

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

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Donald J. Soberg, Administrator, Trade and Consumer Protection Division, State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, and custodian of the official records of said Division, do hereby certify that the annexed order amending rules relating to security of payments to milk producers, Chapter Ag 7.05 (3)(a), Ag 7.02 (4) and (7) and Ag 8, Wis. Adm. Code, was duly approved and adopted by the Department on November 28, 1990.

I further certify that said copy has been compared by me with the original on file in the Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Department offices in the city of Madison, this 28th day of November, 1990.



Donald J. Soberg

Donald J. Soberg, Administrator
Trade and Consumer Protection Division

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Docket No. 2197

**AN ORDER
OF THE STATE OF WISCONSIN DEPARTMENT OF
AGRICULTURE, TRADE AND CONSUMER PROTECTION**

The state of Wisconsin department of agriculture, trade and consumer protection hereby adopts the following order to amend Ag 7.05 (3)(a) and to repeal and recreate Ag 7.02 (4) and (7) and Ag 8, relating to security of payments to milk producers.

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

Statutory authority: ss. 93.07 (1), 97.20, 100.06 and
227.11(2)(a), Stats.

Statutes interpreted: ss. 97.20 and 100.06, Stats.

The department of agriculture, trade and consumer protection ("department") currently licenses Wisconsin dairy plants under s. 97.20, Stats., for compliance with state food laws. Under s. 100.06, Stats., a dairy plant operator (including an operator of an out-of-state dairy plant) must also meet minimum financial standards, or file security with the department, if the operator buys milk from Wisconsin producers or their agents. These financial standards and security requirements provide some protection for producers against payment defaults by dairy plant operators.

This rule repeals and recreates department rules related to dairy plant financial standards and security requirements. The rule implements 1989 Wis. Act 336, which was signed on April 27, 1990. It updates the rules to conform to current drafting standards and accounting terminology. It also makes important substantive changes to the current rules.

Minimum Financial Standards

The rule requires a dairy plant operator (including an operator of an out-of-state dairy plant) to file security with the department unless the operator meets all of the following financial standards:

- (a) A ratio of current assets to current liabilities of at least 1.25 to 1.00.
- (b) Equity equal to at least 35% of total assets.
- (c) A cash flow to debt service ratio of at least 1.50 to 1.00.

Before 1989 Wis. Act 336 was enacted, a dairy plant operator was required to meet lesser financial standards: a current ratio of at least 1.20 to 1.00 (or a quick ratio of 1.00 to 1.00) and total assets in excess of total liabilities.

Security Requirements

Under the current rule, if a dairy plant operator fails to meet minimum financial standards, the operator must file security equal to at least 75% of the operator's maximum liability to producers, or must enter into a dairy plant trusteeship under ch. Ag 7. This requirement is continued under the rule. However, the rule phases in security requirements for dairy plant operators who meet the old financial standards but do not meet the higher new standards.

If a dairy plant operator meets the old financial standards but does not meet the higher new standards in 1991, the rule requires the operator to file security equal to 25% of the operator's maximum liability to producers. If a dairy plant operator meets the old financial standards but does not meet the higher new standards in 1992, the rule requires operator to file security equal to 50% of the operator's maximum liability to producers. In 1993 and thereafter, every dairy plant operator must meet the new financial standards or file security equal to 75% of the operator's maximum liability to producers. The rule defines "maximum liability to producers" as the largest aggregate amount owed by a dairy plant operator to producers at any time during the last year beginning May 1. For out-of-state dairy plants, "maximum liability to producers" is calculated according to the amount owed Wisconsin producers, not out-of-state producers.

Form of Security

The current rule allows dairy plant operators to file security in any of several different forms:

- (a) A commercial surety bond.
- (b) Cash or negotiable securities
- (c) Stocks, bonds or other marketable securities.
- (d) Security interests in inventory, accounts receivable, or other property readily convertible to cash.
- (e) Personal surety bonds or other third party guarantees.
- (f) Monthly deposits equaling at least 1% of gross monthly producer payroll or 0.5% of gross monthly sales.

The rule continues to allow the first three forms of security. It also authorizes the use of irrevocable bank letters of credit and life insurance policies at cash surrender value.

Under the rule, the department will no longer accept a direct security interest in dairy plant inventory or accounts receivable, because the department is not in a position to monitor the collateral or dispose of the collateral in the event of security interest foreclosure. However, a dairy plant operator may pledge dairy plant inventory and accounts receivable to a bank as collateral for a bank letter of credit, which the department will accept as security. Instead of filing security with the department, a dairy plant operator may also enter into a dairy plant trusteeship under ch. Ag 7, in which case the dairy plant trustee will hold a security interest in the dairy plant's inventory and accounts receivable.

Under the rule, the department will no longer accept unsecured personal surety bonds or monthly deposits as security. However, the rule permits a third party, such as a parent organization, to file security on behalf of a dairy plant operator.

Financial Statements

Pursuant to 1989 Wis. Act 336, the rule requires every dairy plant operator to file quarterly financial statements with the department if the operator buys milk from producers. (Quarterly financial statements must be verified, but need not be audited financial statements unless audited statements are required by the department.) A dairy plant operator is required to file quarterly financial statements even if the dairy plant operator files security with the department or enters into a trusteeship. The department may require more frequent financial statements if necessary. A quarterly financial statement must include a balance sheet, income statement and any other information required by the department.

The rule, like the current rule, requires every dairy plant operator to file a year-end financial statement with the department if the dairy plant buys milk from producers. A year-end financial statement must be an audited financial statement unless the dairy plant files security with the department or enters into a trusteeship. A year-end financial statement must normally include a balance sheet, income statement, equity statement, statement of cash flows, notes to the financial statements, and any other information required by the department. However, if the dairy plant operator files security with the department or enters into a trusteeship under ch. Ag 7, the year-end financial statement need only include a balance sheet and income statement (plus any other information required by the department).

Request for Security; Deadline for Filing

The department may require a dairy plant operator to file security at any time if (a) the dairy plant operator no longer meets the minimum financial standards prescribed in the rule, (b) the dairy plant operator's existing security falls below the amount required in the rule, or (c) the dairy plant operator fails to provide relevant information requested by the department. The department's request must be made in writing and

must specify the reason for the request. The request must also specify a security filing deadline, which shall be not more than 30 days after the demand is issued. The department may extend the filing deadline for up to 30 more days for cause. If the dairy plant operator fails to file the security by the final deadline date, the dairy plant operator must, within 5 days after that deadline date, notify all producers shipping milk to that dairy plant that the operator has failed to file security in response to the department's demand.

Monthly Milk Payment Deadline

Pursuant to 1989 Wis. Act 336, the rule requires every dairy plant operator to pay producers by the 18th of the month for milk received during the preceding month.

Producer Claimants

The rule, like the current rule, applies to milk purchased from milk producers or their agents. It does not apply to milk purchased from other sources. The proposed rule defines a "producer" as any of the following:

- (a) A person who owns or operates a dairy farm in this state and sells or distributes milk produced on that farm.
- (b) A person who owns or operates a dairy farm in another state and sells or distributes milk produced on that farm to a dairy plant located in this state.
- (c) A person who, under a written agency agreement, markets milk as agent for a producer described under (a) or (b) to a dairy plant located in this state, provided that the agent does not process or take title to the milk. A marketing agent may file a claim on behalf of producers if the marketing agent qualifies under this definition.

Under the rule, a producer claim may also be filed by the assignee of that producer.

Semiannual Notice to Producers

Under the rule, every dairy plant must notify producers of the basis on which the dairy plant is licensed. (This is required by s. 100.06(3)(a), Stats.) Notice must be issued in writing during the months of June and December each year. The notice must comply with the exact form prescribed in the rule. The notice must state whether the dairy plant is licensed on the basis of its financial statement, on the basis of security filed with the department, or on the basis of a dairy plant trusteeship. The notice must also contain certain additional information prescribed in the rule.

Determining Producer Claims; Collection

The rule spells out the procedure to be followed if a dairy plant defaults in payments to producers. The procedure is designed to determine the amount of allowable producer claims and to order payment of those claims. The rule authorizes the department to commence an action in court to recover allowed claims on behalf of producers or to settle any claim with the consent of the producer. Producers may also bring private actions independently.

License Sanctions

The rule specifies grounds for which a dairy plant license may be suspended or revoked, and specifies the procedure to be used. The department may suspend or revoke a dairy plant license for cause, such as if a dairy plant fails to provide relevant information upon request, fails to file security or enter into a trusteeship by a specified date, violates department rules, or violates s. 100.06, Stats.

A suspension or revocation must ordinarily be preceded by notice and hearing. However, the department secretary may, without prior hearing, prohibit a dairy plant from buying milk from producers if the secretary finds that the summary order is necessary to prevent imminent harm to producers. (The dairy plant could still buy milk from other sources.) The department must hold an informal hearing within 10 days after issuing a summary order, unless the dairy plant waives its right to such a hearing. The department must also hold a formal contested case hearing on relevant matters left unresolved by the informal hearing.

Producer Payroll Records

The rule requires dairy plants to maintain producer payroll records for at least 3 years and make them available to the department on request.

SECTION 1. Ag 7.02 (4) and (7) are repealed and recreated to read:

Ag 7.02 (4) "Maximum liability to producers" has the meaning specified in s. Ag 8.01 (17).

(7) "Producer" has the meaning specified in s. Ag 8.01 (19).

SECTION 2. Ag 7.05 (3) (a) is amended to read:

Ag 7.05 (3) (a) The amount of the bond shall not be less than 75% of the

~~maximum due and accrued producer liability of the dairy plant~~ dairy plant's maximum liability to producers.

SECTION 3. Ag 8 is repealed and recreated to read:

CHAPTER Ag 8

SECURITY FOR PAYMENTS TO MILK PRODUCERS

SUBCHAPTER I

DEFINITIONS; LICENSING

Ag 8.01 DEFINITIONS. In this chapter:

- (1) "Asset" means anything of value owned.
- (2) "Audited financial statement" means a financial statement on which an independent public accountant holding a certificate of authority under ch. 442, Stats., or an independent certified public accountant, has done both of the following:
 - (a) Expressed an opinion in accordance with generally accepted accounting principles.
 - (b) Conducted an audit in accordance with generally accepted auditing standards.
- (3) "Balance sheet" means a statement of assets, liabilities and equity on a fixed date.
- (4) "Cash flow to debt service ratio" means the result obtained by dividing the total of net income plus noncash expenses plus interest expense by the total of interest expense plus current maturities of long-term debt.
- (5) "Current assets" means cash and assets, including trade or investment items, that may be readily converted into cash in the ordinary course of business within one

year from the date of the balance sheet, except as provided in s. Ag 8.35.

(6) "Current liabilities" means liabilities due and payable within one year from the date of the balance sheet.

(7) "Dairy farm" has the meaning specified in s. 97.22(1)(a), Stats.

(8) "Dairy plant" means a dairy plant, as defined in s. 97.20(1)(a), Stats., whose operator buys milk from producers. "Dairy plant" includes a dairy plant outside this state whose operator buys milk from producers located in this state.

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

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

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

(10) "Department" means the state of Wisconsin department of agriculture, trade and consumer protection.

(11) "Equity" means the excess of total assets over total liabilities.

(12) "Equity statement" means a report of the change in equity from the beginning to the end of the accounting period covered by the report.

(13) "Income statement" means a report of the financial results of operations for the accounting period covered by the report.

(14) "Interim financial statement" means a financial statement prepared as of a date other than the end of a fiscal year.

(15) "Liability" means an obligation to pay money or other assets or to render a

service to another person.

(16) "Long-term liability" means debts due or payable more than one year from the date of the balance sheet.

(17) "Maximum liability to producers" means the largest aggregate amount owed by a dairy plant operator to producers at any time since May 1 of the last preceding license year, calculated according to the method prescribed under s. Ag 8.45(4). If a dairy plant operator buys milk from producers located in this state for delivery to the operator's dairy plant located outside this state, "maximum liability to producers" for that dairy plant means maximum liability to producers in this state.

(18) "Milk" has the meaning specified in s. 97.22 (1) (e), Stats.

(19) "Producer" means any of the following:

(a) A person who owns or operates a dairy farm in this state and sells or distributes milk produced on that farm.

(b) A person who owns or operates a dairy farm in another state and sells or distributes milk produced on that farm to a dairy plant located in this state.

(c) A person who, under a written agency agreement, markets milk as agent for a producer described in par. (a) or (b) to a dairy plant located in this state, provided that the agent does not process or take title to the milk.

(20) "Producer claim" means either of the following:

(a) A claim by a producer or the producer's assignee for payment from a dairy plant operator for milk produced by the producer.

(b) A claim by a marketing agent on behalf of producers or their assignees, if

the marketing agent qualifies as a producer under sub. (18)(c).

(21) "Secretary" means the secretary of the department or the secretary's designee.

(22) "Statement of cash flows" means a report of cash receipts and cash payments from operating, investing and financing activities, including an explanation of changes in cash and cash equivalents for the accounting period covered by the report.

(23) "Verified financial statement" means a financial statement that contains a notarized statement, signed and sworn to by the dairy plant operator, attesting that the financial statement is correct.

Ag 8.05 DAIRY PLANT LICENSE APPLICATIONS. Every application for a dairy plant license under s. 97.20, Stats., shall include the sworn and notarized statement required under s. Ag 8.20 and any other information the department requires. An applicant for an initial dairy plant license shall file a year-end financial statement under s. Ag 8.25(2) or, if the applicant has not previously engaged in business, an opening balance sheet and notes under s. Ag 8.25(5)(d). A licensed dairy plant operator shall file periodic financial statements as required by s. Ag 8.25.

NOTE: See ch. Ag 31 regarding dairy plant licensing under s. 97.20, Stats. A dairy plant license is not transferable between operators or locations. A dairy plant outside this state that buys milk from Wisconsin producers is not subject to licensing under s. 97.20, Stats., but is required to comply with this chapter and s. 100.06, Stats.

Ag 8.10 SUSPENSION OR REVOCATION OF LICENSE. (1) GENERAL.

Following notice and hearing, the secretary may suspend or revoke a dairy plant license for cause, including any of the following:

(a) The dairy plant operator fails to provide relevant information requested by the department or required by department rules.

(b) The dairy plant operator fails to file security under s. Ag 8.45 or enter into a trusteeship under ch. Ag 7 by a date the department specifies.

(c) The dairy plant operator violates any provision of ch. Ag 7 or this chapter.

(d) The dairy plant operator violates any provision of s. 100.06, Stats.

(2) SUMMARY ORDER SUSPENDING MILK PROCUREMENT FROM PRODUCERS. The secretary may, without prior hearing, summarily prohibit a dairy plant operator from buying milk from producers if the secretary finds that the summary order is necessary to prevent an imminent threat of financial loss to producers. An order under this subsection shall set forth the basis for the order. Unless the dairy plant waives its right to a hearing, the department shall conduct an informal hearing as soon as reasonably possible, but not more than 10 days after the order is issued. The department shall hold a contested case hearing under ch. 227, Stats., on any issues relevant to the order that are not resolved by the informal hearing.

NOTE: This section does not limit the department's authority to suspend or revoke a dairy plant license for any authorized reason not listed in this section, including violations of ch. 97, Stats., or rules issued thereunder. Nor does it limit the department's authority to summarily suspend a dairy plant license in an emergency, based on an appropriate finding under s. 227.51(3), Stats. Violations of this chapter may also result in penalties as provided under s. 100.26(5), Stats.

SUBCHAPTER II

FINANCIAL STANDARDS AND SECURITY

Ag 8.20 PAYROLL INFORMATION. (1) ANNUAL STATEMENT REQUIRED. Before May 1 of each year, every dairy plant operator shall file with the department a sworn and notarized statement, signed by the operator, containing the information required under sub. (2). The dairy plant operator shall file a separate statement for each Wisconsin dairy plant which is subject to licensing under s. 97.20, and for each out-of-state dairy plant which receives milk from producers as defined in s. Ag 8.01(19). If a dairy plant is located in this state, the operator shall file the statement for that dairy plant with the operator's annual license application under s. 97.20, Stats.

(2) STATEMENT CONTENTS. The sworn and notarized statement under sub. (1) shall be filed on a form provided by the department, and shall include all of the following:

(a) The operator's correct legal name and any trade name used by the operator. The operator's legal name shall match the legal name used on the operator's dairy plant license application under s. 97.20, Stats. If the operator is a corporation, partnership or cooperative, the statement shall identify each corporate officer or partner.

(b) The location of the dairy plant to which the statement pertains, and the name of a responsible person who may be contacted at that location.

(c) The largest gross amount paid by the dairy plant operator to producers for milk received by the dairy plant in any payroll period during the year beginning on the preceding May 1. The statement shall identify the payroll period, the amount and date

of any advance payment, and the amount and date of the final payment.

(d) The number of producers from whom the dairy plant operator receives milk, and the identity of any producer agents from whom producer milk is received.

(e) The name of the bank used for producer milk checks.

(f) The identity of every person to whom milk or dairy products from the dairy plant are sold.

(g) The basis on which the producer milk prices are determined, including any provision for milk component premiums.

(h) Any other relevant information required by the department.

(3) INCREASED MAXIMUM PAYROLL; NOTICE TO DEPARTMENT. If a dairy plant operator is covered by a trusteeship under ch. Ag 7, or if the operator files or is required to file security with the department under s. Ag 8.45, the operator shall immediately notify the department if, at any time, the operator has reason to believe that the operator's producer payroll may exceed the maximum producer payroll last reported to the department under sub. (1)(c).

NOTE: See also s. 100.06(3)(b), Stats.

Ag 8.25 FINANCIAL STATEMENTS. (1) QUARTERLY FINANCIAL STATEMENTS. (a) Every dairy plant operator shall file quarterly financial statements with the department, whether or not the operator files security with the department under s. Ag 8.45 or is covered by a trusteeship under ch. Ag 7. A dairy plant operator shall file quarterly financial statements for the first 3 quarters of the operator's fiscal year.

(b) Quarterly financial statements under par. (a) may be verified financial statements, unless an audited financial statement is required under sub. (2)(b) or by the department.

(c) Except as provided under sub. (2)(c), each quarterly financial statement shall be filed within 60 days after the end of the fiscal quarter to which the statement pertains.

(2) YEAR-END FINANCIAL STATEMENT. (a) Every dairy plant operator shall annually file a year-end financial statement with the department. The year-end financial statement shall cover the operator's most recently completed fiscal year.

(b) Every year-end financial statement under par. (a) and every initial financial statement under sub. (5)(d) shall be an audited financial statement, except that if a dairy plant operator files security with the department under s. Ag 8.45 or is covered by a trusteeship under ch. Ag 7, the operator may file a verified financial statement.

(c) Every dairy plant operator shall file a year-end financial statement by the 15th day of the 4th month following the close of the operator's fiscal year.

(3) SUPPLEMENTARY OR INTERIM FINANCIAL STATEMENTS. The department may require a dairy plant operator to file supplementary financial statements or interim financial statements at any time, containing information the department specifies. Supplementary or interim financial statements need not be audited or verified, except as required by the department.

(4) AUDITED FINANCIAL STATEMENTS; ACCOUNTING PRINCIPLES. Every audited financial statement shall be prepared according to generally accepted

accounting principles and this chapter.

(5) FINANCIAL STATEMENT CONTENTS. (a) A quarterly financial statement under sub. (1) shall include a balance sheet, income statement and any other information required by the department.

(b) Except as provided under par. (c) or (d), every year-end financial statement required under sub. (1) or (2) shall consist of a balance sheet, income statement, equity statement, statement of cash flows, notes to these statements, and any other information required by the department.

(c) If a dairy plant operator files security with the department under s. Ag 8.45 or is covered by a trusteeship under ch. Ag 7, the operator's year-end financial statement shall consist of a balance sheet, income statement and any other information required by the department.

(d) A dairy plant operator who has not previously engaged in business may file an initial financial statement consisting of an opening balance sheet and notes to the balance sheet. Thereafter, the operator shall file periodic financial statements as required under this section.

Ag 8.30 PREPARATION OF FINANCIAL STATEMENTS. (1) CLASSIFICATION OF ASSET ACCOUNTS. In any classification of asset accounts, a dairy plant operator's financial statement shall specifically identify assets not recognized as current assets under this chapter.

(2) NOTES AND ACCOUNTS RECEIVABLE. (a) In a dairy plant operator's financial statement, notes and accounts receivable arising in the ordinary course of trade

shall be identified separately from notes and receivables which do not arise in the ordinary course of trade. Financial statements shall describe any note or account representing 15% or more of all notes or accounts receivable, respectively. The description shall indicate the name of the person from whom payment is due and the amount due.

(b) A dairy plant operator's financial statement shall specifically identify and explain the following notes and accounts receivable:

1. Notes and accounts receivable from officers, directors, partners, employees or stockholders, or from members of their families, other than trade accounts arising in the ordinary course of trade.

2. Notes and accounts receivable from parent organizations, subsidiaries or affiliates, including trade accounts arising in the ordinary course of trade.

(c) A dairy plant operator's financial statement shall include an aging summary of all notes and accounts receivable.

(d) A dairy plant operator shall maintain reasonable allowances for doubtful or uncollectible items and shall identify those allowances in the operator's financial statements.

(3) INVENTORY. A dairy plant operator's financial statement shall identify inventories of dairy products manufactured and held for sale separately from other classes of inventory, such as materials and supplies or merchandise purchased for resale. Inventories not in marketable or saleable condition are not current assets. Financial statements shall describe the basis on which inventory values are determined.

(4) OTHER CURRENT ASSETS. A dairy plant operator's financial statement shall specifically identify the nature or character of other current assets. The financial statement shall separately describe temporary investments, identifying the specific security, the number of shares held and their market value.

(5) FIXED ASSETS. A dairy plant operator's financial statement shall identify fixed assets according to each major class of property included. The dairy plant operator shall report all fixed assets at cost less depreciation and shall submit a summary of fixed assets and related provisions for depreciation transactions with the dairy plant financial statements.

(6) OTHER ASSETS. A dairy plant operator's financial statement shall identify other assets separately from current assets, describing the nature of each asset classified under "other assets" and its current value. Assets of a purely personal or private nature, which are exempt from execution or attachment, may not be included as a business asset by sole proprietors or partnerships.

(7) CURRENT LIABILITIES. (a) A dairy plant operator's financial statement shall show current liabilities separately from long-term liabilities. Current liabilities shall include the current portion of all long-term obligations as well as any other items of a current nature. The financial statement shall set forth current liabilities, including all notes and accounts payable, deferred income and accrued expenses, in sufficient detail that the specific nature of the liability and the amount owed can be readily determined.

(b) A dairy plant operator's financial statement shall show milk payable accounts separate from other trade accounts and shall identify amounts due producers, haulers

and others under milk check assignments.

(c) A dairy plant operator's financial statement shall detail each trade account representing 15% or more of all trade accounts, showing the name of each trade creditor and the amount owed.

(d) A dairy plant operator's financial statement shall specifically identify the current portion of all notes and mortgages payable. The financial statement shall separately state notes and mortgages payable to officers, directors, employees or stockholders, or to members of their families, as well as to parent, subsidiary or affiliated organizations.

(8) LONG-TERM LIABILITIES. A dairy plant operator's financial statement shall fully describe all notes, mortgages or other obligations not due or payable within one year, including the nature of the obligation, the amount owed and the terms of payment.

(9) GENERAL NOTES TO FINANCIAL STATEMENTS. A dairy plant operator's financial statement shall include the following information, if material:

(a) The amount and a brief description of any assets mortgaged, pledged or subject to a lien.

(b) Defaults in payment of any obligations.

(c) A brief statement as to contingent liabilities.

(d) A statement of judgments, suits, liens or claims pending against the dairy plant operator.

(e) A statement as to whether the dairy plant operator has acted as surety,

bondsman or accommodation party on notes or obligations of another.

(f) A description of any changes in accounting principles used that would affect comparability of the dairy plant operator's financial statement with prior financial statements.

(g) A statement as to whether the books and records of the dairy plant operator are inadequate for purposes of providing dependable financial statements.

(h) Disclosure of any deceptive manipulation of accounts, including temporary funding of current liabilities to effect "window dressing".

(i) Any other facts or circumstances that may affect the reliability of the financial statement, the financial liquidity of the dairy plant operator or the operator's ability to pay producers.

Ag 8.35 ASSETS EXCLUDED FROM FINANCIAL STANDARD CALCULATIONS. The department shall exclude the following assets when it calculates whether a dairy plant operator complies with the financial standards under s. Ag 8.40:

(a) All assets of doubtful value.

(b) Nontrade notes and accounts receivable from officers, directors, employees, partners or stockholders, or from members of their families.

(c) Notes and accounts receivable from parent organizations, subsidiaries or affiliates unless the department finds the current financial position of the organization, subsidiary or affiliate justifies the inclusion of these assets.

Ag 8.40 MINIMUM FINANCIAL STANDARDS. (1) REQUIREMENT.

Except as provided under sub. (3), a dairy plant operator shall meet all of the following

financial standards:

(a) The dairy plant operator's ratio of current assets to current liabilities shall be at least 1.25 to 1.00.

(b) The dairy plant operator shall have equity equal to at least 35% of total assets.

(c) The dairy plant operator shall have a cash flow to debt service ratio of at least 1.50 to 1.00.

NOTE: These minimum financial standards are required by s. 100.06, Stats., as amended by 1989 Wis. Act 336.

(2) NOTIFICATION OF CHANGES. A dairy plant operator shall immediately notify the department if the operator knows or has reason to know that any of the financial standards under sub. (1) are no longer being met.

(3) EXEMPTION; FILING SECURITY. A dairy plant operator is not required to meet the financial standards under sub. (1) if the operator files security with the department under s. Ag 8.45 or is covered by a trusteeship under ch. Ag 7.

Ag 8.45 SECURITY. (1) REQUIREMENT. A dairy plant operator shall file security with the department under this section unless the operator meets the minimum financial standards under s. Ag 8.40 or enters into a trusteeship under ch. Ag 7. A third party may provide security on behalf of a dairy plant operator.

(2) FORM OF SECURITY. Security filed with the department under this section is subject to approval by the department. Approved security shall be in one or more of the following forms:

(a) A commercial surety bond payable to the department and issued by an

insurer authorized to operate a surety business in this state.

- (b) Cash, certificates of deposit or money market certificates.
- (c) Stocks, bonds or other marketable securities at current market value.
- (d) Irrevocable bank letters of credit.
- (e) Life insurance policies at cash surrender value.

(3) DEPARTMENT CUSTODY OF SECURITY. The department or department's agent shall hold under its custody any security filed under sub. (2). Security shall be payable to and held by the department for the benefit of producers if the dairy plant operator defaults on the operator's liabilities to producers.

(4) AMOUNT OF SECURITY. Security under this section shall be in an amount equal to at least 75% of the dairy plant operator's maximum liability to producers. The operator's maximum liability to producers is calculated as follows:

(a) Divide the maximum producer payroll reported to the department under s. Ag 8.20 by the number of days in the payroll period.

(b) Multiply the quotient under par. (a) by the sum of the following:

1. The number of days in the payroll period.
2. The number of calendar days between the end of the payroll period and the date on which the dairy plant operator pays for milk delivered during the payroll period.

(c) From the product obtained under par. (b), subtract any advances made by the dairy plant operator to producers as reported under s. Ag 8.20. The remainder is the operator's maximum liability to producers.

(5) INTERIM SECURITY AMOUNTS AND FINANCIAL STANDARDS. (a)

Notwithstanding sub. (4), if a dairy plant operator meets both of the financial standards under par. (b) but does not meet all of the financial standards under s. Ag 8.40, the dairy plant operator shall file security in the following minimum amounts for the license years indicated:

1. For the license year beginning May 1, 1991, 25% of the dairy plant operator's maximum liability to producers.

2. For the license year beginning May 1, 1992, 50% of the dairy plant operator's maximum liability to producers.

(b) For the license years beginning May 1, 1991 and May 1, 1992, a dairy plant operator may file security in the amount required under par. (a), rather than the amount required under sub. (4), if the dairy plant operator meets both of the following interim financial standards:

1. A ratio of current assets to current liabilities of at least 1.20 to 1.00.

2. Total assets in excess of total liabilities.

(c) This subsection does not apply after April 30, 1993.

(6) DEMANDS FOR SECURITY. (a) The department may require a dairy plant operator to provide security at any time if any of the following occurs:

1. The dairy plant operator no longer meets the financial standards under s. Ag 8.40 or the interim standards under sub. (5) (b).

2. The dairy plant operator's existing security falls below the amounts required under sub. (4) or (5) (a), because of depreciation in the value of security deposited or because of an increase in maximum liability to producers.

3. The dairy plant operator fails to provide relevant information requested by the department or required by department rules.

(b) If the department requires a dairy plant operator to provide security under par. (a), it shall issue a notice to the operator indicating why security is required, the amount of security required, and the deadline date for filing security. The security filing deadline shall be not more than 30 days after the date on which the department issues its demand for security. The department may extend the security filing deadline for up to 30 more days for cause. If the department extends the deadline it may require the dairy plant operator to file an alternative form of security, other than a form of security specified in sub. (2) or a trusteeship, in the interim. The department may reject alternative forms of security it finds unacceptable.

(c) If a dairy plant operator fails to file security by the final deadline date specified by the department under par. (b), the dairy plant operator shall, within 5 days after that final deadline date, notify all producers shipping milk to the dairy plant that the operator has failed to file security in response to the department's demand.

(7) RELEASE OF SECURITY. The department may, upon request, release security filed under this section only if one of the following occurs:

(a) The dairy plant operator achieves and maintains for at least 2 consecutive fiscal years the minimum financial standards under s. Ag 8.40.

(b) The dairy plant operator demonstrates, to the department's satisfaction, that the amount of security on file exceeds the amount required under this subsection, and the operator requests that the department release the excess security.

(c) The dairy plant operator files alternative security of equivalent value or enters into a trusteeship under ch. Ag 7.

(d) The dairy plant operator has gone out of business and certifies, to the department's satisfaction, that the operator has paid in full all producer claims.

Ag 8.48 TRUSTEESHIPS. A dairy plant operator is not required to file security under s. Ag 8.45 if the operator enters into a trusteeship under ch. Ag 7.

Ag 8.50 PAYMENT TO PRODUCERS; MONTHLY DEADLINE. On or before the 18th day of each month, a dairy plant operator shall pay each producer or producer assignee the balance due on the actual price for all milk received from that producer during the previous month.

NOTE: A dairy plant operator complies with the payment deadline under this section if the operator mails payment to the producer on or before the 18th day of the month, or gives a check to the milk hauler for delivery to the producer on or before the 18th day of the month.

Ag 8.55 NOTICE TO PRODUCERS; FINANCIAL INFORMATION. (1) SEMIANNUAL NOTICE. (a) Twice each year, during the months of June and December, each dairy plant operator shall notify producers of the basis on which the dairy plant is licensed under this chapter. Notice shall:

1. Be issued in writing to all producers who ship milk to the dairy plant.
2. Be in the form of a separate document. The separate document shall be delivered with the producer's milk check or in a separate mailing or delivery.
3. Clearly and conspicuously set forth the information specified in sub. (2). No other information, except the dairy plant's name and address and the date, may appear on the document.

(b) The dairy plant operator shall file a copy of the notice with the department within 10 days after the operator issues the notice to producers.

(2) CONTENTS OF NOTICE. The semiannual notice under sub. (1) shall bear the conspicuous title "**NOTICE TO PRODUCERS.**" The notice shall include the following information as applicable:

(a) Every notice shall contain the following verbatim statement, conspicuously printed under the title:

"Wisconsin law requires dairy plant operators to demonstrate a reasonable degree of financial responsibility to the Wisconsin Department of Agriculture, Trade and Consumer Protection. This law is designed to provide reasonable assurance that producers will be paid for their milk. However, it does not guarantee that producers will be paid. Each producer has some responsibility for determining the credit worthiness of the dairy plant to which the producer is selling milk. A dairy plant operator may qualify for a license by doing one of the following: (1) filing audited financial statements with the department showing that the dairy plant meets certain minimum financial standards; (2) filing security with the department equal to at least 75% of the operator's maximum reported liability to producers; or (3) establishing a dairy plant trusteeship under ch. Ag 7, Wis. Adm. Code."

(b) If a dairy plant operator is licensed on the basis of the operator's audited financial statement, the notice shall contain the following statement in addition to the statement under par. (a):

"(Name of dairy plant operator) is currently licensed on the basis of its audited financial statement. Our most recent year-end financial statement, audited by the firm of (auditor's name) meets the following minimum financial standards: (1) a current ratio of at least 1.25 to 1.00; (2) owner's equity equal to at least 35% of total assets; and (3) a cash flow to debt service ratio of at least 1.50 to 1.00."

(c) Except as provided under par. (d), if a dairy plant operator has filed security with the department under s. Ag. 8.45, the notice shall contain the following statement in addition to the statement under par. (a):

"(Name of dairy plant operator) has filed security with the department to secure payment to its producers. The amount of the security is equal to at least 75% of the maximum amount which we owed to producers at any time during the past year. The security we have filed is in the following form or forms: (specify forms of security)."

(d) If, on an interim basis under s. Ag 8.45(5), a dairy plant operator has filed security which is less than 75% of the operator's maximum liability to producers, the notice shall contain the following statement in addition to the statement under par. (a):

"Recent law changes have raised the minimum financial standards for dairy plants. (Name of dairy plant operator) met the old minimum standards but does not yet meet the new minimum standards for licensing based on our financial statement alone. On an interim basis, we have therefore filed security with the department to secure a portion of our obligations to producers. The amount of

the security is equal to at least (insert applicable minimum percentage under s. Ag 8.45(5)(a)). The security we have filed is in the following form or forms: (specify forms of security)."

(e) If a dairy plant operator is covered by a trusteeship under ch. Ag 7, the notice shall contain the following statement in addition to the statement under par. (a):

"(Name of dairy plant operator) is currently covered by a dairy plant trusteeship under ch. Ag 7, Wis. Adm. Code. Under a trust agreement filed with the department, the trustee (name of trustee) collects all receipts for milk and dairy products sold by our dairy plant and deposits those receipts in a special bank account. From this account, the trustee pays producers for their milk shipments and transfers any remaining funds to the dairy plant operator."

SUBCHAPTER III

COLLECTION OF PRODUCER CLAIMS

Ag 8.60 PRODUCER CLAIMS; DEFAULT PROCEEDINGS. (1) FILING CLAIMS. If a producer claims that a dairy plant operator has failed to pay for milk when due, the producer may file a written claim with the department. Upon receipt of a producer claim or other evidence of dairy plant default, the department may initiate a default proceeding under this section. Before initiating a default proceeding, the department may conduct a preliminary investigation as provided under s. 93.16, Stats.

(2) INITIATING DEFAULT PROCEEDINGS. To initiate a default proceeding, the department shall issue an order requiring all interested producers to file verified

proofs of producer claims with the department before a specified date or be barred from participating in any recovery obtained by the department. The department shall publish the order as follows:

(a) By posting a copy of the order in a prominent location at the dairy plant.

(b) By mailing a copy of the order to the dairy plant operator and to the trustee or surety, if any.

(c) By publishing the contents of the order as a class 3 notice under ch. 985, Stats. The last date of publication shall be at least 30 days before the deadline date for filing claims.

(d) If, based on the dairy plant operator's records or other information, the department obtains the names and addresses of other producers who appear to have unpaid producer claims against the dairy plant operator, by mailing a copy of the order or equivalent notice to each of those producers. In its notice the department may indicate the amount of the producers' apparent claims and ask the producers to verify or correct the amounts on or before the claim filing deadline.

(e) By any additional method the department considers necessary.

(3) **AUDIT; PROPOSED ORDER.** If the department initiates a default proceeding, it shall audit producer claims filed with the department and shall issue a proposed order allowing or disallowing claims. The proposed order shall be based on proposed findings of fact and conclusions of law, which shall accompany the proposed order. The department shall mail a copy of the proposed order to the dairy plant operator, to the trustee or surety, if any, and to every producer who filed a timely

producer claim.

(4) CLAIMS DISALLOWED. The department shall disallow all of the following:

(a) A producer claim filed after the deadline date specified under sub. (2) unless the department, in writing, waives the deadline date for good cause shown.

(b) A producer claim for payment that was due more than 30 days before the date on which the department received the first written notice of default.

(c) A producer claim for milk that was voluntarily delivered to the dairy plant more than 10 days after the dairy plant operator first failed to pay the producer for milk when payment was due, while that payment was still due.

NOTE: Ag 8.60(4)(c) defines transactions which constitute a "voluntary extension of credit," claims for which are barred under s. 100.06(4), Stats.

(5) NOTICE AND HEARING. The department shall hold a public hearing on its proposed order under sub. (3). The department shall issue a notice of hearing to each person who is required to receive a copy of that order. The notice of hearing shall comply with s. 227.44, Stats. The notice of hearing may require affected parties to file objections to the proposed order, if any, in writing before the date of hearing. The hearing examiner may hold a prehearing conference before the hearing and may reschedule or continue the hearing as necessary. The hearing and related proceedings shall be conducted under ch. 227, Stats., and ch. Ag 1.

(6) FINAL ORDER AFTER HEARING. Before issuing its final decision and order, the department shall follow the procedures prescribed under s. 227.46, Stats.,

except that if after the hearing under sub. (5) no objections remain to the proposed order, the department may adopt the proposed order as its final decision and order without further notice or hearing.

(7) INTEREST ON CLAIMS. (a) If the department's proposed or final order allows a producer claim, the order shall also require the dairy plant operator to pay interest on the claim. The department shall determine the interest rate to be paid to producers injured by a dairy plant default as the rate awarded by Wisconsin courts for interest on verdicts, established in s. 814.04 (4), Stats., unless the interest rate is determined in accordance with par. (b).

(b) The department shall apply the interest rate previously agreed upon by a producer and a dairy plant operator if a producer or dairy plant operator provides proof of either of the following:

1. A producer and a dairy plant operator have executed a written contract specifying the interest rate.
2. A producer has delivered a written confirmation of purchase to a dairy plant operator, specifying the interest rate, and the dairy plant operator failed to make a written objection within 10 days of receipt of the confirmation of purchase.

(c) A producer may waive payment of interest only if all of the following requirements are satisfied:

1. The waiver is in writing.
2. The waiver contains a written acknowledgement that the producer is aware of his or her right to payment of interest under 100.06 (4), Stats.

3. The producer has signed and dated the waiver.

4. The producer or dairy plant operator submits the waiver to the department at, or any time after, the time the producer submits his or her claim.

(d) The department shall compute the amount of interest due a producer by applying the interest rate determined under par. (a) or (b), commencing from the first day of a breach in payment by a dairy plant operator until full payment of a producer's allowed claim is made. If an allowed claim is not paid in full within the time period specified in the department's final order allowing producer claims, interest shall continue to accrue on the balance of the unpaid claim. Interest payments may be made concurrently with payment of an allowed claim, or within a reasonable period of time subsequent to payment of an allowed claim.

Ag 8.65 PAYMENT OF SECURED CLAIMS. If the department issues a final order allowing producer claims under s. Ag 8.60, the department may convert any security it holds under s. Ag 8.45 and may apply the proceeds to pay the allowed claims. The department shall distribute available funds to the producer claimants on a proportionate basis, according to the amount of each allowed producer claim. If funds exceed allowed claims, the excess shall be returned to the person who filed security with the department.

Ag 8.70 DEPARTMENT COLLECTION OF PRODUCER CLAIMS. The department may demand and receive payment of claims allowed under s. Ag 8.60 on behalf of producers and may commence an action in court to recover allowed claims on behalf of producers. Any amounts the department recovers it shall distribute to produc-

er claimants on a proportionate basis, according to the amount of each producer's allowed claim. The department may settle any producer claim with the consent of the producer and may decline to pursue a claim on behalf of a producer who does not agree to a settlement recommended by the department. Any producer may also proceed independently to recover an unpaid claim.

SUBCHAPTER IV

RECORDS

Ag 8.75 RECORDS; INSPECTION BY DEPARTMENT. Each dairy plant operator shall keep a current record of all liabilities and payments to producers. A dairy plant operator shall keep records required under this section for a period of 3 years and shall make them available to the department for inspection and copying upon request.

SECTION 4. EFFECTIVE DATE. The rules contained in this order shall take effect on May 1, 1991 or on the first day of the month following publication in the Wisconsin administrative register, whichever occurs later.

Dated this 28th day of November, 1990.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By Donald J. Soberg
Donald J. Soberg
Administrator, Trade and Consumer
Protection Division

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