

MEETING MINUTES

AGRICULTURAL PRODUCER SECURITY COUNCIL

August 22, 2014

Call to order

The Agricultural Producer Security (APS) Council held a meeting on Friday, August 22, 2014, at the headquarters of the Wisconsin Department of Agriculture, Trade and Consumer Protection, 2811 Agriculture Drive, Madison, Wisconsin.

Chairman John Manske called the meeting to order at 9:33 am

Attendance

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

Two council members, Louise Hemstead, Duane Maatz, were absent.

DATCP staff members present were Eric Hanson, Jeremy McPherson, David Meany and Lori Ronnerud.

Three members of the public, Joan Sanstadt, David Ward and Tom Bressner were also in attendance. A fourth, David Cooper, arrived while comments regarding Agenda item IV were being discussed.

Agenda Item I Membership Update

Jeremy stated that seven members of the council had terms that expired June 30, 2014. After submitting letters for recommendations to fill those vacancies, all previous members were re-appointed for another three year term.

Jeremy mentioned that one member's term will expire June 30, 2015.

Agenda Item II Election of Officers

The Statute requires the Council to elect officers at the first meeting each year. Jeremy opened nominations for Chair of the Council. Dave Daniels nominated John Manske. The motion was seconded by Nick George. With no other nominations being made, a motion to close nominations and elect John Manske Chair of the Council was made by Dave Daniels and seconded by Nick George. Motion was unanimously approved. John thanked the council for electing him again and pledged to do his best. John (Manske) then opened nominations for Vice-Chair of the Council. Jim Zimmerman nominated Dave Daniels. The motion was seconded by Nick George. With no other nominations being made, a motion to close the Vice-Chair nominations and elect Dave Daniels Vice-Chair was made by Craig Myhre and seconded by Jim Zimmerman. Motion was unanimously approved. Lastly, John opened nominations for Secretary of the Council.

Dave Daniels nominated Craig Myhre. The motion was seconded by Nick George. With no other nominations being made, a motion to close the nominations and elect Craig Myhre Secretary was made by Jim Zimmerman and seconded by Don Hamm. Motion was unanimously approved.

Agenda Item III Approve Minutes from December 2, 2013 Meeting

Motion to Approve Minutes from the December 2, 2013 meeting was made by Doug Cropp, seconded by John Umhoefer. Motion was unanimously approved with the correction of spelling Umhoefer's name. John (Umhoefer) expressed his thanks for the detailed minutes provided by staff.

Agenda Item IV Update on Allens, Inc. Default

Jeremy McPherson reported on the Allens, Inc. default.

Jeremy indicated that Allens, Inc. held a vegetable contractor license since 2003. Allens was slow to pay producers in December 2011, but producer security staff worked with the company and all producers were paid by January 2012. As a result of slow payment, conditions were placed on Allens license. Although Allens did not have payment issues in 2012, most conditions were maintained for the 2013 license year. In Sept. 2013, DATCP received its first claim from a vegetable grower that Allens failed to pay for vegetables when due. By Oct. 2013 three more claims were received, and Allens filed for bankruptcy on October 28, 2013. During November 2013, DATCP continued to receive claims, Allens' vegetable contractor license was revoked, and DATCP initiated a formal recovery proceeding.

Producer Security Section staff received and audited 22 claims, approving nineteen. Three claims were denied for various reasons. The value of the approved claims totaled \$8.8 million; however, vegetable contractors do not receive 100% reimbursement of their claim. So far, DATCP has paid \$6.1 million. Another \$633,000 owed to one grower is being held pending the outcome of an unresolved PACA claim the grower has with Allens.

Jeremy said that a default of this size will have several impacts. First, the fund balance has been reduced from \$13 million to just under \$7 million. Overall, the fund balance remains above the required statutory minimum of \$5 million. The vegetable portion of the fund absorbs the full amount of the default, which results in a negative balance. Second, the assessment holiday that milk contractors and grain dealers now receive will be suspended starting with the beginning of the next license year. The holiday will be reinstated once the fund returns to \$11 million assuming individual thresholds are also met. Contractors with default exposure above the Fund deductible have the option of posting individual security to receive an assessment reduction. To receive the reduction, contractors must post security totaling the difference between their exposure and the fund deductible, which is approx. \$4 million).

Jeremy reported that, based on current information and depending on who files security, milk contractors assessments will total between \$450,000 and \$850,000. Specifically,

- 81 milk contractors will pay assessments totaling no more than \$500 (some will still pay \$0)
- 21 milk contractors will pay between \$500 and \$10,000
- 13 milk contractors will pay between \$10,000 and \$50,000
- 4 milk contractors will pay over \$50,000 but no more than \$200,000 (for these contractors the average per cwt. is less than \$0.007)

Grain dealer assessment collections are expected to increase by \$250,000. We have been collecting about \$850,000 in grain dealer deferred payment assessments that were never eligible for the holiday. Specifically,

- 237 grain dealers will pay no more than \$500
- 9 grain dealers will pay between \$500 and \$10,000
- 10 grain dealers will pay over \$10,000 but no more than \$100,000

Grain warehouse keepers and vegetable contractors were not receiving an assessment holiday.

Vegetable contractors will no longer be eligible for license fee credits, which total approximately \$85,000/year. Because the Fund balance attributable to vegetable contractors is below the statutory minimum of \$800,000, DATCP must modify assessment to bring the balance back above the minimum within a "reasonable time." DATCP is authorized for rulemaking, including emergency rulemaking, to address vegetable contractor assessments.

As a result of the default, DATCP staff is evaluating the regulations and will be making recommendations for adjustments to reduce the risk of this type of default occurring in the future.

John Manske said that it was good that 19 growers were paid, and he complimented staff for their work. However, he noted the negative impact the default will have on milk and grain dealers and suggested a need for policy changes going forward.

John Umhoefer noted that a group that had a \$1 million balance in the fund took \$6 million. He wondered if his members were going to be ok with that. He also asked what would happen with another vegetable default. John said that the Council should play a role in determining how the program operates going forward.

John Manske recognized David Ward, Cooperative Networks Dairy Director, who asked to address the Council. David said that there has always been a concern that money contributed by one industry would fund a large default in another industry. David also handed out a joint memo from Cooperative Network and the WI Cheese Makers Assoc. addressed to Secretary Brancel and the APS Council. The memo expressed concern about the effect that the Allens default will have on the dairy industry's participation in the Fund. The memo also expressed a desire to see changes that would protect dairy processors from the impacts of future defaults similar to Allens. John Manske indicated that separating the fund was not a new concept, adding that the 2007 APS workgroup considered it but the idea did not get traction.

John Manske recognized Tom Bressner, Executive Director of Wisconsin Agri-Business Association. Tom shared the same concerns raised by David Ward. He agreed that these were issues that needed to be addressed.

John Manske recognized David Cooper of FarmFirst Cooperative. David said that he was an advocate of the program about 5 years ago when it was being reviewed by the workgroup. He said that he remains supportive of the program but he has concerns. He talked about how investments that negatively affect ratios is a penalty to contractors. He also expressed concern about the holiday being over due to a default in the vegetable industry but acknowledged that it could just as easily have happened in the dairy industry. He indicated a belief that each industry should stand on their own.

Don Hamm expressed concern about the impact of a large default and not having enough in the Fund to pay another large default.

Agenda Item V Financial Results, Third Quarter, March 31, 2014

Eric Hanson reported on the third quarter financial statement. The overall fund has a balance of \$12,748,036.34. There have been some vacancies and retirements which are reflected in lower salary and fringe expenditures.

The increase in grain dealer revenue is the result of higher deferred payment assessments. Doug Cropp commented that grain prices are declining so deferred payments will also likely be declining.

Grain warehouse keepers still show a negative balance at the end of the third quarter but are making progress.

The decrease in Milk contractor revenue is mostly due to the assessment holiday.

Vegetable contractors have a steady balance at just over \$1 million. Jim Zimmerman asked if the balance was going to a negative \$5 million due to the Allens default. Eric stated that was correct.

Agenda Item VI Other Business

John Manske thanked the staff for all their work regarding Allens. He said the Council would like to be involved and work with the Department regarding further regulation/legislation/rule making. Jim Zimmerman and Nick George agreed.

John Umhoefer asked about staff's ideas for regulatory changes?" Jeremy replied that possible modifications were still being analyzed and we should be ready to discuss concepts at the next meeting.

John Manske mentioned that many ideas were presented previously but didn't gain enough support to move forward. Doug Cropp stated that he was on the work group and a lot of ideas were brought up but found that they were very hard to implement.

Nick wondered if the Council should meet more than once a year. Jeremy stated that, statutorily, the Council is required to meet at least once per year but can meet more frequently.

Possible dates for the next meeting were discussed. The group expressed a desire to meet in December or early January. A tentative meeting date of Dec. 8th was scheduled.

Motion to adjourn the meeting was made by Craig Myhre and seconded by Jim Zimmerman. Motion unanimously approved at 10:45 am.