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Details:

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WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

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Assembly

(Assembly, Senate or Joint)

Committee on ... Agriculture (AC-Ag)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt**
 - Clearinghouse Rules ... **CRule**
 - Hearing Records ... bills and resolutions
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution)
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 - Miscellaneous ... **Misc**
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(**sjr** = Senate Joint Resolution)



State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

DATE: August 13, 2008

TO: The Honorable Fred Risser
President, Wisconsin State Senate
Room 220, South, State Capitol
PO Box 7882
Madison, WI 53707-7882

The Honorable Michael Huebsch
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
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Madison, WI 53708-8952

FROM: Rodney J. Nilsestuen, Secretary 
Department of Agriculture, Trade and Consumer Protection

SUBJECT: Producer Security Fees and Assessments
(Clearinghouse Rule #07-073)

The Department of Agriculture, Trade and Consumer Protection (“DATCP”) is transmitting this rule for legislative committee review, as provided in s. 227.19(2) and (3), Stats. DATCP will publish notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19(2), Stats. This rule relates to contractor license fees and producer security fund assessments under Wisconsin’s Agricultural Producer Security Program.

Background

Wisconsin’s Agricultural Producer Security Program helps protect agricultural producers against catastrophic financial defaults by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (collectively referred to as “contractors”). The Department of Agriculture, Trade and Consumer Protection (“DATCP”) administers the program under ch. 126, Stats. Under current law:

- Contractors must be licensed by DATCP, and must pay *license fees* to fund program administration. Administration includes grain warehouse inspections, review of contractor financial statements, license administration, and response to contractor financial defaults and law violations, among other things.

Agriculture generates \$51.5 billion for Wisconsin

- Most contractors (“contributing contractors”) must pay *fund assessments* to finance an *agricultural producer security fund*. The fund is held in trust, for the benefit of agricultural producers. If a contractor defaults on payments to producers, DATCP may reimburse producers from the fund. Fund assessments are based on contractor size, financial condition and risk practices.

Prior to 2003, DATCP administrative costs were paid by a combination of general tax revenue (“GPR”) and contractor license fees. However, the 2003-2004 Biennial Budget Act eliminated virtually all GPR funding for program administration. That made it necessary to transfer staff from GPR funding to license fee funding. Partly as a result of that change, current license fee funding is no longer adequate to cover administrative costs. There has been a gradual growth in administrative costs, due to factors that are outside DATCP control.

Funding shortfalls are especially severe in the grain dealer and grain warehouse keeper programs. Annual administrative costs now exceed annual license fee revenues by over \$200,000 in each of those programs, and each program has a negative cash balance of more than \$570,000. The vegetable contractor program also has an annual deficit of \$20,000, and a negative cash balance of about \$40,000.

Deficits in the grain and vegetable administration accounts are currently being covered by milk contractor license fee revenues and by fund assessment revenues that would normally go to the producer security fund (for the benefit of producers). That unfairly affects milk contractors and reduces fund coverage for *all* producers (grain, milk and vegetable).

Rule Content

This rule changes license fees and fund assessments as shown in *Appendix A*. This rule does all of the following:

- Increases *license fees* for grain dealers, grain warehouse keepers and vegetable contractors, to remedy current inequities and provide adequate funding for program administration.
- Changes *fund assessments* for grain dealers (deferred payment assessments) and grain warehouse keepers, and changes required *minimum* fund assessments for grain dealers, grain warehouse keepers, milk contractors and vegetable contractors.
- Reduces assessment rates (which lowers assessment amounts) for some milk contractors.

Notwithstanding this rule, the total of all license fees and fund assessments paid by contractors under the producer security program is projected to *decline* over the next few years, because of fee credits and declining formula rates that are built into the producer security law itself. This rule will slow, but not reverse, that overall decline. This rule will not have any noticeable impact on contractors’ overall business costs.

Public Hearings

DATCP held 3 hearings on this rule. The hearings were held in Eau Claire on August 16, 2007, Green Bay on August 21, 2007, and Madison on August 22, 2007. The following table summarizes all testimony received:

| Organization | Represented by: | Form of Testimony | Position on Rule | Summary |
|--|-------------------------------|--------------------|----------------------------|--|
| St. Nazignz Milling Inc. | Thomas Lefeber | Verbal | Favor part and oppose part | Concerned that proposed rule does not address fundamental issues with producer security program. |
| Maribel Grain Company | Brian Rabas | Written | In favor | Proposed fee structure would spread costs of this program more evenly across all bushels. |
| NFO | Ron Statz | Verbal | Favor part and oppose part | Focusing on dairy, minor housekeeping is good. Overall, rule does not address foundational issues that created the administrative shortfall. |
| Vita Plus Corporation | Tom Stehr | Verbal | Favor part and oppose part | Opposed to such a dramatic increase in fees. Does support idea of audit program; but something other than this much of a fee increase must be done. |
| Midwest Food Processors Association | Nick George | Verbal | Opposed | Opposed to fee increases. Wis. food processors are happy to compete with foreign competitors on quality – but cost must also stay reasonably comparable. |
| Duffy Grain, Inc. | Pat Duffy | Verbal | Opposed | Too much of an increase in fees. Entire program needs to be reviewed – if producers want this coverage they should fund it directly. |
| Wis. Agri-Service Assoc. | John Petty | Verbal and Written | Favor part and oppose part | Opposed to rule as presented. Represents a half million dollars in additional costs without examining fundamental issues. |
| Wis. Potato and Vegetable Growers Assoc. | Mike Carter | Verbal | Opposed | Organization opposes new fees or fee increases. Understands that program is still important and DATCP should revisit GPR dollars or other funding sources. If fee increase is absolutely necessary, it should be implemented gradually. |
| ConAgra Foods | Larry Kippley and Lon Saucier | Did not testify | Opposed | |
| Dairy Farmers of America (DFA) | Joe Burke | Did not testify | Opposed | |
| Frontier FS Cooperative | David Thomsen | Did not testify | Favor part and oppose part | |
| Wis. Farm Bureau | Jeff Lyon | Written | Opposed | Organization supports program – however, proposed rule does nothing to increase the amount or improve the ability for farmers to be paid. Concerned that administrative costs are excessive. Changes may affect competitiveness of processors and handlers. |
| Wis. Federation of Cooperatives | Bill Oemichen and John Manske | Verbal and Written | Opposed | Rule represents dramatically increased costs to some in the grain industry. Simply increasing fees should not be considered while the more urgent matter is working toward consensus on how the APS law can be changed to better serve industry and producers in a more cost-efficient manner. |
| Gold'n Plump Poultry | Amy Winters | Written | Opposed | Would result in a 964% fee increase. This is not a fair amount considering minimal risk that Gold'n Plump poses and a competitive disadvantage. |

Many of the hearing comments focused on the overall producer security program, rather than on this rule. Several hearing participants suggested that DATCP should take a broader look at the effectiveness, adequacy and cost of the overall program before moving forward on this fee rule. DATCP has taken several steps to do just that:

- First, DATCP held separate (and more general) hearings on the entire producer security program. Those hearings were held in conjunction with the hearings on this rule (the hearing summary above relates only to the rule hearings).
- Second, DATCP organized a Special Work Group on Agricultural Producer Security. Over several months, the Work Group took an in-depth look at the entire producer security program and issued a final report with recommendations. This final draft rule is consistent with those recommendations (the recommendations address several aspects of the program, and are not specifically focused on this rule).

Changes from Hearing Draft

DATCP modified this rule after public hearing. This final draft rule incorporates the following significant changes from the hearing draft:

- Grain Dealer License Fees:
 - In this final draft, the basic grain dealer license fee is 0.1 cent (\$0.001) per bushel procured (rounded to the nearest \$100). The hearing draft had proposed a fee of 0.175 cent (\$0.00175) per bushel.
 - This final draft has a minimum license fee of \$100 and a maximum license fee of \$10,000. The hearing draft had no minimum, and a maximum of \$15,000.
- Grain Warehouse Keeper Inspection Fees:
 - In this final draft, the grain warehouse inspection fee is 0.25 cent (\$0.0025) per bushel of licensed storage capacity. The hearing draft had proposed a fee of 0.3 cent (\$0.003) per bushel, calculated on the highest number of bushels that the warehouse keeper actually stored for others at any time during the previous license year.
 - This final draft has a minimum inspection fee of \$1,000 and a maximum inspection fee of \$10,000. The hearing draft had no minimum, and a maximum of \$15,000.
- Minimum Assessment Amounts (All Contractors):
 - Contractors who participate in the producer security fund (fund) must pay assessments into the fund. Under current law, the minimum assessment is \$20. This rule revises the current minimum assessment, and bases the assessment on procurement volume.

- Under this final draft rule, the minimum assessment for grain dealers, milk contractors and vegetable contractors is \$100, \$200 or \$500 (depending on amount procured from producers). The hearing draft had proposed minimum assessments of \$20, \$200 or \$500 (depending on amount procured from producers).
- Under this final draft rule, the minimum assessment for grain warehouse keepers is \$100 or \$250 (depending on licensed storage capacity). The hearing draft had proposed minimum assessments of \$20 or \$250 (depending on licensed storage capacity).
- Assessment Holiday (all Contractors):
 - This final draft rule provides an “assessment holiday” that was not included in the hearing draft. The “assessment holiday” will relieve contractors of fund assessment obligations when fund balances reach specified levels. That, in turn, will limit fund growth.
 - A contractor qualifies for an “assessment holiday” in any license year if all of the following apply:
 - * The contractor was classified as a “contributing contractor” in each of the 5 previous license years.
 - * The overall fund balance is at least \$11 million.
 - * The fund balance attributable to the contractor’s industry sector is at or above a specified level (\$3 million for the grain dealer sector, \$0.5 million for the grain warehouse keeper sector, \$6 million for the milk contractor sector, and \$1.5 million for the vegetable contractor sector).
- Milk Contractors – Reduced Assessment Rate.
 - Contributing milk contractors pay fund assessments that are based, in part on their financial condition. This final draft rule changes the fund assessment formula so that a milk contractor with a debt to equity ratio of 3 to 1 or higher will pay a lower fund assessment than the contractor would have paid under the current formula.
 - This is a new provision that was not in the hearing draft. In order to make this rule change, it was necessary for DATCP to incorporate some existing statutory language in the final draft rule (that makes the rule a bit longer).
- Milk Contractors – Reports:
 - Under current rules, a milk contractor must report to DATCP the highest amount that the contractor paid for producer milk in any one month during the contractor’s last completed fiscal year.

- This final draft rule allows a milk contractor to report, instead, the highest amount that the contractor owed producers at any one time during the contractor's last completed fiscal year. This option, which may reduce security filing requirements for some milk contractors that pay producers on a frequent basis, was not included in the hearing draft.

DATCP also made a number of organizational and drafting changes in the final draft rule, including changes suggested by the Legislative Council Rules Clearinghouse.

Response to Rules Clearinghouse Comments

DATCP modified the final draft rule to address all of the comments from the Legislative Council Rules Clearinghouse.

Business Impact

Agricultural Producers

This rule will benefit Wisconsin producers of grain, milk and vegetables, by preventing the erosion of the producer security program that helps protect them against catastrophic financial defaults by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (collectively "contractors").

This rule will generate enough license fee revenue to continue critical financial security monitoring activities such as inspections, compliance evaluations, and review of contractor financial statements. Without this rule, DATCP would have to curtail key monitoring activities that help control potentially catastrophic financial risks to producers and the producer security fund.

This rule will also reverse the current diversion of fund assessment revenues from the agricultural producer security trust fund (to subsidize operating deficits in the grain and vegetable sectors). That will yield a slightly increased rate of fund growth which will, in turn, provide greater protection for producers in the event of a catastrophic contractor default.

This rule will not increase costs for agricultural producers, or have any significant impact on commodity prices paid to producers.

Contractors

This rule affects license fees and fund assessments paid by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors. It does not materially change other contractor regulations.

Current Cost to Contractors

Current license fees and fund assessments represent a *very* small share of overall contractor costs. For example:

- Current grain dealer license fees and fund assessments represent only about *11 hundredths of one percent* of the grain dealers' annual Wisconsin grain procurement costs (\$672,000 in fees and fund assessments, compared to \$599 *million* in grain purchased from Wisconsin producers in FY 2005-06).
- Current grain warehouse keeper license fees and fund assessments represent less than *2 hundredths of one percent* of the grain warehouse keepers' annual Wisconsin "cost of sales" (\$210,000 in fees and fund assessments, compared to about \$1.7 *billion* in "cost of sales" for FY 2005-06).
- Current milk contractor license fees and fund assessments represent only about *3 hundredths of one percent* of the contractors' annual Wisconsin milk procurement costs (\$1.2 million in producer security license fees and fund assessments, compared to about \$3.5 *billion* paid for milk produced by Wisconsin farmers in FY 2005-06).
- Current vegetable contractor license fees and fund assessments represent only about *8 hundredths of one percent* of the contractors' annual vegetable procurement costs (\$138,000 in producer security license fees and fund assessments, compared to \$170 *million* in procurement contract obligations to Wisconsin producers in FY 2005-06).

Current contractor license fees and fund assessments represent an even smaller share of *overall* contractor costs (including costs for labor, buildings, equipment, debt service, overhead, etc., in addition to commodity procurement costs).

Declining Cost Burden

If commodity prices, procurement volumes, and contractor financial ratios held constant over the next few years, total contractor license fees and fund assessments would actually *decline* because of fee credits and declining formula rates built into the producer security law itself. This rule will reduce that potential decline, at least in the grain and vegetable contractor sectors. Higher commodity prices and procurement volumes, or deteriorating contractor financial ratios, could also offset the decline.

This rule will reduce license fees and fund assessment rates in the milk contractor sector, but increase license fees and fund assessment rates in the other 3 sectors so that those sectors pay a more proportionate share. The following table shows *combined total license fees and fund assessments* by business sector for FY 2005-06 and FY 2006-07. It also compares projected totals for FY 2009-10 *with* and *without* this rule (these projections may be affected by changing commodity prices, procurement volumes, financial ratios and other factors):

| Total Contractor License Fees and Fund Assessments (Net of Credits) | | | | |
|--|--------------------|--------------------|--|---|
| | FY 2005-06 | FY 2006-07 | FY 2009-10* <i>Without this rule</i> | FY 2009-10* <i>With this rule</i> |
| Grain Dealers | \$672,000 | \$452,000 | \$476,000 | \$581,000 |
| Grain Warehouse Keepers | \$210,000 | \$194,000 | \$181,000 | \$444,000 |
| Milk Contractors | \$1,272,000 | \$1,002,000 | \$959,000 | \$855,000 |
| Vegetable Contractors | \$138,000 | \$26,000 | \$36,000 | \$41,000 |
| TOTAL | \$2,292,000 | \$1,720,000 | \$1,652,000 | \$1,921,000 |

* Projection assumes constant procurement volumes, commodity price levels and contractor financial strength.

Other things equal, there would be a decline in total license fees and fund assessments results from the following features built into the current producer security law (this rule will not change those features):

- *License fee credits.* If the fund balance attributable to an industry sector reaches a specified statutory threshold, a portion of the balance is returned to contributing contractors in that sector (as a credit on their license fees). Contributing milk and vegetable contractors are already enjoying credits that significantly reduce their license fees. Those credits will dramatically reduce fees for contributing contractors, even when this rule is in effect.
- *Falling assessment rates.* Under the producer security law, fund assessment rates decline after a contractor has contributed to the fund for a specified number of years (4 to 6 years depending on contractor type and financial condition). Because the producer security fund is now 6 years old, most contributing contractors are now paying significantly lower fund assessments than they were a short time ago (other things equal). That trend will continue, regardless of this rule.

Effects Vary Between Contractors

The impact of this rule may vary considerably between individual contractors within a business sector. License fees and assessments may be affected by a number of variables, including contractor size, contractor financial strength, contractor risk practices and commodity prices.

For many contractors, this rule will slow the rate at which the contractor's fees and fund assessments would otherwise decline. Some contractors (especially grain warehouse keepers) may have increased fees and fund assessments. For a few contractors, this rule will actually speed the reduction of fees and fund assessments. Many individual contractors (especially milk contractors) will be unaffected by this rule.

This rule incorporates an “assessment holiday” that will automatically go into affect when industry sector balances and overall fund balances grow to specified levels.

Fiscal Impact

Under the agricultural producer security law:

- Licensed contractors must pay *license fees* to fund DATCP administration of the agricultural producer security program. Administration includes grain warehouse inspections, review of contractor financial statements, license administration, and response to contractor financial defaults and law violations.
- Most contractors (“contributing contractors”) must pay *fund assessments* to finance the agricultural producer security fund. The fund is held in trust for the benefit of producers. If a contractor defaults on payments to agricultural producers, DATCP may reimburse producers from the fund.

Prior to 2003, DATCP administrative costs were paid by a combination of general purpose revenue (GPR) and contractor license fees. The 2003-05 biennial budget converted 2.9 FTE positions and support costs from GPR to the agricultural producer security fund. Partly as a result of that change, current license fee funding is no longer adequate to cover administrative costs. There has also been a gradual growth in administrative costs, due to factors (such as state rent, information technology fees, and employee pay plans and fringe benefits) that are outside DATCP control.

Funding shortfalls are of particular concern in the grain dealer and grain warehouse keeper programs. Administrative costs now annually exceed license fee revenues by over \$200,000 in each of those programs, and each program has a negative cash balance of more than \$570,000. In the vegetable contractor program, administrative costs now annually exceed license fee revenues by over \$20,000, and there is a negative cash balance of about \$40,000. Grain and vegetable program operations are currently being subsidized by milk contractor license fees and fund assessments, and funding deficits in the grain and vegetable accounts are limiting the overall producer security fund balance.

This rule increases annual license fees for grain dealers, grain warehouse keepers and vegetable contractors, to remedy current inequities and provide minimally adequate funding for program administration (the fee increases for vegetable contractors will be largely offset by fee credits built into the producer security law). This rule also adjusts fund assessments, especially for grain warehouse keepers (for whom an adjustment is required by law).

Notwithstanding this rule, total revenue derived from contractor payments under the producer security program (license fees plus fund assessments) could actually *decline* over the next few years, because of fee credits and declining formula rates that are built into the producer security law itself. Actual revenues will depend on a variety of factors, including commodity prices, procurement volumes and contractor financial ratios.

License Fee Revenues

The following table shows actual license fee revenues by industry sector for FY 2005-06 and FY 2006-07. It also compares projected license fee revenues for FY 2009-10 *with* and *without* this rule (these projections may be affected by changing commodity prices, procurement volumes, contractor financial ratios and other factors):

| Total License Fee Revenues (Net of Contractor Credits) | | | | |
|---|-------------------|-------------------|--|---|
| | FY 2005-06 | FY 2006-07 | FY 2009-10* <i>Without this rule</i> | FY 2009-10* <i>With this rule</i> |
| Grain Dealers | \$160,000 | \$159,000 | \$156,000 | \$232,000 |
| Grain Warehouse Keepers | \$159,000 | \$152,000 | \$151,000 | \$377,000 |
| Milk Contractors | \$363,000 | \$347,000 | \$159,000 | \$159,000 |
| Vegetable Contractors | \$16,000 | \$13,000 | \$6,000 | \$8,000 |
| TOTAL | \$698,000 | \$671,000 | \$472,000 | \$776,000 |

* Projection assumes constant procurement volumes, commodity price levels and contractor financial strength.

Projected milk and vegetable contractor license fee revenues for FY 2009-10 are affected, to a very considerable degree, by license fee credits built into the producer security law itself. When the producer security fund balance attributable to an industry sector (such as milk or vegetables) reaches a specified statutory “trigger” amount, a portion of the balance is returned to contributing contractors in that sector (as a credit on their license fees).

Contributing milk and vegetable contractors are already enjoying credits that significantly reduce their license fees. Grain dealers and grain warehouse keepers do not yet qualify for these credits, because their fund contributions have not yet attained the required level (nor are they likely to do so prior to FY 2009-10).

DATCP projects that, under this rule, annual license fee revenues will be adequate to cover DATCP’s annual operating costs (DATCP has reduced those costs by eliminating 1.67 FTE grain auditor positions). To the extent that annual grain and vegetable license fee revenues exceed annual operating costs, they will “repay” the program subsidy that those sectors have already received from the milk sector.

Producer Security Fund; Assessment Revenues

The agricultural producer security fund currently has a balance of approximately \$9 million. No more than 60% of the fund balance can be paid out in any individual contractor default. The current fund balance is adequate to cover defaults by most, but not all, individual contractors. Continued fund growth will improve protection for producers, and minimize the need for supplementary security from contractors.

Contributing contractors pay fund assessments to finance the agricultural producer security fund. Annual assessment revenues may decline over the next few years (*with* or *without* this rule), because of fee credits and declining formula rates built into the producer security law. This rule will slow the decline (assessment revenues may also be affected by commodity prices, procurement volumes, contractor financial ratios and other factors). If fund balances grow to a certain point, the automatic “assessment holidays” incorporated into this rule will halt the collection of assessment revenues.

The following table shows actual fund assessment revenues by industry sector for FY 2005-06 and FY 2006-07. It also compares projected license fee revenues for FY 2009-10 *with* and *without* this rule (these projections may be affected by changing commodity prices, procurement volumes, contractor financial ratios and other factors):

| Total Fund Assessment Revenues | | | | |
|---------------------------------------|--------------------|--------------------|--|---|
| | FY 2005-06 | FY 2006-07 | FY 2009-10* <i>Without this rule</i> | FY 2009-10* <i>With this rule</i> |
| Grain Dealers | \$512,000 | \$300,000 | \$320,000 | \$349,000 |
| Grain Warehouse Keepers | \$51,000 | \$22,000 | \$30,000 | \$67,000 |
| Milk Contractors | \$909,000 | \$973,000 | \$800,000 | \$696,000 |
| Vegetable Contractors | \$122,000 | \$35,000 | \$30,000 | \$33,000 |
| TOTAL | \$1,594,000 | \$1,330,000 | \$1,180,000 | \$1,145,000 |

* Projection assumes constant procurement volumes, commodity price levels and contractor financial strength.

Cash in the milk fund assessment sub-account currently covers negative cash balances in the grain and vegetable program administration sub-accounts (which should normally be covered by license fees, not fund assessments). That is slowing the rate of growth in the milk assessment sub-account, and limiting fund coverage for all producers (grain, milk, and vegetable).

By correcting current grain and vegetable license fee revenue shortfalls, this rule will eliminate the current drain on the producer security fund. The fund balance attributable to grain warehouse keeper assessments is expected to build over several years toward the required statutory minimum balance (it currently falls well short).

Federal and Surrounding State Regulations

Federal Programs

Milk

There is no federal producer security program related to milk.

Grain

The United States department of agriculture (USDA) administers a producer security program for federally licensed *grain warehouses* that store grain for producers. Grain warehouses may choose whether to be licensed under state or federal law. Federally-licensed warehouses are exempt from state warehouse licensing and security requirements. State-licensed warehouses are likewise exempt from federal requirements.

The federal grain warehouse program provides little or no protection against financial defaults by *grain dealers*. Grain dealers are persons who buy and sell grain. Sometimes, grain dealers also operate grain warehouses. DATCP currently licenses grain dealers. Licensed warehouse keepers must also hold a state grain dealer license if they engage in grain dealing.

USDA has informally proposed to regulate *grain dealer* activities (grain “merchandising”) by federally licensed warehouse keepers, to the exclusion of state regulation. But USDA has not yet officially introduced its proposed regulations. In any case, the federal regulations would not apply to state-licensed grain warehouses, or to *grain dealers* who do not operate a warehouse.

Vegetables

There is a federal security program for vegetables. That security program is mainly limited to fresh market vegetables, and consists of a priority lien against vegetable-related assets.

Wisconsin’s vegetable security program applies only to processing vegetables (not fresh market vegetables covered by federal regulations). Wisconsin’s program uses an indemnity fund, rather than a priority lien-type program. Unlike the *federal* priority lien program, a *state* priority lien program would not work because it would be preempted by federal bankruptcy law.

There may be some limited overlap between the Wisconsin and federal programs, but that overlap is justified because the scope of federal coverage is not entirely clear. Overlap was reduced by recent Wisconsin legislation, which permits certain potato buyers covered under the federal program to opt out of most of the state program.

Surrounding States

In Minnesota, contractors must be licensed to procure grain, milk or processing vegetables from producers, or to operate grain warehouses. Regulated contractors must file bonds as security against default. The program is financed through industry fees and general tax revenues.

Neither Iowa nor Illinois have producer security programs for milk or vegetables. However, both states maintain indemnity funds to protect grain producers. Fund assessments are based solely on grain volume. In Wisconsin, by contrast, fund assessments are based on grain volume and financial condition. Iowa and Illinois finance their programs through industry fees and general tax revenues.

Michigan has the following producer security programs:

- Potato dealers must be licensed, and must post bonds as security against defaults. (Wisconsin's vegetable security program includes, but is not limited to, potatoes.)
- Dairy plants that fail to meet minimum financial standards must file security or pay cash for milk.
- Grain producers have the option of paying premiums into a state fund. In the event of a grain default, the fund reimburses participating producers.
- These programs are financed through industry fees and general tax revenues.

Appendix A

Proposed Changes to Contractor License Fees and Fund Assessments

Grain Dealer License Fees

Current Fees

Under current law, a grain dealer must pay the following annual license fees and surcharges:

- A nonrefundable license processing fee of \$25.
- One of the following fees:
 - \$500 if the grain dealer paid, in the grain dealer's last completed fiscal year, at least \$500,000 for producer grain procured in this state.
 - \$200 if the grain dealer paid, in the grain dealer's last completed fiscal year, at least \$50,000 but less than \$500,000 for producer grain procured in this state.
 - \$50 if the grain dealer paid, in the grain dealer's last completed fiscal year, less than \$50,000 for producer grain procured in this state.
- A \$225 fee per business location in excess of one location (but only if the grain dealer paid, in the grain dealer's last completed fiscal year, at least \$500,000 for producer grain procured in this state).
- A license fee of \$45 per truck, in excess of one truck, that the grain dealer uses to haul grain in this state.
- A license surcharge of \$425 if the grain dealer submits a required financial statement that is not an audited financial statement.
- A license surcharge of \$500 if the grain dealer operated without a license at any time during the preceding year.
- A license surcharge of \$100 if the grain dealer, during the preceding year, failed to file a required financial statement by the required filing deadline.
- A license surcharge of \$100 if the grain dealer failed to file a license renewal application by the license expiration date of August 31.

Proposed Fees

This rule changes the calculation of grain dealer license fees. Under this rule, a grain dealer must pay the following fees and surcharges:

- A license processing fee of \$25 (same as current law).
- A fee equal to 1/10 of one cent (\$0.001 or 0.1¢) per bushel of producer grain procured in this state (rounded to the nearest \$100). There is a minimum fee of \$100 and a maximum fee of \$10,000.
- \$100 per business location in excess of one location (*regardless* of the grain dealer's annual grain purchase amount).
- A surcharge of \$500 if the grain dealer operated without a license at any time during the preceding year (same as current law).
- A surcharge of \$100 if the grain dealer, during the preceding year, failed to file a required financial statement by the required filing deadline (same as current law).
- A surcharge of \$100 if the grain dealer failed to file a license renewal application by the license expiration date of August 31 (same as current law).

This rule *eliminates* the following current grain dealer fees and surcharges:

- \$45 fee per truck.
- \$425 surcharge for submitting a required financial statement that is not an audited financial statement.

Grain Dealer Fund Assessments

Current Assessments

Under current law, a contributing grain dealer must pay the following annual fund assessments:

- A *basic assessment*, based on a formula that considers the total dollar value of producer grain purchased in this state during the grain dealer's last completed fiscal year, the grain dealer's current ratio, and the grain dealer's debt-to-equity ratio. Other things equal, the formula yields declining basic assessments over time.

- A *deferred payment assessment*, if the grain dealer uses deferred payment contracts (deferred payment contracts carry a higher financial risk). The assessment equals total deferred payments for Wisconsin grain in the grain dealer's last completed fiscal year, multiplied by the following rate:
 - 0.0035 if the grain dealer has contributed to the fund for less than 5 years.
 - 0.002 if the grain dealer has contributed to the fund for 5 years or more.

Under current law, there is a minimum total assessment of \$20 (basic assessment and deferred payment assessment).

Proposed Assessments

- *Basic assessment.* This rule does not change the calculation of a grain dealer's basic fund assessment (the formula continues to generate declining assessments over time), but this rule changes the current minimum assessment (see below).
- *Deferred payment fund assessment.* Under this rule, the deferred payment assessment equals the grain dealer's total deferred payments for Wisconsin grain in the grain dealer's last completed fiscal year, multiplied by 0.0035 -- *regardless* of how long the grain dealer has contributed to the fund.
- *Minimum assessment.* This rule substitutes the following minimum *basic* assessment for the current \$20 minimum *total* assessment:
 - \$100 for grain dealers who procured less than \$500,000 worth of Wisconsin grain during the last completed fiscal year.
 - \$200 for grain dealers who procured at least \$500,000 but less than \$3,000,000 worth of Wisconsin grain.
 - \$500 for grain dealers who procured Wisconsin grain worth \$3,000,000 or more.
- "*Assessment holiday.*" Under this rule, a contributing grain dealer is not required to pay an annual fund assessment (other than a deferred payment fund assessment, if applicable) for any license year if the grain dealer was a contributing grain dealer in each of the 5 preceding license years, and if all of the following applied on May 31 of the last preceding license year:
 - The fund balance attributable to grain dealers was at least \$3 million.
 - The overall fund balance was at least \$11 million.

Grain Warehouse Keeper License Fees

Current Fees

Under current law, a grain warehouse keeper must pay the following annual license fees and surcharges:

- A nonrefundable license processing fee of \$25, plus an additional nonrefundable processing fee of \$25 for each separate warehouse in excess of one warehouse.
- An inspection fee based on the combined capacity of the grain warehouse keeper's warehouses:

| Inspection Fee | Combined Warehouse Capacity (Bushels) |
|-----------------------|--|
| \$ 500 | Less than 150,000 |
| \$ 550 | At least 150,000 but less than 250,000 |
| \$ 600 | At least 250,000 but less than 500,000 |
| \$ 650 | At least 500,000 but less than 750,000 |
| \$ 700 | At least 750,000 but less than 1,000,000 |
| \$ 800 | At least 1,000,000 but less than 2,000,000 |
| \$ 900 | At least 2,000,000 but less than 3,000,000 |
| \$1,000 | At least 3,000,000 but less than 4,000,000 |
| \$1,100 | 4,000,000 or more. |

- A supplemental inspection fee of \$275 for each grain warehouse that the grain warehouse keeper operates in excess of one warehouse.
- A surcharge of \$500 if the grain warehouse keeper operated without a license at any time during the preceding year.
- A surcharge of \$100 if the grain warehouse keeper failed to file an annual financial statement by the applicable deadline.
- A surcharge of \$100 if the applicant fails to renew a license by the license expiration date of August 31.

Proposed Fees

This rule changes the calculation of grain warehouse *inspection* fees, but makes no other changes to current grain warehouse keeper license fees or surcharges. The current inspection fee schedule (see above) is replaced by a formula. Under the new formula, a grain warehouse keeper pays an annual inspection fee equal to the combined capacity of the grain warehouse keeper's warehouses times 0.25 cent per bushel (rounded to the nearest \$1,000). There is a minimum fee of \$1,000 and a maximum fee of \$10,000.

Grain Warehouse Keeper Fund Assessments

Current Assessments

Under current law, a grain warehouse keeper must pay an annual fund assessment based on a formula that considers the warehouse keeper's licensed storage capacity, current ratio and debt-to-equity ratio. Other things equal, the formula yields declining assessments over time. There is a minimum assessment of \$20.

Proposed Assessments

- *Base assessment formula.* Under this rule, a grain warehouse keeper must pay an annual fund assessment that is 50% higher than the assessment generated by the current formula (the formula does not change, and continues to yield declining assessments over time).
- *Minimum Assessment.* This rule substitutes the following minimum assessment for the current \$20 minimum assessment:
 - \$100 for grain warehouse keepers whose storage capacity is less than 500,000 bushels.
 - \$250 for grain warehouse keepers whose storage capacity is 500,000 bushels or more.
- *"Assessment Holiday."* Under this rule, a contributing grain warehouse keeper is not required to pay a fund assessment for any license year if the grain warehouse keeper was a contributing grain warehouse keeper in each of the 5 preceding license years, and if all of the following applied on May 31 of the last preceding license year:
 - The fund balance attributable to grain warehouse keepers was at least \$500,000.
 - The overall fund balance was at least \$11 million.

Milk Contractor License Fees

This rule makes no changes to current milk contractor license fees.

Milk Contractor Fund Assessments

Current Assessments

Under current law, a contributing milk contractor must pay an annual fund assessment based on a formula that considers the milk contractor's total Wisconsin milk payroll obligations for the contractor's last completed fiscal year, the milk contractor's current ratio, and the milk contractor's debt-to-equity ratio. Other things equal, the formula yields declining assessments over time. There is a minimum assessment of \$20.

Proposed Assessments

- *Base assessment formula.* Under current law, a milk contractor's assessment rate increases as the milk contractor's debt-to-equity ratio increases, but there is no further rate increase after the milk contractor's debt-to-equity ratio exceeds 3.1 to 1. Under this rule, there is no further assessment rate increase after the milk contractor's debt-to-equity ratio exceeds 2.9 to 1. This will reduce assessments for some milk contractors.
- *Minimum Assessment.* This rule creates a new minimum assessment for milk contractors, based on the milk contractor's total Wisconsin milk payroll obligations in the contractor's last completed fiscal year. The new minimum assessment is:
 - \$100 for milk contractors with annual Wisconsin milk payroll obligations of less than \$1.5 million.
 - \$200 for milk contractors with annual Wisconsin milk payroll obligations of at least \$1.5 million but less than \$6 million.
 - \$500 for milk contractors with annual Wisconsin milk payroll obligations of \$6 million or more.
- *"Assessment Holiday."* Under this rule, a contributing milk contractor is not required to pay a fund assessment for any license year if the milk contractor was a contributing milk contractor in each of the 5 preceding license years, and if all of the following applied on February 28 of the last preceding license year:
 - The fund balance attributable to milk contractors was at least \$6 million.
 - The overall fund balance was at least \$11 million.

Milk Contractor Producer Payroll Report

Under current law, a milk contractor must report to DATCP the highest amount that the milk contractor paid for producer milk procured in this state in any single month during the contractor's last completed fiscal year. Under this rule, a milk contractor has the option to report *either* of the following:

- The highest amount that the milk contractor paid, for producer milk procured in this state, in any single month during the milk contractor's last completed fiscal year.
- The highest amount that the milk contractor owed to producers at any time during the milk contractor's last completed fiscal year.

For those few milk contractors who must file security with DATCP under current law, and who pay more quickly than the industry standard of twice per month, this change could result in lower security filing requirements (and therefore lower costs).

Vegetable Contractor License Fees

Current Fees

Under current law, vegetable contractors must pay the following annual license fees and surcharges:

- A nonrefundable license processing fee of \$25.
- A fee of \$25 plus 5.75 cents for each \$100 in Wisconsin vegetable procurement contract obligations (to vegetable producers) that the contractor incurred during the contractor's last completed fiscal year. This fee does not apply to "nonparticipating processing potato buyers."
- A \$500 fee if the vegetable contractor is a "nonparticipating processing potato buyer."
- A \$500 surcharge if the vegetable contractor operated without a license at any time during the preceding year.
- A \$100 surcharge if, during the preceding year, the vegetable contractor failed to file a required financial statement by its due date.
- A \$100 surcharge if the vegetable contractor failed to file a license renewal application by the license expiration date of January 31.

Proposed Fees

This rule increases that portion of the license fee which is based on annual Wisconsin vegetable procurement contract obligations. It increases that fee portion to \$25 plus 8.75 cents (currently 5.75 cents) for each \$100 in contract obligations.

This rule replaces the current \$500 fee for "nonparticipating potato buyers" with a fee equal to the lesser of the following amounts:

- \$25 plus 8.75 cents for each \$100 in annual contract obligations (same as other vegetable contractors).
- \$2,000.

This rule makes no other changes to current vegetable contractor license fees or surcharges.

Vegetable Contractor Fund Assessments

Current Assessments

Under current law, a contributing vegetable contractor must pay an annual fund assessment based on a formula that considers the contractor's total vegetable procurement contract obligations during the contractor's last completed fiscal year, the contractor's current ratio, and the contractor's debt-to-equity ratio. Other things equal, the formula yields declining assessments over time. There is a minimum assessment of \$20.

Proposed Assessments

- *Minimum Assessments.* This rule does not change the calculation of vegetable contractor fund assessments (the current formula continues to generate declining assessments over time), except that this rule replaces the current \$20 minimum assessment with the following minimum assessment:
 - \$20 for vegetable contractors with contract obligations of less than \$500,000.
 - \$200 for vegetable contractors with contract obligations of at least \$500,000 and less than \$4 million.
 - \$500 for vegetable contractors with contract obligations of \$4 million or more.
- *"Assessment Holiday."* Under this rule, a vegetable contractor is not required to pay a fund assessment for any license year if all of the vegetable contractor was a contributing vegetable contractor in the 5 preceding license years, and all of the following applied on November 30 of the last preceding license year:
 - The fund balance attributable to vegetable contractors was at least \$1.5 million.
 - The overall fund balance was at least \$11 million.

**PROPOSED ORDER OF THE
WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

1 The Wisconsin department of agriculture, trade and consumer protection proposes the
2 following rule *to repeal* ATCP 99.01(6m), 100.01(4g) and 101.20(3g); *to amend* ATCP
3 99.01(14m), 99.135(2)(intro.), (c) and (d), 100.01(4r), 100.13(1)(intro.), (a) and (d),
4 100.13(3)(a), and 101.20(3r); *to repeal and recreate* ATCP 100.135 and 100.22(3); and
5 *to create* ATCP 99.11, 99.12(5)(c), 99.125, 99.126, 99.23, 99.235, 100.01(5m), 101.23
6 and 101.245; *relating to* the agricultural producer security program.

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

Wisconsin's agricultural producer security program helps protect agricultural producers against catastrophic financial defaults by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (collectively referred to as "contractors").

Contractors must be licensed by the department of agriculture, trade and consumer protection ("DATCP") and pay license fees. Most contractors must also pay assessments to an agricultural producer security fund ("fund"). In the event of a contractor default, DATCP may compensate producers from the fund.

This rule modifies current rules related to the agricultural producer security program. This rule does all of the following:

- Changes current grain dealer, grain warehouse keeper and vegetable contractor license fees.
- Changes current fund assessments for grain dealers (deferred payment assessment), grain warehouse keepers, and milk contractors.
- Changes required *minimum* fund assessments for all contractors.

- Provides for an automatic “assessment holiday” if fund balances reach specified levels.
- Modifies the amount of security that must be filed by a small number of milk contractors.

Statutes Interpreted

Statutes interpreted: ss. 126.81 and 126.88, Stats.

Statutory Authority

Statutory authority: ss. 93.07(1), 126.81 and 126.88, Stats.

Explanation of Statutory Authority

DATCP has broad authority, under s. 93.07(1), Stats., to adopt rules needed to implement laws under its jurisdiction. DATCP also has specific authority, under ss. 126.81 and 126.88, Stats., to do all of the following:

- Interpret and implement the agricultural producer security law, ch. 126, Stats.
- Modify license fees and fund assessments under the agricultural producer security program. Chapter 126, Stats., establishes license fees and fund assessments, but authorizes DATCP to change those license fees and fund assessments by rule.
- Require contractors to notify producers of the contractor’s license, security or fund contribution status under the producer security program.

Under current law, DATCP *must* modify fund assessments whenever fund balances fall outside a specified range. The fund balance attributable to the grain warehouse keeper sector currently falls below the required minimum of \$200,000. Therefore, DATCP *must* modify fund assessments for grain warehouse keepers. DATCP is authorized, but not required, to modify fund assessments for other contractors.

Background

DATCP administers the agricultural producer security program under ch. 126, Stats. DATCP has adopted rules to implement the program. The rules are contained in chs. ATCP 99-101, Wis. Adm. Code.

License Fees and Fund Assessments

Under current law:

- Licensed contractors must pay *license fees* to fund DATCP administration of the agricultural producer security program. Administration includes warehouse inspections, compliance audits, review of contractor financial statements, license administration and response to contractor financial defaults and law violations.
- Most contractors (“contributing contractors”) must pay *fund assessments* to finance the agricultural producer security fund. The fund is held in trust for the benefit of producers. If a contractor defaults on payments to agricultural producers, DATCP may reimburse producers from the fund. Fund assessments are based on contractor size, financial condition and risk practices.
- A few contractors (“disqualified contractors”) are not allowed to participate in the fund. These contractors must instead post individual security with DATCP such as a bond or a letter of credit. Generally, the amount of the security is based on the amount owed to producers.

Program Funding and Costs

Prior to 2003, DATCP administrative costs were paid by a combination of general tax revenue (“GPR”) and contractor license fees. However, the 2003-2004 biennial budget Act eliminated virtually all GPR funding for program administration. That made it necessary to transfer staff from GPR funding to license fee funding.

Partly as a result of that change, current license fee funding is no longer adequate to cover administrative costs. There has been a gradual growth in administrative costs, due to factors outside DATCP control (including increased state costs for rent, information technology, and employee pay plans and fringe benefits). DATCP has controlled costs, to the extent possible, by reducing grain audit staff levels.

Funding Shortfalls

Funding shortfalls are especially severe in the grain dealer and grain warehouse keeper programs, where DATCP must spend much of its staff time. Administrative costs now annually exceed license fee revenues by over \$200,000 in each of those programs, and each program has a negative cash balance of more than \$570,000. In the vegetable contractor program, administrative costs now annually exceed license fee revenues by over \$20,000, and the program has a negative cash balance of about \$40,000.

Deficits in the grain and vegetable administration accounts are currently being covered by milk contractor license fee revenues and by fund assessment revenues that would normally go to the producer security fund. That unfairly affects milk contractors and reduces fund coverage for *all* producers (grain, milk and vegetable).

Fee Adjustments

This rule increases annual license fees for grain dealers, grain warehouse keepers and vegetable contractors, to remedy current inequities and provide minimally adequate funding for program administration. This rule also adjusts fund assessments, especially for grain warehouse keepers (for whom an adjustment is required by law). This rule provides for an automatic “assessment holiday” if fund balances reach specified levels.

Notwithstanding this rule, the total of all contractor payments under the producer security (license fees plus fund assessments) will actually *decline* over the next few years, because of fee credits and declining formula rates that are built into the producer security law itself. This rule will slow, but not reverse, that overall decline. This rule will not have any significant impact on contractors’ overall business costs.

Rule Contents

Grain Dealer License Fees

Current Fees

Under current law, a grain dealer must pay the following annual license fees and surcharges:

- A nonrefundable license processing fee of \$25.
- One of the following fees:
 - \$500 if the grain dealer paid, in the grain dealer’s last completed fiscal year, at least \$500,000 for producer grain procured in this state.
 - \$200 if the grain dealer paid, in the grain dealer’s last completed fiscal year, at least \$50,000 but less than \$500,000 for producer grain procured in this state.
 - \$50 if the grain dealer paid, in the grain dealer’s last completed fiscal year, less than \$50,000 for producer grain procured in this state.
- A \$225 fee per business location in excess of one location (but only if the grain dealer paid, in the grain dealer’s last completed fiscal year, at least \$500,000 for producer grain procured in this state).
- A license fee of \$45 per truck, in excess of one truck, that the grain dealer uses to haul grain in this state.
- A license surcharge of \$425 if the grain dealer submits a required financial statement that is not an audited financial statement.

- A license surcharge of \$500 if the grain dealer operated without a license at any time during the preceding year.
- A license surcharge of \$100 if the grain dealer, during the preceding year, failed to file a required financial statement by the required filing deadline.
- A license surcharge of \$100 if the grain dealer failed to file a license renewal application by the license expiration date of August 31.

Proposed Fees

This rule changes the calculation of grain dealer license fees. Under this rule, a grain dealer must pay the following fees and surcharges:

- A license processing fee of \$25 (same as current law).
- A fee equal to 1/10 of one cent (\$0.001 or 0.1¢) per bushel of producer grain procured in this state (rounded to the nearest \$100). There is a minimum fee of \$100 and a maximum fee of \$10,000.
- \$100 per business location in excess of one location (*regardless* of the grain dealer's annual grain purchase amount).
- A surcharge of \$500 if the grain dealer operated without a license at any time during the preceding year (same as current law).
- A surcharge of \$100 if the grain dealer, during the preceding year, failed to file a required financial statement by the required filing deadline (same as current law).
- A surcharge of \$100 if the grain dealer failed to file a license renewal application by the license expiration date of August 31 (same as current law).

This rule *eliminates* the following current grain dealer fees and surcharges:

- \$45 fee per truck.
- \$425 surcharge for submitting a required financial statement that is not an audited financial statement.

Grain Dealer Fund Assessments

Current Assessments

Under current law, a contributing grain dealer must pay the following annual fund assessments:

- A *basic assessment*, based on a formula that considers the total dollar value of producer grain purchased in this state during the grain dealer's last completed fiscal year, the grain dealer's current ratio, and the grain dealer's debt-to-equity ratio. Other things equal, the formula yields declining basic assessments over time.
- A *deferred payment assessment*, if the grain dealer uses deferred payment contracts (deferred payment contracts carry a higher financial risk). The assessment equals total deferred payments for Wisconsin grain in the grain dealer's last completed fiscal year, multiplied by the following rate:
 - 0.0035 if the grain dealer has contributed to the fund for less than 5 years.
 - 0.002 if the grain dealer has contributed to the fund for 5 years or more.

Under current law, there is a minimum total assessment of \$20 (basic assessment and deferred payment assessment).

Proposed Assessments

- *Basic assessment.* This rule does not change the calculation of a grain dealer's basic fund assessment (the formula continues to generate declining assessments over time), but this rule changes the current minimum assessment (see below).
- *Deferred payment fund assessment.* Under this rule, the deferred payment assessment equals the grain dealer's total deferred payments for Wisconsin grain in the grain dealer's last completed fiscal year, multiplied by 0.0035 -- *regardless* of how long the grain dealer has contributed to the fund.
- *Minimum assessment.* This rule substitutes the following minimum *basic* assessment for the current \$20 minimum *total* assessment:
 - \$100 for grain dealers who procured less than \$500,000 worth of Wisconsin grain during the last completed fiscal year.
 - \$200 for grain dealers who procured at least \$500,000 but less than \$3,000,000 worth of Wisconsin grain.
 - \$500 for grain dealers who procured Wisconsin grain worth \$3,000,000 or more.
- "*Assessment holiday.*" Under this rule, a contributing grain dealer is not required to pay an annual fund assessment (other than a deferred payment fund assessment, if applicable) for any license year if the grain dealer was a contributing grain dealer in each of the 5 preceding license years, and if all of the following applied on May 31 of the last preceding license year:
 - The fund balance attributable to grain dealers was at least \$3 million.
 - The overall fund balance was at least \$11 million.

Grain Warehouse Keeper License Fees

Current Fees

Under current law, a grain warehouse keeper must pay the following annual license fees and surcharges:

- A nonrefundable license processing fee of \$25, plus an additional nonrefundable processing fee of \$25 for each separate warehouse in excess of one warehouse.
- An inspection fee based on the combined capacity of the grain warehouse keeper's warehouses:

| Inspection Fee | Combined Warehouse Capacity (Bushels) |
|-----------------------|--|
| \$ 500 | Less than 150,000 |
| \$ 550 | At least 150,000 but less than 250,000 |
| \$ 600 | At least 250,000 but less than 500,000 |
| \$ 650 | At least 500,000 but less than 750,000 |
| \$ 700 | At least 750,000 but less than 1,000,000 |
| \$ 800 | At least 1,000,000 but less than 2,000,000 |
| \$ 900 | At least 2,000,000 but less than 3,000,000 |
| \$1,000 | At least 3,000,000 but less than 4,000,000 |
| \$1,100 | 4,000,000 or more. |

- A supplemental inspection fee of \$275 for each grain warehouse that the grain warehouse keeper operates in excess of one warehouse.
- A surcharge of \$500 if the grain warehouse keeper operated without a license at any time during the preceding year.
- A surcharge of \$100 if the grain warehouse keeper failed to file an annual financial statement by the applicable deadline.
- A surcharge of \$100 if the applicant fails to renew a license by the license expiration date of August 31.

Proposed Fees

This rule changes the calculation of grain warehouse *inspection* fees, but makes no other changes to current grain warehouse keeper license fees or surcharges. The current inspection fee schedule (see above) is replaced by a formula. Under the new formula, a grain warehouse keeper pays an annual inspection fee equal to the combined capacity of the grain warehouse keeper's warehouses times 0.25 cent per bushel (rounded to the nearest \$1,000). There is a minimum fee of \$1,000 and a maximum fee of \$10,000.

Grain Warehouse Keeper Fund Assessments

Current Assessments

Under current law, a grain warehouse keeper must pay an annual fund assessment based on a formula that considers the warehouse keeper's licensed storage capacity, current ratio and debt-to-equity ratio. Other things equal, the formula yields declining assessments over time. There is a minimum assessment of \$20.

Proposed Assessments

- *Base assessment formula.* Under this rule, a grain warehouse keeper must pay an annual fund assessment that is 50% higher than the assessment generated by the current formula (the formula does not change, and continues to yield declining assessments over time).
- *Minimum Assessment.* This rule substitutes the following minimum assessment for the current \$20 minimum assessment:
 - \$100 for grain warehouse keepers whose storage capacity is less than 500,000 bushels.
 - \$250 for grain warehouse keepers whose storage capacity is 500,000 bushels or more.
- *"Assessment Holiday."* Under this rule, a contributing grain warehouse keeper is not required to pay a fund assessment for any license year if the grain warehouse keeper was a contributing grain warehouse keeper in each of the 5 preceding license years, and if all of the following applied on May 31 of the last preceding license year:
 - The fund balance attributable to grain warehouse keepers was at least \$500,000.
 - The overall fund balance was at least \$11 million.

Milk Contractor License Fees

This rule makes no changes to current milk contractor license fees.

Milk Contractor Fund Assessments

Current Assessments

Under current law, a contributing milk contractor must pay an annual fund assessment based on a formula that considers the milk contractor's total Wisconsin milk payroll obligations for the contractor's last completed fiscal year, the milk contractor's current ratio, and the milk contractor's debt-to-equity ratio. Other things equal, the formula yields declining assessments over time. There is a minimum assessment of \$20.

Proposed Assessments

- *Base assessment formula.* Under current law, a milk contractor's assessment rate increases as the milk contractor's debt-to-equity ratio increases, but there is no further rate increase after the milk contractor's debt-to-equity ratio exceeds 3.1 to 1. Under this rule, there is no further assessment rate increase after the milk contractor's debt-to-equity ratio exceeds 2.9 to 1. This will reduce assessments for some milk contractors.
- *Minimum Assessment.* This rule creates a new minimum assessment for milk contractors, based on the milk contractor's total Wisconsin milk payroll obligations in the contractor's last completed fiscal year. The new minimum assessment is:
 - \$100 for milk contractors with annual Wisconsin milk payroll obligations of less than \$1.5 million.
 - \$200 for milk contractors with annual Wisconsin milk payroll obligations of at least \$1.5 million but less than \$6 million.
 - \$500 for milk contractors with annual Wisconsin milk payroll obligations of \$6 million or more.
- *"Assessment Holiday."* Under this rule, a contributing milk contractor is not required to pay a fund assessment for any license year if the milk contractor was a contributing milk contractor in each of the 5 preceding license years, and if all of the following applied on February 28 of the last preceding license year:
 - The fund balance attributable to milk contractors was at least \$6 million.
 - The overall fund balance was at least \$11 million.

Milk Contractor Producer Payroll Report

Under current law, a milk contractor must report to DATCP the highest amount that the milk contractor paid for producer milk procured in this state in any single month during the contractor's last completed fiscal year. Under this rule, a milk contractor has the option to report *either* of the following:

- The highest amount that the milk contractor paid, for producer milk procured in this state, in any single month during the milk contractor's last completed fiscal year.
- The highest amount that the milk contractor owed to producers at any time during the milk contractor's last completed fiscal year.

For those few milk contractors who must file security with DATCP under current law, and who pay more quickly than the industry standard of twice per month, this change could result in lower security filing requirements (and therefore lower costs).

Vegetable Contractor License Fees

Current Fees

Under current law, vegetable contractors must pay the following annual license fees and surcharges:

- A nonrefundable license processing fee of \$25.
- A fee of \$25 plus 5.75 cents for each \$100 in Wisconsin vegetable procurement contract obligations (to vegetable producers) that the contractor incurred during the contractor's last completed fiscal year. This fee does not apply to "nonparticipating processing potato buyers."
- A \$500 fee if the vegetable contractor is a "nonparticipating processing potato buyer."
- A \$500 surcharge if the vegetable contractor operated without a license at any time during the preceding year.
- A \$100 surcharge if, during the preceding year, the vegetable contractor failed to file a required financial statement by its due date.
- A \$100 surcharge if the vegetable contractor failed to file a license renewal application by the license expiration date of January 31.

Proposed Fees

This rule increases that portion of the license fee which is based on annual Wisconsin vegetable procurement contract obligations. It increases that fee portion to \$25 plus 8.75 cents (currently 5.75 cents) for each \$100 in contract obligations.

This rule replaces the current \$500 fee for "nonparticipating potato buyers" with a fee equal to the lesser of the following amounts:

- \$25 plus 8.75 cents for each \$100 in annual contract obligations (same as other vegetable contractors).
- \$2,000.

This rule makes no other changes to current vegetable contractor license fees or surcharges.

Vegetable Contractor Fund Assessments

Current Assessments

Under current law, a contributing vegetable contractor must pay an annual fund assessment based on a formula that considers the contractor's total vegetable procurement contract obligations during the contractor's last completed fiscal year, the contractor's current ratio, and the contractor's debt-to-equity ratio. Other things equal, the formula yields declining assessments over time. There is a minimum assessment of \$20.

Proposed Assessments

- *Minimum Assessments.* This rule does not change the calculation of vegetable contractor fund assessments (the current formula continues to generate declining assessments over time), except that this rule replaces the current \$20 minimum assessment with the following minimum assessment:
 - \$20 for vegetable contractors with contract obligations of less than \$500,000.
 - \$200 for vegetable contractors with contract obligations of at least \$500,000 and less than \$4 million.
 - \$500 for vegetable contractors with contract obligations of \$4 million or more.
- *“Assessment Holiday.”* Under this rule, a vegetable contractor is not required to pay a fund assessment for any license year if all of the vegetable contractor was a contributing vegetable contractor in the 5 preceding license years, and all of the following applied on November 30 of the last preceding license year:
 - The fund balance attributable to vegetable contractors was at least \$1.5 million.
 - The overall fund balance was at least \$11 million.

Business Impact

Agricultural Producers

This rule will benefit Wisconsin producers of grain, milk and vegetables, by preventing the erosion of the producer security program that helps protect them against catastrophic financial defaults by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (collectively “contractors”).

This rule will generate enough license fee revenue to continue critical financial security monitoring activities such as inspections, compliance evaluations, and review of contractor financial statements. Without this rule, DATCP would have to curtail key monitoring activities that help control potentially catastrophic financial risks to producers and the producer security fund.

This rule will also reverse the current diversion of fund assessment revenues from the agricultural producer security trust fund (to subsidize operating deficits in the grain and vegetable sectors). That will yield a slightly increased rate of fund growth which will, in turn, provide greater protection for producers in the event of a catastrophic contractor default.

This rule will not increase costs for agricultural producers, or have any significant impact on commodity prices paid to producers.

Contractors

This rule affects license fees and fund assessments paid by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors. It does not materially change other contractor regulations.

Current Cost to Contractors

Current license fees and fund assessments represent a *very* small share of overall contractor costs. For example:

- Current grain dealer license fees and fund assessments represent only about *11 hundredths of one percent* of the grain dealers' annual Wisconsin grain procurement costs (\$672,000 in fees and fund assessments, compared to \$599 *million* in grain purchased from Wisconsin producers in FY 2005-06).
- Current grain warehouse keeper license fees and fund assessments represent less than *2 hundredths of one percent* of the grain warehouse keepers' annual Wisconsin "cost of sales" (\$210,000 in fees and fund assessments, compared to about \$1.7 *billion* in "cost of sales" for FY 2005-06).
- Current milk contractor license fees and fund assessments represent only about *3 hundredths of one percent* of the contractors' annual Wisconsin milk procurement costs (\$1.2 million in producer security license fees and fund assessments, compared to about \$3.5 *billion* paid for milk produced by Wisconsin farmers in FY 2005-06).
- Current vegetable contractor license fees and fund assessments represent only about *8 hundredths of one percent* of the contractors' annual vegetable procurement costs (\$138,000 in producer security license fees and fund assessments, compared to \$170 *million* in procurement contract obligations to Wisconsin producers in FY 2005-06).

Current contractor license fees and fund assessments represent an even smaller share of *overall* contractor costs (including costs for labor, buildings, equipment, debt service, overhead, etc., in addition to commodity procurement costs).

Declining Cost Burden

If commodity prices, procurement volumes, and contractor financial ratios held constant over the next few years, total contractor license fees and fund assessments would actually *decline* because of fee credits and declining formula rates built into the producer security law itself. This rule will reduce that potential decline, at least in the grain and vegetable contractor sectors. Higher commodity prices and procurement volumes, or deteriorating financial ratios, could also offset the decline.

This rule will reduce license fees and fund assessment rates in the milk contractor sector, but increase license fees and fund assessment rates in the other 3 sectors so that those sectors pay a more proportionate share. The following table shows *combined total license fees and fund assessments* by business sector for FY 2005-06 and FY 2006-07. It also compares projected totals for FY 2009-10 *with* and *without* this rule (these projections may be affected by changing commodity prices, procurement volumes, financial ratios and other factors):

| Total Contractor License Fees and Fund Assessments (Net of Credits) | | | | |
|--|--------------------|--------------------|--|---|
| | FY 2005-06 | FY 2006-07 | FY 2009-10* <i>Without this rule</i> | FY 2009-10* <i>With this rule</i> |
| Grain Dealers | \$672,000 | \$452,000 | \$476,000 | \$581,000 |
| Grain Warehouse Keepers | \$210,000 | \$194,000 | \$181,000 | \$444,000 |
| Milk Contractors | \$1,272,000 | \$1,002,000 | \$959,000 | \$855,000 |
| Vegetable Contractors | \$138,000 | \$26,000 | \$36,000 | \$41,000 |
| TOTAL | \$2,292,000 | \$1,720,000 | \$1,652,000 | \$1,921,000 |

* Projection assumes constant procurement volumes, commodity price levels and contractor financial strength.

Other things equal, there would be a decline in total license fees and fund assessments results from the following features built into the current producer security law (this rule will not change those features):

- *License fee credits.* If the fund balance attributable to an industry sector reaches a specified statutory threshold, a portion of the balance is returned to contributing contractors in that sector (as a credit on their license fees). Contributing milk and vegetable contractors are already enjoying credits that significantly reduce their license fees. Those credits will dramatically reduce fees for contributing contractors, even when this rule is in effect.

- *Falling assessment rates.* Under the producer security law, fund assessment rates decline after a contractor has contributed to the fund for a specified number of years (4 to 6 years depending on contractor type and financial condition). Because the producer security fund is now 6 years old, most contributing contractors are now paying significantly lower fund assessments than they were a short time ago (other things equal). That trend will continue, regardless of this rule.

Effects Vary Between Contractors

The impact of this rule may vary considerably between individual contractors within a business sector. License fees and assessments may be affected by a number of variables, including contractor size, contractor financial strength, contractor risk practices and commodity prices.

For many contractors, this rule will slow the rate at which the contractor's fees and fund assessments would otherwise decline. Some contractors (especially grain warehouse keepers) may have increased fees and fund assessments. For a few contractors, this rule will actually speed the reduction of fees and fund assessments. Many individual contractors (especially milk contractors) will be unaffected by this rule.

This rule incorporates an "assessment holiday" that will automatically go into effect when industry sector balances and overall fund balances grow to specified levels.

Fiscal Impact

Under the agricultural producer security law:

- Licensed contractors must pay *license fees* to fund DATCP administration of the agricultural producer security program. Administration includes grain warehouse inspections, review of contractor financial statements, license administration, and response to contractor financial defaults and law violations.
- Most contractors ("contributing contractors") must pay *fund assessments* to finance the agricultural producer security fund. The fund is held in trust for the benefit of producers. If a contractor defaults on payments to agricultural producers, DATCP may reimburse producers from the fund.

Prior to 2003, DATCP administrative costs were paid by a combination of general purpose revenue ("GPR") and contractor license fees. The 2003-05 biennial budget converted 2.9 FTE positions and support costs from GPR to the agricultural producer security fund. Partly as a result of that change, current license fee funding is no longer adequate to cover administrative costs. There has also been a gradual growth in administrative costs, due to factors (such as state rent, information technology fees, and employee pay plans and fringe benefits) that are outside DATCP control.

Funding shortfalls are of particular concern in the grain dealer and grain warehouse keeper programs. Administrative costs now annually exceed license fee revenues by over \$200,000 in each of those programs, and each program has a negative cash balance of more than \$570,000. In the vegetable contractor program, administrative costs now annually exceed license fee revenues by over \$20,000, and there is a negative cash balance of about \$40,000. Grain and vegetable program operations are currently being subsidized by milk contractor license fees and fund assessments, and funding deficits in the grain and vegetable accounts are limiting the overall producer security fund balance.

This rule increases annual license fees for grain dealers, grain warehouse keepers and vegetable contractors, to remedy current inequities and provide minimally adequate funding for program administration (the fee increases for vegetable contractors will be largely offset by fee credits built into the producer security law). This rule also adjusts fund assessments, especially for grain warehouse keepers (for whom an adjustment is required by law).

Notwithstanding this rule, total revenue derived from contractor payments under the producer security program (license fees plus fund assessments) could actually *decline* over the next few years, because of fee credits and declining formula rates that are built into the producer security law itself. Actual revenues will depend on a variety of factors, including commodity prices, procurement volumes and contractor financial ratios.

License Fee Revenues

The following table shows actual license fee revenues by industry sector for FY 2005-06 and FY 2006-07. It also compares projected license fee revenues for FY 2009-10 *with* and *without* this rule (these projections may be affected by changing commodity prices, procurement volumes, contractor financial ratios and other factors):

| Total License Fee Revenues (Net of Contractor Credits) | | | | |
|---|-------------------|-------------------|--|---|
| | FY 2005-06 | FY 2006-07 | FY 2009-10* <i>Without this rule</i> | FY 2009-10* <i>With this rule</i> |
| Grain Dealers | \$160,000 | \$159,000 | \$156,000 | \$232,000 |
| Grain Warehouse Keepers | \$159,000 | \$152,000 | \$151,000 | \$377,000 |
| Milk Contractors | \$363,000 | \$347,000 | \$159,000 | \$159,000 |
| Vegetable Contractors | \$16,000 | \$13,000 | \$6,000 | \$8,000 |
| TOTAL | \$698,000 | \$671,000 | \$472,000 | \$776,000 |

* Projection assumes constant procurement volumes, commodity price levels and contractor financial strength.

Projected milk and vegetable contractor license fee revenues for FY 2009-10 are affected, to a very considerable degree, by license fee credits built into the producer security law itself. When the producer security fund balance attributable to an industry sector (such as milk or vegetables) reaches a specified statutory “trigger” amount, a portion of the balance is returned to contributing contractors in that sector (as a credit on their license fees).

Contributing milk and vegetable contractors are already enjoying credits that significantly reduce their license fees. Grain dealers and grain warehouse keepers do not yet qualify for these credits, because their fund contributions have not yet attained the required level (nor are they likely to do so prior to FY 2009-10).

DATCP projects that, under this rule, annual license fee revenues will be adequate to cover DATCP’s annual operating costs (DATCP has reduced those costs by eliminating 1.67 FTE grain auditor positions). To the extent that annual grain and vegetable license fee revenues exceed annual operating costs, they will “repay” the program subsidy that those sectors have already received from the milk sector.

Producer Security Fund; Assessment Revenues

The agricultural producer security fund currently has a balance of approximately \$9 million. No more than 60% of the fund balance can be paid out in any individual contractor default. The current fund balance is adequate to cover defaults by most, but not all, individual contractors. Continued fund growth will improve protection for producers, and minimize the need for supplementary security from contractors.

Contributing contractors pay fund assessments to finance the agricultural producer security fund. Annual assessment revenues may decline over the next few years (*with* or *without* this rule), because of fee credits and declining formula rates built into the producer security law. This rule will slow the decline (assessment revenues may also be affected by commodity prices, procurement volumes, contractor financial ratios and other factors). If fund balances grow to a certain point, the automatic “assessment holidays” incorporated into this rule will halt the collection of assessment revenues.

The following table shows actual fund assessment revenues by industry sector for FY 2005-06 and FY 2006-07. It also compares projected license fee revenues for FY 2009-10 *with* and *without* this rule (these projections may be affected by changing commodity prices, procurement volumes, contractor financial ratios and other factors):

| Total Fund Assessment Revenues | | | | |
|---------------------------------------|--------------------|--------------------|--|---|
| | FY 2005-06 | FY 2006-07 | FY 2009-10* <i>Without this rule</i> | FY 2009-10* <i>With this rule</i> |
| Grain Dealers | \$512,000 | \$300,000 | \$320,000 | \$349,000 |
| Grain Warehouse Keepers | \$51,000 | \$22,000 | \$30,000 | \$67,000 |
| Milk Contractors | \$909,000 | \$973,000 | \$800,000 | \$696,000 |
| Vegetable Contractors | \$122,000 | \$35,000 | \$30,000 | \$33,000 |
| TOTAL | \$1,594,000 | \$1,330,000 | \$1,180,000 | \$1,145,000 |

* Projection assumes constant procurement volumes, commodity price levels and contractor financial strength.

Cash in the milk fund assessment sub-account currently covers negative cash balances in the grain and vegetable program administration sub-accounts (which should normally be covered by license fees, not fund assessments). That is slowing the rate of growth in the milk assessment sub-account, and limiting fund coverage for all producers (grain, milk, and vegetable).

By correcting current grain and vegetable license fee revenue shortfalls, this rule will eliminate the current drain on the producer security fund. The fund balance attributable to grain warehouse keeper assessments is expected to build over several years toward the required statutory minimum balance (it currently falls well short).

Federal and Surrounding State Regulations

Federal Programs

Milk

There is no federal producer security program related to milk.

Grain

The United States department of agriculture (USDA) administers a producer security program for federally licensed *grain warehouses* that store grain for producers. Grain warehouses may choose whether to be licensed under state or federal law. Federally-licensed warehouses are exempt from state warehouse licensing and security requirements. State-licensed warehouses are likewise exempt from federal requirements.

The federal grain warehouse program provides little or no protection against financial defaults by *grain dealers*. Grain dealers are persons who buy and sell grain. Sometimes, grain dealers also operate grain warehouses. DATCP currently licenses grain dealers. Licensed warehouse keepers must also hold a state grain dealer license if they engage in grain dealing.

USDA has informally proposed to regulate *grain dealer* activities (grain “merchandising”) by federally licensed warehouse keepers, to the exclusion of state regulation. But USDA has not yet officially introduced its proposed regulations. In any case, the federal regulations would not apply to state-licensed grain warehouses, or to *grain dealers* who do not operate a warehouse.

Vegetables

There is a federal security program for vegetables. That security program is mainly limited to fresh market vegetables, and consists of a priority lien against vegetable-related assets.

Wisconsin’s vegetable security program applies only to processing vegetables (not fresh market vegetables covered by federal regulations). Wisconsin’s program uses an indemnity fund, rather than a priority lien-type program. Unlike the *federal* priority lien program, a *state* priority lien program would not work because it would be preempted by federal bankruptcy law.

There may be some limited overlap between the Wisconsin and federal programs, but that overlap is justified because the scope of federal coverage is not entirely clear. Overlap was reduced by recent Wisconsin legislation, which permits certain potato buyers covered under the federal program to opt out of most of the state program.

Surrounding States

In Minnesota, contractors must be licensed to procure grain, milk or processing vegetables from producers, or to operate grain warehouses. Regulated contractors must file bonds as security against default. The program is financed through industry fees and general tax revenues.

Neither Iowa nor Illinois have producer security programs for milk or vegetables. However, both states maintain indemnity funds to protect grain producers. Fund assessments are based solely on grain volume. In Wisconsin, by contrast, fund assessments are based on grain volume and financial condition. Iowa and Illinois finance their programs through industry fees and general tax revenues.

Michigan has the following producer security programs:

- Potato dealers must be licensed, and must post bonds as security against defaults. (Wisconsin’s vegetable security program includes, but is not limited to, potatoes.)
- Dairy plants that fail to meet minimum financial standards must file security or pay cash for milk.
- Grain producers have the option of paying premiums into a state fund. In the event of a grain default, the fund reimburses participating producers.
- These programs are financed through industry fees and general tax revenues.