

WISCONSIN DEPARTMENT OF AGRICULTURE,  
TRADE AND CONSUMER PROTECTION

EMERGENCY RULE

- 1 The Wisconsin department of agriculture, trade and consumer protection hereby adopts the
- 2 following emergency rule *to amend* s. ATCP 100.135 (10) (c) *relating to* milk contractor
- 3 agricultural producer security fund assessments.

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

This emergency rule amends one of 3 fund assessment exemption requirements for milk contractors, reducing the overall fund minimum balance requirement from \$11 million to \$5 million.

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 May 1, 2015, 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: s. 126.46, Wis. Stats.

***Statutory Authority***

Statutory Authority: ss. 93.07(1), 126.81(1)(a) and (2m) (b), 126.88(1), and 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 required under s. 126.81 (2m) (b), Stats., to promulgate rules which specify fund assessments under s. 126.46 (1). 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. 126.46, Stats., for milk contractors.

Chapter ATCP 100 of the Wisconsin Administrative Code interprets and implements Chapter 126, Stats., as it relates to milk contractors. DATCP has explicit authority to implement administrative rules modifying the milk contractor keeper assessments prescribed in the statutes.

### *Plain Language Analysis*

#### **Background**

The Agricultural Producer Security Fund (APSF) 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 and vegetables, respectively, from producers, and are required to contribute to the APSF annually. Funds are used to settle claims by producers in the event that a contractor defaults on payment or fails to return grain held in storage. 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 DATCP 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.

ATCP 100.135 (10), Admin. Code., establishes a fund assessment exemption for milk contractors. To be eligible, a licensee must have been a contributing milk contractor in each of the preceding 5 license years. The exemption does not apply if the fund balance attributable to milk contractors was less than \$6 million on February 28 of the preceding license year. The exemption also does not apply if the overall fund balance (which includes contributions from milk, grain and vegetable contractors) was less than \$11 million on February 28 of the preceding license year. Section 126.88, Stats., sets the overall fund minimum balance at \$5 million.

In 2014, the APSF paid out claims to 19 vegetable producers due to payment default by one large, vegetable contractor that went bankrupt. The default totaled \$6.1 million, causing the overall fund balance to drop by almost half. With the overall fund balance well below the \$11 million minimum currently set in administrative code, the milk contractor industry will not be eligible for fund assessment exemptions for an estimated 6-7 years.

DATCP and the Agriculture 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 an actuarial study, will take more than a year.

The proposed emergency rule would alleviate a financial burden otherwise placed upon licensed milk contractors. Without this change, milk contractors would not be eligible for fund

assessment exemption for many years, and would ultimately repay a large portion of the fund balance lost in the default to vegetable producers.

### **Rule Content**

Under this rule, the annual fund assessment exemption requirement regarding the overall fund balance minimum would decrease from \$11 million to \$5 million.

### ***Fiscal Impact***

The proposed rule will slow the growth of the overall fund balance, as the milk contractor industry would otherwise be required to pay an additional \$420,000 - \$800,000 annually, over the course of an estimated 6-7 years.

This will result in fewer funds available to producers in milk, grain and vegetable industries in the event of future large defaults.

### ***Business Impact***

The proposed rule would have a significant and immediate impact on milk contractors; allowing those milk contractors who meet fund assessment exemption requirements under ATCP 100.135 (10) (a) and (b) to not pay fund assessments if the producer security overall fund balance is at least \$5 million on February 28 of the preceding license year. The milk contractor industry would otherwise be required to pay an additional \$420,000 - \$800,000 annually, until the overall fund balance reaches a minimum of \$11 million.

The proposed rule would have a direct impact on the rate of growth of the APSF overall balance. Milk, grain and vegetable producers could potentially be impacted by the lower agricultural producer security overall fund balance, in the event of future large defaults.

### ***Federal and Surrounding State Programs***

#### **Federal Programs**

No federal programs currently exist offering milk producer security from contractor payment defaults.

#### **Surrounding State Programs**

Minnesota requires any wholesale dealer or food processor who contracts with other Minnesota dealers or farmers of milk, cream, or products made from milk or cream, 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. There is no exemption to this requirement.

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. Security can be in one or more of several forms including bond, letter of credit, certificate of deposit or pre-payment. There is no exemption to this requirement.

Illinois, Indiana and Iowa do not require dairy producer security.

### *Data and Analytical Methodologies*

DATCP analyzed the APSF fiscal year 2014 reports to estimate the projected overall fund balance expected on February 28, 2015. DATCP reviewed 2014 financial statements filed by contractors to determine a range of dairy contractor fund assessments due for the license year beginning May 1, 2015.

### *DATCP Contact*

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

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### **FINDING OF EMERGENCY**

1           **(1)** In Wisconsin, milk contractors (persons who purchase milk from producers or  
2 producer agents) must obtain a license to purchase milk from producers or producer agents, and  
3 are collectively referred to as “contractors”. Most contractors are “contributing contractors”,  
4 which means they must pay annual assessments into the Wisconsin Agricultural Producer  
5 Security Fund. This fund is designed to help partially reimburse producers in the event that a  
6 contractor defaults on payment to producers and producer agents. The annual assessments are  
7 calculated based on the total dollar value of commodities purchased, the length of time that the  
8 contractor has participated in the fund, and certain financial ratios from the contractor’s balance  
9 sheet.

1 (2) The milk contractor license years begin on May 1 of each year. At that point,  
2 DATCP calculates the assessment for the new license year that will be due for each contractor,  
3 and determines if a given contractor meets exemption requirements established under ATCP  
4 100.135 (10), Admin. Code., for that license year. Current exemption requirements are: the  
5 milk contractor was classified as a contributing milk contractor in each of the 5 license years  
6 immediately preceding that license year; the fund balance attributable to milk contractors was at  
7 least \$6 million on February 28 of the preceding license year; and, the overall fund balance was  
8 at least \$11 million on February 28 of the preceding license year.

9 (3) The overall fund balance is expected to be less than \$7.6 million on the next  
10 assessment date of February 28, 2015, due to a large claim brought against the fund in 2014 by  
11 vegetable producers. This decrease in the overall fund balance would eliminate eligibility for  
12 fund assessment exemption for every milk contractor over the next 6-7 years, costing the  
13 industry \$420,000 - \$800,000 annually.

14 (4) This temporary emergency rule is necessary to protect the welfare of the over one  
15 hundred milk contractors who do business in Wisconsin, and to help prevent undue financial  
16 burdens upon the milk contractor industry.

#### 17 **EMERGENCY RULE**

18 **SECTION 1.** ATCP 100.135 (10) (c) is amended to read:

19 **ATCP 100.135 (10) (c)** The overall fund balance was at least ~~\$11~~ \$5 million on February  
20 28 of the last preceding license year

21 **SECTION 2. EFFECTIVE DATE:** This emergency rule takes effect on May 1, and  
22 remains in effect for 150 days. The department may seek to extend this emergency rule as  
23 provided in s. 227.24, Stats.

