

Chapter ATCP 100

MILK CONTRACTORS

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Note: Chapters Ag 7, 8, 102 to 104 as those chapters existed on November 30, 1992 were repealed, renumbered and revised into chapter Ag 100; Chapter Ag 100 was renumbered chapter ATCP 100 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448.

Subchapter I — General Provisions

ATCP 100.01 Definitions. In this chapter:

(1) "Affiliate" has the meaning given in s. 126.01 (1), Stats. "Affiliate" includes a person who has significant control or influence over the contractor.

(1m) "Aged cheese" means cheese for which the standard of identity under 21 CFR 133 requires aging for at least 4 months.

(2) "Audited financial statement" has the meaning given in s. 126.01 (3), Stats.

(2m) "Contingent financial backing amount" means the amount of contingent financial backing, if any, which the department holds under s. 126.06, Stats.

(3) "Contributing milk contractor" has the meaning given in s. 126.40 (1), Stats.

(4) "Dairy plant operator" has the meaning given in s. 126.40 (5), Stats., except as provided in s. ATCP 100.98 (4).

(4g) "Deductible amount" means the amount specified in s. 126.72 (3), Stats.

(4m) "Disqualified milk contractor" has the meaning given in s. 126.40 (7), Stats.

(4p) "Estimated default exposure" has the meaning given in s. 126.47 (1) (b) 1., Stats.

(4r) "Maximum fund reimbursement" means the deductible amount plus the contingent financial backing amount.

(5) "Milk contractor" has the meaning given in s. 126.40 (8), Stats.

(6) "Milk producer" has the meaning given in s. 126.40 (10), Stats.

(7) "Procure producer milk in this state" has the meaning given in s. 126.40 (12), Stats.

(8) "Producer agent" has the meaning given in s. 126.40 (13), Stats.

(9) "Producer milk" has the meaning given in s. 126.40 (14), Stats. "Producer milk" includes producer-owned dairy products that a producer agent manufactures from raw producer milk.

(10) "Reviewed financial statement" has the meaning given in s. 126.01 (20), Stats.

History: Cr. Register, February, 1991, No. 422, eff. 5-1-91; renum. from Ag 8.01 and am. (5), (9) (a) and (17), cr. (18m). Register, November, 1992, No. 443, eff. 12-1-92; cr. (18d) and (19m) r. and recr. (19) (c), am. (20) (b), Register, March, 1994, No. 459, eff. 4-1-94; CR 02-113: r. and recr. Register April 2003 No. 568, eff. 5-1-03; CR 05-068: renum. (1) to be (1m), cr. (1), (2m), (4g), (4m), (4p) and (4r) Register April 2006 No. 604, eff. 5-1-06.

Subchapter II — Financial Standards and Security

Note: This subchapter is adopted under authority of ss. 93.07 (1), 126.49, 126.51 and 126.81, Stats., and interprets ch. 126, Stats. The Wisconsin department of agriculture, trade and consumer protection may enforce this subchapter under subch. VIII of ch. 126, Stats.

ATCP 100.10 Financial standards and security; general. A milk contractor shall comply with applicable requirements under ch. 126, Stats.

History: CR 02-113: cr. Register April 2003 No. 568, eff. 5-1-03.

ATCP 100.12 Financial statement. (1) GENERAL. A milk contractor's financial statement, filed under s. 126.44, Stats., shall comply with this section and s. 126.44, Stats.

(2) **LIABILITY DISCLOSURES.** A financial statement shall include a detailed description of all notes, mortgages and other long-term liabilities not due or payable within one year. The description shall be included in the financial statement notes or as an attachment to the financial statement. The description shall indicate the nature of the liabilities, the due dates, and the payment terms.

(3) **LIABILITY CLASSIFICATION.** A financial statement shall classify, as current liabilities, notes payable that do not have a specific due date.

(4) **ASSET DISCLOSURES.** (a) A financial statement shall specifically identify and explain, either in the financial statement notes or as an attachment to the financial statement, the following assets:

1. Every non-trade note or account receivable from an officer, director, employee, partner, or stockholder, or from a member of the family of any of those individuals.

2. Every note or account receivable from a parent organization, a subsidiary, or an affiliate, other than an employee.

Note: "Affiliate" as defined in s. ATCP 100.01 (1) means a person who has significant control or influence. Significant control or influence is a phrase used under generally accepted accounting principals to describe a related party that has sufficient ownership interest to influence the operating and financial policies of an entity.

3. Every note or account that has been receivable for more than one year, unless the milk contractor has established an offsetting reserve for uncollectible notes and accounts receivable.

(b) A financial statement shall include at least one of the following:

1. An allowance for doubtful or uncollectible receivables. The notes to the financial statement shall describe the method used to account for doubtful or uncollectible receivables.

2. A summary classifying the age of all notes and accounts receivable.

(5) **DEBT TO EQUITY RATIO; LIABILITY ADJUSTMENTS.** (a) Solely for the purpose of calculating a milk contractor's fund assessment under s. 126.46, Stats., a milk contractor may adjust the milk con-

tractor's debt to equity ratio under s. 126.44 (8) (c) 2., Stats., by deducting, from liabilities reported in the milk contractor's financial statement, an amount borrowed from a lending institution in order to hold aged cheese in inventory for the aging period required for that cheese under 21 CFR 133. A milk contractor may not make this adjustment unless all the following apply:

1. The milk contractor holds the aged cheese in inventory on the date of the balance sheet.
2. The lending institution holds a security interest in the aged cheese, to secure repayment of the amount borrowed.
3. The amount of the liability deduction does not exceed the amount owed to the lending institution on the date of the balance sheet, or the value of the aged cheese on the date of the balance sheet, whichever is less.
4. The liability deduction and offsetting cheese inventory asset are identified in the financial statement notes or as an attachment to the financial statement.

Note: The liability adjustment under this section does not apply to the milk contractor's debt to equity ratio when used for any purpose under ch. 126, Stats., other than the calculation of fund assessments under s. 126.46, Stats.

(b) If aged cheese inventory value as a percentage of total cheese inventory value is greater on the current annual balance sheet date than on the last preceding annual balance sheet date, the liability deduction under par. (a) may not exceed that prior year's percentage multiplied by the total cheese inventory value on the current annual balance sheet date.

(6) ATTACHMENTS. If information required under this section is provided in an attachment to a reviewed or audited financial statement, the following requirements apply:

(a) The attachment shall be prepared on the letterhead of the certified public accountant who reviewed or audited the financial statement.

(b) The certified public accountant who reviewed or audited the financial statement shall certify, in the attachment, whether the certified public accountant has reviewed or audited the attachment.

History: CR 02-113: cr. Register April 2003 No. 568, eff. 5-1-03.

ATCP 100.13 Fund assessment temporarily affected by merger or acquisition; partial refund.

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

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

(b) The milk 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.

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

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

(e) The milk contractor's annual financial statements, for the fiscal years immediately preceding and immediately following the fiscal year in which the merger or acquisition under par. (b) 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.

(f) In the license year immediately following the license year for which the milk contractor paid the assessment, the sum of the milk contractor's current ratio assessment rate under s. 126.46 (2), Stats., and debt to equity assessment rate under s. 126.46 (4),

Stats., declines by at least 50% compared to the license year for which the milk contractor paid the assessment.

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

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

(3) REFUND PAID AS CREDIT AGAINST NEXT YEAR'S ASSESSMENT.

(a) The department shall pay the refund under sub. (1) as a credit against the milk contractor's assessment for the next license year. The department shall apportion the credit, pro rata, against the quarterly assessment installments required of the milk contractor under s. 126.46 (6), Stats., in that next license year. If the credit exceeds the total assessment required of the milk contractor in that next license year, the department shall credit the balance in the same fashion against assessments required of the milk contractor in subsequent consecutive license years, except that the department may not grant a credit in more than 4 subsequent license years.

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

History: Emerg. cr. eff. 1-29-04; CR 04-030: cr. Register September 2004 No. 585, eff. 10-1-04.

ATCP 100.135 Reduced fund assessment for contributing milk contractors who also maintain security.

(1) VOLUNTARY SECURITY. A milk contractor may at any time file security with the department, regardless of whether the milk contractor is required to file security. Except as provided in sub. (2), a voluntary security filing under this paragraph does not relieve a milk contractor of any other obligation to file security or pay fund assessments.

Note: A milk contractor who files voluntary security under sub. (1) may be eligible for a reduction in fund assessments under sub. (2), and may be able to make a more favorable disclosure to producers under s. ATCP 100.20 (2).

(2) REDUCED ASSESSMENT. If, for the duration of a license year, a contributing milk contractor maintains security under sub. (1) or s. 126.47 (2), Stats., or both, in an amount that is at least equal to the milk contractor's estimated default exposure less the maximum fund reimbursement amount, the milk contractor's annual fund assessment under s. 126.46, Stats., for that year is reduced by an amount that is determined as follows:

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

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

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

(d) Subtract, from the result in par. (c), the amount of any assessment reduction given under s. 126.46 (5m), Stats.

History: Emerg. cr. eff. 4-29-04; CR 04-030: cr. Register September 2004 No. 585, eff. 10-1-04; CR 05-068: r. and recr. (1), am. (2) (intro.) Register April 2006 No. 604, eff. 5-1-06.

ATCP 100.14 Custom processing services to milk producers.

Chapter 126, Stats., does not apply to a dairy plant operator who takes temporary custody of producer milk solely to process it for the milk producer, provided that all the following apply:

(1) The producer retains title to all of the milk and all of the processed dairy products made from that milk.

(2) The operator does not market the milk or processed dairy products, but promptly returns the processed dairy products to the producer or the producer's agent for consumption or marketing.

(3) The operator does not commingle producer-owned milk or dairy products with other milk or dairy products.

(4) The operator provides the processing services under a written contract with the producer or the producer's agent. The contract shall clearly and conspicuously disclose all the following:

(a) That the producer retains title to all the milk shipped to the operator for processing, and all the processed dairy products made from that milk.

(b) That the producer's milk shipments to the operator are not secured under ch. 126, Stats.

(5) The operator keeps a copy of the contract under sub. (4) for at least 3 years after the contract ends, and makes it available to the department for inspection and copying upon request.

(6) The operator submits to the department, by May 1 of each year, an affidavit certifying that the operator qualifies for the custom processing exemption under this section.

History: CR 02-113: cr. Register April 2003 No. 568, eff. 5-1-03.

ATCP 100.16 Producer agents. (1) **QUALIFIED PRODUCER AGENT.** A producer agent is not a qualified producer agent under ss. 126.45 (3), 126.47 (3) (a) 2. or 3., Stats., nor may a producer agent file a default claim under s. 126.70 (1) (c), Stats., unless all the following apply:

(a) The producer agent procures producer milk in this state solely as the agent of milk producers. Notwithstanding this paragraph, a milk contractor who buys some milk and markets other milk as a producer agent may file a default claim under s. 126.70 (1) (c), Stats., for producer milk that the milk contractor markets as a producer agent if the contractor complies with pars. (b) to (f) with respect to all of the milk that the contractor procures in this state as a producer agent.

(b) The producer agent does not take title to the producer milk, or to any processed dairy products made from the producer milk.

(c) The producer agent markets the producer milk under a written contract with each milk producer. The contract shall comply with sub. (2).

(d) The producer agent does not process, as a producer agent, more than 5 million pounds of producer milk in any month.

(e) The producer agent gives, to each recipient of producer milk marketed by the producer agent, a written invoice stating that the milk is producer milk not owned by the producer agent.

(f) The producer agent files a monthly producer agent report with the department, as provided under sub. (3).

Note: Producer agents are regulated as milk contractors under ch. 126, Stats., regardless of whether they comply with sub. (1). But producer agents do not qualify for special treatment as "qualified producer agents" under s. 126.45 (3) or 126.47 (3) (a) 2. or 3., Stats., nor may they file default claims under s. 126.70 (1), Stats., unless they comply with sub. (1).

(2) **CONTRACT WITH MILK PRODUCER.** The contract under sub. (1) (c) shall be signed by the milk producer and the producer agent, and shall clearly specify the terms under which the producer agent receives, markets and accepts payment for milk on behalf of the producer. The contract shall clearly and conspicuously disclose all the following:

(a) That the producer agent does not take title to the producer's milk, or any dairy products made from that milk.

(b) That the producer agent receives payments on behalf of the producer, and holds them in trust for the producer.

(c) The terms and conditions of payment to the producer.

(d) The procedure by which the producer agent will receive payment on behalf of the producer and make payments to the producer, including any trust fund arrangement.

(e) The producer agent's compensation for serving as the producer's agent, and the method by which the producer agent will receive that compensation from the producer.

(f) The appropriate milk security disclosure statement under s. ATCP 100.20.

(3) **MONTHLY REPORT.** A producer agent who files a monthly report under sub. (1) (f) shall file the report on or before the 25th day of the month. The report shall include all the following:

(a) The name and address of each person to whom the producer agent marketed, in the preceding month, producer milk that the producer agent procured in this state as a producer agent.

(b) The total pounds of producer milk that the producer agent marketed to each person under par. (a) in the preceding month.

(c) The total dollar value of producer milk that the producer agent marketed to each person under par. (a) in the preceding month.

(d) The producer agent's total gross payments to milk producers for producer milk that the producer agent marketed under par. (a) in the preceding month.

(4) **EXEMPT AGENT.** Chapter 126, Stats., does not apply to a person who collects a producer's milk for delivery to a custom processor under s. ATCP 100.14, and who receives and markets the custom-processed dairy products for the producer, provided that all the following apply:

(a) The person does not handle more than 5 million pounds of producer milk in any month, does not process milk or dairy products, and does not otherwise operate as a milk contractor.

(b) The producer retains title to the milk and the processed dairy products made from the milk.

(c) The person has a written contract with the producer. The contract shall clearly and conspicuously disclose all the following:

1. That the producer retains title to the milk and the dairy products made from the milk.

2. That the producer's milk shipments are not secured under ch. 126, Stats.

(d) The person keeps a copy of the contract under par. (c) for at least 3 years after the contract ends, and makes it available to the department for inspection and copying upon request.

(e) The person submits to the department, by May 1 of each year, an affidavit certifying that the person qualifies as an exempt agent under this subsection.

History: CR 02-113: cr. Register April 2003 No. 568, eff. 5-1-03; correction in (1) (intro.) made under s. 13.93 (2m) (b) 7., Stats., Register September 2004 No. 585.

ATCP 100.18 Marketing processed dairy products for milk producers. Chapter 126, Stats., does not apply to a person who markets only processed dairy products for milk producers, provided that the person does not procure, market or process raw producer milk.

History: CR 02-113: cr. Register April 2003 No. 568, eff. 5-1-03.

ATCP 100.20 Disclosures to milk producers.

(1) **DISCLOSURE REQUIRED.** A milk contractor shall make a disclosure under sub. (2) to every milk producer and producer agent from whom the milk contractor procures producer milk in this state. The milk contractor shall make the disclosure, in the form prescribed under sub. (2), in a written document given to the producer or producer agent. The disclosure shall be clear and conspicuous, and shall be set apart from every other writing. The milk contractor shall make the disclosure to the producer or producer agent at all of the following times:

(a) When the milk contractor first procures producer milk from that producer or producer agent.

(b) In June of each year in which the milk contractor procures milk from that producer or producer agent.

(c) When the milk contractor first procures producer milk from that producer or producer agent following a change in circumstances that requires a different disclosure statement under sub. (2).

(2) **FORM OF DISCLOSURE.** (a) Except as provided in pars. (b) to (c), the disclosure under sub. (1) shall consist of a verbatim copy of the following statement:

IMPORTANT NOTICE

[Name of milk contractor] participates in Wisconsin's Agricultural Producer Security program. If we fail to pay you for milk when payment is due, you may file a claim under this program. The program may reimburse up to 80% of the first \$60,000 of your allowed claim, and up to 75% of any additional amount. For more information, you may contact the Wisconsin Department of Agriculture, Trade and Consumer Protection, 2811 Agriculture Drive, P. O. Box 8911, Madison, WI 53708-8911 (phone 608/224-4998).

(b) Except as provided in pars. (c) to (e), the disclosure under sub. (1) shall consist of a verbatim copy of the following statement if the milk contractor contributes to the fund and the milk contractor's estimated default exposure is greater than the sum of the maximum fund reimbursement amount plus any security amount the milk contractor has on file with the department:

IMPORTANT NOTICE

[Name of milk contractor] participates in Wisconsin's Agricultural Producer Security Program. If we fail to pay you for milk when payment is due, you may file a claim under this program. The program may reimburse up to 80% of the first \$60,000 of an allowed claim and up to 75% of any additional amount. However, our "estimated default exposure" exceeds available reimbursement funding, and we have not filed security to cover the difference, so reimbursement may cover a much smaller portion of your loss. For more information, you may contact the Wisconsin Department of Agriculture, Trade and Consumer Protection, 2811 Agriculture Drive, P. O. Box 8911, Madison, WI 53708-8911 (phone 608/224-4998).

(c) Except as provided in par. (d) or (e), the disclosure under sub. (1) shall consist of a verbatim copy of the following statement if the milk contractor voluntarily contributes to the fund under s. 126.45 (2), Stats., and has an estimated default exposure greater than the sum of the maximum fund reimbursement amount plus any security amount the milk contractor has on file with the department:

IMPORTANT NOTICE

[Name of milk contractor] voluntarily participates in Wisconsin's Agricultural Producer Security Program, even though our financial statements meet or exceed program standards (positive equity, a current ratio of at least 1.25 to 1.0, and a debt-to-equity ratio of no more than 2.0 to 1.0). If we fail to pay you for milk when payment is due, you may file a claim under this program. The program may reimburse up to 80% of the first \$60,000 of an allowed claim, and up to 75% of any additional amount. However, our "estimated default exposure" exceeds available reimbursement funding, so reimbursement may cover a much smaller portion of your loss. For more information, you may contact the Wisconsin Department of Agriculture, Trade and Consumer Protection, 2811 Agriculture Drive, P. O. Box 8911, Madison, WI 53708-8911 (phone 608/224-4998).

(d) The disclosure under sub. (1) shall consist of a verbatim copy of the following statement if the milk contractor is not required to contribute to the fund or file security with the department, and has not done so voluntarily:

IMPORTANT NOTICE

[Name of milk contractor] is licensed under Wisconsin's Agricultural Producer Security Program. Because our financial statements meet or exceed minimum requirements (positive equity, a current ratio of at least 1.25 to 1.0 and a debt-to-equity ratio of no more than 2.0 to 1.0), we are not required to contribute to the program or file security. The program will provide no compensation if we fail to pay you for milk. For more information, you may contact the Wisconsin Department of Agriculture, Trade and Consumer Protection, 2811

Agriculture Drive, P. O. Box 8911, Madison, WI 53708-8911 (phone 608/224-4998).

(e) If a disclosure under sub. (1) is made on or before April 30, 2007, by a qualified producer agent who files security under s. 126.47 (3) (a) 3., Stats., the disclosure shall consist of a verbatim copy of the following statement:

IMPORTANT NOTICE

[Name of milk contractor] participates in Wisconsin's Agricultural Producer Security Program as a producer agent. If we fail to pay you for milk when payment is due, you may file a claim under this program. The program may reimburse up to 20% of your allowed claim. For more information, you may contact the Wisconsin Department of Agriculture, Trade and Consumer Protection, 2811 Agriculture Drive, P. O. Box 8911, Madison, WI 53708-8911 (phone 608/224-4998).

History: CR 02-113: cr. Register April 2003 No. 568, eff. 5-1-03; CR 04-030: r. (2) (e) 1. and 2., renum. (2) (e) 3. to 5. to be (2) (e) 1. to 3. Register September 2004 No. 585, eff. 10-1-04; corrections in (2) (a), (c) and (f) made under s. 13.93 (2m) (b) 7., Stats., Register September 2004 No. 585; CR 05-068: r. and recr. (2) Register April 2006 No. 604, eff. 5-1-06.

ATCP 100.22 Producer payroll report. (1) An applicant for an annual milk contractor license shall include, as part of the license application, the sworn and notarized statement required under s. 126.41 (6), Stats.

(2) The statement under sub. (1) shall report, under s. 126.41 (6) (a), Stats., the gross amount that the applicant paid for producer milk procured in this state during the applicant's last completed fiscal year. If the applicant has not yet operated as a milk contractor, the applicant shall report the estimated gross amount that the applicant will pay for milk procured in the applicant's first completed fiscal year.

(3) The statement under sub. (1) shall report, under s. 126.41 (6) (b), Stats., the largest gross amount that the applicant paid for producer milk procured in this state in any single month during the applicant's last completed fiscal year.

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

History: CR 02-113: cr. Register April 2003 No. 568, eff. 5-1-03.

Subchapter III — Milk Contractor Payments to Producers; Records

Note: This subchapter is adopted under authority of ss. 93.07 (1), 97.20 (4), 126.49, 126.51 and 126.81, Stats., and interprets ss. 93.15 and 97.20, Stats., and ch. 126, Stats. The Wisconsin department of agriculture, trade and consumer protection may enforce this subchapter under ss. 93.06 (7) and (8), 93.21 (4), Stats., and subch. VIII of ch. 126, Stats., as appropriate.

ATCP 100.30 Pay statements to milk producers. On each producer pay date under s. 126.48 (1) or (2), Stats., a milk contractor who procures producer milk in this state from a milk producer shall provide that milk producer with a written pay statement that includes all the following:

(1) MILK CONTRACTOR IDENTIFICATION. A pay statement shall include the name and address of the milk contractor.

(2) PRODUCER IDENTIFICATION. A pay statement shall include the producer's name and identification number.

(3) PAY PERIOD. A pay statement shall specify the milk delivery dates for which payment is being made.

(4) MILK VOLUME. A pay statement shall specify the total weight of milk, in hundredweights, which the milk contractor received from the milk producer on the dates specified in sub. (3).

(5) GRADE OF MILK. A pay statement shall specify the grade of milk that the milk contractor received from the milk producer on the dates specified in sub. (3).

(6) MILK TEST RESULTS. If the price paid to the milk producer is affected by test results related to milk components, milk quality

or other variables, the pay statement shall indicate all the test results used to determine the pay price unless the milk contractor has already furnished those test results to the milk producer.

(7) MILK PRICE AND ADJUSTMENTS. A pay statement shall include the following price information, as applicable:

(a) *Payment based on straight fat.* If the milk contractor is paying the milk producer on a straight fat basis, the pay statement shall include all the following information:

1. The butterfat content of milk received from the milk producer on the dates specified in sub. (3), expressed as a percentage by weight of milk received.

2. The total pounds of butterfat in the milk received from the producer on the dates specified in sub. (3).

3. The pay price per pound of butterfat.

4. The gross amount paid for butterfat, obtained by multiplying the total pounds of butterfat under subd. 2. by the pay price under subd. 3.

5. The pay price per hundredweight for butterfat, obtained by dividing the gross amount paid under subd. 4. by the milk volume in hundredweights under sub. (4).

6. Price adjustments per hundredweight for other milk components such as protein or solids not fat.

7. Price adjustments per hundredweight for milk grade or quality, including adjustments for bacteria or somatic cell counts.

8. Price adjustments per hundredweight based on volume or other factors identified in the pay statement.

9. The producer's average gross pay per hundredweight of milk, obtained by applying the adjustments under subds. 6. to 8. to the pay price per hundredweight for butterfat under subd. 5.

(b) *Payment based on 3.5% butterfat differential.* If the milk contractor is paying the producer on a 3.5% butterfat differential basis, the pay statement shall include all the following information:

1. The base price per hundredweight for milk containing 3.5% butterfat by weight.

2. The price differential per hundredweight for each percentage point, plus or minus, by which the butterfat content of the producer's milk differs from 3.5%.

3. Price adjustments per hundredweight for other milk components such as protein or solids not fat.

4. Price adjustments per hundredweight for milk grade or quality, including adjustments for bacteria or somatic cell counts.

5. Price adjustments per hundredweight based on volume or other factors identified in the pay statement.

6. The producer's average gross pay per hundredweight of milk after adjustments under this section.

(c) *Payment based on multiple component pricing.* If the milk contractor is paying the producer on a multiple component pricing basis, the pay statement shall include all the following information:

1. The milk volume in hundredweights under sub. (4) multiplied by the applicable producer price differential per hundredweight.

Note: Federal milk marketing orders specify, for each pay period, minimum producer price differentials for grade A milk covered by those orders.

2. The pounds of butterfat contained in the milk received from the producer on the dates specified in sub. (3), multiplied by the applicable butterfat price per pound.

Note: Federal milk marketing orders specify, for each pay period, minimum butterfat prices for grade A milk covered by those orders.

3. The pounds of protein contained in the milk received from the producer on the dates specified in sub. (3), multiplied by the applicable protein price per pound.

Note: Federal milk marketing orders specify, for each pay period, minimum protein prices for grade A milk covered by those orders.

4. The pounds of other solids contained in the milk received from the producer on the dates specified in sub. (3), multiplied by the applicable price per pound for other solids.

Note: Federal milk marketing orders specify, for each pay period, minimum "other solids" prices for grade A milk covered by those orders.

5. For each applicable price adjustment based on milk grade or quality, the milk volume in hundredweights under sub. (4) multiplied by the price adjustment per hundredweight. The pay statement shall identify the basis for each price adjustment under this subdivision.

Note: This includes price adjustments for bacteria count, somatic cell count, or other measures of grade or quality. Federal milk marketing orders specify, for each pay period, minimum somatic cell adjustments for grade A milk covered by those orders.

6. For each applicable price adjustment based on volume or other factors, the milk volume in hundredweights under sub. (4) multiplied by the price adjustment per hundredweight. The pay statement shall identify the basis for each price adjustment under this paragraph.

7. The producer's average gross pay per hundredweight of milk, calculated as the sum of the value used under subds. 1. to 6., divided by the milk volume in hundredweights under sub. (4).

(8) GROSS AMOUNT DUE. A pay statement shall specify the gross amount due the producer for milk delivered on the dates specified under sub. (3), prior to any deductions under sub. (11).

(9) AVERAGE GROSS PAY PER HUNDREDWEIGHT LESS HAULING CHARGES. A pay statement shall specify the producer's average gross pay per hundredweight less hauling charges. This consists of the gross amount due under sub. (8) less total hauling expenses charged to the producer for the pay period under sub. (11) (a), divided by the milk volume in hundredweights under sub. (4).

(10) NET AMOUNT DUE. A pay statement shall specify the net amount due the producer for the milk delivered on the dates specified in sub. (3). This consists of the total amount due under sub. (8) less all deductions under sub. (11).

(11) DEDUCTIONS. A pay statement shall specify the nature and amount of every deduction from the gross amount due the producer under sub. (8), including deductions for any of the following that apply:

- (a) Milk hauling expenses charged to the producer.
- (b) Deductions related to drug residue violations.
- (c) Dairy products that the producer buys from the milk contractor.
- (d) Supplies that the milk contractor provides to the milk producer.
- (e) Wisconsin milk marketing board deductions.
- (f) National dairy promotion deductions.
- (g) Commodity credit corporation deductions.
- (h) Insurance deductions.
- (i) Cooperative fees or capital retained.
- (j) Creditor assignments.
- (k) Other deductions.

History: CR 02-113: cr. Register April 2003 No. 568, eff. 5-1-03.

ATCP 100.32 Pay records. (1) RECORDS REQUIRED. A milk contractor shall keep accurate records and accounts of milk receipts, payments for milk received, and amounts owed to milk producers and producer agents. Records shall include all the following:

(a) A copy of every contract between the milk contractor and a milk producer or producer agent.

(b) A record of all milk receipts from producers and producer agents, showing the amount received from each producer or producer agent and the date of each receipt.

(c) A record of every milk producer pay statement required under s. ATCP 100.30.

(d) Records showing the nature and amount of any non-price consideration that the milk contractor furnishes to a producer in return for the producer's sale or consignment of milk to the milk contractor, but which is not reflected in the producer's pay statement under s. ATCP 100.30. In this subsection, "non-price consideration" has the meaning given in s. ATCP 100.98 (6).

(e) The result of every test on a producer milk delivery, including any test related to milk components or milk quality. Records shall specify the delivery to which each test pertains.

(f) A payroll summary showing, for each payroll period, the amount of milk received from producers, the gross amounts owed to producers for milk received, the amount and disposition of any payroll deductions, the net amounts owed to producers after deductions, and the amounts paid to producers.

(g) Other computer records, worksheets and accounting records showing how the milk contractor computed payment obligations to milk producers and producer agents.

(h) Records showing the milk contractor's use and disposition of milk and dairy products received by the milk contractor. Records shall enable the milk contractor to do all the following:

1. Account for the sale, use or disposition of all milk and dairy products received by the milk contractor.

2. Account for the source of all milk and dairy products sold, marketed or otherwise disposed of by the milk contractor.

(2) **FALSE RECORDS.** (a) No milk contractor may falsify any record or account, or conspire with any other person to falsify a record or account.

(b) No milk contractor may provide any milk producer or producer agent with any statement or accounting that is false or misleading, or that contains any false or misleading computation or arrangement of figures.

(3) **RECORDS RETENTION AND INSPECTION.** A milk contractor shall retain the records required under this section for at least 3 years, and shall make the records available to the department for inspection and copying upon request.

History: CR 02-113: cr. Register April 2003 No. 568, eff. 5-1-03.

Subchapter IV — Discriminatory Payments to Producers

Note: This subchapter is adopted under authority of ss. 93.07 (1), 97.20 (4), and 100.20 (2), Stats., and interprets ss. 93.15, 97.20, 100.20 and 100.22, Stats. Violations are subject to the sanctions provided in ss. 93.21 (4), 97.72, 97.73, 100.20, 100.22 (4) and (5), 100.24, and 100.26 (3), (5) and (6), Stats. Violations of this subchapter may also result in license sanctions under ss. 93.06 (7) and (8) and 97.20, Stats.

ATCP 100.98 Definitions. In this subchapter:

(1) "Base period" means the dairy plant operator's most recently completed fiscal year, or another representative period approved by the department.

(2) "Base period producer service cost" means a dairy plant operator's total cost, for the operator's base period, for all of the following:

(a) Dairy farm field service costs other than field service costs which are directly attributable to violations of ch. ATCP 60.

(b) Costs to test dairy farm milk shipments before the dairy plant operator commingles those milk shipments with other milk shipments at the dairy plant. Testing costs include lab testing, reporting and recordkeeping costs related to milk testing. Testing costs do not include costs incurred by a milk hauler to collect milk samples from dairy farms, nor do they include costs incurred because of producer's violation of ch. ATCP 60.

(c) Expenses to prepare and maintain producer payroll records and process payments to producers.

(d) Dairy farm license fees and other routine expenses which the dairy plant operator incurs in connection with the licensing and regulation of dairy farms.

(e) Other costs which the department allows in writing.

(3) "Base period pickup cost" means a dairy plant operator's total cost, for the operator's base period, to collect milk from dairy farms. "Base period pickup cost" does not include any of the following:

(a) Milk collection and hauling costs which the dairy plant operator charges to milk producers.

(b) Transportation or milk hauling costs incurred before the milk hauler arrives at the first dairy farm on the hauling route, or after the milk hauler leaves the last farm on the hauling route.

(4) "Dairy plant operator" means either of the following:

(a) A person who holds, or is required to hold, a dairy plant license under s. 97.20, Stats., and who buys milk from producers.

(b) A person who operates a dairy plant outside this state, and who buys milk from Wisconsin producers for delivery to that out-of-state dairy plant.

(5) "Milk price" means a producer's average gross pay per hundredweight less hauling charges, calculated for a pay period according to s. ATCP 100.30 (9).

(6) "Pay class" means a group of producers who qualify for the same volume premium.

(7) "Pickup cost per hundredweight" means the cost calculated under s. ATCP 100.983 (5) for a pay class or individual producer.

(8) "Producer service cost per hundredweight" means the cost calculated under s. ATCP 100.983 (4) for a pay class or individual producer.

(9) "Non-price consideration" means anything of monetary value which a dairy plant operator or the operator's agent offers or provides to a producer in return for the producer's sale of milk to the operator, but which is not reflected in the milk price. "Non-price consideration" includes monetary payments, goods, milk hauling services, farm and household services, prizes, price and financing considerations, and other things that have direct monetary value to the producer. "Non-price consideration" includes services which a milk hauler furnishes as an agent of a dairy plant operator.

(10) "Volume premium" means any form of milk price increment or non-price consideration which a dairy plant operator or the operator's agent offers or provides to a producer based on the producer's milk volume, or which the operator or agent offers or provides only to certain producers based on their milk volume.

Note: If a dairy plant operator pays a producer a higher price per hundredweight based on the total weight of any milk component (e.g., protein or butterfat) received from that producer, that price increment is a "volume premium" as defined under sub. (9). However, a per-hundredweight price increment based solely on the percentage contents of milk components in milk is not a "volume premium."

History: Cr. Register, September, 1996, No. 489, eff. 10-1-96; CR 02-113: renum. (4) to be (5) and am., cr. (4), renum. (5) to (9) to be (7) to (9), (6) and (10), am. (4) (f) Register April 2003 No. 568, eff. 5-1-03.

ATCP 100.981 Price discrimination prohibited.

Except as provided under s. ATCP 100.982, 100.983 or 100.984, no dairy plant operator may do any of the following if the operator's action injures any producer or injures, destroys or prevents competition between competing dairy plant operators:

(1) Discriminate between producers, directly or indirectly, in the milk price offered or paid to those producers.

(2) Discriminate between producers, directly or indirectly, in the value of any non-price consideration offered or provided to those producers. A dairy plant operator does not discriminate under this subsection if the operator offers the same non-price consideration to all producers on equal terms, so that the same non-price consideration is effectively available to all producers who wish to receive it.

Note: Section ATCP 100.981 is adopted under s. 100.20 (2), Stats., and other applicable statutes. A person who suffers a monetary loss because of a violation of s. ATCP 100.981 may therefore bring a private lawsuit against the violator under s. 100.20 (5), Stats., and may recover double damages, costs and reasonable attorney fees.

History: Cr. Register, September, 1996, No. 489, eff. 10-1-96.

ATCP 100.982 Exemptions. Section ATCP 100.981 does not prohibit a dairy plant operator from doing any of the following:

(1) Paying a different milk price for grade A versus grade B milk.

(2) Complying with a federal milk marketing order.

(3) Properly charging a producer, pursuant to ch. ATCP 60 or the procurement contract, for costs which the dairy plant operator incurs because of the producer's violation of ch. ATCP 60.

(4) Paying different milk prices to producers based on actual differences in the quality of their milk, or based on actual differences in the percentage content of milk components in their milk, provided that all of the following apply:

(a) The dairy plant operator pays for milk quality, or for the percentage content of milk components in a producer's milk, according to a written payment schedule which the operator announces and makes available on equal terms to all producers from whom the dairy plant operator buys milk.

(b) The payment schedule under par. (a) clearly indicates the amounts by which payments will vary based on actual differences in milk quality, or based on actual differences in the percentage content of milk components in a producer's milk.

(c) The dairy plant operator measures the differences under par. (b) using accepted scientific methods.

(d) The payment schedule under par. (a) does not discriminate between producers having the same milk quality, or the same percentage content of milk components in their milk.

(e) Milk quality and milk component payments are not based on milk volume or restricted to certain producers based on volume.

(f) The dairy plant operator complies with ss. ATCP 80.26 (2) and 100.30.

History: Cr. Register, September, 1996, No. 489, eff. 10-1-96; CR 02-113: am. (4) (f) Register April 2003 No. 568, eff. 5-1-03.

ATCP 100.983 Cost-justification defense. (1) GENERAL. In any proceeding against a dairy plant operator, in which the operator is alleged to have discriminated between pay classes or individual producers in violation of s. ATCP 100.981, it is a defense for the operator to prove, based on documentary evidence which the operator possessed and relied upon at the time of the alleged discrimination, that the amount of the price discrimination per hundredweight between those pay classes or individual producers did not exceed, in any relevant pay period, the difference in the operator's relevant procurement cost per hundredweight between those pay classes or producers.

(2) VOLUME PREMIUMS BASED ON TOTAL MILK VOLUME. A dairy plant operator shall use the following relevant procurement costs per hundredweight to justify, under sub. (1), discrimination resulting from the payment of volume premiums based on total milk volume:

(a) *Pay class.* The operator's relevant procurement cost per hundredweight for each pay class is the operator's "producer service cost per hundredweight" for that pay class, calculated according to sub. (4) (a).

(b) *Individual producer.* The operator's relevant procurement cost per hundredweight for each individual producer is the operator's "producer service cost per hundredweight" for that individual producer, calculated according to sub. (4) (b).

(3) VOLUME PREMIUMS BASED ON VOLUME PER PICKUP. A dairy plant operator shall use the following relevant procurement costs per hundredweight to justify, under sub. (1), discrimination resulting from the payment of volume premiums based on volume per pickup:

(a) *Pay class.* The operator's relevant procurement cost per hundredweight for a pay class is the sum of the operator's "producer service cost per hundredweight" under sub. (4) (a) and

"pickup cost per hundredweight" under sub. (5) (a), except that the operator may not include "producer service cost per hundredweight" if the operator also pays volume premiums based on total volume.

(b) *Individual producer.* The operator's relevant procurement cost per hundredweight for an individual producer is the sum of the operator's "producer service cost per hundredweight" under sub. (4) (b) and "pickup cost per hundredweight" under sub. (5) (b), except that the operator may not include "producer service cost per hundredweight" if the operator also pays volume premiums based on milk volume.

Note: If a dairy plant operator pays separate volume premiums based on total milk volume and volume per pickup, the operator must separately justify the total volume premiums under sub. (2) and the per-pickup volume premiums under sub. (3).

(4) PRODUCER SERVICE COST PER HUNDREDWEIGHT. (a) For a pay class. To calculate a dairy plant operator's "producer service cost per hundredweight" for a pay class in any pay period:

1. Determine the operator's base period producer service cost, as defined in s. ATCP 100.98 (2). Divide that cost by the average number of producers who shipped milk to the operator during the base period.

2. Multiply the result under subd. 1. by the number of producers in the pay class during the relevant pay period.

3. Divide the result under subd. 2. by the hundredweights of milk which the pay class produced during the relevant pay period. This yields the operator's "producer service cost per hundredweight" for that pay class in that pay period.

(b) *For an individual producer.* To calculate a dairy plant operator's "producer service cost per hundredweight" for an individual producer in any pay period:

1. Determine the operator's base period producer service cost, as defined in s. ATCP 100.98 (2). Divide that cost by the average number of producers who shipped milk to the operator during the base period.

2. Divide the result under subd. 1. by the number of hundredweights of milk which the individual producer shipped to the operator during the relevant pay period. This yields the operator's "producer service cost per hundredweight" for that individual producer in that pay period.

(5) PICKUP COST PER HUNDREDWEIGHT. (a) For a pay class. To calculate a dairy plant operator's "pickup cost per hundredweight" for a pay class in any pay period:

1. Determine the operator's base period pickup cost, as defined in s. ATCP 100.98 (3). Divide that cost by the total number of farm stops made during the base period.

2. Multiply the result under subd. 1. by the number of stops made, during the relevant pay period, at dairy farms operated by producers in the pay class.

3. Divide the result under subd. 2. by the hundredweights of milk collected, during the relevant pay period, from producers in the pay class. This yields the operator's "pickup cost per hundredweight" for that pay class in that pay period.

(b) *For an individual producer.* To calculate a dairy plant operator's "pickup cost per hundredweight" for an individual producer in any pay period:

1. Determine the operator's base period pickup cost, as defined in s. ATCP 100.98 (3). Divide that cost by the total number of farm stops made during the base period.

2. Multiply the result under subd. 1. by the number of stops made at the producer's dairy farm during the relevant pay period.

3. Divide the result under subd. 2. by the hundredweights of milk collected from the producer's dairy farm during the relevant pay period. This yields the operator's "pickup cost per hundredweight" for that individual producer in that pay period.

(6) COST ACCOUNTING. (a) At the request of a dairy plant operator, the department may approve alternative methods for calcu-

lating relevant procurement costs per hundredweight under this section. The department shall give its approval, if any, in writing.

(b) Costs under this section shall be determined on the basis of generally accepted accounting principles using the accrual method of accounting.

(7) VALUE OF NON-PRICE CONSIDERATION PER HUNDREDWEIGHT. If a dairy plant operator seeks to cost-justify a discrimination in non-price consideration under s. ATCP 100.981 (2), the operator shall calculate the value of that non-price consideration per hundredweight by dividing the value of the non-price consideration provided in each pay period by the hundredweights of milk which the recipient of that non-price consideration produced during that pay period.

History: Cr. Register, September, 1996, No. 489, eff. 10-1-96.

ATCP 100.984 Meeting competition defense.

(1) GENERAL. In any proceeding against a dairy plant operator, in which the operator is alleged to have discriminated between producers or pay classes in violation of s. ATCP 100.981, it is a defense for the operator to prove that the operator discriminated between those producers or pay classes in good faith in order to meet competition.

(2) PROOF REQUIRED. No dairy plant operator may claim the meeting competition defense under sub. (1) unless the operator proves all of the following, based on documentary evidence which the operator possessed and relied upon when the operator engaged in the alleged discrimination:

(a) The operator offered the discriminatory milk price or non-price consideration in response to a competitor's prior offer to producers in the operator's procurement area.

(b) The competitor's prior offer under par. (a) was still in effect when the operator offered the discriminatory milk price or non-price consideration.

(c) The operator's discriminatory milk price or non-price consideration was similar in kind to the competitor's prior offer under par. (a), and did not exceed the competitor's offer.

(d) The operator offered the discriminatory milk price or non-price consideration only in that part of the operator's procurement area which overlapped the competitor's procurement area, or only to those producers who received the competitor's prior offer under par. (a).

(3) LIMITATIONS. No dairy plant operator may claim the meeting competition defense under sub. (1) for either of the following:

(a) A milk volume premium which exceeds, for producers shipping equivalent volumes of milk, the milk volume premium

offered or paid by the competitor whose competition the operator is purporting to meet.

(b) Discrimination which occurred more than 30 days after the last day on which the competitor's offer was in effect.

History: Cr. Register, September, 1996, No. 489, eff. 11-1-96.

ATCP 100.985 Demanding justification. **(1)** The department may, by written notice, require a dairy plant operator to file with the department the documentation which that operator relies upon to justify, under s. ATCP 100.982, 100.983 or 100.984, a payment or offer which appears to discriminate between producers or pay classes in violation of s. ATCP 100.981.

(2) A dairy plant operator shall file documentation in response to the department's demand under sub. (1) within 14 days after the operator receives that demand, or by a later date which the department specifies in its demand. The department may extend the filing deadline for good cause shown.

Note: See ss. 93.15 and 93.21(4), Stats.

History: Cr. Register, September, 1996, No. 489, eff. 10-1-96.

ATCP 100.986 Failure to justify discrimination; notice. **(1) DEPARTMENT NOTICE TO ALLEGED VIOLATOR.** If the department finds that a dairy plant operator's documentation under s. ATCP 100.985 fails to justify a discrimination in milk price or non-price consideration, the department may give the dairy plant operator written notice of that finding.

(2) PUBLIC INSPECTION. A notice under sub. (1) is open to public inspection under subch. II of ch. 19, Stats.

(3) NOT A PREREQUISITE FOR ENFORCEMENT. A notice under sub. (1) is not a prerequisite for an action to enforce this chapter or s. 100.22, Stats., nor is it a prerequisite for a private action under s. 100.20 (5), Stats.

(4) NOTICE DOES NOT PROVE VIOLATION. A notice under sub. (1) does not prove that a dairy plant operator violated this chapter or s. 100.22, Stats.

History: Cr. Register, September, 1996, No. 489, eff. 10-1-96.

ATCP 100.987 Injury to producer. In a proceeding against a dairy plant operator under s. 93.06 (7) or (8), 100.20 (5) or (6), 100.22 (4) or (5), or 100.26 (3) or (6), Stats., proof that a complaining producer received a lower milk price or non-price consideration than another producer shipping milk to the same dairy plant during the same pay period is presumptive evidence of injury to that producer.

History: Cr. Register, September, 1996, No. 489, eff. 10-1-96.