

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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| <b>1. Type of Estimate and Analysis</b><br><input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected   | <b>2. Date</b><br>October 5, 2018                                      |
| <b>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable)</b><br>ATCP 99 and 100 (Permanent)   |  |
| <b>4. Subject</b><br>Grain dealers and grain warehouse keepers; Milk contractors  |  |
| <b>5. Fund Sources Affected</b><br><input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input checked="" type="checkbox"/> SEG <input type="checkbox"/> SEG-S   | <b>6. Chapter 20, Stats. Appropriations Affected</b><br>20.115 (1) (q) |
| <b>7. Fiscal Effect of Implementing the Rule</b><br><input type="checkbox"/> No Fiscal Effect <input checked="" type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs<br><input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget   |  |
| <b>8. The Rule Will Impact the Following (Check All That Apply)</b><br><input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors<br><input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers<br><input checked="" type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b>   |  |
| <b>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1).</b><br>\$ n/a   |  |
| <b>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)?</b><br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   |  |
| <b>11. Policy Problem Addressed by the Rule</b><br>DATCP proposes to make modifications to ATCP 99 that are necessary to align administrative code with 2017 Wisconsin Act 155 grain dealer and warehouse keeper thresholds and to ensure that assessments continue to be equitable between both grain dealers and warehouse keepers. DATCP will also take the opportunity to address the drafting error related to the assessment exemption for grain warehouse keepers. This rule will not result in a change to assessment amounts currently being paid by either grain dealers or warehouse keepers.<br><br>Act 155 combined Agricultural Producer Security Fund (Fund) balance minimum and maximum thresholds in the grain dealer and grain warehouse keeper programs. Prior to Act 155, the statute specified separate thresholds for grain dealers and warehouse keepers. Under Wis. Stat. § 126.88, DATCP is required to modify assessments to maintain Fund balances within statutory thresholds. When combined, the two exceed the new statutory maximum of \$7 million, and it requires DATCP to modify assessments to bring that portion of the Fund back below the statutory maximum. Prior to Act 155, DATCP took action to address grain dealer assessments specifically in a current emergency rule (EmR 1803) and a proposed permanent rule (CR 17-047). This rule updates the current emergency rule and proposed permanent rule to include warehouse keepers.<br><br>As required by Act 155, DATCP proposes to establish a Fund assessment rate in ATCP 100 for contributing milk contractors that procure milk under a deferred payment contract. The law now allows milk producer payments to be deferred for up to 120 days, which exposes the Fund to potentially larger default payouts in the event a contractor fails to pay the producer. The deferred payment assessment is intended to cover this additional risk. |  |
| <b>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.</b><br>These proposed rule changes, along with statutory changes made in Act 155, were prompted by recommendations made by the Agricultural Producer Security Council. The Council approved the content of this rule at its November 29, 2018 meeting.  |  |

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Members of the Agricultural Producer Security Council, an advisory council as defined in Wis. Stat. § 15.137 (1), represent the following: the Farmers' Educational and Cooperative Union of America, Wisconsin Division; the Midwest Food Processors Association, Inc.; the National Farmers' Organization, Inc.; the Wisconsin Agri-Business Association, Inc.; the Wisconsin Cheese Makers Association; the Wisconsin Corn Growers Association, Inc., the Wisconsin Soybean Association, Inc.; the Wisconsin Dairy Products Association, Inc.; the Wisconsin Farm Bureau Federation; Cooperative Network; and the Wisconsin Potato and Vegetable Growers Association, Inc.

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13. Identify the Local Governmental Units that Participated in the Development of this EIA.

n/a

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14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Proposed changes to ATCP 99 will not have an immediate impact on grain warehouse keepers. Prior to Act 155, warehouse keepers were not projected to receive an assessment exemption for about five years or an assessment reduction for about 15 years. This proposed rule does not change those projections. Nonetheless, these changes are necessary to harmonize ATCP 99 with statute.

Proposed changes to ATCP 100 will establish a deferred payment assessment rate that will cover the additional risk posed to milk producers and the Fund associated with milk contractors deferring payments to milk producers for up to 120 days, as permitted by Act 155. Milk contractors entering into deferred payment contracts with producers will pay higher assessments; however, statute allows these assessments to be passed on to the producers who requested their payments be deferred. Therefore, there will be no effect to milk contractors.

Because Act 155 permits, but does not require, milk contractors to offer deferred payment contracts, any effects will be the result of the decision of the contractor.

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15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule  
Milk, grain, and vegetable producers are all protected against financial defaults by contractors who contribute to the overall Fund. All producers could potentially benefit from a higher Fund balance.

DATCP is required by Wis. Stat. § 126.88 (1) to modify assessments to maintain Fund balances between statutory thresholds. If DATCP does nothing, ATCP 99 will not comply with statute.

DATCP is also required by a newly amended statutory provision under Wis. Stat. § 126.46 (1) to specify a deferred payment assessment rate by rule. If DATCP does not set a rate, ATCP 100 will not comply with statute.

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16. Long Range Implications of Implementing the Rule

In ATCP 99, the Fund balance attributable to grain warehouse keepers is approximately \$256,000 and is expected to grow by approximately \$50,000 each year and therefore is not projected to reach the proposed assessment exemption threshold of \$500,000 for about another five years and would not reach the proposed automatic assessment reduction threshold of \$1 million for about another 15 years. To ensure that the grain warehouse keeper program assessments are equitable and proportionate to their respective exposure this rule proposes that a reduction in assessments will not be implemented for grain warehouse keepers until the Fund balance attributable to grain warehouse keepers exceeds \$1 million. The long range implications of changes to ATCP 99 will be to ensure that grain warehouse keeper assessments are equitable and proportionate to its exposure.

The long-range implication of these proposed changes to ATCP 100 are unknown and entirely dependent on how many milk contractors and producers enter into deferred payment contracts. Since there is no requirement that entities enter into these types of contracts, any impact is voluntary.

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17. Compare With Approaches Being Used by Federal Government  
ATCP 99 - Grain

The United States Warehouse Act is a voluntary regulatory program administered by Farm Service Agency (FSA), a unit within USDA. Under this act, warehouse keepers who obtain a warehouse license must comply with several FSA regulations. Generally, the warehouse keeper must maintain enough grain in inventory to cover 100% of depositor obligations at all times. Further, FSA licensed warehouse keepers must submit financial statements, submit to inspections by USDA auditors, and post surety bonds. In the event a warehouse defaults, FSA can convert the bonds to cash and disperse the proceeds to depositors. The federal grain warehouse license is officially a voluntary program; in practice, it is not completely voluntary. Every state that has significant grain production (including Wisconsin) has some type of state grain warehousing law. These laws require grain warehouse keepers to obtain a license but allow them to choose either a state license or a federal license. Those that choose a federal license are exempt from the state licensing program.

ATCP 100 - Milk

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

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18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)  
ATCP 99 - Grain

Like all states with a significant grain industry, Minnesota, Michigan, Illinois, Indiana, and Iowa require persons who buy grain from producers to obtain a grain dealer license, and all persons who store grain for others are required to obtain either a state or federal grain warehouse license. Licensees must file financial statements with the state, and the warehouses must maintain 100% of depositor-owned grain in inventory at all times.

Minnesota requires grain dealers and grain warehouse keepers to post bonds with the state. Indiana, Illinois, and Iowa all have a state indemnity fund that is made up of grain dealer and warehouse assessments. Michigan (like Wisconsin) has a combination of bonds and indemnity fund contributions.

ATCP 100 - Milk

Minnesota requires any wholesale dealer or food processor who contracts with other Minnesota dealers or farmers of milk, cream, or products made from milk or cream, to be licensed as a Wholesale Produce Dealer. Dealers are required to obtain a surety bond and required to maintain trust assets so that assets are freely available to satisfy outstanding obligations. There is no exemption to this requirement. Dealers are not prohibited from entering into contracts with milk producers that have extended payment terms.

Michigan requires producer security for all manufacturing and Grade A dairy plants that are a first receiving point for raw milk that will be processed at that facility. Security can be in one or more of several forms including bond, letter of credit, certificate of deposit, or pre-payment. There is no exemption to this requirement. Dairy plants are not prohibited from entering into contracts with milk producers that have extended payment terms.

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

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19. Contact Name  
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20. Contact Phone Number  
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**ADMINISTRATIVE RULES**  
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**ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The rule implements statutory changes required by 2017 Wisconsin Act 155 and does not require businesses to incur additional costs unless a milk producer chooses to enter into deferred payment contracts.

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

n/a

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

Adopting changes to the rules that are required by 2017 Wisconsin Act 155

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

n/a

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5. Describe the Rule's Enforcement Provisions

n/a

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes    No
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