

**WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION**

EMERGENCY RULE

The Wisconsin department of agriculture, trade and consumer protection hereby adopts the following emergency rule *to amend* Wis. Admin. Code § ATCP 99.126 (5) (c) and § 99.235 (4) (c) *relating to* grain dealer and grain warehouse keeper agricultural producer security fund assessments.

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

This emergency rule amends one of three fund assessment exemption requirements for grain dealer and grain warehouse keepers, reducing the overall fund minimum balance requirement from \$11 million to \$5 million.

The Wisconsin department of Agriculture, Trade and Consumer Protection (“Department”) adopts this temporary emergency rule. At this time, the Department is in the process of evaluating the Agricultural Producer Security Program and has not yet determined what changes will be made to the permanent rule, if any. This emergency rule will take effect September 1, 2016, and will remain in effect for 150 days. The legislature’s joint committee for review of administrative rules may extend the emergency rule for up to 120 additional days.

Statutes Interpreted

Statutes Interpreted: Wis. Stat. §§ 126.15 and 126.30.

Statutory Authority

Statutory Authority: Wis. Stat. §§ 93.07(1), 126.81(1)(a), 126.88(1), and 227.24.

Explanation of Statutory Authority

The Department has broad general authority under Wis. Stat. § 93.07(1), to interpret laws under its jurisdiction. The Department has specific authority under Wis. Stat. § 126.81(1)(a) to interpret and implement Wis. Stat. ch. 126. The Department also has specific authority under Wis. Stat. § 126.88(1) and (2) to modify agricultural producer security assessments prescribed under Wis. Stat. ch. 126. The Department adopts this temporary emergency rule under authority of Wis. Stat. § 227.24.

Related Statutes and Rules

The Agricultural Producer Security Program is governed under Wis. Stat. ch. 126. More specifically, assessments into the producer security fund are calculated pursuant to Wis. Stat. § 126.15 (1) for grain dealers and Wis. Stat. § 126.30 (1) for grain warehouse keepers.

Wis. Admin. Code ch. ATCP 99 interprets and implements Wis. Stat. ch. 126, as it relates to grain dealers and grain warehouse keepers. The Department has explicit authority to implement administrative rules modifying the grain dealer assessments prescribed in the statutes.

Plain Language Analysis

Background

The Agricultural Producer Security Fund (“APSF”) is a public trust administered by the Department. Milk contractors, grain dealers, grain warehouse keepers, and vegetable contractors (collectively, contractors) must obtain a Department license to procure milk, grain, or vegetables, respectively, from producers, and are required to contribute to the APSF annually. Funds are used to settle claims by producers in the event that a contractor defaults on payment or fails to return grain held in storage. Funds from each industry are accounted for separately and 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 sets minimum fund balances for each industry as well as a minimum balance requirement for the overall fund.

Wis. Admin. Code § ATCP 99.126 (5) establishes a fund assessment exemption for grain dealers. Wis. Admin. Code § ATCP 99.235 (4) establishes a fund assessment exemption for grain warehouse keepers. To be eligible, a licensee must have been a contributing grain dealer or grain warehouse keeper in each of the preceding five license years. The exemption does not apply if the fund balance attributable to grain dealers or grain warehouse keepers was less than \$3 million on May 31 of the preceding license year. The exemption also does not apply if the overall fund balance (which includes contributions from milk, grain and vegetable contractors) was less than \$11 million on May 31 of the preceding license year. Wis. Stat. § 126.88 sets the overall fund minimum balance at \$5 million.

In 2014 and 2015, defaults in the vegetable and milk industries totaled \$7.2 million, causing the APSF balance to drop substantially. With the overall fund balance well below the \$11 million minimum currently set in administrative code, the grain industry will not be eligible for fund assessment exemptions for an estimated five to six years.

The Department and the Agriculture Producer Security Council (“APS Council”) identified the need to evaluate the entire agricultural producer security program, so that changes can be made to mitigate the impact of large defaults in the future. In December 2015, the Department received an actuarial study of the APSF and began working with the APS Council to develop recommendations for permanent changes to the agricultural producer security program.

The proposed emergency rule would alleviate a financial burden otherwise placed upon licensed grain dealers and grain warehouse keepers. Without this change, the grain industry would not be eligible for fund assessment exemption for many years, and would ultimately repay a large portion of the fund balance lost in the default to vegetable producers. Similar emergency rules have been enacted to extend the assessment exemptions for other contractor industries.

Rule Content

Under this rule, the annual fund assessment exemption requirement regarding the overall fund balance minimum would decrease from \$11 million to \$5 million.

Fiscal Impact

The proposed rule will slow the growth of the overall fund balance, as the grain industry would otherwise be required to pay an additional \$200,000-\$250,000 annually, over the course of an estimated five to six years.

This will result in fewer funds available to producers in milk, grain, and vegetable industries in the event of future large defaults.

Business Impact

The proposed rule would have a significant and immediate impact on grain dealers and grain warehouse keepers, allowing those grain licensees who meet fund assessment exemption requirements under Wis. Admin. Code §§ ATCP 99.126 (5) (a) and (b) and ATCP 99.235 (4) (a) and (b), respectively, not to pay fund assessments if the producer security overall fund balance is at least \$5 million on May 31 of the preceding license year. The grain industry would otherwise be required to pay an additional \$200,000-\$250,000 annually, until the overall fund balance reaches a minimum of \$11 million.

The proposed rule would have a direct impact on the rate of growth of the APSF overall balance. Milk, grain, and vegetable producers could potentially be impacted by the lower agricultural producer security overall fund balance, in the event of future large defaults.

Federal and Surrounding State Programs

Federal Programs

The United States Warehouse Act (USWA) is a voluntary regulatory program administered by Farm Service Agency (FSA), a unit within the United States Department of Agriculture (USDA). Under the USWA, 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 the warehouse defaults, FSA can convert the bonds to cash and disperse the proceeds to depositors. While 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 for the state licensing program.

Surrounding State Programs

Like all states with a significant grain industry, Minnesota, Michigan, Illinois, Indiana, and Iowa all require persons who buy grain from producers to obtain a grain dealer license (though they may use different names), 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.

Data and Analytical Methodologies

The Department analyzed the APSF fiscal year 2015 reports to estimate the projected overall fund balance on May 31, 2016. The Department reviewed 2015 financial statements filed by contractors to determine a range of grain dealer and grain warehouse keeper fund assessments due for the license year beginning September 1, 2016.

DATCP Contact

Questions and comments (including hearing comments) related to this rule may be directed to:

David A. Woldseth
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

FINDING OF EMERGENCY

(1) In Wisconsin, grain dealers (persons who buy producer grain or markets producer grain as a producer agent) and grain warehouse keepers (persons who operate one or more grain warehouses) must obtain a license to purchase or hold grain, respectively, and are collectively referred to as “contractors”. Most contractors are “contributing contractors”, which means they must pay annual assessments into the Wisconsin Agricultural Producer Security Fund. This fund is designed to help partially reimburse producers in the event that a contractor defaults on payment to producers or fails to return stored grain to producers. The annual assessments are calculated based on the total dollar value of commodities purchased or stored, the length of time that the contractor has participated in the fund, and certain financial ratios from the contractor’s balance sheet.

(2) The grain contractor license years begin on September 1 of each year. At that point, DATCP calculates the assessment for the new license year that will be due for each contractor, and determines if a given contractor meets exemption requirements established under Wis. Admin. Code § ATCP 99.126 (5) or 99.235 (4) for that license year. Current exemption requirements are: the grain contractor was classified as a contributing grain contractor in each of the 5 license years immediately preceding that license year; the fund balance attributable to grain contractors was at least \$3 million on May 31 of the preceding license year; and, the overall fund balance was at least \$11 million on May 31 of the preceding license year.

(3) The overall fund balance was less than \$7.2 million on the assessment exemption date of May 31, 2016, due to a large claims brought against the fund in 2014 and 2015 by vegetable and milk producers. This decrease in the overall fund balance would eliminate eligibility for fund assessment

exemption for every grain contractor over the next five to six years, costing the industry \$200,000 - \$250,000 annually.

(4) This temporary emergency rule is necessary to protect the welfare of the hundreds of grain contractors who do business in Wisconsin, and to help prevent undue financial burdens upon the grain industry.

EMERGENCY RULE

SECTION 1. ATCP 99.126 (5) (c) is amended to read:

ATCP 99.126 (5) (c) The overall fund balance was at least ~~\$11~~ \$5 million on May 31 of the last preceding license year.

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

ATCP 99.235 (4) (c) The overall fund balance was at least ~~\$11~~ \$5 million on May 31 of the last preceding license year.

SECTION 3. EFFECTIVE DATE: This emergency rule takes effect on September 1 and remains in effect for 150 days. The department may seek to extend this emergency rule as provided in Wis. Stat. § 227.24.