State of Wisconsin
Governor Scott Walker

**Department of Agriculture, Trade and Consumer Protection**
Ben Brancel, Secretary

**DATE:** June 23, 2016

**TO:** Board of Agriculture, Trade and Consumer Protection

**FROM:** Ben Brancel, Secretary for BB
Frank Frassetto, Administrator, Division of Trade and Consumer Protection

**SUBJECT:** **Emergency Rulemaking Scope Statement for Ch. ATCP 99;** Grain Dealers and Grain Warehouse Keepers

**PRESENTED BY:** Jeremy McPherson and Staff - Division of Trade and Consumer Protection

**REQUESTED ACTION:**

At the July 7, 2016, Board meeting, the Department of Agriculture, Trade and Consumer Protection ("Department") will ask the Department Board to approve a "Statement of Scope" (copy attached) for the promulgation of a Department emergency rule related to grain dealers and grain warehouse keepers. This rule is necessary to ensure the continuation of the Agricultural Producer Security Fund assessment exemption for grain dealers and grain warehouse keepers while an actuarial study is evaluated to determine what programmatic and statutory changes should be made related to the Agricultural Producer Security Program.

A scope statement spells out the general purpose and scope of a proposed rule. The Department may not begin drafting a proposed rule (including a proposal to amend or repeal an existing rule) until the Governor approves a scope statement for the proposed rule and the Department Board approves the scope statement. In accordance with 2011 Wisconsin Act 21 (Wis. Stat. § 227.135(2)), the Governor approved this scope statement for emergency rule changes on May 31, 2016, thereby allowing the Department to submit this scope statement for publication and to seek approval of the scope statement by the Department Board.

The Department must publish a draft scope statement in the Wisconsin Administrative Register and file a copy with the Department of Administration ("DOA") at least 10 days before the Board approves the scope statement. The Department filed the attached statement of scope with the Legislative Reference Bureau for publication in the June 6, 2016, issue of the Wisconsin Administrative Register. The Department also filed a copy with DOA.

If the Board approves this scope statement, the Department will prepare the emergency rule, and the rule and associated documents approved by the Secretary will be submitted to the Governor for approval. A copy of the emergency rule will be sent to the Board for informational purposes. If the Governor approves the emergency rule, it will be signed, docketed, published, and then in effect for 150 days.

# STATEMENT OF SCOPE

## Department of Agriculture, Trade and Consumer Protection (DATCP)

**Rule No.:** Ch. ATCP 99, Wis. Adm. Code (Existing)

**Relating to:** Grain Dealers and Grain Warehouse Keepers

**Rule Type:** Emergency

### 1. Finding/nature of emergency:

An emergency rule is necessary to ensure the continuation of the fund assessment exemption for grain dealers and grain warehouse keepers. In December 2015, the Wisconsin Department of Agriculture, Trade and Consumer Protection ("Department") received an actuarial study detailing the need for changes to the Agriculture Producer Security Fund ("APSF") to ensure fund stability and to mitigate the impact of large defaults in the future. Without this emergency rule, licensed grain dealers and grain warehouse keepers will take on the burden of repaying a large portion of the APSF overall fund balance while new policies are developed and implemented based on the findings of the actuarial study. The Department recommends maintaining the status quo during this transitional period. An emergency rule effective date of September 1 is necessary since the next license year (assessment period) for grain dealers and grain warehouse keepers begins September 1, 2016.

### 2. Description of the objective of the rule:

The Department proposes an emergency rule to amend fund assessment exemption requirements for grain dealers and grain warehouse keepers. The emergency rule proposes to continue the decrease in the APSF minimum balance from the minimum set by administrative rule to the minimum set by statute. This change would bring the minimum balance set by rule from $11 million to $5 million, which is the minimum set in Wis. Stat. § 126.88 (1) (a). The emergency rule is necessitated by the recent decrease in the APSF balance due to large defaults claimed by the vegetable and milk contractor industries.

**3. Description of existing policies relevant to the rule and of new policies proposed to be included in the rule and an analysis of policy alternatives; the history, background and justification for the proposed rule:**

History and background

The APSF is a public trust administered by the Department. 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. Funds from each industry are accounted for separately and deposited into the overall fund. Wis. Stat. ch. 126 establishes detailed fund assessment requirements for all contractors except it requires the Department to establish milk contractor fund assessments by rule. Wis. Stat. ch. 126 sets minimum fund balances for each industry, as well as a minimum balance requirement for the overall fund.

Wis. Admin. Code § ATCP 99.126 (5), establishes a fund assessment exemption for grain dealers. To be eligible, a licensee must have been a contributing grain dealer in each of the preceding five license years. The exemption does not apply if the fund balance attributable to grain dealers 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 industries) was less than $11 million on May 31 of the preceding license year. Wis. Stat. § 126.88 sets the APSF minimum balance at $5 million.

Wis. Admin. Code § ATCP 99.235 (4), establishes a fund assessment exemption for grain warehouse keepers with eligibility requirements similar to those for grain dealers. However, grain warehouse keeper licensees are not likely to become eligible for fund assessment exemption for approximately ten years, as the fund balance attributable to grain warehouse keepers is currently below the minimum $500,000 requirement.

In 2014 and 2015, defaults in the vegetable and milk industries totaled $7.2 million, causing the APSF balance to drop substantially. With the APSF balance below the $11 million minimum currently set by administrative rule, the grain dealer and grain warehouse keeper industries will not be eligible for fund assessment exemptions for an estimated five to six years.

The Department and the Agricultural Producer Security Council, a statutory council that advises the Department on the administration of the program, 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, the Department received the completed actuarial study and is developing recommendations for permanent changes to the agricultural producer security program.

The proposed emergency rule would alleviate a financial burden otherwise placed upon licensed grain dealers. Without this change, grain dealers would not be eligible for fund assessment exemptions which have been granted to milk and vegetable contractors during this transitional period.

The proposed emergency rule would make consistent changes to exemption eligibility requirements for both grain dealers and grain warehouse keepers; however, grain warehouse keeper licensees will not likely be effected by the change for approximately ten years, as they will not meet the minimum balance requirement for funds attributable to grain warehouse keepers.

Policy Alternatives

Do nothing. If the Department fails to adopt this emergency rule the grain dealer industry will not be eligible for fund assessment exemption until the producer security overall fund balance exceeds $11 million, which is estimated to take five to six years. If the Department fails to adopt this emergency rule before September 1, 2016, no grain dealers will be eligible for exemption during the next license year.

**4. Statutory authority for the rule (including the statutory citation and language):**

Wis. Stat. § 93.07 (1) directs the Department to make such regulations as are necessary for the discharge of all the powers and duties of the Department.

Wis. Stat. § 126.81 (1) (a) allows the Department to promulgate rules to interpret and implement Wis. Stat. ch. 126.

Wis. Stat. § 227.24 allows the Department to promulgate a rule as an emergency rule without complying with the notice, hearing, and publication requirements under Wis. Stat. ch. 227.

**5. Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:**

The Department estimates that it will use approximately 0.10 FTE staff to develop this rule. This includes time required for the investigation and analysis, financial assistance criteria, rule drafting, preparing related documents, and communicating with affected persons and groups. The Department will use existing staff to develop this rule.

**6. Description of all entities that may be impacted by the rule:**

The proposed rule will allow grain dealers who meet fund assessment exemption requirements under Wis. Admin. Code §§ ATCP 99.126 (5) (a) and (b) to not pay fund assessments if the APSF balance is at least $5 million on May 31 of the preceding license year. The grain dealer industry would otherwise be required to pay an additional $200,000 - $250,000 annually, until the APSF balance reaches a minimum of $11 million.

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.

**7. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:**

There is no existing or proposed federal regulation that is intended to address the activities regulated by this rule.

**8. Anticipated economic impact**

The proposed rule will slow the growth of the overall fund balance, as the grain dealer industry would otherwise be required to pay an additional $200,000 - $250,000 annually, over the course of an estimated five to six years. The impact to milk, grain, and vegetable producers will be minimal if there are no large defaults during the next five to six years.

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5-24-16
Date Submitted