

MEETING MINUTES

AGRICULTURAL PRODUCER SECURITY COUNCIL

December 2, 2013

Call to order

The Agricultural Producer Security (APS) Council held a meeting on Monday, December 2, 2013, at the headquarters of the Wisconsin Department of Agriculture, Trade and Consumer Protection, 2811 Agriculture Drive, Madison, Wisconsin.

Chairman John Manske called the meeting to order at 9:40 am

Attendance

Nine council members were present: John Umhoefer, Craig Myhre, Dave Daniels, Louise Hemstead, Don Hamm, Duane Maatz, John Manske, Doug Cropp and Jim Zimmerman.

One council member, Nick George, was absent.

DATCP staff members present were Eric Hanson, Jeremy McPherson, David Meany, Lori Ronnerud, and Kevin LeRoy.

One member of the public, Joan Sanstadt, was also in attendance.

Agenda Item I Approve Minutes from December 11, 2012 Meeting

Motion to Approve Minutes from the December 11, 2012 meeting by Duane Maatz, seconded by Louis Hemstead. Motion was unanimously approved.

Agenda Item II Staff Changes

Jeremy described the several staff changes that have recently occurred within the Producer Security Section.

The Trade Practices Analyst Position formerly held by Kevin LeRoy has been modified to a Financial Specialist position now held by Lori Ronnerud.

Long-time dairy & vegetable Lead Auditor George Kowieski retired early in 2013. His position was filled by Sally Sutherland, who had previously been a field auditor in the same work group. Samantha Ortega Portillo was hired to replace Sally.

Ty Rohloff transferred to a position in the Division of Agricultural Development. Ty's position will be filled with a new auditor that will be based in the Eau Claire area.

Agenda Item III A Annual Report for Fiscal Year ended June 30, 2013

Eric Hanson led the discussion of the Annual Report. Eric pointed to total revenue and total expenses. At \$1,582,000, overall revenue into the fund for FY2013 was similar to the \$1,579,000 for FY2012. Grain dealer assessments went up by \$80,000, primarily because of an increase in deferred payment assessments. Grain warehouse keeper and milk contractor assessments went down by \$31,000 and \$32,000 respectively, primarily due to improved financial ratios.

Eric pointed out that, at \$1,069,000, FY2013 overall expenditures were down about \$81,000 from FY2012. This is mostly due to decreased salary and fringe related to vacant positions. The financial statement also reflects roughly \$2,000 that was paid-out in the Cuff grain dealer default.

Overall fund balance as of June 30, 2013 was \$12,314,000. This is an increase of \$513,000 over the previous year.

Eric next reviewed the grain dealer portion of the fund. Overall assessments went up \$80,000 despite grain dealers having an assessment holiday for the first time. Regular assessments (those paid by grain dealers based on financial ratios) went from \$336,963 before the holiday in FY2012 to \$56,743 after the holiday in FY2013. However, deferred payment assessments (those paid when producers elect deferred payment and are not tied to financial ratios) went from \$383,039 in FY2012 to \$756,958 in FY2013. Also, license fee credits substantially reduced license fees collected from grain dealers, \$33,200 in FY2013 compared to \$83,200 in FY2012.

The group next discussed the grain warehouse keeper portion of the fund. Eric said that reduced assessments, \$63,500 in FY2013 compared to \$94,100 in FY2012 were mostly because of improved financial ratios. Eric also noted that the balance in this portion of the fund continues to improve.

Eric pointed out that, due to the assessment holiday, milk contractor assessment revenue went down from \$438,200 in FY2011 to \$90,700 in FY2013. The net effect of both license fee credits and the assessment holiday is that milk contractor expenditures have exceeded revenues the last two years, which we anticipated.

Eric said that license fees paid by vegetable contractors (cash, not license fee credits) were up significantly from \$52,400 in FY2012 to 91,000 in FY2013. This increase is attributed to higher dollar amounts of purchases. Eric also discussed the lower salary & fringe expenses caused by vacant positions.

John Manske asked about the grain dealer "penalty – late license renewal" amount for FY2011. Eric said he'd look into it and report back.

John Manske commented on the milk contractor penalty fees and surcharges for late renewals, etc., and asked if it was typically the same licensees that pay these fees year after year. Eric said it varies. Some are often late and some are late just once.

Craig Myhre asked how consolidation in the industry affected assessment revenue into the fund. Eric said that, other than a number of large grain warehouses that converted to the federal warehouse license, the number of total licensees has remained fairly consistent.

John Manske asked if the audit tiering project (discussed in a previous meeting) would eventually impact the FTEs, and Dave Daniels asked where we are at with the tiering project. Eric and Jeremy McPherson responded that we are currently in the second year of the project, and that it is a very helpful tool for allocating time among licensees, but it has not resulted in less time required overall to perform all of our audits. Rather it's allowed us to use our existing resources more effectively.

John Umhoefer observed that the fringe expense relative to salary expense seems quite a bit different between the milk program (page 18) and the grain dealer program (page 16) and asked if there was an explanation. Jeremy stated that it could be the result of paying-out accumulated leave to a recent retiree; but would have to look into it and report back.

John Manske said the tables and graphs relating to thresholds for maximum statutory balances, fee credits, and assessment holidays were very helpful.

Jim Zimmerman asked to what extent changes in commodity prices affect aggregate estimated default exposure. (NOTE: The overall total estimated default exposure reported in the FY2013 report was \$1.1 billion, where-as the previous year it was roughly \$880 million.) Kevin LeRoy said that timing of individual licensees fiscal years, combined with the timing differences between when each industry reports its exposure, make it difficult to draw any year to year comparisons with current commodity prices.

Agenda Item III B Financial Results, First Quarter, September 30, 2013

Eric Hanson led a discussion on the Producer Security Fund's financial results for the three months ended September 30, 2013. Eric highlighted the payout of \$125,001.09 to producers for the GB Elevator default, which occurred in August.

Eric pointed out that, for the first time in a long time, the Grain Warehouse Keeper ending balance as of September 30, 2013 was a positive \$20,974.19. However, because most of the revenue is collected during this quarter and expenses occur all year, it is likely that the balance will dip back below zero in the next couple months. Nevertheless, it is an improvement over previous years.

John Umhoefer asked if staff has prepared any projections for fund balances over the next few years. He said he'd like to start planning for the day when assessment holidays are no longer available. Jeremy McPherson said that until the Allens default (discussed in detail next) is completed, meaningful projections will not be possible.

Agenda Item IV Report – Default History Update

Eric Hanson reported on fund default history.

He noted that one default, Cuff Nutrition Services, occurred in Calendar Year 2012 / FY2013. One producer was reimbursed \$1,982 for grain sold to Cuff. Approximately \$35,000 in grain deposits were also lost, but those losses were not covered by the Fund because Cuff was not required to hold a grain warehouse keeper license.

One default, GB Elevator, LLC, occurred in August of 2013, and the Fund paid producers \$125,001 in August of 2013. This amount will appear on the FY 2014 Fund Annual Report. Eric reported that DATCP is working with DOJ to attempt recovery of this amount.

A third grain dealer default is just wrapping up. Ruby Grain LLC, which is associated with WI Rapids Grain, LLC, defaulted earlier this year. DATCP expects to pay roughly \$60,000 out of the fund to cover the dealer default to about a dozen producers. WI Rapids Grain, LLC was a federally licensed grain warehouse, so any recovery for lost deposits will be determined by the USDA. Craig Myhre asked if it were likely that producers would get their stored grain back. Eric said that, because they held a federal warehouse license, that issue was in the hands of federal officials.

Eric reported that we are currently addressing a default by vegetable contractor Allens, Inc. Eric said that they filed for Chapter 11 Bankruptcy in October. DATCP is currently gathering information, but it appears roughly 20 vegetable growers are owed enough money that total recovery payments could approach the funds roughly \$7 million dollar maximum payment limit. Jeremy said that because this is an ongoing investigation, DATCP is limited in how much it can say at this time.

Duane Maatz briefed the council on the situation from his organization's perspective. He indicated that outstanding debts to Wisconsin vegetable suppliers are roughly \$17 million. The largest of these suppliers will likely be eligible for PACA protection in the bankruptcy proceeding. As a result, it's likely that losses to Wisconsin growers will be \$8 to 10 million, which would not be covered by PACA. Duane reported that WPVGA has retained attorneys and is participating in the bankruptcy proceeding on behalf of growers.

Jeremy McPherson provided a general summary of the default process.

John Umhoefer asked if it was a business mistake for producers to not secure their PACA trust rights, and if so, perhaps it is inappropriate for the Fund to pay producers for losses that they should have been able to prevent.

John Manske asked about timing. David Meany said that he anticipated that the bankruptcy will move quickly because it is in everybody's interest to make sure that Allens' assets are in service and producing revenue for the 2014 growing season. However, there are too many questions regarding the interaction between bankruptcy and the DATCP default proceeding to know about how the timing relates.

The group discussed the affect such a large default would have on assessment holidays for each industry segment.

Louise Hemstead asked how DATCP determines the amount owed to producers – is it strictly contract price or are prevailing commodity prices factored in. Eric said that it is generally based on contract price.

Jim Zimmerman said that this is really overwhelming, and going forward this event will have an impact on the program's ability to do its job – which is trying to maintain stability in the agricultural economy.

Agenda Item V Potato Chip Exemption

Jeremy McPherson introduced the potential legislative language that DATCP had prepared. This language would create a definition of “potato chips” and also add an exclusion to the definition of “processing vegetables” stating that the term does not include potatoes grown or sold for use in the manufacture of potato chips. DATCP handed the proposal over to WPVGA.

Duane Maatz said that WPVGA was actively working with a lobbyist to find willing sponsors.

John Manske mentioned that this might be a good opportunity to update the statute authorizing the Agricultural Producer Security Council. Two of the eleven organizations named in that statute have formally changed their names, and the statute should be updated to reflect that change. (*Editor's note: The Producer Security Council is organized under s. 15.137 (1), Wis. Stats.*)

Agenda Item VI Law Change (Budget Amendment)

John Manske reported that the budget amendment was requested by Foremost Farms, and that two things motivated them to request the amendment. First, Foremost had used some federal new market tax credits to build a plant, but were not able to use the money directly, so they sold the credit to a bank. Foremost was concerned that this financing might make their balance sheet ratios look weaker than they really are and unnecessarily require Foremost to contribute to the fund. Second, Foremost was concerned that accounting requirements for their defined benefit pension program might harm their balance sheet ratios.

Jeremy McPherson said that there was not a lot to add from DATCP's perspective because DATCP was not involved in the amendment. Also, DATCP is just beginning to receive annual financial statements that were prepared since the amendment became law, so we cannot yet measure the impact of the change.

Other Business

Jeremy McPherson mentioned that seven members' three year terms will expire on June 30, 2014. DATCP would be sending letters to organization heads requesting nominations.

Regarding the potential merger between DATCP and DSPS, John Manske reported that Cooperative Network, along with about 20 other organizations, sent a letter to the DOA Secretary saying that if the agencies are combined, please do it strategically. John mentioned this because a merger could impact the Producer Security Council.

John Umhoefer inquired about the Council's role in decisions leading up to making payments from the fund in the Allens, Inc. default. Jeremy responded that the council is an advisory group and is free to advise the Department on anything they feel is appropriate. However, after the department completes its investigation of the facts, Fund coverage is determined by applying the statute to the facts. Jeremy added that, once the default is wrapped up, we may see a need to make adjustments to the program. At that time, DATCP will be very eager to seek Producer Security Council advice.

Motion to adjourn made by Jim Zimmerman and seconded by Craig Myhre. Motion unanimously approved.