WISCONSIN STATE LEGISLATURE COMMITTEE HEARING RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

Committee on Agriculture and Insurance (SC-AI)

File Naming Example:

Record of Comm. Proceedings ... RCP
- 05hr_AC-Ed_RCP_pt01a
- 05hr_AC-Ed_RCP_pt01b
- 05hr_AC-Ed_RCP_pt02

Published Documents

- *Committee Hearings* ... *CH* (*Public Hearing Announcements*)
- **
- *Committee Reports* ... *CR*
- **
- *Executive Sessions* ... *ES*
- **
- *Record of Comm. Proceedings* ... *RCP*
- **

Information Collected By Committee Clerk For Or Against Proposal

- *Appointments* ... *Appt*
- **
- *Clearinghouse Rules* ... *CRule*

**

- *Hearing Records* ... *HR* (*bills and resolutions*)
- **05hr_ab0635_SC-AI_pt04**
- *Miscellaneous* ... *Misc*
- **

05-1813/4 became
2005 AB 635

– POTATO – PRODUCER SECURITY BILL –
FARMERS OTT

State of Wisconsin
Jim Doyle, Governor

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

DATE: February 8, 2005

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Rodney J. Nilsestuen, Secretary
Janet Jenkins, Administrator,
Trade and Consumer Protection Division

SUBJECT: **Agricultural Producer Security**

TO BE PRESENTED BY: Janet Jenkins and Jeremy McPherson

REQUESTED ACTION: At the February 22, 2005 Board meeting, the department will report on issues related to Wisconsin's Agricultural Producer Security Program. The department will ask the Board to do the following:

- Authorize the department to seek legislation to remedy current security shortfalls and make "housekeeping" changes (preliminary draft legislation attached).

- Approve a rulemaking "scope statement" (copy attached). Among other things, the proposed rule will modify current contractor disclosures to producers. In some cases, current disclosures overstate the extent of security coverage for producers.

SUMMARY:

Background

The Department of Agriculture, Trade and Consumer Protection ("DATCP") currently administers an agricultural producer security program under ch. 126, Stats. The program is designed to protect agricultural producers from catastrophic financial defaults by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (collectively referred to as "contractors") who procure agricultural commodities from producers. *See* attached Issue Paper.

The Agricultural Producer Security Fund

Under current law, contractors must be licensed by DATCP. Most contractors must contribute to an agricultural producer security fund (the "fund"). Fund assessments are based on contractor size, financial condition and risk practices. If a *contributing contractor* defaults, DATCP will pay producers out of the fund. The total payment may not exceed 60% of the fund balance at the time of default (the current fund balance is approximately $5.5 million).

The current fund capacity is adequate to cover most, but not all, potential defaults by contributing contractors. *Non-contributing contractors* (who do not qualify for fund participation) must file security to cover the full amount of their "estimated default exposure."

Problem

Current law directs DATCP to purchase "contingent financial backing" that can supplement the fund (up to a total combined payment of $20 million) whenever a large contributing contractor default exceeds fund capacity. However, DATCP has not been able to purchase any "contingent financial backing" (there are no willing providers at this time).

Some large contributing contractors maintain security (originally filed under prior law) to cover the amount by which their "estimated default exposure" exceeds fund capacity. Some other contributing contractors maintain security (filed under current law) to cover the amount by which their "estimated default exposure" exceeds $20 million. But several contributing contractors still have unsecured "default exposure" well in excess of fund capacity. DATCP has no authority, under current law, to demand individual security to cover this exposure.

Proposed Legislation

DATCP proposes legislation to address this problem (*see* preliminary draft legislation attached). DATCP developed this legislation in consultation with the Agricultural Producer Security Council, a statutory advisory council that includes representatives of dairy, grain and vegetable producers and contractors.

Under the proposed legislation, a contributing contractor who fails to meet certain financial standards must file security to cover the amount, if any, by which the contractor's "estimated default exposure" exceeds the capacity of the fund (plus "contingent financial backing" if any). Contractors who file security will pay reduced annual assessments to the fund. The amount of the assessment reduction is proportional to the share of "estimated default exposure" covered by the security.

The proposed legislation also does the following:

- Changes the method used to calculate a milk contractor's "estimated default exposure." Under current law, a milk contractor's "estimated default exposure" equals 75% of the contractor's largest producer payroll obligation at any time during the contractor's last *fiscal year*. Under this bill, a milk contractor's "estimated default exposure" equals 75% of the contractor's largest producer payroll obligation during the *previous 12 months*. This will more fairly reflect changes caused by market price fluctuations (reducing the amount of time that a significant price spike effects security amounts).

- Modifies the current definition of "grain dealer," to facilitate voluntary licensing by persons who may or may not decide to purchase grain from producers.

- Disqualifies producer claims for grain payments that first become due under a "deferred payment contract" more than one year after the grain is delivered. The bill prohibits DATCP from paying these claims from the fund, but it does not limit a producer's private contract remedies.

- Allows DATCP to share contractor financial data with a surety company that may provide "contingent financial backing" for the fund. DATCP must notify a contractor before releasing the contractor's financial information to a surety company for this purpose. The surety company must agree to keep the information confidential, and destroy it by a specified date.

- Extends the current ending date for phase-in of new requirements related to *producer agents*, including requirements related to financial statements, security filings, fund assessments and default coverage. The bill extends the phase-in ending date for one year, from April 30, 2007 to April 30, 2008.

- Makes "housekeeping" changes and corrections to current law.

Proposed Rule

DATCP also proposes to modify current rules related to the producer security program. If DATCP's proposed legislation is enacted, DATCP will need to adopt implementing rules. Even if no legislation is enacted, DATCP must modify current rules related to contractor disclosures to producers. Because of current security shortfalls, current disclosures overstate the extent of security coverage for some producers.

DATCP requests Board approval of the attached rulemaking "scope statement." Under s. 227.135, Stats., DATCP may not begin drafting a proposed rule (including a proposal to amend or repeal an existing rule) until the Board approves a "scope statement" for that rule. A "scope statement" spells out the general purpose and scope of the proposed rule.

DATCP must publish a draft "scope statement" in the Wisconsin Administrative Register, and file a copy with the Department of Administration (DOA), at least 10 days before the Board approves the "scope statement." DATCP filed this "scope statement" with the Revisor of Statutes for publication in the January 30, 2005 issue of the Wisconsin Administrative Register. DATCP also filed a copy with DOA.

At the February 22, 2005 meeting, the Board may take action to approve or disapprove the attached "scope statement." If the Board takes no action on the "scope statement" within 30 days after DATCP presents it to the Board on February 22, the Board is deemed to have approved the "scope statement." Although DATCP may hold preliminary meetings with advisory councils and others, DATCP may not make any rulemaking commitments or begin drafting specific rule provisions until the Board approves the "scope statement."

Approval of a "scope statement" is just the first, preliminary step in a lengthy rulemaking process. The Board will have at least 2 further opportunities to review the proposed rule. The Board must approve a hearing draft rule before DATCP may hold public hearings on the rule proposal. The Board must also approve the final draft rule before DATCP may adopt the rule.

Preliminary Draft
February 8, 2005

AGRICULTURAL PRODUCER SECURITY

Draft Legislation Proposed by the Department of Agriculture, Trade and Consumer Protection

An Act ***to repeal*** 126.16(1)(c)2.c. and (3)(b)3., 126.31(1)(b)2.c. and (3)(b)3., 126.47(1)(b)2.c. and (3)(b)3., and 126.61(1)(bm)2.c. and (3)(b)3.; ***to amend*** 126.10(9)(intro.), 126.16(1)(c)2.(intro.)a. and b., and (3)(b)(intro.)1. and 2., 126.28(1)(b) and (3)(a), 126.31(1)(b)2.(intro.), a. and b., and (3)(b)(intro.), 1. and 2., 126.46(5)(a)1. to 3., 126.45(3), 126.47(1)(b)1., 2.(intro.), 2.a. and 2.b, (3)(a)1. and 3., and (3)(b)(intro.), 1. and 2., 126.61(1)(bm)2.(intro.), (a) and (b), and (3)(b)(intro.), 1. and 2., and 126.71(1)(e); ***to repeal and recreate*** 126.13(1)(b), 126.44(1)(b) and (c) and (5)(a), 126.47(3)(a)2., and 126.58(1)(b) and (3)(a); and ***to create*** 126.13(1)(bm), 126.19(6), 126.44(1)(bm), 126.58(1)(bm), 126.70(4)(f) and 126.84(3) of the statutes; **relating to** agricultural producer security.

Analysis

The Department of Agriculture, Trade and Consumer Protection ("DATCP") currently administers an agricultural producer security program under ch. 126, Stats. The program is designed to protect agricultural producers from catastrophic financial defaults by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (collectively referred to as "contractors") who procure agricultural commodities from producers.

Background

The Agricultural Producer Security Fund

Under current law, contractors must be licensed by DATCP. Most contractors must contribute to an agricultural producer security fund ("the fund"). If one of these *contributing contractors* defaults, DATCP will pay producers out of the fund. The total payment may not exceed 60% of the fund balance at the time of default (the current balance is approximately $5.5 million).

The current fund capacity is adequate to cover most, but not all, potential defaults by contributing contractors. *Non-contributing contractors* (who do not qualify for fund participation) must file security to cover the full amount of their "estimated default exposure."

Current law directs DATCP to purchase "contingent financial backing" that can supplement the fund (up to a total combined payment of $20 million) whenever there is a large contributing contractor default that exceeds fund capacity. However, DATCP has not been able to purchase any "contingent financial backing" (there are no willing providers at this time).

Some contributing contractors maintain security (originally filed under prior law) to cover the amount by which their "estimated default exposure" exceeds fund capacity. Some other contributing contractors maintain security (filed under current law) to cover the amount by which their "estimated default exposure" exceeds $20 million. But several contributing contractors still have unsecured "default exposure" well in excess of fund capacity. DATCP has no authority, under current law, to demand individual security to cover this exposure.

Bill Provisions

Contributing Contractors; Security

Under this bill, a contributing contractor who fails to meet certain financial standards must file security with DATCP if the contractor's "estimated default exposure" exceeds 60% of the fund balance plus the amount of "contingent financial backing" (if any) held by DATCP. The security must cover the full amount by which the contractor's "estimated default exposure" exceeds the sum of the "contingent financial backing" plus 60% of the fund balance.

This security filing requirement will affect a small number of contributing contractors, all of whom are very large contractors. Contributing contractors who must file security under this bill will pay lower annual assessments to the fund. The amount of the assessment reduction is proportional to the share of the contractor's "estimated default exposure" that is covered by the filed security.

Milk Contractor "Estimated Default Exposure"

Milk contractor security filing requirements and amounts are based, in part, on the contractor's "estimated default exposure." Under current law, "estimated default exposure" means 75% of the largest amount of unpaid milk payroll obligations that the contractor had at any time during the contractor's last completed *fiscal year*.

This bill redefines a milk contractor's "estimated default exposure" to mean 75% of the largest amount of unpaid milk payroll obligations that the contractor had at any time during the *previous 12 months*. This change will keep security filings more closely in tune with milk payroll obligations (which are affected by periodic market price fluctuations). This change affects *contributing* and *non-contributing* milk contractors who are required to file security with DATCP.

Grain Dealer Definition

This bill makes a technical amendment to the definition of "grain dealer." Under current law, "grain dealer" means a person who procures grain from producers in this state. This bill expands the definition to include a person who voluntarily obtains a grain dealer license, whether or not the person actually procures grain from producers. This will facilitate voluntary licensing of persons who may decide, at a later date, whether to procure grain during the license year.

Financial Statements

Under current law, most contractors must file annual financial statements with DATCP. Contractors who procure relatively small amounts of grain, milk or vegetables (or store relatively small amounts of grain) are exempt from this requirement. The law currently specifies exemption amounts. This bill revises and slightly increases the exemption amounts, so that some contractors will no longer have to file financial statements with DATCP.

Under current law, financial statements filed by contractors who handle large amounts of grain, milk or vegetables must be *audited* financial statements. The law currently specifies size thresholds at which this requirement applies. This bill modifies and slightly increases the current size thresholds, so that some contractors filing financial statements will no longer be required to file *audited* financial statements.

Correct Drafting Errors

At 3 places in current ch. 126, Stats., the statute incorrectly uses the term "current ratio" instead of the intended term "debt to equity ratio." This bill corrects those errors.

Deferred Payment Contracts; Default Claims

This bill prohibits DATCP from paying default claims related to grain payments that first became due, under a deferred payment contract, more than 365 days after the grain was delivered. This bill does not limit the producer's private contract remedies.

Release of Confidential Records

Under current law, DATCP must maintain the confidentiality of contractor financial records filed with DATCP (there are very limited exceptions). This bill authorizes DATCP to release contractor financial records to a surety company or other prospective provider of "contingent financial backing" for the fund. The surety company must agree to keep the records confidential, and destroy them by a specified date. Before DATCP releases a contractor's financial information to a surety company, DATCP must notify the contractor and provide a copy of the surety company's confidentiality agreement.

Extended Phase-In of Milk "Producer Agent" Requirements

"Producer agents" market commodities for producers, and collect payment on behalf of producers, without ever taking title to the commodities. Producer agents are currently more common in the dairy industry than in the grain or vegetable industries.

The current producer security law, like prior laws, allows producer agents to file default claims on behalf of producers. The current law, *unlike* prior laws, also regulates producer agents like contractors. The law requires producer agents, like other contractors, to comply with licensing, financial statement, fund assessment and security filing requirements.

For milk producer agents, the current law implements some of these new requirements in phases. Until April 30, 2007, milk producer agents are subject to less stringent standards (related to financial statements, fund assessments and security filing) than other contractors. During this phase-in period, milk producers who ship milk to producer agents also enjoy less default protection. This bill extends the current phase-in period for one year, to April 30, 2008.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 126.10(9)(intro.) of the statutes is amended to read:

126.10(9)(intro.) "Grain dealer" means a person who buys producer grain ~~or who~~, markets producer grain as a producer agent, or voluntarily obtains a license under s. 126.11. "Grain dealer" does not include any of the following:

SECTION 2. 126.13(1)(b) of the statutes is repealed and recreated to read:

126.13(1)(b) Except as provided in par. (bm), a grain dealer licensed under s. 126.11 shall file an annual financial statement with the department during each license year if any of the following apply:

1. The grain dealer's most recent license application reports producer grain payments of more than $750,000 under s. 126.11(9)(a), and the grain dealer is not a

contributing grain dealer who procures producer grain in this state solely as a producer agent.

2. Each of the grain dealer's 2 most recent license applications reports producer grain payments of more than $500,000 under s. 126.11(9)(a), and the grain dealer is not a contributing grain dealer who procures producer grain in this state solely as a producer agent.

3. The grain dealer's most recent license application reports deferred payment obligations under s. 126.11(9)(c).

SECTION 3. 126.13(1)(bm) of the statutes is created to read:

126.13(1)(bm) This subsection does not apply to a contributing grain dealer who procures grain in this state solely as a producer agent.

SECTION 4. 126.16(1)(c)2.(intro.), a. and b. of the statutes are amended to read:

126.16(1)(c)2. A grain dealer shall file security with the department, and maintain that security until the department releases it under sub. (8)(bm), if the grain dealer files an annual financial statement under s. 126.13(1) that shows negative equity, a current ratio of less than 1.25 to 1.0, or a debt to equity ratio of more than 4.0 to 1.0 and the grain dealer's estimated default exposure is greater than the sum of the following ~~amount~~:

a. ~~For the license year beginning on September 1, 2003, $18,000,000~~ Sixty percent of the cash balance in the fund on the last day of the preceding month.

b. ~~For the license year beginning on September 1, 2004, $19,000,000~~ The amount of contingent financial backing held by the department under s. 126.06.

SECTION 5. 126.16(1)(c)2.c. of the statutes is repealed.

SECTION 6. 126.16(3)(b)(intro.), 1. and 2. of the statutes are amended to read:

126.16(3)(b) A grain dealer who is only required to file or maintain security under sub. (1)(c) shall at all times maintain security equal to the grain dealer's estimated default exposure, as defined in sub. (1)(c)1., less the sum of the following ~~amount~~:

1. ~~For the license year beginning on September 1, 2003, $18,000,000~~ Sixty percent of the cash balance in the fund on the last day of the preceding month.

2. ~~For the license year beginning on September 1, 2004, $19,000,000~~ The amount of contingent financial backing held by the department under s. 126.06.

SECTION 7. 126.16(3)(b)3. of the statutes is repealed.

SECTION 8. 126.19(6) of the statutes is created to read:

126.19(6) CLAIMS DISALLOWED. The department may not allow a claim under s. 126.70 for any grain payment that first became due under a deferred payment contract more than 365 days from the date of grain delivery. This subsection does not apply to a deferred payment contract formed prior to ***[revisor inserts effective date of this subsection]***.

SECTION 9. 126.28(1)(b) of the statutes is amended to read:

126.28(1)(b) A grain warehouse keeper licensed under s. 126.26(1) shall file an annual financial statement with the department during each license year if in the preceding license year the ~~grain~~ warehouse keeper ~~operates~~ operated grain warehouses with a combined capacity of more than ~~300,000~~ 450,000 bushels or if, in each of the 2 preceding license years, the warehouse keeper operated grain warehouses with a combined capacity of more than 300,000 bushels. The grain warehouse keeper shall file the annual financial statement by the 15th day of the 4th month following the close of the grain warehouse keeper's fiscal year, except that the department may extend the annual filing deadline for up to 30 days if the grain warehouse keeper, or the accountant reviewing or auditing the financial statement, files a written extension request at least 10 days before the filing deadline.

SECTION 10. 126.28(3)(a) of the statutes is amended to read:

126.28(3)(a) A grain warehouse keeper filing an annual financial statement under sub. (1) or (2) shall file an audited financial statement if in the preceding license year the warehouse keeper ~~operates~~ operated grain warehouses with a combined capacity of more than ~~500,000~~ 1,000,000 bushels or, in each of the 2 preceding license years, the warehouse keeper operated grain warehouses with a combined capacity of more than 750,000 bushels.

SECTION 11. 126.31(1)(b)2.(intro.), a. and b. of the statutes are amended to read:

126.31(1)(b)2. A grain warehouse keeper shall file security with the department, and maintain that security until the department releases it under sub. (8)(am), if the grain warehouse keeper files an annual financial statement under s. 126.28(1) that shows negative equity, a current ratio of less than 1.25 to 1.0, or a debt to equity ratio of more than 4.0 to 1.0 and the grain warehouse keeper's estimated default exposure is greater than the sum of the following ~~amount~~:

a. ~~For the license year beginning on September 1, 2003, $18,000,000~~ Sixty percent of the cash balance in the fund on the last day of the preceding month.

b. ~~For the license year beginning on September 1, 2004, $19,000,000~~ The amount of contingent financial backing held by the department under s. 126.06.

SECTION 12. 126.31(1)(b)2.c. of the statutes is repealed.

SECTION 13. 126.31(3)(b)(intro.), 1. and 2. of the statutes are amended to read:

126.31(3)(b) A grain warehouse keeper who is only required to file or maintain security under sub. (1)(b) shall at all times maintain security equal to the grain warehouse keeper's estimated default exposure, as defined in sub. (1)(b)1., less the sum of the following ~~amount~~:

1. ~~For the license year beginning on September 1, 2003, $18,000,000~~ Sixty percent of the cash balance in the fund on the last day of the preceding month.

2. ~~For the license year beginning on September 1, 2004, $19,000,000~~ The amount of contingent financial backing held by the department under s. 126.06.

SECTION 14. 126.31(3)(b)3. of the statutes is repealed.

SECTION 15. 126.44(1)(b) of the statutes is repealed and recreated to read:

126.44(1)(b) Except as provided in par. (c) or (d), a milk contractor licensed under s. 126.41(1) shall file an annual financial statement with the department during each license year if any of the following apply:

1. The milk contractor is not a contributing milk contractor.

2. The milk contractor's most recent license application reported more than $2.5 million in annual milk payroll obligations under s. 126.41(6)(a).

3. Each of the milk contractor's 2 most recent license applications reported more than $1.5 million in annual milk payroll obligations under s. 126.41(6)(a).

SECTION 16. 126.44(1)(bm) of the statutes is created to read:

126.44(1)(bm) A milk contractor who is required to file an annual financial statement under par. (b) shall file that annual financial statement by the 15th day of the 4th month following the close of the milk contractor's fiscal year. The department may extend the filing deadline for up to 30 days if the milk contractor, or the accountant preparing the financial statement, files a written extension request at least 10 days before the filing deadline.

SECTION 17. 126.44(1)(c) of the statutes is repealed and recreated to read:

126.44(1)(c) Paragraph (b) does not apply to a contributing milk contractor who procures producer milk in this state solely as a producer agent.

SECTION 18. 126.44(5)(a) of the statutes is repealed and recreated to read:

126.44(5)(a) A milk contractor filing an annual financial statement under sub (1) or (2) shall file an audited financial statement if any of the following apply:

1. The milk contractor's most recent annual license application reported more than $9 million in annual milk payroll obligations under s. 126.41(6)(a).

2. Each of the milk contractor's 2 most recent license applications reported more than $6 million in annual milk payroll obligations under s. 126.41(6)(a).

SECTION 19. 126.45(3) of the statutes is amended to read:

126.45(3) DISQUALIFIED CONTRACTORS. (a) A milk contractor who is required to file security under s. 126.47(1)(a) is disqualified from the fund until the department releases that security under s. 126.47(7)(a). This paragraph does not apply, during the period beginning on May 1, 2002, and ending on April 30, ~~2007~~ 2008, to a qualified producer agent who files security under s. 126.47(3)(a)3.

SECTION 20. 126.46(5)(a)1. to 3. of the statutes are amended to read:

126.46(5)(a)1. For the milk contractor's 3rd consecutive full license year as a contributing milk contractor, the milk contractor's ~~current ratio~~ debt to equity ratio assessment factor is 0.001.

2. For the milk contractor's 4th consecutive full license year as a contributing milk contractor, the milk contractor's ~~current ratio~~ <u>debt to equity ratio</u> assessment factor is 0.0005.

3. For the milk contractor's 5th or higher consecutive full license year as a contributing milk contractor, the milk contractor's ~~current ratio~~ <u>debt to equity ratio</u> assessment factor is zero.

SECTION 21. 126.47(1)(b)1. of the statutes is amended to read:

126.47(1)(b)1. In this paragraph, "estimated default exposure" means 75% of the ~~amount last reported under s. 126.41(6)(b) or (9)~~ <u>largest amount of unpaid milk payroll obligations that the milk contractor had at any time during the previous 12 months</u>.

SECTION 22. 126.47(1)(b)2.(intro.), a. and b. of the statutes are amended to read:

126.47(1)(b)2. A milk contractor shall file security with the department, and maintain that security until the department releases it under sub. (7)(am), if the milk contractor files an annual financial statement under s. 126.44(1) that shows negative equity, a current ratio of less than 1.25 to 1.0, or a debt to equity ratio of more than 2.0 to 1.0 and the milk contractor's estimated default exposure is greater than the <u>sum of the</u> following ~~amount~~:

a. ~~For the license year beginning on May 1, 2003, \$18,000,000~~ <u>Sixty percent of the cash balance in the fund on the last day of the preceding month</u>.

b. ~~For the license year beginning on May 1, 2004, \$19,000,000~~ <u>The amount of contingent financial backing held by the department under s. 126.06</u>.

SECTION 23. 126.47(1)(b)2.c. of the statutes is repealed.

SECTION 24. 126.47(3)(a)1. of the statutes is amended to read:

126.47(3)(a)1. Except as provided in subd. 2. or 3., security equal to at least 75% of the ~~amount last reported under s. 126.41(6)(b) or (9)~~ largest amount of unpaid milk payroll obligations that the milk contractor had at any time during the previous 12 months.

SECTION 25. 126.47(3)(a)2. of the statutes is repealed and recreated to read:

126.47(3)(a)2. Except as provided in subd. 3., for a milk contractor who procures milk in this state solely as a qualified producer agent, security equal to at least the following amounts:

a. For the license year beginning on May 1, 2004, 45% of the largest amount of unpaid milk payroll obligations that the milk contractor had at any time during the previous 12 months.

b. For the license year beginning on May 1, 2005, 60% of the largest amount of unpaid milk payroll obligations that the milk contractor had at any time during the previous 12 months.

c. For a license year beginning on or after May 1, 2006, 75% of the largest amount of unpaid milk payroll obligations that the milk contractor had at any time during the previous 12 months.

SECTION 26. 126.47(3)(a)3. of the statutes is amended to read:

126.47(3)(a)3. For a contributing milk contractor who procures milk in this state solely as a qualified producer agent, for the period beginning on May 1, 2002 and ending on April 30, ~~2007~~ 2008, security equal to at least 7.5% of the ~~amount last reported under s. 126.41(6)(b) or (9)~~ largest amount of unpaid milk payroll obligations that the milk contractor had at any time during the previous 12 months, but not more than $500,000.

SECTION 27. 126.47(3)(b)(intro.), 1. and 2. of the statutes are amended to read:

126.47(3)(b) A milk contractor who is only required to file or maintain security under sub. (1)(b) shall at all times maintain security equal to the milk contractor's estimated default exposure, as defined in sub. (1)(b)1., less the sum of the following ~~amount~~:

1. ~~For the license year beginning on May 1, 2003, $18,000,000~~ Sixty percent of the cash balance in the fund on the last day of the preceding month.

2. ~~For the license year beginning on May 1, 2004, $19,000,000~~ The amount of contingent financial backing held by the department under section 126.06.

SECTION 28. 126.47(3)(b)3. of the statutes is repealed.

SECTION 29. 126.58(1)(b) of the statutes is repealed and recreated to read:

126.58(1)(b) Except as provided in par. (c), a vegetable contractor licensed under s. 126.56(1) shall file an annual financial statement with the department during each license year if any of the following apply:

1. The vegetable contractor's most recent license application reports more than $750,000 in annual contract obligations under s. 126.56(9)(a).

2. Each of the vegetable contractor's 2 most recent license applications reports more than $500,000 in annual contract obligations under s. 126.56(9)(a).

SECTION 30. 126.58(1)(bm) of the statutes is created to read:

126.44(1)(bm) A vegetable contractor who is required to file an annual financial statement under par. (b) shall file that financial statement by the 15th day of the 4th month following the close of the vegetable contractor's fiscal year. The department may extend the filing deadline for up to 30 days if the vegetable contractor, or the accountant preparing the financial statement, files a written extension request at least 10 days before the filing deadline.

SECTION 31. 126.58(3)(a) of the statutes is repealed and recreated to read:

126.58(3)(a) A vegetable contractor filing an annual financial statement under sub. (1) or (2) shall file an audited financial statement if any of the following apply:

1. The vegetable contractor's most recent license application reported more than $6 million in annual contract obligations under s. 126.56(9)(a).

2. Each of the vegetable contractor's 2 most recent license applications reported more than $4 million in annual contract obligations under s. 126.56(9)(a).

SECTION 32. 126.61(1)(bm)2.(intro.), a. and b. of the statutes are amended to read:

126.61(1)(bm)2. Except as provided in par. (c), a vegetable contractor shall file security with the department, and maintain that security until the department releases it under sub. (7)(bm), if the vegetable contractor files an annual financial statement under s. 126.58(1) that shows negative equity, a current ratio of less than 1.25 to 1.0, or a debt to equity ratio of more than 4.0 to 1.0 and the vegetable contractor's estimated default exposure is greater than the <u>sum of the</u> following ~~amount~~:

a. ~~For the license year beginning on February 1, 2003, $18,000,000~~ <u>Sixty percent of the cash balance in the fund on the last day of the preceding month</u>.

b. ~~For the license year beginning on February 1, 2004, $19,000,000~~ <u>The amount of contingent financial backing held by the department under s. 126.06</u>.

SECTION 33. 126.61(1)(bm)2.c. of the statutes is repealed.

SECTION 34. 126.61(3)(b), 1. and 2. of the statutes are amended to read:

126.61(3)(b)(intro.) A vegetable contractor who is only required to file or maintain security under sub. (1)(bm) shall at all times maintain security equal to the vegetable contractor's estimated default exposure, as defined in sub. (1)(bm)1., less the sum of the following ~~amount~~:

1. ~~For the license year beginning on February 1, 2003, $18,000,000~~ Sixty percent of the cash balance in the fund on the last day of the preceding month.

2. ~~For the license year beginning on February 1, 2004, $19,000,000~~ The amount of contingent financial backing held by the department under s. 126.06.

SECTION 35. 126.61(3)(b)3. of the statutes is repealed.

SECTION 36. 126.70(4)(f) of the statutes is created to read:

126.70(4)(f) That the claim is disallowed under s. 126.19(6).

SECTION 37. 126.71(1)(e) of the statutes are amended to read:

126.71(1)(e) For each default claim allowed under s. 126.70 against a qualified producer agent who, at the time of the default, was a contributing contractor and maintained security under s. 126.47(3)(a)3., if the default occurs after April 30, 2004, and before May 1, ~~2007~~ 2008, 20% of the amount allowed.

SECTION 38. 126.84(3) of the statutes is created to read:

126.84(3) USE OF RECORDS TO OBTAIN CONTINGENT FINANCIAL BACKING. (a) The department may release to a prospective provider of contingent financial backing under s. 126.06, solely for the purpose of obtaining that contingent financial backing, information obtained under this chapter from a contributing contractor whose estimated default exposure under s. 126.16(1)(c)1., 126.31(1)(b)1., 126.47(1)(b)1. or

126.61(1)(bm)1. exceeds an amount that is equal to 60% of the cash balance in the fund on the last day of the month preceding the day on which the information is released.

(b) The department may not release information under par. (a) to any person unless that person first does all of the following in writing:

1. Agrees not to release the information to any person other than the person's authorized employees identified under subd. 2.

2. Provides the name, address and title of each employee who will have access to the information.

3. Agrees that neither the person, nor any of the person's employees, will release the information to any unauthorized person or use the information for any unauthorized purpose.

4. Agrees to destroy the information on or before a specified date.

5. Agrees that neither the person, nor any of the person's employees, will keep any of the information in any form after the date specified in subd. 4.

6. Agrees that the person is responsible for any action of its employee that violates the agreement, regardless of whether the person authorized that employee action.

7. Agrees that the contributing contractor may enforce the agreement against the person, and that enforcement may include a claim for damages caused by any breach of the agreement.

(c) The department may not release information under par. (a) related to any contractor unless, at least 10 days prior to the release date, the department mails or delivers to the contractor a written notice of the intended release. The notice shall include a copy of the document provided, under par. (b), by the person to whom the department intends to release the information.

(END)

State of Wisconsin
Department of Agriculture, Trade and Consumer Protection

Scope of Proposed Rulemaking

The Department of Agriculture, Trade and Consumer Protection (DATCP) gives notice, pursuant to s. 227.135, Stats., that it proposes to amend administrative rules as follows:

SUBJECT: Agricultural Producer Security

ADMINISTRATIVE CODE REFERENCE:

Chapter ATCP 99 (Grain Dealers and Grain Warehouse Keepers), Chapter ATCP 100 (Milk Contractors) and Chapter 101 (Vegetable Contractors), Wis. Adm. Code.

PRELIMINARY OBJECTIVES:

Update existing rules to reflect current conditions under the agricultural producer security program. Among other things, this rule would correct potentially misleading disclosures related to the amount of security provided to certain producers.

PRELIMINARY POLICY ANALYSIS:

Wisconsin's Agricultural Producer Security Law (ch. 126, Wis. Stats.) helps protect agricultural producers against catastrophic defaults by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (collectively known as "contractors"). Contractors must be licensed by DATCP, and most contractors must pay assessments into Wisconsin's producer security trust fund ("fund"). If a contributing contractor defaults in payments to producers, DATCP can draw on the fund to reimburse producers for at least part of their loss.

The current version of the law was created in 2002 and amended in 2003. DATCP has adopted rules to implement the law. However, subsequent experience has revealed some problems that must be addressed. A key problem is the lack of backup security for the fund.

The producer security law directs DATCP to obtain backup security (commercial surety bonds or other security) to supplement the fund. The backup security was intended to cover very large contractor defaults that might exceed the capacity of the fund. But changes in insurance and financial markets have made it impossible to obtain the required backup security at a price that is remotely affordable. Hence there is no backup security in place. Statutory changes are needed to address this problem.

The current fund balance is adequate to cover the vast majority of contractor defaults. However, a small number of contractors are so large that their default would exceed the capacity of the fund (often by a very large amount). Some of these contractors have filed individual security to supplement fund coverage, but others have not. DATCP cannot *require* contractors to file individual security (statutory changes would be needed). But if a contractor filed security under prior law, DATCP can require the contractor to maintain that security. Contractors may also file voluntary security.

Under current DATCP rules, a contractor must give each producer an annual written notice explaining the producer's security coverage. Current rules specify the exact text of the disclosure. But in certain cases, for reasons explained above, the current disclosure may lead producers (those who sell to certain very large contractors) to believe they have more security coverage than is actually available. This rule will correct the current disclosures, to make them more accurate.

DATCP will also consider the following rule changes:

- Changes to clarify which vegetable contract obligations are, or are not, covered by the producer security law.

- Minor rule changes to enhance or clarify current rules.

RELEVANT FEDERAL LEGISLATION:

There is no federal program to secure milk contractor payments to producers. However, there are federal programs relating to grain warehouses and vegetable contractors. Federal program coverage differs from Wisconsin program coverage, so there is little if any duplication.

Grain Warehouses

The United States Department of Agriculture (USDA) administers a producer security program for federally licensed grain *warehouses*. Federally licensed warehouses are exempt from state grain *warehouse* licensing and security requirements. State-licensed warehouses are likewise exempt from federal licensing and security requirements.

The federal program focuses on grain *storage*. Unlike the Wisconsin program, the federal program provides little or no protection related to grain *dealing* (buying grain from producers, with or without storage). However, USDA is proposing to regulate grain *dealing* ("merchandising") by federally licensed grain warehouse keepers. If that proposal becomes law, federally licensed warehouse keepers who engage in grain dealing would likely be exempt from state grain *dealer* licensing. DATCP rules might need to recognize that exemption, if it occurs.

Vegetable Contractors

The Perishable Agricultural Commodities Act (PACA) regulates contractors who buy unprocessed, fresh market vegetables from producers. The federal program creates a priority lien, for the benefit of unpaid vegetable producers, on a contractor's vegetable inventory, sales proceeds and accounts receivable.

Wisconsin's vegetable security program applies to *processing* vegetables, so there is little overlap with PACA (which applies to *fresh market* vegetables). However, this rule may help clarify the relationship between the Wisconsin producer security law and PACA.

ENTITIES AFFECTED:

- *Contractors.* This rule will have little or no effect on 95% of the dairy, grain and vegetable contractors licensed in Wisconsin. However, certain large contractors may need to disclose to producers that their payments to producers are not fully secured (unless the contractors file voluntary security). This rule may also exempt certain transactions from coverage under the Wisconsin producer security program.

- *Producers.* This rule will have little or no effect on most agricultural producers. However, some producers (those who sell to certain large contractors) will receive more accurate security disclosures from their contractor, which could affect their decision to continue selling to that contractor. This rule may also exempt certain transactions from coverage under the Wisconsin producer security program.

POLICY ALTERNATIVES:

There are few, if any, policy alternatives related to contractor disclosures to producers. The current disclosure of security coverage is misleading in some cases, and must be corrected. DATCP cannot continue to require a misleading disclosure.

DATCP may or may not exempt certain transactions from coverage under the Wisconsin producer security law, after reviewing federal coverage and consulting with affected producers and contractors. DATCP reviews all proposed rules with the Agricultural Producer Security Council, a statutory advisory council that includes producer and contractor representatives.

STATUTORY ALTERNATIVES:

Rulemaking will be needed, with or without legislation. However, DATCP may also propose legislation to address the current lack of backup security for the producer security fund. DATCP assumes that backup security will not be available in the foreseeable future. One approach would be to require contractors to file individual security if (1) they fail to meet minimum financial ratios and (2) their obligations to producers exceed the capacity of the fund. The amount of security would be based on the degree to which the contractor's obligations exceed the capacity of the fund. DATCP will review possible draft legislation with the Agricultural Producer Security Council and the DATCP Board.

STAFF TIME REQUIRED:

DATCP estimates that it will use approximately 0.8 FTE staff to develop this rule. This includes time required for investigation and analysis, rule drafting, preparing related documents, coordinating advisory committee meetings, holding public hearings, and communicating with affected persons and groups. DATCP will use existing staff to develop this rule.

DATCP BOARD AUTHORIZATION:

DATCP may not begin drafting this rule until the Board of Agriculture, Trade and Consumer Protection (Board) approves this scope statement. The Board may not approve this scope statement sooner than 10 days after this scope statement is published in the Wisconsin Administrative Register. If the Board takes no action on the scope statement within 30 days after the scope statement is presented to the Board, the scope statement is considered approved. Before DATCP holds public hearings on this rule, the Board must approve the hearing draft. The Board must also approve the final draft rule before the department adopts the rule.

Dated this 5 day of Jan, 2005

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE
AND CONSUMER PROTECTION

By ______________________
Rodney J. Nilsestuen, Secretary

Issue Paper

Agricultural Producer Security

Summary of Program and Proposal to Solve "Contingent Financial Backing" Problem

February 4, 2005

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

Table of Contents

INTRODUCTION

This paper is divided into two sections. The first is a general overview of the Agricultural Producer Security Program. The second section describes a substantial shortcoming in the program, – the lack of "contingent financial backing" – why it is a problem and recommendations for how to solve it.

Wisconsin's Agricultural Producer Security Program provides some assurance that producers who sell milk, grain and vegetables will be reimbursed in the event of a contractor default. Most grain dealers, grain warehouse keepers, milk contractors and vegetable contractors pay annual assessments into the Agricultural Producer Security Trust Fund. The assessment amounts are calculated based on the amount of grain, milk or vegetables purchased (or grain stored) and the contractor's financial ratios. In the event of a default, the fund is available to partially reimburse producers. The program is governed by Chapter 126 of the Wisconsin Statutes.

The fund was created as part of a substantial overhaul of the program during 2002. Previously, contractors were required to either meet certain minimum financial ratios or maintain security (such as a surety bond or letter of credit) with DATCP. The fund was not designed to reimburse producers in the event of a default by a very large contractor. Rather, the fund was supposed to be backed by commercial bonds or lines of credit. However, because of changes in the surety and insurance industry (precipitated by 9/11 terrorist attacks, downturn in financial markets and a wave of accounting scandals), the coverage originally envisioned is not available. This means that producers who sell to the very largest contractors are not protected to the full extent intended under the law. DATCP staff has proposed a "hybrid" system where these largest contractors (who do not meet minimum financial standards) would be required to maintain some individual security. In exchange, they would receive a proportional reduction in their annual fund assessment. This system would require legislative action to amend Chapter 126, Wi. Stats.

SECTION I

PRODUCER SECURITY PROGRAM OVERVIEW

The goal of the producer security program is to provide some assurance (but not a guarantee) that producers will be paid for their grain, milk and vegetables. Grain dealers, grain warehouse keepers, milk contractors and vegetable contractors -- collectively referred to as "contractors" -- are required to obtain a license. In most cases, licensed contractors must contribute to Wisconsin's Agricultural Producer Security Fund. In the event of a default by a contractor against producers, the fund is available to reimburse producers.

Affected Parties

This program primarily affects *contractors* and *producers.*

Producers are people who produce grain, vegetables or milk. Contractors are people who either store grain for producers or purchase grain, milk or vegetables from producers. Most contractors must pay assessments into the producer security fund. There are four types of contractors:

- *Grain dealers* are persons who purchase grain from producers.
- *Grain warehouse keepers* are persons who store producer owned grain in licensed warehouses. There is a parallel federal program known as the Warehouse Act administered by the USDA. Grain warehouse keepers who maintain a federal license are not required to maintain a Wisconsin license.
- *Milk contractors* are persons who purchase milk from producers. Also, *producer agents* are considered contractors for licensing purposes.
- *Vegetable contractors* are persons who purchase vegetables from producers for use in processing. Vegetables purchased "primarily for fresh market use" are not included in the program.

Within the four types of contractors listed above, there are several categories.

- *Contributing contractors* are contractors who contribute to the producer security fund. In the event a contributing contractor defaults on payment to producers, the fund partially compensates the producers. Most contractors are contributing contractors. Contributing contractors are one of the following:
  - *Required contributing contractors.* Most contractors are required contributing contractors.

- *Voluntary contributing contractors.* Milk contractors who meet certain minimum financial ratios are not required to contribute to, and participate in, the fund. However, several of these companies do participate on a voluntary basis.

- *Noncontributing contractors* are licensed contractors who do not contribute to the fund. These contractors are one of the following:

  - *Disqualified contractors.* These contractors are prohibited from contributing to the fund because their financial statements revealed negative owners equity at the time the current program first went into effect (2002) or – for contractors who were first licensed after 2002 – they had negative equity when they were first licensed as a contractor. Disqualified contractors must provide individual security (such as a surety bond or letter of credit) in lieu of contributing to the fund. Disqualified contractors are no longer disqualified once they submit two consecutive financial statements with positive equity.

  - *Voluntary non-contributing contractors.* Milk contractors who meet certain minimum financial standards may, at their discretion, choose not to participate in the fund.

  - *Vegetable contractors who pay cash on delivery.* These contractors are not required to contribute to the fund because they pay cash on delivery for all purchases. The statute defines cash on delivery as currency, cashier's check, wire transfer or simultaneous barter at the time of delivery.

There are several other subcategories of contractors that must be mentioned:

- *Exempt Grain Dealers.* Persons who pay cash on delivery for all producer grain or persons who buy producer grain solely for their own use as feed or seed and spend less than $400,000 per year for that grain are not required to be licensed. However, these persons may voluntarily apply for a grain dealer license.

- *Exempt warehouse keepers.* Persons who store less than 50,000 bushels of grain for others may do so without obtaining a license. Also, warehouse keepers who have obtained a license from the federal government under the United States Warehouse Act are exempt from Wisconsin grain warehouse keeper licensing requirements.

- *Producer agents.* Producer agents are persons who market products (usually milk, but could also be grain or vegetables) and collect payments on behalf of producers without taking title to the product. The producer security law regulates milk received from producer agents the same as milk purchased from any other producer. In this respect, producer agents are considered producers under the producer security law. However, producer agents are also required to be licensed as contractors and (generally) must contribute to the fund. In this respect producer agents are considered contractors under the producer security law.

Under the previous producer security laws, producer agents were not considered contractors and were not required to be licensed, provide financial statements or maintain individual security. Therefore, producer agents are currently being phased-in to contractor requirements. Until 2007, producer agents are granted more lenient standards for financial statement, assessment and individual security. (Of course, this also means that producers who ship milk to producer agents are currently not as well protected from financial failure by the producer agent.)

- *Custom processors* and *exempt agents* are not considered contractors under the law. Custom processors are persons who take temporary custody of producer milk solely to process it into dairy products for the milk producer. Exempt agents are persons who receive milk from producers for delivery to a custom processor and markets the custom-processed dairy products for the producer. Custom processors and exempt agents are relatively small businesses that do not handle much milk.

The following table shows the number of contractors in each of the categories and subcategories listed above as of December 1, 2004.

	Grain Dealers	Grain Warehouse Keepers	Milk Contractors	Vegetable Contractors
Contributing Contractors – Required	286	125	68	34
Contributing Contractors – Voluntary (milk contractors whose financial statements exceed minimum standards, but have chosen to contribute.)	N/A	N/A	22	N/A
Subtotal – Contributing Contractors	**286**	**125**	**90**	**34**
Noncontributing – Disqualified	0	0	2	0
Noncontributing – have met financial statements	N/A	N/A	18	N/A
Noncontributing – vegetable contractors who pay C.O.D	N/A	N/A	N/A	2
Subtotal – Noncontributing Contractors	**0**	**0**	**20**	**2**
Total Licensed Contractors	**286**	**125**	**110**	**36**

The Agricultural Producer Security Fund

"The fund" is a trust fund created under Ch. 25 of the Wisconsin Statutes. There are two main types of revenues that flow into the fund: assessments and license fees.

Assessments are paid by contributing contractors and are intended to provide security for producers. Assessments are charged annually, based on the contractors' purchases and financial ratios, and are collected quarterly. Currently, the balance in the fund is about $5.4 million.

License fee revenues are used to administer the program. In the case of grain dealers, warehouse keepers and vegetable contractors; license fees are collected annually. Milk contractors pay a small annual license fee, but the majority of their fees are charged and collected on a monthly basis.

"Deductible Amount"

The "deductible amount" is the maximum amount that the department would pay producers out of the fund in the event of a default. The statute defines the deductible amount as 60% of the fund balance on the last day of the previous month. Currently, the deductible amount is roughly $3.2 million.

Contingent Financial Backing

The Producer Security Fund was intended to protect producers in tandem with commercial surety bonds or some other type of private backing. The amount of the financial backing is limited to $17 million or a smaller amount if necessary – in the department's judgement – to avoid excessive acquisition costs or repayment liabilities. To date, the department has not acquired this contingent financial backing. Section II of this document discusses this topic in detail.

Licensing

Contractors are required to obtain an annual license from DATCP. The license renewal dates are as follows: February 1 for vegetable contractors; May 1 for milk contractors and September 1 for grain dealers and grain warehouse keepers.

Financial Statements

Generally, contractors are required to submit annual financial statements to the department. All financial statements must be either *audited* or *reviewed* by a Certified Public Accountant. Large contractors are required to submit *audited* financial statements, medium sized contractors are required to submit *reviewed* financial statements and small contractors are not required to submit financial statements. Financial statements must be prepared in accordance with GAAP (Generally Accepted Accounting Principles). Thresholds for audited and reviewed statements are as follows:

- Grain dealers who purchased more than $500,000 in grain payments and had any deferred payment contract obligations during the previous fiscal year must file a financial statement. The financial statement must be audited if the contractor purchased more than $3 million during the previous year or more than $2 million in both of the two previous years.

- Licensed grain warehouse keepers who store more than 300,000 bushels of grain for others must file a financial statement. The statement must be audited if the licensed grain warehouse keeper stores more than 500,000 bushels for others.
- Milk contractors who purchased more than $1.5 million in producer milk during the previous fiscal year must file an annual financial statement. The statement must be an audited financial statement if the contractor purchased more than $6 million.
- Vegetable contractors whose total vegetable contract obligations was more than $500,000 during the previous fiscal year must file a financial statement. The statement must be an audited financial statement if the contractor had more than $4 million in contract obligations.

Assessments

Assessments are calculated in two parts (or three in the case of some grain dealers). All contributing contractors must pay a current ratio assessment and a debt to equity assessment. Each of these assessments is calculated by multiplying a rate times the amount the contractor purchases or stores. The rate is calculated based on complicated statutory formulas that take the contractors' financial ratios into account.

Grain dealers who enter into deferred payment contracts are also required to submit an assessment based on the total amount of the deferred payment contracts. The producer security law requires that the grain dealers pass this assessment on to the producers.

Individual Security

Several contractors are required to maintain individual security (such as a surety bond or letter of credit). There are several situations that could trigger security requirements (see below). If security is required, the amount of security is based on the "estimated default exposure". "Estimated default exposure" for each of the four license types is calculated as follows:

- For grain dealers, "estimated default exposure" is 35% of the grain dealer's average monthly payment for the three months, during the preceding year, in which the grain dealer made the largest monthly payment for producer grain procured in this state; plus the grain dealer's highest total, at any time during the preceding year, of unpaid obligations for producer grain procured in this state under deferred payment contracts.
- For grain warehouse keepers, "estimated default exposure" is 20% of the current local market value of grain that the grain warehouse keeper holds in this state for others.
- For milk contractors, "estimated default exposure" is 75% of the highest monthly amount paid for producer milk since the beginning of the previous fiscal year.

- For vegetable contractors, "estimated default exposure" is 75% of the highest amount of contract obligations owed to producers at any one time during the previous fiscal year.

The types of contractors who are required to file individual security are listed below:

- Contractors who are disqualified from participating in the fund because they have negative equity are required to post individual security. The amount of security required is equal to the amount of the contractor's estimated default exposure.

- Contributing Contractors whose estimated default exposure exceeds the maximum pay-out of the fund and whose financial statements do not meet certain minimum financial ratios. These contractors must post security equal to the difference between their estimated default exposure and the maximum fund pay-out. The maximum fund pay-out is a statutory maximum of default claims paid out of the fund and any contingent financial backing in place for any one default. The maximum pay-out amount was $18 million in license years beginning 2003, $19 million in license years beginning 2004 and $20 million in license years beginning in 2005 and beyond.

- Contributing Contractors whose estimated default exposure exceeds the deductible amount, and had security on file under the previous producer security law. Under the pre-2002 producer security laws, contractors that did not meet minimum financial ratios were required to file individual security. This security was intended to be released when the contingent financial backing was secured. However, because contingent financial backing is not available, DATCP has continued to hold this individual security. This topic is discussed in more detail in Section II.

Administration

DATCP's Producer Security Section is housed within the Bureau of Trade Practices and the Division of Trade and Consumer Protection. The section is staffed by Auditors, Financial Specialists and Program Assistants. The section issues licenses, collects assessments and license fees, reviews contractors' financial statements and conducts field reviews and investigations to ensure compliance with the producer security law and rules.

The department regularly consults with the Agricultural Producer Security Council in the administration of the program. This is an industry advisory council made up of ten representatives from agricultural trade organizations appointed by the Secretary.

The Producer Security Fund is a trust fund administered within the State of Wisconsin accounting system. The Annual Financial Report for the most recently completed fiscal year is attached as Appendix A.

Comparisons to Similar Federal Programs and Neighboring State 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. This is a voluntary program – grain warehouse keepers may choose whether or not to participate in the program. Federally licensed warehouses are exempt from state warehouse licensing and security requirements.

The federal grain warehouse program currently provides no protection against financial defaults related to "merchandising" – or buying grain from producers. However, the USDA has proposed to regulate and provide producer security for these activities as part of the federal grain warehouse program. If this proposal is enacted, Wisconsin grain dealers who also maintain a federal grain warehouse licenses would likely be exempt from state grain dealer licensing requirements.

There is a federal security program, known as PACA (Perishable Agricultural Commodities Act), for unprocessed vegetables sold in interstate commerce. This security program consists of a priority lien against vegetable-related assets in the event of a bankruptcy. Wisconsin's vegetable security program applies only to "processing" vegetables and PACA applies only to "fresh market" vegetables. However, because of differing definitions of these terms, there are certain limited instances where the state and federal programs overlap.

In Minnesota, contractors must be licensed to procure grain 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, therefore the costs for each contractor can vary substantially. Generally, the high level of protection provided for grain warehouse keepers and grain dealers by Wisconsin's agricultural producer security program is similar to the programs in Illinois and Iowa.

Michigan has the following producer security programs:

- Potato dealers must be licensed for a fee of $100, and must post bonds for up to $100,000 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.

Many other states with substantial milk production also have producer security programs that provide protection for milk producers against defaults. The programs vary consisting of indemnity funds, individual security, or combinations of multiple types of protection. Again, Wisconsin's agricultural producer security program provides among the highest level of protection in the country for its milk producers.

There is currently no other state that offers as high a level of protection to vegetable producers as Wisconsin's agricultural producer security program. As would be expected, this results in the costs associated with the program being higher than other states.

Successes and Remaining Challenges

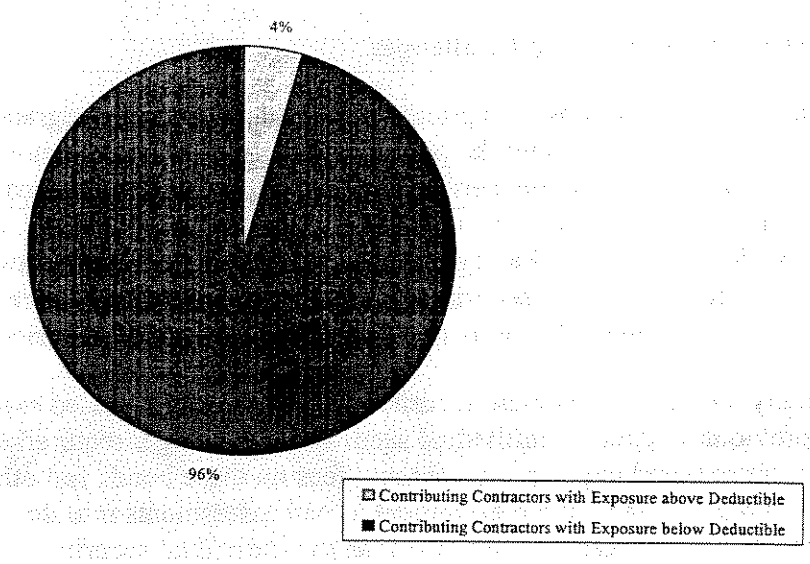
As stated above, Wisconsin's agricultural producer security program went through sweeping changes during 2002. Under the previous law, generally, contractors were required to either file financial statements that met certain minimum standards or required to file individual security. While that system generally provided good coverage for producers, it was expensive and capital intensive for contractors. Passage of the 2002 Producer Security law allowed DATCP to release $100 million in individual security for about 100 contractors – thereby freeing the credit lines of grain, dairy and vegetable companies to invest in Wisconsin's agricultural infrastructure.

For many contractors, the new security law also led to decreased expenses. Most contractors who previously provided individual security are no longer required to do so. Therefore, they no longer are required to pay premiums and fees on these bonds and other securities. This expense has been replaced with the requirement to pay assessments into the fund; but for most companies, the assessments cost less than the individual security.

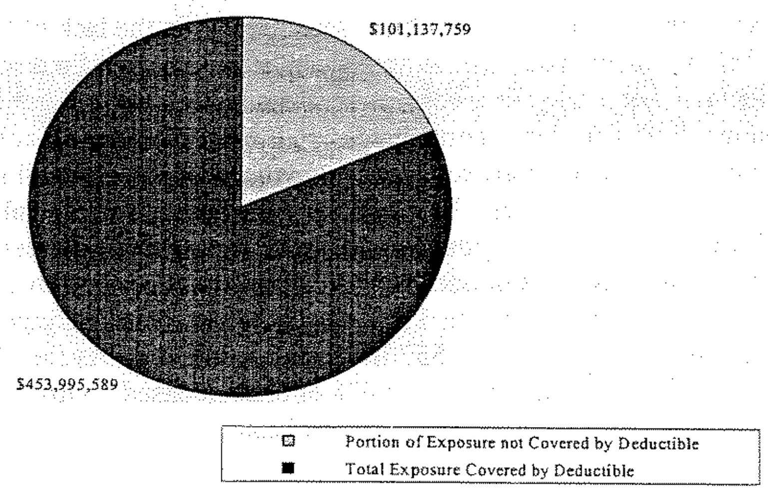
Furthermore, under the previous producer security law, only those producers who did business with a contractor who maintained security were covered. Under the current law, all producers who do business with contributing contractors have some coverage. This represents a huge increase in the number of producers who are provided some coverage.

The one missing piece of the new producer security law is the lack of "contingent financial backing". The producer security law was designed to back the fund with bonds, contingent credit arrangements or some other commercial financial backing for the protection of producers who do business with very large contractors. However, this type of coverage is not viable in the current financial / insurance markets. This is discussed in great detail in section II. However, it should be noted that, even though the fund does not have sufficient balance to cover the largest contractors' estimated default exposure; the fund already has sufficient resources to cover any default from the majority of contractors. The fund balance is already large enough to cover the largest default in state history (about $2 million). The lack of contingent financial backing is only a problem for the 24 largest of 557 licensed contractors. As the illustrations below demonstrate, this problem only exists for 4% of total licensed contractors, but the unprotected default exposure amounts to more than $100 million.

Contractor Coverage by APS Fund



Default Exposure Fund Coverage



SECTION II

POTENTIAL SOLUTION TO CONTINGENT FINANCIAL BACKING PROBLEM

Contingent Financial Backing

To date, DATCP has been unable to secure financial backing for the fund. While designing the program, DATCP was assured by surety industry representatives that backing would be available for about $350,000 per year. That was before several events occurred that made the financial community more cautious, including the 9/11 terrorist attacks and a wave of corporate financial scandals (i.e., Enron and WorldCom). The coverage envisioned by the original statute is simply no longer available at any price. Last session, DATCP worked with the legislature to address this issue. Statutory changes reduced the amount of coverage required from a potential bonding or insurance vendor and increased the financial responsibility of both the fund and the largest contractors. Because of those changes, the department was able to once again open discussions with the financial community. Most recently, the department has been exploring the possibility of Credit Insurance with Aon Risk Services. However, initial estimates place the annual premium between $1 million and $1.5 million per year. The department is continuing to work with Aon to identify ways to reduce the premium; however, this option appears less than promising. DATCP has developed two alternatives to securing contingent financial backing. Initially, both of these alternatives would cost up to an estimated $515,000 per year in lost assessment revenue. While this amount is more that the original cost estimates for external contingent financial backing, it is significantly less expensive than the most recent estimates.

Limit Coverage

One possible alternative is to limit coverage for producers to the amount available in the fund, which is currently approximately $3 million. In the event of a default, producers would be paid according to statutory guidelines. If total payments exceed the amount available in the fund, payments would be reduced proportionately. Under this solution, producers who sell to the largest contractors are not covered at the same level as producers who sell to smaller contractors. Stated another way, the more exposure above the fund balance an individual contractor has, the lower the coverage available for producers who sell to that contractor. As a result, contractors whose exposure exceeds the amount available in the fund would be required to make a disclosure to producers similar to the first example noted in Appendix B.

The advantage to this alternative is that no statute change would be required, making it fairly quick to implement. However, with defaults that could reach in excess of $20 million, this possibility allows for a substantial amount of risk being assumed by producers. In addition, coverage would not be consistent among all producers, and large contractors would be paying assessments for coverage not fully available.

Individual Security

Another possible alternative is to hold individual security for contractors whose estimated default exposure exceeds the amount covered by the fund. The amount of security that each contractor would have to file would be based on their total exposure that exceeds what is available from the fund. Contractors who file security would receive an assessment reduction that would be proportional to the amount of security filed. For example:

> Contractor XYZ has an exposure of $6,000,000. The fund can currently cover a default of $3,000,000. XYZ contractor would file security for an additional $3,000,000. The additional security represents 50% of the contractor's total exposure, and XYZ would receive a 50% reduction in their assessment.

There are three possible ways to approach the individual security alternative:

Voluntary

Under this approach, contractors with an exposure above the amount available from the fund could volunteer to file security for the excess. In return for voluntarily filing, contractors would receive an assessment reduction. Contractors who fall into this category and choose not to voluntarily file security would be required to make a disclosure to producers similar to the second example noted in Appendix B. The disclosure for contractors who voluntarily file security would make a disclosure similar to the third example noted in Appendix B.

This alternative only requires changes to the administrative rule and would be faster to implement than alternatives that require statute changes. However, contractors posing the most risk will most likely make the disclosure to producers as opposed to filing security. Again, this results in producers bearing the brunt of the risk. It is unclear how many contractors would voluntarily file security vs. making the mandatory disclosure if this approach were implemented.

Mandatory

This option would require **all** contractors with an estimated default exposure greater than the amount available from the fund to file security for the excess. The only exception to this requirement would be for milk contractors who meet certain minimum financial ratios and are exempt from participation in the program. Each contractor who files security would receive a reduction in their assessment proportionate to the amount of security filed. Contractors who fall into this category would be required to make a disclosure to producers similar to the fourth example noted in Appendix B.

This alternative provides more protection to producers than any other alternative (including securing contingent financial backing). However, a statute change would be needed for the department to demand security. Additionally, this concept would be a drastic change for contractors who have never been required to file security in the past (under the old law or the new law), and the cost of solid companies filing large amounts of security might out weigh the benefits. There are currently 24 contractors among all three industries who would be required to file security if this approach were implemented.

Hybrid

The third option would allow the department to demand security for contractors with an exposure above the amount available from the fund **and** who don't meet minimum financial ratios. The minimum ratios would be similar to the thresholds stated in the old law. The amount of security required from each contractor not meeting the minimum ratios would be based on their total exposure that exceeds what is available from the fund and any contingent financial backing. Contractors who have excess exposure and are required to file security would also be required to make a disclosure similar to the fifth example noted in Appendix B.

The disclosure for contractors who have excess exposure and are not required to file security would be required to make a disclosure similar to the sixth example noted in Appendix B.

This alternative balances the cost of contractors filing individual security with the risk assumed by producers. Under this approach, there would still be producers who sell to large contractors that will not be protected beyond what the fund would cover. However, producers who sell their products to contractors who pose the most risk would have the protection they need. The current statute would need to be changed to give DATCP the authority to demand security. Under this option there are currently seven contractors who would be required to file security.

The department is currently requiring 4 contractors to maintain about $34 million in security that was originally filed prior to the new requirements enacted during 2002. These contractors will pay their providers an estimated $312,000 to maintain this security. Based on current deductible levels, under existing regulations these contractors will receive assessment reductions of about $346,000.

If the hybrid proposal were enacted, the department would require 2 more contractors to file and maintain about $13 million in security for an estimated cost of about $123,000. Based on current deductible levels, these contractors would receive assessment reductions of about $141,000.

Therefore, under the hybrid proposal, the total security required for those contractors that have exposure above the deductible would be about $46.5 million with an estimated cost to those contractors of $437,000 and estimated assessment reductions of about $487,000.

The following table illustrates some differences between the mandatory, voluntary and hybrid individual security options:

	Mandatory	Hybrid (Mandatory for those whose financial ratios are below minimum standards)	Current Provisions (Holding Security under prior law for those whose financial ratios are below minimum standards)
Producers covered to at least limit in the statute (roughly 80%)	All.	Those who sell to contractors who do not meet minimum financial ratios.	Those who sell to contractors who do not meet minimum financial ratios and have security filed from prior law.
Producers Left with Partial Coverage	None.	Those who sell to contractors who meet minimum financial ratios.	Those who sell to contractors who meet minimum financial ratios or who have fallen below minimum standards since enactment of ch. 126.
Estimated Cost to Fund (in excess of current forgone assessments of about $346,000)	Approx. $203,000 per year in foregone assessments. (This amount would decrease each year as the fund balance grows and assessment rates decline.)	Approx. $141,000 per year in foregone assessments (assuming all contractors volunteer). Probably much less.	Nothing in excess of the amount currently foregone.
Estimated Total Individual Security (For Milk the Mandatory is similar to Hybrid)	• $7.1 million from five Grain Dealers • $43 million from four Milk Contractors • $21 million from five Vegetable Contractors • $9 million from four grain warehouse keepers.	• $200,000 from one Grain Dealer • $43 million from four Milk Contractors • None from Vegetable Contractors • $3 million from one grain warehouse keeper.	• $20,000 from one Grain Dealer • $33 million from three Milk Contractors • None from Vegetable Contractors • None from Grain Warehouse Keepers.
Statute Changes Required	Create authority for DATCP to demand security	Create authority for DATCP to demand security	Create authority for DATCP to demand security
Adm. Code Changes Required	• Revise "Notice to Producer" requirements • Revise Assessment Calculation to grant reduction for filing security.	• Revise "Notice to Producer" requirements • Revise Assessment Calculation to grant reduction to those who file security.	• Revise "Notice to Producer" requirements • Revise Assessment Calculation to grant reduction to those who file security.

[Because it is unknown how many contractors would file security voluntarily, the costs and benefits of the voluntary option are not determinable but would fall somewhere between those of the current provisions and those of the mandatory option.]

Summary and Recommendation

Due to the changes in the financial industry, DATCP cannot obtain the financial backing that was envisioned three years ago. As a result, the program needs to be re-evaluated to provide protection to producers who sell to the largest contractors. While these contractors makeup less than 5% of all contractors among all three industries, the total possible default exposure amounts to significant dollars. In deciding on the best possible solution, consideration must be given to balancing risk to producers, cost to contractors and fairness to all affected parties.

The mandatory individual security plan provides the most coverage to producers – but at an additional cost to contractors who have sound financial ratios. These contractors are arguably the least likely to default. For the contractors who currently participate in the fund or are already filing security, the cost would be about the same.

The voluntary individual security idea is appealing in that it does not require legislative action. The cost/benefit decision rests entirely in the hands of each contractor, and producers would be aware of the risk they are assuming. However, this option would likely result in contractors in the most tenuous financial condition (and therefore have the most difficulty in obtaining individual security) not providing the security. That being the case, adequate coverage would not be available for the producers who arguably need it most.

DATCP Staff recommends adaptation of the hybrid individual security plan. This plan seems to be the best compromise between complete coverage for all producers and reasonable costs to contractors. DATCP has prepared a draft legislative bill that would implement this recommendation. Please see that document for additional details.

Appendix A

Wisconsin Agricultural Producer Security Trust Fund

Annual Report

For the Fiscal Year Ending June 30, 2004

Issued October 15, 2004

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

Division of Trade and Consumer Protection
Janet Jenkins, Administrator

Bureau of Business Trade Practices
Jeremy McPherson, Director

Producer Security Section
Eric Hanson, Chief

Wisconsin Agricultural Producer Security Trust Fund
Statements of Cash Balances, Revenues and Expenditures

	Years Ended June 30, 2004	Years Ended June 30, 2003
Beginning Cash Balance	$ 4,154,678.62	$ 3,021,896.63
Revenues		
Assessments		
Grain Dealers	259,167.79	224,274.87
Grain Warehouse Keepers	58,477.43	33,095.00
Milk Contractors	978,739.32	1,149,879.28
Vegetable Contractors	224,062.59	411,761.23
Total Assessments	1,516,764.13	1,819,010.38
Licenses Fees		
Grain Dealers	155,972.31	152,060.00
Grain Warehouse Keepers	144,487.69	148,850.00
Milk Contractors	343,251.81	240,969.14
Vegetable Contractors	67,280.55	99,526.13
Total License Fees	710,992.36	641,405.27
Miscellaneous Revenue		
Grain Dealers	6,840.00	5,302.50
Grain Warehouse Keepers	-	-
Milk Contractors	-	190.03
Vegetable Contractors	-	-
Total Miscellaneous Revenue	6,840.00	5,492.53
Total Interest Income	46,066.29	52,525.25
Total Revenues	**2,284,345.78**	**2,518,433.43**
Expenditures		
Salaries and Fringe		
Grain Dealers	157,204.60	132,259.85
Grain Warehouse Keepers	210,129.60	89,909.57
Milk Contractors	303,222.32	266,655.43
Vegetable Contractors	90,907.89	120,991.83
Total Salaries and Fringe	761,464.41	609,816.68
Supplies and Services		
Grain Dealers	44,644.67	32,740.29
Grain Warehouse Keepers	46,308.97	32,939.69
Milk Contractors	54,971.12	30,474.95
Vegetable Contractors	14,642.16	29,679.83
Total Supplies and Services	160,566.92	125,834.76
Loan Repayment	600,000.00	650,000.00
Premiums Paid on Financial Backing	-	-
Default Payments to Producers	-	-
Total Expenditures	**1,522,031.33**	**1,385,651.44**
Total Revenues Less Total Expenditures	**762,314.45**	**1,132,781.99**
Ending Cash Balance	**$ 4,916,993.07**	**$ 4,154,678.62**

Wisconsin Agricultural Producer Security Trust Fund
Notes to Statements of Cash Balances, Revenues and Expenditures

OVERVIEW

The Wisconsin Agricultural Producer Security Trust Fund (the Fund) was created as part of 2001 Wisconsin Act 16 (the 01-03 Budget Bill). The Fund was established under Section 25.463, Wis. Stats. and is administered by the Department of Agriculture, Trade and Consumer Protection (The department).

The Fund is housed within the department's Agricultural Producer Security Program (the program). The program is governed by Ch. 126 of the Wisconsin Statutes. The purpose the program is to provide some level of assurance that milk, grain and vegetable producers will be paid for their products. Generally, persons who purchase grain, milk or vegetables from Wisconsin producers, and grain warehouse keepers who store producer owned grain, are required to comply with the provisions of Ch. 126. Collectively, these parties are referred to as contractors. In the event that a contractor defaults on payment to producers, the producers may submit a default claim to be reimbursed by the Fund.

Note 1 – Accounting Methodology

The Statements of Cash Balances, Revenues and Expenditures are presented using the cash basis method of accounting. Revenues are recognized when received by the Fund, and expenditures are recognized when disbursed from the Fund.

Revenues of the Fund consist of annual and monthly license fees as well as annual Producer Security Fund assessments. The annual Fund assessments are typically paid by contractors on a quarterly basis.

Expenditures of the Fund relate to administration of the provisions of Ch. 126.

Responsibility for managing the Fund is split between the department's Division of Management Services and the Division of Trade and Consumer Protection. The Division of Management Services manages and accounts for the overall bank activity, and administers the Fund as part of the State of Wisconsin Accounting System (WISMART.)

The department is required to account for the balance in the Fund that is attributable to each of the four industry categories. Accordingly, the Division of Trade and Consumer Protection maintains a parallel, but more detailed accounting system. The four industry categories are:

- Grain Dealer

- Grain Warehouse Keeper
- Milk Contractor
- Vegetable Contractor

The Division of Trade and Consumer Protection receives monthly reports from the Division of Management Services reflecting all cash activity in the Fund. The Fund has two general functions in each of the four Fund industry categories.

- Indemnity Functions
- Administrative Functions

The Indemnity Functions category consists of assessment revenues collected from contractors. Indemnity Functions expenditures include any payments to producers as a result of a default and any payments to insurance or financial services companies for the financial backing of the Fund. (Please refer to Section 126.06, Wis. Stats. for provisions relating to contingent financial backing of the Fund.)

The Administrative Functions category consists of license fee revenues and expenditures related to administering the program.

The Division of Management Services maintains a record of cash activity segregated by industry category, but does not account for the monthly cash balances in each of the industry categories or functions. The Division of Trade and Consumer Protection accounts for the monthly cash balances in each of the industry categories and functions, and allocates any revenues and expenditures not categorized by the Division of Management Services. The Division of Trade and Consumer Protection reconciles its records to WISMART.

Note 2 – Statements of Cash Balances, Revenues and Expenditures for each Sub-Account

Revenues and expenditures for each sub-account were as follows.

Indemnity Functions – Grain Dealer	**Years Ended**	
	June 30, 2004	**June 30, 2003**
Beginning Cash Balance	$712,124.73	$705,126.22
Revenues		
Transfer from Administrative Functions	-	-
Assessments Collected	259,167.79	224,274.87
Interest Income	6,998.29	10,223.64
Total Revenues	266,166.08	234,498.51
Expenses		
Premiums on Financial Backing	-	-
Default Payments to Producers	-	-
Transfer to Administrative Functions	-	-
Loan Repayment	210,000.00	227,500.00
Total Expenses	210,000.00	227,500.00
Revenues Less Expenses	56,166.08	6,998.51
Ending Balance	**$768,290.81**	**$712,124.73**

Indemnity Functions – Grain Warehouse Keeper	Years Ended	
	June 30, 2004	June 30, 2003
Beginning Balance	$102,832.92	$100,732.32
Revenues		
Transfer from Administrative Functions	-	-
Assessments Collected	58,477.43	33,095.00
Interest Income	1,154.31	1,505.61
Total Revenues	59,631.74	34,600.61
Expenses		
Premiums on Financial Backing	-	-
Default Payments to Producers	-	-
Transfer to Administrative Functions	-	-
Loan Repayment	30,000.00	32,500.00
Total Expenses	30,000.00	32,500.00
Revenues Less Expenses	29,631.74	2,100.61
Ending Balance	**$132,464.66**	**$102,832.92**

Indemnity Functions – Milk Contractor	Years Ended	
	June 30, 2004	June 30, 2003
Beginning Balance	$2,029,616.50	$1,149,783.28
Revenues		
Transfer from Administrative Functions	-	-
Assessments Collected	978,739.32	1,149,879.28
Interest Income	23,516.32	22,453.95
Total Revenues	1,002,255.64	1,172,333.23
Expenses		
Premiums on Financial Backing	-	-
Default Payments to Producers	-	-
Transfer to Administrative Functions	-	-
Loan Repayment	270,000.00	292,500.00
Total Expenses	270,000.00	292,500.00
Revenues Less Expenses	732,255.64	879,833.23
Ending Balance	**$2,761,872.14**	**$2,029,616.50**

Indemnity Functions – Vegetable Contractor	Years Ended	
	June 30, 2004	June 30, 2003
Beginning Balance	$776,415.95	$453,214.12
Revenues		
Transfer from Administrative Functions	-	-
Assessments Collected	224,062.59	411,761.23
Interest Income	8,974.22	8,940.61
Total Revenues	233,036.81	420,701.84
Expenses		
Premiums on Financial Backing	-	-
Default Payments to Producers	-	-
Transfer to "Program Administrative Functions"	-	-
Loan Repayment	90,000.00	97,500.00
Total Expenses	90,000.00	97,500.00
Revenues Less Expenses	143,036.81	323,201.84
Ending Balance	**$919,452.76**	**$776,415.95**

Administrative Functions – Grain Dealer	Years Ended	
	June 30, 2004	June 30, 2003
Beginning Cash Balance	$121,535.10	$126,681.59
Revenues		
Transfer from Indemnity Functions	-	-
License Fees & Monthly Fees	155,972.31	152,060.00
Misc. Revenue	6,840.00	5,302.50
Interest Income	1,586.84	2,491.15
Total Revenues	164,399.15	159,853.65
Expenses		
Transfer to Indemnity Functions	-	-
Salaries and Fringe	157,204.60	132,259.85
Supplies and Services	44,644.67	32,740.29
Total Expenses	201,849.27	165,000.14
Revenues Less Expenses	(37,450.12)	(5,146.49)
Ending Balance	**$ 84,084.98**	**$121,535.09**

Administrative Functions – Grain Warehouse	Years Ended	
	June 30, 2004	**June 30, 2003**
Beginning Balance	$136,689.00	$108,372.29
Revenues		
Transfer from Indemnity Functions	-	-
License Fees & Monthly Fees	144,487.69	148,850.00
Misc. Revenue	-	-
Interest Income	1,421.88	2,315.97
Total Revenue	145,909.57	151,165.97
Expenses		
Transfer to Indemnity Functions	-	-
Salaries and Fringe	210,129.60	89,909.57
Supplies and Services	46,308.97	32,939.69
Total Expenses	256,438.57	122,849.26
Revenues Less Expenses	(110,529.00)	28,316.71
Ending Balance	**$ 26,160.00**	**$136,688.99**

Administrative Functions – Milk Contractor	Years Ended	
	June 30, 2004	**June 30, 2003**
Beginning Balance	$225,379.25	$277,428.30
Revenues		
Transfer from Indemnity Functions	-	-
License Fees	343,251.81	240,969.14
Misc. Revenue	-	190.03
Interest	2,235.37	3,922.16
Total Revenues	345,487.18	245,081.33
Expenses		
Transfer to Indemnity Functions	-	-
Salaries and Fringe	303,222.32	266,655.43
Supplies and Services	54,971.12	30,474.95
Total Expenses	358,193.44	297,130.38
Revenues Less Expenses	(12,706.26)	(52,049.05)
Ending Balance	**$ 212,672.99**	**$225,379.25**

Administrative Functions – Vegetable Contractor	Years Ended	
	June 30, 2004	June 30, 2003
Beginning Balance	$50,085.17	$100,558.52
Revenues		
Transfer from Indemnity Functions	-	-
License Fees	67,280.55	99,526.13
Misc. Revenue	-	-
Interest Income	179.07	672.18
Total Revenues	67,459.62	100,198.31
Expenses		
Transfer to Indemnity Functions	-	-
Salaries and Fringe	90,907.89	120,991.83
Supplies and Services	14,642.16	29,679.83
Total Expenses	105,550.05	150,671.66
Revenues Less Expenses	(38,090.43)	(50,473.35)
Ending Balance	**$11,994.74**	**$50,085.17**

Note 3 – Start-up Loan from the Agrichemical Management Fund

Pursuant to Section 126.08, Wis. Stats., $2 million was transferred from the Wisconsin Agrichemical Management Fund to the Fund as of January 1, 2002. The statute requires complete repayment of the loan by July 1, 2006. A minimum annual payment of $250,000 is due on July 1 of each year.

Loan repayments were as follows.

Year ended June 30, 2003	
September 2002	$250,000.00
February 2003	300,000.00
June 2003	100,000.00
	$650,000.00
Year ended June 30, 2004	
July 2003	$250,000.00
January 2004	350,000.00
	$600,000.00

In July 2004, $250,000 of the loan was repaid.

The interest rate was 5% from January 1, 2002 through June 30, 2003. On July 1, 2003, the interest rate was lowered to 2%. Because the accounting for the Fund is on a cash basis, the Statements of Cash Balances, Revenues and Expenditures do not reflect the accrual of interest expense. However, the department does maintain a separate accounting of accrued interest. Interest is compounded monthly and added to the total loan balance. The Fund incurred $87,575.55 in interest expenses during the fiscal year ended June 30, 2003 and $21,475.62 during the fiscal year ended June 30, 2004.

The balance of the principal and interest due to the Wisconsin Agrichemical Management Fund was $1,488,099.29 at June 30, 2003 and $909,574.91at June 30, 2004. As a result, the excess of cash over loans and interest payable was as follows.

	June 30, 2004	June 30, 2003
Cash balance	$4,916,993.07	$4,154,678.62
Loan payable	(750,000.00)	(1,350,000.00)
Interest payable	(159,574.91)	(138,099.29)
	$4,007,418.16	$2,666,579.33

At the time the loan was received, the balance was allocated among the four Indemnity Functions sub-accounts by percentage. This allocation was based on the estimated amount of potential default exposure in each of the four industries. The department has consistently allocated all payments and interest expense by the same percentages. The allocation percentages are as follows.

- Grain Dealer 35%
- Grain Warehouse Keeper 5%
- Milk Contractor 45%
- Vegetable Contractor 15%

Note 4 – Assessments

Assessments represent the cash collected during the period related to Fund assessments. The Division of Trade and Consumer Protection maintains computerized billing and account receivable systems that track assessments by individual contractor and by license year. Each contractor's assessment amount is based on multiplying the "assessment rate" by the contractor's total purchases (or storage capacity in the case of Grain Warehouse Keepers).

Generally, assessment rates are calculated using a complex algorithm. The contractor's financial condition is evaluated considering their current ratio and debt-to-equity ratio. The assessment rate is higher for contractors having a weaker financial condition. The department calculates the annual assessment at the beginning of each license year.

There was a 16% reduction in assessments collected during the year ended June 30, 2004 compared with the year ended June 30, 2003. Although not individually quantifiable, elements of the reduction include regular fluctuations in contractors' annual purchases (or storage capacity), commodity prices and contractors' financial statement ratios. New administrative rules have allowed certain contractors meeting specified conditions to reduce their annual assessments. These rules are discussed more thoroughly in Note 12 – Significant Nonfinancial Events.

Note 5 – Milk Contractor – Monthly License Fees Transfer

During the fiscal year ended June 30, 2002, $99,225.25 of dairy plant fees that should have been credited to the department's Division of Food Safety were improperly credited to the Fund as milk contractor monthly license fees. During November 2002, the Fund transferred the $99,225.25 to the Division of Food Safety. This transfer resulted in a reduction in the Milk Contractor Licenses Fees for Fiscal Year 2002-2003. Had the correcting transaction been executed during six months ended June 30, 2002 (the same period in which the error occurred), the Milk Contractor Licenses Fees during the year ended June 30, 2003 would have been $340,194.39 instead of the $240,969.14 reported in the Statements of Cash Balances, Revenues and Expenditures.

Note 6 – Miscellaneous Revenue

Miscellaneous revenue consists primarily of service fees received from the Wisconsin Soybean Marketing Board. While performing grain dealer field reviews, DATCP agricultural auditors verify that soybean 'check-off dollars' have be properly paid. The department bills the marketing board for this service. In the years ended June 30, 2003 and 2004, the Fund received $5,302.50 and $6,840.00, respectively, for this service.

In November 2002, $190.03 of excess funds related to the Dairy Maid default proceedings were received by the Fund.

Note 7 – Interest Income

The Wisconsin Department of Administration pays interest to the Fund at the end of each month. The interest rate is determined monthly based on the overall return on the State of Wisconsin's entire cash holdings. The Division of Trade and Consumer Protection allocates interest revenue among the eight sub-accounts based on the prior month ending cash balance.

Note 8 –Salaries and Fringe Expenditures

Salaries & fringe expenditures increased $151,647.73 from $609,816.68 in the year ended June 30, 2003 to $761,464.41 in the year ended June 30, 2004. The increase resulted primarily from an increase in the number of full time employee's (FTE's). At the beginning of the year ended June 30, 2004, 2.9 FTE's were added to the Fund, bringing the total positions to 14.52. All of these FTE's had previously been paid by the Department of Agriculture, Trade and Consumer Protection General Program Revenue accounts. 2.0 of the added FTE positions were existing Agricultural Auditors in the grain security portion of the program and 0.9 positions were portions of administrative positions.

Note 9 –Expenditures

Administrative function expenditures of the four industry categories were as follows.

Grain Dealer	Years Ended	
	June 30, 2004	June 30, 2003
Payroll		
Classified Civil Service Salaries	$110,657.51	$92,061.77
Fringe Benefit Expenditures	46,547.09	40,198.08
	157,204.60	**132,259.85**
Supplies & Services		
Contractual Services Exp	1,534.00	1,766.00
Dues and Subscriptions		100.00
Data Processing – State	10,340.60	5,718.00
Insurance	1,935.17	4,708.00
Mailing	1,069.70	1,335.74
Non State or Non-STS Calls	797.81	1,845.15
Other Admin & Operating	1,996.60	1,616.30
Printing	132.84	188.56
Rent Privately-Owned Space		4,304.76
Rental of State-Owned Space	23,891.54	1,406.28
Materials & Supplies – Other	595.50	1,567.88
STS Charges	53.34	32.68
Travel & Training/In-State	2,239.07	7,880.61
Other Travel & Training Exp	58.50	270.33
	44,644.67	**32,740.29**
Total	**$201,849.27**	**$165,000.14**

Grain Warehouse Keeper	Years Ended	
	June 30, 2004	June 30, 2003
Payroll		
Classified Civil Service Salaries	$150,669.94	$61,489.46
Fringe Benefit Expenditures	59,459.66	28,420.11
	210,129.60	**89,909.57**
Supplies & Services		
Contractual Services Exp	1,035.00	538.00
Dues and Subscriptions	150.00	
Data Processing – State	6,868.81	5,559.49
Insurance	1,253.24	
Mailing	623.10	724.79
Non State or Non-STS Calls	894.50	32.95
Other Admin & Operating	2,546.97	2,394.78
Printing	113.02	33.69
Rent Privately-Owned Space	4,061.96	
Rental of State-Owned Space	11,331.33	10,927.68
Materials & Supplies - Other	339.27	74.64
STS Charges	61.95	103.00
Travel & Training/In-State	3,601.93	64.55
Other Travel & Training Exp	13,427.89	12,486.12
	46,308.97	**32,939.69**
Total	**$256,438.57**	**$122,849.26**

Milk Contractor	Years Ended	
	June 30, 2004	June 30, 2003
Payroll		
Classified Civil Service Salaries	$220,463.07	$184,323.49
Fringe Benefit Expenditures	82,759.25	82,331.94
	303,222.32	**266,655.43**
Supplies & Services		
Advertising/Legal Notices	315.22	
Contractual Services Exp	1,976.00	1,047.86
Dues and Subscriptions	90.00	
Data Processing – State	9,840.66	4,003.00
Insurance	2,432.80	
Mailing	1,267.32	1,488.76
Non State or Non-STS Calls	3,835.29	4,256.78
Other Admin & Operating	220.49	519.41
Printing	571.56	92.00
Rent/Lease of Equipment	515.00	175.00
Rent Privately-Owned Space	1,488.00	1,337.70
Rental of State-Owned Space	20,716.63	12,460.44
Materials & Supplies - Other	1,245.28	1,655.54
STS Charges	226.42	95.23
Other Telecommunications	200.00	
Travel & Training/In-State	3,537.46	2,077.23
Travel & Training/Out-of-State	619.49	
Other Travel & Training Exp	5,873.50	1,266.00
	54,971.12	**30,474.95**
Total	**$358,193.44**	**$297,130.38**

Vegetable Contractor	Years Ended	
	June 30, 2004	June 30, 2003
Payroll		
Classified Civil Service Salaries	$64,280.74	$92,443.12
Fringe Benefit Expenditures	26,627.15	28,548.71
	90,907.89	**120,991.83**
Supplies & Services		
Advertising/Legal Notices		122.02
Contractual Services Exp	528.00	977.00
Data Processing - State	3,525.23	4,844.00
Maint & Repair - Land/Struct.		16.70
Insurance	626.63	
Mailing	207.92	140.97
Non State or Non-STS Calls	433.52	74.74
Other Admin & Operating	802.87	300.48
Printing	0.84	135.48
Rental of State-Owned Space	8,102.08	20,959.20
Materials & Supplies - Other	51.95	549.41
STS Charges	166.24	108.00
Travel & Training/In-State	162.13	1,451.83
Travel & Training/Out-of-State	34.75	
	14,642.16	**29,679.83**
Total	**$105,550.05**	**$150,671.66**

Note 10 – Statutory Fund Balance Trigger Amounts

License fee credits.

If the balance in an industry category's Indemnity Functions sub-account contributed by its contractors exceeds a minimum threshold, Ch. 126 requires reductions in licenses fees for that industry category. The minimum threshold amounts are as follows:

- Grain Dealer $2,000,000 on June 30 [s. 126.11(6), Wis. Stats.]
- Grain Warehouse $ 300,000 on June 30 [s. 126.26(5), Wis. Stats.]
- Milk Contractor $4,000,000 on February 28 [s. 126.42(3), Wis. Stats.]
- Vegetable Contractor $1,000,000 on November 30 [s. 126.56(6), Wis. Stats.]

In the event any of the four Indemnity Functions sub-accounts exceed the thresholds listed above, the department is required to transfer 50% of the amount above the threshold into that industry's Administrative Functions sub-account and credit contractors' license fees. The credit is prorated among the contractors based on the total amount paid in license fees over the four preceding license years. The four Indemnity Functions sub-accounts have not exceed the respective minimum threshold.

As of November 30, 2003, the cash balance in the Vegetable Contractor Indemnity Functions sub-account was $1,006,169.22 and the loan payable (including interest and principle) was $187,267.68, for a net balance of $818,901.54.

As of February 28, 2004, the cash balance in the Milk Contractor Indemnity Functions sub account was $2,480,153.74 and the loan payable was $406,591.32, for a net balance of $2,073,562.42.

As of June 30, 2004, the cash balance in the Grain Dealer Indemnity Functions sub account was $768,290.81 and the loan payable was $318,351.22 for a net balance of $449,939.59. The cash balance in the Grain Warehouse Keeper Indemnity Functions sub account was $132,464.66 and the loan payable was $45,478.75 for a net balance of $86,985.91.

Minimum and Maximum Fund Balances

Ch. 126 permits the department to modify fund assessments by Administrative Rule. Further, the statute requires the department to modify assessments in order to maintain fund balances between specific minimum and maximum amounts. These amounts are as follows:

- An overall fund balance of at least $5,000,000 after January 1, 2006, but not more than $22,000,000 at any time.
- A Grain Dealer Indemnity Functions Subaccount balance of at least $1,000,000 after January 1, 2006, but not more than $6,000,000 at any time.

- A Grain Warehouse Keeper Indemnity Functions Subaccount balance of at least $200,000 by January 1, 2006, but not more than $1,000,000 at any time.
- A Milk Contractor Indemnity Functions Subaccount balance of at least $3,000,000 after January 1, 2006, but not more than $12,000,000 at anytime.
- A Vegetable Contractor Indemnity Functions Subaccount balance of at $800,000 by January 1, 2006 but not more than $3,000,000 at any time.

The minimum amounts do not take effect until January 1, 2006. The fund balance and sub-account balances have not exceeded the maximum amounts during the year ended June 30, 2004. Accordingly, The department has yet to initiate assessment modification rulemaking.

Note 11 -- Monthly Cash Balances

Cash balances in each sub-account at the end of each month during the year ended June 30, 2004 were as follows. (Note the balances do not reflect loan balances remaining unpaid.)

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Indemnity Functions Sub-Accounts

	Grain Dealer	Grain Warehouse	Milk Contractor	Vegetable Contractor	Subtotal Indemnity Functions
July 2002	706,170.39	100,881.48	1,176,941.55	453,885.24	2,437,878.66
August 2002	707,270.91	101,038.70	1,380,511.46	532,066.82	2,720,887.89
September 2002	623,072.70	89,472.96	1,320,062.20	537,512.94	2,570,120.80
October 2002	633,288.45	99,753.21	1,324,642.75	537,512.94	2,595,197.35
November 2002	648,922.00	100,945.44	1,514,586.65	610,394.23	2,874,848.32
December 2002	687,964.44	105,244.97	1,621,958.86	617,371.19	3,032,539.46
January 2003	735,250.89	110,179.03	1,625,631.23	624,703.63	3,095,764.78
February 2003	664,293.86	96,601.44	1,635,221.52	646,461.76	3,042,578.58
March 2003	692,937.22	98,301.30	1,733,080.02	712,808.35	3,237,126.89
April 2003	714,839.47	104,496.00	1,734,996.46	713,596.57	3,267,928.50
May 2003	715,775.11	104,665.37	1,769,553.91	776,301.62	3,366,296.01
June 2003	712,124.73	102,832.92	2,029,616.50	776,415.95	3,620,990.10
July 2003	639,264.04	95,114.85	1,950,327.68	795,196.59	3,479,903.16
August 2003	641,746.54	95,389.45	2,144,777.59	830,612.03	3,712,525.61
September 2003	658,309.91	101,634.74	2,175,369.61	918,976.01	3,854,290.27
October 2003	722,169.05	114,184.60	2,185,383.08	919,680.04	3,941,416.77
November 2003	754,759.62	123,919.96	2,360,598.86	1,006,169.22	4,245,447.66
December 2003	794,116.77	130,794.94	2,455,445.22	1,038,057.25	4,418,414.18
January 2004	685,206.44	117,688.29	2,305,540.93	880,046.34	3,988,482.00
February 2004	686,342.39	118,372.75	2,480,153.74	886,226.49	4,171,095.37
March 2004	707,438.76	121,989.06	2,584,367.34	912,113.72	4,325,908.88
April 2004	731,420.51	126,970.78	2,593,303.21	912,868.63	4,364,563.13
May 2004	732,503.03	127,072.25	2,670,375.85	913,598.15	4,443,549.28
June 2004	768,290.81	132,464.66	2,761,872.14	919,452.76	4,582,080.37

Administrative Functions Sub-Accounts

	Grain Dealer	Grain Warehouse	Milk Contractor	Vegetable Contractor	Subtotal Administrative Functions	Total Fund Cash Balance
July 2002	117,242.02	99,685.25	292,942.35	88,594.41	598,464.03	3,036,342.69
August 2002	164,844.10	142,629.92	300,085.76	81,691.15	689,250.93	3,410,138.82
September 2002	236,627.18	208,637.92	309,281.29	69,037.88	823,584.27	3,393,705.07
October 2002	226,352.64	199,366.13	313,093.30	43,700.31	782,512.38	3,377,709.73
November 2002	221,204.18	196,621.16	226,205.75	25,579.49	669,610.58	3,544,458.90
December 2002	211,926.73	193,489.30	223,267.75	17,045.56	645,729.34	3,678,268.80
January 2003	191,999.64	177,103.53	234,758.18	30,122.40	633,983.75	3,729,748.53
February 2003	181,680.74	171,842.34	235,463.95	57,474.33	646,461.36	3,689,039.94
March 2003	167,357.70	167,152.78	243,090.14	41,033.58	618,634.20	3,855,761.09
April 2003	153,859.81	158,585.13	250,701.42	23,772.19	586,918.55	3,854,847.05
May 2003	138,957.80	149,872.60	266,896.60	4,649.51	560,376.51	3,926,672.52
June 2003	121,535.09	136,688.99	225,379.27	50,085.17	533,688.52	4,154,678.62
July 2003	110,765.25	130,201.08	248,355.93	38,810.80	528,133.06	4,008,036.22
August 2003	155,788.66	167,278.42	262,125.50	23,788.91	608,981.49	4,321,507.10
September 2003	230,333.96	241,740.01	260,611.46	17,296.41	749,981.84	4,604,272.11
October 2003	216,776.51	241,299.81	251,642.08	5,904.88	715,623.28	4,657,040.05
November 2003	210,396.09	232,859.73	226,822.34	(540.73)	669,537.43	4,914,985.09
December 2003	196,993.29	214,943.68	238,695.57	(4,671.77)	645,960.77	5,064,374.95
January 2004	179,909.44	136,923.41	234,183.34	4,387.85	555,404.04	4,543,886.04
February 2004	167,223.93	118,126.14	209,300.15	37,335.34	531,985.56	4,703,080.93
March 2004	147,031.38	95,517.07	221,152.65	28,523.35	492,224.45	4,818,133.33
April 2004	122,710.87	69,323.38	182,109.04	24,669.20	398,812.49	4,763,375.62
May 2004	108,092.37	52,771.49	198,880.12	22,774.97	382,518.95	4,826,068.23
June 2004	84,084.97	26,160.00	212,672.99	11,994.74	334,912.70	4,916,993.07

Note 12 – Significant Non-financial Events

Newly Enacted Emergency Rules

The department promulgated two Emergency Rules during early 2004 relating to agricultural producer security. The first rule became effective February 1, 2004. Generally, this rule authorized the partial refund of assessments to contractors having a dramatic increase in assessments due to a temporary change in financial ratios resulting from a merger or acquisition. The rule authorized a credit only if certain conditions are met. The contractor must have had a current ratio of at least 1.25 to 1.00 and debt to equity ratio of no more than 3.0 to 1.0 before merger or acquisition and must regain those minimum ratios in the fiscal year following the year that the merger or acquisition occurred. The amount of the refund is 75% of the difference between assessment amount for the year in which the merger or acquisition occurred and the following year. The refund amount is paid as a credit against future years assessments.

The second emergency rule became effective May 1, 2004. This rule authorized reductions in assessments for certain contractors who were still required to maintain the security required under the pre-2002 producer security laws while also being required to pay annual Security Fund assessments. This rule authorized a reduction in assessment amounts based on the percentage of the contractor's "estimated default exposure" for which it was providing a bond or letter of credit.

Both of these emergency rules were subsequently promulgated as a permanent administrative rule. The permanent rules became effective October 1, 2004.

Contingent Financial Backing

Section 126.06, Wis. Stats. requires the department to obtain "Contingent Financial Backing". This backing is intended to reimburse producers in the event of a very large default. However, the department has, to date, been unable to obtain a suitable package. Staff has negotiated with two interested vendors. The first discussed a line of credit. Under this arrangement, in the event of a large default, the vendor would loan the Fund the money to be reimbursed to producers, and the Fund would repay the vendor over time.

The second vendor discussed a credit insurance policy. Under this policy, in the event of a default that exceeds the deductible amount, the Department would file a claim with the insurance company to be reimbursed for the loss. (The "deductible amount" is defined in the statute as 60% of the total fund balance on the last day of the previous month.)

The department and the Agricultural Producer Security Council dismissed the line of credit proposal because of unacceptable amount of fees associated with the arrangement and uncertainty of the Fund's ability to repay the line of credit over time. The credit insurance proposal is still under consideration.

New Licensing & Assessment Software

The Agricultural Producer Security program is participating, along with many DATCP programs, in implementing new computer software to manage licenses, assessments and related data. The software was designed during the year ended June 30, 2004 and is currently undergoing user testing. The system is scheduled to be usable for licensing vegetable contractors, which are due for renewal on February 1, 2005.

APPENDIX B
DRAFT CONTRACTOR DISCLOSURES TO PRODUCERS

1. Notice for LIMIT COVERAGE: (page 12)

IMPORTANT NOTICE

[Name of contractor] contributes to Wisconsin's Agricultural Producer Security Fund. Money deposited into this fund is available for securing payments to producers and producer agents for product delivered to contributing contractors. On *[date]* the fund had *[dollars]* available to pay producers and producer agents if a contributing contractor fails to pay a producer or producer agent. The fund may pay up to 80% of the first $60,000 of the producer's unpaid payment claim that is filed in accordance with Wis. Stats. § 126.70, and up to 75% of any additional unpaid payment claim. Default claims must be filed within 30 days after the claimant learned of a contractor's default.

Under the Producer Security program, 'estimated default exposure' means:
[as indicated by the statute for the particular license - milk, vegetable, grain dealer, or grain warehouse keeper]

Based on our contractor operations of the past year, our estimated default exposure exceeds the [dollars] available in the fund. If the total amount of default claims exceeds the amount available in the fund, the department shall prorate the available amount among the eligible claimants in proportion to the amount of their allowed claims.

2. Notice for VOLUNTARY Security: (page 13)

IMPORTANT NOTICE

[Name of contractor] contributes to Wisconsin's Agricultural Producer Security Fund. Money deposited into this fund is available for securing payments to producers and producer agents for product delivered to contributing contractors. On *[date]* the fund had *[dollars]* available to pay producers and producer agents, if a contributing contractor fails to pay a producer or producer agent. The fund may pay up to 80% of the first $60,000 of the producer's unpaid claim that is filed in accordance with Wis. Stats. § 126.70, and up to 75% of any additional unpaid claim. Default claims must be filed within 30 days after the claimant learned of a contractor's default.

Under the Producer Security program, 'estimated default exposure' means:
[as indicated by the statute for the particular license - milk, vegetable, grain dealer, or grain warehouse keeper]

Based on our contractor operations of the past year, our estimated default exposure exceeds the [dollars] available in the fund. Contractors who have an estimated default exposure that exceeds the amount available in the fund have the option to voluntarily file security for the portion not covered by the fund. We have chosen not to voluntarily file security. In the event of default, the department shall prorate the available amount among the eligible claimants in proportion to the amount of their allowed claims.

APPENDIX B
DRAFT CONTRACTOR DISCLOSURES TO PRODUCERS

3. Notice for VOLUNTARY Security Provided: (page 13)

IMPORTANT NOTICE

[Name of contractor] contributes to Wisconsin's Agricultural Producer Security Fund. Money deposited into this fund is available for securing payments to producers and producer agents for product delivered to contributing contractors. On *[date]* the fund had *[dollars]* available to pay producers and producer agents, if a contributing contractor fails to pay a producer or producer agent. The fund may pay up to 80% of the first $60,000 of the producer's unpaid claim that is filed in accordance with Wis. Stats. § 126.70, and up to 75% of any additional unpaid claim. Default claims must be filed within 30 days after the claimant learned of a contractor's default.

Under the Producer Security program, 'estimated default exposure' means:
[as indicated by the statute for the particular license - milk, vegetable, grain dealer, or grain warehouse keeper]
Based on our contractor operations of the past year, our estimated default exposure exceeds the [dollars] available in the fund.

Contractors who have an estimated default exposure that exceeds the amount available in the fund have the option to voluntarily file security for the portion not covered by the fund in return for a reduction in their annual assessment contributions to the fund. We have chosen to voluntarily file security. The security is in the following form(s): *[specify forms of security].*

4. Notice for MANDATORY Security: (page 13)

IMPORTANT NOTICE

[Name of contractor)] contributes to Wisconsin's Agricultural Producer Security Fund. Money deposited into this fund is available for securing payments to producers and producer agents for product delivered to contributing contractors. On *[date]* the fund had *[dollars]* available to pay to producers and producer agents, if a contributing contractor fails to pay a producer or producer agent. The fund may pay up to 80% of the first $60,000 of the producer's unpaid claim that is filed in accordance with Wis. Stats. § 126.70, and up to 75% of any additional unpaid claim. Default claims must be filed within 30 days after the claimant learned of a contractor's default.

Under the Producer Security program, 'estimated default exposure' means:
[as indicated by the statute for the particular license - milk, vegetable, grain dealer, or grain warehouse keeper]

Based on our contractor operations of the past year, our estimated default exposure exceeds the [dollars] available in the fund. We have filed security with the State of Wisconsin for the portion of the estimated default exposure not covered by the fund to help secure payment obligations to producers and producer agents. The security is in the following form(s): *[specify forms of security].*

APPENDIX B
DRAFT CONTRACTOR DISCLOSURES TO PRODUCERS

5. Notice for HYBRID – Security Required. (page 14)

IMPORTANT NOTICE

[Name of contractor)] contributes to Wisconsin's Agricultural Producer Security Fund. Money deposited into this fund is available for securing payments to producers and producer agents for product delivered to contributing contractors. On *[date]* the fund had *[dollars]* available to pay to producers and producer agents, if a contributing contractor fails to pay a producer or producer agent. The fund may pay up to 80% of the first $60,000 of the producer's unpaid claim that is filed in accordance with Wis. Stats. § 126.70, and up to 75% of any additional unpaid claim. Default claims must be filed within 30 days after the claimant learned of a contractor's default.

Under the Producer Security program, 'estimated default exposure' means:
[as indicated by the statute for the particular license - milk, vegetable, grain dealer, or grain warehouse keeper]

Based on our contractor operations of the past year, our estimated default exposure exceeds the [dollars] available in the fund. We have filed security with the State of Wisconsin for the portion of the estimated default exposure not covered by the fund to help secure payment obligations to producers and producer agents. The security is in the following form(s): *[specify forms of security].*

6. Notice for HYBRID – No Security - meets minimum financial ratios: (page 14)

IMPORTANT NOTICE

[Name of contractor)] contributes to Wisconsin's Agricultural Producer Security Fund. Money deposited into this fund is available for securing payments to producers and producer agents for product delivered to contributing contractors. On *[date]* the fund had *[dollars]* available to pay to producers and producer agents, if a contributing contractor fails to pay a producer or producer agent. The fund may pay up to 80% of the first $60,000 of the producer's unpaid claim that is filed in accordance with Wis. Stats. § 126.70, and up to 75% of any additional unpaid claim. Default claims must be filed within 30 days after the claimant learned of a contractor's default.

Under the Producer Security program, 'estimated default exposure' means:
[as indicated by the statute for the particular license - milk, vegetable, grain dealer, or grain warehouse keeper]

Based on our contractor operations of the past year, our estimated default exposure exceeds the [dollars] available in the fund. If the total amount of default claims exceeds the amount available in the fund, the department shall prorate the available amount among the eligible claimants in proportion to the amount of their allowed claims.

Contractors who have a current ratio of less than 1.25 to 1.0 or a debt–to-equity ratio of more than 2.0 to 1.0 and whose estimated default exposure exceeds the amount available in the fund are required to file security with the State of Wisconsin for the portion of the estimated default exposure not covered by the fund. We are not required to file security,

because our financial statement shows positive equity, a current ratio of at least 1.25 to 1.0, and a debt–to-equity ratio of no more than 2.0 to 1.0.