

Report From Agency

DATCP Docket No. 06-R-11
Rules Clearinghouse No. 07-073

**ORDER OF THE
WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

2 The Wisconsin department of agriculture, trade and consumer protection adopts the
3 following rule *to repeal* ATCP 99.01(6m), 100.01(4g) and 101.20(3g); *to amend* ATCP
4 99.01(14m), 99.135(2)(intro.), (c) and (d), 100.01(4r), 100.13(1)(intro.), (a) and (d),
5 100.13(3)(a), and 101.20(3r); *to repeal and recreate* ATCP 100.135 and 100.22(3); and
6 *to create* ATCP 99.11, 99.12(5)(c), 99.125, 99.126, 99.23, 99.235, 100.01(5m), 101.23
7 and 101.245; *relating to* the agricultural producer security program.

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

Wisconsin's agricultural producer security program helps protect agricultural producers against catastrophic financial defaults by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (collectively referred to as "contractors").

Contractors must be licensed by the department of agriculture, trade and consumer protection ("DATCP") and pay license fees. Most contractors must also pay assessments to an agricultural producer security fund ("fund"). In the event of a contractor default, DATCP may compensate producers from the fund.

This rule modifies current rules related to the agricultural producer security program. This rule does all of the following:

- Changes current grain dealer, grain warehouse keeper and vegetable contractor license fees.
- Changes current fund assessments for grain dealers (deferred payment assessment), grain warehouse keepers, and milk contractors.
- Changes required *minimum* fund assessments for all contractors.

- Provides for an automatic “assessment holiday” if fund balances reach specified levels.
- Modifies the amount of security that must be filed by a small number of milk contractors.

Statutes Interpreted

Statutes interpreted: ss. 126.81 and 126.88, Stats.

Statutory Authority

Statutory authority: ss. 93.07(1), 126.81 and 126.88, Stats.

Explanation of Statutory Authority

DATCP has broad authority, under s. 93.07(1), Stats., to adopt rules needed to implement laws under its jurisdiction. DATCP also has specific authority, under ss. 126.81 and 126.88, Stats., to do all of the following:

- Interpret and implement the agricultural producer security law, ch. 126, Stats.
- Modify license fees and fund assessments under the agricultural producer security program. Chapter 126, Stats., establishes license fees and fund assessments, but authorizes DATCP to change those license fees and fund assessments by rule.
- Require contractors to notify producers of the contractor’s license, security or fund contribution status under the producer security program.

Under current law, DATCP *must* modify fund assessments whenever fund balances fall outside a specified range. The fund balance attributable to the grain warehouse keeper sector currently falls below the required minimum of \$200,000. Therefore, DATCP *must* modify fund assessments for grain warehouse keepers. DATCP is authorized, but not required, to modify fund assessments for other contractors.

Background

DATCP administers the agricultural producer security program under ch. 126, Stats. DATCP has adopted rules to implement the program. The rules are contained in chs. ATCP 99-101, Wis. Adm. Code.

License Fees and Fund Assessments

Under current law:

- Licensed contractors must pay *license fees* to fund DATCP administration of the agricultural producer security program. Administration includes warehouse inspections, compliance audits, review of contractor financial statements, license administration and response to contractor financial defaults and law violations.
- Most contractors (“contributing contractors”) must pay *fund assessments* to finance the agricultural producer security fund. The fund is held in trust for the benefit of producers. If a contractor defaults on payments to agricultural producers, DATCP may reimburse producers from the fund. Fund assessments are based on contractor size, financial condition and risk practices.
- A few contractors (“disqualified contractors”) are not allowed to participate in the fund. These contractors must instead post individual security with DATCP such as a bond or a letter of credit. Generally, the amount of the security is based on the amount owed to producers.

Program Funding and Costs

Prior to 2003, DATCP administrative costs were paid by a combination of general tax revenue (“GPR”) and contractor license fees. However, the 2003-2004 biennial budget Act eliminated virtually all GPR funding for program administration. That made it necessary to transfer staff from GPR funding to license fee funding.

Partly as a result of that change, current license fee funding is no longer adequate to cover administrative costs. There has been a gradual growth in administrative costs, due to factors outside DATCP control (including increased state costs for rent, information technology, and employee pay plans and fringe benefits). DATCP has controlled costs, to the extent possible, by reducing grain audit staff levels.

Funding Shortfalls

Funding shortfalls are especially severe in the grain dealer and grain warehouse keeper programs, where DATCP must spend much of its staff time. Administrative costs now annually exceed license fee revenues by over \$200,000 in each of those programs, and each program has a negative cash balance of more than \$570,000. In the vegetable contractor program, administrative costs now annually exceed license fee revenues by over \$20,000, and the program has a negative cash balance of about \$40,000.

Deficits in the grain and vegetable administration accounts are currently being covered by milk contractor license fee revenues and by fund assessment revenues that would normally go to the producer security fund. That unfairly affects milk contractors and reduces fund coverage for *all* producers (grain, milk and vegetable).

Fee Adjustments

This rule increases annual license fees for grain dealers, grain warehouse keepers and vegetable contractors, to remedy current inequities and provide minimally adequate funding for program administration. This rule also adjusts fund assessments, especially for grain warehouse keepers (for whom an adjustment is required by law). This rule provides for an automatic “assessment holiday” if fund balances reach specified levels.

Notwithstanding this rule, the total of all contractor payments under the producer security (license fees plus fund assessments) will actually *decline* over the next few years, because of fee credits and declining formula rates that are built into the producer security law itself. This rule will slow, but not reverse, that overall decline. This rule will not have any significant impact on contractors’ overall business costs.

Rule Contents

Grain Dealer License Fees

Current Fees

Under current law, a grain dealer must pay the following annual license fees and surcharges:

- A nonrefundable license processing fee of \$25.
- One of the following fees:
 - \$500 if the grain dealer paid, in the grain dealer’s last completed fiscal year, at least \$500,000 for producer grain procured in this state.
 - \$200 if the grain dealer paid, in the grain dealer’s last completed fiscal year, at least \$50,000 but less than \$500,000 for producer grain procured in this state.
 - \$50 if the grain dealer paid, in the grain dealer’s last completed fiscal year, less than \$50,000 for producer grain procured in this state.
- A \$225 fee per business location in excess of one location (but only if the grain dealer paid, in the grain dealer’s last completed fiscal year, at least \$500,000 for producer grain procured in this state).
- A license fee of \$45 per truck, in excess of one truck, that the grain dealer uses to haul grain in this state.
- A license surcharge of \$425 if the grain dealer submits a required financial statement that is not an audited financial statement.

- A license surcharge of \$500 if the grain dealer operated without a license at any time during the preceding year.
- A license surcharge of \$100 if the grain dealer, during the preceding year, failed to file a required financial statement by the required filing deadline.
- A license surcharge of \$100 if the grain dealer failed to file a license renewal application by the license expiration date of August 31.

Proposed Fees

This rule changes the calculation of grain dealer license fees. Under this rule, a grain dealer must pay the following fees and surcharges:

- A license processing fee of \$25 (same as current law).
- A fee equal to 1/10 of one cent (\$0.001 or 0.1¢) per bushel of producer grain procured in this state (rounded to the nearest \$100). There is a minimum fee of \$100 and a maximum fee of \$10,000.
- \$100 per business location in excess of one location (*regardless* of the grain dealer's annual grain purchase amount).
- A surcharge of \$500 if the grain dealer operated without a license at any time during the preceding year (same as current law).
- A surcharge of \$100 if the grain dealer, during the preceding year, failed to file a required financial statement by the required filing deadline (same as current law).
- A surcharge of \$100 if the grain dealer failed to file a license renewal application by the license expiration date of August 31 (same as current law).

This rule *eliminates* the following current grain dealer fees and surcharges:

- \$45 fee per truck.
- \$425 surcharge for submitting a required financial statement that is not an audited financial statement.

Grain Dealer Fund Assessments

Current Assessments

Under current law, a contributing grain dealer must pay the following annual fund assessments:

- A *basic assessment*, based on a formula that considers the total dollar value of producer grain purchased in this state during the grain dealer's last completed fiscal year, the grain dealer's current ratio, and the grain dealer's debt-to-equity ratio. Other things equal, the formula yields declining basic assessments over time.
- A *deferred payment assessment*, if the grain dealer uses deferred payment contracts (deferred payment contracts carry a higher financial risk). The assessment equals total deferred payments for Wisconsin grain in the grain dealer's last completed fiscal year, multiplied by the following rate:
 - 0.0035 if the grain dealer has contributed to the fund for less than 5 years.
 - 0.002 if the grain dealer has contributed to the fund for 5 years or more.

Under current law, there is a minimum total assessment of \$20 (basic assessment and deferred payment assessment).

Proposed Assessments

- *Basic assessment.* This rule does not change the calculation of a grain dealer's basic fund assessment (the formula continues to generate declining assessments over time), but this rule changes the current minimum assessment (see below).
- *Deferred payment fund assessment.* Under this rule, the deferred payment assessment equals the grain dealer's total deferred payments for Wisconsin grain in the grain dealer's last completed fiscal year, multiplied by 0.0035 -- *regardless* of how long the grain dealer has contributed to the fund.
- *Minimum assessment.* This rule substitutes the following minimum *basic* assessment for the current \$20 minimum *total* assessment:
 - \$100 for grain dealers who procured less than \$500,000 worth of Wisconsin grain during the last completed fiscal year.
 - \$200 for grain dealers who procured at least \$500,000 but less than \$3,000,000 worth of Wisconsin grain.
 - \$500 for grain dealers who procured Wisconsin grain worth \$3,000,000 or more.
- *"Assessment holiday."* Under this rule, a contributing grain dealer is not required to pay an annual fund assessment (other than a deferred payment fund assessment, if applicable) for any license year if the grain dealer was a contributing grain dealer in each of the 5 preceding license years, and if all of the following applied on May 31 of the last preceding license year:
 - The fund balance attributable to grain dealers was at least \$3 million.
 - The overall fund balance was at least \$11 million.

Grain Warehouse Keeper License Fees

Current Fees

Under current law, a grain warehouse keeper must pay the following annual license fees and surcharges:

- A nonrefundable license processing fee of \$25, plus an additional nonrefundable processing fee of \$25 for each separate warehouse in excess of one warehouse.
- An inspection fee based on the combined capacity of the grain warehouse keeper's warehouses:

Inspection Fee	Combined Warehouse Capacity (Bushels)
\$ 500	Less than 150,000
\$ 550	At least 150,000 but less than 250,000
\$ 600	At least 250,000 but less than 500,000
\$ 650	At least 500,000 but less than 750,000
\$ 700	At least 750,000 but less than 1,000,000
\$ 800	At least 1,000,000 but less than 2,000,000
\$ 900	At least 2,000,000 but less than 3,000,000
\$1,000	At least 3,000,000 but less than 4,000,000
\$1,100	4,000,000 or more.

- A supplemental inspection fee of \$275 for each grain warehouse that the grain warehouse keeper operates in excess of one warehouse.
- A surcharge of \$500 if the grain warehouse keeper operated without a license at any time during the preceding year.
- A surcharge of \$100 if the grain warehouse keeper failed to file an annual financial statement by the applicable deadline.
- A surcharge of \$100 if the applicant fails to renew a license by the license expiration date of August 31.

Proposed Fees

This rule changes the calculation of grain warehouse *inspection* fees, but makes no other changes to current grain warehouse keeper license fees or surcharges. The current inspection fee schedule (see above) is replaced by a formula. Under the new formula, a grain warehouse keeper pays an annual inspection fee equal to the combined capacity of the grain warehouse keeper's warehouses times 0.25 cent per bushel (rounded to the nearest \$1,000). There is a minimum fee of \$1,000 and a maximum fee of \$10,000.

Grain Warehouse Keeper Fund Assessments

Current Assessments

Under current law, a grain warehouse keeper must pay an annual fund assessment based on a formula that considers the warehouse keeper's licensed storage capacity, current ratio and debt-to-equity ratio. Other things equal, the formula yields declining assessments over time. There is a minimum assessment of \$20.

Proposed Assessments

- *Base assessment formula.* Under this rule, a grain warehouse keeper must pay an annual fund assessment that is 50% higher than the assessment generated by the current formula (the formula does not change, and continues to yield declining assessments over time).
- *Minimum Assessment.* This rule substitutes the following minimum assessment for the current \$20 minimum assessment:
 - \$100 for grain warehouse keepers whose storage capacity is less than 500,000 bushels.
 - \$250 for grain warehouse keepers whose storage capacity is 500,000 bushels or more.
- *“Assessment Holiday.”* Under this rule, a contributing grain warehouse keeper is not required to pay a fund assessment for any license year if the grain warehouse keeper was a contributing grain warehouse keeper in each of the 5 preceding license years, and if all of the following applied on May 31 of the last preceding license year:
 - The fund balance attributable to grain warehouse keepers was at least \$500,000.
 - The overall fund balance was at least \$11 million.

Milk Contractor License Fees

This rule makes no changes to current milk contractor license fees.

Milk Contractor Fund Assessments

Current Assessments

Under current law, a contributing milk contractor must pay an annual fund assessment based on a formula that considers the milk contractor's total Wisconsin milk payroll obligations for the contractor's last completed fiscal year, the milk contractor's current ratio, and the milk contractor's debt-to-equity ratio. Other things equal, the formula yields declining assessments over time. There is a minimum assessment of \$20.

Proposed Assessments

- *Base assessment formula.* Under current law, a milk contractor’s assessment rate increases as the milk contractor’s debt-to-equity ratio increases, but there is no further rate increase after the milk contractor’s debt-to-equity ratio exceeds 3.1 to 1. Under this rule, there is no further assessment rate increase after the milk contractor’s debt-to-equity ratio exceeds 2.9 to 1. This will reduce assessments for some milk contractors.
- *Minimum Assessment.* This rule creates a new minimum assessment for milk contractors, based on the milk contractor’s total Wisconsin milk payroll obligations in the contractor’s last completed fiscal year. The new minimum assessment is:
 - \$100 for milk contractors with annual Wisconsin milk payroll obligations of less than \$1.5 million.
 - \$200 for milk contractors with annual Wisconsin milk payroll obligations of at least \$1.5 million but less than \$6 million.
 - \$500 for milk contractors with annual Wisconsin milk payroll obligations of \$6 million or more.
- “*Assessment Holiday.*” Under this rule, a contributing milk contractor is not required to pay a fund assessment for any license year if the milk contractor was a contributing milk contractor in each of the 5 preceding license years, and if all of the following applied on February 28 of the last preceding license year:
 - The fund balance attributable to milk contractors was at least \$6 million.
 - The overall fund balance was at least \$11 million.

Milk Contractor Producer Payroll Report

Under current law, a milk contractor must report to DATCP the highest amount that the milk contractor paid for producer milk procured in this state in any single month during the contractor’s last completed fiscal year. Under this rule, a milk contractor has the option to report *either* of the following:

- The highest amount that the milk contractor paid, for producer milk procured in this state, in any single month during the milk contractor’s last completed fiscal year.
- The highest amount that the milk contractor owed to producers at any time during the milk contractor’s last completed fiscal year.

For those few milk contractors who must file security with DATCP under current law, and who pay more quickly than the industry standard of twice per month, this change could result in lower security filing requirements (and therefore lower costs).

Vegetable Contractor License Fees

Current Fees

Under current law, vegetable contractors must pay the following annual license fees and surcharges:

- A nonrefundable license processing fee of \$25.
- A fee of \$25 plus 5.75 cents for each \$100 in Wisconsin vegetable procurement contract obligations (to vegetable producers) that the contractor incurred during the contractor's last completed fiscal year. This fee does not apply to "nonparticipating processing potato buyers."
- A \$500 fee if the vegetable contractor is a "nonparticipating processing potato buyer."
- A \$500 surcharge if the vegetable contractor operated without a license at any time during the preceding year.
- A \$100 surcharge if, during the preceding year, the vegetable contractor failed to file a required financial statement by its due date.
- A \$100 surcharge if the vegetable contractor failed to file a license renewal application by the license expiration date of January 31.

Proposed Fees

This rule increases that portion of the license fee which is based on annual Wisconsin vegetable procurement contract obligations. It increases that fee portion to \$25 plus 8.75 cents (currently 5.75 cents) for each \$100 in contract obligations.

This rule replaces the current \$500 fee for "nonparticipating potato buyers" with a fee equal to the lesser of the following amounts:

- \$25 plus 8.75 cents for each \$100 in annual contract obligations (same as other vegetable contractors).
- \$2,000.

This rule makes no other changes to current vegetable contractor license fees or surcharges.

Vegetable Contractor Fund Assessments

Current Assessments

Under current law, a contributing vegetable contractor must pay an annual fund assessment based on a formula that considers the contractor's total vegetable procurement contract obligations during the contractor's last completed fiscal year, the contractor's current ratio, and the contractor's debt-to-equity ratio. Other things equal, the formula yields declining assessments over time. There is a minimum assessment of \$20.

Proposed Assessments

- *Minimum Assessments.* This rule does not change the calculation of vegetable contractor fund assessments (the current formula continues to generate declining assessments over time), except that this rule replaces the current \$20 minimum assessment with the following minimum assessment:
 - \$20 for vegetable contractors with contract obligations of less than \$500,000.
 - \$200 for vegetable contractors with contract obligations of at least \$500,000 and less than \$4 million.
 - \$500 for vegetable contractors with contract obligations of \$4 million or more.
- “*Assessment Holiday.*” Under this rule, a vegetable contractor is not required to pay a fund assessment for any license year if all of the vegetable contractor was a contributing vegetable contractor in the 5 preceding license years, and all of the following applied on November 30 of the last preceding license year:
 - The fund balance attributable to vegetable contractors was at least \$1.5 million.
 - The overall fund balance was at least \$11 million.

Business Impact

Agricultural Producers

This rule will benefit Wisconsin producers of grain, milk and vegetables, by preventing the erosion of the producer security program that helps protect them against catastrophic financial defaults by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (collectively “contractors”).

This rule will generate enough license fee revenue to continue critical financial security monitoring activities such as inspections, compliance evaluations, and review of contractor financial statements. Without this rule, DATCP would have to curtail key monitoring activities that help control potentially catastrophic financial risks to producers and the producer security fund.

This rule will also reverse the current diversion of fund assessment revenues from the agricultural producer security trust fund (to subsidize operating deficits in the grain and vegetable sectors). That will yield a slightly increased rate of fund growth which will, in turn, provide greater protection for producers in the event of a catastrophic contractor default.

This rule will not increase costs for agricultural producers, or have any significant impact on commodity prices paid to producers.

Contractors

This rule affects license fees and fund assessments paid by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors. It does not materially change other contractor regulations.

Current Cost to Contractors

Current license fees and fund assessments represent a *very* small share of overall contractor costs. For example:

- Current grain dealer license fees and fund assessments represent only about *11 hundredths of one percent* of the grain dealers' annual Wisconsin grain procurement costs (\$672,000 in fees and fund assessments, compared to \$599 *million* in grain purchased from Wisconsin producers in FY 2005-06).
- Current grain warehouse keeper license fees and fund assessments represent less than *2 hundredths of one percent* of the grain warehouse keepers' annual Wisconsin "cost of sales" (\$210,000 in fees and fund assessments, compared to about \$1.7 *billion* in "cost of sales" for FY 2005-06).
- Current milk contractor license fees and fund assessments represent only about *3 hundredths of one percent* of the contractors' annual Wisconsin milk procurement costs (\$1.2 million in producer security license fees and fund assessments, compared to about \$3.5 *billion* paid for milk produced by Wisconsin farmers in FY 2005-06).
- Current vegetable contractor license fees and fund assessments represent only about *8 hundredths of one percent* of the contractors' annual vegetable procurement costs (\$138,000 in producer security license fees and fund assessments, compared to \$170 *million* in procurement contract obligations to Wisconsin producers in FY 2005-06).

Current contractor license fees and fund assessments represent an even smaller share of *overall* contractor costs (including costs for labor, buildings, equipment, debt service, overhead, etc., in addition to commodity procurement costs).

Declining Cost Burden

If commodity prices, procurement volumes, and contractor financial ratios held constant over the next few years, total contractor license fees and fund assessments would actually *decline* because of fee credits and declining formula rates built into the producer security law itself. This rule will reduce that potential decline, at least in the grain and vegetable contractor sectors. Higher commodity prices and procurement volumes, or deteriorating financial ratios, could also offset the decline.

This rule will reduce license fees and fund assessment rates in the milk contractor sector, but increase license fees and fund assessment rates in the other 3 sectors so that those sectors pay a more proportionate share. The following table shows *combined total license fees and fund assessments* by business sector for FY 2005-06 and FY 2006-07. It also compares projected totals for FY 2009-10 *with* and *without* this rule (these projections may be affected by changing commodity prices, procurement volumes, financial ratios and other factors):

Total Contractor License Fees and Fund Assessments (Net of Credits)				
	FY 2005-06	FY 2006-07	FY 2009-10* <i>Without this rule</i>	FY 2009-10* <i>With this rule</i>
Grain Dealers	\$672, 000	\$452,000	\$476,000	\$581,000
Grain Warehouse Keepers	\$210,000	\$194,000	\$181,000	\$444,000
Milk Contractors	\$1,272,000	\$1,002,000	\$959,000	\$855,000
Vegetable Contractors	\$138,000	\$26,000	\$36,000	\$41,000
TOTAL	\$2,292,000	\$1,720,000	\$1,652,000	\$1,921,000

* Projection assumes constant procurement volumes, commodity price levels and contractor financial strength.

Other things equal, there would be a decline in total license fees and fund assessments results from the following features built into the current producer security law (this rule will not change those features):

- *License fee credits.* If the fund balance attributable to an industry sector reaches a specified statutory threshold, a portion of the balance is returned to contributing contractors in that sector (as a credit on their license fees). Contributing milk and vegetable contractors are already enjoying credits that significantly reduce their license fees. Those credits will dramatically reduce fees for contributing contractors, even when this rule is in effect.

- *Falling assessment rates.* Under the producer security law, fund assessment rates decline after a contractor has contributed to the fund for a specified number of years (4 to 6 years depending on contractor type and financial condition). Because the producer security fund is now 6 years old, most contributing contractors are now paying significantly lower fund assessments than they were a short time ago (other things equal). That trend will continue, regardless of this rule.

Effects Vary Between Contractors

The impact of this rule may vary considerably between individual contractors within a business sector. License fees and assessments may be affected by a number of variables, including contractor size, contractor financial strength, contractor risk practices and commodity prices.

For many contractors, this rule will slow the rate at which the contractor's fees and fund assessments would otherwise decline. Some contractors (especially grain warehouse keepers) may have increased fees and fund assessments. For a few contractors, this rule will actually speed the reduction of fees and fund assessments. Many individual contractors (especially milk contractors) will be unaffected by this rule.

This rule incorporates an "assessment holiday" that will automatically go into effect when industry sector balances and overall fund balances grow to specified levels.

Fiscal Impact

Under the agricultural producer security law:

- Licensed contractors must pay *license fees* to fund DATCP administration of the agricultural producer security program. Administration includes grain warehouse inspections, review of contractor financial statements, license administration, and response to contractor financial defaults and law violations.
- Most contractors ("contributing contractors") must pay *fund assessments* to finance the agricultural producer security fund. The fund is held in trust for the benefit of producers. If a contractor defaults on payments to agricultural producers, DATCP may reimburse producers from the fund.

Prior to 2003, DATCP administrative costs were paid by a combination of general tax revenue ("GPR") and contractor license fees. However, as part of the budget reductions mandated by the FY 2003-05 biennial budget act, DATCP was forced to convert 2.9 FTE positions and support costs from GPR to the agricultural producer security fund. Partly as a result of that change, current license fee funding is no longer adequate to cover administrative costs. There has also been a gradual growth in administrative costs, due to factors (such as state rent, information technology fees, and employee pay plans and fringe benefits) that are outside DATCP control.

Funding shortfalls are especially severe in the grain dealer and grain warehouse keeper programs. Administrative costs now annually exceed license fee revenues by over \$200,000 in each of those programs, and each program has a negative cash balance of more than \$570,000. In the vegetable contractor program, administrative costs now annually exceed license fee revenues by over \$20,000, and there is a negative cash balance of about \$40,000. Grain and vegetable program operations are currently being subsidized by milk contractor license fees and fund assessments, and funding deficits in the grain and vegetable accounts are limiting the overall producer security fund balance.

This rule increases annual license fees for grain dealers, grain warehouse keepers and vegetable contractors, to remedy current inequities and provide minimally adequate funding for program administration (the fee increases for vegetable contractors will be largely offset by fee credits built into the producer security law). This rule also adjusts fund assessments, especially for grain warehouse keepers (for whom an adjustment is required by law).

Notwithstanding this rule, total revenue derived from contractor payments under the producer security program (license fees plus fund assessments) could actually *decline* over the next few years, because of fee credits and declining formula rates that are built into the producer security law itself. Actual revenues will depend on a variety of factors, including commodity prices, procurement volumes and contractor financial ratios.

License Fee Revenues

The following table shows actual license fee revenues by industry sector for FY 2005-06 and FY 2006-07. It also compares projected license fee revenues for FY 2009-10 *with* and *without* this rule (these projections may be affected by changing commodity prices, procurement volumes, contractor financial ratios and other factors):

Total License Fee Revenues (Net of Contractor Credits)				
	FY 2005-06	FY 2006-07	FY 2009-10* <i>Without this rule</i>	FY 2009-10* <i>With this rule</i>
Grain Dealers	\$160,000	\$159,000	\$156,000	\$232,000
Grain Warehouse Keepers	\$159,000	\$152,000	\$151,000	\$377,000
Milk Contractors	\$363,000	\$347,000	\$159,000	\$159,000
Vegetable Contractors	\$16,000	\$13,000	\$6,000	\$8,000
TOTAL	\$698,000	\$671,000	\$472,000	\$776,000

* Projection assumes constant procurement volumes, commodity price levels and contractor financial strength.

Projected milk and vegetable contractor license fee revenues for FY 2009-10 are affected, to a very considerable degree, by license fee credits built into the producer security law itself. When the producer security fund balance attributable to an industry sector (such as milk or vegetables) reaches a specified statutory “trigger” amount, a portion of the balance is returned to contributing contractors in that sector (as a credit on their license fees).

Contributing milk and vegetable contractors are already enjoying credits that significantly reduce their license fees. Grain dealers and grain warehouse keepers do not yet qualify for these credits, because their fund contributions have not yet attained the required level (nor are they likely to do so prior to FY 2009-10).

DATCP projects that, under this rule, annual license fee revenues will be adequate to cover DATCP’s annual operating costs (DATCP has reduced those costs by eliminating 1.67 FTE grain auditor positions). To the extent that annual grain and vegetable license fee revenues exceed annual operating costs, they will “repay” the program subsidy that those sectors have already received from the milk sector.

Producer Security Fund; Assessment Revenues

The agricultural producer security fund currently has a balance of approximately \$9 million. No more than 60% of the fund balance can be paid out in any individual contractor default. The current fund balance is adequate to cover defaults by most, but not all, individual contractors. Continued fund growth will improve protection for producers, and minimize the need for supplementary security from contractors.

Contributing contractors pay fund assessments to finance the agricultural producer security fund. Annual assessment revenues may decline over the next few years (*with* or *without* this rule), because of fee credits and declining formula rates built into the producer security law. This rule will slow the decline (assessment revenues may also be affected by commodity prices, procurement volumes, contractor financial ratios and other factors). If fund balances grow to a certain point, the automatic “assessment holidays” incorporated into this rule will halt the collection of assessment revenues.

The following table shows actual fund assessment revenues by industry sector for FY 2005-06 and FY 2006-07. It also compares projected license fee revenues for FY 2009-10 *with* and *without* this rule (these projections may be affected by changing commodity prices, procurement volumes, contractor financial ratios and other factors):

Total Fund Assessment Revenues				
	FY 2005-06	FY 2006-07	FY 2009-10* <i>Without this rule</i>	FY 2009-10* <i>With this rule</i>
Grain Dealers	\$512,000	\$300,000	\$320,000	\$349,000
Grain Warehouse Keepers	\$51,000	\$22,000	\$30,000	\$67,000
Milk Contractors	\$909,000	\$973,000	\$800,000	\$696,000
Vegetable Contractors	\$122,000	\$35,000	\$30,000	\$33,000
TOTAL	\$1,594,000	\$1,330,000	\$1,180,000	\$1,145,000

* Projection assumes constant procurement volumes, commodity price levels and contractor financial strength.

Cash in the milk fund assessment sub-account currently covers negative cash balances in the grain and vegetable program administration sub-accounts (which should normally be covered by license fees, not fund assessments). That is slowing the rate of growth in the milk assessment sub-account, and limiting fund coverage for all producers (grain, milk, and vegetable).

By correcting current grain and vegetable license fee revenue shortfalls, this rule will eliminate the current drain on the producer security fund. The fund balance attributable to grain warehouse keeper assessments is expected to build over several years toward the required statutory minimum (it currently falls well short of the required minimum).

Federal and Surrounding State Regulations

Federal Programs

Milk

There is no federal producer security program related to milk.

Grain

The United States department of agriculture (USDA) administers a producer security program for federally licensed *grain warehouses* that store grain for producers. Grain warehouses may choose whether to be licensed under state or federal law. Federally-licensed warehouses are exempt from state warehouse licensing and security requirements. State-licensed warehouses are likewise exempt from federal requirements.

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

USDA has informally proposed to regulate *grain dealer* activities (grain “merchandising”) by federally licensed warehouse keepers, to the exclusion of state regulation. But USDA has not yet officially introduced its proposed regulations. In any case, the federal regulations would not apply to state-licensed grain warehouses, or to *grain dealers* who do not operate a warehouse.

Vegetables

There is a federal security program for vegetables. That security program is mainly limited to fresh market vegetables, and consists of a priority lien against vegetable-related assets.

Wisconsin’s vegetable security program applies only to processing vegetables (not fresh market vegetables covered by federal regulations). Wisconsin’s program uses an indemnity fund, rather than a priority lien-type program. Unlike the *federal* priority lien program, a *state* priority lien program would not work because it would be preempted by federal bankruptcy law.

There may be some limited overlap between the Wisconsin and federal programs, but that overlap is justified because the scope of federal coverage is not entirely clear. Overlap was reduced by recent Wisconsin legislation, which permits certain potato buyers covered under the federal program to opt out of most of the state program.

Surrounding States

In Minnesota, contractors must be licensed to procure grain, milk or processing vegetables from producers, or to operate grain warehouses. Regulated contractors must file bonds as security against default. The program is financed through industry fees and general tax revenues.

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. Iowa and Illinois finance their programs through industry fees and general tax revenues.

Michigan has the following producer security programs:

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

DATCP Contact

Questions and comments related to this rule may be directed to the following address:

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P. O. Box 8911, Madison, WI 53708-8911
Attn: Kevin LeRoy
Telephone: (608) 224-4928
E-mail: Kevin.Leroy@datcp.state.wi.us

1 **SECTION 1.** ATCP 99.01(6m) is repealed.

2 **SECTION 2.** ATCP 99.01(14m) is amended to read:

3 ATCP 99.01(14m) “Maximum fund reimbursement” means the deductible
4 amount ~~plus the contingent financial backing amount~~ specified in s. 126.72, Stats.

5 **SECTION 3.** ATCP 99.11 is created to read:

6 **ATCP 99.11 Grain dealer; annual report of grain purchases.** A grain dealer
7 applying for an annual license under s. 126.11, Stats., shall include in the sworn and
8 notarized statement under s. 126.11(9), Stats., the total number of bushels of producer
9 grain, procured in this state, for which the grain dealer paid during the grain dealer’s most
10 recently completed fiscal year. If a license applicant has not yet operated as a grain
11 dealer, the statement shall estimate the total number of bushels of producer grain,
12 procured in this state, for which the applicant will pay during the applicant’s first full
13 fiscal year of operation as a grain dealer.

14 **SECTION 4.** ATCP 99.12(5)(c) is created to read:

15 ATCP 99.12(5)(c) The total number of bushels of producer grain, procured in
16 this state, for which the grain dealer paid during each of the following periods:

- 17 1. The grain dealer’s most recently completed fiscal year.

1 2. Each month of the grain dealer’s most recently completed fiscal year.

2 **SECTION 5.** ATCP 99.125 is created to read:

3 **ATCP 99.125 Grain dealers; license fees and surcharges.** A person applying
4 for an annual grain dealer license under s. 126.11, Stats., shall pay all of the following
5 license fees and surcharges, rather than the license fees and surcharges provided in s.
6 126.11(4), Stats.:

7 (1) A nonrefundable license processing fee of \$25.

8 (2) A fee obtained by multiplying the number of bushels reported under s. ATCP
9 99.11 by 0.1 cent per bushel, and rounding the product to the nearest \$100, except that
10 the fee may not be less than \$100 or more than \$10,000.

11 (3) A fee of \$100 per business location in excess of one business location.

12 (4) A surcharge of \$500 if, within 365 days before submitting the license
13 application, the applicant operated as a grain dealer without a license in violation of s.
14 126.11(1), Stats. The applicant shall also pay any license fees, license surcharges, and
15 fund assessments that are still due for any license year in which the applicant violated s.
16 126.11(1), Stats.

17 (5) A surcharge of \$100 if, within 365 days before submitting the license
18 application, the applicant failed to file an annual financial statement required under s.
19 126.13(1)(b), Stats., by the deadline specified in s. 126.13(1)(c), Stats.

20 (6) A surcharge of \$100 if the applicant was licensed as a grain dealer for the last
21 preceding license year but failed to file a license renewal application before the annual
22 license expiration date of August 31. This subsection does not apply to a grain dealer
23 who is exempt from licensing under s. 126.11(2), Stats., but is voluntarily licensed.

1 **SECTION 6.** ATCP 99.126 is created to read:

2 **ATCP 99.126 Contributing grain dealers; fund assessments.** (1) **GENERAL.**

3 Except as provided in sub. (5), a contributing grain dealer shall pay an annual fund
4 assessment for each license year. The annual fund assessment shall be calculated under
5 this section, rather than under s. 126.15(1), Stats. Except as provided in sub. (4) or (5),
6 the annual fund assessment shall equal the sum of the assessments in subs. (2) and (3).

7 (2) **BASIC ASSESSMENT.** (a) A contributing grain dealer who reports less than
8 \$500,000 in grain payments under s. 126.11(9)(a), Stats., shall pay a basic assessment
9 equal to the greater of the following amounts:

10 1. \$100.

11 2. The sum of the amounts calculated under ss. 126.15(1)(a) and (b), Stats.

12 (b) A contributing grain dealer who reports at least \$500,000 but less than \$3
13 million in grain payments under s. 126.11(9)(a), Stats., shall pay a basic assessment equal
14 to the greater of the following amounts:

15 1. \$200.

16 2. The sum of the amounts calculated under ss. 126.15(1)(a) and (b), Stats.

17 (c) A contributing grain dealer who reports at least \$3 million in grain payments
18 under s. 126.11(9)(a), Stats., shall pay a basic assessment equal to the greater of the
19 following amounts:

20 1. \$500.

21 2. The sum of the amounts calculated under ss. 126.15(1)(a) and (b), Stats.

22 (3) **DEFERRED PAYMENT ASSESSMENT.** A contributing grain dealer shall pay a
23 deferred payment assessment equal to 0.0035 multiplied by the amount, if any, that the

1 grain dealer reports under s. 126.11(9)(b), Stats., in the grain dealer's license application
2 for that license year.

3 (4) **REDUCED ASSESSMENT.** A contributing grain dealer's annual fund assessment
4 under sub. (1) is reduced by the following applicable amounts:

5 (a) The amount calculated under s. 126.15(6m), Stats., if the contributing grain
6 dealer files security under s. 126.16(1)(c), Stats.

7 (b) The amount of any refund that applies under s. ATCP 99.13. The refund shall
8 be paid as a credit against the contributing grain dealer's annual fund assessment for the
9 next license year, as provided in s. ATCP 99.13(3).

10 (c) The amount of any assessment reduction that applies under s. ATCP 99.135.

11 (5) **EXEMPTION.** A contributing grain dealer is not required to pay any fund
12 assessment under this section for a license year, other than a deferred payment
13 assessment required under sub. (3), if all of the following apply.

14 (a) The grain dealer was classified as a contributing grain dealer in each of the 5
15 license years immediately preceding that license year.

16 (b) The fund balance attributable to grain dealers was at least \$3 million on May
17 31 of the last preceding license year.

18 (c) The overall fund balance was at least \$11 million on May 31 of the last
19 preceding license year.

20 **SECTION 7.** ATCP 99.135(2)(intro.), (c) and (d) are amended to read:

21 ATCP 99.135(2)(intro.) If, for the duration of a license year, a contributing grain
22 dealer maintains security under sub. (1) or 126.16(2), Stats., or both, in an amount that is
23 at least equal to the grain dealer's estimated default exposure less the maximum fund

1 reimbursement amount, the contributing grain dealer's annual fund assessment under s.
2 ~~126.15, Stats.,~~ ATCP 99.126(1) for that year is reduced by an amount that is determined
3 as follows:

4 (c) Multiply the result in par. (b) by the amount of the grain dealer's annual fund
5 assessment under s. ~~126.15(1), Stats.~~ ATCP 99.126(1), disregarding any assessment
6 reduction under s. ~~126.15(6m), Stats.~~ ATCP 99.126(4)(a).

7 (d) Subtract, from the result in par. (c), the amount of any assessment reduction
8 given under s. ~~126.15(6m), Stats.~~ ATCP 99.126(4)(a).

9 **SECTION 8.** ATCP 99.23 is created to read:

10 **ATCP 99.23 Grain warehouse keepers; license fees and surcharges.** A
11 person applying for an annual grain warehouse keeper license under s. 126.26, Stats.,
12 shall pay the following license fees and surcharges, rather than the license fees and
13 surcharges provided in s. 126.26(3), Stats.:

14 (1) A nonrefundable license processing fee of \$25 plus \$25 for each grain
15 warehouse identified under s. 126.26(2)(d), Stats. If a grain warehouse keeper operates 2
16 or more grain warehouses located within 0.5 mile of each other, the grain warehouse
17 keeper may treat those grain warehouses as a single grain warehouse for purposes of this
18 subsection and sub. (3).

19 (2) An inspection fee obtained by multiplying the combined grain warehouse
20 capacity reported under s. 126.26(2)(e), Stats., by 0.25 cent per bushel, rounding the
21 product to the nearest \$1,000, and then subtracting any credit provided under s.
22 126.26(5), Stats., except that the inspection fee may not be less than \$1,000 or more than
23 \$10,000.

1 (3) A supplementary inspection fee of \$275 for each grain warehouse, in excess
2 of one grain warehouse, that the applicant operates.

3 (4) A surcharge of \$500 if, within 365 days before submitting the license
4 application, the applicant operated as a grain warehouse keeper in violation of s.
5 126.26(1), Stats. The applicant shall also pay any license fees, license surcharges and
6 fund assessments that are still due for the license year in which the applicant violated s.
7 126.26(1), Stats.

8 (5) A surcharge of \$100 if, within 365 days before submitting the license
9 application, the applicant failed to file an annual financial statement required under s.
10 126.28(1)(b), Stats., by the applicable deadline.

11 (6) A surcharge of \$100 if the applicant was licensed as a grain warehouse keeper
12 for the last preceding license year but failed to file a license renewal application before
13 the annual license expiration date of August 31.

14 **SECTION 9.** ATCP 99.235 is created to read:

15 **ATCP 99.235 Contributing grain warehouse keepers; fund assessments.**

16 (1) GENERAL. Except as provided in sub. (4), a contributing grain warehouse
17 keeper shall pay an annual fund assessment for each license year. The annual fund
18 assessment shall be calculated under this section, rather than under s. 126.30(1), Stats.
19 Except as provided in sub. (3) or (4), the annual fund assessment shall be calculated
20 according to sub. (2).

21 (2) ASSESSMENT AMOUNT. (a) A contributing grain warehouse keeper who
22 operates grain warehouses with a combined capacity of less than 500,000 bushels shall
23 pay an annual fund assessment equal to the greater of the following amounts:

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1. \$100.

2. The sum of the amounts calculated under ss. 126.30(1)(a) and (b), Stats.,

multiplied by 1.5.

(b) A contributing grain warehouse keeper who operates grain warehouses with a combined capacity greater than 500,000 bushels shall pay an annual fund assessment equal to the greater of the following amounts:

1. \$250.

2. The sum of the amounts calculated under ss. 126.30(1)(a) and (1)(b), Stats.,

multiplied by 1.5.

(3) REDUCED ASSESSMENT. A contributing grain warehouse keeper's annual fund assessment under sub. (1) is reduced by the following applicable amounts:

(a) The amount calculated under s. 126.30(5m), Stats., if the contributing grain warehouse keeper files security under s. 126.31(1)(b), Stats.

(b) The amount of any refund that applies under s. ATCP 99.25. The refund shall be paid as a credit against the contributing grain warehouse keeper's annual fund assessment for the next license year, as provided in s. ATCP 99.25(3).

(c) The amount of any assessment reduction that applies under s. ATCP 99.255.

(4) EXEMPTION. A contributing grain warehouse keeper is not required to pay any fund assessment under this section for a license year if all of the following apply.

(a) The grain warehouse keeper was classified as a contributing grain warehouse keeper in each of the 5 license years immediately preceding that license year.

(b) The fund balance attributable to grain warehouse keepers was at least \$3 million on May 31 of the last preceding license year.

1 (c) The overall fund balance was at least \$11 million on May 31 of the last
2 preceding license year.

3 **SECTION 10.** ATCP 100.01(4g) is repealed.

4 **SECTION 11.** ATCP 100.01(4r) is amended to read:

5 ATCP 100.01(4r) “Maximum fund reimbursement” means the deductible amount
6 ~~plus the contingent financial backing amount~~ specified in s. 126.72(3), Stats.

7 **SECTION 12.** ATCP 100.01(5m) is created to read:

8 ATCP 100.01(5m) “Milk payroll obligation” has the meaning given in s.
9 126.40(9), Stats.

10 **SECTION 13.** ATCP 100.13(1)(intro.), (1)(a), (1)(d) and (3)(a) are amended to
11 read:

12 ATCP 100.13(1)(intro.) PARTIAL REFUND OF ASSESSMENT. The department may
13 refund part of an annual fund assessment paid by a contributing milk contractor under s.
14 ~~126.46, Stats.,~~ s. ATCP 100.135 if all of the following apply:

15 (1)(a) The milk contractor paid the full amount of the assessment, including any
16 late payment penalties that apply under s. ~~126.46 (6) (e), Stats.~~ s. ATCP 100.135(7)(e).

17 (1)(d) The milk contractor’s financial statement, for the fiscal year in which the
18 merger or acquisition under par. (b) took effect, caused the sum of the milk contractor’s
19 current ratio assessment rate under s. ~~126.46 (2), Stats.,~~ ATCP 100.135(2) and debt to
20 equity ratio assessment rate under s. ~~126.46 (4), Stats.~~ ATCP 100.135(4), to increase by
21 at least 100% compared to the preceding license year.

22 (3)(a) The department shall pay the refund under sub. (1) as a credit against the
23 milk contractor’s assessment for the next license year. The department shall apportion

1 the credit, pro rata, against the quarterly assessment installments required of the milk
2 contractor under ~~s. 126.46 (6), Stats.,~~ ATCP 100.135(7) in that next license year. If the
3 credit exceeds the total assessment required of the milk contractor in that next license
4 year, the department shall credit the balance in the same fashion against assessments
5 required of the milk contractor in subsequent consecutive license years, except that the
6 department may not grant a credit in more than 4 subsequent license years.

7 **SECTION 14.** ATCP 100.135 is repealed and recreated to read:

8 **ATCP 100.135 Contributing milk contractors; fund assessments. (1)**

9 **GENERAL.** A contributing milk contractor shall pay an annual fund assessment for each
10 license year. The annual fund assessment shall be calculated under this section, rather
11 than under s. 126.46, Stats. Except as provided in sub. (6) or (10), or s. ATCP 100.13,
12 the annual fund assessment amount is the minimum assessment amount listed in sub. (9)
13 or the sum of the following, whichever is greater:

14 (a) The milk contractor's current ratio assessment. The current ratio assessment
15 for a license year equals the milk contractor's current ratio assessment rate under sub. (2)
16 multiplied by the annual milk payroll obligations reported under s. 126.41(6)(a), Stats., in
17 the milk contractor's license application for that license year.

18 (b) The milk contractor's debt to equity ratio assessment. The debt to equity ratio
19 assessment for a license year equals the milk contractor's debt to equity ratio assessment
20 rate under sub. (4) multiplied by the annual milk payroll obligations reported under s.
21 126.41(6)(a), Stats., in the milk contractor's license application for that license year.

22 **(2) CURRENT RATIO ASSESSMENT RATE.** A milk contractor's current ratio
23 assessment rate is calculated, at the beginning of the license year, as follows:

1 (a) If the milk contractor has filed an annual financial statement under s. 126.44,
2 Stats., and that financial statement shows a current ratio of at least 1.25 to 1.0, the milk
3 contractor's current ratio assessment rate equals the greater of zero or the current ratio
4 assessment factor in sub. (3)(a) multiplied by an amount determined as follows:

- 5 1. Subtract 3 from the current ratio.
- 6 2. Divide the amount determined under subd. 1. by 6.
- 7 3. Multiply the amount determined under subd. 2. by negative one.
- 8 4. Raise the amount determined under subd. 3. to the 3rd power.
- 9 5. Divide 0.55 by the current ratio.
- 10 6. Raise the amount determined under subd. 5. to the 7th power.
- 11 7. Add the amount determined under subd. 4. to the amount determined under
12 subd. 6.
- 13 8. Add 0.075 to the amount determined under subd. 7.

14 (b) If the milk contractor has filed an annual financial statement under s. 126.44,
15 Stats., and that financial statement shows a current ratio of less than 1.25 to 1.0, but
16 greater than 1.05 to 1.0, the milk contractor's current ratio assessment rate equals the
17 current ratio assessment factor in sub. (3)(b) multiplied by an amount determined as
18 follows:

- 19 1. Subtract 3 from the current ratio.
- 20 2. Divide the amount determined under subd. 1. by 6.
- 21 3. Multiply the amount determined under subd. 2. by negative one.
- 22 4. Raise the amount determined under subd. 3. to the 3rd power.
- 23 5. Divide 0.55 by the current ratio.

1 6. Raise the amount determined under subd. 5 to the 7th power.

2 7. Add the amount determined under subd. 4. to the amount determined under
3 subd. 6.

4 8. Add 0.075 to the amount determined under subd. 7.

5 (c) Except as provided in par. (e), if the milk contractor has filed an annual
6 financial statement under s. 126.44 Stats., and that financial statement shows a current
7 ratio of less than or equal to 1.05 to 1.0, the milk contractor's current ratio assessment
8 rate equals the current ratio assessment factor in sub. (3)(b) multiplied by 0.1201478.

9 (d) Except as provided in par. (e), if the milk contractor has not filed an annual
10 financial statement under s. 126.44, Stats., the milk contractor's current ratio assessment
11 rate equals the current ratio assessment factor in sub. (3)(b) multiplied by 0.103005.

12 (e) If the milk contractor procures producer milk in this state solely as a producer
13 agent and the milk contractor has not filed an annual financial statement under s. 126.44,
14 Stats., or has filed an annual financial statement that shows a current ratio of not more
15 than 1.05 to 1.0, the milk contractor's current ratio assessment rate is 0.00025, except that
16 for the milk contractor's 5th or higher consecutive full license year of participation in the
17 fund the milk contractor's current ratio assessment rate is 0.000175.

18 (3) CURRENT RATIO ASSESSMENT FACTOR. (a) A milk contractor's current ratio
19 assessment factor under sub. (2)(a) is 0.001, except as follows:

20 1. For the milk contractor's 3rd consecutive full license year as a contributing
21 milk contractor, the milk contractor's current ratio assessment factor is 0.0007.

22 2. For the milk contractor's 4th consecutive full license year as a contributing
23 milk contractor, the milk contractor's current ratio assessment factor is 0.0003.

1 3. For the milk contractor's 5th or higher consecutive full license year as a
2 contributing milk contractor, the milk contractor's current ratio assessment factor is zero.

3 (b) A milk contractor's current ratio assessment factor under sub. (2)(b) to (d) is
4 0.0015, except that, for the milk contractor's 5th or higher consecutive full license year of
5 participation in the fund, the milk contractor's current ratio assessment factor is
6 0.000675.

7 (4) DEBT TO EQUITY ASSESSMENT RATE. A milk contractor's debt to equity ratio
8 assessment rate is calculated, at the beginning of the license year, as follows:

9 (a) If the milk contractor has filed an annual financial statement under s. 126.44,
10 Stats., and that financial statement shows positive equity and a debt to equity ratio of not
11 more than 2.0 to 1.0, the milk contractor's debt to equity ratio assessment rate equals the
12 greater of zero or the debt to equity ratio assessment factor in sub. (5)(a) multiplied by an
13 amount determined as follows:

- 14 1. Subtract 2 from the debt to equity ratio.
- 15 2. Divide the amount determined under subd. 1. by 3.
- 16 3. Raise the amount determined under subd. 2. to the 9th power.
- 17 4. Divide the debt to equity ratio by 3.25.
- 18 5. Raise the amount determined in subd. 4. to the 5th power.
- 19 6. Add the amount determined under subd. 3. to the amount determined under
20 subd. 5.
- 21 7. Add 0.025 to the amount determined under subd. 6.

22 (b) If the milk contractor files an annual financial statement under s. 126.44,
23 Stats., and that financial statement shows a debt to equity ratio of greater than 2.0 to 1.0

1 but less than 2.9 to 1.0, the milk contractor's debt to equity ratio assessment rate equals
2 the debt to equity ratio assessment factor in sub. (5)(b) multiplied by an amount
3 determined as follows:

- 4 1. Subtract 2 from the debt to equity ratio.
- 5 2. Divide the amount determined under subd. 1. by 3.
- 6 3. Raise the amount determined under subd. 2. to the 9th power.
- 7 4. Divide the debt to equity ratio by 3.25.
- 8 5. Raise the amount determined under subd. 4. to the 5th power.
- 9 6. Add the amount determined under subd. 3. to the amount determined under
10 subd. 5.
- 11 7. Add 0.025 to the amount determined under subd. 6.

12 (c) Except as provided in par. (e), if the milk contractor has filed an annual
13 financial statement under s. 126.44, Stats., and that financial statement shows negative
14 equity, or a debt to equity ratio of at least 2.9 to 1.0, the milk contractor's debt to equity
15 ratio assessment rate equals the debt to equity ratio assessment factor in sub. (5)(b)
16 multiplied by 0.590704

17 (d) Except as provided in par. (e), if the milk contractor has not filed an annual
18 financial statement s. 126.44, Stats., the milk contractor's debt to equity ratio assessment
19 rate equals the debt to equity ratio assessment factor in sub. (5)(b) multiplied by
20 0.11325375.

21 (e) If the milk contractor procures producer milk in this state solely as a producer
22 agent and the milk contractor has not filed an annual financial statement under s. 126.44,
23 Stats., or has filed an annual financial statement that shows negative equity or a debt to

1 equity ratio of at least 2.9 to 1.0, the milk contractor's debt to equity ratio assessment rate
2 is 0.00025, except that for the milk contractor's 5th or higher consecutive full license year
3 of participation in the fund the milk contractor's debt to equity ratio assessment rate is
4 0.000175.

5 (5) DEBT TO EQUITY RATIO ASSESSMENT FACTOR. (a) A milk contractor's debt to
6 equity ratio assessment factor under sub. (4)(a) is 0.0015, except as follows:

7 1. For the milk contractor's 3rd consecutive full license year as a contributing
8 milk contractor, the milk contractor's debt to equity ratio assessment factor is 0.001.

9 2. For the milk contractor's 4th consecutive full license year as a contributing
10 milk contractor, the milk contractor's debt to equity ratio assessment factor is 0.0005.

11 3. For the milk contractor's 5th or higher consecutive full license year as a
12 contributing milk contractor, the milk contractor's debt to equity ratio assessment factor
13 is zero.

14 (b) A milk contractor's debt to equity ratio assessment factor under sub. (4) (b) to
15 (d) is 0.00225, except that, for the milk contractor's 5th or higher consecutive full license
16 year as a contributing milk contractor, the milk contractor's debt to equity ratio
17 assessment factor is 0.001.

18 (6) REDUCED ASSESSMENTS. (a) If a contributing milk contractor files security
19 under s. 126.47(1)(b), Stats., the milk contractor's fund assessment under sub. (1) is
20 reduced by the amount provided in s. 126.46(5m), Stats. This reduction is in addition to
21 any reduction provided under par. (b).

22 (b) If a contributing milk contractor files security under par. (d) or s. 126.47(2),
23 Stats., or both, in an amount that is at least equal to the milk contractor's estimated

1 default exposure less the maximum fund reimbursement amount, the milk contractor's
2 annual fund assessment under sub. (1) for that year is reduced by an amount that is
3 determined as follows:

4 1. Subtract the maximum fund reimbursement from the milk contractor's
5 estimated default exposure.

6 2. Divide the result in subd. 1. by the milk contractor's estimated default
7 exposure.

8 3. Multiply the results in subd. 2. by the amount of the milk contractor's annual
9 fund assessment under sub. (1).

10 (c) Notwithstanding pars. (a) and (b), no contributing milk contractor may pay
11 pay a fund assessment that is less than the minimum fund assessment under sub. (9).

12 (d) A milk contractor may at any time file security with the department,
13 regardless of whether the milk contractor is required to file security. Except as provided
14 in par. (b), a voluntary security filing under this paragraph does not relieve a milk
15 contractor of any other obligation to file security or pay fund assessments.

16 **NOTE:** A milk contractor who files voluntary security under par. (d) may be
17 eligible for a reduction in fund assessments under par. (b), and may be
18 able to make a more favorable disclosure to producers under s. ATCP
19 100.20(2).
20

21 (7) QUARTERLY INSTALLMENTS. (a) A contributing milk contractor shall pay the
22 milk contractor's annual fund assessment in equal quarterly installments that are due as
23 follows:

24 1. The first installment is due on June 1 of the license year.

25 2. The 2nd installment is due on September 1 of the license year.

26 3. The 3rd installment is due on December 1 of the license year.

1 4. The 4th installment is due on March 1 of the license year.

2 (b) A contributing milk contractor may prepay any of the quarterly installments
3 under par. (a).

4 (c) A contributing milk contractor who applies for an annual license after the
5 beginning of a license year shall pay for the full annual fund assessment required under
6 this section. The milk contractor shall pay, with the first quarterly installment that
7 becomes due after the day on which the department issues the license, all of the quarterly
8 installments for that license year that were due before that day.

9 (d) If s. 126.45(1)(b), Stats., requires a license milk contractor to become a
10 contributing milk contractor during the license year, the milk contractor shall pay only
11 those quarterly installments that become due after the requirement takes effect.

12 (e) A contributing milk contractor who fails to pay the full amount of any
13 quarterly installment when due shall pay, in addition to that installment, a late payment
14 penalty of \$50 or 10% of the overdue installment, whichever is greater.

15 (8) NOTICE OF ANNUAL ASSESSMENT AND QUARTERLY INSTALLMENTS. When the
16 department issues an annual license to a contributing milk contractor, the department
17 shall notify the milk contractor of all of the following:

18 (a) The amount of the milk contractor's annual fund assessment under this
19 section.

20 (b) The amount of each required quarterly installment under sub. (6) and the date
21 by which the milk contractor must pay each installment.

22 (c) The penalty that applies under sub. (6)(e) if the milk contractor fails to pay
23 any quarterly installment when due.

1 (9) MINIMUM FUND ASSESSMENTS. A contributing milk contractor shall pay the
2 following minimum assessment if that minimum assessment is greater than the amount
3 calculated under sub. (1) less applicable reductions under sub. (6):

4 (a) If the milk contractor reports an amount under s. 126.41(6)(a), Stats., that is
5 less than \$1.5 million, the minimum assessment is \$100.

6 (b) If the milk contractor reports an amount under s. 126.41(6)(a), Stats., that is at
7 least \$1.5 million but less than \$6 million, the minimum assessment is \$200.

8 (c) If the milk contractor reports an amount under s. 126.41(6)(a), Stats., that is at
9 least \$6 million, the minimum assessment is \$500.

10 (10) EXEMPTION. A contributing milk contractor is not required to pay any fund
11 assessment under this section for a license year if all of the following apply.

12 (a) The milk contractor was classified as a contributing milk contractor in each of
13 the 5 license years immediately preceding that license year.

14 (b) The fund balance attributable to milk contractors was at least \$6 million on
15 February 28 of the last preceding license year.

16 (c) The overall fund balance was at least \$11 million on February 28 of the last
17 preceding license year.

18 **SECTION 15.** ATCP 100.22(3) is repealed and recreated to read:

19 ATCP 100.22(3) The statement under sub. (1) may, with the approval of the
20 department, report either of the following in fulfillment of the reporting requirement
21 under s. 126.41(6)(b), Stats.:

22 (a) The largest gross amount that the applicant paid, for producer milk procured
23 in this state, in any single month during the applicant's last completed fiscal year.

1 (b) The largest amount of unpaid milk payroll obligations that the milk contractor
2 had at any time during the milk contractor's last completed fiscal year.

3 **NOTE:** Under s. 126.41(9), Stats., a milk contractor who files security under s.
4 126.47, Stats., must immediately notify the department if, at any time, the
5 milk contractor's unpaid milk payroll obligations exceed the amount last
6 reported under sub. (3). Under s. 126.83, Stats., the department may
7 require the milk contractor to provide additional information as necessary.

8 **SECTION 16.** ATCP 101.20(3g) is repealed.

9 **SECTION 17.** ATCP 101.20(3r) is amended to read:

10 ATCP 101.20(3r) "Maximum fund reimbursement" means the deductible amount
11 ~~plus the contingent financial backing amount~~ specified in s. 126.72(3), Stats.

12 **SECTION 18.** ATCP 101.23 is created to read:

13 **ATCP 101.23 Vegetable contractor license fees.** A person applying for an
14 annual vegetable contractor license under s. 126.56, Stats., shall pay all of the following
15 license fees and surcharges, rather than the license fees and surcharges provided in s.
16 126.56(4), Stats.:

17 (1) A nonrefundable license processing fee of \$25.

18 (2) A fee of \$25 plus 8.75 cents for each \$100 in contract obligations reported
19 under s. 126.56(9)(a), Stats., less any fee credits for which the vegetable contractor
20 qualifies under s. 126.56(6), Stats. This subsection does not apply to a processing potato
21 buyer that has elected under s. 126.595(1), Stats., not to participate in the fund.

22 (3) For a processing potato buyer that has elected under s. 126.595(1), Stats., not
23 to participate in the fund, a fee equal to the lesser of the following amounts:

24 (a) \$25 plus 8.75 cents for each \$100 in contract obligations reported under s.
25 126.56(9)(a), Stats.

26 (b) \$2,000.

1 (4) A surcharge of \$500 if, within 365 days before submitting the license
2 application, the applicant operated as a vegetable contractor without a license in violation
3 of s. 126.56(1), Stats. The applicant shall also pay any license fees, license surcharges,
4 and fund assessments that are still due for the license year in which the applicant violated
5 s. 126.56(1), Stats.

6 (5) A surcharge of \$100 if, within 365 days before submitting the license
7 application, the applicant failed to file an annual financial statement required under s.
8 126.58(1)(b), Stats., by the applicable deadline.

9 (6) A surcharge of \$100 if a renewal applicant fails to renew a license by the
10 license expiration date of January 31.

11 **SECTION 19.** ATCP 101.245 is created to read:

12 **ATCP 101.245 Vegetable contractor fund assessments.** (1) GENERAL. A
13 contributing vegetable contractor shall pay an annual fund assessment for each license
14 year. The annual fund assessment shall be calculated under this section, rather than under
15 s. 126.60(1), Stats. Except as provided in subs. (3) and (4), the annual fund assessment
16 shall be calculated according to sub. (2).

17 (2) ASSESSMENT AMOUNT. (a) A contributing vegetable contractor that reports
18 less than \$500,000 in contract obligations under s. 126.56(9)(a), Stats., shall pay an
19 annual fund assessment equal to the greater of the following amounts:

20 1. \$100.

21 2. The sum of the amounts calculated under ss. 126.60(1)(a), (b) and (c), Stats.

1 (b) A contributing vegetable contractor that reports at least \$500,000 but less than
2 \$4 million in contract obligations under s. 126.56(9)(a), Stats., shall pay an annual fund
3 assessment equal to the greater of the following amounts:

4 1. \$200.

5 2. The sum of the amounts calculated under ss. 126.60(1)(a), (b) and (c), Stats.

6 (c) A contributing vegetable contractor who reports \$4 million or more in
7 contract obligations under s. 126.56(9)(a), Stats., shall pay an annual fund assessment
8 equal to the greater of the following amounts:

9 1. \$500.

10 2. The sum of the amounts calculated under ss. 126.60(1)(a), (b) and (c), Stats.

11 (3) REDUCED ASSESSMENT. A contributing vegetable contractor's annual fund
12 assessment under sub. (1) is reduced by the following applicable amounts:

13 (a) The amount calculated under s. 126.60(5m), Stats., if the contributing
14 vegetable contractor files security under s. 126.61(1)(bm), Stats.

15 (b) The amount of any refund that applies under s. ATCP 101.25. The refund
16 shall be paid as a credit against the contributing vegetable contractor's annual fund
17 assessment for the next license year, as provided in s. ATCP 101.25(3).

18 (c) The amount of any assessment reduction that applies under s. ATCP 101.255.

19 (4) EXEMPTION. A contributing vegetable contractor is not required to pay any
20 fund assessment under this section for a license year if all of the following apply.

21 (a) The vegetable contractor was classified as a contributing vegetable contractor
22 in each of the 5 license years immediately preceding that license year.

1 (b) The fund balance attributable to vegetable contractors was at least \$1.5
2 million on November 30 of the last preceding license year.

3 (c) The overall fund balance was at least \$11 million on November 30 of the last
4 preceding license year.

5 **EFFECTIVE DATE.** (a) Except as provided in par. (b), this rule takes effect on the
6 first day of the month following publication in the Wisconsin administrative register, as
7 provided under s. 227.22(2) (intro.), Stats.

8 (b) Pursuant to s. 227.22(2)(e), Stats., for small businesses as defined in s.
9 227.114(1), Stats., this rule takes effect on the first day of the third month commencing
10 after the date of publication in the Wisconsin administrative register.

11 **INITIAL APPLICABILITY.** This rule first applies to fees and surcharges that are
12 payable for the following license years:

13 (a) For grain dealers and grain warehouse keepers, the license year that begins on
14 September 1, 2009.

15 (b) For milk contractors, the license year that begins on May 1, 2009.

16 (c) For vegetable contractors, the license year that begins on February 1, 2010.

Dated this _____ day of November, 2008.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Rodney J. Nilsestuen, Secretary