



State of Wisconsin  
Governor Scott Walker

**Department of Agriculture, Trade and Consumer Protection**  
Sheila E. Harsdorf, Secretary

**DATE:** May 9, 2018

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

**FROM:** Sheila Harsdorf, Secretary *Sheila Harsdorf*  
Sean M. Brown, JD, Administrator, Division of Trade and Consumer Protection *SB*

**SUBJECT:** Milk contractors (Emergency rule); Statement of Scope

**PRESENTED BY:** Jeremy McPherson and staff

**REQUESTED ACTION:**

At the May 24, 2018 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve a statement of scope for proposed amendments to current DATCP rules related to milk contractors.

**SUMMARY**

The proposed rule will effect a mandate required by 2017 Wisconsin Act 155. The mandate pertains to the Agricultural Producer Security Fund (Fund), which is a public trust administered by DATCP. A variety of agricultural contractors, including milk contractors, are required to contribute to the Fund annually. Monies in the Fund are used to settle claims by producers in the event a contractor defaults on payment to a producer.

Act 155 allows milk contractors to contract with producers so as to defer payment for up to 120 days. An increased default risk arises from allowing milk contractors to take title to producer milk up to four months before the contractors actually pay the producers. The Fund is designed to cover payment defaults and accordingly, Act 155 creates milk contractor deferred payment assessments that are to be paid into the Fund. DATCP is required to establish a deferred payment assessment rate. In proposing a deferred payment assessment rate, DATCP plans to consider the increased exposure to the Fund associated with potential future defaults by milk contractors who owe producers for milk procured under deferred payment contracts.

Simultaneously with this emergency rule, DATCP is also proposing a permanent rule designed to set deferred payment assessment rates. The present emergency rulemaking is needed because milk contractors and producers were authorized to begin entering into deferred payment contracts on April 28, 2018 (thirty days after Act 155 was published). Because most deferred payment contracts will not have a payment date earlier than January 1 of any calendar year, an emergency rule that establishes a deferred payment assessment rate with an effective date of no later than August 1, 2018 is necessary for milk producers to take full advantage of the deferred payment provisions now available in the statute.

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### *Next Steps*

The proposed emergency rule is a temporary rule change. If the Board approves the attached scope statement related to the emergency rule, then the Department will begin drafting the emergency rule. An emergency rule goes into effect after it has been approved by the Secretary and the Governor and published in the state newspaper. An emergency rule remains in effect for 150 days. DATCP may request that the Joint Committee for Review of Administrative Rules to extend the length of time the emergency rule remains in effect for up to an additional 120 days.

# STATEMENT OF SCOPE

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

Rule No.: Wis. Admin. Code ch. ATCP 100 (Existing)

Relating to: Milk Contractors

Rule Type: Emergency

### 1. Finding/nature of emergency:

2017 Wisconsin Act 155 (Act 155) directs the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) to promulgate rules establishing annual assessment rate for milk contractors entering into deferred payment contracts. Furthermore, Act 155 directs DATCP to promulgate these rules as emergency rules until the permanent rules become effective. Notwithstanding Wis. Stat. § 227.24 (1) (a) and (3), Act 155 exempts DATCP from the requirement to provide evidence that promulgating this rule is necessary for the preservation of the public peace, health, safety, or welfare and exempts DATCP from the requirement to provide a finding of emergency.

This emergency rule is necessary because on April 28, 2018 (30 days after Act 155 was published on March 29, 2018), milk contractors and producers may begin entering into deferred payment contracts, which permit milk contractors to defer payments to producers for up to 120 days. Deferred payment assessment rates must be established prior to the date by which a deferred payment becomes due. Because most deferred payment contracts will not have a payment date earlier than January 1 of any calendar year, an emergency rule that establishes a deferred payment assessment rate with an effective date of no later than August 1, 2018, is necessary so that producers and contractors will know the assessment rate before they are likely to begin deferring payments.

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

This proposed rule, dictated by Ch. 126, Stats., would establish a temporary assessment rate to be applied to amounts that a milk contractor pays to a milk producer or producer agent under a deferred payment contract to arrive at a deferred payment assessment amount. The assessment amount shall equal the total amount owed under the contract before the assessment is deducted, multiplied by the deferred payment assessment rate established by this rule. The milk contractor shall deduct the deferred payment assessment from the amount that a milk contractor pays to a milk producer or producer agent under a deferred payment contract.

The purpose of the deferred payment assessment, which is ultimately paid into the Agricultural Producer Security Fund (Fund), is to cover the increased default exposure caused by allowing milk contractors to wait for up to 120 days after taking title to producer milk before paying producers.

**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 Agricultural Producer Security Fund, established by Wis. Stat. § 25.463, is a public trust administered by DATCP. Most milk contractors, grain dealers, grain warehouse keepers, and vegetable contractors (collectively known as contractors) that are licensed by DATCP to obtain grain, milk, or vegetables from producers are required to pay assessments into the Fund annually. Monies in the Fund are used to settle claims by producers in the event that a contractor defaults on a payment. Assessment contributions from each industry are accounted for separately and then deposited into the overall Fund. Wis. Stat. § 126.88 (1) sets minimum and maximum balances for each industry, as well as a minimum and maximum balance requirement for the overall Fund. Wis. Stat. Ch. 126 establishes detailed assessment requirements, except that it requires DATCP to establish milk contractor assessments by rule.

The legislation creating 2017 Wisconsin Act 155 was supported by the Agricultural Producer Security Council, an advisory group of industry members defined in Wis. Stat. § 15.137 (1).

Justification for proposed rule.

Act 155, signed by the Governor on March 28, 2018, allows milk contractors to enter into contracts with producers to defer payment for up to 120 days. The Act requires the provision of financial statements, and, in some instances, individual security, to cover the additional risk arising under such deferred payment contracts. As the Fund could ultimately be responsible for defaults under this type of contract, the Act also creates milk contractor deferred payment assessments and requires DATCP to establish a milk contractor deferred payment assessment rate by emergency rule that may remain in effect for up to 24 months while permanent rules are being developed.

Policy Alternatives.

There are no alternatives. Act 155 requires DATCP to promulgate rulemaking to establish annual assessment rate for milk contractors entering into deferred payment contracts.

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

Wis. Stat. § 25.463 creates the Wisconsin Agricultural Producer Security Trust Fund.

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

Wis. Stat. § 126.46 (1) directs DATCP to establish by rule annual fund assessments for milk contractors.

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

Wis. Stat. § 126.81 (2m) requires DATCP to promulgate rules that specify fund assessments under s. 126.46(1), Stats.

**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:**

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

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

Milk contractors and milk producers who choose to enter into deferred payment contracts will be impacted by paying the additional deferred payment assessment. Grain and vegetable producers are also protected against financial defaults by contractors who contribute to the one overall Fund. All could potentially benefit by a higher agricultural producer security fund balance as a result of the additional deferred payment assessment.

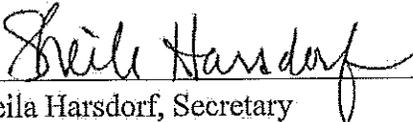
**7. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:**

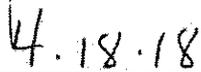
There is no existing or proposed federal regulation that is intended to address the activities regulated by this rule.

**8. Anticipated economic impact**

The proposed rule will increase the growth of the overall Fund balance, as the milk industry begins paying deferred payment assessments. The impact to milk, grain, and vegetable producers will include greater coverage in the event of a default.

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Sheila Harsdorf, Secretary

  
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Date

Department of Agriculture, Trade and Consumer Protection