MEETING MINUTES

AGRICULTURAL PRODUCER SECURITY COUNCIL

December 15, 2014

Call to order

The Agricultural Producer Security (APS) Council held a meeting on Monday, December 15, 2014, at the headquarters of the Wisconsin Department of Agriculture, Trade and Consumer Protection, 2811 Agriculture Drive, Madison, Wisconsin.

Chair John Manske called the meeting to order at 9:08 am.

Attendance

All council members were present: John Umhoefer, Craig Myhre, Dave Daniels, Louise Hemstead, Don Hamm, Duane Maatz, John Manske, Doug Cropp, Jim Zimmerman, Nick George and Jeremie Pavelski.

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

Two members of the public, Tom Bressner and George Kowieski, were also in attendance.

Agenda Item I Introduce new member

Chair John Manske introduced Jeremie Pavelski as the new member of the council representing Wisconsin Potato and Vegetable Growers Association.

Agenda Item II Approve Minutes from August 22, 2014 Meeting

A motion was made to approve minutes from the August 22, 2014 meeting by Jim Zimmerman, seconded by Dave Daniels. Motion was approved.

Agenda Item III A Annual Report for Fiscal Year ended June 30, 2014

Eric Hanson presented the Fiscal Year Ended June 30, 2014 Annual Report. Overall assessment revenue has remained relatively constant over the last three fiscal years. However, there are some year-to-year differences for assessments from each industry group. Grain dealer assessments have gone up over the last 2 years by $180,000, primarily because of an increase in the deferred payment assessments. Grain warehouse keeper and milk contractor assessments have gone down over the last 2 years by $30,000 and $64,000 respectively, primarily due to improved financial ratios.

Eric pointed out that, with the exception of the default payments, overall expenditures continue to decline. This is mostly due to decreased salary and fringe related to vacant positions.

The overall fund balance as of June 30, 2014 was $12,804,000. This is an increase of $490,000 over the previous year.

Eric also discussed individual sub-account financial results.

Overall assessments for Grain Dealers increased despite grain dealers having an assessment holiday. The primary reasons are increases in grain prices and increased use of deferred payment. Deferred payment assessments are not eligible for the holiday. Eric also noted fairly stable license fees collected and license fee credits used by grain dealers over the past 2 years. The grain dealer balance has grown by almost $500,000 in each of the last 3 years.

Grain Warehouse Keeper assessments remained consistent with FY2013. Both FY 2014 and FY2013 were significantly lower than FY2012, primarily the result of improved ratios. Eric also noted that the deficit for this portion of the fund continues to improve. The ending balance for FY2014 was ($122,670), which was an improvement over the FY2013 ending balance of ($198,250).

Regarding the milk contractor schedule, Eric highlighted that the assessment holiday continues to reduce assessment collections as more contractors became eligible for the holiday. Assessment collections were $131,000 in FY2012 compared to $58,000 in FY2014. Although expenditures have remained relatively constant over the last two years, the milk contractor balance continues to decline as a result of fee credits and the assessment holiday. The ending balance fell from $7,616,690 in FY2013 to $7,467,910 in FY2014.

Vegetable contractor assessments almost tripled from FY2013 to $87,170. This increase is attributed to some new contractors paying higher rates. License fee revenue also continued to increase in FY2014. Administrative expenditures remained constant, resulting in a fund balance increase to $1.125 million. The Allens default, as discussed in Note 10 of the report, was not finalized and paid until after the end of the fiscal year. As a result, it will be reported in the FY2015 Annual Report.

Regarding the revenue detail section of the report, John Manske asked about the various penalties and if the same contractors repeatedly were assessed late fees and penalties. Eric said that there is a mix. Some contractors are repeatedly late and simply pay the fees, while others just pay once and are timely thereafter.

Eric reviewed the FTE allocations table on page 15. John Manske asked what the 0.25 Unassigned (Vacant) FTE represented. Jeremy explained that restructuring former Trade Analyst position and shifting duties to the Financial Specialist position resulted the unassigned vacancy. Although there still remains budgetary authorization for a 0.25 FTE, that position is currently unassigned, and there are no plans to fill that position at this time.

Jeremy explained that staff spend a substantial amount of time putting together the Fund financial report and asked if there were sections of the report that were less valuable than others. The group expressed an appreciation and desire for the level of detail currently provided.

The group briefly reviewed the fund balances and trigger points for license fee credits, assessment holidays and minimum and maximum statutory fund balances. John Manske said the tables and graphs were very helpful.

The group discussed the aggregate estimated default exposure reported on page 26. The overall total estimated default exposure reported in the FY2014 report was $1.1 billion. The group asked whether any type of study had been done to determine the likelihood and amount of any future defaults. Jeremy explained that DATCP has been considering an actuarial study along those lines.

Agenda Item III B   Financial Results, First Quarter, September 30, 2014

Eric Hanson led a discussion on the Producer Security Fund's financial results for the three months ended September 30, 2014. The most notable on the overall fund statement (page 1) is the payout of over $6 million to vegetable producers for the Allens default that was made in July. This expense is also shown on the vegetable contractor statement, which is page 5 of the report.

Eric pointed out that the Grain Warehouse Keeper ending balance of September 30, 2014 was a positive $106,898.37, up from $21,469.73 as of September 30, 2013. Since most of the revenue is received at the beginning of the license year, the balance will dip back below zero again. However, we expect that the balance will continue to improve and after a few years will remain positive for the entire year.

Agenda Item III C   6 Year Projections

Eric discussed the projections schedule with the group. Overall assessment collections are expect to increase by about $600,000 annually due to the end of assessment holidays for grain dealers and milk contractors. License fee collections are expected to stay the same for milk contractors, grain dealers, and grain warehouses, but vegetable contractors will lose their license fee credits resulting in about $50,000 in increased collections.

Regarding expenditures, salaries and fringe are expected to be around $900,000 in FYE 2015 and increase to almost $950,000 in 6 years. Supplies and services are expected to be around $190,000 in FYE 2015 and remain essentially unchanged for the next 6 years. These forecasts are based on the projections the division provides DOA.

Defaults are projected to be almost $500,000 per year based on an average of the last 35 years. Based on these revenue and expenditure projections the fund balance is expected to reach $11 million again in 6 or 7 years. If there are no defaults it could reach $11 million in 3 or 4 years.

Agenda Item IV   Allen's Inc. Default Recovery Update

Jeremy McPherson stated that anytime a default that occurs, we analyze the potential to recover any payouts from the company that defaulted. Allens is no exception. Jeremy then introduced Dave Meany, DATCP's Chief Legal Counsel, to discuss specific recovery activity regarding Allens. Attorney Meany discussed the status of an ongoing PACA claim from one producer that also made a claim against the APS Fund. The APS Fund payment is being held pending the outcome of the producers PACA claim, which is expected to conclude next summer/fall.

Additionally, lawsuits were recently filed by the PACA trustee against the Allens principals and their bankruptcy attorneys. The amount claimed in these lawsuits totals approximately $25 million. If these suits are successful, it is possible that DATCP could receive some of the proceeds to reimburse the fund for DATCP's payouts to Allens producers. Timing for resolution in this lawsuit is dependent on whether the parties are willing to settle. If the case is litigated, resolution could take more than a year.

John Umhoefer asked about the source of funds available to pay any potential judgment, given the company is bankrupt. He also asked if this type of lawsuit was typical in a bankruptcy proceeding. Dave Meany said that individuals named in the lawsuit could be personally liable and typically companies maintain insurance policies that may cover the type of activity alleged in the lawsuit. Dave also indicated that PACA law contains unique provisions that may not apply in other bankruptcies.

John Mankse asked if these legal proceedings involved the Attorney General's Office. Dave Meany confirmed that we were working with an Assistant Attorney General that specializes in bankruptcy law.

Agenda Item V Potential Policy Modifications

Jeremy McPherson began the discussion by reporting that, each time a default occurs, the circumstances surrounding the default are reviewed to determine a need for policy changes. After the Allens default, staff reviewed the regulations and analyzed ways to reduce the risk of a similar default happening in the future. Jeremy acknowledge that, although the staff's analysis related specifically to the Allens default, there may be others that propose more structural changes to the program as a whole. Secretary Brancel has indicated that he is willing to consider other changes.

Current law allows vegetable contractors to delay payment to growers but requires most payments be made no later than January 31st for produce delivered the prior year. Almost all vegetable contractors use these provisions to extend payment for several months. Staff believe that shortening payment terms will reduce exposure risk and may also reduce non-payment risk. One option is to require 30 day payment terms, which would be consistent with federal Perishable Agricultural Commodities Act provisions. Payment terms beyond 30 days could still be allowed with more restrictive deferred payment terms, similar to current grain dealer regulations. Another option would be to require individual security and/or additional assessments for payment terms beyond 30 days.

Jeremy indicated that, because the vegetable portion of the program is now below the statutorily required minimum of $800,000, current law requires DATCP to increase vegetable contractor assessments.

Jeremy also said that DATCP staff are currently reviewing the default claims process. Currently, a producer that accepts payment from the fund releases their claim against the defaulting contractor. DATCP assumes the right to pursue contractors to recover fund payments made on the contractor's behalf. By waiting until after the default proceeding, when payments are made from the fund, DATCP is delayed in entering any legal proceeding as a creditor. If a producer fails to preserve their rights in a bankruptcy or receivership proceeding prior to required deadlines, DATCP may miss out on a possible recovery. While this has not happened in the Allens case, DOJ attorneys that represent DATCP have raised this issue. Possible ways to address this issue include requiring claimants to assign their rights to DATCP sooner in the default process, and/or requiring producers to preserve their legal rights in any ongoing court action to be eligible to file a claim against the Fund. DATCP will continue to work with our DOJ attorney to develop recommendations.

A lengthy discussion developed after Jeremy's report.

Dave Daniels asked why the vegetable industry doesn't pay within 30 days. Nick George said that he believed it was a cash flow/cost of production issue. Jeremie Pavelski said that, for potatoes, about 10% of a grower's payment is not immediately known due to price fluctuations and incentives.

Jim Zimmerman thought that the industry would want to address issues regarding payment terms. Nick said that, due to anti-trust laws, the industry never discusses payment terms. Jeremie suggested that changes should be initiated by growers and he would talk to the WPVGA. Nick said that the whole industry took a hit as a result of Allens, both in terms of the Fund and the impact on the market. Dave Meany said that an advantage of the state mandating contract terms was that anti-trust issues are avoided.

Jeremie wondered about the status of excluding chippers from the program. Staff indicated that draft language had been provided to the WPVGA, and the ball was now in their court.

John Umhoefer asked about federal Perishable Agricultural Commodities Act (PACA) Requirements. The group responded that they are complicated and pertain to all buyers and sellers of fresh produce, not just growers. There is a license that in some cases may be required. The group also discussed, generally, PACA trust protection. PACA requires 10 day payment terms but allows for 30 days with a written contract. Tom Bressner added that grain dealers are required to pay producers within 7 days.

John Manske indicated that some Trade Associations have been talking about the ramifications of the Allens default and had a meeting with Secretary Brancel.

John Umhoefer said he has spoken with the largest milk processors that collectively represent a majority of Wisconsin's milk supply. Some want out of the program entirely, not liking the fact that their industry funded a default in another industry. John spoke with others that want a segmented fund. Some believe the program's value is in the oversight rather than the Fund. Nick said that the vegetable industry didn't want to pay for the Allens failure either.

Jeremy asked what a segmented fund would look like and how much coverage would be available. He said that for segmented funds to provide the same coverage producers currently receive, each industry would have to maintain a $7 million balance. Jeremy said that staff had suggested an actuarial study that would review the loss history of the program and provide an analysis of the potential future risk, both in terms of amount of loss and number of defaults. The program would have to fund the study. Timing and cost are current unknowns.

Louise Hemstead asked how we ended up with the current program. Jeremy reviewed the program history: the move from individual security to the APS Fund, the original plan for a bond to back-up the Fund, difficulties in securing the bond, and the Special Work Group recommendations from 2007/2008.

John Umhoefer indicated a desire for the Council to be unanimous in how they move forward with the program. Jim Zimmerman agreed but was not in favor of blowing up the program. He added that costs of the program are typically passed on to producers.

John Manske asked the vegetable representatives if there were any chance that they wanted out of the program entirely. Indicating that, if the future of the program was limited to milk and grain, there may be some thought to combining grain dealer and grain warehouse and leaving milk on its own. Jeremie said that he has not heard that from the non-potato vegetable growers. Nick said that the vegetable contactors would like out, but he understood that it was not likely to happen.

John Manske said that he didn't think that entirely eliminating the program was a unified position within the milk industry. Dave Daniels said he hasn't heard anything about eliminating the program but agrees that changes are needed. Don Hamm said that he still supports the program but is concerned about price swings. Don believes that the program has done a lot of good but also understands that changes may be necessary.

Jim Zimmerman said that the corn growers believe in the prevention aspects of the program, but not necessarily the cure. The Soybean Assoc., however, likes the whole program as it is. Jim indicated that the administrative portion of the program has done well to provide stability in the industry, but perhaps producers haven't had to be as diligent because of the security blanket that the Fund has provided.

Louise said that the Dairy Products Association is not as thrilled about the indemnity side. She said current price volatility does add additional risk, but that we need to explore other ways to do it. John Umhoefer said one way would be to reduce the payout which reduces the estimated default exposure.

Craig Myhre said he wasn't opposed to looking at changes. The size of the producer should be considered when determining payouts.

John Umhoefer made a motion that the Council develop information that DATCP could analyze, having separate programs and considering program size, payout, etc. using the current system as a template. Doug Cropp seconded the motion. John Manske asked for discussion on the motion. Jim Zimmerman asked if we were looking at coverage, and reducing payouts, as part of this motion. If so, the actuarial study discussed earlier may be important. The group agreed that asking the department to conduct an actuarial study may be a separate motion. Without further discussion, the motion passed unanimously.

Tom Bressner brought up the grain warehouse program and reminded the group that the feds have a competing product, so any suggestions for changes need to consider the impact of licensees defecting to a less costly program.

Jim Zimmerman made a motion to recommend DATCP conduct an actuarial study of the likelihood of potential defaults and look at the ramifications of reducing coverage amounts. Nick George seconded the motion. Louise moved to amend the motion adding that the study also look at the Fund as it is today and what it would be segmented. Jeremie seconded the motion to amend. Motion to amend was unanimously approved. A motion to approve Jim's motion as amended by Louise was made and seconded. The motion passed unanimously.

Agenda Item VI Other Business

John Manske mentioned that he had heard that the Governor and DOA wanted to eliminate the Producer Security Council. After discussion with legislators and others, John learned the last budget, Act 20, required that all inactive (meaning not having met within the last 12 months) statutory boards and councils were to be eliminated. John said that clearly this council does not meet that criteria. Sandy Chalmers said that the department was also surprised at the proposed elimination of the council. She said that we contacted DOA about the council's activity and sent minutes of our most recent meetings. John Manske offered to draft a letter on behalf of the council regarding the desire to keep the council in place.

Nick George asked, given the discussion about major structural changes to the program, what was going to happen in the meantime in May and September when the assessment holiday goes away for milk contractors and grain dealers. John Manske said that he had discussions with one legislator's office about granting a loan to the program to bring the balance back above $11 million. After some discussion John Manske offered to write a letter to Rep. Tranel about obtaining a loan for the Fund.

All agreed to meet again in the 1st quarter of 2015, between March 15th and April 15th.

Meeting adjourned at 12:04 pm.