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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2003-04

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on Agriculture...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (August 2012)

Assembly

Record of Committee Proceedings


Committee on Agriculture

Clearinghouse Rule 04-030

Relating to the agricultural producer security program.
Department of Agriculture, Trade and Consumer Protection

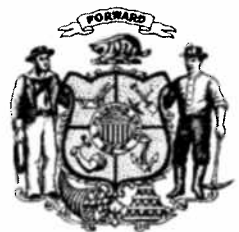
June 30, 2004 Referred to Committee on Agriculture.

July 30, 2004 No action taken.


Erin Napralla
Committee Clerk



WISCONSIN STATE LEGISLATURE





State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

DATE: June 29, 2004

TO: The Honorable Alan J. Lasse
President, Wisconsin State Senate
Room 219 South, State Capitol
PO Box 7882
Madison, WI 53707-7882

The Honorable John Gard
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
PO Box 8952
Madison, WI 53708-8952

FROM: Rodney J. Nilsestuen, Secretary
Department of Agriculture, Trade and Consumer Protection

SUBJECT: **Agricultural Producer Security; Final Draft Rule**
(Clearinghouse Rule #04-030)

The Department of Agriculture, Trade and Consumer Protection is transmitting this rule for legislative committee review, as provided in s. 227.19(2) and (3), Stats. The department will publish a notice of this referral in the Wisconsin Administrative Register, as provided in s. 227.19(2), Stats.

Rule Contents

The Wisconsin department of agriculture, trade and consumer protection ("DATCP") currently administers an agricultural producer security program under ch. 126, Stats. ("producer security law"). This program is designed to protect agricultural producers from catastrophic financial defaults by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors ("contractors") who procure agricultural commodities from producers. Among other things, the law requires most contractors to pay assessments to an agricultural producer security fund.

This rule does all of the following:

- Authorizes a partial refund of contractor assessments that are drastically inflated by a *temporary* change in financial condition caused by a merger or acquisition.

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- Authorizes an assessment reduction for 6 large contractors who (unlike most other contractors) are required to maintain individual security (bonds or letters of credit) with DATCP.
- Updates the disclosures that contractors must give agricultural producers under current rules. The updates are needed to accommodate recent law changes under 2003 Wis. Act 38.
- Clarifies that grain dealers and warehouse keepers may provide grain purchase and deposit receipts (required by current law) in electronic form, provided that the recipient can retrieve, store and print the receipt for future reference.

Assessment Refunds

Under the producer security law, contractors pay annual assessments to an agricultural producer security fund ("the fund"). If a contractor defaults in payments to producers, DATCP may compensate producers from the fund. A contractor's annual fund assessment is based on the contractor's size, financial condition and risk practices. DATCP may modify fund assessments by rule.

Financial condition is determined on the basis of an annual financial statement filed by the contractor. Other things being equal, contractors with weaker financial statements pay higher annual fund assessments. Fund assessments are calculated according to a formula spelled out in the producer security law. However, DATCP may modify fund assessments by rule.

In some cases, a merger or acquisition may temporarily affect a contractor's financial statement. This temporary change may in some cases cause a disproportionate increase in annual fund assessments (based on the current statutory assessment formula). In such cases, this rule authorizes DATCP to refund part of a contractor's assessment if certain conditions apply.

The refund is paid as a credit against the next year's assessment. The amount of the refund under this rule will equal 75% of the difference between the assessment amount paid by the contractor and the assessment amount required of the contractor in the next license year.

Under this rule, if the amount of the authorized refund exceeds the total assessment required of the contractor in the next license year, DATCP must credit the balance against subsequent years' assessments, except that DATCP may not pay credits in more than 4 subsequent license years (so DATCP does not have to carry refund obligations on its books indefinitely).

Assessment Reductions for Contractors Maintaining Individual Security

The producer security law directs DATCP to obtain bonds or other backup security for the fund. The backup security is intended to protect producers against large contractor defaults that may exceed the capacity of the fund. But changes in the insurance and bonding industry have prevented DATCP from obtaining any backup security. Only one bidder offered to provide

backup security, and DATCP rejected that bid based on the unanimous recommendation of the Agricultural Producer Security Council (the Council represents affected producers and contractors).

Before the fund was created in 2002, contractors who failed to meet minimum financial standards were required to file individual security (typically a bond or letter of credit) with DATCP. The amount of security was based on the size of the contractor's producer payroll (potential default exposure). DATCP returned most of this security after the fund was created. But because DATCP was unable to obtain backup security for the fund, DATCP retained security from 6 large contractors in order to protect producers against defaults that might exceed the capacity of the fund.

This action protected producers, but imposed additional costs on the 6 contractors. These 6 contractors are now paying individual security costs *and* fund assessments. This rule reduces fund assessments for these contractors, to compensate for the individual security costs that the contractors continue to incur.

Under this rule, if DATCP still holds pre-fund security from a contractor who now also contributes to the fund, the contractor's annual fund assessment is reduced by an amount determined as follows:

- Subtract the "maximum fund reimbursement" amount from the contractor's "estimated default exposure" amount.
- Divide the result by the contractor's "estimated default exposure" amount.
- Multiply the result by the contractor's annual fund assessment. The resulting amount is the assessment *reduction*.

Disclosures to Producers

Under current rules, a contractor must provide an annual written notice to producers. The notice must disclose whether the contractor participates in the fund, or has filed security with DATCP, to secure the contractor's payment obligations to producers. The notice may take different forms, depending on how the contractor is licensed. Current rules spell out the type of notice that each contractor must give, and exact wording that the notice must include.

2003 Wis. Act 38 modified fund assessments and security filing requirements for some contractors. This rule modifies current disclosure requirements for some contractors, so that the disclosures accurately reflect current law.

Electronic Receipts for Grain

The producer security law requires grain dealers and grain warehouse keepers to provide written receipts for grain received from producers and depositors. This rule authorizes grain dealers and warehouse keepers to provide those receipts in electronic form, provided that the producer or depositor can readily retrieve, view, store and print the receipt for future reference.

Public Hearings

The department held two public hearings on this rule, in Madison on April 26, 2004 and Wausau on April 27, 2004. DATCP invited comments on this rule and on the two emergency rules that preceded it (this final draft rule incorporates, in "permanent" form, the two emergency rules). DATCP also invited comments on other issues related to the producer Security Program. The following persons testified or provided written comments for the hearing record:

- John Manske, Wisconsin Federation of Cooperatives (in favor).
- McCain Foods USA, Inc. (in favor). Asked DATCP to expand assessment refunds.
- Richard Pavelski, Heartland Farms, Inc. (in favor). Suggested a law change to exempt potato processors covered by the federal Perishable Agricultural Commodities Act from the Wisconsin producer security law.
- John Exner, Midwest Food Processors Association (in favor). Asked DATCP to expand assessment refunds. Saw no significant overlap with the federal Perishable Agricultural Commodities Act that would justify a change in the Wisconsin Producer Security Law.
- Mike Carter, Wisconsin Potato and Vegetable Growers Association (in favor). Asked DATCP to consider issues under the federal Perishable Agricultural Commodities Act at another time (not as part of this rulemaking proceeding).
- Baker Cheese Factory, Inc. (in favor). Asked DATCP to consider assessment refunds for other reasons.
- John Umhoeffer, Wisconsin Cheesemakers Association (in favor). Asked DATCP to consider assessment refunds for other reasons.
- David Van Gheem, Shirley Feed Mill, Inc. (discussed producer security issues outside the scope of this rule)

Rule Changes After Public Hearings

DATCP changed the final draft rule in response to hearing comments. The final draft rule includes the following changes from the hearing draft:

- It reduces assessments for certain large contractors who are required to keep security on file with DATCP (see discussion above). This is a simplified (but substantively identical) version of an emergency rule that is currently in effect.

- It increases the number license years in which DATCP may credit the unpaid balance of a refund owed to a contractor whose assessment is temporarily inflated by a merger or acquisition (see discussion above). This change will increase the actual credits paid in some cases.
- It makes minor technical and drafting changes in response to comments from the Legislative Council Rules Clearinghouse.

Fiscal Estimate

This rule will reduce revenues to the agricultural producer security fund, as follows:

- It will refund “windfall” assessments to contractors whose assessments are drastically increased by temporary changes in financial condition caused by merger or acquisition (see discussion above). DATCP estimates that this refund provision will reduce assessment revenues by approximately \$60,000 (4-year total) over the next 4 years.
- It will reduce assessments paid by 6 large contractors who (unlike other contractors) are required to file individual security with DATCP. DATCP estimates that this refund provision will reduce assessment revenues by approximately \$350,000 per year (this amount may fall as the fund balance grows).

A complete fiscal estimate is attached.

Business Impact

This rule will have a minimal impact on regulated businesses. It will have a positive impact on businesses that qualify for assessment refunds or reductions. It will also benefit grain contractors by authorizing electronic receipts for grain. This rule updates current disclosure requirements (per recent law changes), but the updated disclosure requirements will have a minimal impact on regulated businesses.

This rule does not impose any new regulatory requirements. This rule does not add business costs, and will reduce costs for some businesses. This rule will have little, if any, impact on small business. See small business analysis (“final regulatory flexibility analysis”) attached.



State of Wisconsin
Jim Doyle, Governor

Department of Agriculture, Trade and Consumer Protection
Rod Nilsestuen, Secretary

PUBLIC NOTICE

FINAL DRAFT RULE TO LEGISLATURE

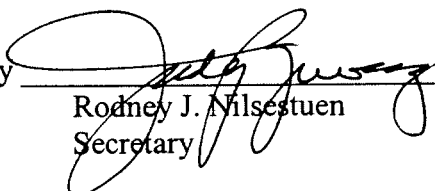
The Department of Agriculture, Trade and Consumer Protection announces that it is submitting the following rule for legislative committee review, pursuant to s. 227.19, Stats.:

CLEARINGHOUSE RULE #: **04-030**
SUBJECT: **Agricultural Producer Security**
ADM. CODE REFERENCE: **ATCP 99, 100, 101**
DATCP DOCKET #: **03-R-08**

Dated this 24th day of June, 2004.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND
CONSUMER PROTECTION

By _____


Rodney J. Nilsestuen
Secretary

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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 #: 04-30
DATCP Docket #: 03-R-08

Rule Description

The Wisconsin department of agriculture, trade and consumer protection ("DATCP") currently administers an agricultural producer security program under ch. 126, Stats. ("producer security law"). This program is designed to protect agricultural producers from catastrophic financial defaults by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors ("contractors") who procure agricultural commodities from producers. Among other things, the law requires most contractors to pay assessments to an agricultural producer security fund.

This rule does all of the following:

- Authorizes a partial refund of contractor assessments that are drastically inflated by a *temporary* change in financial condition caused by a merger or acquisition.
- Authorizes an assessment reduction for 6 large contractors who (unlike most other contractors) are required to maintain individual security (bonds or letters of credit) with DATCP.
- Updates the disclosures that contractors must give agricultural producers under current rules. The updates are needed to accommodate recent law changes under 2003 Wis. Act 38.
- Clarifies that grain dealers and warehouse keepers may provide grain purchase and deposit receipts (required by current law) in electronic form, provided that the recipient can retrieve, store and print the receipt for future reference.

Small Businesses Affected by this Rule

A "small business," as defined in s. 227.114(1)(a), Stats., means a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs fewer than twenty-five full time employees or which has gross annual sales of less than \$2,500,000.

There are roughly 750 licensed contractors. They range in size from international corporations to "small businesses".

Effects on Small Business

It is unlikely that the provisions relating to partial refunds and reductions of contractor assessments will have any direct effect on small businesses. These provisions are more likely to affect large companies.

This rule updates current disclosure requirements (per recent law changes), but the updated disclosure requirements only apply to contractors who purchase (or store) more than \$18,000,000 of grain, milk or vegetables. It is very unlikely that any "small businesses" would be affected by this provision.

This rule also clarifies that grain dealers and warehouse keepers may provide grain purchase and deposit receipts (required by current law) in electronic form. This provision may provide some benefit to small businesses by enabling them to choose what may be a lower cost form of providing receipts.

Dated this 24th day of June, 2004

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Janet Jenkins
Janet Jenkins, Administrator,
Division of Trade and Consumer Protection

FISCAL ESTIMATE DOA-2048 (R 10/94) <input type="checkbox"/> ORIGINAL <input checked="" type="checkbox"/> UPDATED <input type="checkbox"/> CORRECTED <input type="checkbox"/> SUPPLEMENTAL	LRB or Bill No. / Adm. Rule No. ATCP 99, 100 & 101 Amendment No. (If Applicable)
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Subject:
Agricultural Producer Security

Fiscal Effect State: <input type="checkbox"/> No State Fiscal Effect Check below only if bill makes a direct appropriation or affects a sum sufficient appropriation. <input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input checked="" type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation	<input type="checkbox"/> Increase Costs – May be possible to absorb within agency's budget? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Decrease Costs
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Local : <input type="checkbox"/> No local government costs 1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Gov. Unit Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Counties <input type="checkbox"/> Cities <input type="checkbox"/> Other: _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
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Fund Source Affected: <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input checked="" type="checkbox"/> SEG <input type="checkbox"/> SEG-S	Affected Ch. 20 Appropriations: s. 20.115(1)v and w.
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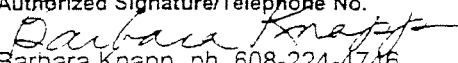
Assumptions Used in Arriving at Fiscal Estimate

Under Ch. 126, Stats., most grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (collectively referred to as "contractors") must contribute assessments into the Agricultural Producer Security Fund. The fund is available in the event a contractor defaults on payment to producers.

This rule authorizes a partial refund of an annual assessment that is drastically inflated by a *temporary* change in financial condition caused by a merger or acquisition. This rule defines the specific circumstances under which the refund is authorized. This rule does not authorize a refund if the change in the contractor's financial condition lasts more than one fiscal year. The refund is paid as a credit against future assessments. This refund provision in this rule will likely result in about a \$30,000 reduction this year (and an additional \$45,000 total over the next four years). The department predicts that this credit will only be used on rare occasions. It should be noted that it is not possible for a contractor to receive this refund unless it had much higher than expected assessments in the previous year. This rule does not really reduce future incomes; rather it reduces unexpected "windfalls" to the fund.

This rule also authorizes reduction in current assessments for several large contractors who are covering a portion of their estimated default exposure with individual security (such as bonds or letters of credit). The department estimates that this assessment reduction will reduce assessment revenues to the fund by about \$350,000 this year. There will be a similar effect in subsequent years. However, the revenue loss should gradually diminish in future years (as the fund grows, the need for individual security will diminish).

Long – Range Fiscal Implications

Agency/prepared by: (Name & Phone No.) DATCP Kevin LeRoy ph. 608-224-4928	Authorized Signature/Telephone No.  Barbara Knapp, ph. 608-224-4746	Date May 20, 2004
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FISCAL ESTIMATE WORKSHEET

Detailed Estimate of Annual Fiscal Effect ORIGINAL UPDATED
 DQA-2047 (R10/94) CORRECTED SUPPLEMENTAL

LRB or Bill No/Adm. Rule No. Amendment No.
 ATCP 99, 100 & 101

SUBJECT
 Agricultural Producer Security

I. One-time Cost or Impacts for State and/or Local Government (do not include in annualized fiscal effect):
 Costs are recurring; see below.

II. Annualized Cost: Annualized Fiscal Impact on State funds from:

A. State Costs by Category	Increased Costs	Decreased Costs
	\$	\$ - 0
		- 0
		- 0
	0	- 0
TOTAL State Costs by Category		\$ - 0

B. State Costs by Source of Funds	Increased Costs	Decreased Costs
1. GPR	\$	\$ - 0
2. FED	0	- 0
3. PRO/PRS	0	- 0
4. SEG/SEG-S	0	- 0

III. State Revenues -	Increased Revenue	Decreased Revenue
<small>Complete this section only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fees)</small>		
• GPR Taxes	\$ 0	\$ - 0
• GPR Earned	0	- 0
• FED	0	- 0
• PRO/PRS	0	- 0
• SEG/SEG-S	0	- 380,000
TOTAL State Revenues	\$ 0	\$ - 380,000

NET ANNUALIZED FISCAL IMPACT

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ 0	\$ 0
NET CHANGE IN REVENUES	\$ 380,000	\$ 0

Agency Prepared by: (Name & Phone No.) DATCP Kevin LeRoy, ph. 608-224-4928	Authorized Signature/Telephone No. <i>Barbara Knapp</i> Barbara Knapp (608) 224-4746	Date 5/20/04 April 16, 2001
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**PROPOSED ORDER
OF THE STATE OF WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

1 The state of Wisconsin department of agriculture, trade and consumer protection hereby
2 adopts the following rule to repeal ATCP 100.20(2)(e)1. and 2.; to renumber ATCP
3 100.20(2)(e)3. to 5.; to amend ATCP 101.26(2)(a)(intro.) and (b)(intro.); to repeal and
4 recreate ATCP 99.26(2)(b); and to create ATCP 99.13, 99.135, 99.14(2)(d), 99.16, 99.25,
5 99.255, 99.26(2)(c), 99.28, 100.13, 100.135, 100.20(2)(g), 101.25, 101.255 and
6 101.26(2)(d) and (e); relating to the agricultural producer security program.

**Analysis Prepared by the Department of Agriculture,
Trade and Consumer Protection**

Statutory Authority: ss. 126.15(1)(intro.), 126.30(1)(intro.),
126.46(1)(intro.), 126.60(1)(intro.), 126.81 and
126.88(intro.), Stats.

Statutes Interpreted: ch. 126, Stats.

The Wisconsin department of agriculture, trade and consumer protection ("DATCP") currently administers an agricultural producer security program under ch. 126, Stats. ("producer security law"). This program is designed to protect agricultural producers from catastrophic financial defaults by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors ("contractors") who procure agricultural commodities from producers. Among other things, the law requires most contractors to pay assessments to an agricultural producer security fund.

DATCP may adopt rules to implement the program (see statutory authority above). Among other things, DATCP may revise contractor assessment rates, require contractor disclosures to producers, and interpret other requirements under the producer security law. This rule does all of the following:

- Authorizes a partial refund of certain agricultural producer security assessments required of grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (collectively referred to as "contractors") under ch. 126, Stats. This rule

authorizes a partial refund of an annual assessment that is drastically inflated by a *temporary* change in financial condition caused by a merger or acquisition. This rule defines the specific circumstances under which the refund is authorized. This rule does not authorize a refund if the change in the contractor's financial condition lasts more than one fiscal year.

- Authorizes a reduction in the assessment amount for certain contractors who provide individual security originally filed under the previous producer security program.
- Updates the disclosures that contractors must give agricultural producers under current rules. The updates are needed to accommodate recent law changes under 2003 Wis. Act 38.
- Clarifies that grain dealers and warehouse keepers may provide grain purchase and deposit receipts (required by current law) in electronic form, provided that the recipient can retrieve, store and print the receipt for future reference.

Assessment Refunds

Background

Under the producer security law, contractors pay annual assessments to an agricultural producer security fund ("the fund"). If a contractor defaults in payments to producers, DATCP may compensate producers from the fund. A contractor's annual fund assessment is based on the contractor's size, financial condition and risk practices. DATCP may modify fund assessments by rule.

Financial condition is determined on the basis of an annual financial statement filed by the contractor. Other things being equal, contractors with weaker financial statements pay higher annual fund assessments. Fund assessments are calculated according to a formula spelled out in the producer security law. However, DATCP may modify fund assessments by rule.

Refunds Authorized

In some cases, a merger or acquisition may temporarily affect a contractor's financial statement. This temporary change may in some cases cause a disproportionate increase in annual fund assessments (based on the current statutory assessment formula). In such cases, this rule authorizes DATCP to refund part of a contractor's assessment if certain conditions apply. The refund is paid as a credit against the next year's assessment.

Under this rule, DATCP may refund part of an annual fund assessment paid by a contributing contractor if all of the following apply:

- The contractor paid the full amount of the assessment, including any late penalties that may apply.

- The contractor is the surviving entity in a merger under s. 179.77, 180.1101, 183.1201 or 185.61, Stats., or has acquired property pursuant to a sale of assets under s. 180.1202, Stats.
- The assessment was based on the contractor's financial statement for the fiscal year in which the merger or acquisition took effect.
- The contractor's financial statement, for the fiscal year in which the merger or acquisition took effect, caused the sum of the contractor's current ratio assessment rate and debt to equity assessment rate (both calculated according to current statutory formulas) to increase by at least 100% compared to the preceding license year.
- The contractor's annual financial statements, for the fiscal years immediately preceding and immediately following the fiscal year in which the merger or acquisition took effect, show positive equity, a current ratio of at least 1.25 to 1.00 and a debt to equity ratio of no more than 3.0 to 1.0.
- In the license year immediately following the license year for which the contractor paid the assessment, the sum of the contractor's current ratio assessment rate and debt to equity assessment rate (both calculated according to current statutory formulas) declines by at least 50% compared to the license year for which the contractor paid the assessment.
- The contractor requests the refund in writing, by the first day of the next license year.

Refund Amount

The amount of the refund under this rule will equal 75% of the difference between the assessment amount paid by the contractor and the assessment amount required of the contractor in the next license year.

Refund Paid as Credit Against Next Year's Assessment

Whenever DATCP pays a refund under this rule, DATCP must pay the refund as a credit against the contractor's assessment for the next license year. DATCP must apportion the credit, pro rata, against the quarterly assessment installments required of the contractor in that next license year.

If the credit exceeds the total assessment required of the contractor in that next license year, DATCP must credit the balance in the same fashion against assessments required of the contractor in subsequent license years. However, DATCP may not grant a credit in more than 4 subsequent license years.

DATCP may not pay refunds except as credits against future assessments (there is no cash refund). DATCP may not pay a refund (grant a credit) to any person other than the contractor who paid the original assessment on which the refund is given.

Assessment Reductions for Contractors Maintaining Individual Security

The producer security law directs DATCP to obtain bonds or other backup security for the fund. The backup security is intended to protect producers against large contractor defaults that may exceed the capacity of the fund. But changes in the insurance and bonding industry have prevented DATCP from obtaining any backup security (DATCP has received no acceptable bids).

Before the fund was created in 2002, contractors who failed to meet minimum financial standards were required to file individual security (typically a bond or letter of credit) with DATCP. The amount of security was based on the size of the contractor's producer payroll (potential default exposure). DATCP returned much of this security after the fund was created. But because DATCP was unable to obtain backup security for the fund, DATCP retained security from some of the largest contractors. DATCP did this in order to protect agricultural producers against large contractor defaults that might exceed the capacity of the fund.

DATCP's action protected agricultural producers against catastrophic defaults, but imposed additional costs on some large contractors. The affected contractors (approximately 6 contractors) must now pay security costs *and* fund assessments. This emergency rule reduces fund assessments for these contractors, to compensate for the added security costs that the contractors must incur.

Under this rule, if DATCP still holds pre-fund security from a contractor who now also contributes to the fund, the contractor's annual fund assessment is reduced by an amount determined as follows:

- Subtract the "maximum fund reimbursement" amount from the contractor's "estimated default exposure" amount.
- Divide the result by the contractor's "estimated default exposure" amount.
- Multiply the result by the contractor's annual fund assessment. The resulting amount is the assessment *reduction*.

Disclosures to Producers

Under current rules, a contractor must provide an annual written "notice to producers." The notice must disclose whether the contractor participates in the fund, or has filed security with DATCP, to secure the contractor's payment obligations to producers. The notice may take different forms, depending on the basis on which the contractor is

licensed by DATCP. Current rules spell out the type of notice that each contractor must give, and exact wording that the notice must include.

2003 Wis. Act 38 modified fund assessments and security filing requirements for some contractors. This rule modifies current disclosure requirements for some contractors, so that the disclosures accurately reflect current law.

Electronic Receipts for Grain

Chapter 126, Stats. requires grain dealers and grain warehouse keepers to provide written receipts for grain received from producers and depositors. This rule authorizes grain dealers and warehouse keepers to provide those receipts in electronic form, provided that the producer or depositor can readily retrieve, view, store and print the receipt for future reference.

Federal and Surrounding State Regulations

Wisconsin's Security Program

Wisconsin has an agricultural producer security program for grain, milk and vegetables. The Wisconsin legislature has spelled out detailed statutory requirements for grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (ch. 126, Stats.). Contractors must be licensed by DATCP, and most contractors must contribute to an agricultural producer security fund administered by DATCP. A few contractors must also file security with DATCP.

DATCP cannot alter current statutory requirements, but can interpret and implement those requirements by rule. This rule makes limited changes to current rules. This rule will benefit contractors by authorizing assessment refunds and assessment reductions in certain situations. It will also benefit grain contractors (dealers and warehouse keepers) by authorizing them to use electronic grain receipts. This rule also modifies milk, grain and vegetable contractor disclosure requirements to implement recent statutory changes.

Federal Programs

There are no federal producer security programs related to milk. The United States department of agriculture (USDA) administers a producer security program for federally licensed *grain warehouses* that store grain for producers. Grain warehouses may choose whether to be licensed under state or federal law. Federally-licensed warehouses are exempt from state warehouse licensing and security requirements. State-licensed warehouses are likewise exempt from federal requirements.

The federal grain warehouse program currently provides little or no protection against financial defaults by *grain dealers*. Grain dealers are persons who buy and sell grain. Sometimes, grain dealers also operate grain warehouses. DATCP currently licenses grain dealers. Licensed warehouse keepers must also hold a state grain dealer license if they engage in grain dealing.

USDA proposes to regulate grain *dealer* activities of federally licensed warehouses, to the exclusion of state regulation. But USDA has not yet finalized its regulations. In any case, the federal regulations would not apply to state-licensed grain warehouses, or to grain dealers who do not operate a warehouse.

There is a federal security program for unprocessed vegetables sold in interstate commerce and potatoes sold in either interstate or intrastate commerce. This security program consists of a priority lien against vegetable-related assets. Wisconsin's vegetable security program applies only to processing vegetables (not fresh market vegetables covered by federal regulations).

Surrounding States

In Minnesota, contractors must be licensed to procure grain, milk or processing vegetables from producers, or to operate grain warehouses. Regulated contractors must file bonds as security against default.

Neither Iowa nor Illinois have producer security programs for milk or vegetables. However, both states maintain indemnity funds to protect grain producers. Fund assessments are based solely on grain volume. In Wisconsin, by contrast, fund assessments are based on grain volume *and financial condition*.

Michigan has the following producer security programs:

- Potato dealers must be licensed, and must post bonds as security against defaults. (Wisconsin's vegetable security program includes, but is not limited to, potatoes.)
- Dairy plants that fail to meet minimum financial standards must file security or pay cash for milk.
- Grain producers have the option of paying premiums into a state fund. In the event of a grain default, the fund reimburses participating producers.

Business Impact Analysis

This rule will have a minimal impact on regulated businesses. The Wisconsin legislature has spelled out detailed statutory requirements for grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (ch. 126, Stats.). DATCP has limited authority to change these requirements by rule.

This rule will make minor changes to current rules. This rule will have a positive impact on some businesses, by authorizing assessment refunds, assessment reductions and electronic receipts. This rule updates current disclosure requirements (per recent law changes), but the updated disclosure requirements will have a minimal impact on regulated businesses.

This rule does not impose any new regulatory requirements. This rule does not add business costs, and will reduce costs for some businesses. This rule will have little, if any, impact on small business.

1 **SECTION 1.** ATCP 99.13 is created to read:

2 **ATCP 99.13 Fund assessment temporarily affected by merger or**

3 **acquisition; partial refund. (1) PARTIAL REFUND OF ASSESSMENT.** The department
4 may refund part of an annual fund assessment paid by a contributing grain dealer under
5 s. 126.15, Stats., if all of the following apply:

6 (a) The grain dealer paid the full amount of the assessment, including any late
7 payment penalties that apply under s. 126.15(7)(d), Stats.

8 (b) The grain dealer is the surviving entity in a merger under s. 179.77, 180.1101,
9 183.1201 or 185.61, Stats., or has acquired property pursuant to a sale of assets under s.
10 180.1202, Stats.

11 (c) The assessment was based on the grain dealer's financial statement for the
12 fiscal year in which the merger or acquisition under par. (b) took effect.

13 (d) The grain dealer's financial statement, for the fiscal year in which the merger
14 or acquisition under par. (b) took effect, caused the sum of the grain dealer's current ratio
15 assessment rate under s. 126.15(2), Stats., and debt to equity ratio assessment rate under
16 s. 126.15(4), Stats., to increase by at least 100% compared to the preceding license year.

1 (e) The grain dealer's annual financial statements, for the fiscal years
2 immediately preceding and immediately following the fiscal year in which the merger or
3 acquisition under par. (b) took effect, show positive equity, a current ratio of at least 1.25
4 to 1.00 and a debt to equity ratio of no more than 3.0 to 1.0.

5 (f) In the license year immediately following the license year for which the grain
6 dealer paid the assessment, the sum of the grain dealer's current ratio assessment rate
7 under s. 126.15(2), Stats., and debt to equity assessment rate under s. 126.15(4), Stats.,
8 declines by at least 50% compared to the license year for which the grain dealer paid the
9 assessment.

10 (g) The grain dealer requests the refund in writing, by September 1 of the grain
11 dealer's next license year.

12 (2) REFUND AMOUNT. The amount of the refund under sub. (1) shall equal 75%
13 of the difference between the assessment amount paid by the grain dealer and the
14 assessment amount required of the grain dealer in the next license year.

15 (3) REFUND PAID AS CREDIT AGAINST NEXT YEAR'S ASSESSMENT. (a) The
16 department shall pay the refund under sub. (1) as a credit against the grain dealer's
17 assessment for the next license year. The department shall apportion the credit, pro rata,
18 against the quarterly assessment installments required of the grain dealer under s.
19 126.15(7), Stats., in that next license year. If the credit exceeds the total assessment
20 required of the grain dealer in that next license year, the department shall credit the
21 balance in the same fashion against assessments required of the grain dealer in
22 subsequent consecutive license years, except that the department may not grant a credit in
23 more than 4 subsequent license years.

1 (b) The department may not pay any refund under sub. (1), except in the manner
2 prescribed in par. (a). The department may not pay the refund to any person other than
3 the grain dealer who paid the original assessment on which the refund is given.

4 **SECTION 2.** ATCP 99.135 is created to read:

5 **ATCP 99.135 Reduced fund assessment for contributing grain dealers who**
6 **also maintain security. (1) DEFINITIONS.** In this section:

7 (a) "Contingent financial backing amount" means the amount of contingent
8 financial backing, if any, which the department holds under s. 126.06, Stats.

9 (b) "Deductible amount" is the amount specified in s. 126.72(3), Stats.

10 (c) "Estimated default exposure" has the meaning given in s. 126.16(1)(c)1.,
11 Stats.

12 (d) "Maximum fund reimbursement" means the deductible amount plus the
13 contingent financial backing amount.

14 (2) **REDUCED ASSESSMENT.** If a contributing grain dealer maintains security
15 under s. 126.16(2), Stats., that is at least equal to the amount required under s. 126.16(3),
16 Stats., less the deductible amount, the contributing grain dealer's annual fund assessment
17 under s. 126.15, Stats., is reduced by an amount that is determined as follows:

18 (a) Subtract the maximum fund reimbursement from the grain dealer's estimated
19 default exposure.

20 (b) Divide the result in par. (a) by the grain dealer's estimated default exposure.

21 (c) Multiply the result in par. (b) by the amount of the grain dealer's annual fund
22 assessment under s. 126.15(1), Stats., disregarding any assessment reduction under s.
23 126.15(6m), Stats.

1 (d) Subtract, from the result in par. (c), the amount of any assessment reduction
2 given under s. 126.15(6m), Stats.

3 SECTION 3. ATCP 99.14(2)(d) is created to read:

4 ATCP 99.14(2)(d) One of the following statements if the grain dealer is a
5 contributing grain dealer and is required to file security under s. 126.16(1)(c), Stats., but
6 is not required to file security under s. 126.16(1)(a), Stats:

7 1. The following statement if the grain dealer makes the disclosure before
8 September 1, 2005:

9 **IMPORTANT NOTICE**

10
11 ***[Name of grain dealer]* contributes to Wisconsin's Agricultural Producer**
12 **Security Fund. This fund helps ensure that grain producers and producer**
13 **agents will be paid for the grain they ship to contributing grain dealers. If a**
14 **contributing grain dealer fails to pay a producer or producer agent, the fund**
15 **may pay up to 80% of the first \$60,000 of the producer's unpaid claim, and**
16 **75% of any additional unpaid claim. We have also filed security with the**
17 **State of Wisconsin to help secure grain payment obligations to producers and**
18 **producer agents. The security is at least equal to the difference between**
19 **\$19,000,000 and the sum of the following:**

- 20
21 • **35% of our average monthly payments for the 3 months during the past**
22 **12 months in which we had the largest monthly payments for producer**
23 **grain.**
24 • **Our highest total unpaid obligations, at any time during the past 12**
25 **months, under deferred payment contracts.**

26
27 **The security is in the following form(s): *[Specify forms of security]*.**

28 2. The following statement if the grain dealer makes the disclosure on or after
29 September 1, 2005:

30 **IMPORTANT NOTICE**

31 ***[Name of grain dealer]* contributes to Wisconsin's Agricultural Producer**
32 **Security Fund. This fund helps ensure that grain producers and producer**
33 **agents will be paid for the grain they ship to contributing grain dealers. If a**
34 **contributing grain dealer fails to pay a producer or producer agent, the fund**
35 **may pay up to 80% of the first \$60,000 of the producer's unpaid claim, and**

1 **75% of any additional unpaid claim. We have also filed security with the**
2 **State of Wisconsin to help secure grain payment obligations to producers and**
3 **producer agents. The security is at least equal to the difference between**
4 **\$20,000,000 and the sum of the following:**

- 5
- 6 • **35% of our average monthly payments for the 3 months during the past**
7 **12 months in which we had the largest monthly payments for producer**
8 **grain.**
 - 9 • **Our highest total unpaid obligations, at any time during the past 12**
10 **months, under deferred payment contracts.**

11 **The security is in the following form(s): [Specify forms of security].**

12

13 **SECTION 4. ATCP 99.16 is created to read:**

14

15 **ATCP 99.16 Grain dealers; receipts for grain. A grain purchase receipt**
16 **required under s. 126.18, Stats., shall be one of the following:**

17 **(1) Legibly printed on a paper or other tangible non-electronic medium that is**
18 **delivered to the producer.**

19 **(2) Delivered to the producer in a legible electronic form that the producer can**
20 **readily retrieve, view, store, and print on paper for future reference.**

21 **SECTION 5. ATCP 99.25 is created to read:**

22 **ATCP 99.25 Fund assessment temporarily affected by merger or**
23 **acquisition; partial refund. (1) PARTIAL REFUND OF ASSESSMENT. The department**
24 **may refund part of an annual fund assessment paid by a contributing grain warehouse**
25 **keeper under s. 126.30, Stats., if all of the following apply:**

26 **(a) The grain warehouse keeper paid the full amount of the assessment, including**
27 **any late payment penalties that apply under s. 126.30(6)(d), Stats.**

28 **(b) The grain warehouse keeper is the surviving entity in a merger under s.**
29 **179.77, 180.1101, 183.1201 or 185.61, Stats., or has acquired property pursuant to a sale**
30 **of assets under s. 180.1202, Stats.**

1 (c) The assessment was based on the grain warehouse keeper's financial
2 statement for the fiscal year in which the merger or acquisition under par. (b) took effect.

3 (d) The grain warehouse keeper's financial statement, for the fiscal year in which
4 the merger or acquisition under par. (b) took effect, caused the sum of the grain
5 warehouse keeper's current ratio assessment rate under s. 126.30(2), Stats., and debt to
6 equity ratio assessment rate under s. 126.30(4), Stats., to increase by at least 100%
7 compared to the preceding license year.

8 (e) The grain warehouse keeper's annual financial statements, for the fiscal years
9 immediately preceding and immediately following the fiscal year in which the merger or
10 acquisition under par. (b) took effect, show positive equity, a current ratio of at least 1.25
11 to 1.00 and a debt to equity ratio of no more than 3.0 to 1.0.

12 (f) In the license year immediately following the license year for which the grain
13 warehouse keeper paid the assessment, the sum of the grain warehouse keeper's current
14 ratio assessment rate under s. 126.30(2), Stats., and debt to equity assessment rate under
15 s. 126.30(4), Stats., declines by at least 50% compared to the license year for which the
16 grain warehouse keeper paid the assessment.

17 (g) The grain warehouse keeper requests the refund in writing, by September 1 of
18 the grain warehouse keeper's next license year.

19 (2) REFUND AMOUNT. The amount of the refund under sub. (1) shall equal 75%
20 of the difference between the assessment amount paid by the grain warehouse keeper and
21 the assessment amount required of the grain warehouse keeper in the next license year.

22 (3) REFUND PAID AS CREDIT AGAINST NEXT YEAR'S ASSESSMENT. (a) The
23 department shall pay the refund under sub. (1) as a credit against the grain warehouse

1 keeper's assessment for the next license year. The department shall apportion the credit,
2 pro rata, against the quarterly assessment installments required of the grain warehouse
3 keeper under s. 126.30(6), Stats., in that next license year. If the credit exceeds the total
4 assessment required of the grain warehouse keeper in that next license year, the
5 department shall credit the balance in the same fashion against assessments required of
6 the grain warehouse keeper in subsequent consecutive license years, except that the
7 department may not grant a credit in more than 4 subsequent license years.

8 (b) The department may not pay any refund under sub. (1), except in the manner
9 prescribed in par. (a). The department may not pay the refund to any person other than
10 the grain warehouse keeper who paid the original assessment on which the refund is
11 given.

12 **SECTION 6.** ATCP 99.255 is created to read:

13 **ATCP 99.255 Reduced fund assessment for contributing grain warehouse**
14 **keepers who also maintain security. (1) DEFINITIONS.** In this section:

15 (a) "Contingent financial backing amount" means the amount of contingent
16 financial backing, if any, which the department holds under s. 126.06, Stats.

17 (b) "Deductible amount" is the amount specified in s. 126.72(3), Stats.

18 (c) "Estimated default exposure" has the meaning given in s. 126.31(1)(b)1.,
19 Stats.

20 (d) "Maximum fund reimbursement" means the deductible amount plus the
21 contingent financial backing amount.

22 (2) **REDUCED ASSESSMENT.** If a contributing grain warehouse keeper maintains
23 security under s. 126.31(2), Stats., in an amount that is at least equal to the amount

1 required under s. 126.31(3), Stats., less the deductible amount, the grain warehouse
2 keeper's annual fund assessment under s. 126.30, Stats., is reduced by an amount that is
3 determined as follows:

4 (a) Subtract the maximum fund reimbursement from the grain warehouse
5 keeper's estimated default exposure.

6 (b) Divide the result in par. (a) by the grain warehouse keeper's estimated default
7 exposure.

8 (c) Multiply the result in par. (b) by the amount of the grain warehouse keeper's
9 annual fund assessment under s. 126.30(1), Stats., disregarding any assessment reduction
10 under s. 126.30(5m), Stats.

11 (d) Subtract, from the result in par. (c), the amount of any assessment reduction
12 given under s. 126.30(5m), Stats.

13 SECTION 7. ATCP 99.26(2)(b) is repealed and recreated to read:

14 ATCP 99.26(2)(b) The following statement if the grain warehouse keeper is not a
15 contributing grain warehouse keeper and is required to file security under s. 126.31(1)(a),
16 Stats.:

17 **IMPORTANT NOTICE**

18 ***[Name of grain warehouse keeper]* does not contribute to 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 grain storage obligations. The**
21 **security is at least equal to 20% of the current local market value of grain**
22 **stored in our Wisconsin warehouse(s). The security is in the following**
23 **form(s): *[Specify forms of security]*.**

24 SECTION 8. ATCP 99.26(2)(c) is created to read:
25

1 ATCP 99.26(2)(c) One of the following statements if the grain warehouse keeper
2 is a contributing grain warehouse keeper and is required to file security under s.
3 126.31(1)(b), Stats., but is not required to file security under s. 126.31(1)(a), Stats.:

4 1. The following statement if the grain warehouse keeper makes the disclosure
5 before September 1, 2005:

6 **IMPORTANT NOTICE**

7 ***[Name of grain warehouse keeper]*** contributes to Wisconsin's Agricultural
8 **Producer Security Fund. This fund helps secure producer grain stored in**
9 **warehouses operated by contributing grain warehouse keepers. If a**
10 **contributing grain warehouse keeper fails to return producer grain on**
11 **demand, the fund may reimburse the producer (or producer agent) for up to**
12 **\$100,000 worth of grain. We have also filed security with the State of**
13 **Wisconsin to help secure part of our grain storage obligations. The security**
14 **is at least equal to the difference between \$19,000,000 and 20% of the current**
15 **local market value of grain stored in our Wisconsin warehouse(s). The**
16 **security is in the following form(s): *[Specify forms of security]*.**

17
18 2. The following statement if the grain warehouse keeper makes the disclosure on
19 or after September 1, 2005:

20 **IMPORTANT NOTICE**

21 ***[Name of grain warehouse keeper]*** contributes to Wisconsin's Agricultural
22 **Producer Security Fund. This fund helps secure producer grain stored in**
23 **warehouses operated by contributing grain warehouse keepers. If a**
24 **contributing grain warehouse keeper fails to return producer grain on**
25 **demand, the fund may reimburse the producer (or producer agent) for up to**
26 **\$100,000 worth of grain. We have also filed security with the State of**
27 **Wisconsin to help secure part of our grain storage obligations. The security**
28 **is at least equal to the difference between \$20,000,000 and 20% of the current**
29 **local market value of grain stored in our Wisconsin warehouse(s). The**
30 **security is in the following form(s): *[Specify forms of security]*.**

31
32, **SECTION 9. ATCP 99.28 is created to read:**

33 **ATCP 99.28 Grain storage receipts.** A warehouse receipt or grain storage
34 receipt required under s. 126.33, Stats., shall be one of the following:

1 (1) Legibly printed on a paper or other tangible non-electronic medium that is
2 delivered to the depositor.

3 (2) Delivered to the depositor in a legible electronic form that the depositor can
4 readily retrieve, view, store, and print on paper for future reference.

5 **SECTION 10.** ATCP 100.13 is created to read:

6 **ATCP 100.13 Fund assessment temporarily affected by merger or**
7 **acquisition; partial refund. (1) PARTIAL REFUND OF ASSESSMENT.** The department
8 may refund part of an annual fund assessment paid by a contributing milk contractor
9 under s. 126.46, Stats., if all of the following apply:

10 (a) The milk contractor paid the full amount of the assessment, including any late
11 payment penalties that apply under s. 126.46(6)(e).

12 (b) The milk contractor is the surviving entity in a merger under s. 179.77,
13 180.1101, 183.1201 or 185.61, Stats., or has acquired property pursuant to a sale of assets
14 under s. 180.1202, Stats.

15 (c) The assessment was based on the milk contractor's financial statement for the
16 fiscal year in which the merger or acquisition under par. (b) took effect.

17 (d) The milk contractor's financial statement, for the fiscal year in which the
18 merger or acquisition under par. (b) took effect, caused the sum of the milk contractor's
19 current ratio assessment rate under s. 126.46(2), Stats., and debt to equity ratio
20 assessment rate under s. 126.46(4), Stats., to increase by at least 100% compared to the
21 preceding license year.

22 (e) The milk contractor's annual financial statements, for the fiscal years
23 immediately preceding and immediately following the fiscal year in which the merger or

1 acquisition under par. (b) took effect, show positive equity, a current ratio of at least 1.25
2 to 1.00 and a debt to equity ratio of no more than 3.0 to 1.0.

3 (f) In the license year immediately following the license year for which the milk
4 contractor paid the assessment, the sum of the milk contractor's current ratio assessment
5 rate under s. 126.46(2), Stats., and debt to equity assessment rate under s. 126.46(4),
6 Stats., declines by at least 50% compared to the license year for which the milk
7 contractor paid the assessment.

8 (g) The milk contractor requests the refund in writing, by May 1 of the milk
9 contractor's next license year.

10 (2) REFUND AMOUNT. The amount of the refund under sub. (1) shall equal 75%
11 of the difference between the assessment amount paid by the milk contractor and the
12 assessment amount required of the milk contractor in the next license year.

13 (3) REFUND PAID AS CREDIT AGAINST NEXT YEAR'S ASSESSMENT. (a) The
14 department shall pay the refund under sub. (1) as a credit against the milk contractor's
15 assessment for the next license year. The department shall apportion the credit, pro rata,
16 against the quarterly assessment installments required of the milk contractor under s.
17 126.46(6), Stats., in that next license year. If the credit exceeds the total assessment
18 required of the milk contractor in that next license year, the department shall credit the
19 balance in the same fashion against assessments required of the milk contractor in
20 subsequent consecutive license years, except that the department may not grant a credit in
21 more than 4 subsequent license years.

1 (b) The department may not pay any refund under sub. (1), except in the manner
2 prescribed in par. (a). The department may not pay the refund to any person other than
3 the milk contractor who paid the original assessment on which the refund is given.

4 **SECTION 11.** ATCP 100.135 is created to read:

5 **ATCP 100.135 Reduced fund assessment for contributing milk contractors**
6 **who also maintain security.** (1) **DEFINITIONS.** In this section:

7 (a) "Contingent financial backing amount" means the amount of contingent
8 financial backing, if any, which the department holds under s. 126.06, Stats..

9 (b) "Deductible amount" is the amount specified in s. 126.72(3), Stats.

10 (c) "Estimated default exposure" has the meaning given in s. 126.47(1)(b)1.,
11 Stats.

12 (d) "Maximum fund reimbursement" means the deductible amount plus the
13 contingent financial backing amount.

14 (2) **REDUCED ASSESSMENT.** (a) If a contributing milk contractor maintains
15 security under s. 126.47(2), Stats., in an amount that is at least equal to the amount
16 required under s. 126.47(3), Stats., less the deductible amount, the contractor's annual
17 fund assessment under s. 126.46, Stats., is reduced by an amount that is determined as
18 follows:

19 (a) Subtract the maximum fund reimbursement from the milk contractor's
20 estimated default exposure.

21 (b) Divide the result in par. (a) by the milk contractor's estimated default
22 exposure.

1 (c) Multiply the result in par. (b) by the amount of the milk contractor's annual
2 fund assessment under s. 126.46(1), Stats., disregarding any assessment reduction under
3 s. 126.46(5m), Stats.

4 (d) Subtract, from the result in par. (c), the amount of any assessment reduction
5 given under s. 126.46(5m), Stats.

6 SECTION 12. ATCP 100.20(2)(e)1. and 2. are repealed.

7 SECTION 13. ATCP 100.20(2)(e)3. to 5. are renumbered to 1. to 3.

8 SECTION 14. ATCP 100.20(2)(g) is created to read:

9 ATCP 100.20(2)(g) One of the following statements if the milk contractor is a
10 contributing milk contractor and is required to file security under s. 126.47(1)(b), Stats.,
11 but is not required to file security under s. 126.47(1)(a), Stats:

12 1. The following statement if the milk contractor makes the disclosure before
13 May 1, 2005:

14 **IMPORTANT NOTICE**

15 ***[Name of milk contractor]*** contributes to Wisconsin's Agricultural Producer
16 **Security Fund. This fund helps ensure that milk producers and producer**
17 **agents will be paid for the milk they ship to contributing contractors. If a**
18 **contributing milk contractor fails to pay a producer or producer agent, the**
19 **fund may pay up to 80% of the first \$60,000 of the producer's allowed claim,**
20 **and up to 75% of any additional allowed unpaid milk payroll claim. We**
21 **have also filed security with the State of Wisconsin to help secure milk**
22 **payroll obligations to producers and producer agents. The security is at least**
23 **equal to the difference between \$19,000,000 and 75% of the largest amount**
24 **that we owed producers and producer agents at any time since the beginning**
25 **of our last completed fiscal year. The security is in the following form(s):**
26 ***[Specify forms of security].***

27
28 2. The following statement if the milk contractor makes the disclosure on or after
29 May 1, 2005:

IMPORTANT NOTICE

1
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 milk contractor fails to pay a producer or producer agent, the**
6 **fund may pay up to 80% of the first \$60,000 of the producer's allowed claim,**
7 **and up to 75% of any additional allowed unpaid milk payroll claim. We**
8 **have also filed security with the State of Wisconsin to help secure milk**
9 **payroll obligations to producers and producer agents. The security is at least**
10 **equal to the difference between \$20,000,000 and 75% of the largest amount**
11 **that we owed producers and producer agents at any time during our last**
12 **completed fiscal year. The security is in the following form(s): [Specify forms**
13 **of security].**

14
15 SECTION 15. ATCP 101.25 is created to read:

16 **ATCP 101.25 Fund assessment temporarily affected by merger or**
17 **acquisition; partial refund. (1) PARTIAL REFUND OF ASSESSMENT. The department**
18 **may refund part of an annual fund assessment paid by a contributing vegetable contractor**
19 **under s. 126.60, Stats., if all of the following apply:**

20 (a) The contractor paid the full amount of the assessment, including any late
21 payment penalties that apply under s. 126.60(6)(d), Stats.

22 (b) The contractor is the surviving entity in a merger under s. 179.77, 180.1101,
23 183.1201 or 185.61, Stats., or has acquired property pursuant to a sale of assets under s.
24 180.1202, Stats.

25 (c) The assessment was based on the contractor's financial statement for the fiscal
26 year in which the merger or acquisition under par. (b) took effect.

27 (d) The contractor's financial statement, for the fiscal year in which the merger or
28 acquisition under par. (b) took effect, caused the sum of the contractor's current ratio
29 assessment rate under s. 126.60(2), Stats., and debt to equity ratio assessment rate under
30 s. 126.60(4), Stats., to increase by at least 100% compared to the preceding license year.

1 (e) The contractor's annual financial statements, for the fiscal years immediately
2 preceding and immediately following the fiscal year in which the merger or acquisition
3 under par. (b) took effect, show positive equity, a current ratio of at least 1.25 to 1.00 and
4 a debt to equity ratio of no more than 3.0 to 1.0.

5 (f) In the license year immediately following the license year for which the
6 contractor paid the assessment, the sum of the contractor's current ratio assessment rate
7 under s. 126.60(2), Stats., and debt to equity assessment rate under s. 126.60(4), Stats.,
8 declines by at least 50% compared to the license year for which the contractor paid the
9 assessment.

10 (g) The contractor requests the refund in writing, by February 1 of the
11 contractor's next license year.

12 (2) REFUND AMOUNT. The amount of the refund under sub. (1) shall equal 75%
13 of the difference between the assessment amount paid by the vegetable contractor and the
14 assessment amount required of the vegetable contractor in the next license year.

15 (3) REFUND PAID AS CREDIT AGAINST NEXT YEAR'S ASSESSMENT. (a) The
16 department shall pay the refund under sub. (1) as a credit against the contractor's
17 assessment for the next license year. The department shall apportion the credit, pro rata,
18 against the quarterly assessment installments required of the contractor under s.
19 126.60(6), Stats., in that next license year. If the credit exceeds the total assessment
20 required of the contractor in that next license year, the department shall credit the balance
21 in the same fashion against assessments required of the contractor in subsequent
22 consecutive license years, except that the department may not grant a credit in more than
23 4 subsequent license years.

1 (b) The department may not pay any refund under sub. (1), except in the manner
2 prescribed in par. (a). The department may not pay the refund to any person other than
3 the contractor who paid the original assessment on which the refund is given.

4 **SECTION 16.** ATCP 101.255 is created to read:

5 **ATCP 101.255 Reduced fund assessment for contributing vegetable**
6 **contractors who also maintain security. (1) DEFINITIONS.** In this section:

7 (a) "Contingent financial backing amount" means the amount of contingent
8 financial backing, if any, which the department holds under s. 126.06, Stats.

9 (b) "Deductible amount" is the amount specified in s. 126.72(3), Stats.

10 (c) "Estimated default exposure" has the meaning given in s. 126.61(1)(bm)1.,
11 Stats.

12 (d) "Maximum fund reimbursement" means the deductible amount plus the
13 contingent financial backing amount.

14 **(2) REDUCED ASSESSMENT.** If a contributing vegetable contractor maintains
15 security under s. 126.61(2), Stats., in an amount that is at least equal to the amount
16 required under s. 126.61(3), Stats., less the deductible amount, the vegetable contractor's
17 annual fund assessment under s. 126.60, Stats., is reduced by an amount that is
18 determined as follows:

19 (a) Subtract the maximum fund reimbursement from the vegetable contractor's
20 estimated default exposure.

21 (b) Divide the result in par. (a) by the vegetable contractor's estimated default
22 exposure.

1 (c) Multiply the result in par. (b) by the amount of the vegetable contractor's
2 annual fund assessment under s. 126.60(1), Stats., disregarding any assessment reduction
3 under s. 126.60(5m), Stats.

4 (d) Subtract, from the result in par. (c), the amount of any assessment reduction
5 given under s. 126.60(5m), Stats.

6 SECTION 17. ATCP 101.26(2)(a)(intro.) is amended to read:

7 ATCP 101.26(2)(a)(intro.) The following statement if the vegetable contractor is
8 a contributing vegetable contractor who is not required to make a disclosure under par.
9 (d) or (e):

10 SECTION 18. ATCP 101.26(2)(b)(intro.) is amended to read:

11 ATCP 101.26(2)(b)(intro.) The following statement if the vegetable contractor
12 has filed security under s. 126.61, Stats., and is not a contributing vegetable contractor:

13 SECTION 19. ATCP 101.26(2)(d) and (e) are created to read:

14 ATCP 101.26(2)(d) The following statement if the vegetable contractor is a
15 contributing vegetable contractor and is required to file security under s. 126.61(1)(b),
16 Stats., but is not required to file security under s. 126.61(1)(a) or (bm), Stats:

17 IMPORTANT NOTICE

18 ***[Name of vegetable contractor]*** contributes to Wisconsin's Agricultural
19 **Producer Security Fund. This fund helps ensure that vegetable producers**
20 **and producer agents will be paid for processing vegetables grown under**
21 **vegetable procurement contracts. If a contributing vegetable contractor fails**
22 **to pay a producer or producer agent, the fund may pay up to 90% of the first**
23 **\$40,000 of the producer's allowed claim, 85% of the producer's next \$40,000**
24 **allowed claim, 80% of the producer's next \$40,000 allowed claim, and 75%**
25 **of any allowed claim in excess of \$120,000. We have also filed security with**
26 **the State of Wisconsin to help secure vegetable payments to producers. The**
27 **security is at least equal to the unpaid deferred contract obligations that we**
28 **had, at the time of application for our vegetable contractor license or any**

1 time since the most recent application filed. The security is in the following
2 form(s): *[Specify forms of security]*.

3
4 (e) One of the following statements if the vegetable contractor is a contributing
5 vegetable contractor and is required to file security under s. 126.61(1)(bm), Stats., but is
6 not required to file security under s. 126.61(1)(a), Stats:

7 1. The following statement if the vegetable contractor makes the disclosure
8 before February 1, 2005:

9 **IMPORTANT NOTICE**

10 ***[Name of vegetable contractor]* contributes to Wisconsin's Agricultural
11 Producer Security Fund. This fund helps ensure that vegetable producers
12 and producer agents will be paid for processing vegetables grown under
13 vegetable procurement contracts. If a contributing vegetable contractor fails
14 to pay a producer or producer agent, the fund may pay up to 90% of the first
15 \$40,000 of the producer's allowed claim, 85% of the producer's next \$40,000
16 allowed claim, 80% of the producer's next \$40,000 allowed claim, and 75%
17 of any allowed claim in excess of \$120,000. We have also filed security with
18 the State of Wisconsin to help secure vegetable payments to producers. The
19 security is at least equal to the difference between \$19,000,000 and the sum of
20 the following:**

- 21
- 22 • **75% of the largest amount that we owed producers and producer agents**
23 **at any time during our last completed fiscal year.**
 - 24
 - 25 • **The largest amount of unpaid deferred contract obligations that we have**
26 **had at any time since our most recent annual license application.**
 - 27

28 **The security is in the following form(s): *[Specify forms of security]*.**

29
30 2. The following statement if the vegetable contractor makes the disclosure on or
31 after February 1, 2005:

32 **IMPORTANT NOTICE**

33 ***[Name of vegetable contractor]* contributes to Wisconsin's Agricultural
34 Producer Security Fund. This fund helps ensure that vegetable producers
35 and producer agents will be paid for processing vegetables grown under
36 vegetable procurement contracts. If a contributing vegetable contractor fails
37 to pay a producer or producer agent, the fund may pay up to 90% of the first**

1 \$40,000 of the producer's allowed claim, 85% of the producer's next \$40,000
2 allowed claim, 80% of the producer's next \$40,000 allowed claim, and 75%
3 of any allowed claim in excess of \$120,000. We have also filed security with
4 the State of Wisconsin to help secure vegetable payments to producers. The
5 security is at least equal to the difference between \$20,000,000 and the sum of
6 the following:

- 7
- 8 • 75% of the largest amount that we owed producers and producer agents
9 at any time during our last completed fiscal year.
 - 10
 - 11 • The largest amount of unpaid deferred contract obligations that we have
12 had at any time since our most recent annual license application.
 - 13

14 The security is in the following form(s): *[Specify forms of security]*.

15

16 **EFFECTIVE DATE:** This rule takes effect on the first day of the month following
17 publication in the Wisconsin administrative register, as provided in s. 227.22(2)(intro.),
18 Stats.

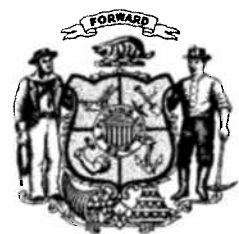
Dated this _____ day of _____, _____.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Rodney J. Nilsestuen, Secretary



WISCONSIN STATE LEGISLATURE



Napralla, Erin

From: Rep.Ott
Sent: Thursday, July 01, 2004 1:21 PM
To: Rep.WilliamsM; Rep.Petrowski; Rep.Kestell; Rep.Suder; Rep.Hines; Rep.Loeffelholz; Rep.Towns; Rep.Gronemus; Rep.Plouff; Rep.Balow; Rep.Vruwink; Rep.Hebl; Rep.Molepske; Rep.Ainsworth
Cc: Patronskey, Mark; Keeton, William; Cross, William; Parrott, Douglas; Narveson, Linda; Scott, Katie; Mielke, Jon; Emerson, Anne; Langan, Casey; Anderson, John; Junck, Linda; Christopher, Marc; Hogleund, Lindsay; Waitrovich, Eric; Redell, Carol; Kulow, Chris
Subject: Clearinghouse Rules Referred to Committee on Agriculture

The following Clearinghouse Rules have been referred to the Assembly Committee on Agriculture for a 30 day review period:

Clearinghouse Rule 04-005: Relating to technical changes to current rules, including current rules related to John's disease test cost reimbursement, commercial feed, dairy farms, dairy plants, weights and measures, direct marketing, and the farm mediation and arbitration program.

Clearinghouse Rule 04-030: Relating to the agricultural producer security program.

Copies of the rules are attached. Please contact my office if you have any questions or would like to request action on either of the rules.

The deadline for committee review is Friday, July 30, 2004.



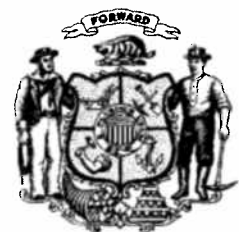
04-005-a.pdf



04-030-a.pdf



WISCONSIN STATE LEGISLATURE



Producer Security Rule Briefing

04-030

July 7, 2004

- Bulk of the rule is two emergency rules rolled together into this permanent rule.
 - Temporary change in financial conditions due to mergers and acquisitions.
 - On paper, a processor's financial condition may temporarily worsen due to use of capital to merge with or acquire another company.
 - Under current rules, this perceived downturn resulted in these companies having to increase their assessment payments to the fund.
 - Under this rule, the company will receive credits in proportion to increased payments due to temporary lack of capital in subsequent years, assuming their financial conditions rebound.
 - This change will avoid dissuading processors from growing in Wisconsin.
 - Companies required to provide private security.
 - Although the law was changed to allow DATCP to seek additional security for the fund, they have thus far been unsuccessful in obtaining this security. Still working to that end, however.
 - In the meantime, 5 large processors continue to have to hold private security as well as contribute to the producer security fund.
 - This rule allows DATCP to credit the processor's assessment in proportion to the security they hold.
 - DATCP anticipates about \$350,000 less in assessments being paid annually because of this rule.
- No problems anticipated by the Department with the rule.

-
- On a separate but related issue, the fund could be facing a problem due to increased commodity prices...
 - Processors that have previously reached a level where they no longer required private security are seeing increased risk because of higher commodity prices.
 - Under current law, they cannot be required to once again obtain private security.
 - However, because DATCP cannot obtain additional security, there is a gap in producer coverage. The fund simply cannot cover the risk that exists, resulting in the gap in coverage should a default occur.
 - DATCP is seeking ways to resolve this without looking to a statute change (allowing them to require private security of these companies should conditions warrant...).
 - Continuing to work on ways to obtain additional security through the department.
 - Rule change requiring processors to inform producers of the gap. Would prefer not to go this route.