

DATCP Docket No. 16-R-01

**WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION**

EMERGENCY RULE

The Wisconsin department of agriculture, trade and consumer protection hereby adopts the following emergency rule *to amend* s. ATCP 100.135 (10) (c) *relating to* milk contractor agricultural producer security fund assessments.

**Analysis Prepared by the Department
of Agriculture, Trade and Consumer Protection**

This emergency rule amends one of three fund assessment exemption requirements for milk contractors, reducing the overall fund minimum balance requirement from \$11 million to \$5 million.

The Wisconsin Department of Agriculture, Trade and Consumer Protection (“Department”) is adopting this temporary emergency rule. At this time, the Department has not yet determined if it will adopt a permanent rule on the same subject. This emergency rule will take effect May 1, 2016, and will remain in effect for 150 days. The legislature’s joint committee for review of administrative rules may extend the emergency rule for up to 120 additional days.

Statutes Interpreted

Statutes Interpreted: s. 126.46, Stats.

Statutory Authority

Statutory Authority: ss. 93.07 (1), 126.81 (1) (a) and (2m) (b), 126.88 (1), and 227.24, Stats.

Explanation of Statutory Authority

The Department has broad general authority, under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. The Department has specific authority under s. 126.81 (1) (a), Stats., to interpret and implement Ch. 126, Stats. The Department also has specific authority under s. 126.88 (1), Stats., to modify agricultural producer security assessments prescribed under Ch. 126, Stats. The Department is required under s. 126.81 (2m) (b), Stats., to promulgate rules which specify fund assessments under s. 126.46 (1), Stats. The Department is adopting this temporary emergency rule under authority of s. 227.24, Stats.

Related Statutes and Rules

The Agricultural Producer Security Program is governed under Ch. 126, Stats. More specifically, assessments into the producer security fund are calculated pursuant to s. 126.46, Stats., for milk contractors.

Chapter ATCP 100 of the Wisconsin Administrative Code interprets and implements Ch. 126, Stats., as it relates to milk contractors. The Department has explicit authority to implement administrative rules modifying the milk contractor keeper assessments prescribed in the statutes.

Plain Language Analysis

Background

The Agricultural Producer Security Fund (APSF) is a public trust administered by the Department. Milk contractors, grain dealers, grain warehouse keepers and vegetable contractors (collectively known as contractors) must purchase a license to obtain milk, grain and vegetables, respectively, from producers, and 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 or fails to return grain held in storage. Funds from each industry are accounted for separately and deposited into the overall fund. Ch. 126, Stats., establishes detailed fund assessment requirements, except that it requires the Department to establish milk contractor fund assessments by rule. Ch. 126, Stats., sets minimum fund balances for each industry, as well as a minimum balance requirement for the overall fund.

Section ATCP 100.135 (10) of the Wisconsin Administrative Code, 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. Section 126.88, Stats., sets the overall fund minimum balance at \$5 million.

In 2014 and 2015, defaults in the vegetable and milk industries totaled \$7.2 million, causing the overall fund balance to drop substantially. With the overall fund balance well below the \$11 million minimum currently set in administrative code, the milk contractor industry will not be eligible for fund assessment exemptions for an estimated 5-6 years.

The Department and the Agricultural Producer Security Council (APS Council) 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, the Department received an actuarial study of the APSF and began working with the APS Council to develop recommendations for permanent changes to the APSF.

The proposed emergency rule would alleviate a financial burden otherwise placed upon licensed milk contractors. Without this emergency rule, licensed milk contractors would not be eligible for fund assessment exemption for the 2016 license year and would take on the burden of repaying a large portion of the APSF overall fund balance.

Rule Content

Under this rule, the annual fund assessment exemption requirement regarding the overall fund balance minimum would decrease from \$11 million to \$5 million.

Summary of, and Comparison with Existing or Proposed Federal Statutes and Regulations

Federal Programs

No federal programs currently exist offering milk producer security from contractor payment defaults.

Surrounding State Programs

Minnesota requires any wholesale dealer or food processor who contracts with other Minnesota dealers or farmers of milk, cream, or products made from milk or cream, to be licensed as a Wholesale Produce Dealer. Dealers are required to obtain a surety bond and required to maintain trust assets so that assets are freely available to satisfy outstanding obligations. There is no exemption to this requirement.

Michigan requires producer security for all manufacturing and Grade A dairy plants that are a first receiving point for raw milk that will be processed at that facility. Security can be in one or more of several forms including bond, letter of credit, certificate of deposit or pre-payment. There is no exemption to this requirement.

Illinois, Indiana and Iowa do not require dairy producer security.

Summary of Factual Data and Analytical Methodologies

The Department analyzed the APSF fiscal year 2015 reports to estimate the projected overall fund balance expected on February 28, 2016. The Department reviewed 2015 financial statements filed by contractors to determine a range of dairy contractor fund assessments due for the license year beginning May 1, 2016.

Analysis and Supporting Documents used to Determine Effect on Small Business

Much of the data analyzed by the Department was generated by small businesses. This includes the APSF fiscal year 2015 reports and the 2015 financial statements filed by contractors.

Effect on Small Business

This rule will have a positive impact on small milk contractor businesses by allowing those that meet fund assessment exemption requirements under ss. ATCP 100.135 (10) (a) and (b) of the Wisconsin Administrative Code, 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 additional \$590,000 - \$1,190,000 annually until the overall fund balance reaches a minimum of \$11 million.

This rule will slow the growth of the overall fund balance; therefore, it could have a negative effect on small milk, grain and vegetable producer businesses in the event of future large defaults.

DATCP Contact

Questions and comments (including hearing comments) related to this rule may be directed to:

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FINDING OF EMERGENCY

(1) In Wisconsin, milk contractors (persons who purchase milk from producers or producer agents) must obtain a license to purchase milk from producers or producer agents, and are collectively referred to as “contractors”. Most contractors are “contributing contractors,” which means they must pay annual assessments into the Wisconsin Agricultural Producer Security Fund (APSF). This fund is designed to help partially reimburse producers in the event that a contractor defaults on payment to producers and producer agents. The annual assessments are calculated based on the total dollar value of commodities purchased, the length of time that the contractor has participated in the fund, and certain financial ratios from the contractor’s balance sheet.

(2) The milk contractor license year begins on May 1 of each year. At that point, the Department calculates the assessment for the new license year that will be due for each contractor, and determines if a given contractor meets exemption requirements established under Wis. Admin. Code § ATCP 100.135 (10) for that license year. Current exemption requirements are: the milk contractor was classified as a contributing milk contractor in each of the five license years immediately preceding that license year; the fund balance attributable to milk contractors was at least \$6 million on February 28 of the preceding license year; and, the overall fund balance was at least \$11 million on February 28 of the preceding license year.

(3) The overall fund balance was just over \$7 million on the assessment date of February 28, 2016, due to default payments to vegetable and milk producers in 2014 and 2015 respectively. This decrease in the overall fund balance would eliminate eligibility for fund assessment exemption for every milk contractor over the next 5-6 years, costing the industry \$590,000 - \$1,190,000 annually. An emergency rule is necessary to ensure the continuation of the fund assessment exemption for milk contractors.

(4) The Department and the Agricultural Producer Security (APS) Council identified the need to evaluate the entire agricultural producer security program, so that changes can be made to ensure fund

stability and mitigate the impact of large defaults in the future. In December 2015, the Department received an actuarial study of the APSF and began working with the APS Council to develop recommendations for permanent changes to the agricultural producer security program. The Department recommends maintaining the status quo during this transitional period. Without this emergency rule, licensed milk contractors would not be eligible for fund assessment exemption for the 2016 license year and will take on the burden of repaying a large portion of the APSF overall fund balance. An emergency rule effective date of May 1 is necessary, as the next license year (assessment period) for milk contractors begins on May 1, 2016.

(5) This temporary emergency rule is necessary to protect the welfare of the over one hundred milk contractors who do business in Wisconsin, and to help prevent undue financial burdens upon the milk contractor industry.

EMERGENCY RULE

SECTION 1. ATCP 100.135 (10) (c) is amended to read:

ATCP 100.135 (10) (c) The overall fund balance was at least ~~\$14~~ \$5 million on February 28 of the last preceding license year

SECTION 2. EFFECTIVE DATE: This emergency rule takes effect on May 1, 2016, and remains in effect for 150 days. The department may seek to extend this emergency rule as provided in s. 227.24, Stats.