

Clearinghouse Rule 07-073

DATCP Docket No. 06-R-11
Rules Clearinghouse No. _____

Proposed Hearing Draft
May 30, 2007

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
REPEALING AND RECREATING RULES**

The state of Wisconsin department of agriculture, trade and consumer protection proposes the following order *to amend* ATCP 99.135(2)(intro.), (c) and (d); and *to create* ATCP 99.11, 99.12(5)(c), 99.125, 99.126, 99.23, 99.235, 100.125, 101.23 and 101.245; *relating to* the agricultural producer security program.

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

Wisconsin's agricultural producer security program helps protect agricultural producers against catastrophic financial defaults by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (collectively referred to as "contractors").

Contractors must be licensed by the Department of Agriculture, Trade and Consumer Protection ("DATCP") and pay license fees. Most contractors must also pay assessments to an agricultural producer security fund ("fund"). In the event of a contractor default, DATCP may compensate producers from the fund.

This rule changes current grain dealer, grain warehouse keeper and vegetable contractor license fees. This rule changes current fund assessments for grain dealers (deferred payment assessment) and grain warehouse keepers, and changes required *minimum* fund assessments for grain dealers, grain warehouse keepers, milk contractors and vegetable contractors. This rule does not make any other significant changes in current contractor regulations.

Statutory Authority

Statutory authority: ss. 93.07(1), 126.81 and 126.88, Stats.

Statutes interpreted: ss. 126.81 and 126.88, States.

DATCP has broad authority, under s. 93.07(1), Stats., to adopt rules needed to implement laws under its jurisdiction. DATCP also has authority, under ss. 126.81 and 126.88, Stats., to establish license fees and fund assessments under the agricultural producer security program. Chapter 126, Stats., establishes license fees and fund assessments, but authorizes DATCP to change those license fees and fund assessments by rule.

Under current law, DATCP *must* modify fund assessments whenever fund balances fall outside a specified range. The fund balance attributed to the grain warehouse keeper sector currently falls below the required minimum of \$200,000. Therefore, DATCP *must* modify fund assessments for grain warehouse keepers. DATCP is authorized, but not required, to modify fund assessments for other contractors.

Background

DATCP administers the agricultural producer security program under ch. 126, Stats. DATCP has adopted rules to implement the program. The rules are contained in chs. ATCP 99-101, Wis. Adm. Code. Under current law:

- Licensed contractors must pay *license fees* to fund DATCP administration of the agricultural producer security program. Administration includes grain warehouse inspections, review of contractor financial statements, license administration and response to contractor financial defaults and law violations.
- Most contractors (“contributing contractors”) must pay *fund assessments* to finance the agricultural producer security fund. The fund is held in trust, for the benefit of producers. If a contractor defaults on payments to agricultural producers, DATCP may reimburse producers from the fund. Fund assessments are like insurance premiums, and are based on contractor size, financial condition and risk practices.

Prior to 2003, DATCP administrative costs were paid by a combination of general tax revenue (“GPR”) and contractor license fees. However, the 2003-2004 Biennial Budget Act eliminated virtually all GPR funding for program administration. That made it necessary to transfer staff from GPR funding to license fee funding. Partly as a result of that change, current license fee funding is no longer adequate to cover administrative costs. There has been a gradual growth in administrative costs, due to factors (such as statewide union contracts for accountants and auditors) that are outside DATCP control.

Funding shortfalls are especially severe in the grain dealer and grain warehouse keeper programs. Administrative costs now annually exceed license fee revenues by over \$200,000 in each of those programs, and each program has a negative cash balance of more than \$350,000. In the vegetable contractor program, administrative costs now annually exceed license fee revenues by over \$20,000, and the program has a negative cash balance (January 1, 2007) of more than \$50,000.

Deficits in the grain and vegetable administration accounts are currently being covered by milk contractor license fee revenues and by fund assessment revenues that would

normally go to the producer security fund. That unfairly affects milk contractors and reduces fund coverage for *all* producers (grain, milk and vegetable).

This rule increases annual license fees for grain dealers, grain warehouse keepers and vegetable contractors, to remedy current inequities and provide minimally adequate funding for program administration. This rule also adjusts fund assessments, especially for grain warehouse keepers (for whom an adjustment is required by law).

Notwithstanding this rule, the total of all contractor payments under the producer security (license fees plus fund assessments) will actually *decline* over the next few years, because of fee credits and declining formula rates that are built into the producer security law itself. This rule will slow, but not reverse, that overall decline. This rule will not have any significant impact on contractors' overall business costs.

Rule Contents

Grain Dealer License Fees

Current Fees

Under current law, a grain dealer must pay the following annual license fees and surcharges:

- A license processing fee of \$25.
- One of the following fees:
 - \$500 if the grain dealer purchased at least \$500,000 worth of producer grain in this state during the grain dealer's last completed fiscal year.
 - \$200 if the grain dealer purchased at least \$50,000 but less than \$500,000 worth of producer grain in this state in the grain dealer's last completed fiscal year.
 - \$50 if the grain dealer purchased less than \$50,000 worth of producer grain in this state in the grain dealer's last completed fiscal year.
- A \$225 fee per business location in excess of one location (but only if the grain dealer purchased \$500,000 worth of producer grain in this state during the grain dealer's last completed fiscal year).
- A \$45 fee per truck, in excess of one truck, that the grain dealer uses to haul grain in this state.

- A \$425 surcharge if the grain dealer submits a required financial statement that is not an audited financial statement.
- A \$500 surcharge if the grain dealer operated without a license at any time during the preceding year.
- A \$100 surcharge if the grain dealer, during the preceding year, failed to file a required financial statement by the required filing deadline.
- A \$100 surcharge if the grain dealer failed to file a license renewal application by the license expiration date of August 31.

Proposed Fees

This rule changes the calculation of grain dealer license fees. Under this rule, a grain dealer must pay the following fees and surcharges:

- A license processing fee of \$25 (same as current law).
- A fee equal to the lesser of the following amounts:
 - 0.175 cents per bushel of producer grain that the grain dealer procured in this state during the grain dealer's last completed fiscal year (the grain dealer must report the number of bushels of grain procured).
 - \$15,000.
- \$100 per business location in excess of one location (*regardless* of the grain dealer's annual grain purchase amount).
- A surcharge of \$500 if the grain dealer operated without a license at any time during the preceding year (same as current law).
- A surcharge of \$100 if the grain dealer, during the preceding year, failed to file a required financial statement by the required filing deadline (same as current law).
- A surcharge of \$100 if the grain dealer failed to file a license renewal application by the license expiration date of August 31 (same as current law).

This rule *eliminates* the following current grain dealer fees and surcharges:

- \$45 fee per truck.
- \$425 surcharge for submitting a required financial statement that is not an audited financial statement.

Grain Dealer Fund Assessments

Current Assessments

Under current law, a contributing grain dealer must pay the following annual fund assessments:

- A *basic assessment*, based on a formula that considers the total dollar value of Wisconsin grain purchased in the grain dealer's last completed fiscal year, the grain dealer's current ratio, and the grain dealer's debt-to-equity ratio. Other things equal, the formula yields declining basic assessments over time.
- A *deferred payment assessment*, if the grain dealer uses deferred payment contracts (which carry higher financial risk). The assessment equals total deferred payments for Wisconsin grain in the grain dealer's last completed fiscal year, multiplied by the following rate:
 - 0.0035 if the grain dealer has contributed to the fund for less than 5 years.
 - 0.002 if the grain dealer has contributed to the fund for 5 years or more.

Under current law, there is a minimum total assessment of \$20 (basic assessment plus deferred payment assessment).

Proposed Assessments

- *Basic assessment*. This rule does not change the calculation of a grain dealer's basic fund assessment (the formula continues to generate declining assessments over time), except that this rule creates a new minimum assessment based on volume (applies only to basic assessment):
 - \$20 for grain dealers who procured less than \$500,000 worth of Wisconsin grain in the preceding license year.
 - \$200 for grain dealers who procured at least \$500,000 but less than \$3,000,000 worth of Wisconsin grain.
 - \$500 for grain dealers who procured Wisconsin grain worth \$3,000,000 or more.
- *Deferred payment fund assessment*. Under this rule, the deferred payment assessment equals the grain dealer's total deferred payments for Wisconsin grain in the grain dealer's last completed fiscal year, multiplied by 0.0035 (*regardless* of how long the grain dealer has contributed to the fund). There is no minimum deferred payment assessment.

Grain Warehouse Keeper License Fees

Current Fees

Under current law, a grain warehouse keeper must pay the following annual license fees and surcharges:

- A nonrefundable license processing fee of \$25, plus an additional nonrefundable processing fee of \$25 for each separate warehouse in excess of one warehouse.
- An inspection fee based on the combined capacity of the grain warehouse keeper's warehouses:

Inspection Fee	Combined Warehouse Capacity (Bushels)
\$ 500	Less than 150,000
\$ 550	At least 150,000 but less than 250,000
\$ 600	At least 250,000 but less than 500,000
\$ 650	At least 500,000 but less than 750,000
\$ 700	At least 750,000 but less than 1,000,000
\$ 800	At least 1,000,000 but less than 2,000,000
\$ 900	At least 2,000,000 but less than 3,000,000
\$1,000	At least 3,000,000 but less than 4,000,000
\$1,100	4,000,000 or more.

- A supplemental inspection fee of \$275 for each grain warehouse that the grain warehouse keeper operates in excess of one warehouse.
- A surcharge of \$500 if the grain warehouse keeper operated without a license at any time during the preceding year.
- A surcharge of \$100 if the grain warehouse keeper failed to file an annual financial statement by the applicable deadline.
- A surcharge of \$100 if the applicant fails to renew a license by the license expiration date of August 31.

Proposed Fees

This rule changes the calculation of grain warehouse *inspection* fees, but makes no other changes to current grain warehouse keeper license fees or surcharges. The current inspection fee schedule (see above) is replaced by a formula. Under the new formula, a grain warehouse keeper pays an annual inspection fee equal to the lesser of the following amounts:

- The warehouse keeper's highest daily grain obligations to depositors (in bushels) in the preceding license year, multiplied by 0.3 cent per bushel.
- \$15,000.

Grain Warehouse Keeper Fund Assessments

Current Assessments

Under current law, a grain warehouse keeper must pay an annual fund assessment based on a formula that considers the warehouse keeper's licensed storage capacity, current ratio and debt-to-equity ratio. Other things equal, the formula yields declining assessments over time. There is a minimum assessment of \$20.

Proposed Assessments

Under this rule, a grain warehouse keeper must pay an annual fund assessment that is 50% higher than the assessment generated by the current formula (the formula does not change, and continues to yield declining assessments over time). There is a new minimum assessment based on storage volume:

- \$20 for grain warehouse keepers whose storage capacity is less than 300,000 bushels.
- \$100 for grain warehouse keepers whose storage capacity is at least 300,000 but less than 500,000 bushels.
- \$250 for grain warehouse keepers whose storage capacity is 500,000 bushels or more.

Milk Contractor License Fees

This rule makes no changes to current milk contractor license fees.

Milk Contractor Fund Assessments

Current Assessments

Under current law, a contributing milk contractor must pay an annual fund assessment based on a formula that considers the milk contractor's total Wisconsin milk payroll obligations for the contractor's last completed fiscal year, the milk contractor's current ratio, and the milk contractor's debt-to-equity ratio. Other things equal, the formula yields declining assessments over time. There is a minimum assessment of \$20.

Proposed Assessments

This rule does not change the calculation of milk contractor fund assessments (the current formula continues to generate declining assessments over time), except that this rule creates a new minimum assessment based on the contractor's total Wisconsin milk payroll obligations in the contractor's last completed fiscal year:

- \$20 for milk contractors with annual Wisconsin milk payroll obligations of less than \$1,500,000.
- \$200 for milk contractors with annual Wisconsin milk payroll obligations of at least \$1,500,000 but less than \$6,000,000.
- \$500 for milk contractors with annual Wisconsin milk payroll obligations of \$6,000,000 or more.

Vegetable Contractor License Fees

Current Fees

Under current law, vegetable contractors must pay the following annual license fees and surcharges:

- A nonrefundable license processing fee of \$25.
- A fee of \$25 plus 5.75 cents for each \$100 in Wisconsin vegetable procurement contract obligations (to vegetable producers) that the contractor incurred during the contractor's last completed fiscal year. This fee does not apply to "nonparticipating processing potato buyers."
- A \$500 fee if the vegetable contractor is a "nonparticipating processing potato buyer."
- A \$500 surcharge if the vegetable contractor operated without a license at any time during the preceding year.
- A \$100 surcharge if, during the preceding year, the vegetable contractor failed to file a required financial statement by its due date.
- A \$100 surcharge if the vegetable contractor failed to file a license renewal application by the license expiration date of January 31.

Proposed Fees

This rule increases the license fee component that is based on annual Wisconsin vegetable procurement contract obligations. It increases that fee component to \$25 plus 8.75 cents (currently 5.75 cents) for each \$100 in contract obligations.

This rule replaces the current \$500 fee for "nonparticipating potato buyers" with a fee equal to the lesser of the following amounts:

- \$25 plus 8.75 cents for each \$100 in annual contract obligations (same as other vegetable contractors).
- \$2,000.

This rule makes no other changes to current vegetable contractor license fees or surcharges.

Vegetable Contractor Fund Assessments

Current Assessments

Under current law, a contributing vegetable contractor must pay an annual fund assessment based on a formula that considers the contractor's total vegetable procurement contract obligations during the contractor's last completed fiscal year, the contractor's current ratio, and the contractor's debt-to-equity ratio. Other things equal, the formula yields declining assessments over time. There is a minimum assessment of \$20.

Proposed Assessments

This rule does not change the calculation of vegetable contractor fund assessments (the current formula continues to generate declining assessments over time), except that this rule creates a new minimum assessment based on contract volume:

- \$20 for vegetable contractors with contract obligations of less than \$500,000.
- \$200 for vegetable contractors with contract obligations of at least \$500,000 and less than \$4,000,000.
- \$500 for vegetable contractors with contract obligations of \$4,000,000 or more.

Business Impact

Agricultural Producers

This rule will benefit Wisconsin producers of grain, milk and vegetables, by preventing the erosion of the producer security program that helps protect them against catastrophic financial defaults by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (collectively "contractors").

This rule will generate enough license fee revenue to continue critical financial security monitoring activities, such as grain warehouse inspections and review of contractor financial statements. Without this rule, DATCP would have to curtail key monitoring activities that help control potentially catastrophic financial risks to producers and to the producer security fund.

This rule will also reverse the current diversion of fund assessment revenues from the agricultural producer security trust fund (to subsidize operating deficits in the grain and vegetable sectors). That will yield a slightly increased rate of fund growth which will, in turn, provide greater protection for producers in the event of a catastrophic contractor default.

This rule will not increase costs for agricultural producers, or have any significant impact on commodity prices paid to producers.

Contractors

This rule affects license fees and fund assessments paid by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors, but does not change other contractor regulations.

Current Cost to Contractors

Current license fees and fund assessments represent a *very* small share of overall contractor costs. For example:

- Current grain dealer license fees and fund assessments represent only about *11 hundredths of one percent* of the grain dealers' annual Wisconsin grain procurement costs (\$672,000 in fees and fund assessments, compared to \$599 *million* in grain purchased from Wisconsin producers in FY 2005-06).
- Current grain warehouse keeper license fees and fund assessments represent less than *2 hundredths of one percent* of the grain warehouse keepers' annual Wisconsin "cost of sales" (\$210,000 in fees and fund assessments, compared to about \$1.7 *billion* in "cost of sales" for FY 2005-06).
- Current milk contractor license fees and fund assessments represent only about *3 hundredths of one percent* of the contractors' annual Wisconsin milk procurement costs (\$1.2 million in producer security license fees and fund assessments, compared to about \$3.5 *billion* paid for milk produced by Wisconsin farmers in FY 2005-06).
- Current vegetable contractor license fees and fund assessments represent only about *8 hundredths of one percent* of the contractors' annual vegetable procurement costs (\$138,000 in producer security license fees and fund assessments, compared to \$170 *million* in procurement contract obligations to Wisconsin producers in FY 2005-06).

Current contractor license fees and fund assessments represent an even smaller share of *overall* contractor costs (including costs for labor, buildings, equipment, debt service, overhead, etc., in addition to commodity procurement costs).

Declining Costs

Total contractor license fees and fund assessments will actually *decline* over the next few years, because of fee credits and declining formula rates built into the producer security law itself. This rule will reduce the rate at which overall contractor fees and fund assessments decline. But even with this rule, the total of all contractor license fees and fund assessments will be about *5% lower* in FY 2009-10 than in FY 2005-06 (other things equal).

Total license fees and fund assessments will decline in every business sector *except* the grain dealer and grain warehouse sector, where license fees and assessments will increase to pay a proportionate share of administrative costs and to provide a proportionate contribution to the producer security fund.

The following table shows *combined total license fees and fund assessments* by business sector for FY 2005-06. It also compares projected totals for FY 2009-10 *with* and *without* this rule:

Total Contractor License Fees and Fund Assessments (Net of Credits)			
	FY 2005-06	FY 2009-10* <i>Without this rule</i>	FY 2009-10* <i>With this rule</i>
Grain Dealers	\$672,000	\$395,000	\$674,000
Grain Warehouse Keepers	\$210,000	\$169,000	\$428,000
Milk Contractors	\$1,272,000	\$1,018,000	\$1,027,000
Vegetable Contractors	\$138,000	\$42,000	\$48,000
TOTAL	\$2,292,000	\$1,624,000	\$2,177,000

* Projection assumes constant procurement volumes, commodity price levels and contractor financial strength.

The projected decline in total license fees and fund assessments (with or without this rule) results from the following features built into the current producer security law (this rule will not change those features):

- *License fee credits.* If the fund balance contributed by an industry sector reaches a specified statutory threshold, a portion of the balance is returned to contributing contractors in that sector (as a credit on their license fees). Contributing vegetable contractors are already enjoying credits that significantly reduce their license fees, and milk contractors began receiving credits in May, 2007. Those credits will dramatically reduce fees for contributing contractors, even when this rule is in effect.
- *Falling assessment rates.* Under the producer security law, fund assessment rates decline after a contractor has contributed to the fund for a specified number of years (4 to 6 years depending on contractor type and financial condition). Because the producer security fund is about five years old, most contributing contractors are now

beginning to pay significantly lower fund assessments than they were a short time ago. That trend will continue, regardless of this rule.

Effects Vary Between Contractors

The impact of this rule may vary considerably between individual contractors within a business sector. License fees and assessments may be affected by a number of variables, including contractor size, contractor financial strength, contractor risk practices and commodity prices.

For many contractors, this rule will slow the rate at which the contractor's fees and fund assessments would otherwise decline. Some contractors (especially grain warehouse keepers) may have increased fees and fund assessments. For a few contractors, this rule will actually speed the reduction of fees and fund assessments. Many contractors (especially milk contractors) will be unaffected by this rule.

Fiscal Impact

Under the agricultural producer security law:

- Licensed contractors must pay *license fees* to fund DATCP administration of the agricultural producer security program. Administration includes grain warehouse inspections, review of contractor financial statements, license administration, and response to contractor financial defaults and law violations.
- Most contractors (“contributing contractors”) must pay *fund assessments* to finance the agricultural producer security fund. The fund is held in trust, for the benefit of producers. If a contractor defaults on payments to agricultural producers, DATCP may reimburse producers from the fund.

Prior to 2003, DATCP administrative costs were paid by a combination of general tax revenue (“GPR”) and contractor license fees. However, as part of the GPR reductions in Act 33, the 2003-2005 Biennial Budget, 2.9 FTE positions and support costs were converted from GPR to the Agricultural Producer Security SEG fund. Partly as a result of that change, current license fee funding is no longer adequate to cover administrative costs. There has been a gradual growth in administrative costs, due to factors (such as statewide union contracts for accountants and auditors) that are outside DATCP control.

Funding shortfalls are especially severe in the grain dealer and grain warehouse keeper programs. Administrative costs now annually exceed license fee revenues by over \$200,000 in each of those programs, and each program has a negative cash balance of

more than \$336,000. In the vegetable contractor program, administrative costs now annually exceed license fee revenues by over \$20,000.

Deficits in the grain and vegetable administration sub accounts affect the total cash balance in Agriculture Producer Security Fund. This unfairly affects milk contractors since the total fund balance is incorporated into the formula that calculates their required security amounts and also affects the total funds available to pay a default.

This rule increases annual license fees for grain dealers, grain warehouse keepers and vegetable contractors, to remedy current inequities and provide minimally adequate funding for program administration (the fee increases for vegetable contractors will be largely offset by fee credits built into the producer security law). This rule also adjusts fund assessments, especially for grain warehouse keepers (for whom an adjustment is required by law).

Notwithstanding this rule, total revenue derived from contractor payments under the producer security program (license fees plus fund assessments) will actually *decline* over the next few years, because of fee credits and declining formula rates that are built into the producer security law itself. This rule will slow, but not reverse, that overall decline.

License Fee Revenues

The following table shows actual license fee revenues for FY 2005-06, compared to *projected* license fee revenue in FY 2009-10 (*with* and *without* this rule):

Total License Fee Revenues (Net of Contractor Credits)			
	FY 2005-06	FY 2009-10* <i>Without this rule</i>	FY 2009-10* <i>With this rule</i>
Grain Dealers	\$160,000	\$155,000	\$405,000
Grain Warehouse Keepers	\$159,000	\$149,000	\$393,000
Milk Contractors	\$363,000	\$159,000	\$159,000
Vegetable Contractors	\$16,000	\$5,000	\$8,000
TOTAL	\$698,000	\$468,000	\$965,000

* Projection assumes constant procurement volumes, commodity price levels and contractor financial strength.

Projected milk and vegetable contractor license fee revenues for FY 2009-10 are affected, to a very considerable degree, by license fee credits built into the producer security law itself. When the producer security fund balance attributable to an industry sector (such as milk or vegetables) reaches a specified statutory “trigger” amount, a portion of the balance is returned to contributing contractors in that sector (as a credit on their license fees).

Contributing vegetable contractors are already enjoying credits that significantly reduce their license fees, and milk contractors began receiving credits in May, 2007. Grain dealers and grain warehouse keepers do not yet qualify for these credits, because their fund contributions have not yet attained the required level (nor are they likely to do so prior to FY 2009-10).

Increased annual license fee revenues will be adequate to cover annual DATCP administrative costs. To the extent that annual license fee revenues exceed annual administrative costs, the additional revenues will offset the deficit in the administrative sub account.

Producer Security Fund; Assessment Revenues

The agricultural producer security fund currently has a balance of approximately \$7,493,000. No more than 60% of the fund balance can be paid out in any individual contractor default. The current fund balance is adequate to cover defaults by most, but not all, individual contractors. Continued fund growth will improve protection for producers, and minimize the need for supplementary security from contractors.

Contributing contractors pay fund assessments to finance the agricultural producer security fund. Annual assessment revenues will decline over the next few years (*with* or *without* this rule), because of fee credits and declining formula rates built into the producer security law. Annual assessment revenues will decline across all business sectors. This rule will slow (but not reverse) the projected decline of annual assessment revenues.

The following table shows actual fund assessment revenues for FY 2005-06, and *projected* assessment revenues for FY 2009-10 (*with* and *without* this rule):

Total Fund Assessment Revenues			
	FY 2005-06	FY 2009-10* <i>Without this rule</i>	FY 2009-10* <i>With this rule</i>
Grain Dealers	\$512,000	\$240,000	\$269,000
Grain Warehouse Keepers	\$51,000	\$20,000	\$35,000
Milk Contractors	\$909,000	\$859,000	\$868,000
Vegetable Contractors	\$122,000	\$37,000	\$40,000
TOTAL	\$1,594,000	\$1,156,000	\$1,212,000

* Projection assumes constant procurement volumes, commodity price levels and contractor financial strength.

Cash in the assessment sub account currently covers the negative cash balances in the grain and vegetable administration sub accounts. That is slowing the rate of growth in

the assessment sub account, and reducing the fund coverage for all producers (grain, milk, and vegetable). By correcting current grain and vegetable license fee revenue shortfalls, this rule will eliminate the current drain on the producer security fund. That, combined with the adjustment of fund assessment rates, will cause the fund balance to grow at a faster rate. Faster growth will increase protection for producers, and reduce supplementary security demands on contractors.

Without this rule, DATCP projects that the fund balance will grow to \$8,332,000 at the end of FY 2009-10. With this rule, DATCP projects that the fund balance will grow to \$9,425,000 by the end of FY 2009-10. Under this rule, the fund balance amount attributable to grain warehouse keeper assessments will build over several years toward the required statutory minimum (it currently falls short of the required minimum).

Federal and Surrounding State Regulations

Federal Programs

There is no federal producer security program related to milk. The United States department of agriculture (USDA) administers a producer security program for federally licensed *grain warehouses* that store grain for producers. Grain warehouses may choose whether to be licensed under state or federal law. Federally-licensed warehouses are exempt from state warehouse licensing and security requirements. State-licensed warehouses are likewise exempt from federal requirements.

The federal grain warehouse program provides little or no protection against financial defaults by *grain dealers*. Grain dealers are persons who buy and sell grain. Sometimes, grain dealers also operate grain warehouses. DATCP currently licenses grain dealers. Licensed warehouse keepers must also hold a state grain dealer license if they engage in grain dealing.

USDA has informally proposed to regulate *grain dealer* activities (grain “merchandising”) by federally licensed warehouse keepers, to the exclusion of state regulation. But USDA has not yet officially introduced its proposed regulations. In any case, the federal regulations would not apply to state-licensed grain warehouses, or to *grain dealers* who do not operate a warehouse.

There is a federal security program for vegetables. That security program is mainly limited to fresh market vegetables, and consists of a priority lien against vegetable-related assets. Wisconsin’s vegetable security program applies only to processing vegetables (not fresh market vegetables covered by federal regulations). Wisconsin’s program uses an indemnity fund, rather than a priority lien-type program. Unlike the *federal* priority lien program, a *state* priority lien program would not work because it would be preempted by federal bankruptcy law.

There may be some limited overlap between the Wisconsin and federal programs, but that overlap is justified because the scope of federal coverage is not entirely clear.

Overlap was reduced by recent Wisconsin legislation, which permits certain potato buyers covered under the federal program to opt out of most of the state program.

Surrounding States

In Minnesota, contractors must be licensed to procure grain, milk or processing vegetables from producers, or to operate grain warehouses. Regulated contractors must file bonds as security against default. The program is financed through industry fees and general tax revenues.

Neither Iowa nor Illinois have producer security programs for milk or vegetables. However, both states maintain indemnity funds to protect grain producers. Fund assessments are based solely on grain volume. In Wisconsin, by contrast, fund assessments are based on grain volume and financial condition. Iowa and Illinois finance their programs through industry fees and general tax revenues.

Michigan has the following producer security programs:

- Potato dealers must be licensed, and must post bonds as security against defaults. (Wisconsin's vegetable security program includes, but is not limited to, potatoes.)
- Dairy plants that fail to meet minimum financial standards must file security or pay cash for milk.
- Grain producers have the option of paying premiums into a state fund. In the event of a grain default, the fund reimburses participating producers.
- These programs are financed through industry fees and general tax revenues.

DATCP Contact

Questions and comments related to this rule, including comments for the hearing record, may be directed to the following address:

Department of Agriculture, Trade and Consumer Protection
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SECTION 1. ATCP 99.11 is created to read:

ATCP 99.11 Grain dealer; annual report of grain purchases. A person applying for an annual grain dealer license under s. 126.11, Stats., shall include, in the sworn and notarized statement required under s. 126.11(9), Stats., the total number of bushels of producer grain that the grain dealer procured in this state during the grain dealer's most recently completed fiscal year. If the applicant has not yet operated as a grain dealer, the statement shall estimate the total number of bushels that the applicant will procure in the applicant's first full fiscal year of operation as a grain dealer.

SECTION 2. ATCP 99.12(5)(c) is created to read:

ATCP 99.12(5)(c) The total number of bushels of producer grain that the grain dealer procured in this state during the grain dealer's most recently completed fiscal year, and during each month of that fiscal year.

SECTION 3. ATCP 99.125 is created to read:

ATCP 99.125 Grain dealers; license fees and surcharges. A person applying for an annual grain dealer license under s. 126.11, Stats., shall pay all of the following license fees and surcharges, rather than the license fees and surcharges provided in s. 126.11(4), Stats.:

- (1) A nonrefundable license processing fee of \$25.
- (2) A fee equal to the lesser of the following amounts:
 - (a) The number of bushels reported under s. ATCP 99.11 multiplied by 0.175 cents per bushel.
 - (b) \$15,000.
- (3) A fee of \$100 per business location in excess of one business location.

(4) A surcharge of \$500 if the department determines that, within 365 days before submitting the license application, the applicant operated as a grain dealer without a license in violation of s. 126.11(1), Stats. The applicant shall also pay any license fees, license surcharges, and fund assessments that are still due for any license year in which the applicant violated s. 126.11(1), Stats.

(5) A surcharge of \$100 if during the preceding 12 months that applicant failed to file an annual financial statement required under s. 126.13(1)(b), Stats., by the deadline specified in s. 126.13(1)(c), Stats.

(6) A surcharge of \$100 if a renewal applicant failed to renew a license by the license expiration date of August 31. This paragraph does not apply to a grain dealer who is exempt from licensing under s. 126.11(2), Stats., but volunteers to be licensed.

SECTION 4. ATCP 99.126 is created to read:

ATCP 99.126 Contributing grain dealers; fund assessments. (1) **GENERAL.** A contributing grain dealer shall pay an annual fund assessment for each license year. The annual fund assessment shall be calculated under this section, rather than under s. 126.15(1), Stats. Except as provided in sub. (4), the annual fund assessment shall equal the sum of the assessments in subs. (2) and (3).

(2) **BASIC ASSESSMENT.** (a) A contributing grain dealer who reports less than \$500,000 in grain payments under s. 126.11(9)(a), Stats., shall pay a basic assessment equal to the greater of the following amounts:

1. \$20.
2. The sum of the amounts calculated under ss. 126.15(1)(a) and (b), Stats.

(b) A contributing grain dealer who reports at least \$500,000 but less than \$3,000,000 in grain payments under s. 126.11(9)(a), Stats., shall pay a basic assessment equal to the greater of the following amounts:

1. \$200.
2. The sum of the amounts calculated under ss. 126.15(1)(a) and (b), Stats.

(c) A contributing grain dealer who reports \$3,000,000 or more in grain payments under s. 126.11(9)(a), Stats., shall pay a basic assessment equal to the greater of the following amounts:

1. \$500.
2. The sum of the amounts calculated under ss. 126.15(1)(a) and (b), Stats.

(3) DEFERRED PAYMENT ASSESSMENT. A contributing grain dealer shall pay a deferred payment assessment equal to 0.0035 multiplied by the amount, if any, that the grain dealer reports under s. 126.11(9)(b), Stats., in the grain dealer's license application for that license year.

(4) REDUCED ASSESSMENT. A contributing grain dealer's annual fund assessment under sub. (1) is reduced by the following applicable amounts:

(a) The amount calculated under s. 126.15(6m), Stats., if the contributing grain dealer files security under s. 126.16(1)(c), Stats.

(b) The amount of any refund that applies under s. ATCP 99.13. The refund shall be paid as a credit against the contributing grain dealer's annual fund assessment for the next license year, as provided in s. ATCP 99.13(3).

(c) The amount of any assessment reduction that applies under s. ATCP 99.135.

SECTION 5. ATCP 99.135(2)(intro.), (c) and (d) are amended to read:

ATCP 99.135(2)(intro.) If, for the duration of a license year, a contributing grain dealer maintains security under sub. (1) or 126.16(2), Stats., or both, in an amount that is at least equal to the grain dealer's estimated default exposure less the maximum fund reimbursement amount, the contributing grain dealer's annual fund assessment under s. ~~126.15, Stats.~~ ATCP 99.126(1) for that year is reduced by an amount that is determined as follows:

(c) Multiply the result in par. (b) by the amount of the grain dealer's annual fund assessment under s. ~~126.15(1), Stats.~~ ATCP 99.126(1), disregarding any assessment reduction under s. ~~126.15(6m), Stats.~~ ATCP 99.126(4)(a).

(d) Subtract, from the result in par. (c), the amount of any assessment reduction given under s. ~~126.15(6m), Stats.~~ ATCP 99.126(4)(a).

SECTION 6. ATCP 99.23 is created to read:

ATCP 99.23 Grain warehouse keepers; license fees and surcharges. A person applying for an annual grain warehouse keeper license under s. 126.26, Stats., shall pay the following license fees and surcharges, rather than the license fees and surcharges provided in s. 126.26(3), Stats.:

(1) A nonrefundable license processing fee of \$25 plus \$25 for each grain warehouse identified under s. 126.26(2)(d), Stats. If a grain warehouse keeper operates 2 or more grain warehouses located within 0.5 mile of each other, the grain warehouse keeper may treat those grain warehouses as a single grain warehouse for purposes of this subsection and par. (c).

(2) An inspection fee equal to the lesser of the following amounts, minus any fee credit to which the grain warehouse keeper is entitled under s. 126.26(5), Stats.

(a) The warehouse keeper's highest total grain obligation to depositors on any single day during the previous license year, as recorded in the warehouse keeper's daily position record under s. 126.32(2)(d), Stats., multiplied by 0.3 cent per bushel.

(b) If the grain warehouse keeper did not operate as a grain warehouse keeper during the previous license year, the capacity of the warehouses in which the warehouse keeper will be storing grain for others during the license year for which the application is filed, multiplied by 0.3 cent per bushel.

(c) \$15,000.

(3) A supplementary inspection fee of \$275 for each grain warehouse that the applicant operates in excess of one grain warehouse.

(4) A surcharge of \$500 if the department determines that, within 365 days before submitting the license application, the applicant operated as a grain warehouse keeper in violation of s. 126.26(1), Stats. The applicant shall also pay any license fees, license surcharges and fund assessments that are still due for the license year in which the applicant violated s. 126.26(1), Stats.

(5) A surcharge of \$100 if during the preceding 12 months the applicant failed to file an annual financial statement required under s. 126.28(1)(b), Stats., by the applicable deadline.

(6) A surcharge of \$100 if a renewal applicant fails to renew a license by the license expiration date of August 31.

SECTION 7. ATCP 99.235 is created to read:

ATCP 99.235 Contributing grain warehouse keepers; fund assessments.

(1) GENERAL. A contributing grain warehouse keeper shall pay an annual fund assessment for each license year. The annual fund assessment shall be calculated under this section, rather than under s. 126.30(1), Stats. Except as provided in sub. (3), the annual fund assessment shall be calculated according to sub. (2).

(2) ASSESSMENT AMOUNT. (a) A contributing grain warehouse keeper who operates grain warehouses with a combined capacity of less than 300,000 bushels shall pay an annual fund assessment equal to the greater of the following amounts:

1. \$20.
2. The sum of the amounts calculated under ss. 126.30(1)(a) and (1)(b), Stats., multiplied by 1.5.

(b) A contributing grain warehouse keeper who operates grain warehouses with a combined capacity of at least 300,000 but less than 500,000 bushels shall pay an annual fund assessment equal to the greater of the following amounts:

1. \$100.
2. The sum of the amounts calculated under ss. 126.30(1)(a) and (b), Stats., multiplied by 1.5.

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

1. \$250.
2. The sum of the amounts calculated under ss. 126.30(1)(a) and (1)(b), Stats., multiplied by 1.5.

(3) REDUCED ASSESSMENT. A contributing grain warehouse keeper's annual fund assessment under sub. (1) is reduced by the following applicable amounts:

(a) The amount calculated under s. 126.30(5m), Stats., if the contributing grain warehouse keeper files security under s. 126.31(1)(b), Stats.

(b) The amount of any refund that applies under s. ATCP 99.25. The refund shall be paid as a credit against the contributing grain warehouse keeper's annual fund assessment for the next license year, as provided in s. ATCP 99.25(3).

(c) The amount of any assessment reduction that applies under s. ATCP 99.255.

SECTION 8. ATCP 100.125 is created to read:

ATCP 100.125 Contributing milk contractors; fund assessments. (1)

GENERAL. A contributing milk contractor shall pay an annual fund assessment for each license year. The annual fund assessment shall be calculated under this section, rather than under s. 126.46(1), Stats. Except as provided in sub. (3), the annual fund assessment shall be calculated according to sub. (2).

(2) ASSESSMENT AMOUNT. (a) A contributing milk contractor who reports less than \$1,500,000 in annual milk payroll obligations under s. 126.41(6), Stats., shall pay an annual fund assessment equal to the greater of the following amounts:

1. \$20.
2. The sum the of amounts calculated under ss. 126.46(1)(a) and (b), Stats.

(b) A contributing milk contractor who reports at least \$1,500,000 but less than \$6,000,000 in annual milk payroll obligations under s. 126.41(6), Stats., shall pay an annual fund assessment equal to the greater of the following amounts:

1. \$200.

2. The sum the of amounts calculated under ss. 126.46(1)(a) and (b), Stats.

(c) A contributing milk contractor who reports \$6,000,000 or more in annual milk payroll obligations under s. 126.41(6)(a), Stats., shall pay an annual fund assessment equal to the greater of the following amounts:

1. \$500.

2. The sum the of amounts calculated under ss. 126.46(1)(a) and (b), Stats.

(3) REDUCED ASSESSMENT. A contributing milk contractor's annual fund assessment under sub. (1) is reduced by the following applicable amounts:

(a) The amount calculated under s. 126.46(5m), Stats., if the contributing milk contractor files security under s. 126.47(1)(b), Stats.

(b) The amount of any refund that applies under s. ATCP 100.13. The refund shall be paid as a credit against the contributing milk contractor's annual fund assessment for the next license year, as provided in s. ATCP 100.13(3).

(c) The amount of any assessment reduction that applies under s. ATCP 100.135.

SECTION 9. ATCP 101.23 is created to read:

ATCP 101.23 Vegetable contractor license fees. A person applying for an annual vegetable contractor license under s. 126.56, Stats., shall pay all of the following license fees and surcharges, rather than the license fees and surcharges provided in s. 126.56(4), Stats.:

(1) A nonrefundable license processing fee of \$25.

(2) A fee of \$25 plus 8.75 cents for each \$100 in contract obligations reported under s. 126.56(9)(a), Stats., less any fee credits for which the vegetable contractor

qualifies under s. 126.56(6), Stats. This subsection does not apply to a processing potato buyer who has elected under s. 126.595(1) not to participate in the fund.

(3) For a processing potato buyer who has elected under s. 126.595(1) not to participate in the fund, a fee equal to the lesser of the following amounts:

(a) \$25 plus 8.75 cents for each \$100 in contract obligations reported under s. 126.56(9)(a), Stats.

(b) \$2,000.

(4) A surcharge of \$500 if the department determines that, within 365 days before submitting the license application, the applicant operated as a vegetable contractor without a license in violation of s. 126.56(1), Stats. The applicant shall also pay any license fees, license surcharges, and fund assessments that are still due for the license year in which the applicant violated s. 126.56(1), Stats.

(5) A surcharge of \$100 if during the preceding 12 months the applicant failed to file an annual financial statement required under s. 126.58(1)(b), Stats., by the applicable deadline.

(6) A surcharge of \$100 if a renewal applicant fails to renew a license by the license expiration date of January 31.

SECTION 10. ATCP 101.245 is created to read:

ATCP 101.245 Vegetable contractor fund assessments. (1) **GENERAL.** A contributing vegetable contractor shall pay an annual fund assessment for each license year. The annual fund assessment shall be calculated under this section, rather than under s. 126.60(1), Stats. Except as provided in sub. (3), the annual fund assessment shall be calculated according to sub. (2).

(2) ASSESSMENT AMOUNT. (a) A contributing vegetable contractor who reports less than \$500,000 in contract obligations under s. 126.56(9)(a), Stats., shall pay an annual fund assessment equal to the greater of the following amounts:

1. \$20.
2. The sum of the amounts calculated under ss. 126.60(1)(a), (b) and (c).

(b) A contributing vegetable contractor who reports at least \$500,000 but less than \$4,000,000 in contract obligations under s. 126.56(9)(a), Stats., shall pay an annual fund assessment equal to the greater of the following amounts:

1. \$200.
2. The sum of the amounts calculated under ss. 126.60(1)(a), (b) and (c).

(c) A contributing vegetable contractor who reports \$4,000,000 or more in contract obligations under s. 126.56(9)(a), Stats., shall pay an annual fund assessment equal to the greater of the following amounts:

1. \$500.
2. The sum of the amounts calculated under ss. 126.60(1)(a), (b) and (c).

(3) REDUCED ASSESSMENT. A contributing vegetable contractor's annual fund assessment under sub. (1) is reduced by the following applicable amounts:

(a) The amount calculated under s. 126.60(5m), Stats., if the contributing vegetable contractor files security under s. 126.61(1)(bm), Stats.

(b) The amount of any refund that applies under s. ATCP 101.25. The refund shall be paid as a credit against the contributing vegetable contractor's annual fund assessment for the next license year, as provided in s. ATCP 101.25(3).

(c) The amount of any assessment reduction that applies under s. ATCP 101.255.

EFFECTIVE DATE. (a) Except as provided in par. (b), this rule takes effect on the first day of the month following publication in the Wisconsin administrative register, as provided under s. 227.22(2) (intro.), Stats.

(b) Pursuant to s. 227.22(2)(e), Stats., for small businesses as defined in s. 227.114(1), Stats., this rule takes effect on the first day of the third month commencing after the date of publication in the Wisconsin administrative register.

INITIAL APPLICABILITY. This rule first applies to fees and surcharges that are payable for the following license years:

(a) For grain dealers and grain warehouse keepers, the license year that begins on September 1, 2008.

(b) For milk contractors, the license year that begins on May 1, 2009.

(c) For vegetable contractors, the license year that begins on February 1, 2009.

Dated this _____ day of _____, _____.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Rodney J. Nilsestuen, Secretary