

## Chapter ATCP 99

### GRAIN DEALERS AND GRAIN WAREHOUSE KEEPERS

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**Note:** Chapter ATCP 99 as it existed on April 30, 2003 was repealed and a new ch. ATCP 99 was created effective May 1, 2003.

**Note:** This chapter 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 chapter under subch. VIII of ch. 126, Stats.

#### Subchapter I — General Provisions

**ATCP 99.01 Definitions.** In this chapter:

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

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

(3) “Balance sheet” has the meaning given in s. 126.01 (4), Stats.

(4) “Capacity” has the meaning given in s. 126.25 (1), Stats.

(4m) “Contingent financial backing amount” means the amount of contingent financial backing, if any, which the department holds under s. 126.06, Stats.

(5) “Contributing grain dealer” has the meaning given in s. 126.10 (3), Stats.

(6) “Contributing grain warehouse keeper” has the meaning given in s. 126.25 (2), Stats.

(7) “Deferred payment contract” has the meaning given in s. 126.10 (6), Stats.

(8) “Depositor” has the meaning given in s. 126.25 (5), Stats.

(8m) “Estimated default exposure” has the meaning given in s. 126.16 (1) (c) 1., Stats., for a grain dealer, and in s. 126.31 (1) (b) 1., Stats., for a grain warehouse keeper.

(9) “Fund” has the meaning given in s. 126.01 (11), Stats.

(10) “Grain” has the meaning given in s. 126.01 (13), Stats.

(11) “Grain dealer” has the meaning given in s. 126.10 (9), Stats.

(12) “Grain producer” has the meaning given in s. 126.10 (10), Stats.

(13) “Grain warehouse” has the meaning given in s. 126.25 (8), Stats.

(14) “Grain warehouse keeper” has the meaning given in s. 126.25 (9), Stats.

(14m) “Maximum fund reimbursement” means the deductible amount specified in s. 126.72, Stats.

(15) “Producer agent” has the meaning given in s. 126.10 (13), Stats.

(16) “Procure grain” has the meaning given in s. 126.10 (11), Stats.

(17) “Procure producer grain in this state” has the meaning given in s. 126.10 (12), Stats.

(18) “Producer grain” has the meaning given in s. 126.10 (14), Stats. “Producer grain” does not include grain that a producer has purchased from another person, or represents as grain purchased from another person.

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

(20) “Warehouse receipt” has the meaning given in s. 126.25 (11), Stats.

**History:** CR 02–113: cr. Register April 2003 No. 568, eff. 5–1–03; CR 05–068: am. (1), cr. (4m), (6m), (8m) and (14m) Register April 2006 No. 604, eff. 5–1–06; CR 07–073: r. (6m), am. (14m) Register December 2008 No. 636, eff. 1–1–09.

#### Subchapter II — Grain Dealers

**ATCP 99.10 General requirements.** A grain dealer shall comply with applicable requirements in ch. 126, Stats.

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

**ATCP 99.11 Grain dealer; annual report of grain purchases.** A grain dealer applying for an annual license under s. 126.11, Stats., shall include in the sworn and notarized statement under s. 126.11 (9), Stats., the total number of bushels of producer grain, procured in this state, for which the grain dealer paid during the grain dealer’s most recently completed fiscal year. If a license applicant has not yet operated as a grain dealer, the statement shall estimate the total number of bushels of producer grain, procured in this state, for which the applicant will pay during the applicant’s first full fiscal year of operation as a grain dealer.

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

**ATCP 99.12 Grain dealer; financial statement.** (1) GENERAL. A grain dealer’s financial statement filed under s. 126.13, Stats., shall comply with this section and s. 126.13, Stats.

(2) LIABILITY DISCLOSURES. A financial statement filed under s. 126.13, Stats., 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 filed under s. 126.13, Stats., shall classify, as current liabilities, notes payable that do not have specific due dates.

(4) ASSET DISCLOSURES. (a) A financial statement filed under s. 126.13, Stats., 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. 99.01 (1) means a person who has significant control or influence. Significant control or influence is a phrase used under generally accepted accounting principals to describe a related party that has sufficient ownership interest to influence the operating and financial policies of an entity.

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

(b) A financial statement filed under s. 126.13, Stats., 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) GRAIN PAYMENT INFORMATION.** A grain dealer shall provide the following information in an attachment to every financial statement filed under s. 126.13, Stats.:

(a) The total amount that the grain dealer paid during the grain dealer's last completed fiscal year, and during each month of that fiscal year, for producer grain procured in this state.

(b) The total amount that the grain dealer paid during the grain dealer's last completed fiscal year, and during each month of that fiscal year, for producer grain procured in this state using deferred payment contracts.

(c) The total number of bushels of producer grain, procured in this state, for which the grain dealer paid during each of the following periods:

1. The grain dealer's most recently completed fiscal year.

2. Each month of the grain dealer's most recently completed fiscal year.

**(6) DEBT TO EQUITY RATIO; LIABILITY ADJUSTMENTS.** (a) Solely for the purpose of calculating the debt to equity ratio under s. 126.13 (6) (c) 2., Stats., a grain dealer may deduct liabilities identified in par. (b) from liabilities reported in the grain dealer's financial statement filed under s. 126.13, Stats., if all the following apply:

1. The individual liability adjustments and offsetting assets are disclosed in the financial statement notes or in an attachment to the financial statement.

2. No individual liability adjustment exceeds the corresponding asset, identified in a note or attachment to the financial statement, that justifies that liability adjustment.

3. Liability adjustments and offsetting assets are determined as of the date of the balance sheet.

(b) A grain dealer may deduct the following liabilities under par. (a):

1. An amount that the grain dealer has borrowed from a lending institution and deposited with a commodities broker to maintain an account to hedge grain transactions. The amount deducted may not exceed the amount owed to the lending institution or the amount deposited in the hedge account with the commodities broker, whichever is less.

2. An amount that the grain dealer has borrowed from a lending institution to buy grain that the grain dealer has sold and shipped, provided that the grain dealer has a collectible account receivable for that grain on the date of the balance sheet. The amount of the deduction may not exceed the amount receivable by the grain dealer or the amount owed to the lending institution, whichever is less.

3. An amount, borrowed from a lending institution, that is secured by grain that the grain dealer owns, holds in inventory on the balance sheet date, and shows as inventory on the balance

sheet. The amount deducted may not exceed the amount owed to the lending institution or the value of the grain dealer's grain given as security and held in inventory, whichever is less.

4. An amount, borrowed from a lending institution, that the grain dealer has used to pay for fertilizer, pesticides, herbicides or seed that the grain dealer owns, holds in inventory on the balance sheet date, and shows as inventory on the balance sheet. The amount deducted may not exceed the amount owed to the lending institution or the cost of the fertilizer, pesticides, herbicides and seed purchased with the borrowed funds, whichever is less.

**(7) ATTACHMENTS.** If information required under this section is contained in an attachment to a reviewed or audited financial statement filed under s. 126.13, Stats., the following requirements apply:

(a) The attachment shall be 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; CR 07-073: cr. (5) (c) Register December 2008 No. 636, eff. 1-1-09.

**ATCP 99.125 Grain dealers; license fees and surcharges.** A person applying for an annual grain dealer license under s. 126.11, Stats., shall pay all of the following license fees and surcharges, rather than the license fees and surcharges provided in s. 126.11 (4), Stats.:

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

**(2)** A fee obtained by multiplying the number of bushels reported under s. ATCP 99.11 by 0.1 cent per bushel, and rounding the product to the nearest \$100, except that the fee may not be less than \$100 or more than \$10,000.

**(3)** A fee of \$100 per business location in excess of one business location.

**(4)** A surcharge of \$500 if, within 365 days before submitting the license application, the applicant operated as a grain dealer without a license in violation of s. 126.11 (1), Stats. The applicant shall also pay any license fees, license surcharges, and fund assessments that are still due for any license year in which the applicant violated s. 126.11 (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. 126.13 (1) (b), Stats., by the deadline specified in s. 126.13 (1) (c), Stats.

**(6)** A surcharge of \$100 if the applicant was licensed as a grain dealer for the last preceding license year but failed to file a license renewal application before the annual license expiration date of August 31. This subsection does not apply to a grain dealer who is exempt from licensing under s. 126.11 (2), Stats., but is voluntarily licensed.

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

**ATCP 99.126 Contributing grain dealers; fund assessments.** **(1) GENERAL.** Except as provided in sub. (5), a contributing grain dealer shall pay an annual fund assessment for each license year. The annual fund assessment shall be calculated under this section, rather than under s. 126.15 (1), Stats. Except as provided in sub. (4) or (5), the annual fund assessment shall equal the sum of the assessments in subs. (2) and (3).

**(2) BASIC ASSESSMENT.** (a) A contributing grain dealer who reports less than \$500,000 in grain payments under s. 126.11 (9) (a), Stats., shall pay a basic assessment equal to the greater of the following amounts:

1. \$100.

2. The sum of the amounts calculated under s. 126.15 (1) (a) and (b), Stats.

(b) A contributing grain dealer who reports at least \$500,000 but less than \$3 million in grain payments under s. 126.11 (9) (a), Stats., shall pay a basic assessment equal to the greater of the following amounts:

1. \$200.
2. The sum of the amounts calculated under s. 126.15 (1) (a) and (b), Stats.

(c) A contributing grain dealer who reports at least \$3 million in grain payments under s. 126.11 (9) (a), Stats., shall pay a basic assessment equal to the greater of the following amounts:

1. \$500.
2. The sum of the amounts calculated under s. 126.15 (1) (a) and (b), Stats.

(3) DEFERRED PAYMENT ASSESSMENT. A contributing grain dealer shall pay a deferred payment assessment equal to 0.0035 multiplied by the amount, if any, that the grain dealer reports under s. 126.11 (9) (b), Stats., in the grain dealer's license application for that license year.

(4) REDUCED ASSESSMENT. A contributing grain dealer's annual fund assessment under sub. (1) is reduced by the following applicable amounts:

(a) The amount calculated under s. 126.15 (6m), Stats., if the contributing grain dealer files security under s. 126.16 (1) (c), Stats.

(b) The amount of any refund that applies under s. ATCP 99.13. The refund shall be paid as a credit against the contributing grain dealer's annual fund assessment for the next license year, as provided in s. ATCP 99.13 (3).

(c) The amount of any assessment reduction that applies under s. ATCP 99.135.

(5) EXEMPTION. A contributing grain dealer is not required to pay any fund assessment under this section for a license year, other than a deferred payment assessment required under sub. (3), if all of the following apply.

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

(b) The fund balance attributable to grain dealers was at least \$3 million on May 31 of the last preceding license year.

(c) The overall fund balance was at least \$11 million on May 31 of the last preceding license year.

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

**ATCP 99.13 Fund assessment temporarily affected by merger or acquisition; partial refund.** (1) PARTIAL REFUND OF ASSESSMENT. The department may refund part of an annual fund assessment paid by a contributing grain dealer under s. 126.15, Stats., if all of the following apply:

(a) The grain dealer paid the full amount of the assessment, including any late payment penalties that apply under s. 126.15 (7) (d), Stats.

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

(d) The grain dealer's financial statement, for the fiscal year in which the merger or acquisition under par. (b) took effect, caused the sum of the grain dealer's current ratio assessment rate under s. 126.15 (2), Stats., and debt to equity ratio assessment rate under s. 126.15 (4), Stats., to increase by at least 100% compared to the preceding license year.

(e) The grain dealer'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 grain dealer paid the assessment, the sum of the grain dealer's current ratio assessment rate under s. 126.15 (2), Stats., and debt to equity assessment rate under s. 126.15 (4), Stats., declines by at least 50% compared to the license year for which the grain dealer paid the assessment.

(g) The grain dealer requests the refund in writing, by September 1 of the grain dealer'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 grain dealer and the assessment amount required of the grain dealer 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 grain dealer's assessment for the next license year. The department shall apportion the credit, pro rata, against the quarterly assessment installments required of the grain dealer under s. 126.15 (7), Stats., in that next license year. If the credit exceeds the total assessment required of the grain dealer in that next license year, the department shall credit the balance in the same fashion against assessments required of the grain dealer 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 grain dealer 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 99.135 Reduced fund assessment for contributing grain dealers who also maintain security.**

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

**Note:** A grain dealer 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 99.14 (2).

(2) REDUCED ASSESSMENT. If, for the duration of a license year, a contributing grain dealer maintains security under sub. (1) in an amount that is at least equal to the grain dealer's estimated default exposure less the maximum fund reimbursement amount, the contributing grain dealer's annual fund assessment under s. ATCP 99.126 (1) for that year is reduced by an amount that is determined as follows:

(a) Subtract the maximum fund reimbursement from the grain dealer's estimated default exposure.

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

(c) Multiply the result in par. (b) by the amount of the grain dealer's annual fund assessment under s. ATCP 99.126 (1), disregarding any assessment reduction under s. ATCP 99.126 (4) (a).

(d) Subtract, from the result in par. (c), the amount of any assessment reduction given under s. ATCP 99.126 (4) (a).

**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; CR 07-073: am. (2) (intro.), (c) and (d) Register December 2008 No. 636, eff. 1-1-09; correction in (2) (intro.) made under s. 13.92 (4) (b) 7, Stats., Register June 2011 No. 666.

**ATCP 99.14 Grain dealer; disclosure to producers.**

(1) DISCLOSURE REQUIRED. A grain dealer shall make a disclosure under sub. (2) to every grain producer and producer agent from whom the grain dealer procures producer grain in this state. The grain dealer shall make the disclosure, in the form prescribed under sub. (2), in a written document given to the producer or pro-

ducer agent. The disclosure shall be clear and conspicuous, and shall be set apart from every other writing. The grain dealer shall make the disclosure to a producer or producer agent at all of the following times:

(a) The first time the grain dealer procures producer grain from that producer or producer agent.

(b) The first time the grain dealer procures producer grain from that producer or producer agent during each license year.

(c) The first time the grain dealer procures producer grain from that producer or producer agent following a change in circumstances that requires a different disclosure statement under sub. (2).

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

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

**IMPORTANT NOTICE**

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

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

**IMPORTANT NOTICE**

*[Name of grain dealer]* participates in Wisconsin's Agricultural Producer Security Program. If we fail to pay you for grain when payment is due, you may file a claim under this program. The program may provide some compensation. However, our "estimated default exposure" exceeds program coverage, and we have not filed security to cover the difference, so compensation may cover only a 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).

**History:** CR 02-113; cr. Register April 2003 No. 568, eff. 5-1-03; CR 04-030; cr. (2) (d) 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.

**ATCP 99.16 Grain dealers; receipts for grain.** A grain purchase receipt required under s. 126.18, Stats., shall be one of the following:

(1) Legibly printed on a paper or other tangible non-electronic medium that is delivered to the producer.

(2) Delivered to the producer in a legible electronic form that the producer can readily retrieve, view, store, and print on paper for future reference.

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

### Subchapter III — Grain Warehouse Keepers

**ATCP 99.20 General requirements.** A grain warehouse keeper shall comply with applicable requirements in ch. 126, Stats.

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

**ATCP 99.22 Grain warehouse keeper licensing.** (1) **GRAIN WAREHOUSE CAPACITY.** (a) The capacity of a grain warehouse, for purposes of ch. 126, Stats., is the sum of the capacities of the grain bins comprising that grain warehouse. To calculate the capacity of each grain bin, divide the number of cubic feet in that bin by 1.244 cubic feet per bushel and then multiply the result by the appropriate pack factor under par. (b). If not all walls of the grain bin are vertical, calculate the capacity of each vertical foot of the bin and add those capacities to obtain the total capacity of the bin.

(b) The pack factor under par. (a) is shown in the following table, based on the shape of the grain bin as viewed from above and the bushels per foot calculated according to par. (c). If not all walls of the grain bin are vertical, determine the pack factor for each vertical foot of the grain bin based on the bushels per foot for that vertical foot and the horizontal cross-sectional shape of the grain bin at that level.

| Square or Rectangular Bin |             | Round or Oval Shaped Bin |             |
|---------------------------|-------------|--------------------------|-------------|
| Bushels per Foot          | Pack Factor | Bushels per Foot         | Pack Factor |
| 0 to 24.0                 | 1.020       | 0 to 15.0                | 1.040       |
| > 24.0 to 34.0            | 1.025       | > 15.0 to 30.0           | 1.042       |
| > 34.0 to 41.0            | 1.030       | > 30.0 to 45.0           | 1.045       |
| > 41.0 to 45.0            | 1.035       | > 45.0 to 75.0           | 1.048       |
| > 45.0 to 48.0            | 1.040       | > 75.0 to 103.5          | 1.050       |
| > 48.0 to 50.0            | 1.042       | > 103.5 to 123.5         | 1.052       |
| > 50.0 to 55.0            | 1.045       | > 123.5 to 157.5         | 1.055       |
| > 55.0 to 62.0            | 1.048       | > 157.5 to 189.0         | 1.058       |
| > 62.0 to 67.0            | 1.050       | > 189.0 to 211.5         | 1.060       |
| > 67.0 to 73.0            | 1.052       | > 211.5 to 228.0         | 1.062       |
| > 73.0 to 83.0            | 1.055       | > 228.0 to 252.5         | 1.065       |
| > 83.0 to 94.0            | 1.058       | > 252.5 to 278.5         | 1.068       |
| > 94.0 to 105.0           | 1.060       | > 278.5 to 289.0         | 1.070       |
| > 105.0 to 120.0          | 1.062       | > 289.0 to 317.0         | 1.072       |
| > 120.0 to 139.0          | 1.065       | > 317.0 to 351.5         | 1.075       |
| > 139.0 to 157.0          | 1.068       | > 351.5 to 382.0         | 1.078       |
| > 157.0 to 289.0          | 1.070       | > 382.0 to 410.5         | 1.080       |
| > 289.0 to 317.0          | 1.072       | > 410.5 to 453.5         | 1.082       |
| > 317.0 to 351.5          | 1.075       | > 453.5 to 505.5         | 1.085       |
| > 351.5 to 382.0          | 1.078       | > 505.5 to 547.5         | 1.088       |
| > 382.0 to 410.5          | 1.080       | > 547.5 to 587.5         | 1.090       |
| > 410.5 to 453.5          | 1.082       | > 587.5 to 638.5         | 1.092       |
| > 453.5 to 505.5          | 1.085       | > 638.5 to 700.0         | 1.095       |
| > 505.5 to 547.5          | 1.088       | > 700.0 to 751.5         | 1.098       |
| > 547.5 to 587.5          | 1.090       | > 751.5                  | 1.100       |
| > 587.5 to 638.5          | 1.092       |                          |             |
| > 638.5 to 700.0          | 1.095       |                          |             |
| > 700.0 to 751.5          | 1.098       |                          |             |
| > 751.5                   | 1.100       |                          |             |

(c) To calculate bushels per foot, for purposes of par. (b), divide the number of square feet in the floor of the grain bin by 1.244 cubic feet per bushel. If not all walls of the grain bin are vertical, calculate bushels per foot for each vertical foot of the grain bin based on the number of square feet in a horizontal cross-section of the grain bin at that level.

(2) **SWORN AND NOTARIZED STATEMENT.** An applicant for a grain warehouse keeper license under ch. 126, Stats., shall include, with the license application, a sworn and notarized statement stating that the information provided on the application is complete and accurate.

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

**ATCP 99.23 Grain warehouse keepers; license fees and surcharges.** A person applying for an annual grain warehouse keeper license under s. 126.26, Stats., shall pay the following license fees and surcharges, rather than the license fees and surcharges provided in s. 126.26 (3), Stats.:

(1) A nonrefundable license processing fee of \$25 plus \$25 for each grain warehouse identified under s. 126.26 (2) (d), Stats. If a grain warehouse keeper operates 2 or more grain warehouses located within 0.5 mile of each other, the grain warehouse keeper may treat those grain warehouses as a single grain warehouse for purposes of this subsection and sub. (3).

(2) An inspection fee obtained by multiplying the combined grain warehouse capacity reported under s. 126.26 (2) (e), Stats., by 0.25 cent per bushel, rounding the product to the nearest \$1,000, and then subtracting any credit provided under s. 126.26 (5), Stats., except that the inspection fee may not be less than \$1,000 or more than \$10,000.

(3) A supplementary inspection fee of \$275 for each grain warehouse, in excess of one grain warehouse, that the applicant operates.

(4) A surcharge of \$500 if, within 365 days before submitting the license application, the applicant operated as a grain warehouse keeper in violation of s. 126.26 (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. 126.26 (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. 126.28 (1) (b), Stats., by the applicable deadline.

(6) A surcharge of \$100 if the applicant was licensed as a grain warehouse keeper for the last preceding license year but failed to file a license renewal application before the annual license expiration date of August 31.

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

**ATCP 99.235 Contributing grain warehouse keepers; fund assessments.** (1) GENERAL. Except as provided in sub. (4), a contributing grain warehouse keeper shall pay an annual fund assessment for each license year. The annual fund assessment shall be calculated under this section, rather than under s. 126.30 (1), Stats. Except as provided in sub. (3) or (4), the annual fund assessment shall be calculated according to sub. (2).

(2) ASSESSMENT AMOUNT. (a) A contributing grain warehouse keeper who operates grain warehouses with a combined capacity of less than 500,000 bushels shall pay an annual fund assessment equal to the greater of the following amounts:

1. \$100.
2. The sum of the amounts calculated under s. 126.30 (1) (a) and (b), Stats., multiplied by 1.5.

(b) A contributing grain warehouse keeper who operates grain warehouses with a combined capacity greater than 500,000 bushels shall pay an annual fund assessment equal to the greater of the following amounts:

1. \$250.
2. The sum of the amounts calculated under s. 126.30 (1) (a) and (1) (b), Stats., multiplied by 1.5.

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

(a) The amount calculated under s. 126.30 (5m), Stats., if the contributing grain warehouse keeper files security under s. 126.31 (1) (b), Stats.

(b) The amount of any refund that applies under s. ATCP 99.25. The refund shall be paid as a credit against the contributing grain warehouse keeper's annual fund assessment for the next license year, as provided in s. ATCP 99.25 (3).

(c) The amount of any assessment reduction that applies under s. ATCP 99.255.

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

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

(b) The fund balance attributable to grain warehouse keepers was at least \$3 million on May 31 of the last preceding license year.

(c) The overall fund balance was at least \$11 million on May 31 of the last preceding license year.

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

**ATCP 99.24 Grain warehouse keeper; financial statement.** (1) GENERAL. A grain warehouse keeper's financial statement, filed under s. 126.28, Stats., shall comply with this section and s. 126.28, 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.

3. Every note or account that has been receivable for more than one year, unless the grain warehouse keeper 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) ADDITIONAL INFORMATION. A financial statement shall separately and clearly disclose, in the financial statement notes or as an attachment to the financial statement, all of the following information for each kind of grain as of the date of the balance sheet:

(a) The total number of bushels of grain in the warehouse keeper's warehouse.

(b) The total number of bushels of grain forwarded to another warehouse keeper, for which the warehouse keeper filing the financial statement holds a warehouse receipt.

(c) The combined total bushels of grain under pars. (a) and (b).

(d) The total number of bushels of grain that the warehouse keeper is obligated to store for depositors who hold original negotiable warehouse receipts issued by the warehouse keeper.

(e) The total number of bushels of grain that the warehouse keeper is obligated to store for depositors who hold original non-negotiable warehouse receipts issued by the warehouse keeper.

(f) The total number of bushels of grain that the warehouse keeper is obligated to store for depositors who hold scale tickets

or other types of receipts, except for negotiable and nonnegotiable warehouse receipts, issued by the warehouse keeper.

(g) The combined total bushels of grain, under pars. (d) to (f), that the warehouse keeper is obligated to store for depositors.

(h) The total number of bushels of grain to which the warehouse keeper claims title.

(i) The total number of bushels of grain for which the warehouse keeper has issued outstanding negotiable warehouse receipts that are held as collateral by creditors.

(j) The warehouse keeper's net grain position.

**(6) DEBT TO EQUITY RATIO; LIABILITY ADJUSTMENTS.** (a) Solely for the purpose of calculating the debt to equity ratio under s. 126.28 (6) (c) 2., Stats., a grain warehouse keeper may deduct liabilities identified under par. (b) from liabilities reported in the grain warehouse keeper's financial statement if all the following apply:

1. The individual liability adjustments and offsetting assets are disclosed in the financial statement notes or in an attachment to the financial statement.

2. No individual liability adjustment exceeds the corresponding asset, identified in a note or attachment to the financial statement, that justifies the liability adjustment.

3. Liability adjustments and offsetting assets are determined as of the date of the balance sheet.

(b) A grain warehouse keeper may deduct the following amounts under par. (a):

1. An amount that the grain warehouse keeper has borrowed from a lending institution and deposited with a commodities broker to maintain an account to hedge grain transactions. The amount deducted may not exceed the amount owed to the lending institution or the amount deposited in the hedge account with the commodities broker, whichever is less.

2. An amount that the grain warehouse keeper has borrowed from a lending institution to buy grain that the warehouse keeper has sold and shipped, provided that the grain warehouse keeper has a collectible account receivable for that grain on the date of the balance sheet. The amount of the deduction may not exceed the amount receivable by the grain warehouse keeper or the amount owed to the lending institution, whichever is less.

3. An amount, borrowed from a lending institution, that is secured by grain that the grain warehouse keeper owns, holds in inventory on the date of the balance sheet, and shows as inventory on the balance sheet. The amount deducted may not exceed the amount owed to the lending institution or the value of the warehouse keeper's grain given as security and held in inventory, whichever is less.

4. An amount, borrowed from a lending institution, that the grain warehouse keeper has used to pay for fertilizer, pesticides, herbicides or seed that the grain warehouse keeper owns, holds in inventory on the date of the balance sheet, and shows as inventory on the balance sheet. The amount deducted may not exceed the amount owed to the lending institution or the cost of the fertilizer, pesticides, herbicides and seed purchased with the borrowed funds, whichever is less.

**(7) 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 99.25 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 grain warehouse keeper under s. 126.30, Stats., if all of the following apply:

(a) The grain warehouse keeper paid the full amount of the assessment, including any late payment penalties that apply under s. 126.30 (6) (d), Stats.

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

(d) The grain warehouse keeper's financial statement, for the fiscal year in which the merger or acquisition under par. (b) took effect, caused the sum of the grain warehouse keeper's current ratio assessment rate under s. 126.30 (2), Stats., and debt to equity ratio assessment rate under s. 126.30 (4), Stats., to increase by at least 100% compared to the preceding license year.

(e) The grain warehouse keeper'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 grain warehouse keeper paid the assessment, the sum of the grain warehouse keeper's current ratio assessment rate under s. 126.30 (2), Stats., and debt to equity assessment rate under s. 126.30 (4), Stats., declines by at least 50% compared to the license year for which the grain warehouse keeper paid the assessment.

(g) The grain warehouse keeper requests the refund in writing, by September 1 of the grain warehouse keeper'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 grain warehouse keeper and the assessment amount required of the grain warehouse keeper 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 grain warehouse keeper's assessment for the next license year. The department shall apportion the credit, pro rata, against the quarterly assessment installments required of the grain warehouse keeper under s. 126.30 (6), Stats., in that next license year. If the credit exceeds the total assessment required of the grain warehouse keeper in that next license year, the department shall credit the balance in the same fashion against assessments required of the grain warehouse keeper 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 grain warehouse keeper 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 99.255 Reduced fund assessment for contributing grain warehouse keepers who also maintain security.** **(1) VOLUNTARY SECURITY.** A licensed grain warehouse keeper may at any time file security with the department, regardless of whether the warehouse keeper is required to file security. Except as provided in sub. (2), a voluntary security filing under this subsection does not relieve a grain dealer of any obligation to file security or pay fund assessments.

**Note:** A grain warehouse keeper 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 99.26 (2).

(2) **REDUCED ASSESSMENT.** If, for the duration of a license year, a contributing grain warehouse keeper maintains security under sub. (1) in an amount that is at least equal to the grain warehouse keeper's estimated default exposure less the maximum fund reimbursement amount, the grain warehouse keeper's annual fund assessment under s. 126.30, Stats., for that year is reduced by an amount that is determined as follows:

(a) Subtract the maximum fund reimbursement from the grain warehouse keeper's estimated default exposure.

(b) Divide the result in par. (a) by the grain warehouse keeper's estimated default exposure.

(c) Multiply the result in par. (b) by the amount of the grain warehouse keeper's annual fund assessment under s. 126.30 (1), Stats., disregarding any assessment reduction under s. 126.30 (5m), Stats.

(d) Subtract, from the result in par. (c), the amount of any assessment reduction given under s. 126.30 (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 99.26 Grain warehouse keeper; disclosure to depositors.** (1) **DISCLOSURE REQUIRED.** A grain warehouse keeper shall make a disclosure under sub. (2) to every grain producer or producer agent who is a depositor for whom the grain warehouse keeper stores grain in this state. The grain warehouse keeper shall make the disclosure, in the form prescribed under sub. (2), in a written document given to the depositor. The disclosure shall be clear and conspicuous, and shall be set apart from every other writing. The grain warehouse keeper shall make the disclosure at all of the following times:

(a) The first time the grain warehouse keeper accepts a grain deposit from that depositor.

(b) The first time the grain warehouse keeper accepts a grain deposit from that depositor in each license year.

(c) The first time the grain warehouse keeper accepts a grain deposit from that depositor following a change in circumstances that requires a different disclosure statement under sub. (2).

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

(a) The following statement if the grain warehouse keeper is required to be licensed under s. 126.26 (1), Stats., and the grain warehouse keeper's estimated default exposure does not exceed the sum of the maximum fund reimbursement amount and any security amount the grain warehouse keeper has on file with the department:

#### IMPORTANT NOTICE

*[Name of grain warehouse keeper]* participates in Wisconsin's Agricultural Producer Security program. If we fail to return your grain on demand, you may file a claim under this program. The program may reimburse you for the loss of up to \$100,000 worth of grain. 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 grain warehouse keeper is required to be licensed under s. 126.26 (1), Stats., and the grain warehouse keeper's estimated default exposure exceeds the sum of the maximum fund reimbursement amount and any security amount the grain warehouse keeper has on file with the department:

#### IMPORTANT NOTICE

*[Name of grain warehouse keeper]* participates in Wisconsin's Agricultural Producer Security Program. If we fail to return your grain on demand, you may file a claim under this program. The program may provide some compensation. However, our "estimated default exposure" exceeds program coverage, and we have not filed security to cover the difference, so compensation may cover only a 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 grain warehouse keeper is not licensed and is exempt from licensing under s. 126.26 (1), Stats.:

#### IMPORTANT NOTICE

*[Name of grain warehouse keeper]* does not participate in Wisconsin's Agricultural Producer Security Program. You are therefore not eligible for compensation under the program if we fail to return your grain on demand. For more information, you may contact the Wisconsin Department of Agriculture, Trade and Consumer Protection, 2811 Agriculture Drive, P. O. Box 8911, Madison, WI 53708-8911 (phone 608/224-4998).

**History:** CR 02-113: cr. Register April 2003 No. 568, eff. 5-1-03; CR 04-030: r. and recr. (2) (b), cr. (2) (c) 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.

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

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

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

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

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

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

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

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

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

**History:** CR 05-068: cr. Register April 2006 No. 604, eff. 5-1-06.

**ATCP 99.28 Grain storage receipts.** A warehouse receipt or grain storage receipt required under s. 126.33, Stats., shall be one of the following:

(1) Legibly printed on a paper or other tangible non-electronic medium that is delivered to the depositor.

(2) Delivered to the depositor in a legible electronic form that the depositor can readily retrieve, view, store, and print on paper for future reference.

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