

**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; Ch. ATCP 100, Milk Contractors; Ch. ATCP 101 Vegetable Contractors

Subject

Agricultural Producer Security Fund Assessment

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Chapter 20 Stats. Appropriations Affected

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

General

The Agricultural Producer Security Fund (Fund) is a public trust administered by the Wisconsin Department of Agriculture, Trade and Consumer Protection. 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 Fund 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 with mandated minimums and maximums but deposited into one overall fund. Wis. Stat. Chapter 126.88 (1) (a) establishes the overall fund balance must be at least \$5 million, but not more than \$22 million.

In 2014, the Fund paid out claims to 18 vegetable producers due to a payment default by one large vegetable contractor that went bankrupt. The default payment totaled \$6.1 million, causing the overall fund balance for all producers to drop by almost half. This resulted in a fund balance deficit attributable to the vegetable program of over \$4.8 million at the time. The following year, a \$1 million default in the milk industry further drew down the Fund.

	Minimum Statutory Balance	Actual Balance as of June 30, 2017	Maximum Statutory Balance
Grain Dealers	\$ 1,000,000	\$ 6,140,594.71	\$ 6,000,000
Grain Warehouse Keepers	\$ 200,000	\$ 134,966.89	\$ 1,000,000
Milk Contractors	\$ 3,000,000	\$ 6,176,076.50	\$ 12,000,000
Vegetable Contractors	\$ 800,000	(\$ 4,501,749.98)	\$ 3,000,000
Entire Fund	\$ 5,000,000	\$ 7,949,888.12	\$ 22,000,000

DATCP and the Agricultural Producer Security Council (Council), a statutory council created to advise the department, 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. In December, 2015, DATCP received an actuarial study of the Fund and began working with the Council to develop recommendations for permanent changes to the agricultural producer security program.

At its September 21, 2017 meeting, the DATCP Board approved a permanent rule addressing the issues outlined below. The permanent rule, however, will not be in effect before the vegetable contractor license renewal date of February 1. This emergency rule is necessary to modify the Agricultural Producer Security fund assessment amounts and to address DATCP's statutorily mandated obligations until the permanent rule is fully in effect.

Wis. Stat. § 126.88 requires the department to modify fund assessments as necessary to maintain fund balances within certain minimums and maximums. Currently, the balance attributable to vegetable contractors is well below its statutory minimum of \$800,000, and the balance attributable to grain dealers is above its statutory maximum of \$6,000,000. Additionally, assessments paid by milk contractors are disproportionately higher than those paid by grain warehouse keepers, grain dealers and vegetable contractors.

ATCP 99 – Grain

Wis. Stat. Chapter 126.88 (1) (b) and (c) establishes that the Fund maintain a balance attributable to grain dealers of at least \$1 million, but not more than \$6 million, and maintain a balance attributable to grain warehouse keepers of at least \$200,000, but not more than \$1 million. As of May 31, 2017, the grain dealer balance has reached the statutory maximum balance of \$6 million.

ATCP 100 – Milk

Wis. Stat. Chapter 126.88 (1) (d) establishes that the Fund maintain a balance attributable to milk contractors of at least \$3 million but not more than \$12 million. Based on the recent actuarial study, the milk contractors' assessment rates are disproportionately higher than those in the other two industries.

ATCP 101 – Vegetable

Wis. Admin. Code § ATCP 101.245 establishes a vegetable contractor fund assessment. The amount of the assessment varies based on a combination of contract obligations and financial ratios under ch. 126, Wis. Stats. Per s. 126.88 (1) (e), Stats., the vegetable contractors' portion of the Fund must maintain a balance of at least \$800,000, but not more than \$3 million. Due to a recent default in the vegetable industry, the current Fund balance deficit attributable to the vegetable program is approximately \$4.5 million, well below the statutory minimum.

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)

General

Members of the Agricultural Producer Security Council, as defined in s. 15.137 (1), Wis. Stats., have worked with the Department in crafting certain rule changes following the 2015 actuarial study. Council members represent the following: the Farmers' Educational and Cooperative Union of America, Wisconsin Division; the Midwest Food Processors Association, Inc.; the National Farmers' Organization, Inc.; the Wisconsin Agri-Business Association, Inc.; the Wisconsin Cheese Makers Association; the Wisconsin Corn Growers Association, Inc., the Wisconsin Soybean Association, Inc.; the Wisconsin Dairy Products Association, Inc.; the Wisconsin Farm Bureau Federation; Cooperative Network; and the Wisconsin Potato and Vegetable Growers Association, Inc.

Local governments are not involved with the Fund, and therefore, were not consulted in this economic impact analysis.

ATCP 99 - Grain

This emergency rule implements a reduction in assessments from approximately \$974,000 to \$256,000

whenever the grain dealer portion exceeds the \$6 million statutory maximum. This rule amends Wis. Admin. Code § ATCP 99.126 (2) and repeals and recreates Wis. Admin. Code § ATCP 99.126 (3) to include an automatic reduction in the rate applied to grain dealers whenever the grain dealer portion of the Fund exceeds the \$6 million statutory maximum.

The Fund mechanisms do not change. In terms of revenues, DATCP expects to receive \$718,000 less due to this emergency rule. Since the collection procedure itself does not change, DATCP does not foresee any changes in compliance or implementation costs.

ATCP 100 – Milk

This emergency rule adds a multiplier of 0.8 to Wis. Admin. Code § ATCP 100.135 (1). This will result in a reduction of the projected assessments for 2018-19 from \$771,000 to \$621,000. The actuarial study projects growth in the milk portion of the Fund of \$373,000 per year over the next ten years. Using the multiplier results in estimated annual assessments of \$560,000, a reduction of \$135,000 annually, and reduces that pace of growth to \$238,000 per year. Effectively, this slows the growth of the milk producers' portion of the Fund. Since DATCP already collects assessments, no change in compliance or implementation costs should occur under changes adopted in this emergency rule.

ATCP 101 – Vegetable

Contributing vegetable contractors will be paying higher fund assessments. Vegetable contractors who purchase potatoes for processing and have opted out of contributing to the Fund will not be affected. Vegetable contractor assessments are being increased to replace money paid as a result of a large vegetable contractor default, the higher Fund balance that results from this increase will affect all producers in Wisconsin by making more money available for future defaults.

This emergency rule amends Wis. Admin. Code § ATCP 101.245 to implement three changes: (1) add an assessment of 0.2% multiplied by contract obligations, net of waiver, with a \$50,000 cap; (2) sunset after the vegetable portion of the Fund reaches the statutory minimum of \$800,000 under s. 126.88 (1) (e), Wis. Stats.; and (3) reduce the assessment by 50% for any vegetable contractor, if all contracts with producers have 30-day payment terms.

These changes will result in assessment of about \$327,000 annually if all contracts payment terms were beyond 30 days. Since DATCP already collects assessments, no change in compliance or implementation costs should occur as a result of any changes adopted by this emergency rule.

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

ATCP 99 - Grain

Benefits

By adopting the automatic assessment reduction provision, the grain dealer portion of the Fund will begin to decline whenever it exceeds its statutory maximum of \$6 million. The reduction in assessments will result in expenses for the grain dealer program exceeding revenues. Without it, the grain dealer portion would continue to increase, well beyond the statutory maximum balance.

Alternatives

Do nothing. If DATCP had failed to adopt this emergency rule, the department would continue to exceed its statutorily mandated requirement for the grain dealer industry portion of the Fund and grain dealers would not receive a \$718,000 annual reduction in assessments any time their portion of the fund is greater than \$6 million.

ATCP 100 - Dairy

Benefits

By adopting the 0.8 multiplier, the department slows the growth of the milk portion of the Fund and provides some financial relief to contributing milk contractors.

Alternatives

Do nothing. If DATCP had failed to adopt this emergency rule, milk contractor contributions to the Fund

would continue to be disproportionately higher than the other three industries, and milk contractors would not receive a \$135,000 annual reduction in their assessments.

ATCP 101 - Vegetable

Benefits

This emergency rule increases fund assessments from contributing vegetable contractors in order to meet the statutory requirement to maintain a minimum Fund balance.

Alternatives

Do nothing. If DATCP had failed to adopt this emergency rule, the department would not meet its statutorily mandated requirement and the vegetable contractor portion of the Fund would remain in a significant deficit while vegetable growers continue to receive the benefits of coverage under the overall Fund. Without the increase from this emergency rule, DATCP anticipated that the Fund would not reach the minimum balance for vegetable contractors for 90 years.

Long Range Implications of Implementing the Rule

General

The Fund balance minimums and maximums were created by Wis. Stats. Chapter 126 to ensure each industry segment's Fund balance remains proportionately aligned to sustain the long-term benefits of the entire Fund.

ATCP 99 - Grain

The grain dealer portion of the Fund is now above its maximum; therefore, DATCP expects grain dealers will receive automatic reductions and revenue collections will become minimal until their portion of the Fund declines below the maximum balance.

ATCP 100 - Milk

Adoption of the multiplier, 0.8, will slow the growth of the milk contractors' portion of the Fund while keeping the balance sufficient to remain within the statutorily required minimum and maximum balances.

ATCP 101 - Vegetable

If DATCP had failed to adopt this rule, the department would not have met its statutory requirement and the vegetable contractor portion of the Fund would have continued in a significant deficit while vegetable growers continued to receive the benefits of coverage under the overall Fund. With adoption of the emergency rule, DATCP anticipates that it will take approximately 18 years for the vegetable portion of the Fund to reach the minimum balance required.

Compare With Approaches Being Used by Federal Government

ATCP 99 - Grain

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 a warehouse defaults, FSA can convert the bonds to cash and disperse the proceeds to depositors. 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 from the state licensing program.

ATCP 100 - Milk

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

ATCP 101 - Vegetable

The Perishable Agricultural Commodities Act (PACA) is a federal program that provides some protections for

vegetables. This program consists of a priority lien against vegetable-related assets and is applicable to fresh vegetables based on a complex set of variables and circumstances. Wisconsin's vegetable security program applies only to processing vegetables. Wisconsin's program uses an indemnity fund, rather than a priority lien-type program.

There may be some limited overlap between the Wisconsin and federal programs, but that overlap is justified because the scope of federal coverage is not entirely clear. Overlap was reduced by Wisconsin legislation, which permits certain potato buyers covered under the federal program to opt out of most of the state program.

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

ATCP 99 - Grain

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, 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.

ATCP 100 - Milk

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.

ATCP 101 - Vegetable

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 if a dealer defaults.

Illinois, Iowa, Michigan, and Indiana lack similar programs.

Name and Phone Number of Contact Person

David Woldseth (608) 224-5164