

**DIVISION OF TRADE AND CONSUMER PROTECTION  
SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE**

<b>Rule Number: ATCP 99-100-101</b>		<b>Hearing Date: July 14 (Stevens Point) and July 19 (Madison), 2017</b>	
<b>Comments: Oral, Written, or Letter</b>	<b>Presenter and Group Represented</b>	<b>Comments or Recommendations</b>	<b>Agency Response</b>
Letter	Jordan K. Lamb, Wisconsin Potato and Vegetable Growers Association	<a href="#"><u>Letter</u></a>  Supports continuation of the APS Program and reestablishment of the minimum fund balance.  Assessment increases should be both workable for vegetable contractors and the Fund.	Noted. No response required.
Letter	John D. Exner, Seneca Foods  Operates nine facilities in Wisconsin.	<a href="#"><u>Letter</u></a>  Opposes changes proposed to ATCP 101. Program fundamentally flawed by penalizing good actors for the actions of those no longer involved and imposes extra costs on Wisconsin businesses.  Eliminate program for vegetable processors.	Objections are statutory and outside the scope of the rule change.
Written	John Manske, Cooperative Network	<a href="#"><u>Letter.</u></a>	Noted. No response required.

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		<p>Supports the grain dealer and milk contractor provisions of the rule changes.</p> <p>No recommendation on vegetable portion – vegetable contractors are not represented among CN’s membership; suggested legislative remedy to Midwest Food Products Association.</p> <p>Supports current legislation.</p>	
E-Mail	<p>Tom Timm, Birdseye Foods</p> <p>Facilities in Darien, WI, and Waseca, MN.</p>	<p><u><a href="#">E-Mail</a></u></p> <p>Opposes changes to ATCP 101, dealing with vegetable contractors.</p> <p>It unfairly increases costs and puts them at an economic disadvantage.</p> <p>Vegetable processors should be removed from the program or vegetable producers should pay into the program.</p>	<p>Objections are statutory and outside the scope of the rule change.</p>
Written	<p>John T. Umhoefer, Wisconsin Cheese Makers Association</p>	<p><u><a href="#">Letter</a></u></p>	<p>Noted support of amendment. Suggested changes to program are statutory and outside the scope of this rule.</p>

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	Represents 52 (of 89) Wisconsin-based DATCP licensed milk contractors.	Favors proposed amendment to ATCP 100.135.  WCMA favors other reforms including separate indemnity funds and protection for milk buyers.	
Written	Nick George, Midwest Food Products Association  Represents 14 producers operating 49 facilities in Illinois, Minnesota, and Wisconsin.	<a href="#"><u>Letter</u></a>  Opposes changes to ATCP 101 relating to vegetable contractors.  A small number of processors carry the majority of the load.  Eliminate the program for the vegetable industry.  Require producers to pay into the Fund.  Payment within 30 days not workable for all processors but they recommend since it may be work for some.  Set a lower statutory threshold.	Suggested changes to program are statutory and outside the scope of this rule.

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Appearance Only	Micah Ends, Rolling Hills Dairy Producers Coop of Monroe		
Oral (July 14- Stevens Point)	Nick George, Midwest Food Products Association	<p>Opposing and supporting aspects - highlighted his written testimony.</p> <p>Recommends the program be eliminated for vegetable industry.</p> <p>Producers benefit and should pay into program.</p> <p>Recognizes that their ideas require statutory change.</p>	Suggested changes to program are statutory and outside the scope of this rule.
Oral (July 14- Stevens Point)	John T. Umhoefer, Wisconsin Cheese Makers Association	<p>Favors amendment to ATCP 100.135 to add multiplier.</p> <p>The WCMA Board favors independent indemnity pools by industry.</p> <p>Favors protection of buyers as well to share risk.</p>	Suggested changes to program are statutory and outside the scope of this rule.
Oral (July 19- Madison)	John Manske, Cooperative Network	<p>Highlighted written testimony.</p> <p>Supports dairy and grain provisions. No position on vegetable provisions.</p>	Support noted. Suggested changes to program are statutory and outside the scope of this rule.

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		Supports statutory changes that Department recommended recently to Fund. Will support the deferred compensation and combining of grain interests.	

***CLEARINGHOUSE COMMENTS***

<b>Reference</b>	<b>Comment</b>	<b>Response</b>
2. a.	Throughout the rule, when a single word is amended, the existing word should be stricken in its entirety and the new word should be underscored immediately after the strike-through.	Done.
2. b.	In SECTION 2 of the rule, the proper treatment is "ATCP 99.126 (3) is repealed and recreated:". The text of a repealed and recreated rule should be shown as it will appear after promulgation, without strike-throughs and underscores.	Done.
2. c.	In SECTION 4 of the rule, the proper treatment clause is "ATCP 101.245 (2) is amended to read:"	Done.
2. d.	In SECTION 4 of the rule, the material in s. ATCP 101.245 (2) (d) 3. does not	Previous:

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	<p>form a complete sentence when read together with the introductory material in s. ATCP 101.245 (2) (d).</p>	<p>(d) If the fund balance attributable to vegetable contractors is less than \$800,000 on November 30 of the last preceding license year, then the lesser of:</p> <ol style="list-style-type: none"><li>3. If all of the contract obligations reported by the vegetable contractor under s. 126.56 (9) (am), Stats., were made under written contracts where payments were required no more than 30 days after taking custody or control of the vegetables, then divide the amounts under subd. 1. and 2. by 2.</li></ol> <p>New:</p> <p>(2) ASSESSMENT AMOUNT.</p> <p>(a) A contributing vegetable contractor that reports less than \$500,000 in contract obligations under s. 126.56 (9) (am), Stats., shall pay a fund assessment equal to the greater of the following amounts:</p> <ol style="list-style-type: none"><li>1. \$100.</li><li>2. The sum of the amounts calculated under s. 126.60 (1) (a) and (b), Stats. <u>If all of the contract obligations reported by the vegetable contractor under s. 126.56 (9) (am), Stats., were made under written contracts where payments were required no more than 30 days after taking custody or control of the vegetables, then further divide this amount by 2.</u></li></ol>
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		<p>(b) A contributing vegetable contractor that reports at least \$500,000 but less than \$4 million in contract obligations under s. 126.56 (9) (am), Stats., shall pay a fund assessment equal to the greater of the following amounts:</p> <ol style="list-style-type: none"><li>1. \$200.</li><li>2. The sum of the amounts calculated under s. 126.60 (1) (a) and (b), Stats. <u>If all of the contract obligations reported by the vegetable contractor under s. 126.56 (9) (am), Stats., were made under written contracts where payments were required no more than 30 days after taking custody or control of the vegetables, then further divide this amount by 2.</u></li></ol> <p>(c) A contributing vegetable contractor who reports \$4 million or more in contract obligations under s. 126.56 (9) (am), Stats., shall pay an fund assessment equal to the greater of following amounts:</p> <ol style="list-style-type: none"><li>1. \$500.</li><li>2. The sum of the amounts calculated under s. 126.60 (1) (a) and (b), Stats. <u>If all of the contract obligations reported by the vegetable contractor under s. 126.56 (9) (am), Stats., were made under written contracts where payments were required no more than 30 days after taking custody or control of the vegetables, then further divide this amount by 2.</u></li></ol>
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		<p><u>(d) If the fund balance attributable to vegetable contractors is less than \$800,000 on November 30 of the preceding license year, a contributing vegetable contractor shall pay the sum of the amount calculated under either (a), (b), or (c) and the lesser of:</u></p> <ol style="list-style-type: none"><li>1. <u>\$50,000. If all of the contract obligations reported by the vegetable contractor under s. 126.56 (9) (am), Stats., were made under written contracts where payments were required no more than 30 days after taking custody or control of the vegetables, then this amount is \$25,000.</u></li><li>2. <u>The amount of contract obligations under s. 126.56 (9) (am), Stats., multiplied by 0.002. If all of the contract obligations reported by the vegetable contractor under s. 126.56 (9) (am), Stats., were made under written contracts where payments were required no more than 30 days after taking custody or control of the vegetables, then divide this amount by 2.</u></li></ol>
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5. a.	Throughout the rule, all subunits should end with a period, rather than a semicolon or the word "and" or "or".	Done.
5. b. and 5. c.	<p>b. In SECTION 2 of the rule, it is unclear who the deferred payment assessment is being assessed against. Section ATCP 99.126 (3) (a) and (b) provides that the assessment rate is "applied to" certain "deferred payment contracts".</p> <p>c. The desired effect of s. ATCP 99.126 (3) (c) is unclear. If the intent is to require a contributing grain dealer to pay a deferred assessment equal to the amount calculated under pars. (a) and (b), SECTION 2 of the rule should be rewritten for clarity.</p>	<p>Previous:</p> <p><b>(3) DEFERRED PAYMENT ASSESSMENT.</b> (a) A contributing grain dealer shall apply a deferred payment assessment rate of 0.000875 to deferred payment contracts entered into on or after September 1, if the fund balance attributable to grain dealers is greater than \$6 million on May 31 of the last preceding license year.</p> <p>(b) A contributing grain dealer shall apply a deferred payment assessment rate of 0.0035 to deferred payment contracts entered on or after September 1, if the fund balance attributable to grain dealers is not more than \$6 million on May 31 of the last preceding license year.</p> <p>(c) A contributing grain dealer shall pay a deferred payment assessment equal to the amount, if any, that the grain dealer paid to producers under deferred payment contracts during the 12 months ended June 30<sup>th</sup> of the preceding license year multiplied by rates that applied to those contracts as specified under par. (a) and (b).</p> <p>New:</p>

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		<p style="text-align: center;"><b>(3) DEFERRED PAYMENT</b></p> <p>ASSESSMENT. A contributing grain dealer shall pay a deferred payment assessment equal to the amount the grain dealer reports under s.126.11 (9) (b), Stats., in the grain dealer's license application for that license year multiplied by rates determined as follows:</p> <p style="padding-left: 40px;">(a) If the fund balance attributable to grain dealers is greater than \$6 million on May 31, the rate is 0.000875 for deferred payment contracts entered into anytime during the following license year.</p> <p style="padding-left: 40px;">(b) If the fund balance attributable to grain dealers is not more than \$6 million on May 31, the rate is 0.0035 for deferred payment contracts entered into anytime during the following license year.</p>
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