

STATEMENT OF SCOPE
Department of Agriculture, Trade and Consumer Protection (DATCP)

Rule No.: Wis. Admin. Code ATCP Chapters 99, 100, and 101 (Existing)

Relating to: Grain Dealers, Milk Contractors, and Vegetable Contractors

Rule Type: Emergency

1. Finding/nature of emergency:

Wis. Stat. § 126.88 (2) (b) obviates the need for an “emergency” finding, as would normally be required under § 227.24 (1) (a) and (3), Stats. Nonetheless, in this instance, this emergency rule is required for several reasons:

- **Corrective Rule Mandated by Statute.** Wis. Stat. § 126.88 (2) (a) mandates the department to promulgate a corrective rule when a portion of the Fund falls below the minimum balance required by statute.
- **Vegetable Contractors.** The permanent rule changes, already approved by the DATCP Board, are unlikely to be in effect by February 1, 2018, the annual licensing assessment date for vegetable contractors. Time is of the essence.
- **Grain Dealers.** DATCP is required to take action to ensure the grain dealer portion of the Fund balance stays within statutory thresholds. Without this emergency rule, the grain dealer balance will continue to grow beyond its \$6 million statutory maximum. An emergency rule effective date of August 31, 2018 is necessary since the next license year (assessment period) for grain dealers begins September 1, 2018. While Wis. Stat. § 126.88 (2) (b) lifts the department’s obligation to affirmatively evidence an “emergency” finding, here, an emergency rule is necessary to limit the growth of the Agriculture Producer Security Fund (Fund) balance attributable to grain dealers. Current law requires DATCP to modify fund assessments through rulemaking if fund balances are below or above certain thresholds. For grain dealers, the maximum balance threshold is \$6 million. The balance attributed to grain dealers currently exceeds this maximum.
- **Milk Contractors.** Without this emergency rule, licensed milk contractors will continue to pay more than their equitable share into the Fund. An emergency rule which implements the provisions of the permanent rule with an effective date of April 30, 2018 is necessary since the next license year (assessment period) begins May 1, 2018. This emergency rule is necessary to provide assessment relief to milk contractors contributing to the Agricultural Producer Security Fund (Fund).

2. Description of the objective of the rule:

The Department of Agriculture, Trade and Consumer Protection (DATCP) proposes this emergency rule to amend Agricultural Producer Security Fund (Fund) assessment amounts required for contributing grain, milk, and vegetable contractors.

In the case of vegetable contractors, time is of the essence. The emergency rule must be in effect by February 1, 2018, which coincides with the start of the annual licensing period for that industry. As a result of a 2014 default by a contributing vegetable contractor, the Fund balance attributable to vegetable contractors is at a deficit and well below its statutorily required minimum balance of \$800,000. Wis. Stat. § 126.88 directs DATCP to promulgate a rule modifying assessments when the fund balance, or a portion of the fund balance, falls below the minimum amounts required under § 126.88 (1) (a) through (e), Stats. On September 21, 2017, the DATCP Board approved a proposed permanent rule to rectify this situation; however, that permanent rule will not be in effect for the February 1, 2018, license year. Any emergency rule change will align with the provisions of the proposed permanent rule, currently in final draft form, which has been submitted for the Governor's approval.

In the case of grain dealers and milk contractors, the emergency rule will reduce the assessment payment requirements. Gubernatorial approval would permit the permanent rule, already approved by both the Agricultural Producer Security Council and the DATCP Board, to be implemented as an emergency rule by the April 30, 2018 date for milk contractors and August 31, 2018 date for grain dealers. This assessment reduction will begin to bring the grain dealer portion of the Fund balance back below the \$6 million statutory maximum and alleviate an unnecessary financial burden otherwise placed on this industry. Additionally, the reductions would provide equity to milk contractors whose assessments are currently disproportionately higher than those paid by the grain and vegetable industries. In the absence of this emergency rule, milk contractors would be ineligible for reduced fund assessments until the permanent changes are implemented. The emergency rule guarantees immediate relief to these industries, regardless of the consequences to the promulgation of the permanent rule.

3. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:

History and Background

The Fund is a public trust administered by DATCP. Milk contractors, grain dealers, grain warehouse keepers, and vegetable contractors (collectively known as contractors) must purchase a license to obtain milk, grain, or vegetables from producers, and most contractors are required to contribute to the Fund annually. Monies collected from each industry are accounted for separately, deposited into the Fund, and used to settle claims by producers in the event of a contractor default on payment. Wis. Stat. ch. 126 establishes detailed fund assessment requirements, except that ch. 126 requires DATCP to establish each contractor's fund assessments by rule.

The Fund incurred payouts to producers, totaling more than \$7 million, due to defaults by a large vegetable contractor in 2014 and a milk contractor in 2015. Subsequently, DATCP and the Agricultural Producer Security Council identified the need to evaluate the entire agricultural producer security program to determine whether changes were necessary to mitigate the impact of large defaults in the future. In December 2015, DATCP received the results from an actuarial study and began developing recommendations for changes to the agricultural producer security program. The recommendations led to permanent rulemaking to adjust assessments paid into the fund by the milk, grain, and vegetable industries.

Justification

Wis. Stats. § 126.88 (1) establishes minimum and maximum balance thresholds for each of the four licenses administered under the Agricultural Producer Security Program and directs the department to modify assessments to maintain these thresholds. In the case of the vegetable industry, fund assessments for contributing contractors must be modified, according to statute, to maintain the fund balances attributable to each industry.

As described, in 2014, the Fund paid claims to 18 vegetable producers due to a payment default by one large, out-of-state contractor that filed for bankruptcy. The default payment totaled \$6.1 million, causing the overall fund balance to drop by almost half. Then, in 2015, another large default by a milk contractor depleted the Fund by an additional \$1 million. Of the four industries, the current vegetable contractor balance is in a critical position, with a deficit well below the vegetable contractors' statutorily required minimum of \$800,000. The following table depicts the fund balances attributable to each industry in the immediate aftermath of the actuarial study, as well as the minimum and maximum statutory balances for each industry.

	Minimum Statutory	Actual Balance as of June 30,	Maximum Statutory
Grain Dealers	\$ 1,000,000	\$ 5,546,281.97	\$ 6,000,000
Grain Warehouse	\$ 200,000	\$ 46,432.94	\$ 1,000,000
Milk Contractors	\$ 3,000,000	\$ 6,132,665.50	\$ 12,000,000
Vegetable Contractors	\$ 800,000	(\$ 4,707,617.97)	\$ 3,000,000
Entire Fund	\$ 5,000,000	\$ 7,017,762.44	\$ 22,000,000

In December 2016, the Governor signed a scope statement that permitted the department to consider permanent rule changes related to fund assessments, in part based upon the December 2015 actuarial study. The department wrote a draft permanent rule and then held two public hearings in July 2017. The DATCP Board approved the final permanent rule at its September 21, 2017 Board meeting; however, it is unlikely that the permanent rule will be implemented before the afore-mentioned 2018 licensing deadlines.

This proposed emergency rule would alleviate a financial burden otherwise placed upon the licensed grain dealers and milk contractors during this transitional period while enabling the vegetable contractors to fulfill their statutory obligations to restore their apportioned balance of the Fund, as approved by the Agricultural Producer Security Council and DATCP Board.

Policy Alternatives

Do nothing. If DATCP fails to adopt this emergency rule, the department will fail to meet its statutory obligations as proscribed by the Wisconsin legislature in Wis. Stat. Chap. 126. The rule will not be in place in time for the February 1, 2018 assessment date which will delay the restoration of the fund balance attributable to the vegetable contractors and render grain dealers and milk contractors ineligible for the reduced assessments during the next license year.

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

Wis. Stat. § 25.463 creates the Wisconsin Agricultural Producer Security Fund.

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

Wis. Stat. § 126.15 directs DATCP to establish by rule annual fund assessments for grain dealers. Wis. Stat. § 126.30 directs DATCP to establish by rule annual fund assessments for grain warehouse keepers. Wis. Stat. § 126.46 (1) directs DATCP to establish by rule annual fund assessments for milk contractors. Wis. Stat. § 126.60 directs DATCP to establish by rule annual fund assessments for vegetable contractors.

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

Wis. Stat. § 126.88 (2) (a) directs DATCP to promulgate a rule modifying assessments when the fund balance or a portion of the fund balance falls below the minimum amounts required under § 126.88 (1) (a) through (e), Stats.

Wis. Stat. § 126.88 (2) (b) allows DATCP to promulgate an emergency rule without demonstrating that the emergency rule is necessary for the preservation of the public peace, health, safety, or welfare under ch. 227.24, Stats.

Wis. Stat. § 126.88 (2) (b) also allows a rule promulgated under this paragraph to remain in effect for not more than 24 months.

5. Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:

DATCP anticipates that this emergency rule will closely track the requisite sections of the proposed permanent rule which is already in final draft form. DATCP estimates that it will use approximately 0.10 FTE staff to develop this emergency rule. This includes time required for the investigation and analysis, development of financial assistance criteria, drafting of the rule, preparation of related documents, and communication with affected persons and groups. DATCP will use existing staff to develop this rule.

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

Milk, grain, and vegetable producers are all protected against financial defaults by contractors who contribute to the Fund. The proposed rule will enable milk contractors and grain dealers to pay reduced fund assessments at more equitable rates beginning May 1, 2018 and September 1, 2018, respectively. While contributing vegetable contractors will be affected by paying higher fund assessments, vegetable contractors who purchase potatoes for processing and have opted out of contributing to the fund, pursuant to Wis. Stat. 126.595, will not be affected.

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

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

8. Anticipated economic impact:

The proposed rule will reduce the milk contractor and grain dealer portions of the Fund balance because both industries will begin paying less in assessments annually. Annual assessments for milk contractors and grain dealers would be substantially reduced under this emergency rule. The proposed emergency rule will increase fund assessments to contributing vegetable contractors in order to meet the statutory requirement to maintain a minimum fund balance. The impact to milk, grain, and vegetable producers will be minimal if there are no large defaults.

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