

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

COMMITTEE NOTICES ...

- Committee Hearings ... CH (Public Hearing Announcements)
- **

- Committee Reports ... CR
- **

- Executive Sessions ... ES
- **

- Record of Comm. Proceedings ... RCP
- **

INFORMATION COLLECTED BY COMMITTEE
CLERK FOR AND AGAINST PROPOSAL

- Appointments ... Appt
- **

Name:

- Clearinghouse Rules ... CRule
- **

- Hearing Records ... HR (bills and resolutions)
- **05hr_ab0635_SC-AI_pt03a**

- Miscellaneous ... Misc
- **

05-1813/4 became
2005 AB 635

POTATO - PRODUCER SECURITY BILL -
FARMERS OTT

Smyrski, Rose

From: Moll, Keeley A DATCP
Sent: Tuesday, January 25, 2005 4:29 PM
To: Smyrski, Rose
Subject: FW: Producer Security

Hey Rose,

Janet Jenkins, our Trade and Consumer Protection Administrator, chatted with Sen. Kapanke today about the producer security issue the WI Potato and Veg. Growers (WPVGA) are having (Ron Kuehn and Mike Carter) and the proposal they are floating around the building. Is there any chance you guys could meet with us on Thurs. morning? Per Janet's email below, I will send you guys an outline of the issues we have with the proposal they are working on...I will also forward you the suggestions we had made to the WPVGA previously. Erin has set a meeting for us with Al at 9:00am, any chance that would also work for you guys? Otherwise we can do a separate meeting with the two of you. Let me know if this would work.

Thanks!

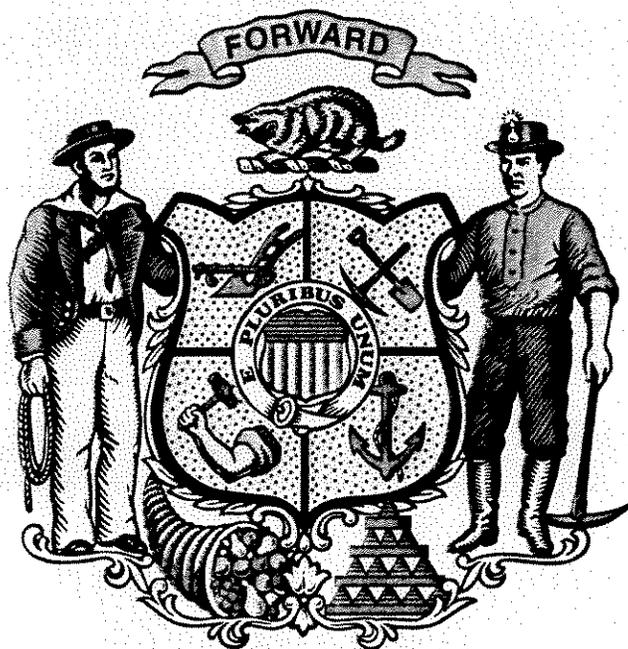
Keeley

From: Jenkins, Janet A DATCP
Sent: Tuesday, January 25, 2005 3:53 PM
To: Moll, Keeley A DATCP; Ziewacz, Judy K DATCP; McPherson, Jeremy S DATCP
Subject: Producer Security

We are going to do our best to have a packet ready by the close of business tomorrow that: (1) sets forth our concerns w/ Carter's proposed legislation and (2) compares PACA coverage w/ Producer Security coverage. We will also have a fiscal note.

So, if you want to set up a time to meet w/ the appropriate legislators for the end of this week or beginning of next week, we'll be ready.

Janet



Discussion Points Regarding LRB1813/1

Prepared by Division of Trade and Consumer Protection, DATCP

- This bill modifies the exemption to licensing requirements for “vegetable contractors” under the Wisconsin Producer Security program.
- The organization that proposed this legislation (The Wisconsin Potato and Vegetable Growers Association) has stated that its members’ goals are to reduce costs to potato buyers, eliminate “duplicate”¹ coverage between the Wisconsin Agricultural Producer Security Program (APS) and the federal Perishable Agricultural Commodities Act (PACA) while preserving Wis. Producer Security coverage for other types of vegetables.
- This bill results in not only elimination of duplicate coverage, but elimination of **all** coverage for a large number of growers (both potato growers and other vegetable growers). Simply holding a PACA license is not the only requirement for ensuring protection for growers under the PACA Bankruptcy Trust. There are many PACA licensed contractors whose growers do not qualify for this protection.² Under this bill, Wisconsin producers who sell to these contractors would simply have no coverage.
- This bill would make the Vegetable Contractor portions of APS absurd. Of the 40 contractors currently regulated under the program, 35 currently have PACA licenses. This program currently insures about \$133 million worth of vegetable purchases per year. If this bill were to become law, it would only insure about \$4 million.
- APS provides protection to growers by regulating transactions between growers and contractors (i.e., contract requirements, pooling funds, payment terms, etc.). Under this bill, growers who do business with PACA licensed contractors would lose these protections.
- Under this bill, there would be no oversight to determine if, in fact, a contractor holds a PACA license or if purchases made by the contractor are covered under the PACA bankruptcy trust.

¹ “Duplicate coverage” is not a very accurate description because there are significant differences in the coverage offered under PACA and APS. PACA offers a preferred position in bankruptcy actions. APS has a trust fund to reimburse producers in the event of a default. We prefer the term “overlapping coverage”.

² Generally, to be eligible for PACA bankruptcy trust protection, the product must have crossed state lines in a fresh state as prescribed by the PACA regulations. (This is a highly simplified statement, the regulations are complicated.) This means that ALL vegetables that do not leave the state are NOT covered by PACA – regardless of whether or not the buyer holds a license. Further, other PACA requirements for protection under the bankruptcy trust are more strict than for basic PACA licensing requirements. For example, PACA bankruptcy protection will not cover transactions where the contractor takes more than 30 days to pay, but this is perfectly acceptable under conditions of licensing.

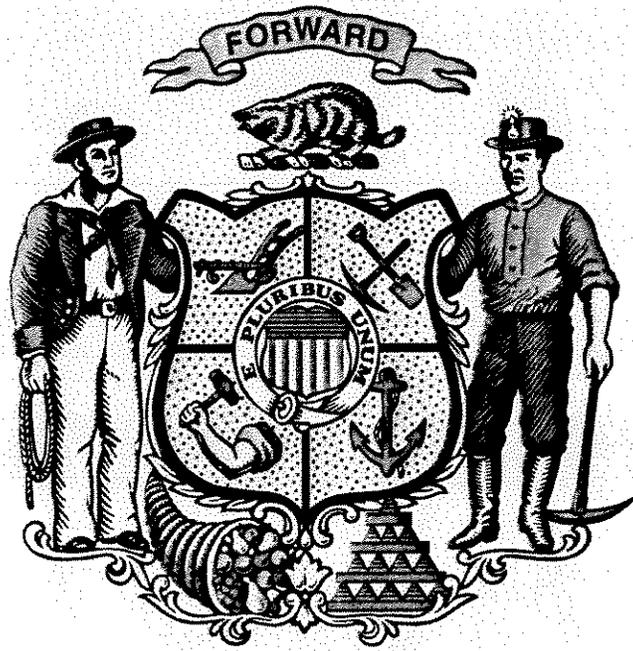
2005 BILL

1 **AN ACT to amend** 126.56 (2) (a) of the statutes; **relating to:** an exemption from
2 the requirement that vegetable contractors be licensed by the Department of
3 Agriculture, Trade and Consumer Protection.

Analysis by the Legislative Reference Bureau

Current law generally requires vegetable contractors to be licensed by the Department of Agriculture, Trade and Consumer Protection (DATCP). A vegetable contractor is a person who buys vegetables from vegetable farmers for use in food processing or who markets vegetables for use in food processing on behalf of farmers. Licensed vegetable contractors are, with some exceptions, required to make contributions under the Agricultural Producer Security Program. The program is designed to reimburse farmers for a portion of the losses they incur when contractors, including vegetable contractors, default on their financial obligations. Under current law, a vegetable contractor who procures vegetables primarily for unprocessed, fresh market use and who is licensed by the federal government under the Perishable Agricultural Commodities Act is not required to be licensed by DATCP.

This bill makes all vegetable contractors that are licensed under the federal Perishable Agricultural Commodities Act, not just those that procure vegetables primarily for unprocessed, fresh market use, exempt from the requirement to be licensed by DATCP.



Wisconsin Department of Agriculture, Trade and Consumer Protection

Preliminary Fiscal Analysis of LRB-1813/1

Under Current Law					
	Number of Contractors	Total Annual Purchases From Producers	Annual License Fees	Annual Assessments	Total
Potato Vegetable Contractors	20	\$ 63,000,000	\$ 37,000	\$ 205,000	\$ 242,000
Non Potato Vegetable Contractors	20	\$ 70,000,000	\$ 42,000	\$ 62,000	\$ 104,000
Total	40	\$ 133,000,000	\$ 79,000	\$ 267,000	\$ 346,000

Assume LRB-1813/1 proposal becomes law					
	Number of Contractors	Total Annual Purchases From Producers	Annual License Fees	Annual Assessments	Total
Potato Vegetable Contractors	0	\$ -	\$ -	\$ -	\$ -
Non Potato Vegetable Contractors	5	\$ 4,300,000	\$ 2,700	\$ 2,500	\$ 5,200
Total	5	\$ 4,300,000	\$ 2,700	\$ 2,500	\$ 5,200

Impact on Industry

Bill would effectively remove entire WI potato crop from coverage under Wisconsin Producer Security Fund, with no guarantee of coverage under PACA.

Bill would also remove \$65.7 million out of roughly \$70 million worth of other (non-potato) vegetables from coverage under the Wisconsin Producer Security Fund, with no guarantee of coverage under PACA.

Fiscal Effect of LRB-1813/1 proposal

Change in License Fee Collections	\$ (76,300)
Change in Assessment Collections	\$ (264,500)

Notes

"License Fees" are used to administer the Agricultural Producer Security Program.

"Assessments" are held in trust to reimburse producers in the event of a default.

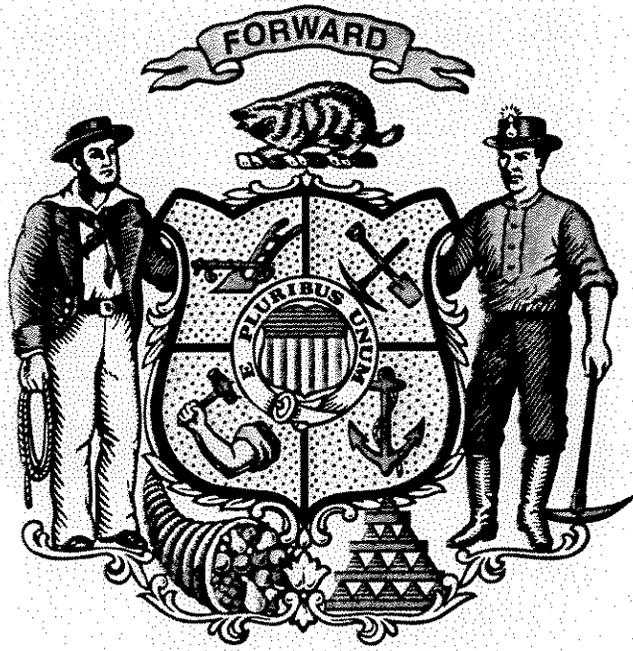
Agriculture Producer Security – PACA Coverage Comparison

(Examples of Overlapping vs. Non-overlapping Coverage)

Would a grower be covered in the following situations?

Product	Wis. Ch. 126 provisions	Federal PACA provisions
OVERLAPPING COVERAGE		
Potatoes grown in WI & sold for processing into potato chips in IL	Yes, WI growers are covered	Yes, WI potatoes cross state lines as a fresh product
Potatoes grown in WI & processed into french fries/tater tots in WI	Yes, WI growers are covered	Yes, frozen french fries/tater tots are considered 'fresh' and covered by PACA, if that particular brand is sold in interstate commerce as a general rule
Potatoes grown in WI & processed in another state into dried potatoes (dehydrated)	Yes, WI growers are covered	Yes WI potatoes cross state lines as a fresh product
Vegetables grown in WI & processed in WI into a frozen chopped vegetable (i.e. cut green beans)	Yes, WI growers are covered	Yes, If a brand of frozen vegetables are sold as a general rule in interstate commerce then they would be covered by PACA
NOT OVERLAPPING COVERAGE		
Vegetables grown in WI and canned in WI	Yes, WI growers are covered	No, would not leave state until canned, which is not covered by PACA
Vegetables grown in IL & canned in WI	No, only WI growers are covered	Yes, IL growers covered, fresh product crossed state lines
Vegetables grown in WI & processed in WI into a pureed vegetable	Yes, WI growers are covered	No, fresh vegetables did not cross state lines, pureed vegetables are in a different form & not covered by PACA
Cucumbers grown in WI & processed into pickles (put in brine) in WI	Yes, WI growers are covered	No, pickles in brine, not covered by PACA, also no interstate commerce occurs as fresh cucumbers
Cucumbers grown in WI & processed into pickle relish (put in brine) in WI	Yes, WI growers are covered	No, pickles/relish in brine, not covered by PACA, also no interstate commerce occurs as fresh cucumbers
Cabbage grown in WI & processed into sauerkraut (put in brine) in WI	Yes, WI growers are covered	No, cabbage in brine is not covered by PACA, also no interstate commerce occurs as fresh cabbage
Potatoes grown in WI & sold to out of state company for fresh market use	No, exempt under 126.56 (2)(a), Wis. Stats.	Yes, WI potatoes cross state lines as a fresh product
Potatoes grown in WI & sold in WI for fresh market use	No, exempt under 126.56 (2)(a), Wis. Stats.	No, fresh potatoes did not cross state lines.
Potatoes grown in WI & processed into potato chips in WI	Yes, WI growers are covered	No, fresh potatoes did not cross state lines.
Potatoes grown in WI & processed into frozen mashed potatoes in WI	Yes, WI growers are covered	No, fresh potatoes did not cross state lines & frozen mashed potatoes are not covered by PACA (different form)
Potatoes grown in WI & processed into dried potatoes (dehydrated)	Yes, WI growers are covered	No, fresh potatoes did not cross state lines & dehydrated potato slices are in a different form, therefore they are not covered by PACA

*NOTE: PACA only provides coverage in certain circumstances, and that coverage is of a different nature than Wis. Ch. 126. The term "overlapping coverage" does not equal "duplicate coverage"



Smyrski, Rose

From: Napralla, Erin
Sent: Tuesday, February 08, 2005 1:09 PM
To: 'mcarter@potatowis.org'; 'tim.stevenson@heartland-farms-wis.com';
'richard.pavelski@heartland-farms-wis.com'; 'sowinski@newnorth.net'; 'basvitner@mwci.net';
'john.exner@mwfpa.org'; Williams, Vincent; Rep.Ballweg; Moll, Keeley A DATCP;
'BELLIOTT@whdlaw.com'; Patronskey, Mark; LeRoy, Kevin J DATCP; Jenkins, Janet A
DATCP; Smyrski, Rose; Sen.Kapanke; Jordan Lamb (E-mail); Ron Kuehn (E-mail)
Subject: Materials for Meeting Regarding Changes to the Producers Security Act

Please find attached a .pdf document containing the following materials:

- 1) Memo from the Wisconsin Potato & Vegetable Growers Association
- 2) LRB 1813/1 - Drafted in response to WPVGA memo.
- 3) DATCP Discussion points regarding LRB 1813/1
- 4) DATCP Preliminary Fiscal Analysis of LRB 1813/1
- 5) Comparison of Wisconsin Producer Security Program and PACA Coverage
- 6) DATCP Proposal to address concerns of WPVGA

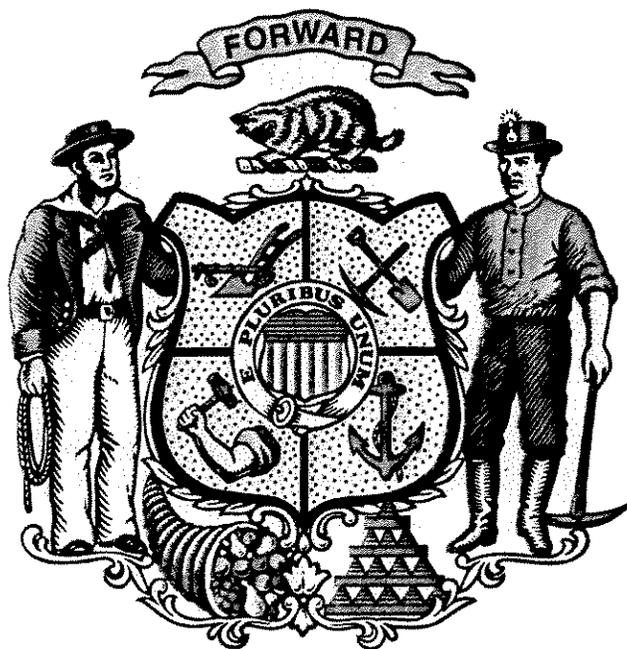
Let me know if you have problems opening the attachment. If I am missing anyone, please feel free to send this information on to them as well.

Thank you!

Erin Napralla
Research Assistant
Office of State Representative Al Ott
608.266.5831
erin.napralla@legis.state.wi.us



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State of Wisconsin
Jim Doyle, Governor

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

Agricultural Producer Security Council

Agenda

For meeting at the
Wisconsin State Capitol
Room 328 NW
Madison, Wisconsin

9:30 a.m.

Tuesday, March 29, 2005

- I Approve Minutes from February 14, 2005 Meeting**
- II Status Report -- Contingent Financial Backing**
 - **DATCP Individual Security Draft Legislation**
 - **DATCP Administrative Rulemaking**
- III Potatoes Issue – Draft legislation exempting potato buyers from participating in the fund.**
- IV Any Other Business**

DRAFT

MINUTES OF THE AGRICULTURAL PRODUCER SECURITY COUNCIL

February 14, 2005

Call to order

The Agricultural Producer Security Council held its thirteenth meeting on Monday, February 14, 2005 at the Wisconsin Farm Bureau Federation Boardroom, 1212 Deming Way, Madison, Wisconsin. Chairman Ron Statz called the meeting to order at 9:30 a.m.

Attendance

Nine council members were present: Ron Statz (Chairman), John Petty (Vice-Chairman), John Exner, Richard Keller, Jim Kleva, John Manske, John Umhoefer, Jim Zimmerman and Mike Carter. One council member, Dave Daniels, was absent.

DATCP personnel present were Administrator Janet Jenkins, Director Jeremy McPherson, Chief Eric Hanson and Analyst Kevin LeRoy.

Minutes of Prior Meeting

The council members reviewed the minutes from the February 14, 2005 meeting and agreed that the minutes did not need to be read. Jim Kleva made and John Manske seconded a motion to approve the minutes (with a few minor corrections). Motion passed.

Quarterly Financial Statement

Eric Hanson led a discussion of the Agricultural Producer Security Fund Statement of Revenues, Expenditures and Cash Balances for the Six Months ended December 31, 2004. The ending total fund balance was \$5,540,162.73. There were significant increases in revenues (both fund assessments and license fees) collected from grain dealers. Part of this assessment increase can be attributed to new assessments for deferred payment that first went into effect this year, and part of the increase appears to be attributable to a general increase in dealer purchases. The very large increase in vegetable contractor license fees is largely due to timing differences -- DATCP collected some 2005-06 license fees before December 31 this year.

Eric said that, before issuing this year's annual report, DATCP staff would carefully examine expenses incurred since the inception of the program and make sure overhead expenses were allocated fairly. If necessary, the department could make adjusting entries at the end of this fiscal year to account for any past inequities in allocation of overhead expenses.

Eric also noted that, subsequent to December 31, the fund did make a \$141,000 payment on the loan from Ag. Chem. Management.

Presentation of Documents that will be Submitted to the Agriculture, Trade and Consumer Protection Board

Eric Hanson led a discussion of the preliminary draft legislation, scope statement and producer security issue paper that will be presented to the Board on February 22, 2005.

Regarding the issue paper, the discussion focused on changes to the paper since the Producer Security Council reviewed a draft on January 14. Council members commented on the draft Notice to Producer text contained in the paper. The notices could do a better job of highlighting differences in coverage by stating the type of coverage first, and moving the general, boilerplate language to the end of the notice. Also, generally speaking, the draft notices in the paper use too many words – less complicated notices would better convey the important message.

DATCP staff stressed that the proposed legislation addresses the agency's most important issue – that producers are provided the coverage originally promised under the fund. This bill would require participating contractors (who do not meet minimum financial standards) whose estimated default exposure exceeds the maximum fund pay-out to provide individual security. In exchange, these contractors would receive proportionate assessment reductions.

Regarding other portions of the legislation, the group discussed whether or not the modifications to the “estimated default exposure” calculation for milk contractors would provide any real-world benefit.

MOTION: John Umhoefer made a motion that The Council supports all three documents (the issue paper, preliminary legislative draft and scope statement). Motion was seconded by Richard Keller and carried.

Discussion of Legislative Issues Relating to Vegetable Contractors who Purchase Potatoes

Mike Carter briefed the group on the Wisconsin Potato and Vegetable Growers Association's legislative proposal. Details have yet to be worked out, but, basically, this proposal would excuse contractors who purchase potatoes for processing from being required to participate in the fund. This legislation is needed because Wisconsin potato growers are losing markets to states that do not have similar programs and/or programs with significantly lower costs.

There was not sufficient time for in-depth discussion of this proposal.

MOTION to adjourn. Motion carried.

Dave Daniels, Secretary

Ron Statz, Chairman

Sixth Revised DATCP Working Draft Bill Language

SECTION 1 126.55(10m) is created to read:

126.55(10r) "Processed potato buyer" means a vegetable contractor or a producer agent who purchases processed potatoes.

126.55(10s) "Processed potatoes" means potatoes grown or sold for use in food processing, regardless of whether those potatoes are actually harvested or processed as food.¹

Section 2. 126.56(4)(f) is created to read:

(f) A vegetable contractor who is a processed potato buyer shall pay a fee of not more than \$500.

SECTION 3. 126.56m is created to read:

126.56m. **PROCESSED POTATO BUYER OPTIONAL NONPARTICIPATION.** (1)

Processed potato buyers who meet all of the provisions in sub (2) may, at their discretion, opt out of participating in the fund.

(2) A nonparticipating processed potato buyer must do all of the following:

(a) Submit to the department when first licensed and thereafter by January 31 of each year, a notification of nonparticipation

(b) Certify, in a statement to the department, that the processed potato buyer will not, in the next license year, enter into contracts with Wisconsin producers where payment terms exceed 20 days, or if the contract is in writing, 30 days.

(c) Certify, in a statement to the department, that the processed potato buyer does not currently have any unpaid obligations with producers where payment terms exceed 20 days, or if the contract is in writing, 30 days.

(d) Provide evidence to the department that the processed potato buyer has, in good standing, a PACA license with the United States Department of Agriculture -- Agricultural Marketing Service.

(e) Disclose to all producers that the processed potato buyer does not participate in the fund by including, in at least 10 point bold type, the following statement in each contract for procurement of processed potatoes: ***The undersigned processed potato buyer, as defined in s. 126.55(10r) Wisconsin Statutes, does not participate in the Wisconsin agriculture producer security fund, established under s. 25.463, Wisconsin Statutes. As a result, you, the producer, do not have the security or other protections against non-payment provided by that fund.***

(f) Maintain on file evidence that each and every purchase of Wisconsin potatoes grown for processing qualifies for PACA Trust Protection and the producers trust rights have been validly preserved.

SECTION 4. 126.57(1)(b)3 is created to read:

3. The vegetable contractor is a nonparticipating processed potato buyer.

SECTION 5. 126.58(1)(c)3 is created to read:

3. The vegetable contractor is a nonparticipating processed potato buyer.

SECTION 6. 126.61(1)(c)3 is created to read:

3. The vegetable contractor is a nonparticipating processed potato buyer.

¹ "Food processing" in this section refers to the definition stated in Wis. Stat. § 97.29(1)(g).



State of Wisconsin
Jim Doyle, Governor

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

DATE: March 24, 2005
TO: Members of the Agricultural Producer Security Council
FROM: Jeremy McPherson, Director, Bureau of Business Trade Practices
SUBJECT: Next meeting

The Agricultural Producer Security Council will hold a meeting at:

9:30 a.m.
Tuesday, March 29, 2005
Wisconsin State Capitol
Room 328 NW

This meeting is being held at the request of Representative Al Ott, Representative Joan Ballweg and Senator Dan Kapanke. As you may be aware, the Wisconsin Potato and Vegetable Growers Association has suggested some changes to the Agricultural Producer Security Program relating potato purchasers. The legislators listed above would very much like to receive input from the council on this topic. Enclosed, please find the following documents:

- An Agenda
- Draft minutes from the February 14, 2005 meeting.
- Copy of letter from Rep. Ott, Rep. Ballweg and Sen. Kapanke to Rod Nilsestuen, Secretary, Department of Agriculture, Trade and Consumer Protection.
- Copy of "working draft" bill.
- Memo to council members regarding lobbying requirements.

Please note that this meeting will take place at in the Capitol (not at DATCP headquarters).

Please contact me at (608) 224-4922, Eric Hanson at (608) 224-4968 or Kevin LeRoy at (608) 224-4928 if you have any questions.

Agriculture generates \$51.5 billion for Wisconsin

2811 Agriculture Drive • PO Box 8911 • Madison, WI 53708-8911 • Wisconsin.gov

Security Council -

Sustain ~~market~~^{security} and not have impact
on market place

Bruce

Chairman Petty

Mike Carter -

members having difficult time getting
Contractors & due to high cost
because of security - Producer Security Act.

PACA - Fed Law = Bigger risk w/ PACA

Proposal

Transaction under PACA
exempt from WI Producer Security Act.

Coverage is different w/ PACA

Pring

PACA - Catastrophic health Ins,
Stat. Trust - debtors ASSETS

75¢ on the dollar -

- Some may end of with 0

- ^{more} difficult for growers - (many not licensed)
to qualify -

- Courts ~~may~~ make decisions on who is a qualified
Trust participant.

- Claims - not make tech. requirements -

- debts assets made

- grower (in. only to be covered)

- can be licensed

Preserve trust rights -

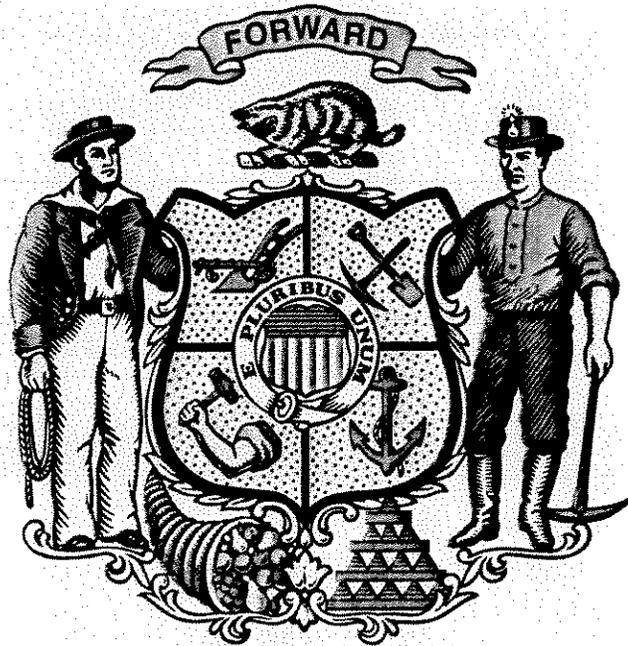
Send notice w/in 30 days -

Agreement w/ Texas -

Must copy notice

Dept of Ag. -

550/year -



Smyrski, Rose

From: LeRoy, Kevin J DATCP
Sent: Monday, May 09, 2005 1:46 PM
To: 'john.exner@mwfpa.org'; 'mcarter@potatowis.org'; 'dands@pitnet.net'; 'rkeller@mhtc.net'; 'john.manske@wfcmac.coop'; 'john@wasa.org'; 'rstatz@nfo.org'; 'John Umhoefer'; 'klevaj@ampi.com'; 'fjzimm@thesurf.com'
Cc: Moll, Keeley A DATCP; Jenkins, Janet A DATCP; McPherson, Jeremy S DATCP; Hanson, Eric J DATCP; Napralla, Erin; Smyrski, Rose; Piliouras, Elizabeth; 'JKrings@chernovlaw.com'; LeRoy, Kevin J DATCP; Williams, Vincent; 'ELLIOTT, Brian J BJE (7127)'
Subject: Producer Security Council -- Documents for May 16 meeting

Attachments: anouncment.pdf; agenda.pdf; draft final minutes.pdf; draft minutes.pdf; quarterlstatement2005March.xls; ATCP 99-101 Board Cover (Hearing Draft 4-26-05) DRAFT.pdf; ATCP 99-101 Preliminary Hearing Draft2 (4-15-05) (2).pdf; DATCP_draft_amended_JKL-7 (3).doc; revisiontoPVGAprposal.pdf; Preliminary position statement of DATCP re potatoes - 5-3-05.pdf

Documents relating to council business



anouncment.pdf
(95 KB)



agenda.pdf (66 KB)



draft final
minutes.pdf (87 KB..)



draft minutes.pdf
(81 KB)

Financial Report (Agenda Item II)



quarterlstatement
2005March.xl...

Documents relating to administrative rulemaking (Agenda Item III)



ATCP 99-101 Board
Cover (Heari...



ATCP 99-101
Preliminary Hearin...

Documents relating to exemption of certain potato buyers (Agenda Item IV)



DATCP_draft_amen
ded_JKL-7 (3)....



revisiontoPVGAprpPreliminary position
osal.pdf (13...



Preliminary position
statement...

Members of the Agricultural Producer Security Council:

As promised, here are documents related to the May 16 Producer Security Council Meeting. These documents are also being delivered via regular mail. The documents include:

- An official meeting announcement and an official Agenda

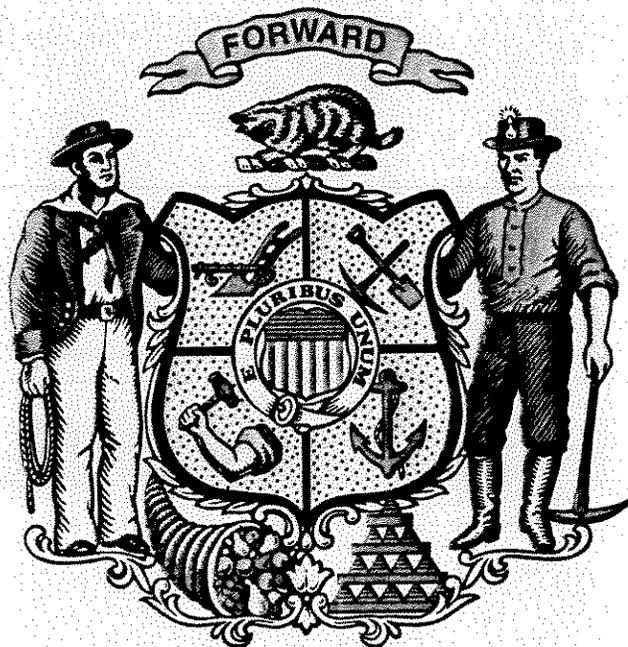
- Draft meeting minutes from the two previous meetings (March 29, 2005 and April 11, 2005)
- Fund statement of revenues, expenses and cash balances for the third quarter, FY 2004-05.
- Documents related to the hearing draft of the proposed administrative rule. DATCP will present this rule to the DATCP Board at its meeting on June 08, 2005. The attachments to this e-mail include only the cover memo and proposed hearing draft. It does not include the draft Fiscal Analysis and Regulatory Flexibility Analysis that are included in the hard-copy packet.
- Documents relevant to potato contractor legislative proposal. This e-mail contains three separate documents regarding this issue:
 - “7th Revised Draft”. This is the legislative proposal prepared by the Wisconsin Potato and Vegetable Growers Association. This is essentially the 6th revised draft that the council voted on at the last meeting with some modifications to address concerns raised by both DATCP and the Producer Security Council.
 - “Discussion Draft”. This is an alternative legislative proposal created by DATCP staff. It is based on PVGA’s “7th Revised Draft”, but is more closely aligned with the current statute provisions. However, this draft does not contain the \$500 limit on license fees. Please note that this draft was prepared by DATCP staff for discussion purposes – it has not been reviewed or approved by either DATCP legal council or executive staff.
 - Memo from Janet Jenkins to Mike Carter. The document lays out 4 possible options for how to address the problems and states what DATCP’s position would likely be on each if it became a legislative bill.

As this potato policy issue has developed over the last several months, there seems to be a perception that is a WPVGA vs. DATCP issue. We dislike that characterization. It is true that DATCP has not been especially receptive of some of the solutions proposed by WPVGA – but that is not because we disagree that there is a problem. Rather, we want to be certain that any new policy proposal truly solves the problem while minimizing unintended negative effects on producers, potato contractors and other contractors who remain in the fund.

Even though there are four policy alternatives listed in the Janet Jenkins memo, that does not mean that DATCP is especially interested in going back to square-one to evaluate all the proposals. We believe that all parties would like to move this issue forward (to the legislature) in the very near future. The intent of this memo is to facilitate discussion by outlining the issue and stating a preliminary DATCP position. We did this out of respect for the WPVGA because when WPVGA discusses their policy proposals with legislators, they are most likely asked what DATCP thinks of the idea(s). It is our intention (and has been all along) to allow WPVGA to lead the discussion on this issue.

We are optimistic that the APS Council, WPVGA and DATCP can move forward, united, with a plan that resolves this issue with as little negative impact as possible.

Jeremy McPherson
 Eric Hanson
 Kevin LeRoy



Proposed Amendments to LRB-1813/2
Pursuant to Resolutions Adopted by
the Producer Security Council on May 16, 2005

*- licensing fees
does not include*

*- John Exner
amendments
who will object to bill*

*1.
8-1
* Should be a set amount
or set by rule
Not "sufficient to
cover expenses"*

Fee (Amendment to LRB-1813/2 As Currently Drafted). The Producer Security Council decided that the fee for those electing *not* to participate in the fund because they are purchasing processing potatoes should be set by DATCP rule, rather than by statute. Accordingly, please amend § 126.56 (4)(f) as follows:

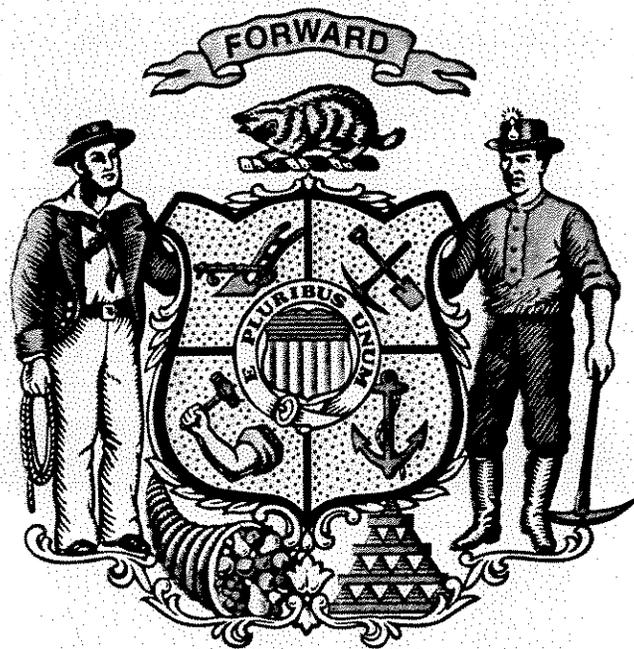
126.56 (4) (f) If the vegetable contractor is a processing potato buyer who has elected not to participate in the fund in accordance with s. 126.595 (1), a fee of \$500 ~~or a lower amount~~ established by the department by rule [sufficient to cover expenses.]

*↳ ~~the~~ drafter can't
like this language*

*2.
unanimous
motion*

Fee Credits (Amendment of Current Law - Insert into Re-draft). The Producer Security Council decided to lower the threshold at which contributors to the producer security fund are eligible to receive fee credits. Accordingly, please insert the following revision to Wis. Stat. § 126.56 (6) (a):

(a) If the balance in the fund contributed by vegetable contractors exceeds \$1,000,000 \$825,000 on November 30 of any license year, the department shall credit 50% of the excess amount against fees charged under sub. (4) (b) to contributing vegetable contractors who file timely license renewal applications for the next license year. The department shall credit each contributing vegetable contractor on a prorated basis, in proportion to the total fees that the vegetable contractor has paid under sub. (4) (b) for the 4 preceding license years.



2005 ASSEMBLY BILL

1 AN ACT *to create* 126.55 (10r) and (10t), 126.56 (4) (f), 126.57 (1) (b) 3., 126.58
 2 (1) (c) 3., 126.59 (1) (d), 126.595, 126.61 (1) (c) 3. and 126.71 (3) (a) 5. of the
 3 statutes; **relating to:** participation by certain persons who buy potatoes in the
 4 Agriculture Producer Security Program and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Current law generally requires vegetable contractors to be licensed by the Department of Agriculture, Trade and Consumer Protection (DATCP). A vegetable contractor is a person who buys vegetables from vegetable farmers for use in food processing or who markets vegetables for use in food processing on behalf of farmers. Licensed vegetable contractors are, with some exceptions, required to make contributions under the Agricultural Producer Security Program (the program). The program is designed to reimburse farmers for a portion of the losses they incur when contractors, including vegetable contractors, default on their financial obligations.

This bill authorizes certain licensed vegetable contractors who purchase only potatoes to choose not to make contributions under the program. If a potato buyer who opts out of the program defaults on a contract with a farmer, the farmer is not eligible for reimbursement under the program.

To be eligible to opt out of the program, a potato buyer must be licensed by the federal government under the Perishable Agricultural Commodities Act (PACA) and must maintain evidence that farmers from whom the potato farmer purchases potatoes qualify for protection under PACA. PACA provides means of enforcing contracts, but it does not directly provide payment for any of a farmer's losses. To

as written there is a problem because you can not guarantee protection by PACA

ASSEMBLY BILL

be eligible to opt out of the program, a potato buyer must also agree not to enter into contracts under which payment is due more than 30 days after it receives potatoes and must notify farmers that the potato buyer does not participate in the program.

* A potato buyer who opts out of the program is exempt from requirements to maintain fire and extended coverage insurance and from filing annual financial statements with DATCP. A potato buyer who opts out of the program must pay an annual fee of \$500 or a lesser amount established by DATCP. The bill provides a procedure by which a potato buyer who has opted out of the program may resume participation in the program.

that is for record keeping

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 126.55 (10r) and (10t) of the statutes are created to read:

2 126.55 **(10r)** "Processing potato buyer" means a vegetable contractor who
3 purchases processing potatoes and no other processing vegetables.

4 **(10t)** "Processing potatoes" means potatoes grown or sold for use in food
5 processing, regardless of whether those potatoes are actually harvested or processed
6 as food.

7 **SECTION 2.** 126.56 (4) (f) of the statutes is created to read:

8 126.56 **(4)** (f) If the vegetable contractor is a processing potato buyer who has
9 elected not to participate in the fund in accordance with s. 126.595 (1), a fee of \$500
10 or a lower amount established by the department by rule.

11 **SECTION 3.** 126.57 (1) (b) 3. of the statutes is created to read:

12 126.57 **(1)** (b) 3. The vegetable contractor is a processing potato buyer who has
13 elected not to participate in the fund in accordance with s. 126.595 (1).

14 **SECTION 4.** 126.58 (1) (c) 3. of the statutes is created to read:

15 126.58 **(1)** (c) 3. The vegetable contractor is a processing potato buyer who has
16 elected not to participate in the fund in accordance with s. 126.595 (1).

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1 **SECTION 5.** 126.59 (1) (d) of the statutes is created to read:

2 126.59 (1) (d) The vegetable contractor is a processing potato buyer who has
3 elected not to participate in the fund in accordance with s. 126.595 (1).

4 **SECTION 6.** 126.595 of the statutes is created to read:

5 **126.595 Processing potato buyer optional nonparticipation. (1)**

6 **ELIGIBILITY.** A processing potato buyer may elect not to participate in the fund by
7 doing all of the following:

8 (a) Submitting a notification of nonparticipation to the department by January
9 31 of each year or, for a new processing potato buyer, at the time of application for
10 its first license.

11 (b) Certifying in a statement to the department that the processing potato
12 buyer will not, in the next licensing year, enter into any of the following:

13 1. An unwritten contract with a vegetable producer in this state under which
14 the processing potato buyer takes custody or control of processing potatoes more than
15 20 days before paying for the processing potatoes in full.

16 2. A written contract with a vegetable producer in this state under which the
17 processing potato buyer takes custody or control of processing potatoes more than 30
18 days before paying for the processing potatoes in full.

19 (c) Certifying in a statement to the department that the processing potato
20 buyer does not at the time of certification have any unpaid obligations to vegetable
21 producers under any of the following:

22 1. An unwritten contract with a vegetable producer in this state under which
23 the processing potato buyer takes custody or control of processing potatoes more than
24 20 days before paying for the processing potatoes in full.

ASSEMBLY BILL**SECTION 6**

1 2. A written contract with a vegetable producer in this state under which the
2 processing potato buyer takes custody or control of processing potatoes more than 30
3 days before paying for the processing potatoes in full.

4 (d) Providing evidence to the department that the processing potato buyer has
5 a license under the federal Perishable Agricultural Commodities Act, 7 USC 499a to
6 499t, that is in good standing.

7 (e) Certifying that it will disclose to all vegetable producers with whom the
8 processing potato buyer contracts that the processing potato buyer does not
9 participate in the fund by providing the following statement, in at least 10-point bold
10 type, in each written contract for processed potatoes or, for unwritten contracts, in
11 a signed written statement provided to the vegetable processor: "The undersigned
12 processing potato buyer, as defined in s. 126.55 (10r), Wisconsin Statutes, does not
13 participate in the Wisconsin agricultural producer security fund, established under
14 s. 25.463, Wisconsin Statutes. As a result, you, the producer, do not have the security
15 or other protections against nonpayment provided by that fund."

16 (f) Maintaining evidence that every purchase of potatoes grown in this state for
17 processing under contract with the processing potato buyer qualifies for trust
18 protection under the federal Perishable Agricultural Commodities Act, 7 USC 499a
19 to 499t, and that the vegetable producers' trust rights have been validly preserved.

20 **(2) RESUMING PARTICIPATION.** (a) A processing potato buyer that has elected not
21 to participate in the fund may rescind its election and may participate in the fund
22 in accordance with the applicable provisions of this chapter, if all of the following
23 apply:

24 1. The processing potato buyer obtains a surety bond in an amount sufficient
25 to cover any potential default on any contracts entered into after the processing

ASSEMBLY BILL

1 potato buyer begins to participate in the fund until the processing potato buyer
2 provides financial information as required by the department and the department
3 informs the processing potato buyer that a surety bond is no longer necessary.

4 2. The processing potato buyer provides to the department verification of the
5 surety bond required in subd. 1. before beginning participation in the fund.

6 (b) A processing potato buyer that elects to participate in the fund under par.
7 (a) shall provide financial information to the department as required by the
8 department.

9 (c) No later than the 60th day after the day on which the processing potato
10 buyer provides the financial information required by the department under par. (b),
11 the department shall inform the processing potato buyer of the amount of any
12 assessments due and of whether the surety bond is still necessary.

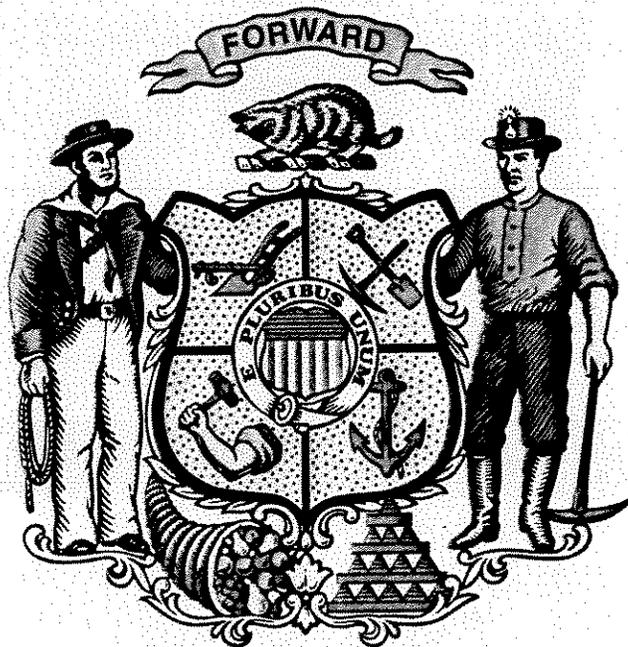
13 (d) Any obligations under a contract for the purchase of processing potatoes
14 that are outstanding when a processing potato buyer elects to participate in the fund
15 under par. (a) are not covered by the fund.

16 (3) **MERGERS.** If a nonparticipating processing potato buyer merges with a
17 processing potato buyer or other vegetable contractor who participates in the fund,
18 the merged entity shall participate in the fund unless the merged entity complies
19 with all of the conditions in sub. (1) (a) to (f).

20 **SECTION 7.** 126.61 (1) (c) 3. of the statutes is created to read:

21 126.61 (1) (c) 3. The vegetable contractor is a processing potato buyer who has
22 elected not to participate in the fund in accordance with s. 126.595 (1).

23 **SECTION 8.** 126.71 (3) (a) 5. of the statutes is created to read:



Smyrski, Rose

From: Jordan K. Lamb [jkl@dewittross.net]
Sent: Thursday, May 19, 2005 2:38 PM
To: Napralla, Erin; Rep.Ballweg; Williams, Vincent; Mike Carter
Cc: Ron Kuehn; Smyrski, Rose
Subject: Producer Security

Attachments: Prop_Am_LRB18132-2.doc



Prop_Am_LRB1813
2-2.doc (40 KB)...

Hello everyone. Attached is a memo that (1) answers the drafter's original questions regarding LRB-1813/2; (2) asks the two questions raised by Representative Ballweg regarding the current draft; and (3) requests amendments to LRB-1812/2 that were adopted by the producer security council and that we discussed in our meeting yesterday (e.g., the liability amendment.)

Please review the draft and let me know if you have questions or if you would like me to make changes. Once we have agreement, I believe that Representative Ballweg will send in a re-draft request to Becky.

Thank you all for your hard work on this issue!
Jordan

--

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Answers to Drafter's Questions LRB-1813/2dn
(Drafter's original question in italics.)

I used the term "processing potatoes" to be consistent with the term "processing vegetables" used in ch. 126. OK.

The proposed definition for potato buyer included "producer agent." I deleted that because the definition of "vegetable contractor" in s. 126.55 (14) includes producer agents. More fundamentally, though, by definition producer agents do not purchase vegetables. Therefore, if the intent is to cover producer agents, the definition of "processing potato buyer" must be expanded to cover more than those who purchase potatoes. Also, I limited coverage of the draft to those who only buy potatoes, not potatoes and other processing vegetables. OK.

The proposed language would require a buyer who opts out to pay a fee of "not more than \$500." The draft needs to indicate the specific amount of the fee or how the amount would be established. In s. 126.56 (4) (f), I provided that the fee is \$500 unless DATCP establishes a lower amount by rule. Please let me know if this should be changed. Should be established by rule. See proposed amendment 1 below.

The proposed language required a buyer who opts out to include a statement in each contract. Because the draft contemplates that some contracts are not in writing, I required that a signed copy of the statement be provided in case of an unwritten contract. See s. 126.595 (1) (e). OK

The proposed language required a buyer who wants to opt back into the program to obtain a bond. Please let me know if the draft should allow the buyer to use other forms of financial security. See current s. 126.61 (4). Not necessary. Bond is adequate.

I am not an expert on the Perishable Agricultural Commodities Act (PACA). Please ask someone from DATCP to verify that the brief description of PACA in the analysis is accurate. OK.

Author's Questions Regarding LRB-1813/2

1. The analysis that proceeds the bill draft contains the following sentence:

"To be eligible to opt out of the program, a potato buyer must be licensed by the federal government under the Perishable Agricultural Commodities Act (PACA) and must maintain evidence that farmers from whom the potato farmer purchases potatoes qualify for protection under PACA." (Emphasis added.)

The use of the word evidence in this sentence may give the impression that the Department is evaluating the information and deciding whether a particular transaction will qualify for PACA coverage. The Department should not be required to make any determination as to whether a transaction will be covered by PACA. Rather, the Department should simply collect and maintain the requested records. A determination of PACA coverage is complex and really is only finally determined by a trustee in bankruptcy after default. Can this sentence be revised?

2. There is another sentence in the analysis that reads:

“A potato buyer who opts out of the program is exempt from requirements to maintain fire and extended coverage insurance and from filing annual financial statements with DATCP.”

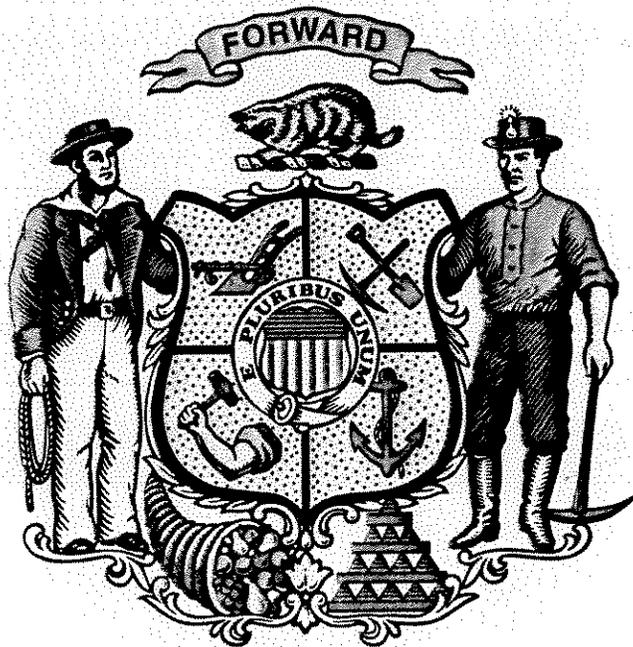
Is this requirement current law that is also affected by the nonparticipation language?

Proposed Amendments to LRB-1813/2

Please make the following changes to the draft:

1. **Fee (Amendment to LRB-1813/2 As Currently Drafted).** The Producer Security Council decided that the fee for those electing *not* to participate in the fund because they are purchasing processing potatoes should be set by DATCP rule, rather than by statute. Accordingly, please amend § 126.56 (4)(f) as follows:
126.56 (4) (f) If the vegetable contractor is a processing potato buyer who has elected not to participate in the fund in accordance with s. 126.595 (1), a fee of ~~\$500 or a lower amount~~ established by the department by rule sufficient to cover expenses.
2. **Fee Credits (Amendment of Current Law – Insert into Re-draft).** The Producer Security Council decided to lower the threshold at which contributors to the producer security fund are eligible to receive fee credits. Accordingly, please insert the following revision to Wis. Stat. § 126.56 (6) (a):
(a) If the balance in the fund contributed by vegetable contractors exceeds ~~\$1,000,000~~ \$825,000 on November 30 of any license year, the department shall credit 50% of the excess amount against fees charged under sub. (4) (b) to contributing vegetable contractors who file timely license renewal applications for the next license year. The department shall credit each contributing vegetable contractor on a prorated basis, in proportion to the total fees that the vegetable contractor has paid under sub. (4) (b) for the 4 preceding license years.
3. **Liability (Addition of New Sections).** (a) Please add a new section to the draft that explicitly exempts the Department from any liability for losses that result from a default by a processing potato buyer who elects not to participate in the fund under § 126.595.

(b) In addition, please add to the contracting requirements that a contract between a vegetable producer and a nonparticipating processing potato buyer must contain an explicit statement that the parties to the contract understand and acknowledge that the neither the State of Wisconsin nor the Wisconsin Department of Agriculture, Trade and Consumer Protection cannot be held liable for any default under this contract. (Should we propose specific language in the statute that must be included in each contract?)





State of Wisconsin
Jim Doyle, Governor

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

DATE: June 24, 2005
TO: Rod Nilsestuen
FROM: Janet Jenkins 
SUBJECT: Analysis of LRB-1813/3
Potato Exemption from Agricultural Producer Security Fund

Background

As you know, the Wisconsin Potato and Vegetable Growers Association (WPVGA) has requested that processed potato buyers receive a partial exemption from the producer security program. They have advanced a proposal to interested legislators. Staff in Representative Ott and Representative Balleg's offices were kind enough to share the LRB draft with us. We have studied this bill and have several comments and recommendations. They are incorporated into this memo.

Overview

Analysis

LRB 1813/3 would allow potato buyers to opt out of participating in the Agricultural Producer Security fund if they meet certain conditions. The conditions are based on requirements for participation in the bankruptcy trust program of the federal Perishable Agricultural Commodities Act (PACA). This bill attempts to delineate the transactions that would be exempt from Wisconsin Producer Security Fund in a manner that would provide a good chance that those transactions would be covered under the PACA trust.

Under this bill, once a contractor has opted out of the fund, it may opt back in only if certain conditions are met (i.e. the contractor posts a bond and fulfills other specific requirements).

This bill also sets the license fees for contractors who opt out at \$500 or a lower amount established by the department by rule.

Recommendation

While we have been working diligently with the WPVGA, the most arduous task has been understanding the complexities of PACA Regulation to be reasonably certain Trust coverage would be available. For example: all parties have been operating under the assumption that

Agriculture generates \$51.5 billion for Wisconsin

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Processing Potato Buyers Exemption

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payment terms must be within 20 days without a written contract or no more than 30 days with a written contract. We found out four days ago that, in most cases, payment terms must be within 10 days without a written contract. This example illustrates why we are uncomfortable with any legislation that is based on a Federal program that few people thoroughly understand.

We recognize that the current producer security assessment formula is not fair to some potato processors. We also recognize that the cost of complying with this program, which exists for the benefit of producers, may actually be causing harm to producers who sell to those potato processors. However, we are generally uncomfortable with LRB-1813/3 because of the enforcement difficulties, potentially meaningless “feel-good” language (PACA coverage requirements), and concerns, both in principle and in practice, of allowing contractors to rejoin the fund after multiple years of not paying for coverage. In addition, we believe the \$500 license fee provision unfairly shifts costs of the program to other contractors.

In its current form, we recommend that DATCP **oppose** LRB-1813/3. The unfairness of the current assessment formulas could be corrected by simply changing the formula. A wholesale change of the law is not necessary. Moreover (provided no defaults occur) the current unfairness in fund assessments and license fees will be almost entirely ameliorated in the next several years since those fees/assessments will decrease drastically.

If a few significant details in this bill were changed, we believe that the department could take a neutral position. However, given the overall concept of the legislation, we do not believe that its proponents would be willing to make these changes.

Definition of “contributing vegetable contractor” – Section 1 of bill

Analysis

Under current law, “Contributing vegetable contractor” is defined to mean a licensed vegetable contractor who pays, or is required to pay assessments into the fund. LRB-1813/3 amends the definition of “contributing vegetable contractor” to also include the phrase: “who has not elected not to participate in the fund under s. 126.595(1)”. We don’t understand the need for this phrase. It seems clear to us that contractors who qualify to elect nonparticipation under the newly created S. 126.595(1) are clearly not required to contribute to the fund and therefore would not be considered “contributing vegetable contractors” under the existing definition. Furthermore, the amended definition includes a double negative (“who has not elected not to participate...”). This seems to us to add confusion rather than clarification.

License Fees – Section 3 of bill

Analysis

Under current law, vegetable contractors must pay an annual license fee that consists of the total of the following:

- A nonrefundable \$25 processing fee
- \$25 plus 5.75¢ for each \$100 in contract obligations
- If applicable, surcharges for:
 - operating without a license (\$500)
 - failing to file a financial statement by the due date (\$100)
 - failing to file a renewal application by the due date (\$100).

This bill creates s. 126.56(4)(f), which states “If the vegetable contractor is a processing potato buyer who has elected not to participate in the fund in accordance with s. 126.596(1), a fee of \$500 or a lower amount established by the department by rule.”

While the actual text of the bill is ambiguous, we believe the intention of this section is to limit the amount of license fees to the lower of either the amount specified in existing law or \$500. That belief is based on discussions w/ WPVGA representatives. If that is the intent, the text in the bill should be replaced with the following:

1 Section X 126.56(4)(b) is amended to read:

2 (b) Except as provided in par. (f), a fee of \$25 plus 5.75 cents for each \$100 in
3 contract obligations reported under sub. (9)(a), less any credit provided under sub. (6).

4 Section Y 126.46(4)(f) is created to read:

5 (f) If the vegetable contractor is a processing potato buyer who has elected not to
6 participate in the fund in accordance with s. 126.595(1), the fee calculated under par. (f)
7 shall not exceed \$XXXX.

8
This text clearly specifies that the limit does not apply to the basic \$25 filing fee or the surcharges.

Recommendation

We recommend that DATCP **oppose** the bill if it contains any provision to limit license fees. We do not believe that allowing this group of contractors to opt out of participating in the fund will provide substantial administrative savings for the Producer Security Program. As a result, limiting license fees will only serve to unfairly transfer these administrative costs to other contractors who remain a part of the fund.

Requirements for Nonparticipation

Analysis

Under this bill, there is a list of things that the processed potato buyer must "submit" or "certify" to the department before it elects not to participate in the fund. These submissions and certifications must occur annually and include:

- Submit notification of nonparticipation
- Certify in a statement that it will not enter into contracts where the payment terms exceed 20 days or, if the contract is in writing, 30 days.
- Certify in a statement that it does not currently have any unpaid obligations that are more than 20 days old, or if the contract is in writing, 30 days.
- Provide evidence that it has a license under the PACA program that is in good standing.
- Certify that it will disclose a specific written statement to producers explaining that the Wisconsin Producer Security Fund does not protect these producers.
- Maintain evidence that growers trust protection has been validly preserved.

It is our understanding that these requirements are in place to increase the odds that the growers will be protected by the PACA trust program in the event of a default. It should be noted, however, that these requirements do not **guarantee** protection to growers.

One particular concern, recently brought to our attention, is that the bill requires a written contract only if payment terms exceed 20 days while PACA regulations specify "prompt payment". Prompt Payment is defined *eleven* different ways under PACA Regs. 46.2 (aa). Depending on the circumstances of the transaction, "prompt payment" could mean 5, 10, 20, 30 or some other number of days. In most cases unwritten contracts require payment within 10 days. (In no case can payment terms exceed 30 days to qualify for PACA Trust protection.)

Recommendation

Proponents of the bill contend that DATCP will not have the express authority or duty to determine the validity/accuracy of the processed potato buyers' certifications. Rather, proponents state that all the bill would require is that DATCP be a repository for whatever information the contractors choose to provide. We find this notion troubling. DATCP is a regulatory agency. The proposed legislation would permit certain contractors to opt out of a program DATCP regulates by providing DATCP with certain information. In the event of a contractor default, it is highly unlikely that DATCP could escape criticism for incorrect or misleading information in the contractor's "certifications" by saying, "we were only supposed to file the paperwork, not look at it or verify its accuracy." And, perhaps even more significantly, does DATCP want to be part of a system in which there is no such verification?

Furthermore, as stated above, the list of requirements for opting out of producer security are designed to dovetail with requirements for grower protection under the PACA Trust in the event

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Processing Potato Buyers Exemption

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of a bankruptcy. However, there are a number of reasons why PACA trust coverage could be non-existent even though the requirements listed in the bill are met. Given this fact, we fear that the list of opt-out requirements contained in the bill may lead growers into thinking that the likelihood of PACA Trust coverage is greater than it really is.

DATCP staff did prepare a separate but similar "discussion draft". Like LRB 1813/3, the staff discussion draft was based on the "7th Revised Draft" created by WPVGA. We believe the staff version is slightly more preferable because it uses terms like "maintain" instead of "certify". Also, the staff version requires contractors to submit notices (and other required documents) to DATCP when it first wishes to opt-out -- they do not need to resubmit the documents at the beginning of each license year.

At the very least, we recommend replacing the reference to "20 days" in s. 126.595(1)(b) with "10 days". This will increase the likelihood that the transaction will fall under the PACA Trust coverage requirements.

Please see the attached document for other suggestions.

Requirements for Re-entry into the Wisconsin Producer Security Program

Analysis

Under the bill, if a processing potato buyer wishes to resume participation in the fund, it may do so if certain conditions are met. Among other things, the contractor must obtain a surety bond. The bill also specifies that only those contracts entered into after the contractor renews participation in the fund would be covered by the fund in the event of a default.

Recommendation

We agree with the general concept of this portion of the bill. A contractor who has not been supporting the fund ought not to be able to benefit from it. Allowing these contractors access to benefits of fund participation would be unfair to those contractors who remained part of the fund and continued to pay assessments. However, the more difficult it is to reenter the fund, the more likely it is that growers will suffer in the event of a default. Going too far in this respect would be counter to the overall goal of the Producer Security Program --to protect growers. We believe LRB-1813/3 does a reasonable job of balancing these (more or less) incompatible goals. However, in our opinion, the bill is too vague and leaves too much up to the discretion of DATCP.

Again, please refer to the staff discussion draft. This version is much more precise on the conditions that must be met. Some members of the Producer Security Council have observed that the staff discussion draft is "harsh" and makes it difficult for the contractor to resume participation, but we disagree. Rather, in our opinion, the staff version is simply more precise in delineating the requirements for resuming participation.

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Processing Potato Buyers Exemption

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Effective Date

LRB-1813/3 is currently silent regarding an effective date. We strongly recommend that the next version of this bill incorporate an effective date that coincides with the existing vegetable contractor annual license renewal application – February 1, 200X. It would be much easier for DATCP to administer contractors' contributing vs. noncontributing status if the change occurred as of the first day of a new license year.

Conclusion

Because this issue has been ongoing for quite some time and Representative Ballweg's office has indicated an intent to circulate this proposal soon, we recommend that DATCP provide formal notice to all interested parties as soon as possible regarding our position on LRB-1813/3.

Staff and I would be happy to meet with you and discuss this matter in greater detail.