

## Chapter ATCP 101

### VEGETABLE CONTRACTORS

#### Subchapter I — Vegetable Procurement Practices

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**Note:** Chapter Ag 101 was renumbered chapter ATCP 101 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448.

#### Subchapter I — Vegetable Procurement Practices

**Note:** This subchapter is adopted under authority of s. 100.20 (2), Stats.,. Violations of this subchapter may be prosecuted under s. 100.20 (6) or 100.26 (3) or (6), Stats. A person who suffers a monetary loss because of a violation of this subchapter may sue the violator directly under s. 100.20 (5), Stats., and may recover twice the amount of the loss, together with costs and reasonable attorneys' fees.

##### ATCP 101.01 Definitions. In this subchapter:

(1) "Abandoned acreage" means vegetable acreage, grown under a vegetable procurement contract, which the contractor declares to be abandoned under s. ATCP 101.04.

(2) "Contractor" means a person who buys or offers to buy vegetables in this state from a producer, or who contracts or offers to contract with a producer to grow vegetables in this state, regardless of whether the contractor is located in this state or is engaged in food processing. "Contractor" does not include any of the following:

(a) A person who procures vegetables primarily for unprocessed fresh market use and is licensed under the federal perishable agricultural commodities act, 7 USC 499.

(b) A restaurant or retail food establishment that procures vegetables solely for retail sale at the restaurant or retail food establishment.

(3) "Pool acreage" means vegetable acreage assigned to an unharvested acreage pool under s. ATCP 101.05.

(4) "Pool contributor" means any of the following:

(a) A producer who contributes, either directly or by means of a deduction or reduced compensation under a vegetable procurement contract, to an unharvested acreage pool.

(b) A contractor who contributes to an unharvested acreage pool as a producer under s. ATCP 101.05 (8).

(c) A contractor who makes a matching contribution to an unharvested acreage pool under s. ATCP 101.05 (7).

(5) "Pool contribution" or "contribution" means an amount of money contributed to an unharvested acreage pool by a pool contributor. A producer's "contribution" to an unharvested acreage pool includes any contribution in the form of a deduction or reduced compensation under a vegetable procurement contract.

(6) "Pool funds" means all contributions made by pool contributors as part of an unharvested acreage pool.

(7) "Pool participant" means a producer assigned to an unharvested acreage pool under s. ATCP 101.05. "Pool participant" includes a contractor who participates in an unharvested acreage pool as a producer under s. ATCP 101.05 (8).

(8) "Producer" means a person who produces and sells vegetables, or who grows vegetables under contract.

(9) "Suitable acreage" means all vegetable acreage grown under a vegetable procurement contract, other than acreage which the contractor declares to be abandoned under s. ATCP 101.04.

(10) "Unharvested acreage" means both of the following:

(a) Vegetable acreage which a contractor leaves unharvested for any reason, regardless of whether the vegetable crop is suitable or abandoned.

(b) Acreage used to produce a vegetable crop which is rejected by the contractor for any reason, regardless of whether the crop is suitable or abandoned.

(11) "Unharvested acreage pool" or "pool" means a contractual arrangement under s. ATCP 101.05 between a contractor and producers, under which producers make contributions in order to help finance a contractor's payments to other producers under s. ATCP 101.05 (4) (a) or (b).

(12) "Vegetable" means sweet corn, snap beans or peas that are grown or sold for use in food processing, whether or not they are actually processed as food.

(13) "Vegetable procurement contract" means an agreement between a contractor and a producer, under which the contractor buys vegetables from the producer or contracts with the producer to grow vegetables in this state.

**History:** Cr. Register, December, 1992, No. 444, eff. 1-1-93; CR 02-113: am. (intro.). Register April 2003 No. 568, eff. 5-1-03.

##### ATCP 101.02 Vegetable procurement contracts.

(1) **CONTRACT IN WRITING; COPY TO PRODUCER.** Every vegetable procurement contract shall be in writing, and shall include the name, address and telephone number of the contractor. The contractor shall provide a copy of the signed contract to the producer after the producer signs the contract.

(2) **PRODUCER'S RIGHT TO CANCEL.** A producer may cancel a vegetable procurement contract by mailing a written cancellation notice to the contractor within 72 hours after the producer receives a copy of the signed contract, or before a later cancellation deadline if a later deadline is specified in the contract. The producer's right to cancel, the method by which the producer may cancel, and the deadline for canceling the contract shall be clearly disclosed in every vegetable procurement contract.

(3) **CLEAR DISCLOSURE OF TERMS.** (a) Every vegetable procurement contract shall clearly and conspicuously disclose both of the following:

1. The amount which the contractor agrees to pay the producer for suitable acreage, including unharvested suitable acreage under s. ATCP 101.03.

2. The amount, if any, which the contractor agrees to pay the producer for abandoned acreage under s. ATCP 101.04. If the contractor offers no payment for abandoned acreage, that fact shall be clearly disclosed in the contract.

(b) If the amounts under par. (a) are variable, depending on crop yield, grade or other factors to be determined at the time of harvest, the contract shall clearly disclose the formula or method by which the amounts will be determined.

(c) The contract shall clearly disclose every charge or deduction which may affect the net amount paid to the producer under the contract.

**Note:** Sections ATCP 101.03 (2) (b), 101.04 (1) (b) and (c) and (3) (b) 2., and 101.05 (1), (5), and (6) also include contract disclosure requirements.

**(4) UNHARVESTED ACREAGE POOL.** (a) If a vegetable procurement contract requires a producer to participate in an unharvested acreage pool, the contract shall clearly specify the terms and conditions of the pool, pursuant to s. ATCP 101.05.

(b) Except for pool contributions under ss. ATCP 101.03 (2), 101.04 (3) and 101.05, no vegetable procurement contract may provide for any deduction or reduced payment to a producer because of a contractor's obligations to other producers.

**(5) HARVEST RESPONSIBILITIES.** Every vegetable procurement contract shall clearly specify whether the contractor or the producer is responsible for harvesting the vegetable crop. If the producer is responsible for harvest, the contract shall not state or imply that the contractor will provide harvest equipment or services unless the contractor is equipped to meet the reasonably foreseeable demand for harvest equipment and services on a timely basis.

**(6) ARBITRATION OF DISPUTES.** Under every vegetable procurement contract, the contractor shall agree to submit contract disputes to impartial arbitration at the request of the producer.

**History:** Cr. Register, December, 1992, No. 444, eff. 1-1-93.

### ATCP 101.03 Unharvested suitable acreage.

**(1) FULL PAYMENT REQUIRED.** (a) *General.* If a contractor declines to harvest or accept delivery of suitable acreage grown under a vegetable procurement contract, the contractor shall pay the producer the full contract amount for the suitable acreage, as if the acreage had been harvested or accepted on a timely basis.

(b) *Suitable acreage left unharvested because of adverse field conditions.* If, because of adverse field conditions during the scheduled harvest period, a contractor is not able to harvest acreage which is otherwise suitable, the contractor shall pay for the unharvested acreage as suitable acreage under this section.

**(2) CONTRIBUTION TO UNHARVESTED ACREAGE POOL.** Subsection (1) does not prohibit the contractor from deducting the producer's contribution to an unharvested acreage pool under s. ATCP 101.05, provided that all of the following apply:

(a) *Equivalent contributions from all producers.* The producer's pool contribution, expressed as a percentage deduction from the gross amount due the producer for the unharvested suitable acreage, equals the percentage contribution on harvested acreage made by every producer of harvested acreage.

(b) *Contribution clearly disclosed.* The pool contribution requirement is clearly disclosed in the vegetable procurement contract, pursuant to s. ATCP 101.05.

(c) *Maximum contribution.* The pool contribution does not exceed the maximum contribution specified in the vegetable procurement contract under s. ATCP 101.05 (6).

**(3) SERVICE CHARGES.** When paying for unharvested suitable acreage under sub. (1), the contractor may deduct charges for seed, harvest, hauling, grading or similar supplies or services that would have been assessed against the producer had the producer's acreage been harvested. A contractor may not receive any pool funds for these services.

**(4) ESTIMATING YIELD AND GRADE OF UNHARVESTED SUITABLE ACREAGE.** (a) *General.* Except as provided under par. (b) or (c), if payment for suitable acreage is based on yield or grade, the contractor shall estimate the yield and grade of unharvested suitable acreage by means of field sampling under sub. (5).

(b) *Equivalent field sampling procedures.* Rather than estimating yield or grade according to the field sampling procedures under sub. (5), a contractor may estimate yield or grade according to equivalent field sampling procedures which are clearly specified in writing in the procurement contract.

(c) *Agreement on yield and grade.* If, because of adverse field conditions or because field harvest is impractical during the scheduled harvest period, a contractor is not able to harvest acreage which is otherwise suitable, the contractor and the producer may agree on the yield and grade of the unharvested acreage without field sampling under sub. (5), provided that all of the following apply:

1. The agreement is made in writing and signed by the parties during the scheduled harvest period, and a copy is provided to the producer.

2. The agreement clearly describes the field conditions deemed adverse or the reason why field harvest was deemed impractical.

3. Before the agreement is made, the contractor discloses to the producer in writing that the producer has a right to have the field sampled for yield and grade in compliance with this subsection. If a producer requests field sampling, the contractor shall sample the field in compliance with par. (a) or (b).

**(5) FIELD SAMPLING PROCEDURE.** (a) *General.* If a contractor is required to estimate the yield or grade of unharvested acreage under sub. (4) (a), the contractor shall estimate the yield or grade using the field sampling procedure under this subsection. Field samples used to estimate yield or grade shall be collected when the unharvested vegetables are at maturity, and shall be collected from areas which are reasonably representative of the field.

(b) *Number of samples.* Except as provided under par. (c), the number of samples collected under par. (a) shall be based on the size of the field as follows:

1. At least 3 samples from different areas shall be taken from a field which is less than 40 acres.

2. At least 5 samples from different areas shall be taken from a field which is 40 to 100 acres.

3. At least 7 samples from different areas shall be taken from a field which is larger than 100 acres.

(c) *Different crop or soil conditions within field; subdivision of field.* If significant differences of crop or soil conditions exist within a field, the field shall be divided so that crop and soil conditions are reasonably uniform within each subdivision. Each subdivision shall be treated as a separate field under par. (b).

(d) *Selecting sampling areas.* The samples collected under par. (b) or (c) shall be collected from sampling areas alternately selected by the contractor and the producer. After the contractor and the producer have each selected an equal number of sample areas, the contractor and the producer shall jointly select the last sample area.

(e) *Sample areas defined.* Each area sample under par. (d) shall consist of one of the following:

1. If the vegetable is a row crop such as sweet corn or snap beans, each sample area shall be not less than 15 linear feet of a row.

2. If vegetables, such as peas, are planted by either the drill or broadcast method, each sample area shall be a plot of not less than 25 square feet having dimensions of not less than 5 feet in length and width.

(f) *Sample weights.* Each sample collected under this subsection shall be individually weighed. The weights of the individual samples shall be added together to obtain a combined sample weight for the field, which shall be divided by the number of samples to determine an average sample weight. Vegetable samples shall be weighed according to the following procedures for the respective commodity:

1. Sweet corn shall be weighed after the ears are completely husked, and the stem and any excess tip are removed.

2. Snap beans shall be weighed after all beans in the sample are removed from the vines.

3. Sweet peas shall be weighed after all peas in the sample are removed from the pods.

(g) *Calculating yield per acre.* The yield per acre of unharvested vegetables shall be calculated by performing the following sequential operations:

1. Calculate the square footage of each sample area. For row crops, multiply the length of the row by the space between rows, measured in feet to 2 decimal places.

2. Determine the average square footage of all the sample areas.

3. Divide the square footage of one acre (43,560 sq. ft.) by the average square footage of the sample areas to determine the number of sampling units per acre.

4. Multiply the number of sampling units per acre by the average sample weight under par. (f) to determine the yield in pounds per acre.

5. Calculate the estimated yield for the unharvested field by multiplying the yield per acre by the number of acres in the field.

(h) *Documenting the yield estimate.* Every yield estimate under this section shall be documented in writing, and a copy shall be provided to the producer. The documentation shall include:

1. The name and address of the contractor.

2. The identity of the producer and the location of the field.

3. The date and time when the field was sampled and the yield estimate was made.

4. The size of the field, the number of samples collected, and the calculations used to estimate the yield. If sampling methods or yield estimation methods differ from those prescribed under this section, the documentation shall specify the methods used.

5. The signatures of the contractor and the producer, or their agents.

(i) *Grading samples.* If payment for unharvested vegetables is based on the quality or condition of the vegetables, the samples collected under this subsection shall be graded in compliance with ch. ATCP 155.

**History:** Cr. Register, December, 1992, No. 444, eff. 1-1-93.

**ATCP 101.04 Abandoned acreage.** (1) **DECLARATION THAT ACREAGE IS ABANDONED.** For payment purposes under s. ATCP 101.03, contracted vegetable acreage is considered suitable unless the contractor declares that the acreage is abandoned under this section. A contractor may declare that acreage is abandoned if any of the following apply:

(a) The vegetable crop is destroyed, or rendered clearly unsuitable for processing, by drought, flood, wind, hail, frost or other natural peril.

(b) The crop yield or grade, determined according to the procedure specified for unharvested suitable acreage under s. ATCP 101.03 (4), fails to meet the contractor's reasonable minimum standard for harvest as specified in the vegetable procurement contract.

(c) The crop is not suitable for processing because it contains illegal pesticide residues, or pesticide residues which exceed limits specified in the vegetable procurement contract.

**Note:** Pesticide residues are illegal if, for example, they exceed legal tolerances on the vegetable crop, or if they resulted from the use of a pesticide which is not registered or labeled for use on that vegetable crop.

(2) **FORM OF DECLARATION.** If a contractor declares that acreage is abandoned under sub. (1), the contractor shall make that declaration in writing to the producer. The contractor shall specify the basis for the declaration under sub. (1).

(3) **CONTRIBUTION TO UNHARVESTED ACREAGE POOL.** (a) Subject to par. (b), a contractor may require a producer of abandoned

acreage to contribute to an unharvested acreage pool under s. ATCP 101.05, and may deduct the producer's contribution from the amount paid to the producer for the abandoned acreage.

(b) A contractor may not require a producer of abandoned acreage to contribute to an unharvested acreage pool unless all of the following apply:

1. The producer's pool contribution, expressed as a percentage deduction from the gross amount due the producer for the abandoned acreage, equals the percentage contribution made by every other producer of abandoned acreage.

2. The pool contribution requirement is clearly disclosed in the vegetable procurement contract, pursuant to s. ATCP 101.05.

3. The pool contribution does not exceed the maximum contribution specified in the vegetable procurement contract under s. ATCP 101.05 (6).

4. The pool contribution does not result in any net payment from the producer to the contractor.

(4) **NO NET CHARGE TO PRODUCER.** (a) If a contractor declares that acreage is abandoned under this section, the contractor may not require the producer to pay any supply or service charges, or make any pool contribution, which would result in a net payment from the producer to the contractor.

(b) Paragraph (a) does not limit charges for supplies and services which the producer was free to obtain from sources other than the contractor.

(5) **CONTRACTOR FAULT.** This section does not relieve a contractor from any contract claim which a producer may have against a contractor because of the contractor's failure to perform the contractor's obligations under the contract.

**History:** Cr. Register, December, 1992, No. 444, eff. 1-1-93.

**ATCP 101.05 Unharvested acreage pool.** A contractor may establish an unharvested acreage pool under this section. The unharvested acreage pool shall comply with all of the following requirements:

(1) **TERMS SPECIFIED IN CONTRACT.** In each vegetable procurement contract with a pool participant, the contractor shall clearly specify the terms and conditions of the pool, including terms related to producer contributions, contractor contributions, and the use of pool funds. The same terms and conditions shall apply to every producer who participates in the pool.

(2) **POOL COVERAGE.** Pool funds may be used only to pay for vegetable acreage contracted with pool participants. No pool may apply to more than one contract year. If a pool applies to more than one vegetable crop, the vegetable procurement contract shall clearly identify the crops included in the pool.

(3) **PRODUCERS AND ACREAGE ASSIGNED TO POOL.** (a) Pool participants and pool acreage shall be assigned to a specific pool when those participants sign vegetable procurement contracts for that acreage. Pool participants and pool acreage, once assigned to a pool, may not be reassigned to a different pool.

(b) If any pool participants are located outside this state, the vegetable procurement contract shall identify all of the states in which pool participants are located.

(4) **USE OF POOL FUNDS; GENERAL.** (a) A contractor may use pool funds to pay for unharvested suitable acreage or abandoned acreage.

(b) If, because of low crop yield or grade, a producer is entitled to a smaller contract payment for harvested acreage than if that harvested acreage had been abandoned, a contractor may use pool funds to pay the producer the difference between the harvested acreage payment and the higher contract guarantee for abandoned acreage.

(c) A contractor may not use pool funds for any purpose other than those specified under par. (a) or (b). Payments under pars. (a) and (b) are subject to the terms of the vegetable procurement contract.

**(5) PRODUCER CONTRIBUTIONS.** In every vegetable procurement contract with a pool participant, the contractor shall clearly specify both of the following:

(a) The circumstances under which the participant will be required to contribute to the pool, and the method by which contributions will be assessed.

(b) The amount of the participant's contribution to the pool, or the formula by which that contribution will be determined, subject to the maximum specified under sub. (6).

**(6) MAXIMUM PRODUCER CONTRIBUTION.** (a) In every vegetable procurement contract with a pool participant, the contractor shall specify the participant's maximum potential contribution to the pool.

(b) The maximum contribution under par. (a) shall be stated as a maximum percentage deduction from the gross amount due the producer under the vegetable procurement contract. Producers of abandoned acreage may be subject to a different maximum contribution than producers of suitable acreage, provided that the different maximum contribution is clearly specified in the contract.

(c) No contractor may require a pool participant to contribute more than the applicable maximum amount specified under this subsection.

**(7) CONTRACTOR TO MATCH PRODUCER CONTRIBUTIONS.** The contractor shall contribute to the pool an amount which is not less than the total of all producer contributions to the pool.

**(8) CONTRACTOR ACREAGE INCLUDED.** (a) If, in any geographic area covered by a pool, a contractor grows the same vegetable crop on acreage owned or leased by the contractor, the contractor shall participate in the pool on the same basis as every other participating producer.

(b) If the contractor participates as a producer under par. (a), the contractor's pool contribution shall be treated as a producer contribution which the contractor shall also match with a separate contribution under sub. (7).

(c) If a contractor participates as a producer under par. (a), the contractor is eligible for payments from the pool on the same basis as every other participating producer.

**(9) REFUNDS TO POOL CONTRIBUTORS.** If the contractor collects more pool contributions than the contractor distributes to pool participants under sub. (4), the contractor shall refund all unused pool funds to pool contributors on a pro rata basis, based on the amount of each contributor's pool contribution. If the contractor refunds pool funds to producers under this subsection, the contractor shall include each producer's pro rata refund with the contractor's final payment to the producer under the vegetable procurement contract.

**(10) INFORMATION TO PRODUCERS.** When the contractor makes final payment to a pool participant under a vegetable procurement contract, the contractor shall provide all of the following information to the pool participant:

(a) The total amount that pool participants contributed to the pool. If the contractor participates as a producer under sub. (8), the contractor's total contribution as a producer shall be stated separately.

(b) The contractor's total contribution to the pool as a contractor under sub. (7).

(c) The total amount of pool funds paid to pool participants under sub. (4). If the contractor received pool funds as a producer under sub. (8) (c), the amount paid to the contractor shall be stated separately.

(d) The total number of suitable pool acres left unharvested, the number of pool participants who produced that unharvested suitable acreage, and the total amount of pool funds paid for unharvested suitable acreage. Instead of reporting the number of suitable pool acres left unharvested, the contractor may report that number as a percentage of total pool acres.

(e) The total number of pool acres that were abandoned, the number of pool participants who produced that abandoned acreage, and the total amount of pool funds paid for abandoned acreage. If some of the abandoned acres were not eligible for pool payments, the contractor shall also report the total number of eligible acres and producers. Instead of reporting the number of pool acres that were abandoned, or the number of abandoned acres that were eligible for pool payments, the contractor may report those numbers as percentages of total pool acres.

(f) The total number of harvested pool acres that were eligible for pool payments under sub. (4) (b), the number of pool participants who produced that eligible harvested acreage, and the total amount of pool funds paid under sub. (4) (b) for that eligible harvested acreage. Instead of reporting the number of pool acres that were eligible for pool payments under sub. (4) (b), the contractor may report that number as a percentage of total pool acres.

(g) The total amount of pool funds, if any, that the contractor refunded to pool contributors under sub. (9). If the contractor contributed as a producer under sub. (8), the amount refunded to the contractor shall be stated separately.

**(11) RECORDS.** (a) For each unharvested acreage pool, the contractor shall keep complete and accurate records related to each of the items under sub. (10).

(b) For each pool participant, the contractor shall keep accurate records of all of the following:

1. The participant's name and address.
2. The amount of each participant's pool acreage.
3. The participant's pool contribution, if any.
4. The amount of unharvested suitable acreage for which the participant received pool payments, and the amount of those payments.
5. The amount of abandoned acreage for which the participant received pool payments, and the amount of those payments.
6. The amount of acreage for which the participant received pool payments under sub. (4) (b), and the amount of those payments.

(c) If a contractor estimates the yield or grade of unharvested suitable acreage under s. ATCP 101.03 (4), the contractor shall keep complete and accurate records showing how the yield or grade was estimated in compliance with that subsection.

**(12) RECORDS RETAINED; INSPECTION AND COPYING.** A contractor shall retain the records under sub. (11) for at least 3 years, and shall make those records available to the department for inspection and copying upon request.

**History:** Cr. Register, December, 1992, No. 444, eff. 1-1-93.

**ATCP 101.06 Prohibited contract provisions.** No vegetable procurement contract may do any of the following:

**(1)** Require any producer to purchase seed, pesticide applications, harvest services, hauling services, or other supplies or services from the contractor if the charges for the supplies or services exceed the reasonable market value of those supplies or services.

**(2)** Relieve, or purport to relieve a contractor from liability for property damage or personal injury caused by the negligent acts or omissions of the contractor.

**(3)** Impose, or purport to impose liability on a producer for personal injury or property damage caused by the contractor.

**History:** Cr. Register, December, 1992, No. 444, eff. 1-1-93.

**ATCP 101.07 Prohibited practices.** No contractor may do any of the following:

**(1)** Fail to pay a producer according to the terms of a vegetable procurement contract.

**(2)** Knowingly misrepresent the terms of a vegetable procurement contract, the procedures used under the contract, or the services provided by the contractor under the contract, in order to induce a producer to sign a vegetable procurement contract.

(3) Conspire with other contractors to fix prices or restrain trade in the procurement of vegetables from producers.

(4) Fail or refuse to offer a vegetable procurement contract to a producer because the producer has done any of the following:

(a) Filed a complaint with the contractor or a government agency.

(b) Requested arbitration of a contract dispute.

(c) Filed suit alleging a violation of this chapter or ch. ATCP 155.

(d) Joined an association of producers, advised or attempted to organize producers, or participated in any discussion, meeting or action related to vegetable procurement or vegetable industry issues.

(e) Negotiated or attempted to enforce the terms of any vegetable procurement contract, or represented producer interests in any matter related to vegetable procurement or vegetable industry issues.

(f) Sought government action related to vegetable procurement, or testified or participated in any way in the development or implementation of laws related to vegetable procurement or vegetable industry issues.

(5) Charge a producer for defective seed planted under a vegetable procurement contract if the seed supplier reimburses the contractor for the cost of that seed.

**History:** Cr. Register, December, 1992, No. 444, eff. 1–1–93.

### 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 101.20 Definitions. In this subchapter:

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

(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 vegetable contractor” has the meaning given in s. 126.55 (4), Stats.

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

(3r) “Maximum fund reimbursement” means the deductible amount specified in s. 126.72 (3), Stats.

(4) “Producer agent” has the meaning given in s. 126.55 (12), Stats.

(5) “Reviewed financial statement” has the meaning given in s. 126.01 (20), Stats.

(6) “Vegetable contractor” has the meaning given in s. 126.55 (14), Stats.

(7) “Vegetable procurement contract” has the meaning given in s. 126.55 (15), Stats.

(8) “Vegetable producer” has the meaning given in s. 126.55 (16), Stats.

**History:** CR 02–113: cr. Register April 2003 No. 568, eff. 5–1–03; CR 05–068: am. (1), cr. (2m), (3g), (3m) and (3r) Register April 2006 No. 604, eff. 5–1–06; CR 07–073: r. (3g), am. (3r) Register December 2008 No. 636, eff. 1–1–09; correction in (3m) made under s. 13.92 (4) (b) 7., Stats., Register June 2011 No. 666.

**ATCP 101.22 General requirements.** A vegetable contractor shall comply with applicable requirements in ch. 126, Stats.

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

**ATCP 101.23 Vegetable contractor license fees.** A person applying for an annual vegetable contractor license under

s. 126.56, Stats., shall pay all of the following license fees and surcharges, rather than the license fees and surcharges provided in s. 126.56 (4), Stats.:

(1) A nonrefundable license processing fee of \$25.

(2) A fee of \$25 plus 8.75 cents for each \$100 in contract obligations reported under s. 126.56 (9) (a), Stats., less any fee credits for which the vegetable contractor qualifies under s. 126.56 (6), Stats. This subsection does not apply to a processing potato buyer that has elected under s. 126.595 (1), Stats., not to participate in the fund.

(3) For a processing potato buyer that has elected under s. 126.595 (1), Stats., not to participate in the fund, a fee equal to the lesser of the following amounts:

(a) \$25 plus 8.75 cents for each \$100 in contract obligations reported under s. 126.56 (9) (a), Stats.

(b) \$2,000.

(4) A surcharge of \$500 if, within 365 days before submitting the license application, the applicant operated as a vegetable contractor without a license in violation of s. 126.56 (1), Stats. The applicant shall also pay any license fees, license surcharges, and fund assessments that are still due for the license year in which the applicant violated s. 126.56 (1), Stats.

(5) A surcharge of \$100 if, within 365 days before submitting the license application, the applicant failed to file an annual financial statement required under s. 126.58 (1) (b), Stats., by the applicable deadline.

(6) A surcharge of \$100 if a renewal applicant fails to renew a license by the license expiration date of January 31.

**History:** CR 07–073: cr. Register December 2008 No. 636, eff. 1–1–09.

**ATCP 101.24 Financial statement. (1) GENERAL.** A vegetable contractor’s financial statement, filed under s. 126.58, Stats., shall comply with this section and s. 126.58, 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 specific due dates.

(4) **ASSET DISCLOSURES.** (a) A financial statement shall specifically identify and explain, 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 101.20 (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 vegetable 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) **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 101.245 Vegetable contractor fund assessments.** (1) **GENERAL.** A contributing vegetable contractor shall pay an annual fund assessment for each license year. The annual fund assessment shall be calculated under this section, rather than under s. 126.60 (1), Stats. Except as provided in subs. (3) and (4), the annual fund assessment shall be calculated according to sub. (2).

(2) **ASSESSMENT AMOUNT.** (a) A contributing vegetable contractor that reports less than \$500,000 in contract obligations under s. 126.56 (9) (am), Stats., shall pay a fund assessment equal to the greater of the following amounts:

1. \$100.

2. The sum of the amounts calculated under s. 126.60 (1) (a) and (b), Stats. If all of the contract obligations reported by the vegetable contractor under s. 126.56 (9) (am), Stats., were made under written contracts where payments were required no more than 30 days after taking custody or control of the vegetables, then further divide this amount by 2.

(b) A contributing vegetable contractor that reports at least \$500,000 but less than \$4 million in contract obligations under s. 126.56 (9) (am), Stats., shall pay a fund assessment equal to the greater of the following amounts:

1. \$200.

2. The sum of the amounts calculated under s. 126.60 (1) (a) and (b), Stats. If all of the contract obligations reported by the vegetable contractor under s. 126.56 (9) (am), Stats., were made under written contracts where payments were required no more than 30 days after taking custody or control of the vegetables, then further divide this amount by 2.

(c) A contributing vegetable contractor who reports \$4 million or more in contract obligations under s. 126.56 (9) (am), Stats., shall pay a fund assessment equal to the greater of the following amounts:

1. \$500.

2. The sum of the amounts calculated under s. 126.60 (1) (a) and (b), Stats. If all of the contract obligations reported by the vegetable contractor under s. 126.56 (9) (am), Stats., were made under written contracts where payments were required no more than 30 days after taking custody or control of the vegetables, then further divide this amount by 2.

(d) If the fund balance attributable to vegetable contractors is less than \$800,000 on November 30 of the preceding license year, a contributing vegetable contractor shall pay the sum of the amount calculated under either (a), (b), or (c) and the lesser of:

1. \$50,000. If all of the contract obligations reported by the vegetable contractor under s. 126.56 (9) (am), Stats., were made under written contracts where payments were required no more than 30 days after taking custody or control of the vegetables, then this amount is \$25,000.

2. The amount of contract obligations under s. 126.56 (9) (am), Stats., multiplied by 0.002. If all of the contract obligations reported by the vegetable contractor under s. 126.56 (9) (am), Stats., were made under written contracts where payments were required no more than 30 days after taking custody or control of the vegetables, then divide this amount by 2.

(3) **REDUCED ASSESSMENT.** A contributing vegetable contractor's annual fund assessment under sub. (1) is reduced by the following applicable amounts:

(a) The amount calculated under s. 126.60 (5m), Stats., if the contributing vegetable contractor files security under s. 126.61 (1) (b), Stats.

(b) The amount of any refund that applies under s. ATCP 101.25. The refund shall be paid as a credit against the contributing vegetable contractor's annual fund assessment for the next license year, as provided in s. ATCP 101.25 (3).

(c) The amount of any assessment reduction that applies under s. ATCP 101.255.

(4) **EXEMPTION.** A contributing vegetable contractor is not required to pay any fund assessment under this section for a license year if all of the following apply:

(a) The vegetable contractor was classified as a contributing vegetable contractor in each of the 5 license years immediately preceding that license year.

(b) The fund balance attributable to vegetable contractors was at least \$1.5 million on November 30 of the last preceding license year.

(c) The overall fund balance was at least \$11 million on November 30 of the last preceding license year.

**History:** CR 07-073; cr. Register December 2008 No. 636, eff. 1-1-09; corrections in (2) (a) 2., (b) 2., (c) 2., (3) (a) made under s. 13.92 (4) (b) 7., Stats., Register June 2011 No. 666; **EmR1803: emerg. am. (2) (a) (intro.), 2., (b) (intro.), 2., (c) (intro.), 2., cr. (2) (d), eff. 2-1-2018; CR 17-047: am. (2) (a) (intro.), 2., (b) (intro.), 2., (c) (intro.), 2., cr. (2) (d) Register November 2019 No. 767, eff. 12-1-19; correction in (2) (c) (intro.) made under s. 35.17, Stats., Register November 2019 No. 767.**

**ATCP 101.25 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 vegetable contractor under s. 126.60, Stats., if all of the following apply:

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

(b) The 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 contractor's financial statement for the fiscal year in which the merger or acquisition under par. (b) took effect.

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

(e) The 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 contractor paid the assessment, the sum of the contractor's current ratio assessment rate under s. 126.60 (2), Stats., and debt to equity assessment rate under s. 126.60 (4), Stats., declines by at least 50% compared to the license year for which the contractor paid the assessment.

(g) The contractor requests the refund in writing, by February 1 of the 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 vegetable contractor and the assessment amount required of the vegetable 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 contractor's assessment for the next license year. The department shall apportion the credit, pro rata, against the quar-

terly assessment installments required of the contractor under s. 126.60 (6), Stats., in that next license year. If the credit exceeds the total assessment required of the contractor in that next license year, the department shall credit the balance in the same fashion against assessments required of the 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 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 101.255 Reduced fund assessment for contributing vegetable contractors who also maintain security.** (1) **VOLUNTARY SECURITY.** A licensed vegetable contractor may at any time file security with the department, regardless of whether the vegetable contractor is required to file security. Except as provided in sub. (2), a voluntary security filing under this subsection does not relieve a vegetable contractor of any other obligation to file security or pay fund assessments.

**Note:** A vegetable 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 101.26 (2).

(2) **REDUCED ASSESSMENT.** If, for the duration of a license year, a contributing vegetable contractor maintains security under sub. (1) in an amount that is at least equal to the vegetable contractor's estimated default exposure less the maximum fund reimbursement amount, the vegetable contractor's annual fund assessment under s. 126.60, Stats., for that year is reduced by an amount that is determined as follows:

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

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

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

(d) Subtract, from the result in par. (c), the amount of any assessment reduction given under s. 126.60 (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; correction in (2) (intro.) made under s. 13.92 (4) (b) 7., Stats., Register June 2011 No. 666.

**ATCP 101.26 Disclosure to producers.** (1) **DISCLOSURE REQUIRED.** A vegetable contractor shall make a disclosure under sub. (2) to every vegetable producer and producer agent with whom the vegetable contractor enters into a vegetable procurement contract. The vegetable contractor shall make the disclosure, in the form prescribed under sub. (2), as part of each proposed vegetable procurement contract offered to the vegetable producer or producer agent. The disclosure shall be clear and conspicuous, and shall be set apart from every other writing.

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

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

**IMPORTANT NOTICE**

*[Name of vegetable contractor]* participates in Wisconsin's Agricultural Producer Security program as a licensed vegetable contractor. If we fail to pay you for vegetables when payment is due, you may file a claim under this program. The program may reimburse up to 90% of the first \$40,000 of your allowed claim, 85% of the next \$40,000, 80% of the next \$40,000, and 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) The following statement if the vegetable contractor's estimated default exposure exceeds the sum of the maximum fund reimbursement amount and any security amount the vegetable contractor has on file with the department:

**IMPORTANT NOTICE**

*[Name of vegetable contractor]* participates in Wisconsin's Agricultural Producer Security Program as a licensed vegetable contractor. If we fail to pay you for vegetables when payment is due, you may file a claim under this program. The program may reimburse up to 90% of the first \$40,000 of an allowed claim, 85% of the next \$40,000, 80% of the next \$40,000, and 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).

(c) The following statement if the vegetable 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 vegetable contractor]* does not contribute to Wisconsin's Agricultural Producer Security Program, and has not filed security under the program. The program will therefore provide no compensation if we fail to pay you for vegetables. 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: am. (2) (a) (intro.) and (b) (intro.), cr. (2) (d) and (e) Register September 2004 No. 585, eff. 10-1-04; CR 05-068: r. and recr. (2) Register April 2006 No. 604, eff. 5-1-06.