

DATCP Docket No. 05-R-01
Rules Clearinghouse No. 05-068

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

1 The Wisconsin department of agriculture, trade and consumer protection adopts the following
2 order to renumber ATCP 100.01(1); to amend ATCP 99.01(1), 99.135(2)(intro.),
3 99.255(2)(intro.), 100.135(2)(intro.), 101.20(1) and 101.255(2)(intro.); to repeal and recreate
4 ATCP 99.135(1), 99.14(2), 99.255(1), 99.26(2), 100.135(1), 100.20(2), 101.255(1) and
5 101.26(2); and to create 99.01(4m), (6m), (8m) and (14m), 99.12(4)(a)2.(note), 99.135(1)(note),
6 99.255(1)(note), 99.27, 100.01(1), (2m), (4g), (4m), (4p) and (14r), 100.12(4)(a)2.(note),
7 100.135(1)(note), 101.20(2m), (3g), (3m) and (3r), 101.24(4)(a)2.(note) and 101.255(1)(note),
8 relating to agricultural producer security.

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

This rule modifies current rules related to the agricultural producer security program under ch. 126, Stats. The program is designed to protect agricultural producers from catastrophic financial defaults by grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (collectively referred to as “contractors”) who procure agricultural commodities from producers.

This rule does all of the following:

- It permits a licensed contractor to file *voluntary* security for the benefit of producers if the contractor’s estimated default exposure exceeds the maximum amount payable from the Wisconsin agricultural producer security fund. A contractor who files voluntary security may pay lower fund assessments and make more favorable disclosures to producers. A voluntary security filing does not relieve a contractor of any other duty to file security or pay fund assessments.
- It changes and simplifies the disclosures that contractors must give to producers.
- It clarifies current grain warehouse keeper record keeping requirements.

Statutory Authority

Statutory authority: ss. 93.07(1), 126.15(1)(intro.), 126.30(1)(intro.), 126.46(1)(intro.), 126.60(1)(intro.), 126.81 and 126.88(intro.), Stats.

Statutes interpreted: Chapter 126, Stats.

The department of agriculture, trade and consumer protection (“DATCP”) administers the agricultural producer security program under ch. 126, Stats. DATCP has broad general authority, under s. 93.07(1), Stats., to adopt rules related to programs under its jurisdiction. DATCP has specific authority under ch. 126, Stats., to adopt rules for the agricultural producer security program.

Background

Under current law, contractors must be licensed by DATCP. Most contractors must contribute to an agricultural producer security fund (the “fund”). Fund assessments are based on contractor size, financial condition and risk practices. If a *contributing contractor* defaults, DATCP will pay producers out of the fund. The total payment may not exceed 60% of the fund balance at the time of default (the current fund balance is approximately \$6.1 million).

The current fund capacity is adequate to cover most, but not all, potential defaults by contributing contractors. Some large contractors have an “estimated default exposure” that exceeds current fund capacity (in some cases, by a very large amount). Some of these contractors are currently required to file security to cover at least part of the difference, but others are not (DATCP lacks statutory authority to require security filings for some of the contractors).

Rule Contents

Voluntary Security

Under this rule, a licensed contractor may file *voluntary* security with DATCP if the contractor’s estimated default exposure exceeds the maximum amount payable from the fund (this rule does not change current *mandatory* security filing requirements). A contractor who files security with DATCP may pay lower fund assessments and make more favorable disclosures to producers.

Reduced Fund Assessment

Under current rules, certain contractors who file security with DATCP are entitled to a reduction in their annual fund assessments (current rules specify the amount of the reduction). Under this rule, certain contractors who file security with DATCP (required or voluntary) may pay reduced fund assessments if their “estimated default exposure” is equal to or less than the sum of the following:

- The maximum amount payable from the fund, if the contractor defaults.
- The total amount of security (required or voluntary) filed by the contractor.

Disclosures to Producers

Under current rules, a contractor must periodically disclose to producers the contractor's license, security and fund contribution status. The current rules specify the exact language that contractors must use. The disclosures are intended to help producers assess the degree of financial risk involved in dealing with any particular contractor. The current disclosures are rather complex, and in some cases overstate the amount of security coverage afforded to producers.

This rule changes and simplifies the current disclosure requirements. This rule, like the current rules, specifies the exact language to be used. Disclosure requirements vary slightly between grain, milk and vegetable contractors, because of differences in the security program for each industry. But for all contractors, the disclosure alternatives are basically as follows:

- If the contractor's "estimated default exposure" is *equal to or less than* the amount of fund coverage and security on file, the disclosure states that the security program may provide full compensation for producers if the contractor defaults (subject to statutory limits).
- If the contractor's "estimated default exposure" is *greater than* the amount of fund coverage and security on file, the disclosure states that the security program may provide *some* compensation for producers if the contractor defaults. But compensation may cover a smaller portion of the producer's loss.
- If the contractor does not contribute to the fund or file any security with DATCP, the disclosure states that the security program will provide *no compensation* to producers if the contractor defaults.

Definition of "Affiliate"

Under current rules, contractor financial statements must disclose accounts and notes payable from "affiliates." These accounts and notes are excluded from the balance sheet before financial ratios are calculated. An "affiliate" is currently defined as an owner, major stockholder, partner, officer, director, member, employee or agent (or a person owned, controlled or operated by one of those persons). This rule clarifies that an "affiliate" also includes any other person who has significant control or influence over the contractor. This is consistent with generally accepted accounting principles.

Grain Warehouse Records

This rule clarifies current grain warehouse record keeping requirements. Under current law, warehouse keepers must keep "daily position" records related to grain in storage. This rule clarifies that daily position records must identify all grain kept by the warehouse keeper, whether in licensed or unlicensed storage. Records must clearly distinguish between grain owned by the warehouse keeper and that held for others. Records must also show the amount of grain entering

and leaving storage each day. Records must be based on individual grain transaction records required under current law.

Fiscal Impact

This rule will have no significant fiscal impact on DATCP or local government. A complete fiscal estimate is attached.

Business Impact

This rule will affect agricultural producers, grain dealers, grain warehouse keepers, milk contractors and vegetable contractors. Many of these businesses are small businesses. A small business analysis is attached.

This rule will have a minimal impact on most affected businesses, and effects will be positive in many cases (especially for agricultural producers). The Wisconsin legislature has spelled out detailed statutory requirements for grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (ch. 126, Stats.). DATCP has limited authority to change these requirements by rule.

This rule will make minor changes to current rules. Among other things, this rule:

- Allows licensed contractors to file voluntary security (it does not change current *mandatory* security requirements).
- Allows some contractors to pay reduced fund assessments.
- Changes and simplifies current contractor disclosures to producers. In some cases, current disclosures overstate the amount of security coverage afforded to producers. Some contractors may incur one-time costs to change their disclosure forms.
- Clarifies current grain warehouse record keeping requirements (this rule does not add major new record keeping requirements).

This rule will not have a significant adverse economic impact on small business. Therefore, it is not subject to the delayed small business effective date provision in s. 227.22(2)(e), Stats.

Under 2003 Wis. Act 145, DATCP and other agencies must adopt rules spelling out their rule enforcement policy for small businesses. DATCP has not incorporated a small business enforcement policy in this rule, but it will propose a separate rule on that subject. DATCP will, to the maximum extent feasible, seek voluntary compliance with this rule.

Federal and Surrounding State Regulations

Wisconsin's Security Program

Wisconsin has an agricultural producer security program for grain, milk and vegetables. The Wisconsin legislature has spelled out detailed statutory requirements for grain dealers, grain warehouse keepers, milk contractors and vegetable contractors (ch. 126, Stats.). Contractors

must be licensed by DATCP, and most contractors must contribute to an agricultural producer security fund administered by DATCP. A few contractors must also file security with DATCP.

Federal Programs

There is no federal producer security program related to milk. The United States department of agriculture (USDA) administers a producer security program for federally licensed *grain warehouses* that store grain for producers. Grain warehouses may choose whether to be licensed under state or federal law. Federally-licensed warehouses are exempt from state warehouse licensing and security requirements. State-licensed warehouses are likewise exempt from federal requirements.

The federal grain warehouse program provides little or no protection against financial defaults by *grain dealers*. Grain dealers are persons who buy and sell grain. Sometimes, grain dealers also operate grain warehouses. DATCP currently licenses grain dealers. Licensed warehouse keepers must also hold a state grain dealer license if they engage in grain dealing.

USDA proposes to regulate *grain dealer* activities (grain “merchandising”) by federally licensed warehouse keepers, to the exclusion of state regulation. But USDA has not yet finalized its regulations. In any case, the federal regulations would not apply to state-licensed grain warehouses, or to grain dealers who do not operate a warehouse.

There is a federal security program for vegetables. The federal security program is mainly limited to fresh market vegetables, and gives producers a priority lien against a contractor’s vegetable-related assets. Wisconsin’s vegetable security program applies only to processing vegetables (not fresh market vegetables covered by federal regulations). There may be some limited overlap between the Wisconsin and federal programs. However, the overlap may be justified because the scope of federal coverage is not entirely clear.

Surrounding States

In Minnesota, contractors must be licensed to procure grain, milk or processing vegetables from producers, or to operate grain warehouses. Regulated contractors must file bonds as security against default.

Neither Iowa nor Illinois have producer security programs for milk or vegetables. However, both states maintain indemnity funds to protect grain producers. Fund assessments are based solely on grain volume. In Wisconsin, by contrast, fund assessments are based on grain volume *and financial condition*.

Michigan has the following producer security programs:

- Potato dealers must be licensed, and must post bonds as security against defaults. (Wisconsin’s vegetable security program includes, but is not limited to, potatoes.)
- Dairy plants that fail to meet minimum financial standards must file security or pay cash for milk.
- Grain producers have the option of paying premiums into a state fund. In the event of a grain default, the fund reimburses participating producers.

Agency Contact for Submitting Comments

Questions or comments related to this rule may be sent to the following address:

Wisconsin Department of Agriculture, Trade and Consumer Protection
 Trade and Consumer Protection Division
 Bureau of Trade Practices
 P.O. Box 8911
 Madison, WI 53708-8911
 Attn.: Kevin LeRoy
 Telephone: (608) 224-4928
 E-Mail: Kevin.Leroy@datcp.state.wi.us

1 **SECTION 1.** ATCP 99.01(1) is amended to read:

2 ATCP 99.01(1) “Affiliate” has the meaning given in s. 126.01(1), Stats. “Affiliate”

3 includes a person who has significant control or influence over the contractor.

4 **SECTION 2.** ATCP 99.01(4m), (6m), (8m) and (14m) are created to read:

5 ATCP 99.01(4m) “Contingent financial backing amount” means the amount of

6 contingent financial backing, if any, which the department holds under s. 126.06, Stats.

7 (6m) “Deductible amount” means the amount specified in s. 126.72(3), Stats.

8 (8m) “Estimated default exposure” has the meaning given in s. 126.16(1)(c)1., Stats., for

9 a grain dealer, and in s. 126.31(1)(b)1., Stats., for a grain warehouse keeper.

10 (14m) “Maximum fund reimbursement” means the deductible amount plus the

11 contingent financial backing amount.

1 **SECTION 2m.** ATCP 99.12(4)(a)2.(note) is created to read:

2 *NOTE:* “Affiliate” as defined in s. 99.01(1) means a person who has significant control
3 or influence. Significant control or influence is a phrase used under generally
4 accepted accounting principals to describe a related party that has sufficient
5 ownership interest to influence the operating and financial policies of an entity.

6 **SECTION 3.** ATCP 99.135(1) is repealed and recreated to read:

7 ATCP 99.135(1) VOLUNTARY SECURITY. A licensed grain dealer may at any time file
8 security with the department, regardless of whether the grain dealer is required to file security.
9 Except as provided in sub. (2), a voluntary security filing under this subsection does not relieve a
10 grain dealer of any other obligation to file security or pay fund assessments.

11 **SECTION 4.** ATCP 99.135(1)(note) is created to read:

12 *NOTE:* A grain dealer who files voluntary security under sub. (1) may be eligible for a
13 reduction in fund assessments under sub. (2), and may be able to make a more
14 favorable disclosure to producers under s. ATCP 99.14(2).
15

16 **SECTION 5.** ATCP 99.135(2)(intro.) is amended to read:

17 ATCP 99.135(2) REDUCED ASSESSMENT. If, for the duration of a license year, a
18 contributing grain dealer maintains security under sub. (1) or s. 126.16(2), Stats., or both, in an
19 amount that is at least equal to the ~~amount required under s. 126.16(3), Stats., less the deductible~~
20 ~~amount~~ grain dealer’s estimated default exposure less the maximum fund reimbursement
21 amount, the contributing grain dealer’s annual fund assessment under s. 126.15, Stats., for that
22 year is reduced by an amount that is determined as follows:

23 **SECTION 6.** ATCP 99.14(2) is repealed and recreated to read:

24 ATCP 99.14(2) FORM OF DISCLOSURE. A disclosure under sub. (1) shall consist of a
25 verbatim copy of one of the following statements, as applicable:

1 (a) The following statement if the grain dealer’s estimated default exposure is equal to or
2 less than the sum of the maximum fund reimbursement amount and any security amount the
3 grain dealer has on file with the department:

4 **IMPORTANT NOTICE**

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

11
12 (b) The following statement if the grain dealer’s estimated default exposure exceeds the
13 sum of the maximum fund reimbursement amount and any security amount the grain dealer has
14 on file with the department:

15 **IMPORTANT NOTICE**

16 ***[Name of grain dealer]* participates in Wisconsin’s Agricultural Producer Security**
17 **Program. If we fail to pay you for grain when payment is due, you may file a claim under**
18 **this program. The program may provide some compensation. However, our “estimated**
19 **default exposure” exceeds program coverage, and we have not filed security to cover the**
20 **difference, so compensation may cover only a portion of your loss. For more information,**
21 **you may contact the Wisconsin Department of Agriculture, Trade and Consumer**
22 **Protection, 8911 Agriculture Drive, Madison, WI 53708-8911 (phone 608/224-4998).**

23
24 **SECTION 7.** ATCP 99.255(1) is repealed and recreated to read:

25 ATCP 99.255(1) VOLUNTARY SECURITY. A licensed grain warehouse keeper may at any
26 time file security with the department, regardless of whether the warehouse keeper is required to
27 file security. Except as provided in sub. (2), a voluntary security filing under this subsection
28 does not relieve a grain dealer of any obligation to file security or pay fund assessments.

29 **SECTION 8.** ATCP 99.255(1)(note) is created to read:

30 **NOTE:** A grain warehouse keeper who files voluntary security under sub. (1) may be
31 eligible for a reduction in fund assessments under sub. (2), and may be able to
32 make a more favorable disclosure to producers under s. ATCP 99.26(2).

1 **IMPORTANT NOTICE**

2 *[Name of grain warehouse keeper]* participates in Wisconsin’s Agricultural Producer
3 **Security Program. If we fail to return your grain on demand, you may file a claim under**
4 **this program. The program may provide some compensation. However, our “estimated**
5 **default exposure” exceeds program coverage, and we have not filed security to cover the**
6 **difference, so compensation may cover only a portion of your loss. For more information,**
7 **you may contact the Wisconsin Department of Agriculture, Trade and Consumer**
8 **Protection, 8911 Agriculture Drive, Madison, WI 53708-8911 (phone 608/224-4998).**

9
10 (c) The following statement if the grain warehouse keeper is not licensed and is exempt
11 from licensing under s. 126.26(1), Stats.:

12 **IMPORTANT NOTICE**

13 *[Name of grain warehouse keeper]* does not participate in Wisconsin’s Agricultural
14 **Producer Security Program. You are therefore not eligible for compensation under the**
15 **program if we fail to return your grain on demand. For more information, you may**
16 **contact the Wisconsin Department of Agriculture, Trade and Consumer Protection, 8911**
17 **Agriculture Drive, Madison, WI 53708-8911 (phone 608/224-4998).**

18
19 **SECTION 11.** ATCP 99.27 is created to read:

20 **ATCP 99.27 Warehouse keepers; daily position record.** (1) A grain warehouse
21 keeper’s daily position record under s.126.32(2), Stats., shall include all of the following, as of
22 the close of each day’s business:

23 (a) The total amount of grain that the warehouse keeper has in storage, including grain in
24 the warehouse keeper’s licensed warehouses, in the warehouse keeper’s unlicensed warehouses
25 if any, or on deposit with other warehouse keepers.

26 (b) The total amount of stored grain owned by the warehouse keeper, including grain in
27 the warehouse keeper’s licensed warehouses, in the warehouse keeper’s unlicensed warehouses
28 if any, or on deposit with other warehouse keepers.

29 (c) The warehouse keeper’s total grain storage obligations to depositors.

1 (d) The amount of grain, owned by the warehouse keeper, which was added to storage
2 that day.

3 (e) The amount of grain, owned by the warehouse keeper, which was removed from
4 storage that day.

5 (f) The amount of grain, held for others, which was received from depositors that day.

6 (g) The amount of grain, held for others, which was returned to depositors that day.

7 (2) Daily position records under sub. (1) shall be based on individual transaction records
8 kept by the grain warehouse keeper, including records required under s. 126.32 and 126.33,
9 Stats.

10 **SECTION 12.** ATCP 100.01(1) is renumbered (1m).

11 **SECTION 13.** ATCP 100.01(1), (2m), (4g), (4m), (4p) and (14r) are created to read:

12 ATCP 100.01(1) “Affiliate” has the meaning given in s. 126.01(1), Stats. “Affiliate”
13 includes a person who has significant control or influence over the contractor.

14 (2m) “Contingent financial backing amount” means the amount of contingent financial
15 backing, if any, which the department holds under s. 126.06, Stats.

16 (4g) “Deductible amount” means the amount specified in s. 126.72(3), Stats.

17 (4m) “Disqualified milk contractor” has the meaning given in s. 126.40(7), Stats.

18 (4p) “Estimated default exposure” has the meaning given in s. 126.47(1)(b)1., Stats.

19 (4r) “Maximum fund reimbursement” means the deductible amount plus the contingent
20 financial backing amount.

21 **SECTION 13m.** ATCP 100.12(4)(a)2.(note) is created to read:

22 **NOTE:** “Affiliate” as defined in s. ATCP 100.01(1) means a person who has significant
23 control or influence. Significant control or influence is a phrase used under
24 generally accepted accounting principals to describe a related party that has

1 sufficient ownership interest to influence the operating and financial policies of an
2 entity.

3 **SECTION 14.** ATCP 100.135(1) is repealed and recreated to read:

4 ATCP 100.135(1) VOLUNTARY SECURITY. A milk contractor may at any time file
5 security with the department, regardless of whether the milk contractor is required to file
6 security. Except as provided in sub. (2), a voluntary security filing under this paragraph does not
7 relieve a milk contractor of any other obligation to file security or pay fund assessments.

8 **SECTION 15.** ATCP 100.135(1)(note) is created to read:

9 **NOTE:** A milk contractor who files voluntary security under sub. (1) may be eligible for
10 a reduction in fund assessments under sub. (2), and may be able to make a more
11 favorable disclosure to producers under s. ATCP 100.20(2).
12

13 **SECTION 16.** ATCP 100.135(2)(intro.) is amended to read:

14 ATCP 100.135(2) REDUCED ASSESSMENT. If, for the duration of a license year, a
15 contributing milk contractor maintains security under sub. (1) or s. 126.47(2), Stats., or both, in
16 an amount that is at least equal to the ~~amount required under s. 126.47(3), Stats., less the~~
17 ~~deductible amount~~ milk contractor's estimated default exposure less the maximum fund
18 reimbursement amount, the milk contractor's annual fund assessment under s. 126.46, Stats., for
19 that year is reduced by an amount that is determined as follows:

20 **SECTION 17.** ATCP 100.20(2) is repealed and recreated to read:

21 ATCP 100.20(2) FORM OF DISCLOSURE. (a) Except as provided in pars. (b) to (e), the
22 disclosure under sub. (1) shall consist of a verbatim copy of the following statement:

23 **IMPORTANT NOTICE**

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

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

7 **IMPORTANT NOTICE**

8 ***[Name of milk contractor]* participates in Wisconsin's Agricultural Producer Security**
9 **Program. If we fail to pay you for milk when payment is due, you may file a claim under**
10 **this program. The program may reimburse up to 80% of the first \$60,000 of an allowed**
11 **claim and up to 75% of any additional amount. However, our "estimated default**
12 **exposure" exceeds available reimbursement funding, and we have not filed security to**
13 **cover the difference, so reimbursement may cover a much smaller portion of your loss. For**
14 **more information, you may contact the Wisconsin Department of Agriculture, Trade and**
15 **Consumer Protection, 8911 Agriculture Drive, Madison, WI 53708-8911 (phone 608/224-**
16 **4998).**

17
18 (c) Except as provided in par. (d) or (e), the disclosure under sub. (1) shall consist of a
19 verbatim copy of the following statement if the milk contractor voluntarily contributes to the
20 fund under s. 126.45(2), Stats., and has an estimated default exposure greater than the sum of the
21 maximum fund reimbursement amount plus any security amount the milk contractor has on file
22 with the department:

23 **IMPORTANT NOTICE**

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

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

4 **IMPORTANT NOTICE**

5 ***[Name of milk contractor]* is licensed under Wisconsin’s Agricultural Producer Security**
6 **Program. Because our financial statements meet or exceed minimum requirements**
7 **(positive equity, a current ratio of at least 1.25 to 1.0 and a debt-to-equity ratio of no more**
8 **than 2.0 to 1.0), we are not required to contribute to the program or file security. The**
9 **program will provide no compensation if we fail to pay you for milk. For more**
10 **information, you may contact the Wisconsin Department of Agriculture, Trade and**
11 **Consumer Protection, 8911 Agriculture Drive, Madison, WI 53708-8911 (phone 608/224-**
12 **4998).**

13
14 (e) If a disclosure under sub. (1) is made on or before April 30, 2007, by a qualified
15 producer agent who files security under s. 126.47(3)(a)3., Stats., the disclosure shall consist of a
16 verbatim copy of the following statement:

17 **IMPORTANT NOTICE**

18 ***[Name of milk contractor]* participates in Wisconsin’s Agricultural Producer Security**
19 **Program as a producer agent. If we fail to pay you for milk when payment is due, you may**
20 **file a claim under this program. The program may reimburse up to 20% of your allowed**
21 **claim. For more information, you may contact the Wisconsin Department of Agriculture,**
22 **Trade and Consumer Protection, 8911 Agriculture Drive, Madison, WI 53708-8911 (phone**
23 **608/224-4998).**

24
25 **SECTION 18.** ATCP 101.20(1) is amended to read:

26 ATCP 101.20(1) “Affiliate” has the meaning given in s. 126.01(1), Stats. “Affiliate”
27 includes a person who has significant control or influence over the business entity.

28 **SECTION 19.** ATCP 101.20(2m), (3g), (3m) and (3r) are created to read:

29 ATCP 101.01(2m) “Contingent financial backing amount” means the amount of
30 contingent financial backing, if any, which the department holds under s. 126.06, Stats.

31 (3g) “Deductible amount” means the amount specified in s. 126.72(3), Stats.

1 (3m) “Estimated default exposure” has the meaning given in s. 126.61(1)(bm)1., Stats.

2 (3r) “Maximum fund reimbursement” means the deductible amount plus the contingent
3 financial backing amount.

4 **SECTION 19m.** ATCP 101.24(4)(a)2.(note) is created to read:

5 **NOTE:** “Affiliate” as defined in s. ATCP 101.20(1) means a person who has significant
6 control or influence. Significant control or influence is a phrase used under
7 generally accepted accounting principals to describe a related party that has
8 sufficient ownership interest to influence the operating and financial policies of an
9 entity.

10 **SECTION 20.** ATCP 101.255(1) is repealed and recreated to read:

11 ATCP 101.255(1) VOLUNTARY SECURITY. A licensed vegetable contractor may at any
12 time file security with the department, regardless of whether the vegetable contractor is required
13 to file security. Except as provided in sub. (2), a voluntary security filing under this subsection
14 does not relieve a vegetable contractor of any other obligation to file security or pay fund
15 assessments.

16 **SECTION 21.** ATCP 101.255(1)(note) is created to read:

17 **NOTE:** A vegetable contractor who files voluntary security under sub. (1) may be
18 eligible for a reduction in fund assessments under sub. (2), and may be able to
19 make a more favorable disclosure to producers under s. ATCP 101.26(2).
20

21 **SECTION 22.** ATCP 101.255(2)(intro.) is amended to read:

22 ATCP 101.255(2) REDUCED ASSESSMENT. If, for the duration of a license year, a
23 contributing vegetable contractor maintains security under sub. (1) or s. 126.61(2), Stats., or
24 both, in an amount that is at least equal to the amount required under s. 126.61(3), Stats., less the
25 deductible amount the vegetable contractor’s estimated default exposure less the maximum fund
26 reimbursement amount, the vegetable contractor’s annual fund assessment under s. 126.60,
27 Stats., for that year is reduced by an amount that is determined as follows:

28 **SECTION 23.** ATCP 101.26(2) is repealed and recreated to read:

1 ATCP 101.26(2) FORM OF DISCLOSURE. A disclosure under sub. (1) shall consist of a
2 verbatim copy of one of the following statements, as applicable:

3 (a) Except as provided in par. (b) or (c), the following statement if the vegetable
4 contractor's estimated default exposure is equal to or less than the sum of the maximum fund
5 reimbursement amount and any security amount the vegetable contractor has on file with the
6 department:

7 **IMPORTANT NOTICE**

8 ***[Name of vegetable contractor]* participates in Wisconsin's Agricultural Producer Security**
9 **program as a licensed vegetable contractor. If we fail to pay you for vegetables when**
10 **payment is due, you may file a claim under this program. The program may reimburse up**
11 **to 90% of the first \$40,000 of your allowed claim, 85% of the next \$40,000, 80% of the next**
12 **\$40,000, and 75% of any additional amount. For more information, you may contact the**
13 **Wisconsin Department of Agriculture, Trade and Consumer Protection, 8911 Agriculture**
14 **Drive, Madison, WI 53708-8911 (phone 608/224-4998).**

15
16 (b) The following statement if the vegetable contractor's estimated default exposure
17 exceeds the sum of the maximum fund reimbursement amount and any security amount the
18 vegetable contractor has on file with the department:

19 **IMPORTANT NOTICE**

20 ***[Name of vegetable contractor]* participates in Wisconsin's Agricultural Producer Security**
21 **Program as a licensed vegetable contractor. If we fail to pay you for vegetables when**
22 **payment is due, you may file a claim under this program. The program may reimburse up**
23 **to 90% of the first \$40,000 of an allowed claim, 85% of the next \$40,000, 80% of the next**
24 **\$40,000, and 75% of any additional amount. However, our "estimated default exposure"**
25 **exceeds available reimbursement funding, so reimbursement may cover a much smaller**
26 **portion of your loss. For more information, you may contact the Wisconsin Department of**
27 **Agriculture, Trade and Consumer Protection, 8911 Agriculture Drive, Madison, WI 53708-**
28 **8911 (phone 608/224-4998).**

29
30 (c) The following statement if the vegetable contractor is not required to contribute to the
31 fund or file security with the department, and has not done so voluntarily:

1 **IMPORTANT NOTICE**

2 ***[Name of vegetable contractor]* does not contribute to Wisconsin’s Agricultural Producer**
3 **Security Program, and has not filed security under the program. The program will**
4 **therefore provide no compensation if we fail to pay you for vegetables. For more**
5 **information, you may contact the Wisconsin Department of Agriculture, Trade and**
6 **Consumer Protection, 8911 Agriculture Drive, Madison, WI 53708-8911 (phone 608/224-**
7 **4998).**

8
9 **EFFECTIVE DATE.** This rule takes effect on the first day of the month following
10 publication in the Wisconsin administrative register, as provided in s. 227.22(2)(intro.), Stats.

Dated this _____ day of _____, _____.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND
CONSUMER PROTECTION

By _____
Rodney J. Nilsestuen, Secretary