

3. A fee of 3 cents for each \$100 in total producer obligations reported under sub. (4) (a).

(b) *Surcharge for operating without a registration certificate.* 1. An applicant under sub. (2) shall pay a surcharge of \$500 if the department determines that, within 365 days prior to submitting the application, the applicant procured fruits or vegetables from producers without a registration certificate in violation of sub. (1).

2. An applicant required to pay a surcharge under subd. 1 shall also pay all fees, set forth in a statement from the department, that are still due for any registration year in which, according to the department, the applicant violated sub. (1).

3. Payment of the license fee surcharge and past fees under subds. 1 and 2 does not relieve the applicant of any other civil or criminal liability that results from the violation of sub. (1), but does not constitute evidence of any law violation.

(c) *Registration contingent on fee payment.* The department shall not grant an application under sub. (2) unless the applicant has paid all fees and surcharges, set forth in a statement from the department, that are due and payable by the applicant under this subsection. The department shall refund a fee paid under protest if, upon review, the department determines that the fee or surcharge is not due and payable under this subsection.

(4) **SWORN AND NOTARIZED STATEMENT.** An application under sub. (2) shall include a sworn and notarized statement, signed by the contractor or an officer of the contractor, which states all of the following:

(a) The contractor's total producer obligations, whether paid or unpaid, that accrued during the registration year immediately preceding the registration year for which application is made.

(b) The contractor's maximum liability to producers during the registration year immediately preceding the registration year for which application is made.

(c) The contractor's anticipated maximum liability to producers during the registration year for which application is made. If the contractor's anticipated maximum liability is zero because the contractor plans to make cash payment on delivery under every procurement contract or the contractor plans to procure all farm products from another contractor, the contractor shall so state. A contractor shall immediately notify the department in writing if, at any time during the registration year, the contractor has reason to believe that the contractor's maximum liability to producers will exceed the maximum liability previously anticipated and reported to the department.

(d) Whether, on the date of application, the contractor has paid all producer obligations that became due before that date.

(e) Whether the contractor and the contractor's affiliates and subsidiaries will collectively grow more than 10% of the acreage of any vegetable species grown or procured by the contractor during the registration year for which application is made.

Note: See s. 100.235 (3), Stats.

(f) Whether the contractor is a producer-owned cooperative or organization doing business on a cooperative pooling basis with its producer-owners and, if so, and whether the producer-owned cooperative or organization procures any fruits or vegetables from producers who are not its producer-owners.

(5) **ACTION GRANTING OR DENYING APPLICATION.** The department shall grant or deny an application under sub. (2) within 40 days after the department receives a complete application.

Note: See ss. ATCP 98.02 (3) (c) and 98.06 (1).

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94.

**ATCP 98.04 Registration certificate; suspension or revocation.** (1) **GENERAL.** The secretary may suspend or revoke a contractor's registration certificate for cause, including any violation of this chapter.

Note: See ch. ATCP 1 for procedure in suspension or revocation proceedings.

(2) **SUMMARY SUSPENSION.** The secretary may issue a summary order suspending a contractor's registration certificate without prior notice or hearing if the secretary determines that summary action is necessary to prevent clear and imminent harm to producers. A summary order under this subsection shall set forth the specific basis for the order.

Note: A person adversely affected by a summary suspension is entitled to a prompt informal hearing and a full evidentiary hearing upon request, as provided under s. ATCP 1.03 (3).

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94.

## Subchapter II — Contractor Payments to Producers

**ATCP 98.06 Timely payment required.** (1) **GENERAL.** No contractor may fail to pay a producer obligation when due. Except as provided under sub. (2) or (3), the department shall not grant an application under s. ATCP 98.02 (2) unless, according to the contractor's sworn statement under s. ATCP 98.02 (4) (d), the contractor has paid all producer obligations that became due before the application date.

(2) **DISPUTED PRODUCER OBLIGATION.** If a contractor is unable to comply with sub. (1) solely because a producer obligation is disputed, the department may issue an annual registration certificate to the contractor if the contractor deposits the disputed amount in escrow with the department or a court, pending resolution of the dispute.

(3) **COOPERATIVE POOLING ORGANIZATIONS EXEMPT.** This section does not apply to a producer-owned cooperative or organization when doing business on a cooperative pooling basis with its producer-owners.

History: Cr. Register, June, 1994, No. 462, eff. 7-1-94.

**ATCP 98.08 Payment deadlines.** (1) **PAYMENT DATE IF NOT SPECIFIED IN WRITTEN CONTRACT.** Except as provided under s. ATCP 98.10, if a procurement contract does not specify a payment date in writing, the contractor shall pay the producer as follows:

(a) If a contractor harvests or accepts delivery of fruits or vegetables grown or delivered under the contract, the

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contractor shall pay the producer the full amount owed for those fruits or vegetables on or before the 15th day of the month immediately following the month in which the contractor harvests or accepts delivery of those fruits or vegetables, or by an earlier date agreed upon between the parties.

(b) If a contractor rejects fruits or vegetables tendered under the contract, or declines for any reason to harvest fruits or vegetables grown under the contract, the contractor shall pay the producer the full amount, if any, which the contractor owes under the contract for the rejected fruits or vegetables or the unharvested acreage. Unless the parties agree on an earlier payment date, the contractor shall pay the producer by the 15th day of the month immediately following the month in which the producer tenders the fruits or vegetables, or in which the contractor notifies the producer that the acreage will not be harvested.

Note: See ch. ATCP 101 related to unharvested vegetable acreage.

**(2) PAYMENT DATE SPECIFIED IN WRITTEN CONTRACT.** Except as provided under s. ATCP 98.10, if a procurement contract specifies a payment date in writing, the contractor shall pay the producer by that specified date. No contract may specify a payment date that violates sub. (3).

**(3) ANNUAL PAYMENT DEADLINE.** (a) Except as provided under par. (b) or (c), a contractor shall pay all producer obligations by January 31 of each registration year.

(b) A written procurement contract may specify a payment date after January 31 for fruits or vegetables delivered on or before December 31 if, before the contract is offered to producers, it is approved by a vote of producers who had procurement contracts with the contractor for the same type of fruit or vegetable in the preceding registration year. To obtain advance approval of a contract under this paragraph, a contractor shall give written notice to all producers who had procurement contracts with the contractor for the same type of fruit or vegetable in the preceding registration year. The notice shall include a copy of the proposed contract and shall announce a meeting at which producers will be asked to vote on the proposed contract. The notice shall also include a mail ballot by which a producer may cast his or her vote without attending the meeting. Voting shall be by secret ballot. The proposed contract shall be approved by a majority of the producers who vote on the proposed contract. Before offering the approved contract to producers, the contractor shall file a sworn statement with the department, on a form provided by the department, certifying the results of the balloting.

(c) If a producer tenders or delivers fruits or vegetables to a contractor after December 31 of any registration year, the contractor shall pay the producer the full amount owed for those fruits or vegetables by the 15th day of the month following the month in which the fruits or vegetables were tendered or delivered, or within 30 days after tender or delivery, whichever occurs later.

History: Cr. Register, June, 1991, No. 462, eff. 7-1-91.

**ATCP 98.10 Payment on delivery.** (1) **GENERAL REQUIREMENT.** A contractor shall make payment on delivery to all producers, as provided under sub. (3), if any of the following applies:

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(a) The contractor does not meet the minimum financial standards under s. ATCP 98.16, and has not filed security with the department under s. ATCP 98.18.

(b) The secretary orders the contractor to make payment on delivery, pursuant to sub. (2).

(c) The contractor stated, in the sworn and notarized statement under s. ATCP 98.02 (4) (c), that the contractor would make payment on delivery to all producers.

**(2) FAILURE TO FILE SECURITY; SUMMARY ORDER REQUIRING PAYMENT ON DELIVERY.** If a contractor fails to file the full amount of security required by the department under s. ATCP 98.18 (5) by the deadline date which the department specifies, the secretary may, without prior notice or hearing, issue a summary order requiring the contractor to make payment on delivery under every procurement contract. The summary order shall set forth the specific basis for the order.

Note: A person adversely affected by a summary order under sub. (2) is entitled to a prompt informal hearing and a full evidentiary hearing upon request, as provided under s. ATCP 1.03 (3).

**(3) PAYMENT ON DELIVERY; WHAT CONSTITUTES.** If a contractor is required to make payment on delivery under sub. (1), the contractor shall pay producers as follows:

(a) If the contractor harvests or accepts delivery of fruits or vegetables grown or delivered under a procurement contract, and the fruits or vegetables will not be graded, the contractor shall make full cash payment for those fruits and vegetables when the contractor harvests or accepts delivery of those fruits or vegetables.

(b) If the contractor harvests or accepts delivery of fruits or vegetables grown or delivered under a procurement contract, and the fruits or vegetables will be graded, the contractor shall make full cash payment for those fruits and vegetables within 72 hours after the contractor harvests or accepts delivery of those fruits or vegetables.

(c) If the contractor rejects delivery of fruits or vegetables which the producer tenders under the contract, or notifies the producer that contract acreage will not be harvested for any reason, the contractor shall pay the producer the full amount, if any, which the contractor owes the producer under the contract for the rejected fruits or vegetables or the unharvested acreage. If payment is owed, the contractor shall make full cash payment when the producer tenders the fruits or vegetables or the contractor notifies the producer that the acreage will not be harvested.

Note: See ch. ATCP 101 related to unharvested vegetable acreage. If a contractor is required to make payment "on delivery" under this section, that contractor may not use any unharvested acreage pool that provides for delayed pool accounting, payment or refunds to pool contributors.

History: Cr. Register, June, 1994, No. 462, eff. 7-1-91.

### Subchapter III — Financial Standards and Security

**ATCP 98.12 Financial statements.** (1) **YEAR-END FINANCIAL STATEMENT.** (a) Except as provided under sub. (2), every contractor shall file a year-end financial statement with the department for each of the contractor's fiscal years. A year-end financial statement shall be filed, for