

MEETING MINUTES
AGRICULTURAL PRODUCER SECURITY COUNCIL

November 18, 2019

The Agricultural Producer Security Council held a meeting on Monday, November 18, 2019, at the headquarters of the Wisconsin Department of Agriculture, Trade and Consumer Protection, 2811 Agriculture Drive, Madison, Wisconsin.

Attendance

Eight council members were in attendance: Jason Culotta, Dave Daniels, Don Hamm, Howard Hartmann, John Manske, Greg Pollesch, John Umhoefer, and Andy Wallendal.

DATCP staff members present included Eric Hanson, Jeremy McPherson, Lori Ronnerud, David Woldseth, Lara Sutherlin, Interim Secretary Randy Romanski, General Counsel Jane Landretti and Paul LaZotte. Tom Bressner from the Wisconsin Agri-Business Association was also in attendance.

Agenda Item I Call to Order

Chair Dave Daniels called the meeting to order at 9:35 a.m. Recognizing three new members have been appointed to the Council, introductions were made.

Interim DATCP Secretary, Randy Romanski addressed the Council and welcomed the new members.

Agenda Item II Public Records Presentation

General Counsel, Jane Landretti gave a presentation regarding the roles and responsibilities Council members have under Wisconsin's Public Records Law.

Agenda Item III Election of Officers

Dave Daniels transferred control of the meeting to Jeremy McPherson who opened nominations for the position of APS Council Chair. John Manske nominated Dave Daniels. There were no other nominations. Jeremy McPherson requested a motion to close the nominations and cast a unanimous ballot electing Dave Daniels as Chair. Don Hamm so moved, John Umhoefer seconded, and the motion passed unanimously.

Dave Daniels resumed control of the meeting and opened nominations for the position of Vice-Chair. John Manske nominated John Umhoefer. There were no other nominations. Dave Daniels requested a motion to close nominations and cast a unanimous ballot electing John Umhoefer as Vice-Chair. Don Hamm so moved, John Manske seconded, and the motion passed unanimously.

Dave Daniels opened nominations for the position of Secretary. John Manske nominated Don Hamm. There were no other nominations. Dave Daniels requested a motion to close the nominations and cast a unanimous ballot electing Don Hamm as Secretary. Jason Culotta so moved, Andy Wallendal seconded, and the motion passed unanimously.

Agenda Item IV Approve Minutes from December 21, 2018 meeting

Chair Dave Daniels asked if there were any comments or corrections to the minutes from the December 21, 2018 meeting. Don Hamm stated that he was also present via telephone. With no other corrections, Jason Culotta moved to approve the minutes, as amended. Andy Wallendal seconded the motion. The motion was passed unanimously.

Agenda Item V Agriculture Producer Security Overview

Jeremy McPherson gave a brief overview and history of the program.

In one form or another, providing assurance to producers that they will be paid for their products dates back to 1935 when bonding was first required for vegetable buyers. A milk program began in 1939 and grain was added in 1979.

There have been numerous law changes over the last 85 years. Some of those changes strengthened regulatory requirements while others relaxed them. Most of these changes came in the aftermath of significant defaults or after long periods without any major producer losses.

One of the most significant changes came in 2001, when the Council was established and the Ag. Producer Security Fund was created. This state-managed trust fund allowed DATCP to release back to the agriculture industry over \$180 million in individual security (mostly bonds and letters of credit) posted by individual licensees.

Jeremy discussed the Council's program review and an actuarial study that occurred after a \$6 million default by vegetable contractor Allens, Inc. that occurred in 2014, which reduced the balance in the Fund by about 50%. The actuarial study found that, despite the unexpectedly large default, the program's overall funding mechanism is appropriate and equitable, and only minor adjustments were necessary. The Council made recommendations for Statutory and Administrative Code changes that led to 2017 Wisconsin Act 155 and two separate Administrative Code revisions.

The Act combined the grain dealer and grain warehouse keeper fund balance thresholds, as recommended by the actuarial study. The Act also permitted the dairy industry to use deferred payment contracts, which was a request from milk producers. There were two separate Administrative Code changes that were in the final stages of being adopted at the time of this meeting. Those changes include modifications to fees in all three industry segments:

- Establishing a surcharge for vegetable contractors to address its Fund balance shortfall,
- Reducing assessments for both grain dealers and milk contractors,
- Creating a milk contractor deferred payment assessment rate, and
- Aligning Admin Code language with the new statutory language.

Dave Daniels mentioned that the APS Council includes representatives from 5 industry organizations and from 5 producer associations. Greg Pollesch asked if the actuarial study set the maximums and minimums. Jeremy responded that those thresholds were established in the original legislation passed in 2001, and that the actuary studied how they stood up against future anticipated losses.

Agenda Item VI Agriculture Producer Security Fund – Annual Report

Eric reviewed the Statement of Revenues, Expenses, and Cash Balances, specifically noting both the increase in interest revenue and the overall growth of the Fund for Fiscal Year 2019. Eric then discussed individual license program balances, noting and explaining year to year variances in program revenues and expenses. Eric also reviewed the notes to the annual report highlighting changes that resulted from recent legislation and emergency/permanent rulemaking.

John Umhoefer noted that the June 30, 2019 Fund balance exceeds the \$11 million threshold that triggers assessment holidays. Eric acknowledged that the grain dealer and milk contractor license programs also exceed their individual fund balance thresholds. Eric further explained both programs will be eligible for assessment holidays in 2020, as long as both their individual program fund balances and the overall fund balance remain above their respective regulatory thresholds.

Agenda Item VII Administrative Rule Update

Jeremy McPherson reported that the first of the two rulemaking projects (CR 17-047) will be published in the Administrative Register on December 1, 2019. This rule makes permanent the emergency rule provisions that created the vegetable contractor surcharge and reduced grain dealer and milk contractor assessments.

The second rulemaking project (CR 18-061) is moving through the legislative review process. It's anticipated that this rule would go into effect no earlier than February 1, 2020. This rule was necessary due to statutory changes resulting from 2017 Wisconsin Act 155. These rule changes permanently establish the current emergency rule provisions creating a milk contractor deferred payment assessment rate. The rule also aligns the grain warehouse keeper assessment provisions with the new statutory thresholds. Dave Daniels asked for confirmation that the deferred payment assessment rate established for milk contractors mirrored the existing deferred payment assessment rate for Grain Dealers. Jeremy responded that the rates are the same.

Agenda Item VIII Default Proceedings

Jeremy McPherson reported about two defaults that occurred since the last time the Council had met.

First, Noble View Cheese (a licensed milk contractor) defaulted, leaving 5 producers unpaid, after its only customer failed to pay for cheese Noble View sold them. Although Noble View was able to reclaim the cheese, difficulty finding another buyer left Noble View unable to pay its producers. In total, producers were owed about \$205,000, and the Fund issued payments for \$165,000. In August 2019 Noble View was able to sell some of its cheese and pay producers the remaining amount owed. Since then, DATCP has continued pursuing reimbursement for the Fund. Dave Daniels asked if legal action was started against Noble View. Jeremy responded that, although the department has done that in the past (with assistance from the Dept. of Justice), legal action in this case would likely lead to bankruptcy resulting in any remaining assets going to secured creditors. Noble View no longer has a milk contractor license and is not permitted to procure producer milk.

Second, Frank's Feed Mill (a licensed grain dealer and an unlicensed grain warehouse keeper) closed its doors in August of 2019. When it closed, Frank's did not have sufficient grain inventory to cover its depositors. Frank's was not required to hold a license because it stored less than 50,000 bushels of grain for depositors. As an unlicensed warehouse, there was no coverage from the Fund for those producers. DATCP's role in the warehouse default was to oversee that the remaining grain was equitably distributed to depositors. While reviewing Frank's records, auditors discovered that producers who sold grain to Frank's had not been paid. As a result, a default proceeding was initiated. A total of eight claims were submitted, four of which were approved. Four of the claims were denied because the claimants either failed to file their claims timely (payment was more than 120 days past due) or the claim was for a storage loss rather than a sale. The four claims that were approved totaled \$33,000, of which \$26,700 was paid from the Fund.

John Manske asked about our reviews of licensed Grain Dealers and unlicensed Grain Warehouse Keepers. Jeremy said our only specific requirement for conducting reviews is that licensed warehouses must be audited every year or two depending on the licensee's financial ratios. Licensed grain dealers and unlicensed warehouses are reviewed on a regular schedule but may not be as frequent. Eric Hanson added that we are starting to focus more on unlicensed Grain Warehouse Keepers due to the number of recent compliance findings.

Dave Daniels asked about the Dean Foods bankruptcy and whether DATCP was involved. Jeremy said we were aware of it and have been in contact with the company. Although we cannot disclose specific financial information about our licensees, it's been publicly reported that they have received debtor financing and we have confirmed that producers would continue to be paid.

Other Business

Jeremy said John Manske's term was coming to an end and he was not going to seek reappointment; therefore, this was likely to be his final Council meeting. Jeremy recognized John as a charter member of the Council and thanked him for all his work for the program and the department. Jeremy mentioned that the DATCP Board will be recognizing John during its December meeting.

Chair Daniels asked if there were any questions from the new members. He then asked Jeremy how many appointments expire this coming June. Jeremy said that there are six members whose terms are expiring and he would be sending out nomination letters to organization leadership in late spring 2020. Chair Daniels reminded the group that there were no term limits and members could be re-nominated.

Agenda Item IX Adjourn

John Manske moved to adjourn the meeting at 11:52 a.m. Jason Culotta seconded the motion. The motion was unanimously approved.

Don Hamm, Secretary

Dave Daniels, Chair