

1 **Publication Date:** September 2, 2011
Effective Dates: September 2, 2011 thru January 29, 2012

EmR1112

DATCP Docket No. 11-R-02

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

EMERGENCY RULE

2 The Wisconsin department of agriculture, trade and consumer protection hereby adopts the following emergency rule *to*
3 *create* ss. ATCP 99.126 (6) and ATCP 99.235 (5) and *to amend* ss. ATCP 99.126 (1) and ATCP 99.235 (1) *relating to*
4 grain dealer and grain warehouse keeper agricultural producer security fund assessments.

5 This emergency rule was approved by the governor on July 14, 2011.

6 The statement of scope for this rule, SS 002-11, was approved by the governor on July 14, 2011, published in Register -
7 667, on July 31, 2011, and approved by The Board of Agriculture, Trade and Consumer Protection on August 12, 2011.
8

FINDING OF EMERGENCY

9 (1) In Wisconsin, grain dealers (persons who purchase grain from producers), grain warehouse keepers (persons
10 who store grain that is owned by others), milk contractors (persons who purchase milk from producers, and vegetable
11 contractors (persons who purchase vegetables from producers for use in processing), must obtain a license to do these
12 activities and are collectively referred to as “contractors”. Most contractors are “contributing contractors”, which means
13 they must pay annual assessments into the Wisconsin Agricultural Producer Security Fund. This fund is designed to help
14 partially reimburse producers in the event that a contractor defaults on payment to producers. The annual assessments are
15 calculated based on the total dollar value of commodities purchased or stored, the length of time that the contractor has
16 participated in the fund, and certain financial ratios from the contractor’s balance sheet.

17 (2) All else equal, a contractor who purchases small amounts will pay lower assessments than one who purchases
18 large amounts. All else equal, a contractor who is in a conservative financial position will pay lower assessments than one
19 who carries higher levels of liabilities relative to their assets or equity. All else equal, a contractor who has participated in
20 the fund for more than five years will pay lower assessments than one who has participated for less than five years. The
21 annual assessment, calculated from the factors discussed above, vary considerably from one contractor to another. An
22 annual assessment may be as low as \$100, or as high as several hundred thousand dollars.

23 (3) The grain dealer and grain warehouse keeper license years begin on September 1 of each year. At that point,
24 DATCP calculates the assessment for the new license year that will be due in four quarterly payments over the course of
25 that year. Calculations are based on purchase data and financial statement data for the grain dealer or grain warehouse
26 keeper’s most recently completed fiscal year and annual financial statement.

27 (4) For the license years that will begin on September 1, 2011, a very unusual combination of business financing
28 and recent high commodity prices has lead to unusually high assessment calculations for one grain company. In fact, if
29 the existing rule remains unmodified, there will be one individual elevator that will be charged over \$1.2 million in
30 assessments (for both grain dealer and grain warehouse combined). This is roughly four times greater than the previous
31 highest annual assessment and roughly six times higher than the second highest annual assessment in the grain (dealer and
32 warehouse combined) producer security fund program. Further, this potential assessment for next license year is more
33 than double the highest assessment that has ever occurred in the milk contractor portion of the fund. This is significant
34 because the dollar amount of a large milk contractor’s annual purchase of milk tends to be much higher the dollar amount
35 of a large grain dealer’s annual purchase (or store) of grain.

1 (5) In the majority of cases, the assessment calculation formulas reasonably charge contractors for the overall risk
2 that they pose to the fund in the event that they should default on amounts owed to producers. However, at least in the
3 short term, this is not true for this one elevator. DATCP will analyze whether or not it is appropriate for this emergency
4 rule to also be promulgated as a permanent rule, and if so, begin a separate rulemaking process at a later date.

5 (6) This temporary emergency rule is necessary to protect the welfare of the many hundreds of grain farmers
6 who do business with this grain elevator, and to help prevent major disruptions in the grain industry.
7

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

This emergency rule places a cap on the total amount of annual producer security fund assessments that could be charged to any one licensed grain dealer or grain warehouse keeper.

The Wisconsin department of agriculture, trade and consumer protection (DATCP) is adopting this temporary emergency rule. At this time, DATCP has not yet determined if it will adopt a permanent rule on the same subject. This emergency rule will take effect immediately upon publication in the official state newspaper, and will remain in effect for 150 days. The legislature's joint committee for review of administrative rules may extend the emergency rule for up to 120 additional days.

Statutes Interpreted

Statutes Interpreted: ss. 126.15 and 126.30, Wis. Stats.

Statutory Authority

Statutory Authority: ss. 93.07(1), 126.81(1)(a), and 126.88(1), 227.24, Stats.

Explanation of Statutory Authority

DATCP has broad general authority, under s. 93.07(1), Stats., to interpret laws under its jurisdiction. DATCP has specific authority under s. 126.81(1)(a), Stats., to interpret and implement Chapter 126, Stats. DATCP also has specific authority under s. 126.88(1), Stats., to modify agricultural producer security assessments prescribed under Chapter 126, Stats. DATCP is adopting this temporary emergency rule under authority of s. 227.24, Stats.

Related Statutes and Rules

The Agricultural Producer Security Program is governed under Chapter 126 of the Wisconsin Statutes. More specifically, assessments into the producer security fund are calculated pursuant to s. 126.15, Stats., for grain dealers and 126.30, Stats., for grain warehouse keepers.

Chapter ATCP 99 of the Wisconsin Administrative Code interprets and implements Chapter 126, Stats., as it relates to grain dealers and grain warehouse keepers. DATCP has explicit authority to implement administrative rules modifying the grain dealer and grain warehouse keeper assessments prescribed in the statutes. DATCP has exercised this authority in the case of grain warehouse keeper, see s. ATCP 99.235, Adm. Code. DATCP has not exercised this authority as it relates to grain dealers.

Plain Language Analysis

Background

Chapter 126 of the Statutes governs the Agricultural Producer Security Program. This program is designed to limit losses to producers in the event of a default by a grain dealer, grain warehouse keeper, vegetable contractor, or a milk contractor. It contains a number of provisions that are designed to reduce the risk that a default will occur. In the event a default does

occur, the program includes the agricultural producer security fund. Producers who suffer losses may be able to make a claim to the fund to cover a portion of those losses.

The Agricultural Producer Security Fund relies on license fees and assessments paid by licensees for revenue. License fees are – generally – directly related to the number of bushels of grain that a grain dealer purchases or that a grain warehouse keeper stores. Assessments are more complicated. They are based on a formula that takes the grain dealers purchases, in dollars, and certain balance sheet ratios from the grain dealers most recently completed fiscal year into account to calculate the amount of the assessment. All else equal, a grain dealer or grain warehouse keeper that purchases or stores more grain will pay higher assessments than one that purchases or stores less grain. Further, a grain dealer or grain warehouse keeper that has a conservative balance sheet will pay lower assessments than one that is more extended or leveraged.

The new grain dealer and grain warehouse keeper license year begins on September 1, 2011. Looking at data from grain dealers and grain warehouse keepers most recent financial statements, it appears that one grain dealer and grain warehouse keeper will have abnormally high assessments. Very large contractors (in the milk contractor, vegetable contractor, and grain dealer areas) have occasionally incurred six-digit annual assessments under this program. However, it appears that this year, without some change, there will be one annual assessment that exceeds one million dollars. This would more than double any previous annual assessment that has ever occurred under the program and more than four times higher than the next highest annual assessment in the grain area of the program.

Rule Content

Under this rule, if a grain dealer’s annual producer security fund assessment (except for the portion of the assessment related to deferred payment contracts) exceeds \$350,000, then that grain dealer shall pay \$350,000, and no more.

If a grain warehouse keeper’s annual producer security fund assessment exceeds \$150,000, then that grain warehouse keeper shall pay \$150,000 and no more.

Fiscal Impact

The net fiscal impact for this rule would be a loss of revenue of about \$756,000. Under current rules, DATCP estimates that total assessments for both the upcoming license year (Sept. 1, 2011 to Aug. 31, 2012) and fiscal year (July 1, 2011 to June 30, 2012) would be about \$1,612,000 for grain dealers and grain warehouse keepers. Under this rule, DATCP estimates that the total assessments would be about \$856,000. Should the assessments be collected in accordance with the current rule, the \$756,000 in revenue would represent an unexpected “windfall” to the producer security program.

This rule may affect the timing of when assessment revenues are collected in the next few years. The existing producer security assessment formulas contain provisions for “assessment holidays” that are triggered when the balance in the producer security fund reaches certain minimum balances. Although this rule may affect how the formulas determine which years grain dealers and milk contractors will have an assessment holiday, the impact would only be to shift an assessment holiday from one license year to another. The overall assessments collections, averaged across several years, would be similar.

Business Impact

This rule would have a significant and direct impact on a single grain elevator. It would also have an indirect impact on the hundreds of grain farmers with whom that elevator does business, many of which are small businesses. This rule will help facilitate a stable and orderly grain industry and protect the welfare of grain farmers.

DATCP estimates that the balance of the Agricultural Producer Security Fund, as of June 30, 2012, would be about \$11.5 million under this rule and about \$12.2 million under current rules. The fund balance impacts both farmers and contractors, in certain specific situations.

For example, the maximum amount that can be paid out to producers in the event of a default is 60% of the fund balance. Therefore, in the event of a very large default, there would be more money available to help reimburse producers without this rule than with it. But there is a very low probability of a default occurring that would involve that much money.

Fund balances also play a role in “assessment holidays” for licensees. If the fund balance reaches certain minimum thresholds, licensees who have participated in the fund for at least five years do not have to make annual assessment payments that year. This rule might play a role in which years grain dealers and milk contractors have an assessment holiday. But in both cases, since the impact would only be to shift an assessment holiday from one license year to another, the overall assessments collections, averaged across several years, would be similar.

Federal and Surrounding State Programs

Federal Programs

The United States Warehouse Act is a voluntary regulatory program administered by Farm Service Agency (FSA), a unit within USDA. Under the 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 the warehouse defaults, FSA can convert the bonds to cash and disperse the proceeds to depositors. While 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 for the state licensing program.

Surrounding State Programs

Like all states with a significant grain industry, Minnesota, Michigan, Illinois, Indiana, and Iowa all require persons who buy grain from producers to obtain a grain dealer license (though they may use different names), 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 (like Wisconsin) that is made up of grain dealer and warehouse assessments. Michigan has a combination of bonds and indemnity fund contributions.

When compared to other states’ grain programs, there are two things that make Wisconsin’s program unique. First, while there are many states that have indemnity funds to protect producers, Wisconsin’s indemnity fund (The Agricultural Producer Security Fund) is unique in that it pools risks and resources across multiple agricultural sectors. Second, where other states with indemnity funds tend to charge assessments on a flat rate per amount purchased or stored, Wisconsin’s assessment formulas consider the licensee’s balance sheet along with total purchases or storage capacity when calculating assessments.

DATCP Contact

Questions and comments (including hearing comments) related to this rule may be directed to:

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1 **EMERGENCY RULE**

2 **SECTION 1.** ATCP 99.126 (1) is amended to read:

3 **ATCP 99.126 (1) GENERAL.** Except as provided in sub.(5), a contributing grain dealer shall pay an annual fund
4 assessment for each license year. The annual fund assessment shall be calculated under this section, rather than under s.
5 126.15 (1), Stats. Except as provided in sub. (4), ~~or (5)~~ or (6), the annual fund assessment shall equal the sum of
6 assessments in subs. (2) and (3).

7 **SECTION 2.** ATCP 99.126 (6) is created to read:

8 **ATCP 99.126 (6) MAXIMUM ASSESSMENT.** If the total of the basic assessment in sub. (2) exceeds \$350,000,
9 than the grain dealer shall pay an annual assessment of \$350,000.

10 **SECTION 3.** ATCP 99.235 (1) is amended to read:

11 **ATCP 99.235 (1) GENERAL.** Except as provided in sub. (4), a contributing grain warehouse keeper shall pay an
12 annual fund assessment for each license year. The annual fund assessment shall be calculated under this section, rather
13 than under s. 126.30 (1), Stats. Except as provided in sub. (3), ~~or (4)~~ or (5), the annual fund assessment shall be calculated
14 according to sub. (2).

15 **SECTION 4.** ATCP 99.235 (5) is created to read:

16 **ATCP 99.235 (5) MAXIMUM ASSESSMENT.** If the total assessment calculated in sub. (2) exceeds \$150,000, than
17 the grain warehouse keeper shall pay an annual assessment of \$150,000.

18 **SECTION 5. EFFECTIVE DATE:** This emergency rule takes effect on August 31, and remains in effect for 150
19 days. The department may seek to extend this emergency rule as provided in s. 227.24, Stats.

Dated this _____ day of _____, 2011.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____

Ben Brancel, Secretary

Business Impact Analysis¹

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22 **Rule Subject:** Grain Dealer and Warehouse Keeper Assessments
23 **Adm. Code Reference:** ATCP 99
24 **Rules Clearinghouse #:** Not applicable
25 **DATCP Docket #:** 11-R-02

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29 **Rule Summary**
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Under this rule, if a grain dealer’s annual producer security fund assessment (except for the portion of the assessment related to deferred payment contracts) exceeds \$350,000, then that grain dealer shall pay \$350,000, and no more.

If a grain warehouse keeper’s annual producer security fund assessment exceeds \$150,000, then that grain warehouse keeper shall pay \$150,000 and no more.

This rule may potentially have an impact on certain grain elevators. It would also have an indirect impact on the hundreds of grain farmers with whom the elevators do business, many of which are small businesses. This rule will help facilitate a stable and orderly grain industry and protect the welfare of grain farmers.

¹ This analysis includes, but is not limited to, a small business analysis (“regulatory flexibility analysis”) under ss. 227.114 and 227.19(3)(e), Stats.

DATCP estimates that the balance of the Agricultural Producer Security Fund, as of June 30, 2012, would be about \$11.5 million under this rule and about \$12.2 million under current rules. The fund balance impacts both farmers and contractors, in certain specific situations.

For example, the maximum amount that can be paid out to producers in the event of a default is 60% of the fund balance. Therefore, in the event of a very large default, there would be more money available to help reimburse producers without this rule than with it. But there is a very low probability of a default occurring that would involve that much money.

Fund balances also play a role in “assessment holidays” for licensees. If the fund balance reaches certain minimum thresholds, licensees who have participated in the fund for at least five years do not have to make annual assessment payments that year. This rule might play a role in which years grain dealers and milk contractors have an assessment holiday. But in both cases, since the impact would only be to shift an assessment holiday from one license year to another, the overall assessments collections, averaged across several years, would be similar.