

Clearinghouse Rule 96-138

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

Clearinghouse Rule
No. 96-138

CERTIFICATION:

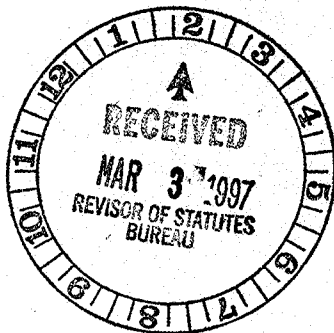
I, Alan Tracy, Secretary of the Wisconsin Department of Agriculture, Trade and Consumer Protection and custodian of the department's official records, hereby certify that the attached rulemaking order relating to financial standards and security requirements for vegetable contractors was signed and adopted by the Department on February 28, 1997.

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

Signed and sealed this 28th day of February, 1997.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 
Alan T. Tracy, Secretary



5-1-97

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

1 The state of Wisconsin department of agriculture, trade and
2 consumer protection repeals ATCP 98.01(6), 98.02(3)(a)3. and
3 98.20; renumbers and amends ATCP 98.01(17), 98.02(1)(a) and
4 98.02(3)(a)4.; amends ch. ATCP 98(title), 98.01(1)(intro.), (7),
5 (26), (27), (29), (32), (35), and (36), 98.02(1)(note), (3)(a)2.,
6 (3)(b), (4)(c) and (4)(f), 98.08(1)(a), (1)(b), (3)(b) and
7 (3)(c), 98.10(3)(a), (b) and (c), 98.12(1), (2)(intro.), (b) and
8 (c), (4), (9) and (12)(b), 98.18(1)(intro.), (2)(intro.), (3) and
9 (6)(d), 98.22(2)(a) to (c) and (e)(intro.), 98.22(3), 98.24(2)(b)
10 and (3) and 98.32(4); repeals and recreates ATCP 98.06, 98.12(3),
11 98.16(1), 98.18(4) and 98.22(2)(f); and creates ATCP
12 98.01(37)(note), 98.02(2)(f), 98.02(4)(dm), 98.12(1m),
13 98.18(6)(bm) and 98.32(2m), Wis. Admin. Code; relating to
14 financial standards and security requirements for vegetable
15 contractors.

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

Statutory Authority: ss. 93.07(1) and 100.03(17), Stats.

Statutes Interpreted: s. 100.03, Stats.

The department of agriculture, trade and consumer protection administers Wisconsin's vegetable security law under s. 100.03, Stats. The law is designed to protect vegetable producers against catastrophic financial defaults by vegetable contractors, although it does not guaranty payments to producers. The department has adopted rules under ch. ATCP 98, Wis. Adm. Code, to implement the law.

1995 Wis. Act 460, published on July 10, 1996, made significant changes to the vegetable security law. Among other things, Act 460 increased the minimum financial standards for vegetable contractors. This rule amends the department's current rules under ATCP 98 to incorporate the statutory changes.

BACKGROUND

Under the vegetable security law, s. 100.03, Stats., vegetable contractors must do all of the following:

- Register annually with the department.
- File financial statements with the department.
- File security with the department if they fail to meet minimum financial standards. The department currently holds nearly \$30 million in security under this program.

1995 Wis. Act 460 makes the following changes to the vegetable security law:

- It exempts fruit contractors from coverage under the law.
- It establishes higher minimum financial standards for vegetable contractors. Contractors who meet the prior standards, but fail to meet the new standards, must file security in the following amounts:
 - * For the license year beginning February 1, 1997, 25% of the contractor's anticipated maximum liability to producers.
 - * For the license year beginning February 1, 1998, 50% of the contractor's anticipated maximum liability to producers.
 - * For subsequent license years, 75% of the contractor's anticipated maximum liability to producers.
- It changes the annual registration year expiration date, from March 31 to January 31.
- It clarifies current requirements related to year-end financial statements. Vegetable contractors are currently required to file a year-end financial statement on or before the 15th day of the 4th month beginning after the close of the contractor's fiscal year. Act 460 permits the department to extend the filing deadline by up to 30 days.

- It requires vegetable contractors to file an interim financial statement with each annual application for registration renewal.
- It requires vegetable contractors to report, at the end of each registration year, whether they have met producer payment deadlines under the law.
- It prohibits a contractor from assessing a separate charge to producers to finance the cost of security filed with the department.
- It eliminates food processing plant trusteeships as a security option.

RULE CONTENTS

General

This rule implements Act 460 and makes other minor changes to clarify the department's current rules under ch. ATCP 98, Wis. Adm. Code.

Rule Coverage

This rule applies to "vegetable contractors." A vegetable contractor is a processor or handler who buys vegetables grown in this state for use in food processing, or who contracts with a producer to grow vegetables in this state for use in food processing.

This rule does not apply to fruit contractors. Act 460 exempted fruit contractors from regulation under s. 100.03, Stats. This rule modifies current rules to reflect the new exemption.

Registration Year

Act 460 changed the registration year for vegetable contractors. The registration year now expires on January 31 of each year, rather than on March 31 as before. This rule modifies current rules to incorporate this change.

Contractor Payments to Producers; General

Current law specifies payment deadlines under vegetable procurement contracts:

- If a procurement contract does not specify a payment date in writing, the contractor must pay the producer by the 15th day of the month immediately following the month in which the producer tendered or delivered the vegetables.

- By January 31 of each registration year, a contractor must pay for all vegetables tendered or delivered prior to December 31 of that registration year unless a contract specifying a later payment date is approved by a vote of producers.
- If a producer tenders or delivers vegetables after December 31 of any registration year, the contractor must pay by the 15th day of the month following the month in which the vegetables were tendered or delivered, or by the 30th day after tender or delivery, whichever is later. (Act 460 clarifies this provision.)

Under Act 460 and this rule, the department may not renew a contractor's registration unless, before February 5 of the registration year for which renewal is sought, the contractor files a sworn statement declaring that the contractor has paid in full all producer obligations which were due and payable in the preceding registration year ending January 31.

Annual Financial Statement

Under current law, a vegetable contractor must annually file a year-end financial statement with the department. (There are certain exceptions.) A contractor must file the year-end financial statement on or before the 15th day of the 4th month beginning after the close of the contractor's fiscal year.

Under Act 460 and this rule:

- Year-end financial statements must be audited or reviewed by a CPA or public accountant. A year-end financial statement must be audited if the contractor incurs more than \$250,000 in producer obligations during the year to which the financial statement pertains.
- The department may, for good cause, extend the filing deadline for up to 30 days.

Interim Financial Statement to Accompany Renewal Application

Under Act 460 and this rule, contractors who are required to file year-end financial statements must also file interim financial statements when they apply for renewal of their annual registration certificates. A contractor must file an interim financial statement as of the end of the quarter that ends closest to November 30.

Minimum Financial Standards

Under prior law, a vegetable contractor was required to file security unless the contractor met both of the following financial standards:

- The contractor's ratio of current assets to current liabilities was at least 1.2 to 1.0.
- The contractor's total assets exceeded total liabilities.

Act 460 changes these minimum financial standards. Under Act 460 and this rule, a contractor must now file security unless the contractor meets all of the following standards:

- The contractor's ratio of current assets to current liabilities must be at least 1.2 to 1.0 at the end of the contractor's fiscal year, and at least 1.0 to 1.0 at all other times.
- The contractor's equity must be at least 20% of total assets at the end of the contractor's fiscal year, and at least 10% at all other times.

Security Required

Under current law, a contractor who fails to meet minimum financial standards must file security with the department unless the contractor pays cash "on delivery" for all vegetables procured from producers. The contractor must file security equivalent to at least 75% of the contractor's anticipated "maximum liability to producers" during the registration year.

Under Act 460 and this rule, a contractor who meets the minimum financial standards under prior law, but fails to meet the new minimum financial standards under Act 460, must file "transitional" security in the following amounts for the following years:

- For the license year beginning February 1, 1997, 25% of the contractor's anticipated maximum liability to producers.
- For the license year beginning February 1, 1998, 50% of the contractor's anticipated maximum liability to producers.
- For subsequent license years, 75% of the contractor's anticipated maximum liability to producers.

Act 460 and this rule prohibit a contractor from assessing a separate deduction against producers to finance the cost of security filed with the department. This rule also clarifies

current standards for calculating a contractor's "maximum liability to producers."

Food Processing Plant Trusteeship

Under prior law, a contractor who was also a food processing plant operator could, as an alternative to filing security with the department, enter into a food processing plant trusteeship. This allowed a contractor to set aside, in trust for producers, processed vegetables equivalent to not less than 30% of the raw vegetables received from producers. Act 460 repealed the option of a food processing plant trusteeship, which was difficult to administer and enforce. Consistent with Act 460, this rule repeals current rules related to food processing plant trusteeships.

Releasing Security

Under current rules, the department may release security only if one of the following applies:

- The contractor complies with minimum financial standards for at least 2 consecutive years.
- The contractor files alternative security.
- The contractor goes out of business after paying producers in full.
- The contractor demonstrates that the amount of security on file exceeds the amount required (e.g., because of a substantial appreciation in the value of the security or a substantial reduction in the contractor's maximum liability to producers).

This rule provides a different standard for the release of "transitional" security which a contractor is first required to file for the registration year beginning February 1, 1997, because the contractor fails to meet the new minimum financial standards under Act 460. Under this rule, the department may release that "transitional" security at any time on or before January 31, 1999 if the contractor files a single year-end financial statement that meets the new minimum financial standards.

Notice to Producers; Financial Information

Under current rules, whenever a contractor offers a producer a procurement contract, the contractor must notify the producer of the basis on which the contractor is registered with the department. The contractor must give the notice in writing, in

the exact form prescribed in the rule. The notice must indicate which of the following applies:

- The contractor must pay cash on delivery as a condition to registration.
- The contractor is registered on the basis of the contractor's financial statement.
- The contractor is registered on the basis of security voluntarily filed with the department in lieu of a financial statement.
- The contractor is registered on the basis of security which the contractor is required to file because the contractor does not meet minimum financial standards.

This rule modifies the current notice requirements to reflect law changes made by Act 460. This rule specifies a different notice for contractors who must file "transitional" security because they fail to meet the new minimum financial standards under Act 460.

SECTION 1. Chapter ATCP 98 (title) is amended to read:

CHAPTER ATCP 98

~~FRUIT AND VEGETABLE CONTRACTORS; SECURITY REQUIREMENTS~~

SECTION 2. ATCP 98.01(1)(intro.) is amended to read:

ATCP 98.01(1)(intro.) "Affiliate" means any of the following persons or business entities that procures ~~farm~~ products vegetables for use by an operator:

SECTION 3. ATCP 98.01(6) is repealed.

SECTION 4. ATCP 98.01(7) is amended to read:

ATCP 98.01(7) "Contractor" means a person who buys ~~fruits~~ ~~or~~ vegetables grown in this state from a producer, or who contracts with a producer to grow ~~fruits~~ ~~or~~ vegetables in this state, regardless of whether the contractor is located in this

1 state or is engaged in food processing. "Contractor" does not
2 include any of the following:

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

6 (b) A restaurant or retail food establishment that procures
7 ~~fruits or~~ vegetables solely for retail sale at the restaurant or
8 retail food establishment.

9 SECTION 5. ATCP 98.01(17) is renumbered ATCP 98.01(37) and
10 amended to read:

11 ATCP 98.01(37) "~~Fruit or vegetable~~ Vegetable" means any
12 ~~fruit or~~ vegetable that is grown or sold for use in food
13 processing, whether or not the ~~fruit or~~ vegetable is actually
14 processed as food. "~~Fruit or vegetable~~ Vegetable" includes, but
15 is not limited to, green beans, kidney beans, lima beans, romano
16 beans, wax beans, beets, cabbage, carrots, celery, cucumbers,
17 onions, peas, potatoes, spinach, squash and sweet corn, but does
18 not include grain, as defined in s. ATCP 99.01(23), or seed corn.

19 SECTION 6. ATCP 98.01(26), (27), (29), (32), (35) and (36)
20 are amended to read:

21 ATCP 98.01(26) "Procurement contract" means an oral or
22 written agreement between a contractor and a producer, under
23 which the contractor buys ~~fruits or~~ vegetables grown in this
24 state from the producer or contracts with the producer to grow
25 ~~fruits or~~ vegetables in this state.

1 (27) "Producer" means a person who produces and sells
2 ~~fruits or~~ vegetables or who grows ~~fruits or~~ vegetables under
3 contract.

4 (29) "Producer obligation" means a ~~payment~~ net amount which
5 a contractor owes to a producer, or to the producer's assignees
6 or successors in interest, as payment under a procurement
7 contract. "Producer obligation" includes a net amount owed for
8 unharvested acreage.

9 (32) "Reviewed financial statement" means a financial
10 statement, containing a sworn and notarized statement by the
11 contractor that the financial statement is correct, that is
12 reviewed according to generally accepted accounting principles by
13 an independent certified public accountant, or by a public
14 accountant who holds a certificate of authority under ch. 442,
15 Stats., but that is not audited by the accountant.

16 (35) "Subsidiary" means a corporation or business entity
17 that is owned, controlled or operated by an operator, and that
18 procures ~~fruits or~~ vegetables for use by the operator.

19 (36) "Unharvested acreage" means ~~fruit or~~ vegetable
20 acreage, subject to a procurement contract, which a contractor
21 leaves unharvested for any reason. Unharvested acreage includes
22 both of the following:

23 (a) Acreage that is suitable for processing, but not
24 harvested.

25 (b) Acreage that is abandoned as being unsuitable for
26 processing.

1 **SECTION 7.** ATCP 98.01(37) (note) is created to read:

2 NOTE: The definition of "grain" in s. ATCP 99.01(23) is
3 based on the definition in the United States grain
4 standards act (7 USC 75). Under the federal act, grain
5 is defined to include "corn" for which standards are
6 established. The standards require whole kernels of
7 specific species of corn. ATCP 99.01(23) then
8 clarifies that, under the established standards,
9 "grain" does not include the sweet corn subspecies.

10 **SECTION 8.** ATCP 98.02(1) (a) is renumbered ATCP 98.02(1) and
11 amended to read:

12 ATCP 98.02(1) REGISTRATION CERTIFICATE REQUIRED. No person
13 may operate as a contractor unless that person holds an annual
14 registration certificate from the department. A registration
15 certificate expires on ~~March~~ January 31 annually and is not
16 transferable.

17 **SECTION 9.** ATCP 98.02(1) (note) is amended to read:

18 NOTE: See s. 100.03, Stats. If the operator of a food
19 processing plant procures ~~fruits~~ or vegetables from
20 producers, the operator must obtain both a food
21 processing plant license under s. 97.29, Stats. (see
22 chapter ATCP 70) and a registration certificate under
23 s. 100.03, Stats. (see this chapter).

24 **SECTION 10.** ATCP 98.02(2) (f) is created to read:

25 ATCP 98.02(2) (f) An interim statement if required under s.
26 ATCP 98.12(1m).

27 **SECTION 11.** ATCP 98.02(3) (a)2. is amended to read:

28 ATCP 98.02(3) (a)2. A fee of one cent for each \$100 in total
29 producer obligations reported under sub. (4) (a). The fee under
30 this subdivision is not required if all graded ~~fruits~~ and
31 vegetables which the contractor procures from producers are
32 graded by the department under contract with the contractor.

1 **SECTION 12.** ATCP 98.02(3)(a)3. is repealed.

2 **SECTION 13.** ATCP 98.02(3)(a)4. is renumbered ATCP

3 98.02(3)(a)3. and amended to read:

4 98.02(3)(a)3. ~~For the registration year beginning April 1,~~
5 ~~1996, and for each registration year thereafter,~~ a A fee of 4.75
6 cents for each \$100 in total producer obligations reported under
7 sub. (4)(a).

8 **SECTION 14.** ATCP 98.02(3)(b) is amended to read:

9 ATCP 98.02(3)(b) Surcharge for operating without a
10 registration certificate. 1. An applicant under sub. (2) shall
11 pay a surcharge of \$500 if the department determines that, within
12 365 days prior to submitting the application, the applicant
13 procured ~~fruits or~~ vegetables from producers without a
14 registration certificate in violation of sub. (1).

15 2. An applicant required to pay a surcharge under subd. 1.
16 shall also pay all fees, set forth in a statement from the
17 department, that are still due for any registration year in
18 which, according to the department, the applicant violated sub.
19 (1).

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

25 **SECTION 15.** ATCP 98.02(4)(c) is amended to read:

1 ATCP 98.02(4)(c) The contractor's anticipated maximum
2 liability to producers during the registration year for which
3 application is made. If the contractor's anticipated maximum
4 liability is zero because the contractor plans to make cash
5 payment on delivery under every procurement contract or the
6 contractor plans to procure all ~~farm products~~ vegetables from
7 another contractor, the contractor shall so state. A contractor
8 shall immediately notify the department in writing if, at any
9 time during the registration year, the contractor has reason to
10 believe that the contractor's maximum liability to producers will
11 exceed the maximum liability previously anticipated and reported
12 to the department.

13 **SECTION 16.** ATCP 98.02(4)(dm) is created to read:

14 ATCP 98.02(4)(dm) Whether, by the date of application, the
15 contractor has paid all producer obligations that are due and
16 payable during the registration year ending January 31.

17 **SECTION 17.** ATCP 98.02(4)(f) is amended to read:

18 ATCP 98.02(4)(f) Whether the contractor is a producer-owned
19 cooperative or organization doing business on a cooperative
20 pooling basis with its producer-owners and, if so, and whether
21 the producer-owned cooperative or organization procures any
22 ~~fruits or~~ vegetables from producers who are not its producer-
23 owners.

24 **SECTION 18.** ATCP 98.06 is repealed and recreated to read:

25 **ATCP 98.06 REGISTRATION CONTINGENT ON TIMELY PAYMENT.** (1)

26 GENERAL. Except as provided under subs. (2) or (3), the

1 department may not renew a contractor's registration certificate
2 for any registration year unless, prior to February 5 of that
3 registration year, the contractor files a sworn and notarized
4 statement, signed by the contractor or an officer of the
5 contractor, showing that the contractor has paid in full all
6 producer obligations that became due and payable during the
7 preceding registration year ending January 31.

8 NOTE: A statement made in a renewal application under s.
9 ATCP 98.02(4)(dm) satisfies the requirement of a
10 statement under sub. (1) if, by the renewal application
11 date, the contractor has paid in full all of the
12 producer obligations that become due and payable during
13 the registration year ending January 31. If not, the
14 contractor may submit a supplementary statement under
15 sub. (1) at any time prior to February 5.

16 (2) DISPUTED OBLIGATIONS. If a contractor disputes a
17 producer obligation which is due and payable during a
18 registration year ending January 31, the department may renew the
19 contractor's registration certificate for the next registration
20 year if the contractor deposits the disputed amount in escrow
21 with the department or a court, pending resolution of the
22 dispute.

23 (3) EXEMPTION FOR PRODUCER-OWNED ORGANIZATION. This
24 section does not apply to a producer-owned cooperative or
25 organization when doing business on a cooperative pooling basis
26 with its producer owners.

27 SECTION 19. ATCP 98.08(1)(a), (1)(b), (3)(b) and (3)(c) are
28 amended to read:

29 ATCP 98.08(1)(a) If a contractor harvests or accepts
30 delivery of ~~fruits or~~ vegetables grown or delivered under the

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

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

17 (3) (b) A written procurement contract may specify a payment
18 date after January 31 for ~~fruits or~~ vegetables delivered on or
19 before December 31 if, before the contract is offered to
20 producers, it is approved by a vote of producers who had
21 procurement contracts with the contractor for the same type of
22 ~~fruit or~~ vegetable in the preceding registration year. To obtain
23 advance approval of a contract under this paragraph, a contractor
24 shall give written notice to all producers who had procurement
25 contracts with the contractor for the same type of ~~fruit or~~
26 vegetable in the preceding registration year. The notice shall

1 include a copy of the proposed contract and shall announce a
2 meeting at which producers will be asked to vote on the proposed
3 contract. The notice shall also include a mail ballot by which a
4 producer may cast his or her vote without attending the meeting.
5 Voting shall be by secret ballot. The proposed contract shall be
6 approved by a majority of the producers who vote on the proposed
7 contract. Before offering the approved contract to producers,
8 the contractor shall file a sworn statement with the department,
9 on a form provided by the department, certifying the results of
10 the balloting.

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

18 **SECTION 20.** ATCP 98.10(3)(a), (b) and (c) are amended to
19 read:

20 ATCP 98.10(3)(a) If the contractor harvests or accepts
21 delivery of ~~fruits or~~ vegetables grown or delivered under a
22 procurement contract, and the ~~fruits or~~ vegetables will not be
23 graded, the contractor shall make full cash payment for those
24 ~~fruits and~~ vegetables when the contractor harvests or accepts
25 delivery of those ~~fruits or~~ vegetables.

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

7 (c) If the contractor rejects delivery of ~~fruits or~~
8 vegetables which the producer tenders under the contract, or
9 notifies the producer that contract acreage will not be harvested
10 for any reason, the contractor shall pay the producer the full
11 amount, if any, which the contractor owes the producer under the
12 contract for the rejected ~~fruits or~~ vegetables or the unharvested
13 acreage. If payment is owed, the contractor shall make full cash
14 payment when the producer tenders the ~~fruits or~~ vegetables or the
15 contractor notifies the producer that the acreage will not be
16 harvested.

17 **SECTION 21.** ATPC 98.12(1) is amended to read:

18 ATPC 98.12(1) YEAR-END FINANCIAL STATEMENT. (a) Except as
19 provided under sub. (2), every contractor shall annually file
20 with the department a year-end financial statement ~~with the~~
21 ~~department for each of~~ covering the contractor's last completed
22 ~~fiscal years~~ year. ~~A~~ The contractor shall file the year-end
23 ~~financial statement shall be filed, for each fiscal year,~~ by the
24 15th day of the fourth month following the close of ~~that~~ the
25 contractor's fiscal year. The department may, for cause, extend
26 the filing deadline for up to 30 days.

1 (b) A year-end financial statement under par. (a) shall be
2 an audited financial statement, except that if a contractor
3 ~~purchases~~ procures less than \$250,000 of ~~fruits and~~ vegetables
4 from producers each year, the contractor may file a ~~compiled or~~
5 reviewed financial statement. ~~A compiled or reviewed financial~~
6 ~~statement shall contain a notarized statement, signed and sworn~~
7 ~~by the contractor or an officer of the contractor, stating that~~
8 ~~the financial statement is correct.~~

9 SECTION 22. ATCP 98.12(1m) is created to read:

10 ATCP 98.12(1m) INTERIM STATEMENT. Except as provided under
11 sub. (2), a contractor shall file, with the contractor's annual
12 registration renewal application under s. ATCP 98.02, an interim
13 statement showing the contractor's financial condition as of the
14 end of the contractor's fiscal quarter that ends closest to
15 November 30.

16 NOTE: An interim statement filed with the contractor's
17 annual registration renewal application under sub. (1m)
18 must be accompanied by a sworn and notarized statement,
19 signed by the contractor, attesting that the financial
20 statement is correct. The interim statement filed
21 under this subsection may be a compiled financial
22 statement, a reviewed financial statement, or a
23 statement showing the contractor's financial condition
24 prepared by the contractor.

25 SECTION 23. ATCP 98.12(2)(intro.), (b) and (c) are amended
26 to read:

27 ATCP 98.12(2)(intro.) ~~Subsection (1) does~~ Subsections (1)
28 and (1m) do not apply to any of the following:

1 (b) A contractor who files security with the department
2 under s. ATCP 98.18, unless the contractor files security under
3 s. ATCP 98.18(4)(b).

4 (c) A producer-owned cooperative or organization that
5 procures ~~fruits and~~ vegetables solely on a cooperative pooling
6 basis from its producer-owners, and that submits a sworn and
7 notarized statement to that effect under s. ATCP 98.02(4)(f).

8 **SECTION 24.** ATCP 98.12(3) is repealed and recreated to
9 read:

10 ATCP 98.12(3) ADDITIONAL FINANCIAL STATEMENTS. (a)
11 Notwithstanding sub. (2), the department may require any
12 contractor to do any of the following:

13 1. File a year-end financial statement or interim
14 statement.

15 2. Supplement or clarify any financial statement filed with
16 the department.

17 (b) A financial statement under par. (a) shall comply with
18 all of the following requirements:

19 1. It shall contain the information specified by the
20 department.

21 2. It shall contain a notarized statement, signed and sworn
22 by the contractor or an officer of the contractor, stating that
23 the financial statement is correct.

24 3. It shall be an audited or reviewed financial statement
25 if the department so requires.

1 **SECTION 25.** ATCP 98.12(4), (9) and (12)(b) are amended to
2 read:

3 ATCP 98.12(4) **FINANCIAL STATEMENTS; ACCOUNTING PRINCIPLES.**
4 Every ~~compiled~~, reviewed or audited financial statement shall be
5 prepared according to generally accepted accounting principles
6 and this chapter.

7 (9) **INVENTORY.** A contractor's financial statement shall
8 identify inventories of ~~farm products manufactured~~ vegetables
9 processed and held for sale separately from other classes of
10 inventory, such as materials and supplies. Inventories not in
11 marketable or salable condition are not current assets.
12 Financial statements shall describe the basis on which inventory
13 values are determined.

14 (12)(b) A contractor's financial statement shall show ~~fruit~~
15 ~~and~~ vegetable accounts separate from other trade accounts and
16 shall identify amounts payable to producers and their assignees.

17 **SECTION 26.** ATCP 98.16(1) is repealed and recreated to
18 read:

19 ATCP 98.16(1) **REQUIREMENT.** Except as provided under
20 sub. (3), a contractor shall meet all of the following financial
21 standards:

22 (a) The contractor's fiscal year-end ratio of current
23 assets to current liabilities shall be at least 1.2 to 1.0. At
24 all other times, the contractor's ratio of current assets to
25 current liabilities shall be at least 1.0 to 1.0.

1 (b) The contractor's equity, at fiscal year-end, shall be
2 equal to at least 20% of total assets. At all other times, the
3 contractor's equity shall be equal to at least 10% of total
4 assets.

5 SECTION 27. ATCP 98.18(1)(intro.), (2)(intro.) and (3) are
6 amended to read:

7 ATCP 98.18(1)(intro.) REQUIREMENT. A contractor shall file
8 security with the department under this section, ~~or enter into a~~
9 ~~food processing plant trusteeship under s. ATCP 98.20,~~ unless
10 one or more of the following apply:

11 (2)(intro.) FORM OF SECURITY. Security filed with the
12 department under this section is subject to approval by the
13 department. ~~Except as provided under s. ATCP 98.20,~~ security
14 Security shall be in one or more of the following forms:

15 (3) DEPARTMENT CUSTODY OF SECURITY. ~~Except as provided~~
16 ~~under s. ATCP 98.20,~~ the The department or the department's agent
17 shall maintain custody of all security filed by a contractor
18 under this section. Security shall be payable to and held by the
19 department for the benefit of producers.

20 SECTION 28. ATCP 98.18(4) is repealed and recreated to
21 read:

22 ATCP 98.18(4) AMOUNT OF SECURITY. (a) Except as provided
23 under par. (b), a contractor required to file security under this
24 section shall file an amount of security which is at least equal
25 to 75% of the anticipated maximum liability to producers which
26 the contractor last reported under s. ATCP 98.02(4)(c).

1 (b) A contractor need only file the following amounts of
2 security for the following registration years if the department
3 finds, based on a financial statement filed with the department
4 under s. ATCP 98.12, that the contractor's latest year-end ratio
5 of current assets to current liabilities is at least 1.2 to 1.0
6 and the contractor's total assets exceed total liabilities:

7 1. For the registration year beginning February 1, 1997,
8 25% of the contractor's anticipated maximum liability to
9 producers.

10 2. For the registration year beginning February 1, 1998,
11 50% of the contractor's anticipated maximum liability to
12 producers.

13 **SECTION 29.** ATCP 98.18(6)(bm) is created to read:

14 ATCP 98.18(6)(bm) The contractor has filed security under
15 sub. (4)(b)1. for the registration year beginning February 1,
16 1997, and the contractor subsequently files a year-end financial
17 statement that meets the minimum financial standards under s.
18 ATCP 98.16. This paragraph does not apply after January 31,
19 1999.

20 **SECTION 30.** ATCP 98.18(6)(d) is amended to read:

21 ATCP 98.18(6)(d) The contractor is no longer in business
22 and ~~certifies~~ submits a sworn affidavit certifying, to the
23 department's satisfaction, that the contractor has paid all
24 producer obligations in full.

25 **SECTION 31.** ATCP 98.20 is repealed.

1 SECTION 32. ATCP 98.22(2)(a) to (c) and (e)(intro.) are
2 amended to read:

3 ATCP 98.22(2)(a) Every notice under sub. (1) shall contain
4 the following verbatim statement conspicuously printed under the
5 title:

6 "Under Wisconsin law, if a contractor procures ~~fruits or~~
7 vegetables from producers for use in processing, the
8 contractor must be registered with the Wisconsin Department
9 of Agriculture, Trade and Consumer Protection, and must
10 demonstrate a reasonable degree of financial responsibility.
11 The law does not guarantee that contractors will pay
12 producers for their ~~fruits or~~ vegetables. Every producer
13 has some responsibility for determining the credit
14 worthiness of the contractor for whom the producer grows
15 ~~fruits or~~ vegetables. To qualify for registration, a
16 contractor must do at least one of the following: (1) pay
17 cash on delivery for all ~~fruits and~~ vegetables; (2) file
18 financial statements with the department showing that the
19 contractor meets certain minimum financial standards; or (3)
20 file security with the department equal to at least 75% of
21 the contractor's anticipated maximum liability to producers
22 , or (4) set aside part of the contractor's processed
23 inventory in trust for producers. (Some contractors may
24 file only 25% security for the registration year beginning
25 February 1, 1997, and 50% security for the registration year
26 beginning February 1, 1998.)

27 (b) If a contractor is required, under s. ATCP 98.10(1), to
28 pay cash on delivery for all ~~fruits and~~ vegetables, the notice
29 under sub. (1) shall contain the following statement in addition
30 to the statement under par. (a):

31 "(Name of contractor) is currently required, as a condition
32 of registration, to pay cash on delivery for all ~~fruits or~~
33 vegetables which we procure from producers. This also
34 applies to any amounts owed for unharvested contract
35 acreage. (See s. ATCP 98.10, Wis. Adm. Code)."

36 (c) If a contractor is ~~licensed~~ registered on the basis of
37 the contractor's financial statement, the notice under sub. (1)

1 shall contain the following statement in addition to the
2 statement under par. (a):

3 "(Name of contractor) is currently registered on the basis
4 of its financial statement. Our most recent year-end
5 financial statement meets the following minimum financial
6 standards: (1) a current ratio of at least 1.20 to 1.00 at
7 fiscal year-end, and at least 1.0 to 1.0 at all other times;
8 and (2) ~~total assets in excess of total liabilities~~ equity
9 equal to at least 20% of total assets at fiscal year-end,
10 and 10% at all other times."

11 (e) (intro.) ~~If~~ Except as provided under par. (f), if a
12 contractor has filed security with the department under s. ATCP
13 98.18 because the contractor's financial statement does not meet
14 the minimum financial standards under s. ATCP 98.16, the notice
15 under sub. (1) shall contain the following statement in addition
16 to the statement under par. (a):

17 SECTION 33. ATCP 98.22(2)(f) is repealed and recreated to
18 read:

19 ATCP 98.22(2)(f) If a contractor has filed security with
20 the department under s. ATCP 98.18(4)(b), the notice under sub.
21 (1) shall contain, in addition to the statement under par. (a):

22 1. The following statement for the registration year
23 beginning February 1, 1997:

24 "(Name of contractor) has filed security with the department
25 to secure payments to its producers because, although our
26 year-end ratio of current assets to current liabilities is
27 at least 1.2 to 1.0 and our total assets exceed total
28 liabilities, our financial statement does not meet new
29 minimum financial standards created by recent law changes.
30 The amount of security is equal to 25% of the maximum amount
31 which we expect to owe producers at any time during the
32 coming year."

33 2. The following statement for the registration year
34 beginning February 1, 1998:

1 "Name of contractor) has filed security with the department
2 to secure payments to its producers because, although our
3 year-end ratio of current assets to current liabilities is
4 at least 1.2 to 1.0 and our total assets exceed total
5 liabilities, our financial statement does not meet new
6 minimum financial standards created by recent law changes.
7 The amount of security is equal to 50% of the maximum amount
8 which we expect to owe producers at any time during the
9 coming year."

10 SECTION 34. ATCP 98.22(3) is amended to read:

11 ATCP 98.22(3) EXEMPTION. This section does not apply to a
12 producer-owned cooperative or organization when that cooperative
13 or organization procures ~~fruits and~~ vegetables on a cooperative
14 pooling basis from its producer-owners.

15 SECTION 35. ATCP 98.24(2)(b) and (3) are amended to read:

16 ATCP 98.24(2)(b) By mailing a copy of the order to the
17 contractor and to the ~~trustee or~~ surety, if any.

18 (3) AUDIT; PROPOSED ORDER. If the department initiates a
19 default proceeding, the department shall audit producer claims
20 filed with the department and shall issue a proposed order
21 allowing or disallowing claims. The proposed order shall be
22 based on proposed finding of facts and conclusions of law which
23 shall accompany the proposed order. The department shall mail a
24 copy of the proposed order to the contractor, to the ~~trustee or~~
25 surety, if any, and to every producer who filed a timely producer
26 claim in the proceeding.

27 SECTION 36. ATCP 98.32(2m) is created to read:

28 ATCP 98.32(2m) Deduct, from the amount paid or payable to
29 any producer, any assessment that is designated for use in
30 offsetting the cost of security filed under this chapter.

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SECTION 37. ATCP 98.32(4) is amended to read:

ATCP 98.32(4) If the contractor is a producer-owned cooperative, procure ~~fruits or~~ vegetables from producers contrary to the contractor's statement under s. ATCP 98.02(4)(f).

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

Dated this 28th day of February, 1997.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 
Alan T. Tracy, Secretary