State of Wisconsin
Jim Doyle, Governor

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

DATE: November 11, 2008

TO: Bruce Hoesly, Legislative Reference Bureau
1 East Main Street, Suite 200

FROM: Rodney J. Nilsestuen, Secretary

SUBJECT: Agricultural Producer Security; Final Draft Rule for Publication (*Clearinghouse Rule No.07-073*)

The Department of Agriculture, Trade and Consumer Protection (DATCP) hereby submits the following rule for publication:

CLEARINGHOUSE RULE #:	**07-037**
SUBJECT:	**Agricultural Producer Security**
ADM. CODE REFERENCE:	**ATCP 99, 100 and 101**
DATCP DOCKET #:	**06-R-11**

We are enclosing a copy of the final draft rule, as adopted by DATCP. We are also providing the following information for publication with the rule, as required by s. 227.114(6), Stats.

Final Regulatory Flexibility Analysis (Summary)

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 for 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, contractor financial ratios and other factors):

Total Contractor License Fees and Fund Assessments (Net of Credits)

	FY 2005-06	**FY 2006-07**	**FY 2009-10*** ***Without this rule***	**FY 2009-10*** ***With this rule***
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.

Steps to Assist Small Business

Many of the businesses affected by this rule, including contractors and agricultural producers, are "small businesses." This rule benefits small agricultural producers, by preventing the erosion of the agricultural producer security program that helps protect them against catastrophic financial defaults by contractors.

This rule increases aggregate license fees collected from grain dealers and warehouse keepers. However, the size of the fee increase is not significant in relation to overall business costs (see above). This rule also restructures the license fee formula, to make it more fair for small businesses (who arguably pay disproportionately high fees compared to large businesses).

For example, under current rules, a grain dealer who procures $550,000 worth of grain pays the same basic license fee as one who procures 3 times that amount. Under this rule, larger grain businesses would pay a more representative share of overall license fees. The smallest grain dealers and warehouse keepers will likely see license fee ***decreases*** under this proposed rule.

This rule also provides a similar benefit for small processed potato buyers who are noncontributing vegetable contractors. Under current law, the basic license fee for all contractors in this group is a flat $500 with some other add-ons. Under this proposed rule, the base license fee would be the lower of a flat $2,000 or $25 plus 8.75¢ for each $100 in purchases. That change would reduce fees for smaller businesses.

Conclusion

This rule will benefit agricultural producers, by preventing erosion of the producer security program that helps protect them against catastrophic financial defaults by contractors.

This rule will affect license fees and fund assessments paid by contractors, including grain dealers, grain warehouse keepers, milk contractors and vegetable contractors. Other things equal, total license fees and fund assessments will actually *decline* over the next few years (with or without this rule), because of fee credits and declining rates built into the producer security law itself. This rule will slow, but not reverse, that decline.

Fund assessments will continue to decline over all business sectors. License fees (net after credits) will continue to decline for milk contractors and vegetable contractors, but will go up for grain dealers and grain warehouse keepers. The increase for grain dealers and grain warehouse keepers will not have any significant impact on their overall business costs.

The new license fee formula for grain dealers and grain warehouse keepers will be more equitable, in that it will require large grain dealers and warehouse keepers to pay a more proportionate share of program costs. As a result, small grain dealers and warehouse keepers may actually see a reduction in license fees.

Comments from Legislative Committees (Summary)

On August 13, 2007, DATCP transmitted the above rule for legislative review. The rule was assigned to the Senate Committee on Agriculture and Higher Education and to the Assembly Committee on Agriculture. The Senate Committee on Agriculture and Higher Education took no action. The Chair of the Assembly Committee on Agriculture asked for a meeting with DATCP, and a thirty day extension of the review period, but took no other action.