



State of Wisconsin  
Governor Scott Walker

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

**DATE:** February 25, 2015

**TO:** Board of Agriculture, Trade and Consumer Protection

**FROM:** Ben Brancel, Secretary

**SUBJECT:** Ch. ATCP 100; Milk Contractors (Scope Statement)

**PRESENTED BY:** Jeremy McPherson and Staff - Division of Trade and Consumer Protection

**REQUESTED ACTION:**

At the March 11, 2015 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to approve a "Statement of Scope" (copy attached) for the promulgation of a DATCP emergency rule related to milk contractors. This rule is necessary to ensure the continuation of the Agricultural Producer Security Fund assessment exemption for milk contractors while an actuarial study is conducted to determine what programmatic and statutory changes should be made.

A scope statement spells out the general purpose and scope of a proposed rule. DATCP may not begin drafting 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 approves the scope statement. In accordance with 2011 Wisconsin Act 21 (s.227.135(2), Stats.), the Governor approved this scope statement for emergency rule changes on February 16, 2015, thereby allowing DATCP to submit this scope statement for publication and to seek approval of the scope statement by the DATCP Board.

DATCP 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. DATCP filed the attached statement of scope with the Legislative Reference Bureau for publication in the February 23, 2015 issue of the Wisconsin Administrative Register. DATCP also filed a copy with DOA.

If the Board approves the scope statement, the Department will begin work to draft the emergency rule. As the desired effective date is May 1, 2015, the Board will not have an opportunity to review the emergency rule prior to its effective date. The emergency rule will be effective when the final draft has been approved by the Governor and adopted by the Secretary. The board will be notified upon adoption of the emergency rule.

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# STATEMENT OF SCOPE

## Department of Agriculture, Trade and Consumer Protection (DATCP)

Rule No.: Ch. ATCP 100, Wis. Adm. Code (Existing)

Relating to: Milk Contractors

### 1. Description of the objective of the rule:

The Department of Agriculture, Trade and Consumer Protection (DATCP) proposes an emergency rule that will amend fund assessment exemption requirements for milk contractors. The emergency rule proposes a decrease in the agricultural producer security overall fund balance minimum requirement. This change would bring the minimum balance set by rule from \$11 million to \$5 million, which is the minimum set in s. 126.88 (1) (a), Stats. The emergency rule is necessitated by the recent decrease in the agricultural producer security overall fund balance due to a large default claimed by the vegetable contractor industry (see history and background section below).

### 2. 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 Agricultural Producer Security Fund (APSF) is a public trust administered by DATCP. 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 APSF annually. Funds are used to settle claims by producers in the event that a contractor defaults on payment. Funds from each industry are accounted for separately and deposited into the overall fund. Ch. 126, Stats., establishes detailed fund assessment requirements, except that it requires DATCP to establish milk contractor fund assessments by rule. Ch. 126, Stats., sets minimum fund balances for each industry, as well as a minimum balance requirement for the overall fund.

ATCP 100.135 (10), Admin. Code., establishes a fund assessment exemption for milk contractors. To be eligible, a licensee must have been a contributing milk contractor in each of the preceding 5 license years. The exemption does not apply if the fund balance attributable to milk contractors was less than \$6 million on February 28 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 February 28 of the preceding license year. Section 126.88, Stats., sets the overall fund minimum balance at \$5 million.

In 2014, the APSF paid out claims to 19 vegetable producers due to payment default by one large, out-of-state contractor that went bankrupt. The default payment totaled \$6.1 million, causing the overall fund balance to drop by more than half. With the overall fund balance well below the \$11 million minimum currently set in administrative code, the milk contractor industry will not be eligible for fund assessment exemptions for an estimated 6-7 years.

DATCP and the Agricultural Producer Security Council have 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. This entire process, including the performance of the actuarial study, will take more than a year.

The proposed emergency rule would alleviate a financial burden otherwise placed upon licensed milk contractors. Without this change, milk contractors 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.

#### Nature of the Emergency

An emergency rule is necessary to ensure the continuation of the fund assessment exemption for milk contractors while an actuarial study is conducted to determine what programmatic and statutory changes should be made. Without this emergency rule, licensed milk contractors will take on the burden of repaying a large portion of the agricultural producer security overall fund balance lost in the default to vegetable producers. An emergency rule effective date of May 1 is necessary, as the next license year for milk contractors begins May 1, 2015.

#### Policy Alternatives

Do nothing. If DATCP fails to adopt this emergency rule the milk contractor industry will not be eligible for fund assessment exemption until the producer security overall fund balance exceeds \$11 million, which is estimated to take 6-7 years. License years for milk contractors begin May 1. If DATCP fails to adopt this emergency rule before May 1, 2015, no milk contractors will be eligible for exemption during the next license year.

#### **3. Statutory authority for the rule (including the statutory citation and language):**

Section 93.07 (1), Stats., directs DATCP to make such regulations as are necessary for the discharge of all the powers and duties of the department.

Section 126.46 (1), Stats., directs DATCP to establish by rule annual fund assessments for milk contractors.

Section 126.81 (1) (a), Stats., allows DATCP to promulgate rules to interpret and implement Ch. 126, Stats.

Section 227.24, Stats., allows DATCP to promulgate a rule as an emergency rule without complying with the notice, hearing and publication requirements under ch. 227, Stats.

**4. Estimate of the amount of time that state employees will spend to develop the rule and of other resources necessary to develop the rule:**

DATCP estimates that it will use approximately 0.10 FTE staff to develop this rule. This includes time required for the investigation and analysis, financial assistance criteria, rule drafting, preparing related documents, and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

**5. Description of all entities that may be impacted by the rule:**

The proposed rule will allow milk contractors who meet fund assessment exemption requirements under ATCP 100.135 (10) (a) and (b) to not pay fund assessments if the producer security overall fund balance is at least \$5 million on February 28 of the preceding license year. The milk contractor industry would otherwise be required to pay an additional \$420,000 - \$800,000 annually, until the overall fund balance reaches a minimum of \$11 million.

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.

**6. Summary and preliminary comparison of any existing or proposed federal regulation that is intended to address the activities to be regulated by the rule:**

There is no existing or proposed federal regulation that is intended to address the activities regulated by this rule.

**7. Anticipated economic impact**

The proposed rule will slow the growth of the overall fund balance, as the milk contractor industry would otherwise be required to pay an additional \$420,000 - \$800,000 annually, over the course of an estimated 6-7 years. The impact to milk, grain and vegetable producers will be minimal if there are no large defaults during the next 6-7 years.

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Ben Brancel  
Secretary  
Department of Agriculture, Trade and Consumer Protection

1-27-15  
Date Submitted