



State of Wisconsin
Governor Scott Walker

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

DATE: December 20, 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 *SM*

SUBJECT: Grain dealers and grain warehouse keepers and milk contractors;
Wisconsin Admin. Code Chapters ATCP 99 and 100 (Final Draft)

PRESENTED BY: Jeremy McPherson, Director, Bureau of Business Trade Practices

REQUESTED ACTION:

At the December 20, 2018 DATCP Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve the final draft rule of Wis. Admin. Code chs. ATCP 99 and 100, related to grain dealers and grain warehouse keepers and to milk contractors. This rule implements 2017 Wisconsin Act 155 (Act 155), which directed the Department to adopt rules that would align with the enacted statute.

The final draft rule changes, along with statutory changes reflected in Act 155, were prompted by recommendations made by the Agricultural Producer Security Council. The Department consulted with the Council during the development of this rule. The Council approved the content of this final rule at its November 29, 2018 meeting.

SUMMARY:

Background

The Agricultural Producer Security Fund (Fund) is a public trust administered by the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP). Milk contractors, grain dealers, grain warehouse keepers, and vegetable contractors (collectively known as contractors) must purchase a license to obtain milk, grain, or vegetables from producers, and most contractors are required to contribute to the Fund annually. The Fund is used to settle claims by producers in the event that a contractor defaults on payment. Assessment contributions from each industry are accounted for separately and deposited into the overall Fund. Wisconsin Statutes ch. 126 establishes detailed assessment requirements, except that it requires DATCP to establish milk contractor assessments by rule. Wisconsin Statute ch. 126 sets minimum and maximum Fund balances for each industry, as well as a minimum and maximum balance requirement for the overall Fund.

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ATCP 99- Grain

Act 155 combined individual minimum and maximum Fund balance requirements for grain dealers and grain warehouse keepers. Prior to Act 155, individual minimums for grain dealers and grain warehouse keepers were set at \$1 million and \$200,000, respectively, and maximums were set at \$6 million and \$1 million, respectively. These balances were combined specifically to increase the overall stability of the Fund and guard against a modest grain warehouse keeper default having a catastrophic effect on that portion of the Fund. The new combined minimum is \$1.2 million, and the new combined maximum is \$7 million. Current law requires DATCP to adjust assessment rates by rule to maintain Fund balances between the statutory thresholds.

A 2008 drafting error set the assessment exemption threshold at \$3 million for both grain dealers and warehouse keepers. Notes from the rulemaking docket indicate that the warehouse keeper threshold should have been set at \$500,000. Since the previous warehouse keeper Fund balance maximum was \$1 million, an assessment exemption threshold of \$3 million would never be realized.

ATCP 100 – Milk

Act 155 permits milk contractors and producers to enter into contracts to defer payments for up to 120 days. Act 155 further requires DATCP to promulgate rules, including emergency rules, to establish a deferred payment Fund assessment rate for these types of transactions. Allowing producer payments to be deferred for up to 120 days exposes the Fund to larger default payouts in the event a contractor fails to pay the producer. The deferred payment assessment is intended to cover this additional risk. Prior to Act 155, milk producers were required to be paid on the 4th and the 19th of every month.

Rule Content

This final draft rule does all of the following:

- Reduces Fund assessments paid by all grain warehouse keepers to the minimum amounts of either \$100 or \$250 when the grain warehouse keeper portion of the Fund exceeds \$1 million.
- Corrects the drafting error, changing the grain warehouse keeper assessment exemption from \$3 million to \$500,000.
- Establishes the milk contractor deferred payment assessment rate of 0.0035.

Fiscal Impact

Milk, grain, and vegetable producers are all protected against financial defaults by contractors who contribute to the overall Fund. All producers could potentially benefit from a higher Fund balance.

ATCP 99- Grain

Proposed changes to ATCP 99 will not have an immediate impact on grain warehouse keepers. Prior to Act 155, warehouse keepers were not projected to receive an assessment exemption for about five years or an assessment reduction for about 15 years. This proposed rule does not change those projections. Nonetheless, these changes are necessary to harmonize ATCP 99 with statute.

ATCP 100- Milk

Proposed changes to ATCP 100 will establish a deferred payment assessment rate that will cover the additional risk posed to milk producers and the Fund associated with milk contractors deferring payments to milk producers for up to 120 days, as permitted by Act 155. Milk contractors entering into deferred payment contracts with producers will pay higher assessments; however, the statute allows these assessments to be passed on to the producers who requested their payments be deferred. Therefore, there will be no effect to milk contractors.

Because Act 155 permits, but does not require, milk contractors to offer deferred payment contracts, any effects will be the result of the decision of the contractor.

Business Impact

ATCP 99- Grain

The business impact matches the fiscal impact as the rule only involves businesses.

ATCP 100- Milk

The business impact matches the fiscal impact as the rule only involves businesses.

Environmental Impact

This rule will not have any environmental impact.

Federal and Surrounding State Programs

Federal Programs

ATCP 99 - Grain

The United States Warehouse Act is a voluntary regulatory program administered by the Farm Service Agency (FSA), a unit within USDA. Under this 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 who choose a federal license are exempt from the state licensing program.

ATCP 100 - Milk

No federal programs currently exist that offer security to milk producers in the event of payment defaults.

Surrounding State Programs

ATCP 99 - Grain

Like all states with a significant grain industry, Minnesota, Michigan, Illinois, Indiana, and Iowa 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) employs 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 are no exceptions to this requirement. Dealers are not prohibited from entering into contracts with milk producers that have extended payment terms.

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 are no exceptions to this requirement. Dairy plants are not prohibited from entering into contracts with milk producers who have extended payment terms.

Illinois, Indiana, and Iowa do not require dairy producer security.

Public Hearing

DATCP held a public hearing on the hearing draft rule on September 10, 2018 at the Prairie Oaks State Office Building in Madison.

After the hearing, DATCP accepted formal written comments for two weeks until September 24, 2018. Having received no requests for changes and two letters of support from Cooperative Network and Wisconsin Agri-Business Association, DATCP did not change the hearing draft based on the basis of public comments. DATCP did receive small typographical and formatting suggestions from the Wisconsin Legislative Council Rules Clearinghouse and adopted them.

Next Steps

If the Board approves this final draft rule, the Department will submit the final draft rule to the Governor. If the Governor approves the final draft of the rule, the Department will then submit the rule to the Legislature for legislative committee review. If the Legislature has no objection to the rule, the Department secretary will sign the final rulemaking order and transmit it for publication. The rule will take effect on the first day of the month following publication.

**PROPOSED ORDER
OF THE WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

The Wisconsin department of agriculture, trade and consumer protection proposes the following rule *to amend* ch. ATCP 99.235 (2) and (4) and ATCP 100.135 (10); and *to repeal and recreate* ch. ATCP 100.135 (1); and *to create* ch. ATCP 100.135 (1e) and (1m); *relating to* grain warehouse keepers and milk contractors.

**Analysis Prepared by the Department
of Agriculture, Trade and Consumer Protection**

This proposed rule modifies Wis. Admin. Code ch. ATCP 99 to align grain warehouse keeper assessment reduction and exemption thresholds with the statutory changes enacted under 2017 Wisconsin Act 155 (Act 155). Act 155 amended Wis. Stat. § 126.88 (1) (b) and repealed Wis. Stat. § 126.88 (1) (c), which resulted in combining Agricultural Producer Security Fund (Fund) balances for grain dealers and grain warehouse keepers and creating a new minimum and maximum.

This proposed rule also modifies Wis. Admin. Code ch. ATCP 100 to establish an annual assessment rate for milk contractors that both contribute to the Fund and enter into deferred payment contracts with producers to procure milk. Among other things, Act 155 allows milk contractors to enter into contracts with producers to defer payment for up to 120 days and requires these milk contractors to pay a deferred payment assessment into the Fund. Act 155 requires the Department to establish a deferred payment assessment rate by administrative rule.

Statutes Interpreted

Statutes Interpreted: Wis. Stat. §§ 25.463, 126.30 (1), and 126.88 (1) (b)

Statutory Authority

Statutory Authority: Wis. Stat. §§ 25.463, 93.07 (1), 126.46 (1), 126.81 (1) (a), and 126.88 (1)

Explanation of Statutory Authority

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

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. § 126.46 (1) directs the Department to specify by rule annual fund assessments for milk contractors, including an assessment for deferred payment contracts under Wis. Stat. § 126.485.

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

Wis. Stat. § 126.88 (1) allows the Department to promulgate rules modifying assessments provided under Wis. Stat. § 126.30 (1).

Wis. Stat. § 126.88 (1) (b) directs the Department to promulgate a rule modifying assessments to maintain a combined Fund balance attributable to grain dealers and grain warehouse keepers of at least \$1,200,000, but not more than \$7,000,000.

Related Statutes and Rules

Wis. Stat. § 15.137 (1) defines the membership of the Agricultural Producer Security Council (Council), which advises the Department on the Fund and other producer security matters.

Plain Language Analysis

Background

ATCP 99

The Agricultural Producer Security Fund (Fund) is a public trust administered by the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP). Milk contractors, grain dealers, grain warehouse keepers, and vegetable contractors (collectively known as contractors) must purchase a license to obtain milk, grain, or vegetables from producers, and most contractors are required to contribute to the Fund annually. The Fund is used to settle claims by producers in the event that a contractor defaults on payment. Assessment contributions from each industry are accounted for separately and deposited into the overall Fund. Wis. Stat. ch. 126 establishes detailed assessment requirements, except that it requires DATCP to establish milk contractor

assessments by rule. Wis. Stat. ch. 126 sets minimum and maximum Fund balances for each industry, as well as a minimum and maximum balance requirement for the overall Fund.

In March 2018, the Governor signed Act 155. This Act combined individual minimum and maximum Fund balance requirements for grain dealers and grain warehouse keepers. Prior to Act 155, individual minimums for grain dealers and grain warehouse keepers were set at \$1 million and \$200,000, respectively, and maximums were set at \$6 million and \$1 million, respectively. These balances were combined specifically to increase the overall stability of the Fund and guard against a modest grain warehouse keeper default having a catastrophic effect on that portion of the Fund. The new combined minimum is \$1.2 million, and the new combined maximum is \$7 million. Current law requires DATCP to adjust assessment rates by rule to maintain Fund balances between the statutory thresholds.

A 2008 drafting error set the assessment exemption threshold at \$3 million for both grain dealers and warehouse keepers. Notes from the rulemaking docket indicate that the warehouse keeper threshold should have been set at \$500,000. Since the previous warehouse keeper Fund balance maximum was \$1 million, an assessment exemption threshold of \$3 million would never be realized.

ATCP 100 – Milk

Act 155 permits milk contractors and producers to enter into contracts to defer payments for up to 120 days. Act 155 further requires DATCP to promulgate rules, including emergency rules, to establish a deferred payment Fund assessment rate for these types of transactions.

Prior to Act 155, milk producers were required to be paid on the 4th and the 19th of every month. Allowing producer payments to be deferred for up to 120 days exposes the Fund to larger default payouts in the event a contractor fails to pay the producer. The deferred payment assessment is intended to cover this additional risk.

Proposed Policies.

DATCP proposes to make modifications to ATCP 99 that are necessary to align administrative code with Act 155 grain dealer and warehouse keeper thresholds and to ensure that assessments continue to be equitable between both grain dealers and warehouse keepers. DATCP also took the opportunity to address the drafting error relating to the assessment exemption for grain warehouse keepers. This rule will not result in a change to assessment amounts currently being paid by either grain dealers or warehouse keepers.

Act 155 combined Fund balance minimum and maximum thresholds in the grain dealer and grain warehouse keeper programs. Prior to Act 155, the statute specified separate limits for grain dealers and warehouse keepers. Under Wis. Stat. § 126.88, DATCP is required to modify assessments to maintain Fund balances within statutory thresholds. When combined, the two exceeded the new statutory maximum of \$7 million, and it required DATCP to modify assessments to bring that portion of the Fund back below the statutory maximum. DATCP previously took action addressing grain dealer assessments specifically in a current emergency

rule (EmR 1803) and a proposed permanent rule (CR 17-047). This rule updates the current emergency rule and proposed permanent rule to include grain warehouse keepers.

As required by Act 155, DATCP proposes to establish a Fund assessment rate in ATCP 100 for contributing milk contractors that procure milk under a deferred payment contract. The law now allows milk producer payments to be deferred for up to 120 days, which exposes the Fund to potentially larger default payouts in the event a contractor fails to pay the producer. The deferred payment assessment is intended to cover this additional risk.

Policy Alternatives.

DATCP is required by Wis. Stat. § 126.88 (1) to modify assessments to maintain Fund balances between statutory thresholds. If DATCP does nothing, ATCP 99 will not comply with statute.

DATCP is also required by a newly amended statutory provision under Wis. Stat. § 126.46 (1) to specify a deferred payment assessment rate by rule. If DATCP does not set a rate, it will not comply with statute.

Rule Content

This proposed rule does all of the following:

- Reduces Fund assessments paid by all grain warehouse keepers to the minimum amounts of either \$100 or \$250 when the grain warehouse keeper portion of the Fund exceeds \$1 million.
- Corrects the drafting error, changing the grain warehouse keeper assessment exemption from \$3 million to \$500,000.
- Establishes the milk contractor deferred payment assessment rate of 0.0035.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations

ATCP 99 - Grain

The United States Warehouse Act is a voluntary regulatory program administered by the Farm Service Agency (FSA), a unit within USDA. Under this 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 security to milk producers in the event of payment defaults.

Comparison with Rules in Adjacent States

ATCP 99 - Grain

Like all states with a significant grain industry, Minnesota, Michigan, Illinois, Indiana, and Iowa 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) employs 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 are no exceptions to this requirement. Dealers are not prohibited from entering into contracts with milk producers that have extended payment terms.

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 a bond, letter of credit, certificate of deposit, or pre-payment. There are no exceptions to this requirement. Dairy plants are not prohibited from entering into contracts with milk producers that have extended payment terms.

Illinois, Indiana, and Iowa do not require dairy producer security.

Summary of Factual Data and Analytical Methodologies

The proposed rule changes, along with statutory changes reflected in Act 155, were prompted by recommendations made by the Agricultural Producer Security Council. DATCP consulted with the Council during the development of this proposed rule. The Council approved the content of the hearing draft rule at its June 25, 2018 meeting and the final draft rule at its November 29, 2018 meeting.

ATCP 99 – Grain

As of March 31, 2018, the Fund balance attributable to grain dealers is approximately \$6,789,000, which exceeded the previous maximum threshold by \$789,000. The Fund balance attributable to grain warehouse keepers is approximately \$284,000, which is just above the previous minimum. The combined balance of approximately \$7,073,000 is over the new statutory maximum of \$7 million and almost entirely a result of the grain dealer portion of the Fund.

Pre-Act 155 Balances

	Minimum Statutory Balance	Actual Balance as of 3/31/18	Maximum Statutory Balance
Grain Dealers	\$ 1,000,000	\$ 6,788,914.73	\$ 6,000,000
Grain Warehouse Keepers	\$ 200,000	\$ 283,878.32	\$ 1,000,000
Milk Contractors	\$ 3,000,000	\$ 6,579,940.89	\$ 12,000,000
Vegetable Contractors	\$ 800,000	(\$ 4,296,714.61)	\$ 3,000,000
Entire Fund	\$ 5,000,000	\$ 9,356,019.33	\$ 22,000,000

Act 155 Implementation Balances

	Minimum Statutory Balance	Actual Balance as of 3/31/18	Maximum Statutory Balance
Grain Dealers and Grain Warehouse Keepers	\$ 1,200,000	\$ 7,072,793.05	\$ 7,000,000
Milk Contractors	\$ 3,000,000	\$ 6,579,940.89	\$ 12,000,000
Vegetable Contractors	\$ 800,000	(\$ 4,296,714.61)	\$ 3,000,000
Entire Fund	\$ 5,000,000	\$ 9,356,019.33	\$ 22,000,000

By the time Act 155 became law, the grain dealer portion of the Fund had already exceeded its individual statutory maximum of \$6 million. As a result, DATCP enacted an emergency rule and a proposed permanent rule to lower assessments until that portion of the fund fell back below \$6 million.

Based on the current Fund balance and projected annual growth attributable to grain warehouse keepers, that portion of the fund is not projected to reach assessment reduction thresholds for a number of years. To ensure that the grain warehouse keeper program assessments are equitable and proportionate to their respective exposure, this rule proposes that a reduction in assessments will not be implemented for grain warehouse keepers until the Fund balance attributable to grain warehouse keepers exceeds \$1 million.

ATCP 100 – Milk

Act 155 allows a portion of producers' milk checks to be deferred beyond the current statutory requirement. Previously, milk contractors were required to pay producers by the 4th and 19th of each month for the prior month's milk. The Act requires DATCP to establish a milk contractor

deferred payment assessment rate to be applied to deferred payment contracts to cover the additional risk they pose to producers and the Fund. Similar provisions are already in place for the grain industry and were considered while developing the milk deferred payment assessment rate.

Like the new deferred payment contract provisions for milk contractors, the grain dealer program permits grain dealers to enter into contracts with grain producers to defer payments for up to 120 days. The deferred payment assessment rate applied to these contracts in the grain program is 0.0035. Deferred payments in the milk program pose a similar risk; therefore, DATCP proposes to use the same deferred payment assessment rate of 0.0035 for milk contractors. That is to say, \$100,000 of deferred milk payments would equal a \$350 deferred payment assessment.

The amount of increased revenue is unknown and will depend on the amount of milk paid for under deferred payment contracts.

Analysis and Supporting Documents used to Determine Effect on Small Business

Members of the Agricultural Producer Security Council, an advisory council as defined in Wis. Stat. § 15.137 (1), worked with the Department to craft Act 155 and these changes to Wisconsin Administrative Code. 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.

Effect on Small Business

ATCP 99- Grain

This rule will not have an immediate impact on grain warehouse keepers. Prior to Act 155, warehouse keepers were not projected to receive an assessment reductions for a number of years. This proposed rule does not change those projections. Nonetheless, these changes are necessary to harmonize ATCP 99 with statute.

ATCP 100- Milk

This rule will establish a deferred payment assessment rate that will cover the additional risk posed to milk producers and the Fund associated with milk contractors deferring payments to milk producers for up to 120 days, as permitted by Act 155. Milk contractors entering into deferred payment contracts with producers will pay higher assessments; however, the statute allows these assessments to be passed on to the producers who requested their payments be deferred. Therefore, there will be no effect to milk contractors.

Because Act 155 permits, but does not require, milk contractors to offer deferred payment contracts, any effects will be the result of decisions between contractors and producers. Milk, grain, and vegetable producers are all protected against financial defaults by contractors who contribute to the overall Fund. All producers could potentially benefit from a higher Fund balance.

DATCP Contact

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Where and When Comments May Be Submitted

Questions and comments related to this rule may be directed to:

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Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-5164
E-Mail: DavidA.Woldseth@wisconsin.gov

Rule comments were accepted for two weeks after the public hearing.

1 **SECTION 1.** ATCP 99.235 (2) is amended to read:

2 **(2)** ASSESSMENT AMOUNT.

3 **(a)** A contributing grain warehouse keeper who operates grain warehouses with a combined
4 capacity of less than 500,000 bushels shall pay an annual fund assessment equal to the greater of
5 the following amounts:

6 1. \$100.

7 2. The~~If~~ the fund balance attributable to grain warehouse keepers is less than \$1 million on
8 May 31 of the last preceding license year, then the sum of the amounts calculated under s. 126.30

9 (1) (a) and (b), Stats., multiplied by 1.5.

1 (b) A contributing grain warehouse keeper who reports at least 500,000 bushels shall pay an
2 annual fund assessment equal to the greater of the following amounts:

3 1. \$250.

4 2. The If the fund balance attributable to grain warehouse keepers is less than \$1 million on
5 May 31 of the last preceding license year, then the sum of the amounts calculated under s. 126.30

6 (1) (a) and ~~(1)~~(b), Stats.

7 SECTION 2. ATCP 99.235 (4) (b) is amended to read:

8 (b) The fund balance attributable to grain warehouse keepers was at least ~~\$3 million~~
9 \$500,000 on May 31 of the last preceding license year.

10 SECTION 3. ATCP 100.135 (1) is repealed and recreated to read:

11 (1) GENERAL. A contributing milk contractor shall pay an annual fund assessment for
12 each license year. The annual fund assessment shall be calculated under this section, rather than
13 under s. 126.46, Stats. Except as provided in sub. (6) or (10), or s. ATCP 100.13, the annual
14 fund assessment amount shall equal the sum of the assessments in subs. (1e) and (1m).

15 SECTION 4. ATCP 100.135 (1e) is created to read:

16 (1e) BASIC ASSESSMENT. A contributing milk contractor shall pay a basic assessment
17 equal to the minimum assessment amount listed in sub. (9) or the sum of the following
18 multiplied by 0.8, whichever is greater:

19 a. The milk contractor's current ratio assessment. The current ratio assessment for a
20 license year equals the milk contractor's current ratio assessment rate under sub. (2) multiplied
21 by the annual milk payroll obligations reported under s. 126.41 (6) (a), Stats., in the milk
22 contractor's license application for that license year.

1 b. The milk contractor's debt to equity ratio assessment. The debt to equity ratio
2 assessment for a license year equals the milk contractor's debt to equity ratio assessment rate
3 under sub. (4) multiplied by the annual milk payroll obligations reported under s. 126.41 (6) (a),
4 Stats., in the milk contractor's license application for that license year.

5 **SECTION 5.** ATCP 100.135 (1m) is created to read:

6 **(1m) DEFERRED PAYMENT ASSESSMENT.** A contributing milk contractor shall pay a
7 deferred payment assessment under s. 126.485 (5), Stats., equal to the amount the milk
8 contractor reports under s. 126.41 (6) (ag), Stats., in the milk contractor's license application for
9 that license year multiplied by 0.0035.

10 **SECTION 6.** ATCP 100.135 (10) (intro.) is amended to read:

11 (10) EXEMPTION. A contributing milk contractor is not required to pay any fund
12 assessment under this section for a license year, other than a deferred payment assessment
13 required under sub. (1m), if all of the following apply:

14 **SECTION 7. EFFECTIVE DATE:** This rule takes effect on the first day of the month
15 following publication in the Wisconsin administrative register, as provided in s. 227.22 (2)
16 (intro.), Stats.

17
Dated this ____ day of _____, 2018.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: _____
Sheila Harsdorf
Secretary

Wisconsin Department of Agriculture, Trade and Consumer Protection

Final Regulatory Flexibility Analysis

Rule Subject: Grain Dealers and Grain Warehouse Keepers;
Milk Contractors
Adm. Code Reference: ATCP 99 and 100 (Permanent)
Rules Clearinghouse #: CR 18-061
DATCP Docket #: 18-R-03

Rule Summary

This rule does the following:

- Reduces Agricultural Producer Security Fund (Fund) assessments paid by all grain warehouse keepers to the minimum amounts of either \$100 or \$250 when the grain warehouse keeper portion of the Fund exceeds \$1 million.
- Corrects the drafting error that triggered an assessment exemption from \$3 million to \$500,000.
- Establishes the milk contractor deferred payment assessment rate required by statute at 0.0035.
- Implements requirements of 2017 Wisconsin Act 155.

Small Business Affected

ATCP 99

The rule change combines the grain dealers with the grain warehouse keepers' portion of the Fund and does not increase costs for the state or its businesses. The Legislature required this change in 2017 Wisconsin Act 155.

ATCP 100

This rule will establish a deferred payment assessment rate that will cover the additional risk posed to milk producers and the Fund associated with milk contractors deferring payments to milk producers for up to 120 days. Milk contractors entering into deferred payment contracts with producers will pay higher assessments; however, the statute permits these assessments to be passed on to the producers whose payments are being deferred.

Act 155 permits, but does not require, milk contractors to offer deferred payment contracts. Therefore, any effects will be the result of the decision of the contractor.

Milk, grain, and vegetable producers are all protected against financial defaults by contractors who contribute to the overall Fund. The additional milk contractor deferred

payment assessment could potentially benefit all producers by preserving the integrity of the Fund.

Reporting, Bookkeeping, and Other Procedures

The proposed permanent rule does not create new reporting, bookkeeping, or other procedures for small businesses in either the grain or dairy industries.

Professional Skills Required

The proposed rule does not require any additional professional skills by small businesses.

Accommodation for Small Business

No accommodations are required for the grain industry as it merely merges the two portions of the Fund.

The program accommodates for small business by giving them options in payment that did not previously exist among milk contractors. The rule that implements the Act provides additional accommodations rather than restricts them.

Conclusion

This rule may have an impact on affected businesses, including small businesses. However, the impact is voluntary, dependent on a desire to offer deferred payment contracts to milk producers. There continues to be risk of a default in payments to dairy, grain, and vegetable producers. This rule should neither increase nor decrease the likelihood of such a default. This rule will not have a significant adverse effect on “small business,” and is not subject to the delayed “small business” effective date provided in Wis. Stat. § 227.22 (2) (e). In fact, Wisconsin Act 155 requires the rule to be promulgated with minimal delay, and an emergency rule change to Wis. Admin. Code ch. ATCP 100 implements the deferred payment requirement.

Dated this 7th day of December, 2018.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 

Sean M. Brown
Administrator, Division of Trade and Consumer Protection

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date October 5, 2018
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Wis. Admin. Code chs. ATCP 99 and 100 (Permanent)	
4. Subject Grain dealers and grain warehouse keepers; Milk contractors	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input checked="" type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected 20.115 (1) (q)
7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input checked="" type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$ n/a	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule DATCP proposes to make modifications to Wis. Admin. Code ch. ATCP 99 that are necessary to align administrative code provisions with 2017 Wisconsin Act 155 grain dealer and warehouse keeper thresholds and to ensure that assessments continue to be equitable between both grain dealers and warehouse keepers. DATCP will also take the opportunity to address the drafting error related to the assessment exemption for grain warehouse keepers. This rule will not result in a change to assessment amounts currently being paid by either grain dealers or warehouse keepers. Act 155 combined Agricultural Producer Security Fund (Fund) balance minimum and maximum thresholds in the grain dealer and grain warehouse keeper programs. Prior to Act 155, the statute specified separate thresholds for grain dealers and warehouse keepers. Under Wis. Stat. § 126.88, DATCP is required to modify assessments to maintain Fund balances within statutory thresholds. When combined, the two exceed the new statutory maximum of \$7 million, and it requires DATCP to modify assessments to bring that portion of the Fund back below the statutory maximum. Prior to Act 155, DATCP took action to address grain dealer assessments specifically in a current emergency rule (EmR 1803) and a proposed permanent rule (CR 17-047). This rule updates the current emergency rule and proposed permanent rule to include warehouse keepers. As required by Act 155, DATCP proposes to establish a Fund assessment rate in ATCP 100 for contributing milk contractors that procure milk under a deferred payment contract. The law now allows milk producer payments to be deferred for up to 120 days, which exposes the Fund to potentially larger default payouts in the event a contractor fails to pay the producer. The deferred payment assessment is intended to cover this additional risk.	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. These proposed rule changes, along with statutory changes made in Act 155, were prompted by recommendations made by the Agricultural Producer Security Council. The Council approved the content of this rule at its November 29, 2018 meeting.	

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

Members of the Agricultural Producer Security Council, an advisory council as defined in Wis. Stat. § 15.137 (1), 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.

13. Identify the Local Governmental Units that Participated in the Development of this EIA.

n/a

14. 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)

Proposed changes to ATCP 99 will not have an immediate impact on grain warehouse keepers. Prior to Act 155, warehouse keepers were not projected to receive an assessment exemption for about five years or an assessment reduction for about 15 years. This proposed rule does not change those projections. Nonetheless, these changes are necessary to harmonize ATCP 99 with statute.

Proposed changes to ATCP 100 will establish a deferred payment assessment rate that will cover the additional risk posed to milk producers and the Fund associated with milk contractors deferring payments to milk producers for up to 120 days, as permitted by Act 155. Milk contractors entering into deferred payment contracts with producers will pay higher assessments; however, the statute allows these assessments to be passed on to the producers who requested their payments be deferred. Therefore, there will be no effect to milk contractors.

Because Act 155 permits, but does not require, milk contractors to offer deferred payment contracts, any effects will be the result of the decision of the contractor.

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule
Milk, grain, and vegetable producers are all protected against financial defaults by contractors who contribute to the overall Fund. All producers could potentially benefit from a higher Fund balance.

DATCP is required by Wis. Stat. § 126.88 (1) to modify assessments to maintain Fund balances between statutory thresholds. If DATCP does nothing, ATCP 99 will not comply with statute.

DATCP is also required by a newly amended statutory provision under Wis. Stat. § 126.46 (1) to specify a deferred payment assessment rate by rule. If DATCP does not set a rate, ATCP 100 will not comply with statute.

16. Long Range Implications of Implementing the Rule

In ATCP 99, the Fund balance attributable to grain warehouse keepers is approximately \$256,000 and is expected to grow by approximately \$50,000 each year, and therefore, is not projected to reach the proposed assessment exemption threshold of \$500,000 for about another five years (and would not reach the proposed automatic assessment reduction threshold of \$1 million for about another 15 years). To ensure that the grain warehouse keeper program assessments are equitable and proportionate to their respective exposure, this rule proposes that a reduction in assessments will not be implemented for grain warehouse keepers until the Fund balance attributable to grain warehouse keepers exceeds \$1 million. The long range implications of changes to ATCP 99 will be to ensure that grain warehouse keeper assessments are equitable and proportionate to their exposure.

The long-range implication of these proposed changes to ATCP 100 are unknown and entirely dependent on how many milk contractors and producers enter into deferred payment contracts. Since there is no requirement that entities enter into these types of contracts, any impact is voluntary.

17. Compare With Approaches Being Used by Federal Government

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

ATCP 99 - Grain

The United States Warehouse Act is a voluntary regulatory program administered by the Farm Service Agency (FSA), a unit within USDA. Under this 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.

18. 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 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. Dealers are not prohibited from entering into contracts with milk producers that have extended payment terms.

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. Dairy plants are not prohibited from entering into contracts with milk producers who have extended payment terms.

Illinois, Indiana, and Iowa do not require dairy producer security.

19. Contact Name David A. Woldseth	20. Contact Phone Number 608 224-5164
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This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The rule implements statutory changes required by 2017 Wisconsin Act 155 and does not require businesses to incur additional costs unless a milk producer chooses to enter into deferred payment contracts.

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

n/a

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements

Other, describe:

Adopting changes to the rules that are required by 2017 Wisconsin Act 155

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

n/a

5. Describe the Rule's Enforcement Provisions

n/a

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

Yes No



**WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE**

Scott Grosz
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Margit S. Kelley
Clearinghouse Assistant Director

Jessica Karls-Ruplinger
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 18-061

AN ORDER to amend ATCP 99.235 (2) and (4) and 100.135 (10); to repeal and recreate ATCP 100.135 (1); and to create ATCP 100.135 (1e) and (1m), relating to grain warehouse keepers and milk contractors.

Submitted by **DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION**

08-02-2018 RECEIVED BY LEGISLATIVE COUNCIL.

08-29-2018 REPORT SENT TO AGENCY.

SG:MQ

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz
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CLEARINGHOUSE RULE 18-061

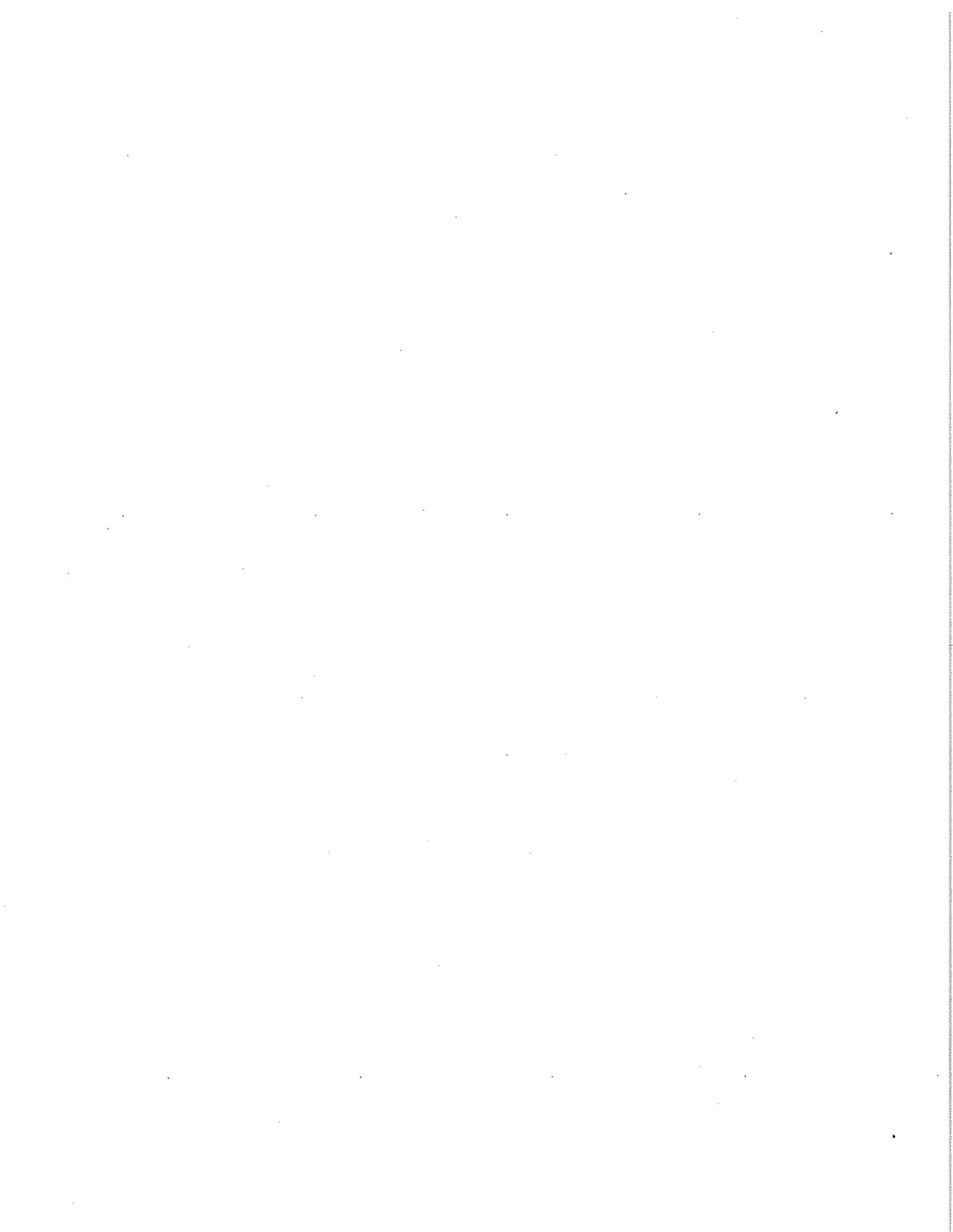
Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

2. Form, Style and Placement in Administrative Code

a. In s. ATCP 99.935 (2) (a) 2. and (b) 2. and (4) (b), where material is deleted and other material is inserted in the same location, the new underscored material should immediately follow the stricken material. [s. 1.06 (1), Manual.]

b. In s. ATCP 99.935 (2) (a) 2. and (b) 2. and (4) (b), where a single word is amended, the existing word should be stricken in its entirety and the new word should be underscored immediately after the stricken word. [s. 1.06 (2), Manual.]





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September 10, 2018

To: DATCP
From: John Manske & David Ward, Cooperative Network
RE: Support for EMR1816 and CR 18-061

Thank you to DATCP for holding the hearing today on the emergency rule relating to milk contractors and the Agricultural Producer Security (APS) program and the proposed permanent rule relating to grain contractors and milk contractors. Cooperative Network is one of the ten organizations that are represented on the Agricultural Producer Security Council. Cooperative Network's dairy members and farm supply members have a particular interest in the APS program and in the rules before you today. At meetings in April and June of this year the council acted affirmatively to support the emergency and permanent rules.

Several years ago when DATCP's audit discovered that there was some deferral of milk check payments that did not have a statutory basis, the agency communicated with the dairy industry to ensure compliance with the law that required twice monthly milk check payments. We communicated with our members and other dairy industry organizations to formulate a strategy of response that would provide some type of deferral allowance, which can be an important cash management tool. With the support of our members and other organizations we worked with DATCP to design an allowance for milk check deferral contracts between milk producer and purchaser. We successfully advocated to the legislature for statutory change. The resulting emergency rule and proposed permanent rule providing the details for deferred payment contracts in the dairy industry are the subject of this timely hearing. Cooperative Network supports both rules that make changes to ATCP 100.

Cooperative Network also supports the proposed permanent rule changes to ATCP 99 that will align grain warehouse keeper assessment reductions and exemption thresholds with the statutory changes that were enacted by the legislature under 2017 Wisconsin Act 155. The rule also addresses a prior drafting ^{error} relating to the assessment exemption for grain warehouse keepers. Cooperative Network was an active advocate for the legislation that was signed into law as Act 155.

Again, thank you to DATCP for holding this hearing on the emergency rule, which went into effect August 1, and the proposed permanent rule. We are in support of both and appreciate that DATCP worked very positively with the dairy industry to identify a remedy that enjoys broad industry support.

Wisconsin Department of Agriculture, Trade and Consumer Protection
APPEARANCE CARD *

NAME: John Manske

ADDRESS: 4930 Hwy N

CITY: Sun Prairie ZIP CODE: 53590

REPRESENTING: (if other than yourself) Cooperative Network

SUBJECT MATTER: ATCP 99 + 100

PLEASE CHECK ALL THAT APPLY:

I wish to speak on the proposal

I do not wish to speak on the proposal

I oppose the proposal

I favor part and oppose part of the proposal

I support the proposal

I take no position on the proposal

Other _____

Additional Comments: _____



2801 International Lane, Suite 105
Madison, WI 53704

Phone: (608) 223-1111
Fax: (608) 223-1147

My name is Tom Bressner, and I am the Executive Director of the Wisconsin Agri-Business Association.

Once again, I want to congratulate DATCP staff and the Agricultural Producers Security Council for the work they have done to develop proposed changes to the Agriculture Producers Security Program as detailed in the Emergency Rule - EmR1816 and Permanent Rule CR18-061. Detailed studies have been conducted by the Council, attempting to provide the best alternatives for the fund, while limiting risk to all sectors and making it fair to all sectors. They have taken no shortcuts and no one was excluded from these discussions. In the end, these proposed changes appear to be the best alternative to moving the program forward from here.

The Wisconsin Agri-Business Association fully supports EmR1816 and CR18-061, and I thank you for the opportunity to share our support here today.

Sincerely,
Tom Bressner
Executive Director
Wisconsin Agri-Business Association
2801 International Lane, Suite 105
Madison, WI 53704

Wisconsin Department of Agriculture, Trade and Consumer Protection
APPEARANCE CARD *

NAME: Tom Bressner

ADDRESS: Wisconsin Agri-Business Assoc. 2801 International Lane

CITY: Madison ZIP CODE: 53704 Suite 105

REPRESENTING: (if other than yourself) Wisconsin Agri-Business Association

SUBJECT MATTER: ATCP 99 and 100

PLEASE CHECK ALL THAT APPLY:

I wish to speak on the proposal

I do not wish to speak on the proposal

I oppose the proposal

I favor part and oppose part of the proposal

I support the proposal

I take no position on the proposal

Other written testimony

Additional Comments: _____