



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

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Joint Committee on Finance

Paper #140

Grain Inspection Program (Agriculture, Trade and Consumer Protection)

[LFB 2011-13 Budget Summary: Page 59, #13 (part)]

CURRENT LAW

The Department of Agriculture, Trade and Consumer Protection (DATCP) conducts grain inspections, including weighing and grading of grain, for shipments traveling through ports. Services are funded by fees collected on shipments.

GOVERNOR

Provide \$96,400 for grain inspection as a general reestimate of program revenue appropriations.

DISCUSSION POINTS

1. The following services are mandatory under the United States Grain Standards Act: (a) official weighing and inspection of most grain exported from the United States; and (b) testing of all corn exported from the United States prior to shipment, unless the contract stipulates that testing is not required, for aflatoxin, a fungal toxin that can cause liver damage and that can accumulate through improper harvest, storage or processing. Inspections are not mandatory in certain export situations, such as: (1) grain not sold or described by grade; (2) grain sold as seed; (3) grain exporters shipping fewer than 15,000 metric tons of grain abroad annually; or (4) grain shipped through but not originating in the United States via a bonded transporter. Grain shipped domestically is not required to be weighed and inspected, but may be performed on a fee basis upon request.

2. For grain exports, mandatory inspection and weighing services are done by Federal Grain Inspection Service (FGIS) field offices at key ports in the U.S., unless FGIS has delegated this authority to the state in which the port is located. In Wisconsin, DATCP holds such authority to perform all grain inspections, but only for the Port of Superior. Under this authority, DATCP

provides mandatory export inspection and weighing services for standardized grains and oilseeds. Federally trained and licensed state employees perform these functions under the direct supervision of a state program manager. An FGIS manager then provides general oversight and monitoring of the program. DATCP charges federally approved hourly rates for grain inspection, weighing and commodity inspection, or fees per truck, rail car, or sample for various services. DATCP collects fees for the services it provides and reimburses FGIS a portion of the fee for supervision based on the service provided. For example, in Superior, typical DATCP fees are \$21.95 for each railcar inspected (of which FGIS receives 95¢), and \$11.30 for each truck inspected (30¢ to FGIS).

3. For non-export shipments from Superior, DATCP performs voluntary inspections and related activities for a variety of grain products. These inspection activities include inbound grain arriving on trucks or rail cars, and outbound grain being loaded on rail cars or ships for transport. These voluntary inspections allow suppliers of agricultural products the opportunity to assure customers of the consistent quality of their products and services. Having one inspection by DATCP staff for both inbound and outbound grain is also cost-effective for grain suppliers; DATCP services allow suppliers to avoid hiring in-house staff for inspection, which eliminates a portion of their costs, and also ensures independent inspections of inbound and outbound grain would not make different findings about the quality of the shipment.

4. DATCP previously held authority for all shipments for export or domestic commerce throughout the state, including Milwaukee and locations in La Crosse and Prairie du Chien. However, 2005 Act 25 eliminated \$3.3 million and 38.57 positions with the expectation that DATCP would relinquish all grain inspection authorities previously granted by USDA. Act 25 also required DATCP and the Department of Administration (DOA) to report to the Joint Committee on Finance on a model of delivering grain services that would be financially viable and sustainable, with a system that would provide a flexible workforce to reflect seasonal changes in activity but also maintain state oversight of service quality and inspection certificates. DATCP in late 2005: (a) returned to the federal government the authority to conduct inspections of domestic shipments at non-export locations; and (b) closed all grain inspection offices in Milwaukee, La Crosse and Prairie du Chien, leaving only Superior under DATCP inspection services. The Committee subsequently reauthorized 21.0 positions for the Superior inspection program under 14-day passive review. This is the current level of authorized positions, which includes 17.0 inspectors and 4.0 managerial or administrative positions.

5. As of June 30, 2010, the grain inspection PR continuing appropriation carried a deficit of \$658,500. Program revenue deficits are liabilities of the general fund. Table 1 shows the estimated condition of the appropriation under the bill. DATCP reports revenues in 2010-11 are expected to be high relative to recent levels based on higher shipping volumes in the fall of 2010, which is discussed later in greater detail. Revenues for the 2011-13 biennium reflect the most recent DATCP estimates, and shipping activity more typical than that of 2010. Although 2011-13 expenditures would be budgeted at the levels shown in Table 1, DATCP reports expenditures may be closer to \$1.6 million in 2011-12 and \$1.5 million in 2012-13. If so, this could result in a June 30, 2013, deficit exceeding \$1 million.

TABLE 1**DATCP Grain Inspection Appropriation Condition**

| | Actual <u>2008-09</u> | Actual <u>2009-10</u> | Estimated <u>2010-11</u> | Bill <u>2011-12</u> | Bill <u>2012-13</u> |
|------------------------|--------------------------|--------------------------|-----------------------------|------------------------|------------------------|
| Opening Balance | -\$472,500 | -\$470,900 | -\$658,500 | -\$671,100 | -\$713,900 |
| Revenues | 1,549,600 | 1,388,300 | 1,788,500 | 1,358,000 | 1,358,000 |
| Expenditures | -1,548,000 | -1,520,200 | -1,801,100 | -1,400,800 | -1,400,800 |
| General Fund Transfers | <u>0</u> | <u>-55,700</u> | <u>0</u> | <u>0</u> | <u>0</u> |
| Closing Balance | -\$470,900 | -\$658,500 | -\$671,100 | -\$713,900 | -\$756,700 |

6. Under s. 16.513 of the statutes, DATCP is required to report to DOA and the Joint Committee on Finance a plan to correct the unsupported overdrafts attributable to the appropriation after each fiscal year. In November, 2010, the Department and administration forwarded to the Committee a plan to address the overdraft. The plan identified no actions to reduce the deficit beyond the transfers of GPR discussed below.

7. The grain inspection program has been in deficit since the end of the 2000-01 fiscal year. In addition to relinquishing inspection ports and reducing positions to attempt to correct structural imbalances, 2005 Act 25 created a requirement that DATCP annually transfer to the grain inspection appropriation the unencumbered balances in its GPR general operations for food safety, consumer protection, animal health, agricultural development, agricultural resource management and central administrative services. This provision was included to recover the amount of the deficit that had accumulated to that point, recognizing that the federal government will not allow a fee structure that exceeds current operations to cover past deficiencies. The annual amounts transferred under this provision are included in Table 1 under revenues. DATCP's net operating revenues for each year in Table 2 exclude the effect of these GPR balance transfers. Since the transfers began in 2005-06, GPR transfers have accounted for all yearly surpluses.

TABLE 2**DATCP GPR Transfers to Grain Inspection**

| | <u>2005-06</u> | <u>2006-07</u> | <u>2007-08</u> | <u>2008-09</u> | <u>2009-10</u> |
|------------------------|----------------|----------------|----------------|-----------------|-----------------|
| GPR Transfer | \$150,100 | \$155,400 | \$489,100 | \$304,000 | \$6,900 |
| Net Operating Revenues | <u>-63,000</u> | <u>-45,400</u> | <u>-23,000</u> | <u>-302,400</u> | <u>-138,800</u> |
| Annual Surplus/Deficit | \$87,100 | \$110,000 | \$466,100 | \$1,600 | -\$131,900 |

8. DATCP officials are considering submitting a request for a fee increase to USDA, which must approve all fee increases for delegated programs. (As fees are set under delegated federal authority and not by state statute or rule, there is no direct legislative role in the fee-setting process.) The last fee increase in the grain program took effect in 2004. Further, DATCP estimates USDA-administered inspections in the port of Duluth are, on average, about 30% more expensive than most of DATCP's fees, which in many cases gives DATCP a competitive advantage in

attracting domestic voluntary inspections from USDA. On these bases, DATCP generally expects a reasonable fee increase may be acceptable to USDA. An approval generally must be granted or denied within 60 days. However, USDA is only likely to approve fee increases to cover a delegated program's operating costs and not to cover past deficiencies. Therefore, it is likely that eliminating the account deficit may require both adjustments to operations and continued surpluses provided by GPR.

9. To better align program revenues and costs, DATCP is also analyzing the application of its existing cost structure, which includes both hourly rates per inspector used and per-unit rates for rail cars or other grain-carrying vessels. DATCP is authorized to charge the higher of an hourly or a unit-based fee calculable for an inspection, but staff in most cases has charged the per-unit fee. DATCP officials believe in some cases the program could charge hourly rates instead of the per-unit fee to better reflect the cost of the inspection, but the Department does not have evidence that this would appreciably change the program's revenues. Such a change may, however, reduce program costs associated with instances when a grain shipment is late in arriving, but the program is paying inspectors waiting for the shipment to arrive.

10. Most program revenue appropriations do not collect interest if they run a surplus, or pay interest if they run a deficit, as these amounts instead accrue to the state's general fund. However, in 1994, FGIS sent DATCP a letter informing it that: (a) 1993 amendments to the U.S. Grain Standards Act eliminated the authority for delegated states to use grain inspection revenues for the maintenance of other agricultural programs; (b) all revenues collected for performing official grain inspection and weighing services must be used to maintain those programs exclusively; and (c) DATCP was requested to make the necessary arrangements to implement this funding change starting in state fiscal year 1994-95. Since then, DATCP's grain inspection appropriation has collected or paid interest to the general fund when the account has a surplus or deficit. DATCP staff reports the total interest charged to the account since 2002-03 is \$103,500.

11. If a fee increase were pursued to balance revenues with expenditure levels, DATCP staff report the grain inspection program would remain almost wholly dependent on sufficient shipping volumes moving through the port. Shipments in turn are heavily influenced by domestic factors and international market conditions that make it difficult to determine staffing needed for any shipping year at the port of Superior. Domestic factors include annual grain production, crop quality, and demand. International economic conditions may include international grain production and demand, which may be dependent on climate patterns around the world. For instance, grain shipments through the port of Superior increased in the 2010 shipping year due to Russia's embargo on wheat exports, which was caused by a severe drought. DATCP also reports international shipping volumes in Superior have fallen over time as foreign countries increase their domestic grain production, and as ports such as those on the West Coast have increasingly met shipping demand increases in Asia and other parts of the world. DATCP also reports the size of some western states' delegated programs allow them to operate with lower average costs than a program of DATCP's size.

12. The annual expenditures of the grain inspection PR appropriation consist mostly of personnel costs; of the \$1.4 million appropriated under the bill, more than \$1.2 million each year would be for salaries, fringe benefits and limited-term employees. Inspection workloads are highest in the fall, following harvest and prior to the freezing of Lake Superior and Great Lakes shipping

lanes in December or January. However, during winter and into the spring as planting occurs, workload at the port is significantly reduced. Due to the seasonal nature of shipping and inspection, DATCP reports inspection staff typically earn significant overtime pay as well as compensatory hours during the fall and winter. Table 3 shows the hours worked by grain inspection staff, including overtime hours and hours worked by limited-term employees, by quarter for the 2009 and 2010 calendar years.

TABLE 3

Grain Inspection Staff Hours

| | <u>Regular</u> | <u>Overtime</u> | <u>LTE</u> | <u>Total</u> |
|-------------|----------------|-----------------|--------------|---------------|
| 2009 | | | | |
| Q1 | 5,164 | 516 | 553 | 6,233 |
| Q2 | 5,785 | 1,085 | 928 | 7,798 |
| Q3 | 5,583 | 2,756 | 2,174 | 10,513 |
| Q4 | <u>6,284</u> | <u>2,646</u> | <u>3,175</u> | <u>12,105</u> |
| Total | 22,816 | 7,003 | 6,830 | 36,649 |
| 2010 | | | | |
| Q1 | 4,386 | 233 | 593 | 5,212 |
| Q2 | 5,189 | 731 | 734 | 6,654 |
| Q3 | 6,077 | 4,252 | 3,132 | 13,461 |
| Q4 | <u>6,493</u> | <u>2,570</u> | <u>3,979</u> | <u>13,042</u> |
| Total | 22,145 | 7,786 | 8,438 | 38,369 |

13. Of the overtime hours worked annually, the staff is required to accrue at least 200 hours and may accrue up to 240 hours as compensatory time each year. These hours are in lieu of payment at the overtime rate. These compensatory hours allow DATCP to require staff to take time off in winter and spring periods when there is little activity at the port. These changes took effect in 2005. Prior to this time, the Department customarily laid off employees during slow periods, paying unemployment for laid off employees but also paying cash to the same employees for time worked during busy inspection periods. The Department reports total unemployment costs typically were from \$45,000 to \$60,000 each year, which were in addition to overtime costs paid. The current scheduling structure now largely avoids laying employees off.

14. DATCP reports the 17.0 inspector positions currently authorized are what it believes to be the best balance to: (a) accommodate all inspection requests that may be received by the port for both inbound and outbound grain shipments; (b) provide inspection services during heavy shipping periods, in combination with LTE staff; and (c) not have excessive staffing levels for times when employees are not needed. Some level of permanent staff is needed throughout the year for routine inspection requests; the grain inspection office is required under federal regulations to begin inspections on any inbound or outbound grain shipments within six hours of receiving a request. Further, during certain inactive winter and summer periods when certain staff may be using compensatory time, a number of staff persons may be unavailable. If the Department fails to respond to an inspection request, that limits the revenues generated by inspection activity, and also may jeopardize the federal delegation of inspection authority if the program repeatedly fails to provide timely inspections.

15. The Department contends that it is not a viable option to reduce permanent staff and increase LTE staff to reduce overtime, primarily due to competition for LTE staff with grain elevators and other entities in the Superior area. The Department reports that it regularly hires LTEs that may go on to be full-time licensed inspectors. However, the Department reports many LTEs it hires also leave to work with other grain shipping or storing organizations, or have not been dependable workers, either due to a lack of a driver's license or not reporting for scheduled work.

16. During several recent periods, including 2010, DATCP has held positions vacant in the grain inspection program as allowed by inspection workload, which has limited costs. However, DATCP reports its final two vacancies were filled in early 2011 in anticipation of estimated program activity in the 2011 shipping year. None of the 21.0 grain inspection positions are currently vacant.

17. It could be argued that reducing costs, most of which are personnel-related, is the only certain means of reducing program expenditures, given that the federal government approves fee increases and that the Department reports many of the changes to staff scheduling and compensation have already eliminated many of the additional costs the program incurred in previous years. However, if program personnel are not available to fulfill requests for inspection, the elimination of program staff could potentially reduce revenues to the program. DATCP reports that although such an effect is plausible, it is not able to estimate whether any such effect would occur or how significant it would be.

18. The Committee could consider deleting funding and a number of positions from the grain inspection appropriation. Assuming DATCP's higher estimated 2011-12 expenditure of about \$1.6 million, the yearly imbalance would be approximately \$240,000. Further, if total expenditures of \$1.6 million consist of approximately 15% non-personnel costs as under the bill and \$1.4 million in personnel costs, one position would cost, on average, about \$67,000. This would equate to 3.6 positions to attempt to bring revenues in line with expenditures [Alternative 1].

19. Another alternative would be to delete the \$96,400 PR annual increase for grain inspection [Alternative 2]. Although this may not be sufficient to address the program operating deficit, the Committee could require DATCP submit a plan to the Joint Committee on Finance to correct the deficit in the grain inspection PR account. Because the Department may be submitting a fee increase for USDA approval in the coming months, the Committee could specify the Department report by January 1, 2012, on specific actions taken or other administrative efforts planned to reduce the deficit in the grain inspection program [Alternative 3]. It should be noted that this alternative could be taken in conjunction with the position reduction under Alternative 1. Specifically, if it appears at the time of a report that a fee increase could support restoring permanent staff, and that additional positions would be beneficial to the program in providing revenue-generating services, the Department could submit a request under s. 16.505/.515 for position authorization, or outline in the request additional actions that may reduce the program deficit.

20. The Committee could also consider changing the grain inspection appropriation from continuing to annual [Alternative 4]. As a continuing appropriation, DATCP is authorized to expend all monies received for that purpose, and expenditure figures under Chapter 20 of the schedule are estimates. However, DATCP, with the approval of DOA, may change the allocated amount, and adjustments do not require any legislative action. On the other hand, under an annual

appropriation, DATCP could only expend the amount appropriated under Chapter 20 of the statutes in a given year. Additional expenditures would require the approval of the Legislature in a bill, or by the Joint Committee on Finance under a 14-day passive review request from DATCP and DOA. Converting the grain inspection appropriation to annual would allow the Legislature to maintain greater legislative oversight than the continuing appropriation under current law [Alternative 4]. This alternative could be adopted in addition to any of the other measures described above.

21. The Committee could also take no action [Alternative 5]. Under this alternative, it would remain incumbent upon DATCP and DOA to continue pursuing efforts to balance program revenues and expenditures.

ALTERNATIVES

1. Adopt the Governor's recommendation. (This would maintain expenditures estimated under the bill at \$1,400,800 PR each year with 21.0 positions.)

2. Delete \$240,000 grain inspection PR annually with 3.6 positions.

| ALT 2 | Change to Bill | |
|-------|----------------|-----------|
| | Funding | Positions |
| PR | - \$480,000 | - 3.60 |

3. Delete \$96,400 grain inspection PR each year.

| ALT 3 | Change to Bill | |
|-------|----------------|--|
| | Funding | |
| PR | - \$192,800 | |

4. Require DATCP to report by January 1, 2012, on specific actions taken or administrative efforts planned to correct the deficit in the grain inspection program.

5. Change the grain inspection appropriation from continuing to annual.

Prepared by: Paul Ferguson