



**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2003-04

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on Agriculture...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
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(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
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- Miscellaneous ... **Misc**

1 (1) The producer retains title to all of the milk and all of the processed dairy
2 products made from that milk.

3 (2) The operator does not market the milk or processed dairy products, but
4 promptly returns the processed dairy products to the producer or the producer's agent for
5 consumption or marketing.

6 (3) The operator does not commingle producer-owned milk or dairy products
7 with other milk or dairy products.

8 (4) The operator provides the processing services under a written contract with
9 the producer or the producer's agent. The contract shall clearly and conspicuously
10 disclose all the following:

11 (a) That the producer retains title to all the milk shipped to the operator for
12 processing, and all the processed dairy products made from that milk.

13 (b) That the producer's milk shipments to the operator are not secured under ch.
14 126, Stats.

15 (5) The operator keeps a copy of the contract under sub. (4) for at least 3 years
16 after the contract ends, and makes it available to the department for inspection and
17 copying upon request.

18 (6) The operator submits to the department, by May 1 of each year, an affidavit
19 certifying that the operator qualifies for the custom processing exemption under this
20 section.

21 **ATCP 100.16 Producer agents.** (1) QUALIFIED PRODUCER AGENT. A producer
22 agent is not a qualified producer agent under s. 126.45(3) or 126.47(3)(b) or (c), Stats.,

1 nor may a producer agent file a default claim under s. ATCP 126.70(1)(c), Stats., unless
2 all the following apply:

3 (a) The producer agent procures producer milk in this state solely as the agent of
4 milk producers. Notwithstanding this paragraph, a milk contractor who buys some milk
5 and markets other milk as a producer agent may file a default claim under s. 126.70(1)(c),
6 Stats., for producer milk that the milk contractor markets as a producer agent if the
7 contractor complies with pars. (b) to (f) with respect to all of the milk that the contractor
8 procures in this state as a producer agent.

9 (b) The producer agent does not take title to the producer milk, or to any
10 processed dairy products made from the producer milk.

11 (c) The producer agent markets the producer milk under a written contract with
12 each milk producer. The contract shall comply with sub. (2).

13 (d) The producer agent does not process, as a producer agent, more than 5 million
14 pounds of producer milk in any month.

15 (e) The producer agent gives, to each recipient of producer milk marketed by the
16 producer agent, a written invoice stating that the milk is producer milk not owned by the
17 producer agent.

18 (f) The producer agent files a monthly producer agent report with the department,
19 as provided under sub. (3).

20 **NOTE:** Producer agents are regulated as milk contractors under ch. 126, Stats.,
21 regardless of whether they comply with sub. (1). But producer agents do
22 not qualify for special treatment as “qualified producer agents” under s.
23 126.45(3) or 126.47(3)(b) or (c), Stats., nor may they file default claims
24 under s. 126.70(1), Stats., unless they comply with sub. (1).
25

1 **(2) CONTRACT WITH MILK PRODUCER.** The contract under sub. (1)(c) shall be
2 signed by the milk producer and the producer agent, and shall clearly specify the terms
3 under which the producer agent receives, markets and accepts payment for milk on behalf
4 of the producer. The contract shall clearly and conspicuously disclose all the following:

5 (a) That the producer agent does not take title to the producer's milk, or any dairy
6 products made from that milk.

7 (b) That the producer agent receives payments on behalf of the producer, and
8 holds them in trust for the producer.

9 (c) The terms and conditions of payment to the producer.

10 (d) The procedure by which the producer agent will receive payment on behalf of
11 the producer and make payments to the producer, including any trust fund arrangement.

12 (e) The producer agent's compensation for serving as the producer's agent, and
13 the method by which the producer agent will receive that compensation from the
14 producer.

15 (f) The appropriate milk security disclosure statement under s. ATCP 100.20.

16 **(3) MONTHLY REPORT.** A producer agent who files a monthly report under sub.
17 (1)(f) shall file the report on or before the 25th day of the month. The report shall include
18 all the following:

19 (a) The name and address of each person to whom the producer agent marketed,
20 in the preceding month, producer milk that the producer agent procured in this state as a
21 producer agent.

22 (b) The total pounds of producer milk that the producer agent marketed to each
23 person under par. (a) in the preceding month.

1 (c) The total dollar value of producer milk that the producer agent marketed to
2 each person under par. (a) in the preceding month.

3 (d) The producer agent's total gross payments to milk producers for producer
4 milk that the producer agent marketed under par. (a) in the preceding month.

5 (4) EXEMPT AGENT. Chapter 126, Stats., does not apply to a person who collects
6 a producer's milk for delivery to a custom processor under s. ATCP 100.14, and who
7 receives and markets the custom-processed dairy products for the producer, provided that
8 all the following apply:

9 (a) The person does not handle more than 5 million pounds of producer milk in
10 any month, does not process milk or dairy products, and does not otherwise operate as a
11 milk contractor.

12 (b) The producer retains title to the milk and the processed dairy products made
13 from the milk.

14 (c) The person has a written contract with the producer. The contract shall
15 clearly and conspicuously disclose all the following:

16 1. That the producer retains title to the milk and the dairy products made from the
17 milk.

18 2. That the producer's milk shipments are not secured under ch. 126, Stats.

19 (d) The person keeps a copy of the contract under par. (c) for at least 3 years after
20 the contract ends, and makes it available to the department for inspection and copying
21 upon request.

22 (e) The person submits to the department, by May 1 of each year, an affidavit
23 certifying that the person qualifies as an exempt agent under this subsection.

1 **ATCP 100.18 Marketing processed dairy products for milk producers.**

2 Chapter 126, Stats., does not apply to a person who markets only processed dairy
3 products for milk producers, provided that the person does not procure, market or process
4 raw producer milk.

5 **ATCP 100.20 Disclosures to milk producers. (1) DISCLOSURE REQUIRED.** A

6 milk contractor shall make a disclosure under sub. (2) to every milk producer and
7 producer agent from whom the milk contractor procures producer milk in this state. The
8 milk contractor shall make the disclosure, in the form prescribed under sub. (2), in a
9 written document given to the producer or producer agent. The disclosure shall be clear
10 and conspicuous, and shall be set apart from every other writing. The milk contractor
11 shall make the disclosure to the producer or producer agent at all of the following times:

12 (a) When the milk contractor first procures producer milk from that producer or
13 producer agent.

14 (b) In June of each year in which the milk contractor procures milk from that
15 producer or producer agent.

16 (c) When the milk contractor first procures producer milk from that producer or
17 producer agent following a change in circumstances that requires a different disclosure
18 statement under sub. (2).

19 **(2) FORM OF DISCLOSURE.** A disclosure under sub. (1) shall consist of one of the
20 following verbatim statements, as applicable:

21 (a) The following statement if the milk contractor is required to pay fund
22 assessments under s. 126.45, Stats., and is not a producer agent who is also required to
23 file security under s. 126.47(3)(c), Stats.:

1 **IMPORTANT NOTICE**

2 ***[Name of milk contractor]* contributes to Wisconsin's Agricultural Producer**
3 **Security Fund. This fund helps ensure that milk producers and producer**
4 **agents will be paid for the milk they ship to contributing contractors. If a**
5 **contributing contractor fails to pay a producer or producer agent, the fund**
6 **may pay up to 80% of the first \$60,000 of the producer's unpaid milk**
7 **payment claim, and up to 75% of any additional unpaid milk payroll claim.**

8
9 (b) The following statement if the milk contractor is not required to pay fund

10 assessments, but has voluntarily chosen to do so:

11 **IMPORTANT NOTICE**

12 ***[Name of milk contractor]* contributes to Wisconsin's Agricultural Producer**
13 **Security Fund. This fund helps ensure that milk producers and producer**
14 **agents will be paid for the milk they ship to contributing contractors. If a**
15 **contributing contractor fails to pay a producer or producer agent, the fund**
16 **may pay up to 80% of the first \$60,000 of the producer's unpaid milk**
17 **payment claim, and up to 75% of any additional unpaid milk payroll claim.**
18 **We are not required to contribute to this fund because our financial**
19 **statement shows positive equity, a current ratio of at least 1.25 to 1.0, and a**
20 **debt-to-equity ratio of no more than 2.0 to 1.0, but we have elected to join the**
21 **fund as a voluntary contributor.**

22
23 (c) The following statement if the milk contractor files security under s. 126.47,

24 Stats., but is not a producer agent filing security under s. 126.47(3)(b) or (c), Stats.:

25 **IMPORTANT NOTICE**

26 ***[Name of milk contractor]* does not participate in Wisconsin's Agricultural**
27 **Producer Security Fund. We have filed security with the State of Wisconsin**
28 **to cover part, but not all, of our milk payment obligations to milk producers**
29 **and producer agents. The security equals at least 75% of the largest amount**
30 **that we owed producers and producer agents at any time during our last**
31 **completed fiscal year. The security is in the following form(s): *[specify forms***
32 ***of security]*.**

33
34 (d) The following statement if the milk contractor is not a contributing milk

35 contractor, and has not filed security, but has filed financial statements that meet the

36 standards under s. 126.45(1)(b), Stats.:

1 **IMPORTANT NOTICE**

2 ***[Name of milk contractor]* does not participate in Wisconsin's Agricultural**
3 **Producer Security Fund, and has not filed security with the State of**
4 **Wisconsin to secure payments to milk producers and producer agents. We**
5 **are not required to participate because our financial statement shows**
6 **positive equity, a current ratio of at least 1.25 to 1.0, and a debt-to-equity**
7 **ratio of no more than 2.0 to 1.0.**

8
9 (e) One of the following statements if the milk contractor is a producer agent who
10 is required to file security under s. 126.47, Stats., and does not contribute to the fund:

11 1. The following statement if the milk contractor makes the disclosure before
12 May 1, 2003:

13 **IMPORTANT NOTICE**

14 ***[Name of milk contractor]* does not participate in Wisconsin's Agricultural**
15 **Producer Security Fund. We have filed security with the State of Wisconsin**
16 **to cover part, but not all, of our milk payment obligations to milk producers.**
17 **The security equals 15% of the largest amount that we owed to producers at**
18 **any time during our last completed fiscal year. The security is in the**
19 **following form(s): *[specify forms of security]*.**

20
21 2. The following statement if the milk contractor makes the disclosure on or after
22 May 1, 2003 but before May 1, 2004:

23 **IMPORTANT NOTICE**

24 ***[Name of milk contractor]* does not participate in Wisconsin's Agricultural**
25 **Producer Security Fund. We have filed security with the State of Wisconsin**
26 **to cover part, but not all, of our milk payment obligations to milk producers.**
27 **The security equals 30% of the largest amount that we owed to producers at**
28 **any time during our last completed fiscal year. The security is in the**
29 **following form(s): *[specify forms of security]*.**

30
31 3. The following statement if the milk contractor makes the disclosure on or after
32 May 1, 2004 but before May 1, 2005:

1 **IMPORTANT NOTICE**

2 ***[Name of milk contractor]*** does not participate in Wisconsin's Agricultural
3 **Producer Security Fund. We have filed security with the State of Wisconsin**
4 **to cover part, but not all, of our milk payment obligations to milk producers.**
5 **The security equals 45% of the largest amount that we owed to producers at**
6 **any time during our last completed fiscal year. The security is in the**
7 **following form(s): *[specify forms of security]*.**

8
9 4. The following statement if the milk contractor makes the disclosure on or after
10 May 1, 2005 but before May 1, 2006:

11 **IMPORTANT NOTICE**

12 ***[Name of milk contractor]*** does not participate in Wisconsin's Agricultural
13 **Producer Security Fund. We have filed security with the State of Wisconsin**
14 **to cover part, but not all, of our milk payment obligations to milk producers.**
15 **The security equals 60% of the largest amount that we owed to producers at**
16 **any time during our last completed fiscal year. The security is in the**
17 **following form(s): *[specify forms of security]*.**

18
19 5. The following statement if the milk contractor makes the disclosure on or after
20 May 1, 2006:

21 **IMPORTANT NOTICE**

22 ***[Name of milk contractor]*** does not participate in Wisconsin's Agricultural
23 **Producer Security Fund. We have filed security with the State of Wisconsin**
24 **to cover part, but not all, of our milk payment obligations to milk producers.**
25 **The security equals 75% of the largest amount that we owed to producers at**
26 **any time during our last completed fiscal year. The security is in the**
27 **following form(s): *[specify forms of security]*.**

28
29 (f) The following statement if the milk contractor contributes to the fund as a
30 producer agent, and files security according to s. 126.47(3)(c), Stats.:

31 **IMPORTANT NOTICE**

32 ***[Name of milk contractor]*** contributes to Wisconsin's Agricultural Producer
33 **Security Fund as a *producer agent*. If we fail to pay a producer between May**
34 **1, 2002 and April 30, 2004, the fund may pay up to 15% of the producer's**
35 **allowed claim. If we fail to pay a producer between May 1, 2004 and April**
36 **30, 2007, the fund may pay up to 20% of the producer's allowed claim. If we**

1 **fail to pay a producer at anytime after April 30, 2007, the fund may pay up to**
2 **80% of the first \$60,000 claimed and up to 75% of any additional claim**
3 **above \$60,000.**

4
5 **ATCP 100.22 Producer payroll report.** (a) An applicant for an annual milk
6 contractor license shall include, as part of the license application, the sworn and notarized
7 statement required under s. 126.41(6), Stats.

8 (b) The statement under par. (a) shall report, under s. 126.41(6)(a), Stats., the
9 gross amount that the applicant paid for producer milk procured in this state during the
10 applicant's last completed fiscal year. If the applicant has not yet operated as a milk
11 contractor, the applicant shall report the estimated gross amount that the applicant will
12 pay for milk procured in the applicant's first completed fiscal year.

13 (c) The statement under par. (a) shall report, under s. 126.41(6)(b), Stats., the
14 largest gross amount that the applicant paid for producer milk procured in this state in
15 any single month during the applicant's last completed fiscal year.

16 **NOTE:** Under s. 126.41(9), Stats., a milk contractor who files security under s.
17 126.47, Stats., must immediately notify the department if, at any time, the
18 milk contractor's unpaid milk payroll obligations exceed the amount last
19 reported under par. (c). Under s. 126.83, Stats., the department may
20 require the milk contractor to provide additional information as necessary.

1
2
3 **SUBCHAPTER III**
4 **MILK CONTRACTOR PAYMENTS**
5 **TO PRODUCERS; RECORDS**

6 **NOTE:** This subchapter is adopted under authority of ss. 93.07(1), 97.20(4),
7 126.49, 126.51 and 126.81, Stats., and interprets ss. 93.15 and 97.20,
8 Stats., and ch. 126, Stats. The Wisconsin department of agriculture, trade
9 and consumer protection may enforce this subchapter under ss. 93.06(7)
10 and (8), Stats., s. 93.21(4), Stats., and subch. VIII of ch. 126, Stats., as
11 appropriate.
12

13 **ATCP 100.30 Pay statements to milk producers.** On each producer pay date
14 under s. 126.48(1) or (2), Stats., a milk contractor who procures producer milk in this
15 state from a milk producer shall provide that milk producer with a written pay statement
16 that includes all the following:

17 (1) **MILK CONTRACTOR IDENTIFICATION.** A pay statement shall include the name
18 and address of the milk contractor.

19 (2) **PRODUCER IDENTIFICATION.** A pay statement shall include the producer's
20 name and identification number.

21 (3) **PAY PERIOD.** A pay statement shall specify the milk delivery dates for which
22 payment is being made.

23 (4) **MILK VOLUME.** A pay statement shall specify the total weight of milk, in
24 hundredweights, which the milk contractor received from the milk producer on the dates
25 specified in sub. (3).

26 (5) **GRADE OF MILK.** A pay statement shall specify the grade of milk that the milk
27 contractor received from the milk producer on the dates specified in sub. (3).

28 (6) **MILK TEST RESULTS.** If the price paid to the milk producer is affected by test
29 results related to milk components, milk quality or other variables, the pay statement

1 shall indicate all the test results used to determine the pay price unless the milk contractor
2 has already furnished those test results to the milk producer.

3 (7) MILK PRICE AND ADJUSTMENTS. A pay statement shall include the following
4 price information, as applicable:

5 (a) *Payment based on straight fat.* If the milk contractor is paying the milk
6 producer on a straight fat basis, the pay statement shall include all the following
7 information:

8 1. The butterfat content of milk received from the milk producer on the dates
9 specified in sub. (3), expressed as a percentage by weight of milk received.

10 2. The total pounds of butterfat in the milk received from the producer on the
11 dates specified in sub. (3).

12 3. The pay price per pound of butterfat.

13 4. The gross amount paid for butterfat, obtained by multiplying the total pounds
14 of butterfat under subd. 2. by the pay price under subd. 3.

15 5. The pay price per hundredweight for butterfat, obtained by dividing the gross
16 amount paid under subd. 4. by the milk volume in hundredweights under sub. (4).

17 6. Price adjustments per hundredweight for other milk components such as
18 protein or solids not fat.

19 7. Price adjustments per hundredweight for milk grade or quality, including
20 adjustments for bacteria or somatic cell counts.

21 8. Price adjustments per hundredweight based on volume or other factors
22 identified in the pay statement.

1 9. The producer's average gross pay per hundredweight of milk, obtained by
2 applying the adjustments under subs. 6. to 8. to the pay price per hundredweight for
3 butterfat under subd. 5.

4 (b) *Payment based on 3.5% butterfat differential.* If the milk contractor is paying
5 the producer on a 3.5% butterfat differential basis, the pay statement shall include all the
6 following information:

7 1. The base price per hundredweight for milk containing 3.5% butterfat by
8 weight.

9 2. The price differential per hundredweight for each percentage point, plus or
10 minus, by which the butterfat content of the producer's milk differs from 3.5%.

11 3. Price adjustments per hundredweight for other milk components such as
12 protein or solids not fat.

13 4. Price adjustments per hundredweight for milk grade or quality, including
14 adjustments for bacteria or somatic cell counts.

15 5. Price adjustments per hundredweight based on volume or other factors
16 identified in the pay statement.

17 6. The producer's average gross pay per hundredweight of milk after adjustments
18 under this section.

19 (c) *Payment based on multiple component pricing.* If the milk contractor is
20 paying the producer on a multiple component pricing basis, the pay statement shall
21 include all the following information:

22 1. The milk volume in hundredweights under sub. (4) multiplied by the
23 applicable producer price differential per hundredweight.

1 **NOTE:** Federal milk marketing orders specify, for each pay period, minimum
2 producer price differentials for grade A milk covered by those orders.

3
4 2. The pounds of butterfat contained in the milk received from the producer on
5 the dates specified in sub. (3), multiplied by the applicable butterfat price per pound.

6 **NOTE:** Federal milk marketing orders specify, for each pay period, minimum
7 butterfat prices for grade A milk covered by those orders.

8
9 3. The pounds of protein contained in the milk received from the producer on the
10 dates specified in sub. (3), multiplied by the applicable protein price per pound.

11 **NOTE:** Federal milk marketing orders specify, for each pay period, minimum
12 protein prices for grade A milk covered by those orders.

13
14 4. The pounds of other solids contained in the milk received from the producer on
15 the dates specified in sub. (3), multiplied by the applicable price per pound for other
16 solids.

17 **NOTE:** Federal milk marketing orders specify, for each pay period, minimum
18 “other solids” prices for grade A milk covered by those orders.

19
20 5. For each applicable price adjustment based on milk grade or quality, the milk
21 volume in hundredweights under sub. (4) multiplied by the price adjustment per
22 hundredweight. The pay statement shall identify the basis for each price adjustment
23 under this subdivision.

24 **NOTE:** This includes price adjustments for bacteria count, somatic cell count, or
25 other measures of grade or quality. Federal milk marketing orders specify,
26 for each pay period, minimum somatic cell adjustments for grade A milk
27 covered by those orders.

28
29 6. For each applicable price adjustment based on volume or other factors, the
30 milk volume in hundredweights under sub. (4) multiplied by the price adjustment per
31 hundredweight. The pay statement shall identify the basis for each price adjustment
32 under this paragraph.

1 7. The producer's average gross pay per hundredweight of milk, calculated as the
2 sum of the value used under subs. 1. to 6., divided by the milk volume in
3 hundredweights under sub (4).

4 **(8) GROSS AMOUNT DUE.** A pay statement shall specify the gross amount due the
5 producer for milk delivered on the dates specified under sub. (3), prior to any deductions
6 under sub. (11).

7 **(9) AVERAGE GROSS PAY PER HUNDREDWEIGHT LESS HAULING CHARGES.** A pay
8 statement shall specify the producer's average gross pay per hundredweight less hauling
9 charges. This consists of the gross amount due under sub. (8) less total hauling expenses
10 charged to the producer for the pay period under sub. (11)(a), divided by the milk volume
11 in hundredweights under sub. (4).

12 **(10) NET AMOUNT DUE.** A pay statement shall specify the net amount due the
13 producer for the milk delivered on the dates specified in sub. (3). This consists of the
14 total amount due under sub. (8) less all deductions under sub. (11).

15 **(11) DEDUCTIONS.** A pay statement shall specify the nature and amount of every
16 deduction from the gross amount due the producer under sub. (8), including deductions
17 for any of the following that apply:

- 18 (a) Milk hauling expenses charged to the producer.
- 19 (b) Deductions related to drug residue violations.
- 20 (c) Dairy products that the producer buys from the milk contractor.
- 21 (d) Supplies that the milk contractor provides to the milk producer.
- 22 (e) Wisconsin milk marketing board deductions.
- 23 (f) National dairy promotion deductions.

1 (g) Commodity credit corporation deductions.

2 (h) Insurance deductions.

3 (i) Cooperative fees or capital retained.

4 (j) Creditor assignments.

5 (k) Other deductions.

6 **ATCP 100.32 Pay records. (1) RECORDS REQUIRED.** A milk contractor shall
7 keep accurate records and accounts of milk receipts, payments for milk received, and
8 amounts owed to milk producers and producer agents. Records shall include all the
9 following:

10 (a) A copy of every contract between the milk contractor and a milk producer or
11 producer agent.

12 (b) A record of all milk receipts from producers and producer agents, showing
13 the amount received from each producer or producer agent and the date of each receipt.

14 (c) A record of every milk producer pay statement required under s. ATCP
15 100.30.

16 (d) Records showing the nature and amount of any non-price consideration that
17 the milk contractor furnishes to a producer in return for the producer's sale or
18 consignment of milk to the milk contractor, but which is not reflected in the producer's
19 pay statement under s. ATCP 100.30. In this subsection, "non-price consideration" has
20 the meaning given in s. ATCP 100.98(6).

21 (e) The result of every test on a producer milk delivery, including any test related
22 to milk components or milk quality. Records shall specify the delivery to which each test
23 pertains.

1 (f) A payroll summary showing, for each payroll period, the amount of milk
2 received from producers, the gross amounts owed to producers for milk received, the
3 amount and disposition of any payroll deductions, the net amounts owed to producers
4 after deductions, and the amounts paid to producers.

5 (g) Other computer records, worksheets and accounting records showing how the
6 milk contractor computed payment obligations to milk producers and producer agents.

7 (h) Records showing the milk contractor's use and disposition of milk and dairy
8 products received by the milk contractor. Records shall enable the milk contractor to do
9 all the following:

10 1. Account for the sale, use or disposition of all milk and dairy products received
11 by the milk contractor.

12 2. Account for the source of all milk and dairy products sold, marketed or
13 otherwise disposed of by the milk contractor.

14 **(2) FALSE RECORDS.** (a) No milk contractor may falsify any record or account,
15 or conspire with any other person to falsify a record or account.

16 (b) No milk contractor may provide any milk producer or producer agent with
17 any statement or accounting that is false or misleading, or that contains any false or
18 misleading computation or arrangement of figures.

19 **(3) RECORDS RETENTION AND INSPECTION.** A milk contractor shall retain the
20 records required under this section for at least 3 years, and shall make the records
21 available to the department for inspection and copying upon request.

22 **SECTION 9.** Chapter 100 subchapters IV and V are repealed.

1 **SECTION 10.** Chapter 100 subchapter VI (title) is renumbered subchapter IV
2 (title).

3 **SECTION 11.** Chapter 100 subchapter IV (note) is created to read:

4 **NOTE:** This subchapter is adopted under authority of ss. 93.07(1), 97.20(4), and
5 100.20(2), Stats., and interprets ss. 93.15, 97.20, 100.20 and 100.22, Stats.
6 Violations are subject to the sanctions provided in ss. 93.21(4), 97.72,
7 97.73, 100.20, 100.22(4) and (5), 100.24, and 100.26(3), (5) and (6), Stats.
8 Violations of this subchapter may also result in license sanctions under ss.
9 93.06(7) and (8) and 97.20, Stats.

10
11 **SECTION 12.** ATCP 100.98(4) is renumbered (5) and amended to read:

12 100.98(5) “Milk price” means a producer’s average gross pay per hundredweight
13 less hauling charges, calculated for a pay period according to s. ATCP ~~100.75(9)~~
14 100.30(9).

15 **SECTION 13.** ATCP 100.98(4) is created to read:

16 ATCP 100.98(4) “Dairy plant operator” means either of the following:

- 17 (a) A person who holds, or is required to hold, a dairy plant license under s.
18 97.20, Stats., and who buys milk from producers.
- 19 (b) A person who operates a dairy plant outside this state, and who buys milk
20 from Wisconsin producers for delivery to that out-of-state dairy plant.

21 **SECTION 14.** ATCP 100.98(5) to (9) are renumbered (7) to (9), (6) and (10).

22 **SECTION 15.** ATCP 100.982(4)(f) is amended to read:

23 ATCP 100.982(4)(f) The dairy plant operator complies with s. 80.26(2) and
24 ~~100.75~~ 100.30.

25 **SECTION 16.** Chapter ATCP 101 is renumbered chapter ATCP 101 subchapter I:

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27 **SECTION 17.** Chapter ATCP 101 (title) is created to read:
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**CHAPTER ATCP 101
VEGETABLE CONTRACTORS**

14 **SECTION 18.** Chapter ATCP 101 subchapter I (note) is amended to read.

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NOTE: This ~~chapter subchapter~~ is adopted under authority of s. 100.20(2), Stats., and is administered by the Wisconsin department of agriculture, trade and consumer protection. Violations of this subchapter may be prosecuted under s. 100.20(6), or 100.26(3) or (6), Stats. A person who suffers a monetary loss because of a violation of this ~~chapter subchapter~~ may sue the violator directly under s. 100.20(5), Stats., and may recover twice the amount of the loss, together with costs and reasonable attorneys' fees.

31 **SECTION 19.** ATCP 101.01(intro.) is amended to read:

32 **ATCP 101.01 Definitions.** In this ~~chapter subchapter~~:

33 **SECTION 20.** ATCP 101.08 is repealed.

34 **SECTION 21.** Chapter ATCP 101 subchapter II is created to read:

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**SUBCHAPTER II
FINANCIAL STANDARDS AND SECURITY**

NOTE: This subchapter is adopted under authority of ss. 93.07(1), 126.49, 126.51 and 126.81, Stats., and interprets ch. 126, Stats. The Wisconsin department of agriculture, trade and consumer protection may enforce this subchapter under subch. VIII of ch. 126, Stats.

ATCP 101.20 Definitions. In this subchapter:

(1) "Affiliate" has the meaning given in s. 126.01(1), Stats.

(2) "Audited financial statement" has the meaning given in s. 126.01(3), Stats.

(3) "Contributing vegetable contractor" has the meaning given in s. 126.55(4),
Stats.

(4) "Producer agent" has the meaning given in s. 126.55(12), Stats.

(5) "Reviewed financial statement" has the meaning given in s. 126.01(20), Stats.

(6) "Vegetable contractor" has the meaning given in s. 126.55(14), Stats.

1 (7) "Vegetable procurement contract" has the meaning given in s. 126.55(15),
2 Stats.

3 (8) "Vegetable producer" has the meaning given in s. 126.55(16), Stats.

4 **ATCP 101.22 General requirements.** A vegetable contractor shall comply with
5 applicable requirements in ch. 126, Stats.

6 **ATCP 101.24 Financial statement. (1) GENERAL.** A vegetable contractor's
7 financial statement, filed under s. 126.58, Stats., shall comply with this section and s.
8 126.58, Stats.

9 (2) **LIABILITY DISCLOSURES.** A financial statement shall include a detailed
10 description of all notes, mortgages and other long-term liabilities not due or payable
11 within one year. The description shall be included in the financial statement notes or as
12 an attachment to the financial statement. The description shall indicate the nature of the
13 liabilities, the due dates and the payment terms.

14 (3) **LIABILITY CLASSIFICATION.** A financial statement shall classify, as current
15 liabilities, notes payable that do not have specific due dates.

16 (4) **ASSET DISCLOSURES. (a)** A financial statement shall specifically identify and
17 explain, in the financial statement notes or as an attachment to the financial statement, the
18 following assets:

19 1. Every non-trade note or account receivable from an officer, director,
20 employee, partner, or stockholder, or from a member of the family of any of those
21 individuals.

22 2. Every note or account receivable from a parent organization, a subsidiary, or
23 an affiliate, other than an employee.

1 3. Every note or account that has been receivable for more than one year, unless
2 the vegetable contractor has established an offsetting reserve for uncollectible notes and
3 accounts receivable.

4 (b) A financial statement shall include at least one of the following:

5 1. An allowance for doubtful or uncollectible receivables. The notes to the
6 financial statement shall describe the method used to account for doubtful or
7 uncollectible receivables.

8 2. A summary classifying the age of all notes and accounts receivable.

9 **(5) ATTACHMENTS.** If information required under this section is provided in an
10 attachment to a reviewed or audited financial statement, the following requirements
11 apply:

12 (a) The attachment shall be prepared on the letterhead of the certified public
13 accountant who reviewed or audited the financial statement.

14 (b) The certified public accountant who reviewed or audited the financial
15 statement shall certify, in the attachment, whether the certified public accountant has
16 reviewed or audited the attachment.

17 **ATCP 101.26 Disclosure to producers. (1) DISCLOSURE REQUIRED.** A
18 vegetable contractor shall make a disclosure under sub. (2) to every vegetable producer
19 and producer agent with whom the vegetable contractor enters into a vegetable
20 procurement contract. The vegetable contractor shall make the disclosure, in the form
21 prescribed under sub. (2), as part of each proposed vegetable procurement contract
22 offered to the vegetable producer or producer agent. The disclosure shall be clear and
23 conspicuous, and shall be set apart from every other writing.

1 (2) FORM OF DISCLOSURE. A disclosure under sub. (1) shall consist of one of the
2 following verbatim statements, as applicable:

3 (a) The following statement if the vegetable contractor is a contributing vegetable
4 contractor:

5 **IMPORTANT NOTICE**

6 ***[Name of vegetable contractor]* contributes to Wisconsin's Agricultural
7 Producer Security Fund. This fund helps ensure that vegetable producers
8 and producer agents will be paid for processing vegetables grown under
9 vegetable procurement contracts. If a contributing vegetable contractor fails
10 to pay a producer or producer agent, the fund may pay up to 90% of the first
11 \$40,000 of the producer's allowed claim, 85% of the producers next \$40,000
12 allowed claim, 80% of the producers next \$40,000 allowed claim, and 75% of
13 any allowed claim in excess of \$120,000.**

14
15 (b) The following statement if the vegetable contractor has filed security under s.
16 126.61, Stats:

17 **IMPORTANT NOTICE**

18 ***[Name of vegetable contractor]* does not participate in Wisconsin's
19 Agricultural Producer Security Fund. We have filed security with the State
20 of Wisconsin to cover part, but not all, of our vegetable payment obligations
21 to producers and producer agents. The security equals at least 75% of the
22 largest amount that we owed producers and producer agents at any time
23 during our last completed fiscal year. The security is in the following
24 form(s): *[specify forms of security]*.**

25
26 (c) The following statement if the vegetable contractor is not a contributing
27 vegetable contractor, and has not filed security with the department under s. 126.61,
28 Stats.:

29 **IMPORTANT NOTICE**

30 ***[Name of vegetable contractor]* does not contribute to Wisconsin's
31 Agricultural Producer Security Fund, and has filed no security with the State
32 of Wisconsin to secure payment for vegetables grown under vegetable
33 procurement contracts.**

1 **SECTION 22.** ATCP 161.31(8)(a) and (b) are amended to read:

2
3 ATCP 161.31(8)(a) A warehouse keeper licensed under ~~ch. 127, Stats., s. 126.26,~~
4 Stats., or 7 USC 241 to 271.

5 (b) ~~An exempt warehouse keeper, as defined in s. 127.01(14), Stats.~~ A
6 warehouse keeper who has a total of less than 50,000 bushels of grain obligations to
7 others, for all the warehouse keeper's warehouses, at any time.

8 **SECTION 23.** ATCP 161.32(3)(intro.) is amended to read:

9 ATCP 161.32(3)(intro.) The department shall make payment from the
10 ~~appropriation~~ appropriations under ~~s. 20.115(3)(d), Stats., ss. 20.115(1)(d) and (k), Stats.,~~
11 subject to the availability of funds in the ~~appropriation~~ appropriations.

12 **SECTION 24.** ATCP 162.02(2) is amended to read:

13 ATCP 162.02(2) "Agriculturally related business" means any person, or any
14 business association or entity, which is engaged in the sale or rental of farm supplies,
15 services or equipment to farmers, provided that the sale or rental of farm supplies,
16 services or equipment to farmers comprises at least 50% of the annual gross revenue of
17 the person, association or entity. "Agriculturally related business" does not include a
18 ~~person, association or entity regulated under s. 100.03, 100.06, or ch. 127, Stats.~~ a grain
19 dealer, grain warehouse keeper, milk contractor or vegetable contractor regulated under
20 ch. 126, Stats.

Fiscal Estimate — 2001 Session

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number Ch. ATCP 99, 100 and 101

Subject
 Agricultural Producer Security

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

- Increase Costs — May be possible to absorb within agency's budget.
 Yes No
 Decrease Costs

Local: No Local Government Costs

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations
 s. 20.115(1)(q), Wis. Stats.

Assumptions Used in Arriving at Fiscal Estimate

This rule implements changes to the Agricultural Producer Security laws. In general, this law (Ch. 126, Stats) overhauls the states system of securing payments to grain, dairy and vegetable producers. Previous law was based on individual grain dealers, grain warehouse keepers, dairy plants and vegetable contractors either meeting minimum financial standards or providing security (such as a bond or a letter of credit) to pay producers in the event of a default. The new law introduces a shared risk concept where "contractors" are assessed an annual amount to be collected by the state and placed in the Agricultural Producer Security Fund (the fund). Assessments are based on the contractors financial statement ratios and the amount of business that they do with producers.

The Department expects revenue from the statutory fund assessments to be roughly \$2 million per year in first couple years of the program, and then gradually dropping to about \$900,000. (The assessment rates were designed to gradually reduce the cost to the industry as the fund builds a sufficient balance.)

This rule clarifies that grain dealers, grain warehouse keepers and some milk contractors are allowed to make certain adjustments to their balance sheets and thereby reduce the amount of their assessment. Depending on the number of companies that are in a position to use the allowed adjustments, the department estimates that this will reduce assessment revenue by \$50,000 to \$70,000 per year.

Long-Range Fiscal Implications

Prepared By: Kevin LeRoy	Telephone No. 608/224-4928	Agency DATCP
Authorized Signature <i>Barbara Knapp</i>	Telephone No. 608/224-4746	Date (mm/dd/ccyy) 12/19/02

Fiscal Estimate Worksheet — 2001 Session

Detailed Estimate of Annual Fiscal Effect

- Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number Chapters ATCP 99 and 100

Subject
 Agricultural Producer Security

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Annualized Costs:	Annualized Fiscal Impact on State Funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations — Salaries and Fringes	\$	\$ -
(FTE Position Changes)	(FTE)	(- FTE)
State Operations — Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
Total State Costs by Category	\$	\$ -
B. State Costs by Source of Funds		
GPR	\$	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
State Revenues	Increased Revenue	Decreased Revenue
<small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>		
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		- 60,000
Total State Revenues	\$	\$ - 60,000

Net Annualized Fiscal Impact

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$	\$
Net Change in Revenues	\$ 60,000	\$

Prepared By: Kevin LeRoy	Telephone No. 608/224-4928	Agency DATCP
Authorized Signature <i>Barbara Knapp</i>	Telephone No. 608/224-4746	Date (mm/dd/ccyy) 12/19/02

**Wisconsin Department of Agriculture,
Trade and Consumer Protection**

Final Regulatory Flexibility Analysis

Rule Subject: Agricultural Producer Security
Adm. Code Reference: ATCP 99, 100 and 101
Rules Clearinghouse #: 02-113
DATCP Docket #: 02-R03

This proposed rule implements Wisconsin's new agricultural producer security law, Wisconsin Statutes, Chapter 126. This rule amends and repeals current rules and creates new rules consistent with the new law.

Background

Chapter 126, Stats., regulates "contractors" including grain dealers, grain warehouse keepers, milk contractors and vegetable contractors. Contractors must be licensed by the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP). In most cases, licensed contractors must contribute to Wisconsin's agricultural producer security fund. In some cases, fund participation is voluntary. If a contributing contractor defaults on payments to producers, the fund may partially compensate those producers. Fund contributions are based, in part, on the contractor's financial condition.

Among other things, this rule:

- Requires contractors to make certain financial disclosures, either in the notes to their financial statements or as attachments to their financial statements.
- Requires all contractors to make certain disclosures to producers (farmers) with whom the contractor does business.
- Allows grain dealers and grain warehouse keepers to deduct certain liabilities from their balance sheet before calculating their "debt to equity ratio" for the purpose of calculating fund assessments.
- Allows milk contractors to deduct liabilities that are tied to maintaining "aged cheese" in inventory (based on the minimum cure time required by federal standards). Milk contractors may deduct these liabilities when calculating their "debt to equity" ratio, but solely for the purpose of determining fund assessments.
- Clarifies how grain warehouse keepers calculate "capacity."
- Clarifies that dairy "custom processors" are not regulated by the Agricultural Producer Security Law.

Milk Contractors

This rule will benefit cheesemakers who provide "custom processing" services to milk producers. "Custom processors" are typically small businesses that make cheese and other dairy products from producer milk but do not take title to the milk. This rule clarifies that the Agricultural Producer Security Law does not apply to cheesemakers who are solely engaged in "custom processing".

Cheesemakers that specialize in "aged cheese" will also benefit from this rule. The rule allows them to deduct liabilities (such as bank loans) incurred in order to hold aged cheese in inventory. This could reduce fund assessments for cheesemakers making aged cheese.

This rule will impose some additional financial statement disclosure requirements on milk contractors. This may lead to some increased accounting costs. However, these requirements are needed for the effective implementation of the agricultural producer security law.

This rule also requires milk contractors to make specific security disclosures to producers. This requirement is similar to the "notice to producers" requirement contained in the current rules and is no more or less burdensome for small businesses.

Finally, this rule spells out minimum requirements for milk contractors who wish to qualify as producer agents. These requirements are no more burdensome than what is required under current law.

Vegetable Contractors

This rule will impose some additional financial statement disclosure requirements on vegetable contractors. This may lead to some increased accounting costs. However, these requirements are needed for the effective implementation of the agricultural producer security law.

This rule also requires vegetable contractors to make specific security disclosures to producers. This requirement is similar to the "notice to producers" requirement contained in the current rules and is no more or less burdensome for small businesses.

Dated this 19th day of DECEMBER, 2002

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Merry Fran Tryon
Merry Fran Tryon, Administrator,
Division of Trade and Consumer Protection

1 **EFFECTIVE DATE:** The rules contained in this order shall take effect on the first
2 day of the month following publication in the Wisconsin administrative register, as
3 provided under s. 227.22(2) (intro.), Stats.

Dated this _____ day of _____, _____.

**STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION**

By _____
Rodney L. Nilsestuen,
Secretary