

MEETING MINUTES

AGRICULTURAL PRODUCER SECURITY COUNCIL

May 22, 2017

The Agricultural Producer Security (APS) Council held a meeting on Monday, May 22, 2017, at the headquarters of the Wisconsin Department of Agriculture, Trade and Consumer Protection, 2811 Agriculture Drive, Madison, Wisconsin.

Attendance

Three council members were present: Nick George, John Manske and John Umhoefer. Council members Louise Hemstead, Dave Daniels, Don Hamm, and Jim Zimmerman participated by phone.

DATCP staff members present included Eric Hanson, Jeremy McPherson, Lori Ronnerud, David Woldseth, Lauren Van Buren and Deputy Secretary Jeff Lyon. Tom Bressner from the Wisconsin Agri-Business Association, Inc., Ron Statz and Terry Hanson with Scenic Central Milk Producers Cooperative Association were also in attendance.

Agenda Item I Call to Order

Chair John Manske called the meeting to order at 10:05 a.m.

Agenda Item II Approve Minutes

Members voiced appreciation of the more detailed meeting minutes which was requested at the last meeting. Chairman Manske asked if there were any comments or corrections to the minutes and there was none. John Umhoefer moved to approve the minutes from the December 6, 2016, meeting. The motion was seconded by Nick George. The motion passed unanimously.

Agenda Item III Hearing Draft Administrative Rule: ATCP 99, 100, 101

Jeremy McPherson summarized the contents of the Hearing Draft, which the Council discussed in detail at the April 17, 2017 meeting. The Hearing Draft combines the proposed language from ATCP 99, 100, and 101 into one document. Grain Dealer assessments for all licensees would be reduced to the minimums and the deferred payment assessment would be reduced by 75% if, by May 31st of any year, the Grain Dealer portion of the Fund balance is equal to or greater than \$6 million. However, the deferred payment reduction would be delayed by one license year, because licensees collect these assessments from producers in advance. The Milk contractor assessment formula would be reduced by 20%. The Vegetable Contractor assessment formula would return to what it was prior to the emergency rule. Additionally, Vegetable Contractors would be charged an additional assessment equivalent to 0.2% of purchases from growers, up to a maximum of \$50,000. This additional assessment would be eliminated once the Vegetable Contractor Fund balance reaches its statutory minimum of \$800,000.

John Umhoefer asked when this rule would be effective, if it were to be approved. Staff indicated that it's reasonable to assume it would be in effect prior to Milk Contractor license renewal – May 1, 2018. However, it's unlikely it would be effective by the next Vegetable Contractor renewal on Feb. 1, 2018. Since the current Vegetable Contractor emergency rule will be expired, it's possible that another emergency rule for Vegetable Contractors will be necessary.

John Manske asked Nick George if the Midwest Food Products Association had taken a position on the proposal. Nick said that his Board was meeting on May 31st, but he expected that it would cause heartburn for some members. He said that he anticipates recommending changes.

Ron Statz asked about the decision not to extend the emergency rule continuing the assessment holiday for milk contractors. Staff indicated that the emergency rule was created to allow time to conduct an actuarial study and explore the recommendation to segregate the Fund. When that process concluded, and the Council did not recommend pursuing a segregated Fund, there was no longer a need to continue the emergency rule. Additionally, statutory provisions do not allow for "rolling over" emergency rules. There must be a new emergency that would necessitate an emergency rule.

John Umhoefer moved to support clearinghouse rule Hearing Draft, DATCP Docket No 16-R-06 and recommend the DATCP Board approve public hearings. Dave Daniels seconded the motion. The motion passed unanimously.

Agenda Item IV Preliminary Draft Legislation

Jeremy McPherson began by explaining that the draft proposal must be read in conjunction with existing statute because the draft only includes language that is being changed, added, or deleted. Nick George asked for a review of how we got to this point. Jeremy McPherson responded that this process began two years ago when the Council discussed a number of potential policy changes. The Council recommended an actuarial study to analyze the overall fairness and health of the Fund, along with an analysis of what the Fund would look like segregated by industry. After reviewing the study, the Council considered and voted on a number of policy recommendations. Some of the recommendations could be addressed by administrative rule, while others required statutory changes. The legislative package before the council, along with the Administrative Rule Hearing Draft discussed previously, is the start of implementing those recommendations.

Eric Hanson walked through each section of the document noting that, while the language may look different than what the Council reviewed at a previous meeting, the LRB drafters captured the overall intent of the changes. However, there were a few things that needed clarification or correction.

One new item in the proposal is elimination of the notarization requirement for license applications and financial statements. The department is migrating to a new on-line licensing system that will make submitting notarized signatures difficult. Eliminating this requirement will not increase risk to producers or the Fund and will streamline the application and financial statement filing process.

Another addition to this draft relates to clarifying requirements for Grain Dealers filing financial statements or security if a producer has filed a default claim waiver. The need to include these clarifications was identified as we were drafting the new provisions to allow Milk Contractors to use deferred payment.

The legislative draft also includes, as previously discussed, combining the minimum and maximum Fund balance requirements for Grain Dealers and Grain Warehouse Keepers; allowing Milk Contractors to enter into deferred payment contracts; creating a licensing exemption for people who purchase less than \$15,000/year of vegetables for processing; and making changes to the default claim filing process to require producers to preserve claims in any bankruptcy or receivership proceeding and specify that DATCP has subrogation rights in recovery of any claim paid from the Fund.

John Umhoefer questioned the definition of deferred payment and suggested that it should say what deferred payment is, not what it isn't. John Umhoefer also asked for an explanation of the estimated default exposure language as it relates to security being required. Staff said that those provisions were written to insure we weren't double counting exposure when requiring security. For example, the amount of security a Milk Contractor would be required to file if they had both a default exposure over \$20 million and used deferred payment would be the higher of the two exposure amounts. Without this provision, a contractor may be required to post security to cover both amounts. John Umhoefer asked why estimated default exposure was 100% of the deferred payment amount but only 75% of the highest obligations if deferred payment is not used. Staff indicated that, while a default could occur at any time throughout the year, it would most likely occur just before any deferred payments are due to be paid. However, milk contractors that are paying for all of their producer milk twice monthly are not likely to default on the full amount owed.

Nick George asked if it was only the large and financially strong companies that used deferred payment contracts. Staff responded that companies that use deferred payment must have either strong financial statements or the ability to file security, but size was not a factor. Additionally, deferred payment contracts are typically prompted by producers for their own tax planning purposes and not a cash management tool for contractors.

John Manske asked if the limit on deferred payment contracts of 120 days was long enough. Dave Daniels thought it was enough. Staff indicated that the statute was changed several years ago to shorten limits on grain dealer deferred payment contracts to 120 days to limit the risk to the Fund.

John Umhoefer suggested that the deferred payment assessment deduction be disclosed to producers. Staff indicated that the exact amount may not be known until the final pay price is determined, but that rates could be disclosed ahead of time and we could require assessments amounts be disclosed on paystubs.

Dave Daniels asked what the deferred payment assessment rate would be. Staff indicated that once the law is changed, DATCP will begin rulemaking to establish the rate. For comparison, the current grain dealer deferred payment assessment rate is .0035 times total deferred payment obligations.

Regarding the exemption for Vegetable Contractors, Nick George asked how many current Vegetable Contractors purchase less than \$15,000/year. Eric said it was around 4.

John Manske acknowledged that the draft needs some additional edits, but once it is final DATCP will be looking to Council members to move it forward in the legislature. John Umhoefer asked if the DATCP Board will be weighing in on the proposal. Jeff Lyon said that we don't usually take legislative drafts to the Board.

The group agreed that there was a consensus to keep the draft moving, but a formal motion should wait until the draft is final.

Agenda Item VII Adjourn

A motion to adjourn the meeting was made by Nick George, with a second by Jim Zimmerman. Motion was unanimously approved. The meeting was adjourned at approximately 12:00 p.m.