



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection

Ben Brancel, Secretary

DATE: February 9, 2017

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary 
Frank Frassetto, Administrator - Division of Trade and Consumer Protection 

SUBJECT: Grain dealers and grain warehouse keepers, milk contractors, and vegetable contractors;
Scope Statement, Wis. Admin. Code chs. ATCP 99, 100 and 101

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

REQUESTED ACTION:

At the February 16, 2017, Board meeting, the Department of Agriculture, Trade and Consumer Protection ("Department") will ask the Board to approve a "Statement of Scope" (copy attached) for proposed amendments to current rules related to grain dealers and grain warehouse keepers, milk contractors, and vegetable contractors.

The Agricultural Producer Security Fund ("Fund"), established by Wis. Stat. § 25.463 and administered by the Department, has been reduced by about 50% due to recent defaults; the balance attributed to vegetable contractors is currently well below its minimum threshold. This proposed rule would modify Wis. Admin. Code ch. ATCP 101 to increase vegetable contractor assessments, as required by statute, to address the portion of the Fund currently below its minimum threshold. This proposed rule will also amend portions of Wis. Admin. Code ch. ATCP 99 and Wis. Admin. Code ch. ATCP 100 based on findings from a recent actuarial study of the Fund and discussions with the Agricultural Producer Security Council. The actuarial study was conducted to, in part, examine the overall sustainability of the Fund and analyze the equitability of assessments contributed by each industry relative to anticipated losses. The Department plans to consider how expected future defaults and payments to and from the Fund impact current Fund balance thresholds and fairness between industries.

A scope statement spells out the general purpose and scope of a proposed rule. The Department may not begin to draft 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 DATCP Board ("Board") approves the scope statement. In accordance with 2011 Wisconsin Act 21 (Wis. Stat. § 227.135(2)), the Governor approved this scope statement for permanent rule changes on January 4, 2017, thereby allowing the Department to submit this scope statement for publication and to seek approval of the scope statement by the 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

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publication in the January 9, 2017, issue of the *Wisconsin Administrative Register*. The Department also filed a copy with DOA.

If the Board approves the scope statement, the Department will begin work to draft the permanent rules. Approval of a scope statement is just the first, preliminary step in a lengthy process for enacting permanent rules. The Board will have at least two further opportunities to review the proposed rules. The Board must approve a Hearing Draft rule before the Department may hold public hearings on the rule proposal. The Board must also approve the Final Draft rule before the Department may adopt the rule. The permanent rule will be effective when the Final Drafts have been approved by the Board, approved by the Governor, completed the legislative review process, and adopted by the Secretary.

STATEMENT OF SCOPE

Department of Agriculture, Trade and Consumer Protection (DATCP)

Rule No.: Ch. ATCP 99-100-101, Wis. Admin. Code (Existing)

Relating to: Grain dealers and grain warehouse keepers; milk contractors; vegetable contractors

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

N/A

2. Description of the objective of the rule:

This proposed rule would modify Wis. Admin. Code ch. ATCP 101 to increase vegetable contractor assessments, as required by statute, to address the portion of the Agricultural Producer Security Fund (Fund) that is currently below its minimum threshold. This proposed rule will also amend portions of ch. ATCP 99, Wis. Admin. Code, and ch. ATCP 100, Wis. Admin. Code based on both findings from a recent actuarial study of the Fund and discussions with the Agricultural Producer Security Council (APSC). This rule process will explore whether there should be changes in the assessment formulae and will implement any statutory changes that may have resulted from the study or from recommendations by the APSC. The Department plans to consider how expected future defaults and payments to and from the Fund impact current Fund balance thresholds and fairness between 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 Fund, established by Wis. Stat. § 25.463, 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 Fund annually. Funds are used to settle claims by producers in the event that a contractor defaults on a payment. Funds from each industry are accounted for separately and then deposited into the overall fund. Wis. Stat. ch. 126 establishes detailed fund assessment requirements, except that it requires the Department to establish milk contractor fund assessments by rule. Wis. Stat. ch. 126.88 (1), sets minimum and maximum fund balances for each industry, as well as a minimum and maximum balance requirement for the overall fund.

In 2014, a default by Allens Inc. caused the Fund to pay vegetable producers more than \$6 million. The resultant impact of this default is that the Fund balance attributed to vegetable

contractors is well below the minimum statutory threshold of \$800,000. The following year, a \$1 million default in the milk industry further drew down the Fund balance. As a result, the Department and the APSC identified the need to evaluate the entire agricultural producer security program. An actuarial study was conducted to, in part, examine the overall sustainability of the Fund and analyze the equitability of assessments contributed by each industry relative to anticipated losses. The Department adopted a number of interim emergency rules as a stopgap measure while it awaited the results of an actuarial study to consider possible permanent rule changes. In December 2015, the Department received the study of the Fund and began working with the APSC to develop recommendations for permanent changes in the agricultural producer security program.

Proposed policies. The Department is statutorily required to initiate rulemaking to modify Vegetable Contractor assessments as a result of its portion of the Fund balance being below its statutory threshold. Conversely, without a significant increase, the vegetable contractor portion of the Fund balance will remain negative for the foreseeable future.

Additionally, the actuarial study indicated that, while the overall Fund was sustainable long-term, adjustments may be needed to assessments or individual Fund balance thresholds to provide more equity across all industry segments.

Policy Alternatives. The Department must take some action to meet its statutory obligation with regard to the Fund balance attributable to Vegetable Contractors. A permanent solution must be reached or the Fund will not be able to meet its statutory obligation of default protection as dictated by Wis. Stat. ch. 126.

While awaiting the results of the actuarial study, the Department issued emergency rules for all three affected industries. The final one will lapse in February 2018. Due to the length of an administrative rule process, the Department may seek emergency rules in the interim. However, the Department anticipates that any emergency rule would mirror the final permanent rule that may be adopted.

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 Department to make such regulations as are necessary for the discharge of all the powers and duties of the department.

Wis. Stat. § 126.19 (4) (b), permits Department to specify form and content of disclosure in grain dealer deferred payment contracts.

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

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

Wis. Stat. § 126.88 (2) (a), directs the Department to promulgate a rule modifying assessments when the fund balance or a portion of the fund balance falls below the minimum amounts or rises above the maximum amounts required under Wis. Stats. § 126.88 (1) (a) through (e).

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 0.25 FTE staff to develop this rule. That includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating council meetings with the Agricultural Producer Security Council, holding public hearings, and communicating with other 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:

Milk, grain, and vegetable producers also have a stake in the health of the Fund, and could potentially be impacted by changes to the agricultural producer security overall fund balance.

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:

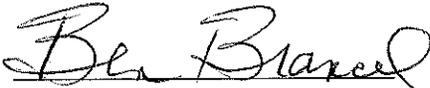
The Department will consider the Perishable Agricultural Commodities Act (PACA) provisions in any rewrite of the administrative rule. PACA is a federal program that addresses the activity of buying and selling fresh produce.

8. Anticipated economic impact

The Department expects the proposed rule to have minimal to no economic impact statewide or locally to the general public.

However, the three industries (grain, milk, and vegetable) will benefit from the solvency of the Fund if a future default should occur.

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

12-12-16
Date Signed