



News & Views

A Monthly Publication Dedicated to the Feed, Seed, Grain and Farm Supply Industries of Wisconsin

DATCP License Fee Proposals

You should already be aware of the Wisconsin Department of Agriculture, Trade and Consumer Protection's (DATCP) proposed rule changes affecting grain dealer and warehouse license fees. We earlier sent a letter to the industry members of the association, so they are aware of some of the general points in the proposal, however, in this writing we'd like to go into a little more depth.

The proposal stems from a continuing trend in Wisconsin government; that is, the reliance on fees to fully fund various programs across the state which in the past had received and relied upon general tax revenue. A fact of life in Wisconsin is that general tax revenue is being used almost exclusively to fund schools, roads, health care and prisons. Virtually everything else is, or will shortly be, fully funded by fees. This gives politicians of both parties "cover" to rightfully claim, "No new or raised taxes." They don't say anything about fees though.

The trade security branch of DATCP (which regulates grain dealers, grain warehouses, vegetable processors and dairy plants) had about \$250,000 pulled by the legislature in the last budget. Primarily because of that reduction and general cost inflation, the branch is facing an almost a half million dollar deficit. The Department's subsequent response is the current proposal for an increase in license fee revenue.

We need to be clear on a point regarding the proposal; *it almost exclusively deals with license fees*, very little in it addresses the Producer Security Fund itself. And that, we feel is the crux of the issue. Without addressing the underlying issue of producer security or the Department's regulatory vision, this proposal is simply a funding mechanism for the status quo. *That is acceptable to neither the*

regulated industry nor the producers the program is intended to protect in the event of a default.

The program itself is widely viewed as "broken" and a few examples will illuminate that point. First, the program was designed to have a blanket bond to cover catastrophic defaults. That bond simply doesn't exist. The cash pool that was to cover the deductible on that bond now serves as the *only* coverage available. Secondly, the program provides what is seen as the broadest (and most expensive) coverage in the country compared to other programs. Two quick highlights: 1) There is no limit on aged grain contract receivables held by a producer that qualify for coverage. That is, a producer carrying three-year-old unpriced basis contract has the same standing as a producer who dropped off a load the day before and the check bounced, and 2) If a massive default occurred today the maximum payout by DATCP would be about \$4.8 million dollars. Fine, except DATCP's annual administrative cost to manage that fund (and potential payout) is \$1.1 million dollars. Not exactly a great cost-benefit ratio. Along with other members organizations of the Producer Security Council (of which WASA is a founding member), there has been developed a list of inequities, inefficiencies and general problems with the fund with suggested solutions to those issues. The DATCP proposal addresses none of those industry concerns.

A larger issue that is also not addressed in the proposal is the regulatory vision of DATCP regarding the program. As was stated earlier, the proposal is simply an increased funding mechanism for the status quo. Without fundamentally addressing how the department performs its regulatory mission, we will be doomed to repeat this entire sequence again in three to five years, when "surprise, surprise," costs have escalated again. Our argument is the Department needs to review how the program can be administered differently in order to control

administrative costs. This will potentially require a shift in how the industry is regulated, all the while maintaining producer confidence in the system. Once that facet of the program is addressed and costs are under control; then and only then, is the time to address changing the revenue side of the equation. If you simply try to tweak the proposal as it exists, you are accepting, by default, the current administration of the program. That is unacceptable, and we argue the entire program and regulatory vision of the program needs to be “on the table.”

DATCP is also asking for responses by both the regulated industry members and their producer customers to a set of questions. Those questions are highlighted below, along with general comments and thoughts by WASA staff.

1. Is there a continuing need for a producer security law?

WASA believes the Agricultural Producer Security (APS) program should not be maintained at its current level and the administration of the program requires re-examination. We believe the program currently promises more than it can deliver and needs to be downsized to become more cost-efficient with a tighter focus. In addition, Wisconsin needs to remain competitive with other states in order to continue to attract agri-business and allow those already here the flexibility to expand.

2. If so, what is the appropriate level of coverage for producers? If that amount exceeds coverage currently available, how should the coverage be provided?

WASA believes the law should be changed so that default payments are limited to the funds available at the time of default; that is, a maximum of 60% of the fund balance. No payout would exceed the funds available. Defaults eligible for compensation should also be solely limited to those caused by business failure rather than including losses covered by Acts of God, as is now the case.

3. In most cases, (buyers) currently pay directly into the fund based on overall size and financial risk. Should contractors continue to

cover the cost of providing coverage? Should producers contribute to the fund directly?

WASA’s long held position is the beneficiaries of the program should directly pay for the program. In lieu of that, our goal was to make the program assessments risk-based. However, we maintain the Department’s sole use of current and debt-to-equity ratios in determination of those assessments does not accurately reflect an operation’s financial health. Assessments based solely on these ratios have and do serve as a disincentive to expansion of agribusiness in our state. The last thing this program should do is force businesses to ask the question whether or not they wish to expand or curtail their operations in our state based on the impact of their assessments. Currently, it does exactly that.

In addition, the expansion of large farm operations has changed the historic relationship between farms and the country elevator or feed mill. Under current law, a farmer can buy up to \$400,000 of other producers’ grain with no regulation whatsoever by the state. A feed mill that buys 30,000 bushels or less of grain annually (less than a semi-load a week) is required to fully comply with state grain law. Where is the greater risk to producers? Is the idea to regulate people or activity and risk?

4. Do producers clearly understand disclosures about the extent of their security coverage and financial risk? Do security disclosures actually influence producer decisions?

We have long held that producers in our state are largely ignorant of the APS. The current required disclosures provide producers with a sense of the coverage available (for those that take the time to read them). That said; we are not aware of any better solution to inform producers than the current disclosure system. This situation will exist until producers see the costs directly, rather than buried in a margin, of both the cost of administering the program and the associated assessments. Only then, will they seek to understand what the program is *and* what they get for their money.

Comments by interested parties on both the proposal and the questions listed above can be made in writing to DATCP up until October 31, 2007. The mailing address for comments is:

DATCP
Division of Trade and Consumer Protection
2811 Agriculture drive
P.O. Box 8911
Madison, WI 53708

Alternatively, email comments can be sent to:
kevin.leroy@wisconsin.gov

Facility Registration Update 3■

The U.S. Department of Homeland Security (DHS) now intends by the end of August to issue a final version of its list of “chemicals of interest” and threshold quantity trigger levels that will be used to determine which facilities potentially will be regulated under the agency’s chemical facility antiterrorism regulations. These regulations, finalized on June 8, require facilities (including grain elevators, feed mills, grain processors and farm supply retailers) handling such chemicals at levels exceeding specific threshold trigger quantities to register with DHS and complete a web-based screening tool (dubbed “Top Screen”). DHS has indicated that each chemical would have a specific minimum threshold quantity established, rather than the original proposal in which several chemicals if possessed at “any level” would be subject to potential regulation. The results of the “Top Screen” assessment tool then are to be evaluated by DHS to determine whether the facility represents a “high-risk” chemical facility that should be subject to additional regulations, *including a requirement to conduct a vulnerability assessment and implement additional performance-based security measures.*

Once the final version of Appendix A is published in the *Federal Register*, DHS will provide 60 days for affected facilities to register with the agency and complete the “Top Screen” process. The result of the “Top Screen” process will determine if the facility is excluded from the regulations, or is placed in a preliminary tier of risk for further evaluation by

DHS. Within 60 days after the “Top Screen” process is completed, DHS is to notify affected facilities as to whether they are a “high-risk” chemical facility, as well as their respective risk category. Four risk categories will be established – ranging from Tier 1 (highest risk) to Tier 4 (lowest risk), with the level of security risk-based performance standards escalating based upon the category. Affected facilities subsequently will be required to conduct a security vulnerability analysis that assesses security measures currently in place that mitigate or reduce the likelihood of a successful attack on an asset of the facility. Affected facilities then will be required to develop a site security plan that contains specific security measures the facility has implemented or will implement to meet the applicable risk-based performance standards.

DHS has already required an estimated 100 to 150 facilities that have been deemed “high-risk” to complete the Top Screen process and develop the required security vulnerability analysis and site security plan. The remaining affected facilities – expected to total in the “high thousands” – that “possess or come into possession” of chemicals at or above the threshold trigger quantities will begin the “Top Screen” process during the second phase of implementation, according to DHS.

We will continue to keep the membership updated as new information becomes available.

Source: NGFA

WASA Directory Update■

The annual association directory was mailed earlier this month. If you have not yet received your copy, please contact the WASA office so that we may follow up.

Looking Down the Road■

Sept. 11 **WASA Golf Outing**
SentryWorld, Stevens Point

Sept. 12 **WASA Grain Grading School**
Kalahari Resort, Wisconsin Dells