegetables from producers, and most contractors are required to contribute to the APSF annually. Funds are used to settle claims by producers in the event that a contractor defaults on payment. Funds from each industry are accounted for separately and

deposited into the overall fund. Wis. Stat. ch. 126, establishes detailed fund assessment requirements, except that it requires DATCP to establish milk contractor fund assessments by rule. Wis. Stat. ch. 126, sets minimum fund balances for each industry, as well as a minimum balance requirement for the overall fund.

Wis. Admin. Code § ATCP 100.135 (10), establishes a fund assessment exemption for milk contractors. To be eligible, a licensee must have been a contributing milk contractor in each of the preceding five license years. The exemption does not apply if the fund balance attributable to milk contractors was less than $6 million on February 28 of the preceding license year. The exemption also does not apply if the overall fund balance (which includes contributions from milk, grain and vegetable contractors) was less than $11 million on February 28 of the preceding license year. Wis. Stat. § 126.88, sets the overall fund minimum balance at $5 million.

In 2014, the APSF paid out claims to 18 vegetable producers due to payment default by one large, out-of-state contractor. The APSF payments totaled $6.1 million, causing the overall fund balance to drop by more than half. With the overall fund balance well below the $11 million minimum balance currently set by rule, the milk contractor industry would not be eligible for fund assessment exemptions for an estimated 6-7 years.

DATCP and the Agricultural Producer Security Council have identified the need to evaluate the entire agricultural producer security program, so that changes can be made to mitigate the impact of large defaults in the future. In December 2015, DATCP received the completed actuarial study and is developing recommendations for permanent changes to the agricultural producer security program based on the findings in the actuarial study.

The proposed emergency rule would alleviate a financial burden otherwise placed upon licensed milk contractors during this transitional period. Without this change, milk contractors would not be eligible for fund assessment exemption until permanent changes to the agricultural producer security program are implemented.

Policy Alternatives

Do nothing. If DATCP fails to adopt this emergency rule the milk contractor industry will not be eligible for fund assessment exemption until the producer security overall fund balance exceeds $11 million. License years for milk contractors begin May 1. If DATCP fails to adopt this emergency rule before May 1, 2016, no milk contractors will be eligible for exemption during the next license year.

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

Wis. Stat. § 93.07 (1), directs DATCP to make such regulations as are necessary for the discharge of all the powers and duties of the department.

Wis. Stat. § 126.46 (1), directs DATCP to establish by rule annual fund assessments for milk contractors.

Wis. Stat. § 126.81 (1) (a), allows DATCP to promulgate rules to interpret and implement Wis. Stat. ch. 126.

Wis. Stat. § 227.24, allows DATCP to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under Wis. Stat. ch. 227.

5. 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 0.10 FTE staff to develop this rule. This includes time required for the investigation and analysis, financial assistance criteria, rule drafting, preparing related documents, and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

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

The proposed rule will allow milk contractors who meet fund assessment exemption requirements under Wis. Admin. Code §§ ATCP 100.135 (10) (a) and (b), to not pay fund assessments if the producer security overall fund balance is at least $5 million on February 28 of the preceding license year. The milk contractor industry would otherwise be required to pay an estimated $420,000 - $800,000 annually, until the overall fund balance reaches a minimum balance of $11 million.

Milk, grain, and vegetable producers could potentially be impacted by the overall lower APSF balance, in the event of future large defaults.

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

There is no existing or proposed federal regulation that is intended to address the activities regulated by this rule.

8. Anticipated economic impact

The proposed rule will slow the growth of the overall fund balance, as the milk contractor industry would otherwise be required to pay an additional $420,000 - $800,000 annually. The impact to milk, grain, and vegetable producers will be minimal if there are no large defaults during the next 6-7 years.

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