

Clearinghouse Rule No. 04-30
DATCP Docket No. 03-R-08

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

1 The state of Wisconsin department of agriculture, trade and consumer protection hereby adopts
2 the following rule to repeal ATCP 100.20(2)(e)1. and 2.; to renumber ATCP 100.20(2)(e)3. to 5.;
3 to amend ATCP 101.26(2)(a)(intro.) and (b)(intro.); to repeal and recreate ATCP 99.26(2)(b);
4 and to create ATCP 99.13, 99.135, 99.14(2)(d), 99.16, 99.25, 99.255, 99.26(2)(c), 99.28, 100.13,
5 100.135, 100.20(2)(g), 101.25, 101.255 and 101.26(2)(d) and (e); relating to the agricultural
6 producer security program.

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

Statutory Authority: ss. 126.15(1)(intro.), 126.30(1)(intro.), 126.46(1)(intro.),
126.60(1)(intro.), 126.81 and 126.88(intro.), Stats.

Statutes Interpreted: ch. 126, Stats.

The Wisconsin department of agriculture, trade and consumer protection ("DATCP") currently administers an agricultural producer security program under ch. 126, Stats. ("producer security law"). This program is designed to protect agricultural producers from catastrophic financial defaults by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors ("contractors") who procure agricultural commodities from producers. Among other things, the law requires most contractors to pay assessments to an agricultural producer security fund.

DATCP may adopt rules to implement the program (see statutory authority above). Among other things, DATCP may revise contractor assessment rates, require contractor disclosures to producers, and interpret other requirements under the producer security law. This rule does all of the following:

- Authorizes a partial refund of certain agricultural producer security assessments required of grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (collectively referred to as "contractors") under ch. 126, Stats. This rule authorizes a partial refund of an annual assessment that is drastically inflated by a *temporary* change in financial condition caused by a merger or acquisition. This rule defines the specific circumstances

under which the refund is authorized. This rule does not authorize a refund if the change in the contractor's financial condition lasts more than one fiscal year.

- Authorizes a reduction in the assessment amount for certain contractors who provide individual security originally filed under the previous producer security program.
- Updates the disclosures that contractors must give agricultural producers under current rules. The updates are needed to accommodate recent law changes under 2003 Wis. Act 38.
- Clarifies that grain dealers and warehouse keepers may provide grain purchase and deposit receipts (required by current law) in electronic form, provided that the recipient can retrieve, store and print the receipt for future reference.

Assessment Refunds

Background

Under the producer security law, contractors pay annual assessments to an agricultural producer security fund ("the fund"). If a contractor defaults in payments to producers, DATCP may compensate producers from the fund. A contractor's annual fund assessment is based on the contractor's size, financial condition and risk practices. DATCP may modify fund assessments by rule.

Financial condition is determined on the basis of an annual financial statement filed by the contractor. Other things being equal, contractors with weaker financial statements pay higher annual fund assessments. Fund assessments are calculated according to a formula spelled out in the producer security law. However, DATCP may modify fund assessments by rule.

Refunds Authorized

In some cases, a merger or acquisition may temporarily affect a contractor's financial statement. This temporary change may in some cases cause a disproportionate increase in annual fund assessments (based on the current statutory assessment formula). In such cases, this rule authorizes DATCP to refund part of a contractor's assessment if certain conditions apply. The refund is paid as a credit against the next year's assessment.

Under this rule, DATCP may ~~may~~ refund part of an annual fund assessment paid by a contributing contractor if all of the following apply:

- The contractor paid the full amount of the assessment, ~~when due~~ including any late penalties that may apply.
- The ~~grain dealer~~ contractor is the surviving entity in a merger under s. 179.77, 180.1101, 183.1201 or 185.61, Stats., or has acquired property pursuant to a sale of assets under s. 180.1202, Stats.

- The assessment was based on the contractor's financial statement for the fiscal year in which the merger or acquisition took effect.
- The contractor's financial statement, for the fiscal year in which the merger or acquisition took effect, caused the sum of the contractor's current ratio assessment rate and debt to equity assessment rate (both calculated according to current statutory formulas) to increase by at least ~~200%~~100% compared to the preceding license year.
- The contractor's annual financial statements, for the fiscal years immediately preceding and immediately following the fiscal year in which the merger or acquisition took effect, show positive equity, a current ratio of at least 1.25 to 1.00 and a debt to equity ratio of no more than 3.0 to 1.0.
- In the license year immediately following the license year for which the contractor paid the assessment, the sum of the contractor's current ratio assessment rate and debt to equity assessment rate (both calculated according to current statutory formulas) declines by at least 50% compared to the license year for which the contractor paid the assessment.
- The contractor requests the refund in writing, by the first day of the next license year.

Refund Amount

The amount of the refund under this rule will equal 75% of the difference between the assessment amount paid by the contractor and the assessment amount required of the contractor in the next license year.~~the difference between the following:~~

- ~~The assessment amount paid by the contractor.~~
- ~~The average of the assessment amount paid by the contractor and the assessment amount required of the contractor in the next license year.~~

Refund Paid as Credit Against Next Year's Assessment

Whenever DATCP pays a refund under this rule, DATCP must pay the refund as a credit against the contractor's assessment for the next license year. DATCP must apportion the credit, pro rata, against the quarterly assessment installments required of the contractor in that next license year.

If the credit exceeds the total assessment required of the contractor in that next license year, DATCP must credit the balance in the same fashion against assessments required of the contractor in subsequent license years. However, DATCP may not grant a credit in more than 4 subsequent license years.

DATCP may not pay refunds except as credits against future assessments (there is no cash refund). DATCP may not pay a refund (grant a credit) to any person other than the contractor who paid the original assessment on which the refund is given.

Assessment Reductions for Contractors Maintaining Individual Security

The producer security law directs DATCP to obtain bonds or other backup security for the fund. The backup security is intended to protect producers against large contractor defaults that may exceed the capacity of the fund. But changes in the insurance and bonding industry have prevented DATCP from obtaining any backup security (DATCP has received no acceptable bids).

Before the fund was created in 2002, contractors who failed to meet minimum financial standards were required to file individual security (typically a bond or letter of credit) with DATCP. The amount of security was based on the size of the contractor's producer payroll (potential default exposure). DATCP returned much of this security after the fund was created. But because DATCP was unable to obtain backup security for the fund, DATCP retained security from some of the largest contractors. DATCP did this in order to protect agricultural producers against large contractor defaults that might exceed the capacity of the fund.

DATCP's action protected agricultural producers against catastrophic defaults, but imposed additional costs on some large contractors. The affected contractors (approximately 6 contractors) must now pay security costs *and* fund assessments. This emergency rule reduces fund assessments for these contractors, to compensate for the added security costs that the contractors must incur.

Under this rule, ~~may~~ if DATCP still holds pre-fund security from a contractor who now also contributes to the fund, the contractor's annual fund assessment is reduced by an amount determined as follows:

- Subtract the "maximum fund reimbursement" amount from the contractor's "estimated default exposure" amount.
- Divide the result by the contractor's "estimated default exposure" amount.
- Multiply the result by the contractor's annual fund assessment. The resulting amount is the assessment *reduction*.

Disclosures to Producers

Under current rules, a contractor must provide an annual written "notice to producers." The notice must disclose whether the contractor participates in the fund, or has filed security with DATCP, to secure the contractor's payment obligations to producers. The notice may take different forms, depending on the basis on which the contractor is licensed by DATCP. Current rules spell out the type of notice that each contractor must give, and exact wording that the notice must include.

2003 Wis. Act 38 modified fund assessments and security filing requirements for some contractors. This rule modifies current disclosure requirements for some contractors, so that the disclosures accurately reflect current law.

Electronic Receipts for Grain

Chapter 126, Stats. requires grain dealers and grain warehouse keepers to provide written receipts for grain received from producers and depositors. This rule authorizes grain dealers and warehouse keepers to provide those receipts in electronic form, provided that the producer or depositor can readily retrieve, view, store and print the receipt for future reference.

Federal and Surrounding State Regulations

Wisconsin's Security Program

Wisconsin has an agricultural producer security program for grain, milk and vegetables. The Wisconsin legislature has spelled out detailed statutory requirements for grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (ch. 126, Stats.). Contractors must be licensed by DATCP, and most contractors must contribute to an agricultural producer security fund administered by DATCP. A few contractors must also file security with DATCP.

DATCP cannot alter current statutory requirements, but can interpret and implement those requirements by rule. This rule makes limited changes to current rules. This rule will benefit contractors by authorizing assessment refunds and assessment reductions in certain situations. It will also benefit grain contractors (dealers and warehouse keepers) by authorizing them to use electronic grain receipts. This rule also modifies milk, grain and vegetable contractor disclosure requirements to implement recent statutory changes.

Federal Programs

There are no federal producer security programs related to milk. The United States department of agriculture (USDA) administers a producer security program for federally licensed *grain warehouses* that store grain for producers. 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 currently 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 proposes to regulate grain *dealer* activities of federally licensed warehouses, to the exclusion of state regulation. But USDA has not yet finalized its 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.

There is a federal security program for unprocessed vegetables sold in interstate commerce and potatoes sold in either interstate or intrastate commerce. This security program 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).

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.

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*.

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.

Business Impact Analysis

This rule will have a minimal impact on regulated businesses. The Wisconsin legislature has spelled out detailed statutory requirements for grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (ch. 126, Stats.). DATCP has limited authority to change these requirements by rule.

This rule will make minor changes to current rules. This rule will have a positive impact on some businesses, by authorizing assessment refunds, assessment reductions and electronic receipts. This rule updates current disclosure requirements (per recent law changes), but the updated disclosure requirements will have a minimal impact on regulated businesses.

This rule does not impose any new regulatory requirements. This rule does not add business costs, and will reduce costs for some businesses. This rule will have little, if any, impact on small business.

1 **SECTION 1.** ATCP 99.13 is created to read:

2 **ATCP 99.13 Fund assessment temporarily affected by merger or acquisition;**

3 **partial refund. (1) PARTIAL REFUND OF ASSESSMENT.** The department may ~~may~~ refund part of
4 an annual fund assessment paid by a contributing grain dealer under s. 126.15, Stats., if all of the
5 following apply:

6 (a) The grain dealer paid the full amount of the assessment, ~~when due~~ including any late
7 payment penalties that apply under s. 126.15(7)(d), Stats.

8 (b) The grain dealer is the surviving entity in a merger under s. ~~Ss.~~ 179.77, 180.1101,
9 183.1201 or 185.61, Stats., or has acquired property pursuant to a sale of assets under s.
10 180.1202, Stats.

11 (c) The assessment was based on the grain dealer's financial statement for the fiscal year
12 in which the merger or acquisition under par. (b) took effect.

13 (d) The grain dealer's financial statement, for the fiscal year in which the merger or
14 acquisition under par. (b) took effect, caused the sum of the grain dealer's current ratio
15 assessment rate under s. 126.15(2), Stats., and debt to equity ratio assessment rate under s.
16 126.15(4), Stats., to increase by at least ~~200%~~ 100% compared to the preceding license year.

17 (e) The grain dealer's annual financial statements, for the fiscal years immediately
18 preceding and immediately following the fiscal year in which the merger or acquisition under
19 par. (b) took effect, show positive equity, a current ratio of at least 1.25 to 1.00 and a debt to
20 equity ratio of no more than 3.0 to 1.0.

1 (f) In the license year immediately following the license year for which the grain dealer
2 paid the assessment, the sum of the grain dealer's current ratio assessment rate under s.
3 126.15(2), Stats., and debt to equity assessment rate under s. 126.15(4), Stats., declines by at
4 least 50% compared to the license year for which the grain dealer paid the assessment.

5 (g) The grain dealer requests the refund in writing, by September 1 of the grain dealer's
6 next license year.

7 (2) REFUND AMOUNT. The amount of the refund under sub. (1) shall equal 75% of the
8 difference between the assessment amount paid by the grain dealer and the assessment amount
9 required of the grain dealer in the next license year.

10 (3) REFUND PAID AS CREDIT AGAINST NEXT YEAR'S ASSESSMENT. (a) The department
11 shall pay the refund under sub. (1) as a credit against the grain dealer's assessment for the next
12 license year. The department shall apportion the credit, pro rata, against the quarterly assessment
13 installments required of the grain dealer under s. 126.15(7), Stats., in that next license year. If
14 the credit exceeds the total assessment required of the grain dealer in that next license year, the
15 department shall credit the balance in the same fashion against assessments required of the grain
16 dealer in subsequent consecutive license years, except that the department may not grant a credit
17 in more than 4 subsequent license years.

18 (b) The department may not pay any refund under sub. (1), except in the manner
19 prescribed in par. (a). The department may not pay the refund to any person other than the grain
20 dealer who paid the original assessment on which the refund is given.

21 **SECTION 2.** ATCP 99.135 is created to read:

22 **ATCP 99.135 Reduced fund assessment for contributing grain dealers who also**
23 **maintain security. (1) DEFINITIONS.** In this section:

1 (a) “Contingent financial backing amount” means the amount of contingent financial
2 backing, if any, which the department holds under s. 126.06, Stats.

3 (b) “Deductible amount” is the amount specified in s. 126.72(3), Stats.

4 (c) “Estimated default exposure” has the meaning given in s. 126.16(1)(c)1., Stats.

5 (d) “Maximum fund reimbursement” means the deductible amount plus the contingent
6 financial backing amount.

7 (2) REDUCED ASSESSMENT. ~~If~~ a contributing grain dealer maintains security under
8 s. 126.16(2), Stats., that is at least equal to the amount required under s. 126.16(3), Stats., less the
9 deductible amount, the contributing grain dealer’s annual fund assessment under s. 126.15,
10 Stats., is reduced by an amount that is determined as follows:

11 (a) Subtract the maximum fund reimbursement from the grain dealer’s estimated default
12 exposure.

13 (b) Divide the result in par. (a) by the grain dealer’s estimated default exposure.

14 (c) Multiply the result in par. (b) by the amount of the grain dealer’s annual fund
15 assessment under s. 126.15(1), Stats., disregarding any assessment reduction under s.
16 126.15(6m), Stats.

17 (d) Subtract, from the result in par. (c), the amount of any assessment reduction given
18 under s. ~~the following:~~

19 ~~(a) The assessment amount paid by the grain dealer.~~

20 126.15(6m), Stats.

21 SECTION 3. ATCP 99.14(2)(d) is created to read:

- Our highest total unpaid obligations, at any time during the past 12 months, under deferred payment contracts.

The security is in the following form(s): [Specify forms of security].

SECTION 4. ATCP 99.16 is created to read:

ATCP 99.16 Grain dealers; receipts for grain. A grain purchase receipt required under s. 126.18, Stats., shall be one of the following:

(1) Legibly printed on a paper or other tangible non-electronic medium that is delivered to the producer.

(2) Delivered to the producer in a legible electronic form that the producer can readily retrieve, view, store, and print on paper for future reference.

SECTION 52. ATCP 99.25 is created to read:

ATCP 99.25 Fund assessment temporarily affected by merger or acquisition; partial refund. (1) PARTIAL REFUND OF ASSESSMENT. The department ~~may~~ may refund part of an annual fund assessment paid by a contributing grain warehouse keeper under s. 126.30, Stats., if all of the following apply:

(a) The grain warehouse keeper paid the full amount of the assessment, ~~when due~~ including any late payment penalties that apply under s. 126.30(6)(d), Stats.

(b) The grain warehouse keeper is the surviving entity in a merger under s. 179.77, 180.1101, 183.1201 or 185.61, Stats., or has acquired property pursuant to a sale of assets under s. 180.1202, Stats.

(c) The assessment was based on the grain warehouse keeper's financial statement for the fiscal year in which the merger or acquisition under par. (b) took effect.

(d) The grain warehouse keeper's financial statement, for the fiscal year in which the merger or acquisition under par. (b) took effect, caused the sum of the grain warehouse keeper's

1 current ratio assessment rate under s. 126.30(2), Stats., and debt to equity ratio assessment rate
2 under s. 126.30(4), Stats., to increase by at least ~~200~~100% compared to the preceding license
3 year.

4 (e) The grain warehouse keeper's annual financial statements, for the fiscal years
5 immediately preceding and immediately following the fiscal year in which the merger or
6 acquisition under par. (b) took effect, show positive equity, a current ratio of at least 1.25 to 1.00
7 and a debt to equity ratio of no more than 3.0 to 1.0.

8 (f) In the license year immediately following the license year for which the grain
9 warehouse keeper paid the assessment, the sum of the grain warehouse keeper's current ratio
10 assessment rate under s. 126.30(2), Stats., and debt to equity assessment rate under s. 126.30(4),
11 Stats., declines by at least 50% compared to the license year for which the grain warehouse
12 keeper paid the assessment.

13 (g) The grain warehouse keeper requests the refund in writing, by September 1 of the
14 grain warehouse keeper's next license year.

15 **(2) REFUND AMOUNT.** The amount of the refund under sub. (1) shall equal 75% of the
16 difference between the assessment amount paid by the grain warehouse keeper and the
17 assessment amount required of the grain warehouse keeper in the next license year.

18 **(3) REFUND PAID AS CREDIT AGAINST NEXT YEAR'S ASSESSMENT.** (a) The department
19 shall pay the refund under sub. (1) as a credit against the grain warehouse keeper's assessment
20 for the next license year. The department shall apportion the credit, pro rata, against the
21 quarterly assessment installments required of the grain warehouse keeper under s. 126.30(6),
22 Stats., in that next license year. If the credit exceeds the total assessment required of the grain
23 warehouse keeper in that next license year, the department shall credit the balance in the same

1 fashion against assessments required of the grain warehouse keeper in subsequent consecutive
2 license years, except that the department may not grant a credit in more than 4 subsequent
3 license years.

4 (b) The department may not pay any refund under sub. (1), except in the manner
5 prescribed in par. (a). The department may not pay the refund to any person other than the grain
6 warehouse keeper who paid the original assessment on which the refund is given.

7 **SECTION 6.** ATCP 99.255 is created to read:

8 **ATCP 99.255 Reduced fund assessment for contributing grain warehouse keepers**
9 **who also maintain security. (1) DEFINITIONS.** In this section:

10 (a) “Contingent financial backing amount” means the amount of contingent financial
11 backing, if any, which the department holds under s. 126.06, Stats.

12 (b) “Deductible amount” is the amount specified in s. 126.72(3), Stats.

13 (c) “Estimated default exposure” has the meaning given in s. 126.31(1)(b)1., Stats.

14 (d) “Maximum fund reimbursement” means the deductible amount plus the contingent
15 financial backing amount.

16 (2) **REDUCED ASSESSMENT.** If a contributing grain warehouse keeper maintains security
17 under s. 126.31(2), Stats., in an amount that is at least equal to the amount required under s.
18 126.31(3), Stats., less the deductible amount, the grain warehouse keeper’s annual fund
19 assessment under s. 126.30, Stats., is reduced by an amount that is determined as follows:

20 (a) Subtract the maximum fund reimbursement from the grain warehouse keeper’s
21 estimated default exposure.

22 (b) Divide the result in par. (a) by the grain warehouse keeper’s estimated default
23 exposure.

1 (c) Multiply the result in par. (b) by the amount of the grain warehouse keeper's annual
2 fund assessment under s. 126.30(1), Stats., disregarding any assessment reduction under s.
3 126.30(5m), Stats.

4 (d) Subtract, from the result in par. (c), the amount of any assessment reduction given
5 under s. ~~the following:~~

6 ~~(a) The assessment amount paid by the grain dealer.~~

7 126.30(5m), Stats.

8 SECTION 7. ATCP 99.26(2)(b) is repealed and recreated to read:

9 ATCP 99.26(2)(b) The following statement if the grain warehouse keeper is not a
10 contributing grain warehouse keeper and is required to file security under s. 126.31(1)(a), Stats.:

11 **IMPORTANT NOTICE**

12 *[Name of grain warehouse keeper] does not contribute to Wisconsin's Agricultural*
13 *Producer Security Fund. We have filed security with the State of Wisconsin to*
14 *cover part, but not all, of our grain storage obligations. The security is at least*
15 *equal to 20% of the current local market value of grain stored in our Wisconsin*
16 *warehouse(s). The security is in the following form(s): [Specify forms of security].*

17
18 SECTION 8. ATCP 99.26(2)(c) is created to read:

19 ATCP 99.26(2)(c) One of the following statements if the grain warehouse keeper is a
20 contributing grain warehouse keeper and is required to file security under s. 126.31(1)(b), Stats.,

21 but is not required to file security under s. 126.31(1)(a), Stats.:

22 1. The following statement if the grain warehouse keeper makes the disclosure before
23 September 1, 2005:

24 **IMPORTANT NOTICE**

25 *[Name of grain warehouse keeper] contributes to Wisconsin's Agricultural Producer*
26 *Security Fund. This fund helps secure producer grain stored in warehouses*
27 *operated by contributing grain warehouse keepers. If a contributing grain*
28 *warehouse keeper fails to return producer grain on demand, the fund may*

1 reimburse the producer (or producer agent) for up to \$100,000 worth of grain. We
2 have also filed security with the State of Wisconsin to help secure part of our grain
3 storage obligations. The security is at least equal to the difference between
4 \$19,000,000 and 20% of the current local market value of grain stored in our
5 Wisconsin warehouse(s). The security is in the following form(s): [Specify forms of
6 security].

7
8 2. The following statement if the grain warehouse keeper makes the disclosure on or
9 after September 1, 2005:

10 **IMPORTANT NOTICE**

11 [Name of grain warehouse keeper] contributes to Wisconsin’s Agricultural Producer
12 Security Fund. This fund helps secure producer grain stored in warehouses
13 operated by contributing grain warehouse keepers. If a contributing grain
14 warehouse keeper fails to return producer grain on demand, the fund may
15 reimburse the producer (or producer agent) for up to \$100,000 worth of grain. We
16 have also filed security with the State of Wisconsin to help secure part of our grain
17 storage obligations. The security is at least equal to the difference between
18 \$20,000,000 and 20% of the current local market value of grain stored in our
19 Wisconsin warehouse(s). The security is in the following form(s): [Specify forms of
20 security].

21 SECTION 9. ATCP 99.28 is created to read:

22
23 ATCP 99.28 Grain storage receipts. A warehouse receipt or grain storage receipt
24 required under s. 126.33, Stats., shall be one of the following:

25 (1) Legibly printed on a paper or other tangible non-electronic medium that is delivered
26 to the depositor.

27 (2) Delivered to the depositor in a legible electronic form that the depositor can readily
28 retrieve, view, store, and print on paper for future reference.

29 SECTION 103. ATCP 100.13 is created to read:

30 **ATCP 100.13 Fund assessment temporarily affected by merger or acquisition;**
31 **partial refund. (1) PARTIAL REFUND OF ASSESSMENT.** The department ~~may~~ may refund part of

1 an annual fund assessment paid by a contributing milk contractor under s. 126.46, Stats., if all of
2 the following apply:

3 (a) The milk contractor paid the full amount of the assessment, ~~when due~~including any
4 late payment penalties that apply under s. 126.46(6)(e).

5 (b) The milk contractor is the surviving entity in a merger under s. 179.77, 180.1101,
6 183.1201 or 185.61, Stats., or has acquired property pursuant to a sale of assets under s.
7 180.1202, Stats.

8 (c) The assessment was based on the milk contractor's financial statement for the fiscal
9 year in which the merger or acquisition under par. (b) took effect.

10 (d) The milk contractor's financial statement, for the fiscal year in which the merger or
11 acquisition under par. (b) took effect, caused the sum of the milk contractor's current ratio
12 assessment rate under s. 126.46(2), Stats., and debt to equity ratio assessment rate under s.
13 126.46(4), Stats., to increase by at least ~~200%~~100% compared to the preceding license year.

14 (e) The milk contractor's annual financial statements, for the fiscal years immediately
15 preceding and immediately following the fiscal year in which the merger or acquisition under
16 par. (b) took effect, show positive equity, a current ratio of at least 1.25 to 1.00 and a debt to
17 equity ratio of no more than 3.0 to 1.0.

18 (f) In the license year immediately following the license year for which the milk
19 contractor paid the assessment, the sum of the milk contractor's current ratio assessment rate
20 under s. 126.46(2), Stats., and debt to equity assessment rate under s. 126.46(4), Stats., declines
21 by at least 50% compared to the license year for which the milk contractor paid the assessment.

22 (g) The milk contractor requests the refund in writing, by May 1 of the milk contractor's
23 next license year.

1 (2) REFUND AMOUNT. The amount of the refund under sub. (1) shall equal 75% of the
2 difference between the assessment amount paid by the milk contractor and the assessment
3 amount required of the milk contractor in the next license year.~~the difference between the~~
4 ~~following:~~

5 ~~(a) The assessment amount paid by the milk contractor.~~

6 ~~(b) The average of the assessment amount paid by the milk contractor and the~~
7 ~~assessment amount required of the milk contractor in the next license year.~~

8 (3) REFUND PAID AS CREDIT AGAINST NEXT YEAR'S ASSESSMENT. (a) The department
9 shall pay the refund under sub. (1) as a credit against the milk contractor's assessment for the
10 next license year. The department shall apportion the credit, pro rata, against the quarterly
11 assessment installments required of the milk contractor under s. 126.46(6), Stats., in that next
12 license year. If the credit exceeds the total assessment required of the milk contractor in that
13 next license year, the department shall credit the balance in the same fashion against assessments
14 required of the milk contractor in subsequent consecutive license years, except that the
15 department may not grant a credit in more than 4 subsequent license years.

16 (b) The department may not pay any refund under sub. (1), except in the manner
17 prescribed in par. (a). The department may not pay the refund to any person other than the milk
18 contractor who paid the original assessment on which the refund is given.

19 **SECTION 11.** ATCP 100.135 is created to read:

20 **ATCP 100.135 Reduced fund assessment for contributing milk contractors who**
21 **also maintain security.** (1) DEFINITIONS. In this section:

22 (a) "Contingent financial backing amount" means the amount of contingent financial
23 backing, if any, which the department holds under s. 126.06, Stats..

1 (b) “Deductible amount” is the amount specified in s. 126.72(3), Stats.

2 (c) “Estimated default exposure” has the meaning given in s. 126.47(1)(b)1., Stats.

3 (d) “Maximum fund reimbursement” means the deductible amount plus the contingent
4 financial backing amount.

5 (2) REDUCED ASSESSMENT. (a) ~~may~~ If a contributing milk contractor maintains security
6 under s. 126.47(2), Stats., in an amount that is at least equal to the amount required under s.
7 126.47(3), Stats., less the deductible amount, the contractor’s annual fund assessment under s.
8 126.46, Stats., is reduced by an amount that is determined as follows:

9 (a) Subtract the maximum fund reimbursement from the milk contractor’s estimated
10 default exposure.

11 (b) Divide the result in par. (a) by the milk contractor’s estimated default exposure.

12 (c) Multiply the result in par. (b) by the amount of the milk contractor’s annual fund
13 assessment under s. 126.46(1), Stats., disregarding any assessment reduction under s.
14 126.46(5m), Stats.

15 (d) Subtract, from the result in par. (c), the amount of any assessment reduction given
16 under s. ~~the following:~~

17 ~~(a) The assessment amount paid by the grain dealer.~~

18 126.46(5m), Stats.

19 **SECTION 12.** ATCP 100.20(2)(e)1. and 2. are repealed.

20 **SECTION 13.** ATCP 100.20(2)(e)3. to 5. are renumbered to 1. to 3.

21 **SECTION 14.** ATCP 100.20(2)(g) is created to read:

1 ATCP 100.20(2)(g) One of the following statements if the milk contractor is a
2 contributing milk contractor and is required to file security under s. 126.47(1)(b), Stats., but is
3 not required to file security under s. 126.47(1)(a), Stats:

4 1. The following statement if the milk contractor makes the disclosure before May 1,
5 2005:

6 **IMPORTANT NOTICE**

7 *[Name of milk contractor]* contributes to Wisconsin's Agricultural Producer Security
8 Fund. This fund helps ensure that milk producers and producer agents will be paid
9 for the milk they ship to contributing contractors. If a contributing milk contractor
10 fails to pay a producer or producer agent, the fund may pay up to 80% of the first
11 \$60,000 of the producer's allowed claim, and up to 75% of any additional allowed
12 unpaid milk payroll claim. We have also filed security with the State of Wisconsin
13 to help secure milk payroll obligations to producers and producer agents. The
14 security is at least equal to the difference between \$19,000,000 and 75% of the
15 largest amount that we owed producers and producer agents at any time since the
16 beginning of our last completed fiscal year. The security is in the following form(s):
17 *[Specify forms of security].*

18
19 2. The following statement if the milk contractor makes the disclosure on or after May 1,
20 2005:

21 **IMPORTANT NOTICE**

22 *[Name of milk contractor]* contributes to Wisconsin's Agricultural Producer
23 Security Fund. This fund helps ensure that milk producers and producer agents
24 will be paid for the milk they ship to contributing contractors. If a contributing
25 milk contractor fails to pay a producer or producer agent, the fund may pay up to
26 80% of the first \$60,000 of the producer's allowed claim, and up to 75% of any
27 additional allowed unpaid milk payroll claim. We have also filed security with the
28 State of Wisconsin to help secure milk payroll obligations to producers and
29 producer agents. The security is at least equal to the difference between \$20,000,000
30 and 75% of the largest amount that we owed producers and producer agents at any
31 time during our last completed fiscal year. The security is in the following form(s):
32 *[Specify forms of security].*

33
34 **SECTION 154.** ATCP 101.25 is created to read:

1 **ATCP 101.25 Fund assessment temporarily affected by merger or acquisition;**

2 **partial refund. (1) PARTIAL REFUND OF ASSESSMENT.** The department ~~may~~ may refund part of
3 an annual fund assessment paid by a contributing vegetable contractor under s. 126.60, Stats., if
4 all of the following apply:

5 (a) The contractor paid the full amount of the assessment, ~~when due~~including any late
6 payment penalties that apply under s. 126.60(6)(d), Stats.-

7 (b) The contractor is the surviving entity in a merger under s. 179.77, 180.1101,
8 183.1201 or 185.61, Stats., or has acquired property pursuant to a sale of assets under s.
9 180.1202, Stats.

10 (c) The assessment was based on the contractor's financial statement for the fiscal year in
11 which the merger or acquisition under par. (b) took effect.

12 (d) The contractor's financial statement, for the fiscal year in which the merger or
13 acquisition under par. (b) took effect, caused the sum of the contractor's current ratio assessment
14 rate under s. 126.60(2), Stats., and debt to equity ratio assessment rate under s. 126.60(4), Stats.,
15 to increase by at least ~~200%~~100% compared to the preceding license year.

16 (e) The contractor's annual financial statements, for the fiscal years immediately
17 preceding and immediately following the fiscal year in which the merger or acquisition under
18 par. (b) took effect, show positive equity, a current ratio of at least 1.25 to 1.00 and a debt to
19 equity ratio of no more than 3.0 to 1.0.

20 (f) In the license year immediately following the license year for which the contractor
21 paid the assessment, the sum of the contractor's current ratio assessment rate under s. 126.60(2),
22 Stats., and debt to equity assessment rate under s. 126.60(4), Stats., declines by at least 50%
23 compared to the license year for which the contractor paid the assessment.

1 (g) The contractor requests the refund in writing, by February 1 of the contractor's next
2 license year.

3 (2) REFUND AMOUNT. The amount of the refund under sub. (1) shall equal 75% of the
4 difference between the assessment amount paid by the vegetable contractor and the assessment
5 amount required of the vegetable contractor in the next license year.~~the difference between the~~
6 ~~following:~~

7 ~~(a) The assessment amount paid by the contractor.~~

8 ~~(b) The average of the assessment amount paid by the contractor and the assessment~~
9 ~~amount required of the contractor in the next license year.~~

10 (3) REFUND PAID AS CREDIT AGAINST NEXT YEAR'S ASSESSMENT. (a) The department
11 shall pay the refund under sub. (1) as a credit against the contractor's assessment for the next
12 license year. The department shall apportion the credit, pro rata, against the quarterly assessment
13 installments required of the contractor under s. 126.60(6), Stats., in that next license year. If the
14 credit exceeds the total assessment required of the contractor in that next license year, the
15 department shall credit the balance in the same fashion against assessments required of the
16 contractor in subsequent consecutive license years, except that the department may not grant a
17 credit in more than 4 subsequent license years.

18 (b) The department may not pay any refund under sub. (1), except in the manner
19 prescribed in par. (a). The department may not pay the refund to any person other than the
20 contractor who paid the original assessment on which the refund is given.

21 **SECTION 16.** ATCP 101.255 is created to read:

22 **ATCP 101.255 Reduced fund assessment for contributing vegetable contractors**
23 **who also maintain security. (1) DEFINITIONS.** In this section:

1 (a) “Contingent financial backing amount” means the amount of contingent financial
2 backing, if any, which the department holds under s. 126.06, Stats.

3 (b) “Deductible amount” is the amount specified in s. 126.72(3), Stats.

4 (c) “Estimated default exposure” has the meaning given in s. 126.61(1)(bm)1., Stats.

5 (d) “Maximum fund reimbursement” means the deductible amount plus the contingent
6 financial backing amount.

7 (2) REDUCED ASSESSMENT. ~~may~~ If a contributing vegetable contractor maintains security
8 under s. 126.61(2), Stats., in an amount that is at least equal to the amount required under s.
9 126.61(3), Stats., less the deductible amount, the vegetable contractor’s annual fund assessment
10 under s. 126.60, Stats., is reduced by an amount that is determined as follows:

11 (a) Subtract the maximum fund reimbursement from the vegetable contractor’s estimated
12 default exposure.

13 (b) Divide the result in par. (a) by the vegetable contractor’s estimated default exposure.

14 (c) Multiply the result in par. (b) by the amount of the vegetable contractor’s annual fund
15 assessment under s. 126.60(1), Stats., disregarding any assessment reduction under s.
16 126.60(5m), Stats.

17 (d) Subtract, from the result in par. (c), the amount of any assessment reduction given
18 under s. ~~the following:~~

19 ~~(a) The assessment amount paid by the grain dealer.~~

20 126.60(5m), Stats.

21 **SECTION 17.** ATCP 101.26(2)(a)(intro.) is amended to read:

22 ATCP 101.26(2)(a)(intro.) The following statement if the vegetable contractor is a
23 contributing vegetable contractor who is not required to make a disclosure under par. (d) or (e):

1 SECTION 18. ATCP 101.26(2)(b)(intro.) is amended to read:

2 ATCP 101.26(2)(b)(intro.) The following statement if the vegetable contractor has filed
3 security under s. 126.61, Stats., and is not a contributing vegetable contractor:

4 SECTION 19. ATCP 101.26(2)(d) and (e) are created to read:

5 ATCP 101.26(2)(d) The following statement if the vegetable contractor is a contributing
6 vegetable contractor and is required to file security under s. 126.61(1)(b), Stats., but is not
7 required to file security under s. 126.61(1)(a) or (bm), Stats:

8 **IMPORTANT NOTICE**

9 [Name of vegetable contractor] contributes to Wisconsin's Agricultural Producer
10 Security Fund. This fund helps ensure that vegetable producers and producer
11 agents will be paid for processing vegetables grown under vegetable procurement
12 contracts. If a contributing vegetable contractor fails to pay a producer or
13 producer agent, the fund may pay up to 90% of the first \$40,000 of the producer's
14 allowed claim, 85% of the producer's next \$40,000 allowed claim, 80% of the
15 producer's next \$40,000 allowed claim, and 75% of any allowed claim in excess of
16 \$120,000. We have also filed security with the State of Wisconsin to help secure
17 vegetable payments to producers. The security is at least equal to the unpaid
18 deferred contract obligations that we had, at the time of application for our
19 vegetable contractor license or any time since the most recent application filed. The
20 security is in the following form(s): [Specify forms of security].

21
22 (e) One of the following statements if the vegetable contractor is a contributing
23 vegetable contractor and is required to file security under s. 126.61(1)(bm), Stats., but is not
24 required to file security under s. 126.61(1)(a), Stats:

25 1. The following statement if the vegetable contractor makes the disclosure before
26 February 1, 2005:

27 **IMPORTANT NOTICE**

28 [Name of vegetable contractor] contributes to Wisconsin's Agricultural Producer
29 Security Fund. This fund helps ensure that vegetable producers and producer
30 agents will be paid for processing vegetables grown under vegetable procurement
31 contracts. If a contributing vegetable contractor fails to pay a producer or
32 producer agent, the fund may pay up to 90% of the first \$40,000 of the producer's

1 allowed claim, 85% of the producer's next \$40,000 allowed claim, 80% of the
2 producer's next \$40,000 allowed claim, and 75% of any allowed claim in excess of
3 \$120,000. We have also filed security with the State of Wisconsin to help secure
4 vegetable payments to producers. The security is at least equal to the difference
5 between \$19,000,000 and the sum of the following:

- 6
- 7 • 75% of the largest amount that we owed producers and producer agents at any
8 time during our last completed fiscal year.
- 9
- 10 • The largest amount of unpaid deferred contract obligations that we have had at
11 any time since our most recent annual license application.
- 12

13 The security is in the following form(s): [Specify forms of security].

14

15 2. The following statement if the vegetable contractor makes the disclosure on or after

16 February 1, 2005:

17 **IMPORTANT NOTICE**

18 [Name of vegetable contractor] contributes to Wisconsin's Agricultural Producer
19 Security Fund. This fund helps ensure that vegetable producers and producer
20 agents will be paid for processing vegetables grown under vegetable procurement
21 contracts. If a contributing vegetable contractor fails to pay a producer or
22 producer agent, the fund may pay up to 90% of the first \$40,000 of the producer's
23 allowed claim, 85% of the producer's next \$40,000 allowed claim, 80% of the
24 producer's next \$40,000 allowed claim, and 75% of any allowed claim in excess of
25 \$120,000. We have also filed security with the State of Wisconsin to help secure
26 vegetable payments to producers. The security is at least equal to the difference
27 between \$20,000,000 and the sum of the following:

- 28
- 29 • 75% of the largest amount that we owed producers and producer agents at any
30 time during our last completed fiscal year.
- 31
- 32 • The largest amount of unpaid deferred contract obligations that we have had at
33 any time since our most recent annual license application.
- 34

35 The security is in the following form(s): [Specify forms of security].

36

37 **EFFECTIVE DATE:** This rule takes effect on the first day of the month following

38 publication in the Wisconsin administrative register, as provided in s. 227.22(2)(intro.), Stats.

Dated this _____ day of _____, _____.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
Rodney J. Nilsestuen, Secretary