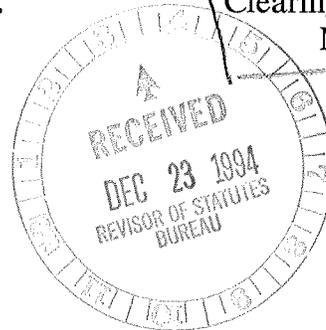


STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE & CONSUMER PROTECTION

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Clearinghouse Rule
No. 94-147



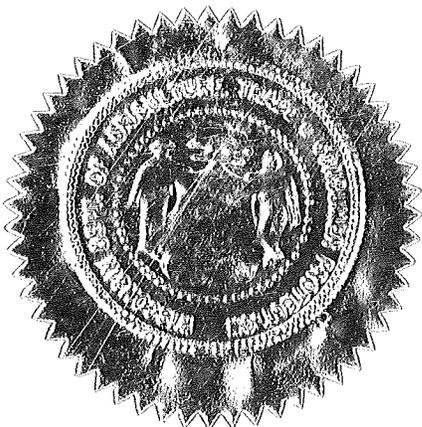
CERTIFICATION:

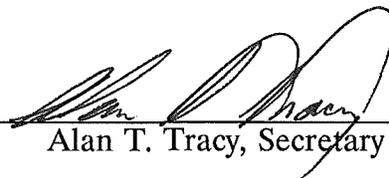
I, Alan T. Tracy, Secretary of the State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, and custodian of the department's official records, hereby certify that the attached rulemaking order relating to vegetable procurement practices and fees paid by fruit and vegetable contractors was signed and adopted by the department on December 21, 1994.

I further certify that I have compared the attached copy to the original on file in the department, and that the attached copy is a complete and accurate copy of the original.

Signed and sealed this 21st day of December, 1994.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION



By 
Alan T. Tracy, Secretary

3-1-95

ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING, AMENDING OR REPEALING RULES

1 The state of Wisconsin department of agriculture, trade and
2 consumer protection adopts the following order to amend ATCP
3 155.21(3), to repeal and recreate ATCP 98.02(3)(a)3 and
4 155.03(6), and to create ATCP 98.02(3)(a)4 and 155.215 relating
5 to vegetable procurement practices and fees paid by fruit and
6 vegetable contractors.

Analysis by the Department of
Agriculture, Trade and Consumer Protection

Statutory authority: ss. 100.03(3) and (17) and 100.20(2),
Stats.

Statutes interpreted: ss. 100.03 and 100.20, Stats.

This rule modifies current vegetable procurement rules to allow deductions for thistle buds, nightshade berries and mustard pod pieces in peas grown for processing. This rule also increases current fees charged to fruit and vegetable contractors in order to fund the department's fruit and vegetable producer security and trade practice programs.

BACKGROUND

Vegetable Processing Industry

Wisconsin's vegetable processing industry is among the largest in the nation. The vegetable processing industry is dominated by a small number of large integrated processors (contractors). Vegetables are typically grown by producers under written contracts with contractors. Vegetable procurement contracts are typically prepared by contractors and signed prior to the growing season. Contracts give contractors considerable control over production, harvest and payment.

Fruit and Vegetable Producer Security Program

Currently, the department administers a fruit and vegetable producer security program under s. 100.03, Stats., and ch. ATCP 98, Wis. Adm. Code. This program, which is similar to the department's security programs for milk and grain producers, is designed to reduce the risk of catastrophic financial defaults by contractors that may leave producers unpaid.

Under the fruit and vegetable security program, fruit and vegetable contractors must hold an annual registration certificate from the department and pay annual registration fees. Contractors must demonstrate compliance with minimum financial standards, pay cash on delivery, or file security with the department to secure payment obligations to producers. The DATCP Board has endorsed legislation to exempt fruit contractors from s. 100.03, Stats., and to strengthen financial standards for vegetable contractors. However, that legislation has not been enacted to date.

Under a vegetable procurement contract, the producer is seldom paid until the end of the year, after the crop is harvested and processed. At some points during the year, vegetable contractors have as much as \$60 million in unpaid obligations to producers. In some cases, a vegetable contract may represent a producer's entire annual income.

Under its vegetable security program, the department reviews annual financial statements from vegetable contractors to determine whether contractors meet minimum financial standards. If contractors fail to meet minimum financial standards, or choose not to file financial statements, they must pay cash on delivery or file security with the department for the benefit of producers. The department currently holds approximately \$22 million in security from vegetable contractors for the benefit of producers.

Vegetable Grading

In order to ensure fair payment to vegetable producers, the department has adopted vegetable grading rules under ch. ATCP 155, Wis. Adm. Code. If payment is based on grade, vegetables must be weighed, sampled and graded according to standards specified in the current rules.

Vegetable Procurement Practices

In order to protect vegetable producers in their transactions with contractors, the department has also adopted trade practice rules under ch. ATCP 101, Wis. Adm. Code. The current rules establish minimum standards for vegetable procurement contracts, and prohibit certain contract provisions. The current rules require payment for unharvested acreage, unless the acreage is abandoned for certain specified reasons. The current rules also regulate the use of "unharvested acreage pools," under which contractors require producers to help fund payments for unharvested acreage.

FRUIT AND VEGETABLE CONTRACTORS; FEE INCREASE

This rule increases the annual fee charged to fruit and vegetable

contractors under s. 100.03(3)(a)3, Stats., and s. ATCP 98.02(3)(a)3 in order to fund the department's current programs related to fruit and vegetable producer security and vegetable trade practices. Current fees are not adequate to support these current programs.

Under current law, fruit and vegetable contractors must pay annual registration fees, including a fee of 3 cents for each \$100 in total contractual obligations incurred by the contractor during the preceding year. This rule increases the current fee to 4 cents for the registration year beginning April 1, 1995, and to 4.75 cents for the registration year beginning April 1, 1996.

THISTLE BUDS, NIGHTSHADE BERRIES AND MUSTARD POD
PIECES IN PEAS; DEDUCTIONS AUTHORIZED

Harvested peas often include a significant number of thistle buds, nightshade berries or mustard pod pieces. Contractors incur significant expense in removing these adulterants prior to processing. Under current grading rules, thistle buds, nightshade berries and mustard pod pieces are considered "tare" whose weight is deducted from the weight of peas on which payment is made. However, current rules do not permit any additional deduction for thistle buds, nightshade berries or mustard pod pieces, nor do thistle buds, nightshade berries or mustard pod pieces affect the grade of peas for payment purposes.

This rule permits a contractor to make a specific deduction for thistle buds, nightshade berries and mustard pod pieces in peas if the number of thistle buds, nightshade berries and mustard pod pieces exceeds a minimum number specified in the rule. The deduction may be applied to harvested or unharvested pea acreage. The amount of the deduction must be specified in the procurement contract, and the deduction must comply with applicable requirements under this rule.

Deduction Applied to Harvested Peas

Under this rule, a deduction for each load of harvested peas must be based on the actual number of thistle buds, nightshade berries or mustard pod pieces found in a 200-ounce grading sample collected from that load. The sample must be collected according to current rules under ss. ATCP 155.03 and 155.21.

Deduction Applied to Unharvested Pea Acreage

For unharvested pea acreage, this rule provides that a deduction must be based on the actual number of thistle buds, nightshade berries or mustard pod pieces found in a composite 200-ounce grading sample collected from the unharvested acreage. A composite sample must be composed of component samples collected according to current grade sampling rules under s. ATCP

101.03(5), or according to equivalent field sampling procedures specified in the procurement contract.

Alternatively, a contractor and producer may agree to a deduction for unharvested pea acreage without field sampling. The deduction must be determined according to the procurement contract, based on a joint estimate of the number of thistle buds, nightshade berries or mustard pod pieces that would be found by sampling. Before the producer agrees to the deduction, the contractor must disclose in writing that the producer is entitled to have the field sampled. The deduction may not exceed the maximum amount specified under this rule. An agreement must be made in writing and signed by the parties during the scheduled harvest period. The agreement must specify the acreage covered by the agreement, and a copy of the agreement must be provided to the producer.

Deduction Amount

Under this rule, no contractor may deduct for thistle buds, nightshade berries or mustard pod pieces unless the procurement contract specifies the number of thistle buds, nightshade berries or mustard pod pieces that will trigger a deduction, and also specifies the amount of the deduction. The number of thistle buds triggering a deduction may not be less than 4; the number of nightshade berries triggering a deduction may not be less than 2; and the number of mustard pod pieces may not be less than 20.

Under this rule, a deduction must be expressed as a percentage of the net amount that the producer would be paid in the absence of any deduction for thistle buds, nightshade berries or mustard pod pieces. A deduction must be based on the number of thistle buds, nightshade berries or mustard pod pieces found in excess of the number that triggers the deduction.

Maximum Deduction

Under this rule, a deduction for thistle buds may not exceed 5% per thistle bud for each thistle bud in excess of one (1). A deduction for nightshade berries may not exceed 10% per nightshade berry for each nightshade berry, if the deduction threshold is met. A deduction for mustard pod pieces may not exceed 5% for each aggregate unit of 20 pieces. The combined deduction for thistle buds, nightshade berries and mustard pod pieces may not exceed 30%.

1 **SECTION 1.** ATCP 98.02(3)(a)3 is repealed and recreated to
2 read:

3 ATCP 98.02(3)(a)3 For the registration year beginning April
4 1, 1995, a fee of 4 cents for each \$100 in total producer
5 obligations reported under sub. (4)(a).

6 **SECTION 2.** ATCP 98.02(3)(a)4 is created to read:

7 ATCP 98.02(3)(a)4 For the registration year beginning April
8 1, 1996, and for each registration year thereafter, a fee of 4.75
9 cents for each \$100 in total producer obligations reported under
10 sub. (4)(a).

11 **SECTION 3.** ATCP 155.03(6) is repealed and recreated to
12 read:

13 ATCP 155.03(6) TARE. If, under any procurement contract,
14 there is a deduction for tare, tare shall be actual tare as
15 defined under s. ATCP 155.12(4) for snap beans, s. ATCP 155.21(3)
16 for peas, or s. ATCP 155.31(4) for sweet corn. This subsection
17 does not prohibit either of the following:

18 (a) A payment deduction under s. ATCP 155.215 for thistle
19 buds, nightshade berries or mustard pod pieces in peas.

20 (b) A payment deduction for undergrade, substandard or
21 culled vegetables graded under subchapters II to IV, provided
22 that the undergrade, substandard or culled vegetables are
23 separately identified and graded and are not counted as tare.

24 **SECTION 4.** ATCP 155.21(3) is amended to read:

25 ATCP 155.21(3) TARE. Actual tare shall be used in grading
26 peas. All peas shall be removed from any unshelled pods in the

1 sample, and the pods shall be included as tare. Actual tare is
2 the amount deducted from the gross weight of the sample for
3 foreign material only. Foreign material includes shelled pods,
4 thistle buds, nightshade berries, mustard pod pieces and
5 everything in the sample other than the peas themselves. The
6 presence of thistle buds, nightshade berries, mustard pod pieces
7 or other foreign material in the sample shall not affect the
8 grade of the peas. Except as provided under s. ATCP 155.215, no
9 contractor may deduct for thistle buds, nightshade berries or
10 mustard pod pieces except as tare.

11 **SECTION 5.** ATCP 155.215 is created to read:

12 ATCP 155.215 DEDUCTIONS FOR THISTLE BUDS, NIGHTSHADE
13 BERRIES AND MUSTARD POD PIECES. (1) GENERAL. Under a
14 procurement contract for peas, a contractor may deduct for
15 thistle buds, nightshade berries and mustard pod pieces found
16 among the peas. The deduction shall be made from the net amount
17 that would be payable to the producer and may be applied to
18 harvested peas or unharvested pea acreage according to this
19 section. The procurement contract shall specify the terms of the
20 deduction, consistent with this section. Deductions shall comply
21 with the procurement contract and this section.

22 (2) HARVESTED PEAS; BASIS FOR DEDUCTION. For each load of
23 harvested peas, the deduction under sub. (1) shall be based on
24 the actual number of thistle buds, nightshade berries or mustard
25 pod pieces found in a 200-ounce grading sample collected from
26 that load. The sample shall be collected according to ss. ATCP

1 155.03(3) and 155.21.

2 (3) UNHARVESTED ACREAGE; BASIS FOR DEDUCTION. For
3 unharvested pea acreage, the deduction under sub. (1) shall be
4 based on the actual number of thistle buds, nightshade berries or
5 mustard pod pieces found in a composite 200-ounce grading sample
6 collected from the unharvested acreage. The composite sample
7 shall be comprised of component samples collected from the
8 unharvested acreage according to s. ATCP 101.03(5) or equivalent
9 field sampling procedures specified in the procurement contract.

10 (4) DEDUCTION AMOUNT. No contractor may make a deduction
11 under sub. (1) unless the procurement contract specifies the
12 amount of the deduction. Subject to the limits specified under
13 subs. (5) and (6), the amount deducted shall be based on the
14 number of thistle buds, nightshade berries or mustard pod pieces
15 found in sampling under sub. (2) or (3). Deduction amounts shall
16 be expressed as percentages of the net amount that would be
17 payable to the producer in the absence of any deduction under
18 sub. (1).

19 (5) DEDUCTION LIMITATIONS. No contractor may make a
20 deduction under sub. (1) unless the procurement contract
21 specifies a number of thistle buds, nightshade berries or mustard
22 pod pieces which, when found in sampling under sub. (2) or (3),
23 will cause a deduction to be made under the contract. For
24 purposes of making a deduction, the contract may not specify a
25 number less than 4 thistle buds, 2 nightshade berries, or 20
26 mustard pod pieces.

1 (6) DEDUCTION CAP. (a) The amount of the deduction
2 specified under sub. (4) for each thistle bud in excess of one
3 may not exceed 5% of the net amount payable to the producer
4 absent the deduction.

5 (b) The amount of the deduction specified under sub. (4)
6 for each nightshade berry, if the deduction threshold is met, may
7 not exceed 10% of the net amount payable to the producer absent
8 the deduction.

9 (c) The amount of the deduction specified under sub. (4)
10 for each aggregate unit of 20 whole or partial pieces of mustard
11 pods may not exceed 5% of the net amount payable to the producer
12 absent the deduction.

13 (d) The combined deduction specified under sub. (4) for
14 thistle buds, nightshade berries and mustard pod pieces may not
15 exceed 30% of the net amount that would be payable to the
16 producer absent the deduction.

17 (7) UNHARVESTED ACREAGE; AGREEMENT ON DEDUCTION.
18 Notwithstanding sub. (3), a contractor and producer may, without
19 field sampling, agree to a deduction under sub. (1) for
20 unharvested pea acreage if all of the following apply:

21 (a) The deduction is determined according to the
22 procurement contract, based on an agreed upon estimate of the
23 number of thistle buds, nightshade berries or mustard pod pieces
24 that would be found by sampling under sub. (3).

25 (b) The deduction does not exceed the maximum deduction
26 allowed under sub. (6).

1 (c) The contractor discloses to the producer in writing,
2 before the producer agrees to the deduction, that the producer
3 has the right to have the field sampled for thistle buds,
4 nightshade berries and mustard pod pieces according to sub. (3).

5 (d) The agreement is made in writing and signed by the
6 parties during the scheduled harvest period.

7 (e) The agreement specifies the acreage covered by the
8 agreement.

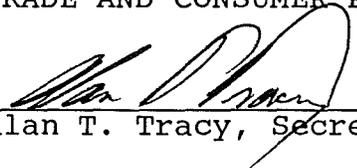
9 (f) A copy of the agreement is provided to the producer.

10 **SECTION 6.** The rules contained in this order shall take
11 effect on the first day of the month following publication in the
12 Wisconsin administrative register, as provided under s.
13 227.22(2)(intro.), Stats.

Dated this 21st day of December, 1994.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By


Alan T. Tracy, Secretary





State of Wisconsin
Tommy G. Thompson, Governor

Department of Agriculture, Trade and Consumer Protection

Alan T. Tracy, Secretary

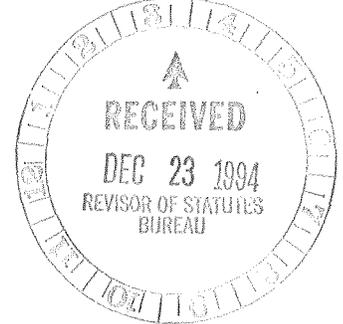
PO Box 8911
Madison, Wisconsin 53708-8911

Date: December 20, 1994

To: Gary Poulson - Revisor of Statutes Office
119 Martin Luther King Blvd, 2nd Floor

From: Alan T. Tracy, Secretary 

Subject: Clearinghouse Rule No. 94-147, Relating to Vegetable Procurement Practices and Fees Paid by Fruit and Vegetable Contractors



The Department of Agriculture, Trade and Consumer Protection hereby submits the following information for filing with the above rule.

Final Regulatory Flexibility Analysis

This rule interprets s. 100.03 and s. 100.20, Stats. It modifies current vegetable procurement rules in ch. ATCP 155 to allow deductions for thistle buds, nightshade berries and mustard pod pieces in peas grown for processing and changes ch. ATCP 98 to increase the current fees charged to fruit and vegetable contractors in order to fund the department's fruit and vegetable producer security and vegetable procurement trade practice programs. Of the approximately 60 licensed fruit and vegetable contractors, some are small businesses as defined by s. 227.114(a), Stats., and this rule will have some impact on them beyond those imposed by statute. The statutes and this rule are intended to regulate certain vegetable procurement practices and provide some assurance to producers of fruits and vegetables for processing that they will be paid. Virtually all of these producers are small businesses as defined by s. 227.114(a), Stats.

This rule will permit a contractor to make a specific deduction for thistle buds, nightshade berries and mustard pod pieces in peas if the number of thistle buds, nightshade berries and mustard pod pieces exceeds a minimum number specified in the rule. The deduction may be applied to harvested or unharvested pea acreage. The amount of the deduction must be specified in the procurement contract and the deduction must comply with applicable requirements under this rule.

A deduction for each load of harvested peas must be based on the actual number of thistle buds, nightshade berries or mustard pod pieces found in a 200 ounce grading sample collected from that load. The sample must be collected according to current rules in ss. ATCP 155.03 and 155.21.

For unharvested pea acreage, this rule provides that a deduction must be based on the actual number of thistle buds, nightshade berries or mustard pod pieces found in a composite 200 ounce grading sample collected from the unharvested acreage. A composite sample must be composed of component samples collected according to current grade sampling rules under s. ATCP 101.03(5), or according to equivalent field sampling procedures specified in the procurement contract.

Alternatively, a contractor and producer may agree to a deduction for unharvested pea acreage without field sampling. The deduction must be determined according to the procurement contract, based on a joint estimate of the number of thistle buds, nightshade berries or mustard pod pieces that would be found by sampling. Before the producer agrees to the deduction, the contractor must disclose in writing that the producer is entitled to have the field sampled. The deduction may not exceed the maximum amount specified in this rule. An agreement must be made in writing and signed by the parties during the scheduled harvest period. The agreement must specify the acreage covered by the agreement, and a copy of the agreement must be provided to the producer.

Under this rule, no contractor may deduct for thistle buds, nightshade berries or mustard pod pieces unless the procurement contract specifies the number of thistle buds, nightshade berries or mustard pod pieces that will trigger a deduction, and also specifies the amount of the deduction. The number of thistle buds triggering a deduction may not be less than 4; the number of nightshade berries triggering a deduction may not be less than 2; and the number of mustard pod pieces may not be less than 20.

Under this rule, a deduction must be expressed as a percentage of the net amount that the producer would be paid in the absence of any deduction for thistle buds, nightshade berries or mustard pod pieces. A deduction must be based on the number of thistle buds, nightshade berries or mustard pod pieces found in excess of the number that triggers the deduction.

Under this rule, a deduction for thistle buds may not exceed 5% per thistle bud for each thistle bud in excess of one (1). A deduction for nightshade berries may not exceed 10% per nightshade berry for each nightshade berry, if the deduction threshold is met. A deduction for mustard pod pieces may not exceed 5% for each aggregate unit of 20 pieces. The combined deduction for thistle buds, nightshade berries and mustard pod pieces may not exceed 30%.

Gary Poulson
December 20, 1994
Page 3

This rule increases the annual fee charged to fruit and vegetable contractors under s. 100.03(3)(a)3, Stats., and s. ATCP 98.02(3)(a)3, Wis. Adm. Code, in order to fund the department's current programs related to fruit and vegetable producer security and vegetable trade practices. Current fees are not adequate to support these current programs.

Under current law, fruit and vegetable contractors must pay annual registration fees, including a fee of 3 cents for each \$100 in total contractual obligations incurred during the preceding year. This rule increases the current fee to 4 cents for the registration year beginning April 1, 1995 and to 4.75 cents for the registration year beginning April 1, 1996.

Except as noted above, this rulemaking will have no impact on small businesses.

Comments from Legislative Committees

The rule was referred to the Senate Committee on Transportation, Agriculture, Local and Rural Affairs on November 2, 1994 and to the Assembly Committee on Agriculture, Forestry and Rural Affairs on November 2, 1994. The department received no comments or request for hearing from either committee.

