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EmR1402

DATCP Docket No. 13-R-17

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

EMERGENCY RULE

This emergency rule was approved by the Governor on January 10, 2014.

The scope statement for this rule, SS 140-13, was approved by the Governor on October 29, 2013 published in register No. 695 on November 14, 2013, and approved by the Board of Agriculture, Trade & Consumer Protection on December 10, 2013.

The Wisconsin department of agriculture, trade and consumer protection hereby adopts the following emergency rule *to amend* ss. 161.50 (3) (f), 161.60 and 161.62 (1) (intro.) *relating to* the “grow Wisconsin dairy processor” grant program created under ss. 20.115 (4) (dm) and 93.40 (1) (g), Stats.

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

This emergency rule implements the “Wisconsin dairy processor” grant program created under s. 20.115 (4) (dm) and 93.40 (1) (g), Stats., by 2013 Wisconsin Act 20 (biennial budget act). Under s. 93.40 (1) (g), Stats., the Department of Agriculture, Trade and Consumer Protection (“DATCP”) is authorized to award grants and loans to dairy producers for projects designed to promote the growth of the dairy industry. The budget act created an annual appropriation in DATCP of \$200,000 for each year of the biennium for grants to dairy processors. (See s. 20.115 (4) (dm), Stats.)

This emergency rule does all of the following:

- Authorizes DATCP to make grant awards and distribute grant funds appropriated for the “Wisconsin dairy processor” grant and loan program.
- Applies the procedures and criteria that DATCP currently uses for dairy producer grants and loans funded under s. 20.115 (4) (d), Stats., to grants for dairy processors funded under s. 20.115 (4) (dm), Stats.

Statutes Interpreted

Statute Interpreted: s. 20.115 (4) (dm) and 93.40 (1) (g), Stats.

Statutory Authority

Statutory Authority: ss. 20.115 (4) (dm), 93.40 (1) (g) and 93.07 (1), Stats.

Explanation of Statutory Authority

Section 93.07 (1), Stats., directs DATCP to make such regulations as are necessary for the discharge of all the powers and duties of the department. While granting the authority to make grants to dairy processors, the budget language does not specify the bases for grant determinations. The agency considers it necessary to adopt rules to establish the bases for grant determinations in order to effectuate the purposes of s. 20.114 (4) (dm) and 93.40 (1) (g), Stats. This temporary emergency rule implements the “dairy processor” grant program on an interim basis, pending the adoption of “permanent” rules.

Related Rules or Statutes

There are no directly related rules or statutes, other than those cited above. DATCP rules for the “dairy processor” grant program will be incorporated in subchapter of ch. ATCP 161, Wis. Adm. Code (agricultural development and market promotion).

Plain Language Analysis

The “dairy processor” grant program is designed to promote the growth of the dairy industry by providing grants to dairy processors. The biennial budget act appropriated \$200,000 in grant funding for each year of the FY 2013-15 fiscal biennium. This emergency rule spells out grant procedures and criteria. Under this emergency rule, the “dairy processor” grant program will support projects proposed by dairy processors intended to expand and diversify the dairy industry.

Grant Purposes

Under this emergency rule, DATCP may award grants for projects that create, expand, diversify or promote any of the following:

- New capital investment in the dairy industry.

- New technologies or practices related to dairy production.
- Improvement of the competitive position of the Wisconsin dairy industry.
- Efficient use of farmland and other agricultural resources for dairy production.
- Employment in the dairy industry.

Grant Limits

Under this emergency rule, DATCP may award no more than \$50,000 of grant funding to any person or entity in any state fiscal biennium. Once DATCP makes a grant award, DATCP may make the actual grant payments over an original contract term of up to 3 years.

Matching Contribution

DATCP may give preference to applicants providing matching funds which may be in the form of capital, land, labor, equipment or cash related to the grant project.

Use of Grant Funds

Under this emergency rule, grant funds may be used to reimburse any of the following expenses if those expenses are a reasonable and necessary part of the grant project:

- Operating expenses, including expenses for salaries and wages, contract and consulting services, travel, supplies and public information.
- Equipment rental.
- The purchase of equipment whose full value is ordinarily depreciable within one year.

Grant funds may not reimburse any of the following expenses:

- Real estate purchases.
- Repayment of loans or mortgages.
- Rent or contract payments for time periods extending beyond the term of the grant contract.
- Equipment purchases, except for certain equipment purchases and depreciation expenses specifically authorized by this rule.
- Administrative or overhead costs that are not direct costs of the grant project.

Grant Proposals

Under this emergency rule, DATCP must issue at least one request for grant proposals in each state fiscal biennium (DATCP may issue more frequent requests, if it chooses to do so). The request for proposals must describe the required form and content of grant and loan proposals,

and must specify a deadline for submitting grant proposals. Applicants must submit grant proposals to DATCP, in the manner prescribed by DATCP's request for proposals.

Grant Awards

Under this emergency rule, DATCP must evaluate grant proposals and issue its grant awards within 90 days after receipt of a complete proposal. DATCP must clearly identify each award recipient, the amount of the award, and the purposes for which the award is given. DATCP must consider all of the following criteria when evaluating grant proposals and making grant awards:

- The extent to which a proposed project will benefit the dairy industry.
- Whether the proposal complies with DATCP's request for proposals.
- Whether the proposed project meets the standards prescribed in this emergency rule.
- The viability of the proposed project.
- The management and technical qualifications of the grant applicant.
- The qualifications of the persons who will carry out the project.
- The financial capacity of the grant applicant to complete the project as proposed.
- The adequacy of the project plan and budget.
- Whether the grant proposal adequately identifies the nature of project expenses to be reimbursed under the proposed grant.

Grant Contracts

Under this emergency rule, DATCP must enter into a contract with a grant recipient before distributing any funds to that recipient. The contract must spell out grant terms and conditions, including performance requirements, reporting requirements and payment terms.

Grant Payments

Under this emergency rule, DATCP may distribute grant funds in one or more payments, based on documented progress toward completion of the grant project. DATCP may require a grant recipient to file progress reports and require grant recipients to submit expense documentation as necessary to support grant payments.

Fiscal Impact

This emergency rule will have a fiscal impact on DATCP operations. Under this emergency rule, DATCP must issue at least one request for grant proposals in each state fiscal biennium. DATCP staff must review grant applications, recommend grant awards, administer grants, and ensure compliance with applicable requirements. DATCP staff will also provide technical assistance to grant applicants and recipients, as appropriate.

Program administration will occupy at least .5 FTE staff in DATCP's Division of Agricultural Development (this does not include legal, managerial, DATCP central accounting, or other indirect staff support). The cost for the .5 FTE staff will be \$50,000 per year, including salary,

fringe benefits and support costs (there will be a smaller proportionate cost for the remainder of the current fiscal year). DATCP will try to fill program staffing needs by shifting current staff from other agricultural development programs. A complete Fiscal Estimate is attached.

Business Impact

The “dairy processor” grant program is voluntary and thus imposes no cost on businesses. By providing \$200,000 in grant funding to dairy processors, the “dairy processor” grant program will benefit dairy farms, other dairy businesses and communities that participate in production, distribution or marketing of dairy products. Grant recipients will benefit directly, while others will benefit indirectly from the creation of a stronger dairy industry. DATCP plans to use application procedures that will make the cost of applying insignificant and particularly make it possible for small businesses to apply for funding without hiring consulting services. A complete Business Impact Analysis is attached.

Federal and Surrounding State Programs

Federal Programs

There are currently no similar federal programs.

Surrounding State Programs

The Minnesota Dairy Development and Profitability Enhancement program awards \$200,000 annually in grants of up to \$5,000 per dairy producer to cover half the cost of a comprehensive business plan to evaluate farm start-up, modernization and expansion.

In 2009-2010, 50 Minnesota producers were selected to share \$1 million in grants aimed at boosting the state’s livestock sector with projects that include renovation of milking facilities, barn upgrades, technology modernization, improved waste management systems and business transitions.

There are no similar programs in Illinois, Indiana, Iowa, or Michigan.

Data and Analytical Methodologies

DATCP worked with representatives of various dairy industry groups to develop standards for grant and loan determinations contained in this emergency rule.

DATCP Contact

Questions and comments related to this rule may be directed to:

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Rule comments will be accepted up to two weeks after the last public hearing is held on this rule. Hearing dates will be scheduled after this rule is approved by the Governor and published in the Wisconsin State Journal.

FINDING OF EMERGENCY

Enactment of a rule is necessary to establish criteria the department will use to make determinations for grants, loans or other forms of financial assistance to dairy processors to promote and develop the dairy industry. An emergency rule is needed to ensure that funds are used to assist dairy producers during the first year of the program as permanent rules cannot be adopted in time to provide the basis for grant and loan determinations during that first year of the program.

EMERGENCY RULE

SECTION 1. ATCP 161.50 (3) (f), 161.60 and 162.62 (1) (intro.) are amended to read:

ATCP 161.50 (3) (f). The “grow Wisconsin dairy producer” grant and loan program under ss. 20.115 (4) (d) and (dm) and 93.40 (1) (g), Stats.

ATCP 161.60 **Purpose.** This subchapter implements the “grow Wisconsin dairy producer” grant and loan program created under ss. 20.115 (4) (d) and (dm) and 93.40 (1) (g), Stats.

ATCP 161.62 (1) (intro.) The department may award grants from the appropriation under s. 20.115 (4) (dm), Stats., and grants and loans from the appropriation under s. 20.115 (4) (d) under s 93.40 (1) (g), Stats., for projects undertaken by dairy producers that are designed to do any of the following:

SECTION 2. EFFECTIVE DATE AND DURATION: This emergency rule takes effect upon publication and remains in effect for 150 days. The department may seek to extend this emergency rule as provided in s. 227.24, Stats.

. Dated this _____ day of _____, 2013.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Ben Brancel, Secretary