STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA 2049 (R 07/2011)

ADMINISTRATIVE RULES
FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis

☒ Original ☐ Updated ☐ Corrected

Administrative Rule Chapter, Title and Number

Ch. ATCP 99 Grain Dealers and Grain Warehouse Keepers

Subject

Milk Contractors; Agricultural Producer Security Fund Assessment Exemption

Fund Sources Affected	Chapter 20, Stats. Appropriations Affected
☐ GPR ☐ FED ☐ PRO ☐ PRS ☒ SEG SEG-S	20.115 (1)(q)

Fiscal Effect of Implementing the Rule

☒ No Fiscal Effect ☐ Indeterminate	☐ Increase Existing Revenues ☐ Decrease Existing Revenues	☐ Increase Costs ☐ Could Absorb Within Agency's Budget ☐ Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

☐ State's Economy ☐ Local Government Units	☒ Specific Businesses/Sectors ☐ Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than $20 million?

☐ Yes ☒ No

Policy Problem Addressed by the Rule

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 most contractors 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 99.126 (5), Admin. Code, establishes a fund assessment exemption for grain dealers. ATCP 99.235 (4), Admin. Code, establishes a fund assessment exemption for grain warehouse keepers. To be eligible, a licensee must have been a contributing grain dealer or grain warehouse keeper in each of the preceding 5 license years. The exemption does not apply if the fund balance attributable to grain dealers or grain warehouse keepers was less than $3 million on May 31 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 May 31 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 payment 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 grain industry will not be eligible for fund assessment exemptions for an estimated 6-7 years.

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

The proposed emergency rule would alleviate a financial burden otherwise placed upon licensed grain dealers and grain warehouse keepers. Without this change, the grain industry 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.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule will slow the growth of the overall fund balance, as the grain industry would otherwise be required to pay an additional $250,000 - $300,000 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.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Benefits

This rule benefits grain dealers and grain warehouse keepers by ensuring the continuation of the fund assessment exemption for grain dealers and grain warehouse keepers while an actuarial study is conducted to determine what programmatic and statutory changes should be made. Without this emergency rule, licensed grain dealers and grain warehouse keepers will take on the burden of repaying a large portion of the agricultural producer security overall fund balance lost in the default to vegetable producers. An emergency rule effective date of September 1 is necessary, as the next license year for grain dealers and grain warehouse keepers begins September 1, 2015.

Alternatives

Do nothing. If DATCP fails to adopt this emergency rule the grain industry will not be eligible for fund assessment exemption until the producer security overall fund balance exceeds $11 million, which is estimated to take 6-7 years. License years for grain dealers and grain warehouse keepers begin September 1. If DATCP fails to adopt this emergency rule before September 1, 2015, no grain dealers or grain warehouse keepers will be eligible for exemption during the next license year.

Long Range Implications of Implementing the Rule

There are no long-term implications of implementing this rule.

Compare With Approaches Being Used by Federal Government

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.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

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 that is made up of grain dealer and warehouse assessments. Michigan (like Wisconsin) has a combination of bonds and indemnity fund contributions.

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