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

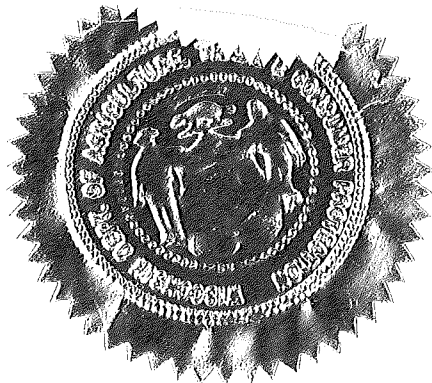
SEP 10 1992
4:15 pm
Revisor of Statutes
Bureau

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, John M. Alberts, 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 adopting rules relating to the security of payments by dairy plants to milk producers, dairy plant trusteeships, dairy plant records, milk uniform statements, and milk audits, Chapter Ag 100, Wis. Adm. Code, was duly approved and adopted by the Department on September 10, 1992.

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 10th day of September 1992.



John M. Alberts

John M. Alberts, Administrator
Trade and Consumer Protection Division

part 12-1-92
part 6-1-93

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

The Wisconsin department of agriculture, trade and consumer protection hereby adopts the following order to repeal chapter Ag 7, Ag 8.50 and 8.50(note), subchapter IV of chapter Ag 8, chapter Ag 102, chapter Ag 103 and chapter Ag 104; to renumber chapter Ag 8 subchapter I(title); Ag 8.01(title), (intro.), (1) to (4), (6) to (8), (9)(intro.) and (b), (10) to (16), and (18) to (23), 8.05(note), 8.10(title) and (1)(title), (intro.) and (a), 8.10(1)(d) and (2), chapter Ag 8 subchapter II(title), Ag 8.20(title), (2) and (3)(note), 8.25(title), (1)(title), (b) and (c), (2)(title), (a) and (c), (3), (4), and 5(title), (a), (b) and (d), 8.30, 8.35(title) and (a) to (c), 8.40(title), (1) and (2), 8.45(title), (2), (3), (4)(title), (intro.) and (b), (5)(title), (a)1 and 2, (b) and (c), (6)(title), (a)(intro.), (a)2 and 3 and (b), (7)(title), (intro.), (b) and (d), 8.55(title), (1) and (2)(title), (intro.) and (b), chapter Ag 8 subchapter III(title), and Ag 8.60(title) and (1) to (7); to renumber and amend chapter Ag 8(title), Ag 8.01(5), (9)(a), and (17), 8.05, 8.10(1)(b) and (c) and (2)(note), 8.20(1) and (3), 8.25(1)(a), (2)(b) and (5)(c), 8.35(intro.), 8.40(3), 8.45(1), (4)(a) and (c), (5)(a)(intro.), (6)(a)1 and (c), and (7)(a) and (c), 8.48, 8.55(2)(a) and (c) to (e), 8.60(4)(c)(note), 8.65 and 8.70; and to create chapter Ag 100(title)(note), Ag 100.01(18m), 100.06, 100.50, 100.50(note), and subchapters IV and V of chapter Ag 100; relating to security of dairy plant payments to milk producers.

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

Statutory authority: ss. 93.07(1), 97.20(4) and 100.20(2),
Stats.

Statutes interpreted: ss. 97.20, 100.06 and 100.20, Stats.

Introduction

This rule consolidates and updates current rules related to the security of dairy plant payments to milk producers, including rules related to dairy plant trusteeships, milk producer payroll statements and dairy plant records. The rule also incorporates current statutory fees related to the department's milk producer security program.

Background; Milk Producer Security

The department of agriculture, trade and consumer protection ("department") currently licenses Wisconsin dairy plants under s. 97.20, Stats. Under s. 100.06, Stats., a dairy plant operator (including an operator of an out-of-state dairy plant) must 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.

Current rules governing the milk producer security program are contained in ch. Ag 8, Wis. Adm. Code. These rules were recently updated in response to major legislative changes in 1989 Wis. Act 336.

Under ch. Ag 8, one security option available to dairy plants is a dairy plant trusteeship. Trusteeships are currently governed by a separate rule, ch. Ag 7, Wis. Adm. Code. The rule on dairy plant trusteeships has not been substantially updated since 1977.

Rule Consolidation

This rule consolidates chs. Ag 7 and Ag 8 into a single new chapter Ag 100, Wis. Adm. Code, related to milk producer security. The rule also repeals obsolete portions of chs. Ag 102 (Dairy Plants, False Records), Ag 103 (Milk, Uniform Statements) and Ag 104 (Milk Audits), and incorporates relevant portions of those chapters into the new ch. Ag 100.

For the most part, current rules under ch. Ag 8 are incorporated without change into the new chapter Ag 100. Currently, under s. Ag 8.45(6)(c), if a dairy plant operator fails to file security

in response to a department demand, the dairy plant operator must notify producers that the operator has failed to file security. Under this rule, if the dairy plant operator fails to give this notice within 5 days after the security filing deadline, the department must notify producers. This rule also makes minor technical amendments to the current rules under ch. Ag 8.

Dairy Plant Trusteeships

As part of the this rule consolidation, current rules under ch. Ag 7 related to dairy plant trusteeships are completely redrafted. This rule does not change the basic operation of dairy plant trusteeships. However, the rule clarifies the obligations of the dairy plant operator and the trustee, to ensure that trusteeships are properly created and administered. The rule also reorganizes the current rules, and conforms them to current drafting standards.

Under a trusteeship, an independent trustee exercises control over the dairy plant operator's milk receipts, and over the products and proceeds of those receipts, to secure payment to producers. Proceeds from the dairy plant operator's sale of dairy products are paid to the trustee and deposited in a trust account controlled by the trustee. The trustee first applies those proceeds to pay producers for milk delivered to the dairy plant operator. When those payroll obligations have been met, the trustee may pay any remaining proceeds to the dairy plant operator.

Trust Agreement

A trusteeship is created by a written agreement between the dairy plant operator and the trustee. The trust agreement must be approved by the department in writing. A trusteeship is not valid until the trust agreement is signed by the parties and approved by the department. If a dairy plant operator is operating under a valid trusteeship, the dairy plant operator is not required to file any other security with the department.

Under a trust agreement, the dairy plant operator must pay all expenses of the trust. A dairy plant operator must provide the trustee with payroll records, sales records, and other records reasonably required by the trustee to carry out the trustee's obligations. A dairy plant operator may not interfere with the trustee's performance.

Trustee; Approval and Bond

A dairy plant trustee must be approved by the department and by the milk producers who are covered by the trusteeship. This rule spells out the procedure by which a trustee is approved. It also spells out the procedure by which a trustee can be removed by the

department.

A trustee cannot have any ownership or financial interest in the dairy plant. A prospective trustee must show, to the department's satisfaction, that the trustee has adequate knowledge and experience to perform the trustee's obligations.

Under this rule, as under current rules, a trustee must secure and file with the department a performance bond, written by an insurer authorized to operate a surety business in this state. The bond must be for an amount not less than 75% of the dairy plant operator's maximum liability to producers.

Under this rule, a trusteeship is not valid until the trustee is approved by producers and the department, and until the trustee files the required bond.

Trustee to Hold Security Interest

Under this rule, as under the current rule, the dairy plant operator must grant the trustee a first priority security interest in all of the operator's inventories of milk and dairy products, and in all proceeds and accounts receivable from the sale of milk and dairy products. The trustee must perfect the security interest by filing as provided under ch. 409, Stats.

Under this rule, the trustee must exercise reasonable diligence to ensure that the trustee's perfected security interest is indeed a first priority security interest, and that it is not subordinated to any other security interest in the collateral. The dairy plant operator may not grant any other security interest in the collateral without informing the trustee.

Under this rule, the trustee must file documentation with the department showing that the trustee has perfected the security interest, and must also certify that the security interest has priority over every other security interest in the collateral. A trusteeship is not valid until the trustee submits the required documentation.

Proceeds Paid to Trustee

Under this rule, as under the current rule, proceeds from the dairy plant operator's sale of milk and dairy products must be paid to the trustee. The dairy plant operator must instruct each of the operator's account debtors to make all payments for milk and dairy products directly to the trustee. Before a trusteeship takes effect, the dairy plant operator must identify all accounts receivable for the trustee, and must certify to the department and the trustee that notice has been given to those account debtors.

Under this rule, whenever the dairy plant operator sells milk or dairy products on account, the dairy plant operator must provide the trustee with a copy of every sale contract, invoice, shipping manifest, bill of lading, or other document which specifies the terms and conditions of the sale. Every sale document must instruct the account debtor to remit payment to the trustee. The dairy plant operator may not accept any direct payment for milk or dairy products from an account debtor.

If a dairy plant operator makes a cash sale of milk or dairy products, whether to a retail or wholesale purchaser, the operator must remit the cash proceeds of that sale to the trustee within one week. The trustee must monitor the operator's compliance with applicable requirements related to cash sales and sales on account.

Trust Account

Under this rule, all proceeds from the dairy plant operator's sale of milk and dairy products must be deposited to a trust account which is under the trustee's exclusive control. Deposits must be made to a bank lock box for the account. The trust account must be fully insured.

The trustee, and no other person, is authorized to write checks on the trust account. The trustee is required to keep records of trust account balances and disbursements, and is required to reconcile those records with the bank's records.

If the trust account balance is not adequate to meet the dairy plant operator's milk producer payroll obligations when due, the trustee must immediately notify the department and the bonding company that issued the trustee's performance bond.

Trustee Payments to Producers

To the extent of available funds in the trust account, the trustee must meet the dairy plant operator's milk producer payroll obligations on a timely basis. Payment is based on a payroll record provided by the dairy plant operator. The operator is responsible for providing an accurate payroll, and the trustee is responsible for reviewing the payroll. The trustee must also keep a record of all payments to producers.

Cash proceeds from milk delivered during each pay period must be applied first to pay producers for milk delivered during that pay period. If cash proceeds from milk delivered during any pay period exceed the amount owed to producers for that milk, the trustee may apply the excess proceeds to pay producers for milk delivered during a prior pay period.

The trustee is required to keep, for at least 3 years, a complete and accurate record of all payments to producers.

Trustee Payments to Dairy Plant Operator

If cash proceeds from milk delivered during any pay period exceed the amounts owed to producers for milk delivered during that pay period and all prior pay periods, the trustee may distribute the excess proceeds to the dairy plant operator. Alternatively, rather than distributing the excess proceeds to the dairy plant operator, the trustee may use those excess proceeds to pay producers for milk delivered during a subsequent pay period if, in the trustee's judgment, such action is necessary to meet the dairy plant operator's payroll obligations.

The trustee is required to keep, for at least 3 years, a complete and accurate record of all payments to the dairy plant operator.

Trustee Borrowing to Meet Payroll Obligations

If, because of the normal time allowed for payment of accounts receivable, there is a temporary shortage of cash proceeds in the trust account to meet producer payroll obligations when due, the trustee may obtain a short-term loan to remedy the temporary shortage. The trustee may not borrow more than the amount reasonably required to meet producer payroll obligations when due.

In order to obtain a loan to pay producers for milk delivered during any pay period, the trustee may assign to the lender the trustee's security interest in those accounts receivable which pertain to the sale of milk or dairy products made from that milk. A trustee may not give any other security for a loan.

Funds borrowed by the trustee on the strength of accounts receivable must be deposited to the trust account, and must be treated as proceeds from those accounts receivable. The trustee must repay each loan with the cash proceeds eventually received from the accounts receivable assigned as security for the loan.

Accounting by Trustee

On or before March 1 of each year, the trustee must prepare an accounting of all transactions affecting the trusteeship during the preceding calendar year. The trustee must provide copies of the accounting to the department, the dairy plant operator and each affected producer. Upon termination of a trusteeship, the trustee must also prepare a final accounting.

Dairy Plant Operator to Pay Producers Twice Monthly

This rule incorporates recent legislative changes to s.

100.06(2m), Stats. Under those changes, a dairy plant operator must pay producers at least twice monthly for milk delivered to the dairy plant operator.

Under this rule, a dairy plant operator's payment to a milk producer for milk received from that producer during the first 15 days of the month must be made before the 4th day of the following month. The payment must be based on an estimated price that is at least 80% of the class III published by the regional federal milk market administrator for the month before the month in which the milk is received, or 80% of the price originally contracted for by the dairy plant operator and the milk producer, whichever is greater.

The dairy plant operator must pay a milk producer the balance due for all milk received from that milk producer during the month, based on the actual price for that milk, before the 19th day of the following month.

Milk Producer Payroll Statement

Chapter Ag 103, Wis. Adm. Code (Milk, Uniform Statements) currently requires a dairy plant to provide each milk producer with a uniform payroll statement setting forth the amount paid to that producer for milk, and the method by which the payment was calculated. The current rule also spells out the specific format to be used in the payroll statement. The current rule was adopted in 1948, and the prescribed format is no longer appropriate based on modern milk pricing methods. Among other things, the current format makes no explicit provision for price adjustments based on milk components other than butterfat, or for price adjustments based on milk quality.

This rule adopts a more up-to-date, flexible format for milk producer payroll statements. The proposed format accommodates pricing formulas based on factors other than butterfat. However, the dairy plant operator must specify the base price and all adjustments to the base price, including all adjustments for milk components, milk quality or volume. If pay price adjustments are based on milk test results, the dairy plant operator must provide the producer with those test results.

Under this rule, the producer's milk payroll statement must also specify the producer's gross pay for the pay period, the producer's average gross pay per hundredweight less hauling charges, and the producer's net pay for the pay period after deductions. The payroll statement must specify the nature and amount of each deduction.

In order to give dairy plant operators time to comply with the new payroll statement requirements, the rule specifies a delayed effective date for the new requirements.

Dairy Plant Payroll Records

Currently, chs. Ag 102 (Dairy Plants, False Records) and Ag 104 (Milk Audits) also include provisions related to dairy plant payroll records and audits. These rules were last amended in 1959 and 1960, respectively. This rule repeals obsolete portions of the current rules. Other portions of the current rules are incorporated, in revised form, into the new ch. Ag 100.

Milk Producer Security Program; Fees

Under 1991 Wis. Act 39 (biennial budget act), the Legislature required dairy plant operators to pay a fee of 0.1 cent for each 100 lbs. of milk received by the dairy plant operator. The fees will be used to fund a portion of the department's milk producer security program. This rule incorporates the new fee requirement, without change, into the new ch. Ag 100, Wis. Adm. Code.

SECTION 1. Ch. Ag 7 is repealed.

SECTION 2. Ch. Ag 8(title) is renumbered ch. Ag 100(title) and amended to read:

Ag 100(title) ~~SECURITY FOR PAYMENTS TO MILK PRODUCERS-DAIRY~~
PLANT PAYMENTS TO MILK PRODUCERS; SECURITY.

SECTION 3. Ch. Ag 8, subch. I (title) is renumbered ch. Ag 100, subch. I (title).

SECTION 4. Ag 8.01(title), (intro.), and (1) to (4) are renumbered Ag 100.01(title), (intro.) and (1) to (4).

SECTION 5. Ag 8.01(5) is renumbered Ag 100.01(5) and amended to read:

Ag 100.01(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 8-35 100.35.

SECTION 6. Ag 8.01(6) to (8) and (9)(intro.) are renumbered Ag 100.01(6) to (8) and (9)(intro.).

SECTION 7. Ag 8.01(9)(a) is renumbered Ag 100.01(9)(a) and amended to read:

Ag 100.01(9)(a) A person who holds, or is required to hold, a dairy plant license under s. 97.20, Stats. , and who buys milk from producers.

SECTION 8. Ag 8.01(9)(b) and (10) to (16) are renumbered Ag 100.01(9)(b) and (10) to (16).

SECTION 9. Ag 8.01(17) is renumbered Ag 100.01(17) and amended to read:

Ag 100.01(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)~~ 100.45(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.

SECTION 10. Ag 8.01(18) to (23) are renumbered Ag 100.01(18) to (23).

SECTION 11. Ag 8.05 is renumbered Ag 100.05 and amended to read:

Ag 100.05 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~~ 100.20 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)~~ 100.25(2) or, if the applicant has not previously engaged in business, an opening balance sheet and notes under s. Ag ~~8-25(5)(d)~~ 100.25(5)(d). A licensed dairy plant operator shall file periodic financial statements as required by s. Ag ~~8-25~~ 100.25.

SECTION 12. Ag 8.05(note) is renumbered Ag 100.05(note).

SECTION 13. Ag 8.10(title) and (1)(title), (intro.) and (a) are renumbered Ag 100.10(title) and (1)(title), (intro.) and (a).

SECTION 14. Ag 8.10(1)(b) and (c) are renumbered Ag 100.10(1)(b) and (c) and amended to read:

Ag 100.10(1)(b) The dairy plant operator fails to file security under s. Ag ~~8-45~~ 100.45 or enter into a trusteeship under ~~ch. Ag 7~~ subch. V by a date the department specifies.

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

SECTION 15. Ag 8.10(1)(d) and (2) are renumbered Ag 100.10(1)(d) and (2).

SECTION 16. Ag 8.10(2)(note) is renumbered Ag 100.10(2)(note) and amended to read:

Ag 100.10(2)(note)

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.~~

SECTION 17. Ch. Ag 8, subch. II(title) is renumbered ch. Ag 100, subch. II(title).

SECTION 18. Ag 8.20(title) is renumbered Ag 100.20(title).

SECTION 19. Ag 8.20(1) is renumbered Ag 100.20(1) and amended to read:

Ag 100.20(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 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 Ag ~~8.01(19)~~ 100.01(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.

SECTION 20. Ag 8.20(2) is renumbered Ag 100.20(2).

SECTION 21. Ag 8.20(3) is renumbered Ag 100.20(3) and amended to read:

Ag 100.20(3) INCREASED MAXIMUM PAYROLL; NOTICE TO DEPARTMENT. If a dairy plant operator is covered by a trusteeship under ~~ch. Ag 7~~ subch. V, or if the operator files or is required to file security with the department under s. Ag ~~8.45~~ 100.45, 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)(e)~~ (2)(c).

SECTION 22. Ag 8.20(3)(note) is renumbered Ag 100.20(3)(note).

SECTION 23. Ag 8.25(title) and (1)(title) are renumbered Ag 100.25(title) and (1)(title).

SECTION 24. Ag 8.25(1)(a) is renumbered Ag 100.25(1)(a) and amended to read:

Ag 100.25(1)(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~~ 100.45 or is covered by a trusteeship under ~~ch. Ag 7~~ subch. V. A dairy plant operator shall file quarterly financial statements for the first 3 quarters of the operator's fiscal year.

SECTION 25. Ag 8.25(1)(b) and (c) and (2)(title) and (a) are renumbered Ag 100.25(1)(b) and (c) and (2)(title) and (a).

SECTION 26. Ag 8.25(2)(b) is renumbered Ag 100.25(2)(b) and amended to read:

Ag 100.25(2)(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~~ in the amount prescribed under s. Ag 100.45(4) or is covered by a trusteeship under ~~ch. Ag 7~~ subch. V, the operator

may file a verified financial statement.

SECTION 27. Ag 8.25(2)(c), (3), (4), and (5)(title), (a) and (b) are renumbered Ag 100.25(2)(c), (3), (4), and (5)(title), (a) and (b).

SECTION 28. Ag 8.25(5)(c) is renumbered Ag 100.25(5)(c) and amended to read:

Ag 100.25(5)(c) If a dairy plant operator files security with the department under s. Ag ~~8.45~~ 100.45 or is covered by a trusteeship under ~~ch. Ag 7~~ subch. V, the operator's year-end financial statement shall consist of a balance sheet, income statement and any other information required by the department.

SECTION 29. Ag 8.25(5)(d) is renumbered Ag 100.25(5)(d).

SECTION 30. Ag 8.30 is renumbered Ag 100.30.

SECTION 31. Ag 8.35(title) is renumbered Ag 100.35(title).

SECTION 32. Ag 8.35(intro.) is renumbered Ag 100.35(intro.) and amended to read:

Ag 100.35(intro.) 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~~ 100.40:

SECTION 33. Ag 8.35(a) to (c) are renumbered Ag 100.35(1) to (3).

SECTION 34. Ag 8.40(title), (1) and (2) are renumbered Ag 100.40(title), (1) and (2).

SECTION 35. Ag 8.40(3) is renumbered Ag 100.40(3) and amended to read:

Ag 100.40(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~~ 100.45 or is covered by a trusteeship under ~~ch. Ag 7~~ subch. V.

SECTION 36. Ag 8.45(title) is renumbered Ag 100.45(title).

SECTION 37. Ag 8.45(1) is renumbered Ag 100.45(1) and amended to read:

Ag 100.45(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~~ 100.40 or enters into a trusteeship under ~~ch. Ag 7~~ subch. V. A third party may provide security on behalf of a dairy plant operator.

SECTION 38. Ag 8.45(2), (3) and (4)(title) and (intro.) are renumbered Ag 100.45(2), (3) and (4)(title) and (intro.).

SECTION 39. Ag 8.45(4)(a) is renumbered Ag 100.45(4)(a) and amended to read:

Ag 100.45(4)(a) Divide the maximum producer payroll reported to the department under s. Ag ~~8.20~~ 100.20 by the number of days in the payroll period.

SECTION 40. Ag 8.45(4)(b) is renumbered Ag 100.45(4)(b).

SECTION 41. Ag 8.45(4)(c) is renumbered Ag 100.45(4)(c) and amended to read:

Ag 100.45(4)(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~~ 100.20. The remainder is the operator's maximum liability to producers.

SECTION 42. Ag 8.45(5)(title) is renumbered Ag 100.45(5)(title).

SECTION 43. Ag 8.45(5)(a)(intro.) is renumbered Ag 100.45(5)(a)(intro.) and amended to read:

Ag 100.45(5)(a)(intro.) Notwithstanding sub. (4), if a dairy plant operator meets both of the financial standards under par. (b) but does not meet all of the standards under s. Ag ~~8-40~~ 100.40, a dairy plant operator shall file security in the following amounts for the license years indicated:

SECTION 44. Ag 8.45(5)(a)1 and 2, (5)(b) and (c), and (6)(title) and (a)(intro.) are renumbered Ag 100.45(5)(a)1 and 2, (5)(b) and (c), and (6)(title) and (a)(intro.).

SECTION 45. Ag 8.45(6)(a)1 is renumbered Ag 100.45(6)(a)1 and amended to read:

Ag 100.45(6)(a)1 The dairy plant operator no longer meets the financial standards under s. Ag ~~8-40~~ 100.40 or the interim standards under sub. (5)(b).

SECTION 46. Ag 8.45(6)(a)2 and 3 and (b) are renumbered Ag 100.45(6)(a)2 and 3 and (b).

SECTION 47. Ag 8.45(6)(c) is renumbered Ag 100.45(6)(c) and amended to read:

Ag 100.45(6)(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 the final deadline, notify all producers shipping milk to the dairy plant that the operator has failed to file the security in response to the department's demand. If the operator fails to inform all producers within 5 days, or incorrectly informs producers, the department shall promptly notify all producers of the operator's failure to file security.

SECTION 48. Ag 8.45(7)(title) and (intro.) are renumbered Ag 100.45(7)(title) and (intro.).

SECTION 49. Ag 8.45(7)(a) is renumbered Ag 100.45(7)(a) and amended to read:

Ag 100.45(7)(a) The dairy plant operator achieves and maintains for at least 2 consecutive fiscal years the minimum financial standards under s. Ag ~~8.40~~ 100.40.

SECTION 50. Ag 8.45(7)(b) is renumbered Ag 100.45(7)(b).

SECTION 51. Ag 8.45(7)(c) is renumbered Ag 100.45(7)(c) and amended to read:

Ag 100.45(7)(c) The dairy plant operator files alternative security of equivalent value or enters into a trusteeship under ~~ch. Ag 7~~ subch. V.

SECTION 52. Ag 8.45(7)(d) is renumbered Ag 100.45(7)(d).

SECTION 53. Ag 8.48 is renumbered Ag 100.48 and amended to read:

Ag 100.48 TRUSTEESHIPS. A dairy plant operator is not required to file security under s. Ag ~~8.45~~ 100.45 if the operator enters into a trusteeship under ~~ch. Ag 7~~ subch. V.

SECTION 54. Ag 8.50 and Ag 8.50(note) are repealed.

SECTION 54m. Ag 8.55(title), (1) and (2)(title) and (intro.) are renumbered Ag 100.50, Ag 100.50(note) and Ag 100.55(title), (1) and (2)(title) and (intro.).

SECTION 55. Ag 8.55(2)(a) is renumbered Ag 100.55(2)(a) and amended to read:

Ag 100.55(2)(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 7 100, subch. V, Wis. Adm. Code."

SECTION 56. Ag 8.55(2)(b) is renumbered Ag 100.55(2)(b).

SECTION 57. Ag 8.55(2)(c) to (e) are renumbered Ag 100.55(2)(c) to (e) and amended to read:

Ag 100.55(2)(c) Except as provided under par. (d), if a dairy plant operator has filed security with the department under s. Ag ~~8.45~~ 100.45, 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)~~ 100.45(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)~~ 100.45(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~~ subch. V, 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~~ ch. 100, subch. V, Wis. Adm. Code. Under a trust agreement filed with the department, the trustee (name of trustee) collects all receipts for milk or 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."

SECTION 58. Ch. Ag 8, subch. III(title) is renumbered ch. Ag 100, subch. III(title).

SECTION 59. Ag 8.60(title) and (1) to (4) are renumbered Ag 100.60(title) and (1) to (4).

SECTION 60. Ag 8.60(4)(c)(note) is renumbered Ag 100.60(4)(c)(note) and amended to read:

Ag 100.60(4)(c)(note)

NOTE: Ag ~~8.60(4)(e)~~ 100.60(4)(c) defines transactions which constitute a "voluntary extension of credit," claims for which are barred under s. 100.06(4), Stats.

SECTION 61. Ag 8.60(5) to (7) are renumbered Ag 100.60(5) to (7).

SECTION 62. Ag 8.65 is renumbered Ag 100.65 and amended to read:

Ag 100.65 PAYMENT OF SECURED CLAIMS. If the department issues a final order allowing producer claims under s. Ag ~~8-60~~ 100.60, the department may convert any security it holds under s. Ag ~~8-45~~ 100.45 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.

SECTION 63. Ag 8.70 is renumbered Ag 100.70 and amended to read:

Ag 100.70 DEPARTMENT COLLECTION OF PRODUCER CLAIMS. The department may demand and receive payment of claims allowed under s. Ag ~~8-60~~ 100.60 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 producer 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.

SECTION 64. Subchapter IV of ch. Ag 8 is repealed.

SECTION 65. Chapter Ag 100(title)(note) is created to read:
Ag 100(title)(note)

NOTE: This chapter interprets ss. 97.20, 100.06 and 100.20, Stats. Violations are subject to civil and criminal penalties under ss. 97.72, 97.73, 100.20, 100.24, and 100.26(3), (5) and (6), Stats. Violations of this chapter may also result in the restriction, suspension or revocation of a dairy plant license under ss. 93.06(7) and (8) and 97.20, Stats.

SECTION 66. Ag 100.01(18m) is created to read:

Ag 100.01(18m) "Proceeds" has the meaning specified under s. 409.306, Stats.

SECTION 67. Ag 100.06 is created to read:

Ag 100.06 FEES FOR MILK PRODUCER SECURITY PROGRAM.

Pursuant to s. 100.06(9), Stats., every dairy plant operator shall pay to the department a fee of 0.1 cent for each 100 lbs. of milk received by the dairy plant operator. The dairy plant operator shall pay the fee on each month's milk deliveries on or before the 18th day of the following month. A dairy plant operator may not charge the fee under this section back to milk producers.

SECTION 67m. Ag 100.50 and Ag 100.50(note) are created to read:

Ag 100.50 PAYMENT TO PRODUCERS; DEADLINES. (1) FIRST MONTHLY PAYMENT. A dairy plant operator's payment to a milk producer for milk received from that producer during the first 15 days of the month shall be made before the 4th day of the following month. The payment shall be based on an estimated price that is at least 80% of the class III published by the regional federal milk market administrator for the month before the month in which the milk is received, or 80% of the price originally contracted for by the dairy plant operator and the

milk producer, whichever is greater.

(2) SECOND MONTHLY PAYMENT. A dairy plant operator shall pay a milk producer the balance due for all milk received from that milk producer during the month, based on the actual price for that milk, before the 19th day of the following month.

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

SECTION 68. Subchapters IV and V of ch. Ag 100 are created to read:

SUBCHAPTER IV

DAIRY PLANT PAYROLL AND RECORDS

Ag 100.75 PAYROLL STATEMENTS TO MILK PRODUCERS. On each producer pay date, a dairy plant operator shall provide each producer with a written statement including all of the following:

- (1) The name and address of the dairy plant operator.
- (2) The producer's name and identification number.
- (3) The milk delivery dates, or pay period, for which payment is being made.
- (4) The total weight of milk which the dairy plant operator received from the producer during the pay period.
- (5) The grade of milk received.
- (6) The base price and all adjustments to the base price, whether positive or negative, including any of the following which may apply:
 - (a) Adjustments for milk components such as butterfat,

protein, or solids not fat.

(b) Adjustments related to milk grade or quality, including adjustments for bacteria counts, somatic cell counts or drug residue findings.

(c) Adjustments based on volume or other factors.

(7) If the price paid to the producer is affected by test results related to milk components, milk quality or other variables, a statement of all test results used to determine the pay price. The payroll statement need not include test results which the dairy plant operator has already furnished to the producer.

(8) The nature and amount of every deduction from the pay price, including deductions for any of the following:

(a) Milk hauling.

(b) Dairy products which the producer buys from the dairy plant operator.

(c) Supplies which the dairy plant operator provides to the producer.

(d) Wisconsin milk marketing board deductions.

(e) National dairy promotion deductions.

(f) Commodity credit corporation deductions.

(g) Insurance deductions.

(h) Cooperative fees or capital retained.

(i) Creditor assignments.

(j) Other specified deductions.

(9) The gross amount due the producer for the pay period,

prior to any deductions under sub. (8).

(10) The producer's average gross pay per hundredweight less hauling charges. This consists of the gross amount due under sub. (9) less total hauling charges for the pay period under sub. (8)(a), divided by the number of hundredweights of milk delivered during the pay period under sub. (4).

(11) The net amount due the producer for the pay period, consisting of the gross amount due under sub. (9) less all deductions under sub. (8).

100.76 DAIRY PLANT RECORDS. A dairy plant operator shall keep accurate records and accounts of milk receipts, payments for milk received, and amounts owed to milk producers. Records shall include all of the following:

(1) A copy of every contract between the dairy plant operator and a milk producer.

(2) A record of all milk receipts from producers, showing the amount received from each producer and the date of each receipt.

(3) A copy of every individual milk producer payroll statement under s. Ag 100.75.

(4) The result of every test performed on a producer milk delivery, including any test related to milk components or milk quality. Records shall specify the milk delivery to which each test result pertains.

(4) A payroll summary showing, for each payroll period, the amount of milk received from producers, the gross amounts owed to

producers for milk received, the amount and disposition of any payroll deductions, the net amounts owed to producers after deductions, and the amounts paid to producers.

(5) Other computer records, worksheets and accounting records showing how the dairy plant operator computed payroll obligations.

(6) Records showing the dairy plant operator's use and disposition of milk and dairy products received by the operator. Records shall enable the dairy plant operator to do both of the following:

(a) Account for the sale, use or disposition of all milk and dairy products received by the operator.

(b) Account for the source of all milk and dairy products sold or otherwise disposed of by the dairy plant operator.

Ag 100.77 FALSE RECORDS. (1) No dairy plant operator may falsify any record or account, or conspire with any other person to falsify a record or account.

(2) No dairy plant operator may provide any producer with any statement or accounting which is false or misleading, or which contains any false or misleading computation or arrangement of figures.

Ag 100.78 RETAINING RECORDS; INSPECTION BY DEPARTMENT. A dairy plant operator shall retain the records required under s. Ag 100.76 for a period of 3 years and shall make them available for inspection and copying by the department upon request.

SUBCHAPTER V

DAIRY PLANT TRUSTEESHIPS

Ag 100.85 TRUSTEESHIP; GENERAL. A dairy plant operator is not required to file security under s. Ag 100.45 if the dairy plant operator is operating under a valid trusteeship established in compliance with this subchapter. The trusteeship shall be managed by an independent trustee who shall exercise exclusive control over the dairy plant operator's milk receipts, and over the products and proceeds of those receipts, to secure payment to milk producers.

Ag 100.86 TRUST AGREEMENT. (1) GENERAL. A trusteeship shall be created by a written trust agreement. The trust agreement shall be prepared in a form prescribed by the department, and shall be signed by the dairy plant operator and a trustee approved under s. Ag 100.87. The trust agreement shall comply with applicable requirements under this subchapter.

(2) APPROVAL; EFFECTIVE DATE. A trust agreement is not valid, for purposes of this chapter, unless it is approved in writing by the department. The department's approval does not take effect until all of the following have occurred:

(a) The trust agreement is signed by the dairy plant operator and the trustee.

(b) The department approves the trustee under s. Ag 100.87(4).

(c) The trustee files a performance bond with the department, in compliance with s. Ag 100.88(4).

(d) The trustee obtains and perfects a security interest as required by s. Ag 100.89(1) and (2), and files documentation with the department as required under s. Ag 100.89(5).

(e) The dairy plant operator certifies to the trustee and the department that the operator has notified the operator's current account debtors as required by s. Ag 100.91(4).

NOTE: A trust agreement may be binding on the parties to that agreement, even though it does not constitute a valid trust agreement for purposes of this chapter. If a trust agreement is not valid for purposes of this chapter, the dairy plant operator must comply with the security requirements under s. Ag 100.45.

Ag 100.87 TRUSTEE; APPROVAL AND REPLACEMENT. (1)

APPLICATION. A prospective trustee shall file a trustee application with the department on a form provided by the department. The application shall include all of the following:

- (a) The identity and address of the prospective trustee.
- (b) The prospective trustee's qualifications under s. Ag 100.88(1) to (3).
- (c) Proof that the prospective trustee has been approved by producers as provided under sub. (2).
- (d) A trustee performance bond complying with s. Ag 100.88(4).
- (e) Other relevant information required by the department.

(2) APPROVAL BY PRODUCERS. Before the department approves a trustee under sub. (4), the trustee shall be approved by producers who will be covered by the proposed trusteeship. Producer approval may be signified in either of the following ways:

(a) By majority vote of producers present at a meeting called for the purpose of approving a trustee. The dairy plant operator shall give every affected producer reasonable advance notice of the scheduled meeting. The person presiding at the meeting shall submit a sworn and notarized statement, on a form provided by the department, certifying the approval of the trustee.

(b) By a petition, signed by a majority of producers who will be covered by the proposed trusteeship, indicating that the signing producers approve the trustee identified in the petition. The dairy plant operator shall submit with the petition a sworn and notarized statement stating that the producers signing the petition constitute a majority of the producers who ship milk to the dairy plant operator.

(3) PRODUCER AGENT; VOTING STATUS. If a producer agent delivers milk to a dairy plant operator on behalf of producers, and if the agent qualifies as a producer under s. Ag 100.01(19)(c), that agent may cast one vote as a producer under sub. (2)(a), or may sign a petition under sub. (2)(b) as an individual producer. Producers whose milk is delivered to a dairy plant operator by an agent who qualifies as a producer under s. Ag 100.01(19)(c) may not cast votes as producers under sub. (2)(a), nor may they sign a petition as producers under sub. (2)(b).

(4) APPROVAL BY DEPARTMENT. Within 20 days after the department receives a complete application under sub. (1), the

department shall approve or disapprove the prospective trustee.

(5) REMOVAL. (a) The department may, by written notice, withdraw its approval of a trustee if the department determines either of the following:

1. The trustee has not performed the trustee's obligations under this subchapter, or is not capable of performing those obligations.

2. A majority of producers covered by a trusteeship have signed a petition for the removal of the trustee.

(b) If the department withdraws its approval of a trustee under par. (a), the department may issue a written notice declaring that the trusteeship is no longer valid for purposes of this chapter.

NOTE: A notice under sub. (5)(a) or (b) may be issued by the administrator of the department's trade and consumer protection division, or by the administrator's designee. A person adversely affected by a notice under sub. (5)(a) or (b) may request a hearing before the department on the notice. A request for hearing does not stay the effective date of the notice.

(6) RESIGNATION. If a trustee resigns, the trustee shall give reasonable advance notice before the resignation becomes effective, so that a new trusteeship can be created prior to the effective date of the resignation.

(7) INTERIM TRUSTEE. If a trustee resigns, dies, becomes incapacitated, or is removed by the department, the department may act as interim trustee, pending the creation of a new trusteeship. While acting as interim trustee, the department may exercise all of the powers of a trustee under this subchapter.

(8) If a trustee resigns, dies, becomes incapacitated, or is removed by the department, either the trustee, the trustee's successor in interest, or a person exercising power of attorney on behalf of the trustee shall promptly assign the trustee's security interest under s. Ag 100.89 to the department as interim trustee, or to a replacement trustee approved by the department.

Ag 100.88 TRUSTEE QUALIFICATIONS; PERFORMANCE BOND. (1)

GENERAL. A trustee may be either of the following:

(a) A natural person who is an adult resident of this state.

(b) A firm or corporation having trust powers and offices in this state.

(2) NO OWNERSHIP OR FINANCIAL INTEREST IN DAIRY PLANT. (a) A trustee may not have any ownership interest in the dairy plant operation. This does not prohibit a producer member of a cooperative organized under ch. 185, Stats., from serving as trustee for a dairy plant owned by that cooperative.

(b) Neither a trustee nor a trustee's employer may have any notes or accounts receivable from the dairy plant operator that collectively exceed 5 percent of the dairy plant operator's total liabilities.

(c) A trustee may not be an employe of the dairy plant operator.

(3) KNOWLEDGE AND EXPERIENCE. A trustee shall document, to the department's satisfaction, that the trustee has adequate knowledge and experience related to accounting and dairy plant

operations to perform the trustee's obligations under this subchapter.

(4) PERFORMANCE BOND. (a) A trustee shall secure and file with the department a performance bond, written by an insurer authorized to operate a surety business in this state. The bond shall secure the trustee's faithful performance of the trustee's obligations under this subchapter.

(b) The bond under par. (a) shall be issued in a form prescribed by the department, in an amount not less than 75% of the dairy plant operator's maximum liability to producers.

Ag 100.89 SECURITY INTEREST. (1) REQUIREMENT. To secure payment of a dairy plant operator's obligations to milk producers, the dairy plant operator shall grant the trustee a first priority security interest in all of the operator's inventories of milk and dairy products, and in all proceeds and accounts receivable from the sale and disposition of milk and dairy products. The security agreement shall be prepared in a form prescribed by the department, and shall be approved by the department.

(2) PERFECTED BY FILING. The trustee shall perfect the security interest under sub. (1) by filing according to ch. 409, Stats.

(3) SECURITY INTEREST PRIORITY. (a) A trustee shall exercise reasonable diligence to ensure that the security interest granted to the trustee under this section takes priority over every other security interest in the collateral. A trustee

may not subordinate the trustee's security interest under this section to any other security interest in the collateral.

(b) A dairy plant operator may not grant any other security interest in the operator's inventories of milk or dairy products, or in the proceeds or accounts receivable from the sale or disposition of milk or dairy products, which has priority over the trustee's security interest under this section.

(4) OTHER SECURITY INTERESTS IN THE COLLATERAL; APPROVAL BY TRUSTEE AND DEPARTMENT. A dairy plant operator may not grant any other security interest in the operator's inventories of milk or dairy products, or in the proceeds or accounts receivable from the sale or disposition of milk or dairy products, without prior written approval from the trustee and the department. The trustee or the department may deny approval.

(5) TRUSTEE TO FILE DOCUMENTATION WITH DEPARTMENT. The trustee shall file documentation with the department showing that the trustee has perfected the security interest under this section in compliance with sub. (2). The trustee shall annually certify to the department that the security interest has priority over every other security interest in the collateral.

Ag 100.90 PROCEEDS FROM SALE OF MILK AND DAIRY PRODUCTS; PAID TO TRUST ACCOUNT. Under a trusteeship, all proceeds from the dairy plant operator's sale of milk and dairy products shall be paid to a trust account established under s. Ag 100.93. Proceeds from sales on account shall be paid to the trust account in compliance with s. Ag 100.91. Proceeds from cash sales shall

be deposited to the trust account in compliance with s. Ag 100.92. The trustee shall distribute funds from the trust account in compliance with s. Ag 100.94.

Ag 100.91 SALES ON ACCOUNT; ACCOUNT DEBTOR TO PAY TRUSTEE.

(1) NOTICE TO ACCOUNT DEBTOR. (a) Under a trusteeship, whenever a dairy plant operator sells milk or dairy products on account, the dairy plant operator shall direct the account debtor to remit payment directly to the trustee, and not to the dairy plant operator. The dairy plant operator shall include a notice to this effect in every contract, and in every invoice, shipping manifest or bill of lading related to the sale of milk or dairy products on account.

(b) A dairy plant operator's notice to an account debtor under par. (a) shall direct the account debtor to remit payments to the lock box for the trust account under s. Ag 100.93. The notice shall include the lock box number and address.

(2) DAIRY PLANT OPERATOR MAY NOT ACCEPT DIRECT PAYMENTS FROM ACCOUNT DEBTORS. Under a trusteeship, a dairy plant operator may not accept a direct payment from an account debtor in connection with the operator's sale of milk or dairy products to that account debtor. Payments by account debtors shall be directed to the trustee, as provided under sub. (1).

(3) INITIAL IDENTIFICATION OF ACCOUNTS RECEIVABLE. Prior to the effective date of a trusteeship, the dairy plant operator shall provide the trustee with copies of all of the dairy plant operator's current accounts receivable for milk and dairy

products, including the name and address of the account debtor, and the amount receivable for each sale of milk or dairy products. In connection with each sale of milk or dairy products, the account receivable shall also indicate the dates of the producer milk deliveries from which the milk or dairy products were made.

(4) INITIAL NOTICE TO ACCOUNT DEBTORS; CERTIFYING COMPLIANCE. Prior to the effective date of a trusteeship, the dairy plant operator shall certify in writing, to the trustee and the department, that the dairy plant operator has instructed each of the operator's current account debtors to remit all future payments for milk and dairy products to the trustee, as provided under sub. (1).

(5) SALE DOCUMENTS. Whenever the dairy plant operator sells milk or dairy products on account, the dairy plant operator shall provide the trustee with a copy of every sale contract, invoice, shipping manifest, bill of lading, or other document which specifies the terms and conditions of sale or evidences the sale. Sale documents shall provide sufficient information so that the trustee can determine the dates of the producer milk deliveries from which the milk or dairy products were made.

(6) OFFSETS AGAINST ACCOUNT OBLIGATIONS. (a) Under a trusteeship, a dairy plant operator may not authorize or accept, as payment for goods or services provided by an account debtor, any offset against the operator's account receivable from that account debtor for milk or dairy products sold to the account

debtor.

(b) Under a trusteeship, if a dairy plant operator sells milk or dairy products to an employe, the dairy plant operator may not deduct the sale price from the employe's salary or wages unless the operator makes an equivalent cash payment to the trustee. The dairy plant operator shall make the cash payment within the same week that the employe payroll deduction is made.

(c) If a dairy plant operator sells dairy products to a milk producer, the dairy plant operator may deduct the sale price from the dairy plant operator's producer payroll obligation to that producer without making an equivalent cash payment to the trustee.

(7) TRUSTEE MAY PROHIBIT SALES. A trustee may, by written notice, prohibit the dairy plant operator from selling milk or dairy products to an account debtor if the account debtor has not made payments on a timely basis, or if the trustee has good reason to believe that the account debtor will not make payments on a timely basis.

(8) TRUSTEE TO REVIEW COMPLIANCE. The trustee shall, at least monthly, review the dairy plant operator's sales contracts, accounts and records to determine whether the operator is complying with this section.

Ag 100.92 CASH SALES; DAIRY PLANT OPERATOR TO REMIT PROCEEDS TO TRUSTEE. (1) GENERAL. Whenever a dairy plant operator makes a cash sale of milk or dairy products, either to a retail or wholesale purchaser, the dairy plant operator shall

remit the entire proceeds of the cash sale to the trustee.

(2) WEEKLY DEPOSITS. By the end of each week, the dairy plant operator shall remit to the trustee the accumulated proceeds of cash sales made by the operator during that week. The operator shall deposit the proceeds to the lock box for the trust account under s. Ag 100.93. For purposes of s. Ag 100.94, these cash deposits are considered proceeds of milk delivered by producers during the pay period in which the deposits are made.

(3) TRUSTEE TO MONITOR COMPLIANCE. The trustee shall review the dairy plant operator's sales accounts and records to determine whether the operator is complying with this section.

100.93 TRUST ACCOUNT. (1) TRUSTEE TO ESTABLISH ACCOUNT. For each trusteeship, the trustee shall open and maintain a separate trust account. The trust account shall be identified as follows: (*Name of dairy plant*), (*Name of trustee*), Trustee. The trustee shall also arrange for a lock box to receive deposits to the trust account.

(2) DEPOSITS TO TRUST ACCOUNT. All proceeds from the dairy plant operator's sale of milk and dairy products, and all funds borrowed by the trustee under s. Ag 100.95, shall be deposited to the trust account. Deposits shall be made to the bank lock box for that account.

(3) CHECKS WRITTEN ON TRUST ACCOUNT. (a) Persons authorized to write checks. The following persons, and no others, shall be authorized to write checks on the trust account:

1. The trustee.

2. If the department assumes responsibility as interim trustee under s. Ag 100.87(6), an authorized representative of the department.

(b) To whom payable. Checks written on the trust account may be made payable to the following persons in compliance with this subchapter, and to no other persons:

1. To producers for milk shipped to the dairy plant operator, or to the assignees of those producers.

2. To the dairy plant operator.

(c) Trustee to keep record. The trustee shall keep a current record of all checks written on the trust account. For each check written on the account, the record shall identify the check number, the date on which the check was written, the person to whom the check was made payable, and the amount of the check. The trustee's check records shall be reconciled at least monthly with the bank's account records.

(d) Checks imprinted with trustee name and address. All checks written on the trust account shall be imprinted with the name and address of the trustee, identified as trustee for (*name of dairy plant*).

(4) RECORD OF ACCOUNT BALANCE. The trustee shall keep a current, up-to-date record of the trust account balance. At least monthly, the trustee shall reconcile the bank's record of account balances with the trustee's records.

(5) ADEQUATE BALANCE. The trustee shall monitor the adequacy of the trust account balance in relation to the dairy

plant operator's producer payroll obligations. If the trust account balance is insufficient to meet a dairy plant operator's producer payroll obligations when due, in compliance with s. Ag 110.94, the trustee shall immediately notify the department and the bonding company which issued the trustee's performance bond under s. 100.88(4).

Ag 100.94 TRUSTEE PAYMENTS TO PRODUCERS AND DAIRY PLANT OPERATOR. (1) GENERAL. The trustee shall distribute cash proceeds from the trust account under s. Ag 100.93 in compliance with this section. For purposes of this section, "cash proceeds" means all moneys which have been deposited to the trust account under ss. Ag 100.91, Ag 100.92 and Ag 100.95, and which are available for distribution by the trustee.

(2) TIMELY PAYMENTS TO PRODUCERS. To the extent permitted under this section, the trustee shall make timely payment of the amounts due to producers for milk delivered to the dairy plant operator. Payments shall be made in compliance with this section. If available cash proceeds are not adequate to pay producers in full, the trustee shall distribute the available cash proceeds to producers on a pro rata basis.

(3) APPLYING PROCEEDS BY PAY PERIOD; GENERAL. Cash proceeds from milk delivered during each pay period shall be applied first to pay producers for the milk delivered during that pay period. To the extent that proceeds from milk delivered during any pay period exceed the dairy plant operator's producer payroll obligations for that pay period, the trustee may apply

the excess proceeds to satisfy any unpaid obligations for producer milk delivered during a prior pay period. The trustee may not use cash proceeds from milk delivered during any pay period to pay for milk delivered during a prior pay period, except as provided under this subsection.

(4) DISTRIBUTING EXCESS CASH PROCEEDS TO DAIRY PLANT OPERATOR. If cash proceeds from milk delivered during any pay period exceed the amounts owed to producers for milk delivered during that pay period and all prior pay periods, the trustee may distribute the excess proceeds to the dairy plant operator. The trustee may not distribute cash proceeds to the dairy plant operator except as provided under this subsection.

(5) RETAINING EXCESS PROCEEDS. Rather than distribute excess proceeds under sub. (4) to the dairy plant operator, the trustee may retain those excess proceeds and use them to pay producers for milk delivered during a subsequent pay period if, in the trustee's judgment, such action is necessary to meet the dairy plant operator's payroll obligations.

(6) CASH PROCEEDS AVAILABLE FOR DISTRIBUTION; DETERMINATION BY TRUSTEE. Before distributing any cash proceeds from the trust account, the trustee shall determine the pay period to which those proceeds are attributable, and shall determine the amounts available for distribution to producers and the dairy plant operator in compliance with this subsection. The determination under this subsection shall be made in writing. The trustee shall keep a copy of each determination under this subsection for

at least 3 years.

(7) PRODUCER PAYMENTS BASED ON DAIRY PLANT PAYROLL RECORD.

(a) The trustee shall pay producers based on the dairy plant operator's producer payroll record. The operator's producer payroll record shall accurately reflect the amount of milk delivered by each producer, the pay price, and the pay adjustments and terms agreed upon between the producer and the dairy plant operator. The trustee shall review each payroll to determine whether payroll computations appear to be accurate, based on information available to the trustee.

(b) The dairy plant operator shall provide the trustee with a timely and accurate producer payroll, so that the trustee can make timely payment to producers under this section. The dairy plant operator shall also provide the trustee with any information the trustee may need to verify the accuracy of a producer payroll.

NOTE: If a dairy plant operator receives milk from a producer agent who qualifies as a producer under s. Ag 100.01(19)(c), amounts due that producer agent for producer milk delivered to the dairy plant operator must be included in the producer payroll under this subsection.

(8) ADVANCE PAYMENTS. The trustee shall not advance any payment to a producer, except pursuant to an agreement between the producer, the trustee and the dairy plant operator. The amount advanced to a producer may not exceed the reasonable accrued value of the milk which the producer delivered to the dairy plant operator prior to the date of the advance payment.

(9) RECORD OF PAYMENTS. (a) The trustee shall keep a

record of every payment to producers, showing the amount paid to each producer and the basis for each payment. The record of each payment shall be kept for at least 3 years after the payment is made.

(b) The trustee shall keep a record of every payment to the dairy plant operator, showing the amount of each payment and the basis for each payment. The record of each payment shall be kept for at least 3 years after the payment is made.

Ag 100.95 SHORT-TERM BORROWING BY TRUSTEE; ACCOUNTS RECEIVABLE AS SECURITY. (1) AUTHORITY TO BORROW. If, because of the normal time allowed for payment of accounts receivable, there is a temporary shortage of cash proceeds in the trust account to meet producer payroll obligations when due, the trustee may obtain a short-term loan to remedy the temporary shortage. The trustee may not borrow more than the amount reasonably required to meet producer payroll obligations when due.

(2) SECURITY. In order to obtain a loan under sub. (1) to pay producers for milk delivered during any pay period, the trustee may assign to the lender the trustee's security interest in those accounts receivable under s. Ag 100.91 which pertain to the sale of milk or dairy products made from that producer milk. The assignment shall identify the specific dairy product sale invoices or vats of cheese to which the assigned security interest pertains. A trustee may not give any other security for a loan under this section.

(3) LOAN PROCEEDS. Funds borrowed by the trustee on the strength of accounts receivable under s. Ag 100.91 shall be deposited to the trust account under s. Ag 100.93, and shall be treated as proceeds from those accounts receivable.

(4) LOAN REPAYMENT. The trustee shall repay each loan under this section with cash proceeds received from those accounts receivable which are covered by the assigned security interest under sub. (2). The trustee may not use any other funds to repay a loan under this section.

Ag 100.96 ANNUAL AND FINAL ACCOUNTING BY TRUSTEE. (1)
ANNUAL ACCOUNTING. On or before March 1 of each year, the trustee shall prepare a true and accurate account of all transactions affecting the trusteeship during the immediately preceding calendar year. The accounting shall be prepared on forms provided by the department, and the trustee shall provide copies to the department, the dairy plant operator, and all producers who ship milk to the dairy plant operator. As part of the trustee's annual accounting, the trustee shall certify the priority of the trustee's security interest in the dairy plant operator's inventory and accounts receivable, as required under s. Ag 100.89(5).

(2) FINAL ACCOUNTING. Upon termination of a trusteeship, the trustee shall prepare a final accounting on forms furnished by the department. Copies of the final accounting shall be provided to the department, to the dairy plant operator, and to producers who ship milk to the dairy plant operator.

100.97 DAIRY PLANT OPERATOR'S OBLIGATIONS. (1) GENERAL.

A dairy plant operator shall comply with all applicable requirements under this subchapter. The dairy plant operator shall not engage in any conduct which impairs the trustee's ability to carry out the trustee's obligations under this subchapter. If a dairy plant operator fails to comply with this subchapter, the department may, in addition to or in lieu of other sanctions, require the operator to file security under s. Ag 8.45.

(2) RECORDS. Under a trusteeship, the dairy plant operator shall provide the trustee with producer payroll records, sales and accounting records, records of receipts and disbursements, and other records reasonably required by the trustee to carry out the trustee's obligations under this subchapter.

(3) EXPENSES. The dairy plant operator is responsible for all expenses reasonably incurred in the creation, operation and maintenance of a trusteeship under this subchapter.

SECTION 68. Chapters Ag 102, Ag 103 and Ag 104 are repealed.

SECTION 69. EFFECTIVE DATE. The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22(2)(intro.), Stats., except that the creation of ss. Ag 100.75 and 100.88(2) shall take effect on the first day of the seventh month following publication.

Dated this 10th day of September, 1992

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By *John M. Alberts*
John Alberts, Administrator
Trade and Consumer Protection
Division