

DATCP Docket No. 15-R-08
Final Draft Rule
December 9, 2015

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

The Wisconsin department of agriculture, trade and consumer protection proposes the following emergency rule *to amend* ATCP 101.245 (2) (a) 2., ATCP 101.245 (2) (b) 2., and ATCP 101.245 (2)(c) 2.; *relating to* vegetable contractors and the agricultural producer security fund assessment.

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

This emergency rule modifies the Agricultural Producer Security Fund (ASPF) assessment amounts of contributing vegetable contractors. Section 126.88, Stats. requires the Wisconsin Department of Agriculture, Trade and Consumer Protection (the department) to modify fund assessments as necessary to maintain a fund balance attributable to vegetable contractors of at least \$800,000, but not more than \$3,000,000.

Statutes Interpreted

Statutes Interpreted: ss. 126.60, 126.88 (1)(a) through (e), and 126.88 (2)(a), Stats.

Statutory Authority

Statutory Authority: ss. 93.07(1), 126.81 (1)(a), 126.88 (2)(a), and 126.88 (2)(b), Stats.

Explanation of Statutory Authority

The Department of Agriculture, Trade and Consumer Protection (the department) has broad general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction. The department has authority under s. 93.06 (1m) and (1p), Stats., to evaluate farm products upon request for certification purposes, and to charge a fee to cover the cost of the service. Section 126.60 permits an annual fund assessment and specifies the ratio assessment rates and factors. Section 126.81 (1) (a), Stats. allows The department to promulgate rules to interpret and implement ch. 126, Stats. Section 126.88 (2) (a), Stats., directs The department to promulgate a rule modifying assessments when the fund balance or a portion of the fund balance falls below the minimum amounts required under section 126.88 (1) (a) through (e), Stats.

Related Statutes and Rules

Ch. 126, Stats. establishes detailed fund assessment requirements and sets minimum fund balances for each of three industries, as well as a minimum balance requirement for the overall fund. ATCP 99 covers grain dealers and grain warehouse keepers, and ATCP 100 covers milk contractors.

Plain Language Analysis

Background

The APSF is a public trust administered by the department. Milk contractors, grain dealers, grain warehouse keepers, and vegetable contractors (Contractors) must purchase a license to obtain milk, grain, and vegetables from producers and most contractors are required to contribute to the APSF annually. Funds are used to settle claims by milk, grain, and vegetable producers in the event that a contractor defaults on payment. Funds from each industry are accounted for separately and deposited into the overall fund. Ch. 126, Stats. establishes detailed fund assessment requirements, except that it requires the department to establish milk contractor fund assessments by rule. Ch. 126, Stats. sets minimum fund balances for each industry, as well as a minimum balance requirement for the overall fund.

Section 126.88, Stats. establishes minimum and maximum balances for each of the four licenses administered under the Agricultural Producer Security Program and directs the department to modify assessments to maintain these thresholds. Assessments for contributing vegetable contractors shall be modified to maintain a fund balance attributable to vegetable contractors of at least \$800,000, but not more than \$3,000,000.

In 2014, the APSF paid out claims to 18 vegetable producers due to payment default by one large, out-of-state contractor that went bankrupt. The default payment totaled \$6.1 million, causing the overall fund balance to drop by almost half. This resulted in a fund balance deficit attributable to the vegetable program of over \$4.8 million and, furthermore, has brought the overall fund balance well below the \$11 million minimum currently set in administrative code to be eligible for fund assessment exemptions.

The department and the Agricultural Producer Security Council have identified the need to evaluate the entire agricultural producer security program, so that changes can be made to mitigate the impact of large defaults in the future. This entire process, including the performance of the actuarial study, will take more than a year.

An emergency rule is required to meet the statutory obligation to restore the vegetable fund balance to the minimum within a reasonable time. Without this emergency rule, the fund balance attributable to the vegetable program will remain dramatically underfunded. An emergency rule must be in effect by February 1, 2016, in order to apply to the next license year for vegetable contractors. This emergency rule will be in effect for 24 months per statutory authority given the department in s. 126.88 (2)(b), Stats.

Rule Content

This rule defines the vegetable procurement practices and financial standards and security for vegetable contractors in Wisconsin. This emergency rule will affect the vegetable contractors' payments to the APSF. Specifically, it:

Increases assessments paid by contributing vegetable contractors; and
Assists the department in achieving the statutory minimum balance for the fund.

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Fiscal Impact

By amending ATCP 101.245, the emergency rule sets the participation fee at the level currently paid by first-year participants. By amending this rule, the department projects the fund will receive approximately \$95,000 in additional revenue each year.

Business Impact

The proposed rule will impact vegetable contractors who participate in the APSF through an increase in assessments paid by contributing vegetable contractors. The department expects to receive approximately \$95,000 in additional revenue each year from 22 contractors.

Federal and Surrounding State Programs

Federal Programs

The Noninsured Crop Disaster Assistance Program provides some coverage for losses when natural disasters affect specialty crops such as vegetables and fruits. The program offers coverage at up to 65 percent of producers expected production at 100 percent of the average market price. However, this program targets the producers rather than the contractors.

Surrounding State Programs

Minnesota requires any wholesale dealer or food processor who contracts with other Minnesota dealers for fresh fruits or vegetables 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.

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. However, they do not have a similar program for vegetable producers.

Illinois, Iowa, and Indiana do not have similar programs.

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FINDING OF EMERGENCY

No finding of emergency is necessary pursuant to s. 126.88(2)(b), Stats.

EMERGENCY RULE

SECTION 1. ATCP 101.245 (2)(a) 2. is amended to read:

2. The sum of the amounts calculated under s. 126.60 (1) (a) and (b), Stats. except as follows:

- a. A vegetable contractor's current ratio assessment factor under s.126.60 (3) (a), Stats. is 0.00048.
- b. A vegetable contractor's current ratio assessment factor under s.126.60 (3) (b), Stats. is 0.00072.
- c. A vegetable contractor's debt to equity ratio assessment factor under s.126.60 (5) (a), Stats. is 0.000135.
- d. A vegetable contractor's debt to equity ratio assessment factor under s.126.60 (5) (b), Stats. is 0.000203.

SECTION 2. ATCP 101.245 (2)(b) 2. is amended to read:

2. The sum of the amounts calculated under s. 126.60 (1) (a) and (b), Stats. except as follows:

- a. A vegetable contractor's current ratio assessment factor under s.126.60 (3) (a), Stats. is 0.00048.
- b. A vegetable contractor's current ratio assessment factor under s.126.60 (3) (b), Stats. is 0.00072.
- c. A vegetable contractor's debt to equity ratio assessment factor under s.126.60 (5) (a), Stats. is 0.000135.
- d. A vegetable contractor's debt to equity ratio assessment factor under s.126.60 (5) (b), Stats. is 0.000203.

SECTION 3. ATCP 101.245 (2)(c) 2. is amended to read:

2. The sum of the amounts calculated under s. 126.60 (1) (a) and (b), Stats. except as follows:

- a. A vegetable contractor's current ratio assessment factor under s.126.60 (3) (a), Stats. is 0.00048.
- b. A vegetable contractor's current ratio assessment factor under s.126.60 (3) (b), Stats. is 0.00072.
- c. A vegetable contractor's debt to equity ratio assessment factor under s.126.60 (5) (a), Stats. is 0.000135.
- d. A vegetable contractor's debt to equity ratio assessment factor under s.126.60 (5) (b), Stats. is 0.000203.

SECTION 4. EFFECTIVE DATE: This emergency rule takes effect on February 1, 2016, and remains in effect for 24 months. The department implements this emergency rule as provided in s. 126.88 (2)(b), Stats.