

STATE OF WISCONSIN)
) ss.
DEPARTMENT OF AGRICULTURE,)
TRADE AND CONSUMER PROTECTION)

Clearinghouse Rule
No. 93-85

CERTIFICATION

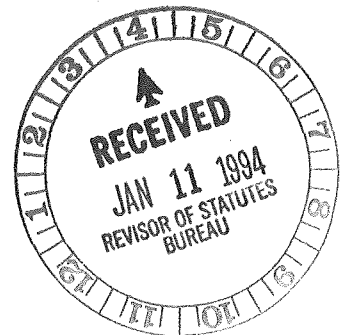
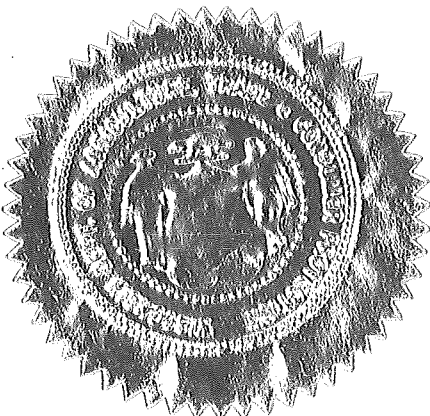
I, Alan T. Tracy, Secretary of the State of Wisconsin Department of Agriculture, Trade and Consumer Protection, and custodian of the department's official records, hereby certify that the attached rulemaking order relating to security of dairy plant payments to milk producers was signed and adopted by the Department on January 11, 1994.

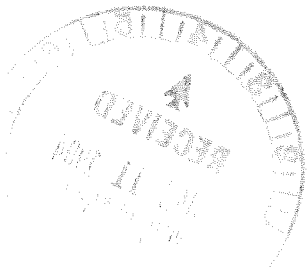
I further certify that I have compared the attached copy to the original on file in the department, and that the attached copy is a complete and accurate copy of the original.

Signed and sealed this 11th day of January, 1994.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND
CONSUMER PROTECTION

Egabek Kohle
By Deputy Secretary
Alan T. Tracy, Secretary





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

The state of Wisconsin department of agriculture, trade and consumer protection adopts the following order to repeal ATCP 100.45(5); to renumber and amend ATCP 100.06 and 100.45(3); to amend ATCP 100.01(20)(b), 100.45(2), 100.45(6)(a)1 and 2, 100.45(7)(intro.), 100.55(title), 100.88(4)(b) and 100.93(1); to repeal and recreate ATCP 100.01 (19)(c); and to create ATCP 100.01(18d), 100.01(19m), 100.06(2), 100.25(2)(d), 100.45(3), 100.45(6)(d), 100.56 and 100.57; relating to security of dairy plant payments to milk producers.

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

Statutory authority: s. 93.07(1), Stats.
Statutes interpreted: s. 100.06, Stats.

Background

This rule amends current rules related to the security of dairy plant payments to milk producers (ch. ATCP 100, Wis. Adm. Code). Under current rules, if a dairy plant operator fails to meet minimum financial standards specified under s. 100.06, Stats., the dairy plant operator must file security with the department. The department holds the security for the benefit of producers in the event that the dairy plant operator defaults on payments to producers.

Under current rules, security may be filed in the form of a commercial surety bond; cash, certificates of deposit or money market certificates; stocks, bonds or other marketable securities; irrevocable bank letters of credit; or life insurance policies at cash surrender value.

As an alternative to filing security, a dairy plant operator may enter into a dairy plant trusteeship. Under a dairy plant trusteeship, an independent trustee administers dairy plant

receipts for the benefit of producers. Funds received by a trustee are held in a trust account pending disbursement by the trustee. The trustee is required to file a performance bond to secure the trustee's faithful performance of the trustee's obligations.

Under current rules, certain types of security filed with the department can expire or be canceled before the dairy plan operator files replacement security with the department. The resulting gap in security coverage may leave producers vulnerable to serious losses. Also, under the current rules, the trust account under a dairy plant trusteeship may not be fully covered by FDIC deposit insurance.

Security Requirements

This rule continues to allow all current forms of security. However, this rule strengthens certain administrative requirements to provide more reliable financial protection for producers. Under this rule:

- Letters of credit, performance bonds and surety bonds must be continuous and noncancellable except upon 90 days advance written notice to the department.
- Security must be in a form that is acceptable to the department and readily convertible into cash. Security must comply with specified terms and conditions to ensure that the security is viable and readily convertible to cash.
- If a dairy plant is subject to a dairy plant trusteeship, the trust account must be properly designated to ensure that the account balance will be ensured by FDIC up to the maximum allowable amount for each account holder.
- The department may summarily prohibit a dairy plant operator from purchasing milk from producers if the dairy plant operator does not file replacement security before current security expires or is canceled. A summary order must be signed by the DATCP Secretary. A summary order does not necessarily prohibit a dairy plant operator from buying milk from sources other than producers (e.g., other dairy plants).

Year-End Financial Statement; Filing Deadline

Under current rules, a dairy plant operator must file a year-end financial statement with the department by the 15th day of the 4th month following the close of the operator's fiscal year. Under this rule, the department may extend the filing deadline by up to 30 days. To obtain an extension, the dairy plant operator

or the accountant who prepares the dairy plant operator's year-end financial statement must file a written request for extension at least 10 days before the filing deadline.

Milk Handlers

Under this rule, a "milk handler" who receives milk from producers, but who is not covered under the current dairy producer security law, must give producers semiannual notice of that fact. The form of the notice is specified in the rule. A "milk handler" includes a person who buys milk for resale to dairy plants. It also includes a person who processes producer milk into dairy products, and markets those dairy products for producers without taking title to the milk or dairy products.

Producer Agents

Under this rule, a "producer agent" is defined as a person who markets a producer's milk under a written contract with the producer, but who does not process or take title to that milk. Under the dairy plant security law, s. 100.06, Stats., a "producer agent" may file a claim and collect payment from a dairy plant on behalf of producers.

Under this rule, no person may claim to be a "producer agent," for purposes of s. 100.06, Stats., or ch. ATCP 100, unless that person has a written agency contract with the producer. The contract must be signed by the producer and the producer agent, and the producer must be given a copy of the signed contract. The contract must clearly specify all of the following:

- That the producer agent does not buy or process the producer's milk, but markets that milk on behalf of the producer according to the terms of the contract.
- That the producer agent may ship or direct the shipment of the producer's milk, according to the terms of the contract.
- That the producer agent may receive and collect the proceeds resulting from the sale of the producer's milk.
- That the producer agent will pay the producer the amount due the producer from sale of the producer's milk, according to the terms of the contract.

Under this rule, a producer agent must give producers a semiannual notice, in the form specified under this rule. The notice states that the agent may collect payments from dairy plant operators on behalf of producers under the dairy plant security law, just as if the producers had sold their milk directly to the dairy plant operator. But the notice also states

that the dairy plant security law does not secure the agent's payments to producers.

Under this rule, a producer agent who ships milk to a dairy plant operator must notify the dairy plant operator that the milk is producer milk subject to the dairy plant security law. The producer agent must also file monthly reports with the department specifying the amount and value of producer milk which the producer agent shipped to each dairy plant during the preceding month.

Dairy Plant Fees

Currently, dairy plant operators are required to pay a fee under s. 100.06(9), Stats., and s. ATPC 100.06, Wis. Adm. Code, to help finance the milk producer security program. The current fee is 0.1 cent per 100 lbs. of milk received by a dairy plant operator. This rule increases the fee to 0.15 cent per hundredweight for milk received on or after the first day of the month following the effective date of this rule. This rule clarifies that a dairy plant operator is required to pay fees only on milk purchased from producers, including milk purchased through producer agents.

SECTION 1. ATPC 100.01(18d) is created to read:

ATPC 100.01(18d) "Milk handler" means a person, other than a producer agent or a dairy plant operator who buys milk from producers, who does any of the following:

(a) Buys milk from producers, other than for personal or household consumption.

(b) Manufactures dairy products from milk owned by producers, and markets those dairy products without taking title to the milk or dairy products.

SECTION 2. ATPC 100.01(19)(c) is repealed and recreated to read:

(c) A producer agent.

SECTION 3. ATPC 100.01(19m) is created to read:

(19m) "Producer agent" means a person who markets milk on behalf of a producer and who qualifies as a producer agent under s. ATCP 100.57(1).

SECTION 4. ATCP 100.01(20)(b) is amended to read:

(b) A claim by a marketing producer agent on behalf of producers or their assignees, ~~if the marketing agent qualifies as a producer under sub. (18)(c).~~

SECTION 5. ATCP 100.06 is renumbered 100.06(1) and amended to read:

ATCP 100.06(1) Pursuant to s. 100.06(9), Stats., every dairy plant operator shall pay to the department a fee ~~of 0.1 cent for each 100 lbs. of milk received by the dairy plant operator~~ as provided under sub. (2) for milk purchased from producers, including milk purchased through producer agents. The dairy plant operator shall pay the fee on each month's milk deliveries on or before the 18th day of the following month. A dairy plant operator may not charge the fee under this section back to producers.

SECTION 6. ATCP 100.06(2) is created to read:

ATCP 100.06(2) A dairy plant operator shall pay the following fee under sub. (1) for each 100 lbs. of milk received by the dairy plant operator:

(a) For milk received before the first day of the month following the effective date of this subsection [revisor inserts date], 0.1 cent.

(b) For milk received on or after the 1st day of the month

following the effective date of this subsection [revisor inserts date], 0.15 cent.

SECTION 7. ATCP 100.25(2)(d) is created to read:

(d) The department may extend the date for filing an annual financial statement under par. (c) by up to 30 days. The department may only grant the extension in response to a written request by the dairy plant operator or the accountant that prepares the dairy plant operator's annual financial statement. The extension request shall be filed with the department at least 10 days before the deadline date specified in par. (c), and shall state the reason for the requested extension.

SECTION 8. ATCP 100.45(2) is amended to read:

ATCP 100.45(2)(title) APPROVED SECURITY. Security filed with the department under this section is subject to approval by the department. ~~Approved security shall be in one or more of the following~~ The department may approve only the following types of security:

(a) ~~A commercial surety bond payable to the department and issued by an insurer authorized to operate a surety business in this state~~ that complies with sub. (3)(a).

(b) Cash, or certificates of deposit or money market certificates that comply with sub. (3)(b).

(c) Stocks, bonds or other marketable securities ~~at current market value~~ that comply with sub. (3)(c).

(d) Irrevocable bank letters of credit that comply with sub. (3)(d).

(e) Life insurance policies ~~at cash surrender value~~ that comply with sub. (3)(e).

SECTION 9. ATCP 100.45(3) is renumbered (4) and amended to read:

ATCP 100.45(4) DEPARTMENT CUSTODY OF SECURITY. The department or department's agent shall hold under its custody any security filed under ~~sub. (2)~~ this section. Security shall be ~~payable to and held for the benefit of producers if the dairy plant operator defaults on the operator's liability to producers~~ and may be used under s. ATCP 100.65 to pay producer claims allowed under s. ATCP 100.60.

SECTION 10. ATCP 100.45(3) is created to read:

ATCP 100.45(3) FORM OF SECURITY; REQUIRED TERMS AND CONDITIONS. (a) Commercial surety bonds. A commercial surety bond filed as security with the department shall be all the following:

1. Made payable to the department for the benefit of producers selling milk to the dairy plant operator.
2. Issued by an insurer authorized to operate a surety business in this state.
3. Issued as a continuous term bond subject to cancellation only upon written agreement by the department, or upon written notice to the department received at least 90 days prior to the date of cancellation. Notice of cancellation shall be served on the department in person or by certified mail.
4. Issued in a form, and subject to any terms and

conditions, that the department considers necessary or appropriate.

(b) Certificates of deposit or money market certificates.

A certificate of deposit or money market certificate filed as security with the department shall be all of the following:

1. Issued or endorsed to the department, for the benefit of producers selling milk to the dairy plant operator, so that the certificate cannot be canceled or redeemed without the department's written authorization, and so that the funds represented by the certificate cannot be transferred or withdrawn without the department's written authorization.

2. Issued for a period of at least one year.

3. Subject to automatic renewal without any action by the department.

4. Issued in a form, and subject to any terms and conditions, that the department considers necessary and appropriate.

(c) Stocks, bonds or other marketable securities. A stock, bond, or other marketable security filed as security with the department shall be all of the following:

1. Issued or endorsed to the department for the benefit of producers selling milk to the dairy plant operator.

2. Valued for security purposes at current market value.

3. Readily convertible by the department into cash.

4. Subject to sale or redemption only with the department's written agreement.

5. Held by the department subject to any terms and conditions that the department considers necessary or appropriate.

(d) Irrevocable bank letters of credit. An irrevocable bank letter of credit filed as security with the department shall be all of the following:

1. Payable to the department for the benefit of producers selling milk to a dairy plant operator.

2. Issued on bank letterhead.

3. Issued for an initial period of one year.

4. Issued in a form that provides for automatic annual renewal unless, at least 90 days before the scheduled renewal date, the issuing bank gives the department written notice that the letter of credit will not be renewed. Written notice shall be served on the department in person or by certified mail.

5. Issued in a form, and subject to any terms and conditions, that the department considers necessary or appropriate.

(e) Life insurance policies. A life insurance policy filed as security with the department shall be all of the following:

1. Issued or endorsed to the department, for the benefit of producers selling milk to the dairy plant operator, so that if the policy is canceled or surrendered the cash surrender value of the policy is paid to the department.

2. Issued or endorsed to the department, for the benefit of producers selling milk to the dairy plant operator, so that the

insurer cannot make any payment to policy beneficiaries unless the insurer first pays the equivalent of the policy's cash surrender value to the department, or the department agrees to waive payment of the cash surrender value.

3. Issued or endorsed to the department, for the benefit of producers selling milk to the dairy plant operator, so that the department can require that the policy be surrendered and the cash surrender value paid to the department for the benefit of producers pursuant to s. ATCP 100.65.

4. Valued for security purposes at cash surrender value.

5. Issued in a form, and subject to any terms and conditions, that the department considers necessary or appropriate.

SECTION 11. ATCP 100.45(5) is repealed.

SECTION 12. ATCP 100.45(6)(a)1 and 2 are amended to read:

ATCP 100.45(6)(a)1. The dairy plant operator no longer meets the financial standards under s. ATCP 100.40 ~~or the interim standards under sub. (5)(b).~~

2. The dairy plant operator's existing security falls below the amounts required under sub. (4) ~~or (5)(a)~~, because of depreciation in the value of the security ~~deposited or because of filed with the department~~, an increase in maximum liability to producers , or the cancellation of any security filed with the department.

SECTION 13. ATCP 100.45(6)(d) is created to read:

ATCP 100.45(6)(d) If a dairy plant operator fails to file

security with the department by the final deadline date specified by the department under par. (b), the secretary may issue a summary order under s. ATCP 100.10(2) prohibiting the dairy plant operator from buying milk from producers.

SECTION 14. ATCP 100.45(7)(intro) is amended to read:

ATCP 100.45(7) **RELEASE OF SECURITY.** The department may, upon written request by a dairy plant operator, release security filed under this section only if one of the following occurs:

SECTION 15. ATCP 100.55(title) is amended to read:

ATCP 100.55(title) **DAIRY PLANT OPERATORS; NOTICE TO PRODUCERS.**

SECTION 16. ATCP 100.56 is created to read:

ATCP 100.56 **MILK HANDLERS; NOTICE TO PRODUCERS.** (1)
SEMIANNUAL NOTICE. A milk handler shall issue semiannual notices to producers under this section. Semiannual notices shall be issued during the months of June and December of each year.

(2) **PRODUCERS ENTITLED TO NOTICE.** A semiannual notice under sub. (1) shall be issued to all of the following milk producers:

(a) Every producer who delivers milk produced in this state to the custody of the milk handler who at the time of delivery is acting as a milk handler for that producer.

(b) Every producer whose milk, produced in this state, is subject to disposition by the milk handler pursuant to a contract between the producer and the handler.

(3) **FORM AND CONTENTS OF NOTICE.** The notice under sub. (1)

shall be issued in writing, in the form of a separate document mailed to the producer. The notice shall bear the conspicuous title "NOTICE TO PRODUCERS." The notice shall contain the following verbatim statement, conspicuously printed under the title:

"Under Wisconsin law, dairy plant operators must meet minimum financial standards or file security with the Wisconsin Department of Agriculture, Trade and Consumer Protection. The dairy plant security law provides some financial protection for milk producers in this state who sell their milk to dairy plant operators, but it does not guarantee that those producers will be paid.

Financial standards and security requirements under the dairy plant security law apply only to dairy plant operators who buy milk from producers or their agents. The law does NOT regulate other milk handlers who receive producer milk and make payments to producers. If you deliver your milk to the custody of an unregulated handler, the dairy plant security law does not secure the handler's payments to you.

(Name of milk handler) receives milk from you as an unregulated milk handler. Therefore, we are not subject to financial standards and security requirements under the dairy plant security law.

SECTION 17. ATCP 100.57 is created to read:

ATCP 100.57 PRODUCER AGENTS; REQUIREMENTS. (1)

QUALIFICATIONS. (a) No person may claim to be an agent of any producer, for purposes of s. 100.06, Stats., or this chapter, unless that person is responsible for doing all of the following pursuant to a written agency contract with that producer under sub. (2):

1. Marketing that producer's milk.
2. Receiving and collecting payment for that producer's milk, either directly or through a trust fund established for the

benefit of producers for whom that person serves as agent.

3. Paying the producer for the producer's milk, either directly or through a trust fund established for the benefit of producers for whom that person serves as agent.

(b) No person may claim to be an agent of any producer, for purposes of s. 100.06, Stats., or this chapter, if that person does any of the following:

1. Buys or takes title to that producer's milk.
2. Pasteurizes or packages that producer's milk.
3. Manufactures any food or dairy product from that producer's milk.

(2) CONTRACT WITH PRODUCER. No person may claim to be an agent of any producer, for purposes of s. 100.06, Stats., or this chapter, unless that person has a written agency contract under this subsection with a producer identified under s. ATCP 100.01(19)(a) or (b). The contract shall be signed by the producer and the producer agent, and the producer agent shall give the producer a copy of the signed contract. The contract shall clearly specify all of the terms and conditions under which the producer agent markets the producer's milk on behalf of the producer, including terms and conditions related to all of the following:

- (a) Ownership or title to the milk.
 - (b) The receipt and collection of payment for the milk.
 - (c) Payment to the producer.
- (2) SEMIANNUAL NOTICE TO PRODUCERS. (a) A producer agent

shall, during June and December of each year, issue a semiannual notice to every producer in this state with whom the producer agent has a current contract under sub. (1) to market the producer's milk.

(b) The notice under par. (a) shall be issued in writing, in the form of a separate document mailed to the producer. The notice shall bear the conspicuous title "NOTICE TO PRODUCERS." The notice shall contain the following verbatim statement, conspicuously printed under the title:

"Under Wisconsin's dairy plant security law, a dairy plant operator who buys milk from producers or their agents must meet minimum financial standards or file security with the Wisconsin Department of Agriculture, Trade and Consumer Protection. The dairy plant security law provides some financial protection for milk producers who sell their milk to dairy plant operators, either directly or through an agent. However, the law does not guarantee dairy plant payments to producers or their agents. Wisconsin's dairy plant security law does not require producer agents to meet minimum financial standards or file security.

(Name of agent) does not buy milk from producers, but acts as an agent of producers in marketing their milk to dairy plant operators. When we market your milk to a Wisconsin dairy plant, that milk is covered by Wisconsin's dairy plant security law, and we are authorized to file claims and receive payment on your behalf. However, the dairy plant security law does not regulate, assure or guarantee our payments to you. Each producer has some responsibility to determine the credit worthiness of the dairy plant or agent to whom the producer entrusts his or her milk.

(3) NOTICE TO DAIRY PLANT OPERATORS. Whenever a producer agent ships or directs the shipment of producer-owned milk to a dairy plant in this state pursuant to a sales contract with the dairy plant operator, the sales invoice for that shipment shall notify the dairy plant operator that the producer agent is

selling that milk as an agent of the producers who own the milk.

(4) REPORTS. A producer agent shall file with the department, on or before the 25th day of each month, a written report indicating all of the following:

(a) The dairy plant operators to whom the producer agent sold milk on behalf of producers during the preceding month.

(b) The total amount of milk, in pounds, which the producer agent sold to each dairy plant operator identified under par.

(a), and the sale price for that milk.

SECTION 18. ATCP 100.88(4)(b) is amended to read:

(b) The bond under par. (a) shall ~~be issued in a form prescribed by the department, in an amount not less than 75% of the dairy plant operator's maximum liability to producers.~~ be all of the following:

1. Issued on a continuous basis subject to cancellation only with the department's written agreement, or upon written notice received by the department at least 90 days prior to the date of cancellation. Notice shall be served on the department in person or by certified mail.

2. Issued for an amount not less than 75% of the dairy plant operator's maximum liability to producers.

3. Issued in a form, and subject to any terms and conditions, that the department considers necessary or appropriate.

SECTION 19. ATCP 100.93(1) is amended to read:

ATCP 100.93(1) For each trusteeship, the trustee shall open

and maintain a separate trust account. The trust account shall be identified as follows: ~~(Name of dairy plant), (Name of trustee), Trustee~~ "Trust account for (name of dairy plant operator) and producers shipping milk to (name of dairy plant operator); (name of trustee), Trustee". The trustee shall also arrange for a lock box to receive deposits to the trust account.

SECTION 20. The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided under s. 227.22(2), Stats.

Dated this 11th day of January, 1994.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By E. Gabriel Kohl
Deputy Secretary
Alan T. Tracy, Secretary

