MEETING MINUTES

AGRICULTURAL PRODUCER SECURITY COUNCIL

April 10, 2015

Call to order

The Agricultural Producer Security (APS) Council held a meeting on Friday, April 10, 2015, at the headquarters of the Wisconsin Department of Agriculture, Trade and Consumer Protection, 2811 Agriculture Drive, Madison, Wisconsin.

Attendance

Eight council members were present: John Manske, Doug Cropp, John Umhoefer, Craig Myhre, Dave Daniels, Nick George, Don Hamm, and Jim Zimmerman with Jeremie Pavelski on speaker phone.

One council member, Louise Hemstead, was absent.

DATCP staff members present were Eric Hanson, Jeremy McPherson, Lori Ronnerud, and DATCP attorney Lauren Van Buren.

Agenda Item I Call to Order

Chairman John Manske called the meeting to order at 1:33 pm.

Chairman Manske passed out a copy of the letter he sent on behalf of the Council requesting that the proposal to eliminate the APS Council be removed from the state budget.

Chairman Manske also passed around an agenda from a Wisconsin Potato and Vegetable Growers Association meeting that he, along with Jeremy McPherson and Eric Hanson, attended in Stevens Point on 2/17/15. Presentations and discussions were held regarding the Federal Perishable Agricultural Commodities Act and the state APS program.

Agenda Item II Approve Minutes

Jeremie Pavelski moved to approve the minutes from the Dec. 15, 2014 meeting. The motion was seconded by Nick George, and the motion was approved without discussion.

Agenda Item III Membership Update

Jeremy McPherson mentioned that Craig Myhre is the only member whose term will expire June 30, 2015.

Agenda Item IV Default Update

Eric Hanson gave an update on the Allens default. John Manske asked about a replacement for the Chief Legal Counsel now that Dave Meany moved on to DOJ. Jeremy said that one has not been appointed yet.

Eric then updated the Council on the Liberty Milk Marketing Cooperative default. Twenty seven producers filed claims amounting to $1.3 million. John Manske and John Umhoefer asked for additional details: will there be Fund coverage, whether we saw this coming, and where Liberty is located. Eric said that Liberty was a participant in the Fund, so its producers would be eligible for coverage. Eric added that Liberty is located in Cadott, and we did not have advance warning.

Eric said that this default would provide challenges because the manager for Liberty had passed away just before the default. Not having him around to provide answers to questions will add difficulty to the default proceeding. John Umhoefer asked if we had learned anything in this default. Eric said that we learn something from every default. Jeremy added that, once the process is completed and producers are paid, we will review what occurred to see if adjustments to policies or procedures are needed.

Agenda Item V Actuarial Study Report

Eric provided an update on progress towards hiring an actuary to conduct a study of the Fund as recommended by the Council at the Dec. 15th meeting. Eric reported that DOA allowed us to piggyback on an existing contract with the Department of Employee Trust Funds, allowing us to avoid a lengthy request for proposal. Eric said we were close to finalizing contract terms. The consultant is an international actuarial firm, and ETF has been pleased with their work.

John Manske asked about cost and whether the report would be completed by the end of October. Jeremy stated that negotiations were ongoing but the target was a completion date of Oct. 31st and a total cost under $100,000. Jeremy said that asking them to consider both the fund as a whole and splitting the fund by industry added both time and cost.

Dave Daniels asked if the actuary would look at prior defaults, the integrity of the Fund, and how much it can protect producers. Jeremy said the actuary will consider historical defaults, both in WI and in other states. Jeremy added that we will be providing data regarding the licensees in each industry, but it will be summarized in such a way that individual contractors cannot be identified. He said that the actuary will take the data we provide and combine it with their own research to build a forecasting model. In the end they will provide us with probabilities both in number and extent of future defaults, and provide recommendations for sustainable fund balances.

Dave Daniels clarified that the current program does not cover producers for 100% of their default, the one exception being grain warehouse with a $100K cap. He then asked if the model will stay at the 80%. Jeremy said that we will ask the actuary about how the results change with changes to coverage amounts.

John Umhoefer said he thinks the study will be very useful. Jim Zimmerman thought it would have some future value. Jeremy said the study may need to be revisited periodically due to economic changes.

Agenda Item VI Emergency Rule

Jeremy McPherson reported that on March 11th the DATCP Board approved scope statements for emergency rules relating to Chapter ATCP 99 and 100, Wi. Adm. Code. Jeremy

acknowledged the Council's concerns raised at the December meeting regarding Milk Contractors and Grain Dealers losing the assessment holiday due to the Allens default payout. The emergency rule would temporarily reduce the overall Fund balance requirement for assessment holiday eligibility to $5 million. The emergency rule will allow the status quo to continue until the actuarial study is complete and more long term solutions are considered. We anticipate Governor approval and the rules to be in effect at the start of the new license year, which is May 1 for Milk Contractors and Sept. 1 for Grain Dealers. DATCP is required to hold public hearings for the emergency rules but not until they become effective. John Manske asked DATCP to make sure the Council knows the date of the hearings. Nick George asked if the Vegetable contractor program would be affected because their portion of the Fund is below the minimum balance required by statute. Jeremy explained that the statue requires DATCP to initiate rulemaking to increase assessment when a contractor's portion of the Fund falls below minimum requirements, so the Council should anticipate Vegetable Contractor emergency rule that will raise veg. assessments by Feb. 1, 2016. John Manske said that rule making is critically important for MC and GL.

John Umhoefer moved to express support and appreciation for the scope statements and rule making. Don Hamm seconded the motion. Motion passed.

Agenda Item VII Council Policy Ideas for DATCP Analysis

John Umhoefer said he is in favor of the actuarial study and offered three suggestions:

1. Coverage for producers should be reduced to 50%
2. The dairy industry should have their own Indemnity Fund capped at $5 million.
3. The assessment holiday should be in effect above $4.5 million.

John added that the dairy industry benefits from DATCP staff auditing the financials of milk processors and therefore license fees should continue to be utilized to support current staff, but license fee credits should also be retained. He also added that security aspects should continue to be included as part of coverage to producers. John recognized that legislative action would be necessary to implement these changes.

John Manske stated that John Umhoefer's suggestions should also be considered for the grain industry with the exception that the grain dealer and warehouse program be combined.

WABA & Cooperative Network suggested:

- Combining the grain dealer and grain warehouse keeper funds.
- Creating a similar analysis for reduced coverage as proposed for milk contractors.
- Changing holiday, fee credit, and minimum thresholds.

Doug Cropp agreed that the industries covered by the Fund are not apples and oranges, more like different kinds of apples. Comment from folks within his industry are that they would prefer that kind of structure. Costs associated with each industry come back to producers in one form or another. Doug added that, while not specifically endorsed by WABA, some members would like to see the assessment into the Fund paid directly by producers or shared with the grain operators.

John Umhoefer stated that the Cheesemakers would also like to see a shared assessment with producers and stated that when the producer pays the costs they are more aware of the Program. Nick George said that applies to VG also and Jeremie Pavelski agreed.

John Manske asked Jeremie Pavelski of WPVGA what their thoughts are on siloing each of the programs. Jeremie has heard some support and some opposition to the idea and would receive more feedback after the results of the actuarial study. Jeremie stated that there is interest in shared assessments with producers. Things need to change because the different industries have different risks. John Manske raised the possibility of some being left behind if there were more defaults. Jeremie Pavelski brought up the question that, should the Fund go away, is there anything else DATCP can do? For instance, PACA notifies growers of potential problems.

Jeremy McPherson talked about how quickly the Allens default occurred. Jeremy said when staff work with companies to address financial difficulties with specific licensees, these issues are not disclosed publicly. While there are numerous instances where staff has worked with licensees to prevent defaults, disclosing these instances could unnecessarily harm those companies. Additionally, financial information about our licensees is statutorily protected from public disclosure. However, Jeremy added, compliance issues that result in enforcement action or conditional licenses are disclosed publicly. Our website contains a list of all licensees and identifies those with conditional licenses.

It was asked if there is some way for DATCP to help inform producers.

Eric said that there would need to be changes to the law or rule that detail circumstances under which financial information can be disclosed. John Manske asked if DATCP was sharing this type of information with the actuary. Jeremy said that we will be sharing data at a summary level so as to not identify specific companies. Jeremy also said that the actuary will be doing its own research regarding risks posed by each industry, including interviewing various organizations.

John Umhoefer asked about DATCP's powers regarding Liberty Milk, given the appearance that they took money that was collected for the purpose of paying producers. Jeremy said that we are working with an attorney from DOJ to represent the Fund's interest in the receivership. While Ch. 126 includes criminal penalties for intentional violations, proving intentional action as opposed to simple mismanagement is very difficult. He added that this case is more complicated with Liberty's manager passing away.

John Manske asked what the timeline would be for getting policy changes in place. Jeremy mentioned several policy issues that would need to be considered including establishing quicker payment terms for vegetable contractors and issues related to how default claims in the APS program interact with federal bankruptcy and state receivership proceedings. The timeline is unclear, given that some modifications may involve changes to statutes, which could in turn lead to additional rulemaking.

John Manske asked if there was any opposition to siloing the industries. Jeremie Pavelski said he knew of no approval or opposition. Craig Myhre stated that he had a resolution from Wisconsin Farmers Union which supports the program as designed, but recognizes the need to look at coverage and funding.

Jeremy McPherson suggested that we could ask the actuary to consider the impact of reducing coverage from 80% to 50%, recognizing that it could lead to additional costs since this was not in the scope of the original actuarial project. Jeremy also said that adding a producer contribution has been considered in the past but hadn't gained much traction. He added that perhaps it may be worth considering again. Eric suggested charging a percentage of the cwt (hundred weight) or by the bushel and Jeremy replied that is how the California's milk program works.

Jim Zimmerman said that theoretically all costs are passed on to the producer, directly or indirectly. Don Hamm said NFO members like the audit part to help divert disaster but not pay outs. If they had a choice they would not participate in the fund. Jim Zimmerman replied that individual producers know with whom they're doing business.

Agenda Item VIII Other Business

John Manske asked about the timeline for the next meeting, possibly October or November? Jim Zimmerman stated that his availability during harvest is limited. Jeremy said that the timeline for completing the Actuarial Study could affect the date.

Motion to adjourn the meeting was made by Nick George and seconded by John Umhoefer. Motion unanimously approved at 2:24 pm.

Craig Myhre, Secretary

John Manske, Chair