

CR 93-196

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

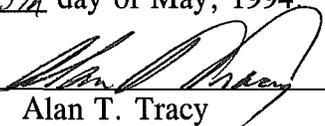
Docket No. 2481

CERTIFICATION:

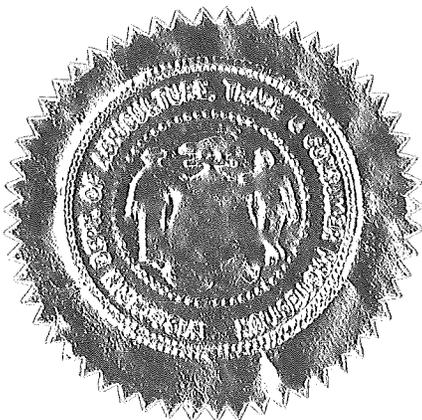
I, Alan T. Tracy, Secretary, State of Wisconsin, Department of Agriculture, Trade and Consumer Protection, and custodian of the official records of said Department, do hereby certify that the annexed order creating chapter ATP 99, Wisconsin Administrative Code, relating to grain warehouse keepers and grain dealers was duly approved and adopted by the Department on May 13, 1994.

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 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 13th day of May, 1994.

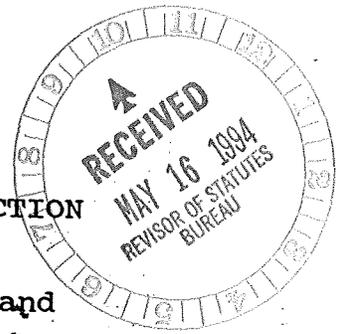


Alan T. Tracy
Secretary



9-1-94

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



1 The state of Wisconsin department of agriculture, trade and
2 consumer protection hereby adopts the following order to create
3 chapter ATCP 99 relating to grain warehouse keepers and grain
4 dealers.

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

Statutory authority: s. 127.15, Stats.
Statutes interpreted: ch. 127, Stats.

This rule codifies the department's current regulatory program related to grain warehouses and grain dealers under ch. 127, Stats. It also establishes new requirements. The rule is designed to provide reasonable assurance that grain producers who deposit their grain in warehouses, or who sell their grain to dealers, will receive payment for their grain. However, the rule does not guaranty payment to producers.

I. GRAIN WAREHOUSES

Registration Certificate; Application and Fees

A warehouse keeper stores grain for producers and other depositors. Under current law, a grain warehouse keeper must obtain an annual registration certificate from the department. An "exempt warehouse keeper" is exempt from the registration requirement.

This rule clarifies that an "exempt warehouse keeper" is a warehouse keeper who stores a combined total of less than 50,000 bushels of grain for others at all of the warehouse keeper's facilities, regardless of the capacity of those facilities. An "exempt warehouse keeper," though exempt from annual registration, is subject to certain other requirements under current law and under this rule.

Under this rule, as under current law, a registration certificate expires on August 31 annually and is not transferable. A warehouse keeper must display the registration certificate at each warehouse operated by the warehouse keeper. A warehouse keeper may not buy grain from producers unless the warehouse keeper also complies with applicable grain dealer registration requirements.

Under current law, a warehouse keeper applying for a registration certificate must submit an initial financial statement, evidence of insurance coverage against fire and natural perils, and registration fees specified by statute. This rule incorporates current registration requirements and fees without change. Under this rule, the department must grant or deny a warehouse keeper's application within 60 days after the department receives a complete application.

Warehouse Keeper's Insurance

Under current law, a warehouse keeper must maintain fire and extended coverage insurance on grain held in storage, and must file proof of coverage with the department. Under this rule, "exempt warehouse keepers" must also maintain insurance coverage. However, an "exempt warehouse keeper" is not required to file proof of insurance coverage. This rule requires all warehouse keepers, including "exempt warehouse keepers," to disclose the scope of insurance coverage to depositors.

Under this rule, a warehouse keeper must also disclose whether the warehouse keeper is covered by liability insurance, and whether that insurance covers liability related to fraud or malfeasance. A liability insurance policy may require a warehouse keeper to indemnify the insurer for a "deductible" share of depositor claims paid by the insurer, provided that the "deductible" agreement between the insurer and warehouse keeper does not limit the insurer's obligation to pay depositor claims in full.

Financial Statements

Under current law, a warehouse keeper other than an "exempt warehouse keeper" must file an annual financial statement with the department. The annual financial statement must be filed on or before the 15th day of the 4th month following the close of the warehouse keeper's fiscal year. The annual financial statement must include a balance sheet, income statement, equity statement, statement of cash flows, notes to those statements, and any other information required by the department. This rule incorporates and interprets these current requirements.

Under this rule, the department may require an "exempt warehouse keeper" to file an annual financial statement with the department. The department may also require any warehouse keeper to file supplementary or interim financial statements.

Under this rule, as under current law, if a warehouse keeper has warehouses with a combined storage capacity of 500,000 bushels or more, the warehouse keeper's financial statement must be audited by a certified public accountant (CPA). If a warehouse keeper has warehouses with a combined storage capacity of less than 500,000

bushels, the warehouse keeper's annual financial statement may be reviewed or audited by a CPA. (A "reviewed" statement gets less scrutiny.)

Preparing Financial Statements

This rule specifies standards for the preparation of financial statements, including standards related to the classification of assets and liabilities; the identification of inventory, accounts receivable and fixed assets; the identification of current and long-term liabilities; the exclusion of personal assets; and financial statement notes.

Under this rule, the department must exclude certain assets of doubtful value in determining whether a warehouse keeper complies with minimum financial standards.

Minimum Financial Standards

Under this rule, as under current law, a warehouse keeper must file security (and supplementary reports) with the department unless the warehouse keeper meets all of the following financial standards:

- At the end of every fiscal year, the warehouse keeper's ratio of current assets to current liabilities must be at least 1.25 to 1.
- At all times other than at the end of the warehouse keeper's fiscal year, the warehouse keeper's ratio of current assets to current liabilities must be at least 1.0 to 1.0.
- The warehouse keeper's total assets must at all times exceed total liabilities by at least \$50,000, or by the product obtained by multiplying the bushel capacity of the warehouse by 10 cents, whichever is greater.

This rule requires a warehouse keeper to notify the department whenever the warehouse keeper has reason to believe that any of the above standards is no longer being met. Neither this rule nor current law requires an "exempt warehouse keeper" to meet minimum financial standards.

Security Filing; Amount

Under this rule, as under current law, a warehouse keeper who fails to meet minimum financial standards must file security with the department. The warehouse keeper must file security in an amount which is not less than 20% of the current market value of all grains stored in the warehouse, except that the amount of security may not be less than \$25,000 and is not required to be more than \$500,000. Neither this rule nor current law requires an "exempt warehouse keeper" to file security.

Security Filing Requirement; Deadline; Notice to Producers

Under this rule, the department may require a warehouse keeper to file security at any time if the warehouse keeper no longer meets required minimum financial standards, if the amount of security on file is no longer adequate, if existing security is canceled, or if the warehouse keeper refuses to provide relevant information to the department. The warehouse keeper must file security by the deadline date which the department specifies. The deadline date must be not more than 30 days from the date of demand.

If a warehouse keeper fails to file security by a specified deadline date, the warehouse keeper must, within 5 days, notify depositors that the warehouse keeper has failed to comply with the security demand. If the warehouse keeper fails to notify depositors, the department must notify depositors by publishing a class 3 public notice under ch. 985, Stats.

Release of Security

Under this rule, the department may release security only if the warehouse keeper complies with minimum financial standards for at least 2 years, files alternative security, goes out of business after satisfying depositor obligations in full, or demonstrates that the amount of security on file exceeds the amount required (e.g., because of a substantial appreciation in the value of the security or a substantial reduction in the warehouse keeper's obligations to depositors).

Form of Security; General

Under this rule, a warehouse keeper may file any of the following forms of security:

- A continuous surety bond that cannot be canceled except upon 90 days prior written notice to the department.
- Cash or negotiable securities.
- Stocks, bonds and other marketable securities at current market value.
- An irrevocable bank letter of credit that is issued for an initial term of at least one year, is automatically renewed, and is not subject to cancellation except upon 90 days advance written notice to the department.
- A first priority security interest in all of the warehouse keeper's grain inventories, proceeds and accounts receivable. The department holds the security interest for the benefit of depositors, and the warehouse keeper must

file periodic reports on the status of all assets covered by the security interest.

- Personal surety bonds or third party guarantees that are supported by cash or by negotiable or marketable securities.

Supplementary Reports

Under this rule, as under current law, a warehouse keeper must file monthly reports with the department unless the warehouse keeper meets the minimum financial standards described above. Each monthly report must specify the amount of each type of grain in storage at the end of the previous month. An "exempt warehouse keeper" is not required to file monthly reports except as ordered by the department.

Receipts for Grain

Under this rule, every warehouse keeper (including an "exempt warehouse keeper") must give a producer a storage receipt for all grain deposited by that producer, and must keep a copy of the storage receipt. The storage receipt must include specified information, including the following:

- The name and permanent address of the warehouse keeper, and the location of the warehouse.
- The date on which the grain is received.
- The net weight of grain received, including dockage if determined.
- The grade of the grain.
- A statement indicating whether the receipt is "NEGOTIABLE" or "NONNEGOTIABLE."
- A statement indicating that the depositor's right to demand return of the stored grain terminates on a specified date, not more than 3 years after the date of deposit.

Under this rule, if a warehouse keeper issues a receipt for grain, the receipt is considered a storage receipt unless it is clearly designated as a purchase receipt.

Records and Accounts

Under this rule, every warehouse keeper (including an "exempt warehouse keeper") must keep complete records and accounts of all grain received by that warehouse keeper. Records and accounts must be complete, accurate, well organized and accessible, so that the warehouse keeper and the department can readily determine all of the following:

- The kinds, grade if determined, and amounts by grade of grain which the warehouse keeper has received for storage, the dates of receipt, the names and addresses of the persons

from whom the grain was received, and the terms under which the grain was received for storage.

- The kinds, grade if determined, and amounts by grade of grain which the warehouse keeper has released from storage, the dates of release, and the corresponding storage obligation which was reduced or fulfilled by each release.
- The kinds, grade if determined, and amounts by grade of grain which the warehouse keeper currently holds in storage for others. (This record must be updated on a daily basis.)
- The kinds, grade if determined, and amounts by grade of grain, currently held by the warehouse keeper, to which the warehouse keeper claims title. (This record must be updated on a daily basis.)
- The warehouse keeper's current obligations to depositors. (This record must be updated on a daily basis.)
- The existence and extent of any liens, security interests or other encumbrances, known to the warehouse keeper, which may apply to grain held by the warehouse keeper.

Under this rule, a warehouse keeper must retain records for at least 6 years, and must make them available for inspection and copying by the department upon request.

Duties and Prohibited Practices

Under this rule, a warehouse keeper (including an "exempt warehouse keeper"):

- Must use accurate equipment and procedures when determining the weight of grain, the grade of grain if determined, and the quality of grain if determined.
- Must protect stored grain from loss or abnormal deterioration.
- Must at all times maintain sufficient grain inventory to meet all outstanding depositor obligations.
- Must return stored grain, or its equivalent, to a depositor upon demand. Equivalent value is based on the local market value of stored grain when the depositor demands return of the grain.
- May not misrepresent the weight, grade or quality of stored grain received by any person.
- May not make any false or misleading statement to the department in a registration application, or in any other report required by the department.
- May not fail to provide information requested by the department.
- May not fail to provide security (if required) by the deadline date specified by the department.
- May not violate ch. 127, Stats., or this rule.

Notice to Producers; Financial Information

Under this rule, whenever any warehouse keeper (including an "exempt warehouse keeper") receives grain from a producer, the warehouse keeper must notify the producer of the basis on which the warehouse keeper is registered with the department. The notice must be given in writing, and in the exact form prescribed in the rule. The notice must include one of the following:

- A description of the minimum financial standards met by the warehouse keeper, if the warehouse keeper is registered on the basis of the warehouse keeper's financial statement;
- A description of the amount of security filed with the department, if the warehouse keeper is registered on the basis of security filed with the department; or
- A statement that the warehouse keeper is an "exempt warehouse keeper" and has not filed a financial statement or security with the department.

II. GRAIN DEALERS

Grain Dealer Classification

A grain dealer buys grain from or sells grain for producers. Under current law, grain dealers are classified as class A, class B, class C or "exempt" grain dealers. This rule clarifies grain dealer classifications as follows:

- A "class A grain dealer" means a person, other than an "exempt grain dealer," a class B grain dealer, or a class C grain dealer, who does any of the following:
 - Buys grain from producers for resale or for introduction into commercial channels.
 - Sells, on behalf of producers, grain received from those producers.
 - Spends \$400,000 or more during that person's fiscal year to buy grain from producers.
- A "class B grain dealer" means a person that buys grain from producers only in connection with or incidental to the operation of a feed mill or manufacturing facility operated by that person, and who spends less than \$400,000 during that person's fiscal year to buy grain from producers.
- A "class C grain dealer" means a producer, or a feeder of livestock or poultry, who buys grain from producers solely for his or her use as feed or seed. A "class C grain dealer" does not include a person who does either of the following:
 - Spends \$400,000 or more during that person's fiscal year to buy grain from producers.

- Sells grain other than grain that he or she has produced.
- An "exempt grain dealer" means a grain dealer who makes full and final cash payment for all grain which the grain dealer receives from producers before the grain dealer takes custody of that grain.

Registration Certificate; Application and Fees

Under this rule, as under current law, every class A and class B grain dealer must obtain an annual registration certificate from the department. Class C grain dealers and "exempt grain dealers" are not required to register, but class C grain dealers may register voluntarily. Although class C grain dealers and "exempt grain dealers" are exempt from annual registration, they are subject to certain other requirements under current law and under this rule.

A registered grain dealer must display the dealer's registration certificate at the grain dealer's permanent business address, and on every truck used to haul grain. A grain dealer may not operate a storage facility to store 50,000 bushels of grain or more for producers unless the grain dealer is also registered as a warehouse keeper.

Under this rule, as under current law, a registration certificate expires on August 31 annually and is not transferable. A grain dealer applying for a registration certificate must submit registration fees specified by statute. A class A grain dealer must also file an initial financial statement. Under this rule, the department must grant or deny a grain dealer's application within 60 days after the department receives a complete application.

Financial Statements

Under this rule, as under current law, a class A grain dealer must file an annual financial statement with the department. Neither this rule nor current law requires a class B grain dealer, a class C grain dealer, or an "exempt grain dealer" to file an annual financial statement, unless the grain dealer claims to be secured.

Under current law, a class A grain dealer must file an annual financial statement on or before the 15th day of the 4th month following the close of the grain dealer's fiscal year. The annual financial statement must include a balance sheet, income statement, equity statement, statement of cash flows, notes to those statements, and any other information required by the department. This rule incorporates and interprets these current

requirements. The department may require supplementary or interim financial statements as necessary.

Under this rule, as under current law, if a class A grain dealer buys or sells at least \$2,000,000 of grain during the grain dealer's fiscal year, the grain dealer's annual financial statement must be audited by a CPA. Otherwise, it may be reviewed or audited by a CPA. (A "reviewed" statement gets less scrutiny.)

Preparing Financial Statements

This rule specifies standards for the preparation of financial statements, including standards related to the classification of assets and liabilities; the identification of inventory, accounts receivable and fixed assets; the identification of current and long-term liabilities; the exclusion of personal assets; and financial statement notes.

Under this rule, the department must exclude certain assets of doubtful value in determining whether a grain dealer complies with minimum financial standards.

Minimum Financial Standards

Under this rule, as under current law, a class A grain dealer must file security (and supplementary reports) with the department unless the grain dealer meets all of the following financial standards:

- At the end of every fiscal year, the grain dealer's ratio of current assets to current liabilities must be at least 1.2 to 1, except that on and after September 1, 1994, the ratio must be at least 1.25 to 1.
- At all times other than at the end of the grain dealer's fiscal year, the grain dealer's ratio of current assets to current liabilities must be at least 1.0 to 1.0.
- The grain dealer's total assets must at all times exceed total liabilities by at least \$10,000, or 5% of the amount that the grain dealer paid producers for grain during the grain dealer's last completed fiscal year, whichever is greater, except that the grain dealer's total assets need not exceed total liabilities by more than \$500,000.

This rule requires a class A grain dealer to notify the department whenever the class A grain dealer has reason to believe that any of the above standards is no longer being met. Neither current law, nor this rule, requires class B grain dealers, class C grain dealers or "exempt grain dealers" to meet any minimum financial standards.

Security Filing; Amount

Under this rule, as under current law, a class A grain dealer who fails to meet minimum financial standards must file security with the department. Neither this rule, nor current law, requires a class B grain dealer, a class C grain dealer or an "exempt grain dealer" to file security with the department unless the grain dealer claims to be secured. However, under this rule, any of these grain dealers may voluntarily file security with the department.

Under this rule, as under current law, a grain dealer must file security equal to at least 10% of the total amount which the grain dealer paid producers for grain purchased from producers during the grain dealer's last completed fiscal year. The total amount of security may not be less than \$25,000 and is not required to be more than \$500,000.

Security Filing Requirement; Deadline; Notice to Producers

Under this rule, the department may require a grain dealer to file security at any time if the grain dealer no longer meets required minimum financial standards, if the amount of security on file is no longer adequate, if existing security is canceled, or if the grain dealer refuses to provide relevant information to the department. The grain dealer must file security by the deadline date which the department specifies. The deadline date must be not more than 30 days from the date of demand.

If a grain dealer fails to file security by a specified deadline date, the grain dealer must, within 5 days, notify producers that the grain dealer has failed to comply with the security demand. If the grain dealer fails to notify producers, the department must promptly notify producers by publishing a class 3 public notice under ch. 985, Stats.

Release of Security

Under this rule, the department may release security only if the grain dealer complies with minimum financial standards for at least 2 years, files alternative security, goes out of business after paying producers in full, or demonstrates that the amount of security on file exceeds the amount required (e.g., because of a substantial appreciation in the value of the security or a substantial reduction in the grain dealer's obligations to producers).

Form of Security; General

Under this rule, a grain dealer may file any of the following forms of security:

- A continuous surety bond that cannot be canceled except upon 90 days prior written notice to the department.
- Cash or negotiable securities.
- Stocks, bonds and other marketable securities at current market value.
- An irrevocable bank letter of credit that is issued for an initial term of at least one year, is automatically renewed, and is not subject to cancellation except upon 90 days advance written notice to the department.
- A first priority security interest in all of the grain dealer's grain inventories, proceeds and accounts receivable. The department holds the security interest for the benefit of producers, and the grain dealer must file periodic reports on the status of all assets covered by the security interest.
- Personal surety bonds or third party guarantees that are supported by cash or by negotiable or marketable securities.

Supplementary Reports

Under this rule, as under current law, a class A grain dealer must file monthly reports with the department unless the grain dealer meets the minimum financial standards described above. Each monthly report must specify the following:

- The total amount of grain purchased during the previous month for which the grain dealer has paid in full, and the amount paid.
- The total amount of grain purchased during the previous month for which the grain dealer has not yet paid in full, and the total amount owed for that grain.

Neither current law, nor this rule, requires a class B grain dealer, a class C grain dealer or an "exempt grain dealer" to file supplementary reports with the department unless that grain dealer represents to any person that the dealer is bonded or covered by security.

Receipts for Grain

Under this rule, a grain dealer must give a producer scale tickets or other purchase receipts for all grain received from the producer, and must keep copies of all purchase receipts. The purchase receipts must include specified information, including the following:

- The name and permanent address of the warehouse keeper.

- The date on which the grain is received.
- The net weight of grain received, including dockage if determined.
- The grade and quality of the grain, if determined.
- An indication whether the grain dealer is purchasing the grain or receiving it for storage. An undesignated receipt is considered a purchase receipt unless the grain dealer is also a warehouse keeper, in which case it is considered a storage receipt.
- The total amount which the grain dealer owes the producer for the grain, and a promise to pay that full amount within 7 days. This requirement does not apply if the grain dealer receives the grain for storage only, or pays cash on delivery. Nor does it apply if the producer signs a written deferred payment or deferred price contract for the grain, and receives a copy of the contract before delivering custody to the grain dealer.

Deferred Payment and Deferred Price Contracts

This rule establishes requirements for deferred payment or deferred price contracts used by grain dealers to purchase grain from producers. Under this rule:

- A "deferred payment contract" means a contract for the sale of grain from a producer to a grain dealer, under which the grain dealer takes custody of the grain more than 7 days before the grain dealer pays the producer in full for that grain.
- A "deferred price contract" means a contract for the sale of grain from a producer to a grain dealer, under which the grain dealer takes custody of the grain before the grain dealer and the producer agree on a price for that grain.

Under this rule, deferred payment and deferred price contracts must be in writing, and must be signed by the grain dealer and the producer. The grain dealer must provide the producer with a copy of every contract when the contract is made.

Under this rule, deferred payment and deferred price contracts must include all of the following:

- The type, weight and grade of grain purchased.
- The price for the grain or, under a deferred price contract, the method and deadline by which the price will be determined.
- The date by which the grain dealer agrees to pay the producer in full for the grain.
- The permanent business location of the grain dealer.

Under this rule, no grain dealer may purchase grain under a

deferred payment or deferred price contract unless the contract clearly specifies that the grain dealer takes title to the grain upon receipt or, if the contract involves the purchase of grain already in storage, that the grain dealer takes title to that grain when the contract is made.

Under this rule, a grain dealer who enters into a deferred payment or deferred price contract must pay the producer by a deadline date specified in the contract. The specified payment deadline must be not more than one year after the contract is made. The payment deadline may not be extended, except that the producer may annually sign a new contract extending the deadline for up to one year.

Under this rule, every deferred payment or deferred price contract must contain the following statement:

"THIS IS NOT A STORAGE CONTRACT. THE GRAIN DEALER (BUYER) BECOMES THE OWNER OF ANY GRAIN WHICH THE PRODUCER (SELLER) DELIVERS TO THE GRAIN DEALER UNDER THIS CONTRACT. THE PRODUCER RELINQUISHES OWNERSHIP AND CONTROL OF THE GRAIN, AND BECOMES AN UNSECURED CREDITOR PENDING PAYMENT."

Under this rule, every deferred payment or deferred price contract between a producer and a class B or class C grain dealer must also contain the following statement:

"AS A CLASS B OR CLASS C GRAIN DEALER, WE ARE NOT REQUIRED TO MEET MINIMUM FINANCIAL STANDARDS, NOR ARE WE REQUIRED TO FILE SECURITY WITH THE STATE OF WISCONSIN TO SECURE OUR PAYMENT OBLIGATIONS TO PRODUCERS."

Records and Accounts; General

Under this rule, a grain dealer must keep complete records and accounts of all grain received by the grain dealer. Records and accounts must be complete, accurate, well organized and accessible, so that the grain dealer and the department can readily determine all of the following:

- The kinds and amounts of grain which the grain dealer has received, the dates of receipt, the persons from whom the grain was received, and the terms under which the grain was received.
- The kinds and amounts of grain which the grain dealer has sold, the dates of sale, the persons to whom the grain was sold, and the terms of sale.
- The kinds and amounts of grain, received from others, which the grain dealer has used for feed, seed, milling, manufacturing, processing or other purposes.
- The kinds and amounts of grain, received from others, which the grain dealer has currently on hand. Of this grain on

hand, the records and accounts shall indicate which kinds and amounts are owned by the grain dealer, and which kinds and amounts are held in storage for others.

- The nature and amount of a grain dealer's current obligations to producers under grain purchase contracts, including deferred payment and deferred price contracts. The grain dealer must keep a daily record of obligations under priced contracts, and a separate daily record of obligations under deferred price contracts that have not yet been priced.
- The grain dealer's current obligations to producers under storage agreements, if any, including the nature and amount of those obligations.
- The grain dealer's accounts receivable from the sale of grain, including amounts receivable and due dates.

Grain Received from Producers; Records

With respect to grain received from producers, this rule requires a grain dealer to keep records indicating all of the following:

- The kind and weight of grain received, the grade of the grain if determined, and quality of the grain if determined.
- The date on which the grain dealer received the grain.
- The name and address of the producer from whom the grain was received.
- Whether the grain dealer purchased the grain or received it for storage.
- If the grain dealer purchased the grain from the producer, the terms of the purchase.
- If the grain dealer did not purchase the grain, but received it for storage, the terms and conditions of the storage agreement.
- The terms of every deferred payment and deferred price contract.

Grain Dealer Duties

Under this rule:

- A grain dealer must use accurate equipment and procedures when determining the weight, grade and quality of grain.
- A grain dealer must pay producers for grain when due. A grain dealer may not pay with a forged check, a check drawn on an account containing insufficient funds, or any other nonnegotiable check.
- A class A or class B grain dealer must maintain a permanent business address at which the grain dealer may be readily contacted during business hours. The address must be included on every scale ticket or receipt issued to a producer in connection with a grain purchase.
- If a class A or class B grain dealer purchases grain under

deferred price contracts, the grain dealer must have business hours that begin at 9:30 AM and continue until 2:30 PM every Monday through Friday except on official holidays when boards of trade and commodity exchanges are closed.

- A grain dealer must retain required records and accounts for at least 6 years, and must make them available to the department for inspection and copying upon request.

Prohibited Practices

Under this rule, a grain dealer may not do any of the following:

- Misrepresent the weight, grade or quality of grain received from or delivered to any person.
- Make any false or misleading statement in any application for a registration certificate or in any other report required by the department.
- Fail to provide relevant information required by the department.
- Fail to file security (if required) by the date which the department specifies.
- Violate ch. 127, Stats., this rule, or any order issued by the department under this rule.

Notice to Producers; Financial Information

Under this rule, whenever a grain dealer receives grain from a producer, the grain dealer must give that producer a specified written notice unless the grain dealer makes full cash payment for the grain before taking custody of the grain. The notice must be given in writing, and in the exact form prescribed in the rule. The notice must include one of the following:

- A description of the minimum financial standards met by the grain dealer, if the grain dealer is registered on the basis of the grain dealer's financial statement.
- A description of the amount of security filed with the department, if the grain dealer is registered on the basis of security filed with the department.
- A statement that the grain dealer is a class B or class C grain dealer, and has not filed a financial statement or security with the department.

III. ADMINISTRATIVE PROCEEDINGS

Suspension or Corrective Action Orders

Under this rule, the department secretary may, after notice and hearing, do either of the following:

- Suspend or revoke a warehouse keeper's or grain dealer's registration certificate for cause.

- Require a warehouse keeper or grain dealer to take specific corrective action.

The secretary may issue an order on a summary basis, without prior notice or hearing, if the secretary finds that summary action is necessary because of a clear and imminent threat of harm to producers. Under this rule, there is a clear and imminent threat of harm whenever any of the following occurs:

- A warehouse keeper fails to file replacement insurance within the time specified.
- A warehouse keeper or grain dealer fails to file security within the time specified.
- A grain dealer fails to pay a producer according to the terms of the grain dealer's contract with that producer.
- A warehouse keeper fails to return grain to a depositor upon demand.
- A warehouse keeper fails to maintain a reasonably sufficient quantity and quality of grain in storage to satisfy all existing obligations to depositors.

A summary order must set forth the basis for the order. Unless the warehouse keeper or grain dealer waives a hearing, the department must conduct an informal hearing as soon as reasonably possible, but not more than 10 days after the order is issued. The department must hold a contested case hearing under ch. 227, Stats., on any issues which are not resolved at the informal hearing.

Producer or Depositor Claims; Default Proceedings

This rule establishes a procedure for verifying and collecting unpaid producer or depositor claims for grain deposited with, or sold to a warehouse keeper or grain dealer. If a producer or depositor claims that a warehouse keeper or grain dealer has failed to meet obligations when due, the producer or depositor may file a claim with the department. Upon receipt of one or more claims, the department may initiate an administrative "default" proceeding to determine the amount of allowable claims. In a default proceeding, the department issues a claim filing notice to affected producers and depositors and audits all claims filed by producers and depositors.

Based on its audit, the department prepares a order allowing or disallowing claims, and ordering payment of allowed claims. Following a hearing on the order, the department secretary issues a final order requiring the warehouse keeper or grain dealer to pay the allowed claims.

Payment of Secured Claims

If the department holds security from the warehouse keeper or grain dealer, the department may convert that security and use it to pay allowed claims. Available funds must be distributed among claimants on a pro rata basis, according to the amount of their claims. Any excess funds must be returned to the warehouse keeper or grain dealer.

Collecting Producer or Depositor Claims

The department may demand and receive payment of allowed claims on behalf of producers or depositors, and may commence an action in court to recover the allowed claims. The department may settle any claim with the consent of the producer or depositor, and may decline to represent a claimant who does not agree to a settlement recommended by the department. Under ch. 127, Stats., a producer or depositor may also sue a warehouse keeper or grain dealer directly, without department involvement, to recover the producer's losses together with costs and reasonable attorney fees.

1
2 **SECTION 1.** Chapter ATCP 99 is created to read:
3

4
5 **CHAPTER ATCP 99**
6

7 **GRAIN WAREHOUSE KEEPERS AND GRAIN DEALERS**
8

9 Subchapter I
10 Definitions
11

12 ATCP 99.01 Definitions
13

14 Subchapter II
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1 NOTE: This chapter is adopted under authority of s. 127.15,
2 Stats. A person who violates this chapter, or any
3 order issued under this chapter, is subject to
4 penalties provided under s. 127.17, Stats.
5

6 **SUBCHAPTER I**

7 **DEFINITIONS**

8 **ATCP 99.01 DEFINITIONS.** As used in this chapter:

9 (1) "Affiliate" means any of the following:

10 (a) An officer, director or partner of a warehouse keeper
11 or grain dealer.

12 (b) A firm or corporation owned or operated by an officer,
13 director or partner of a warehouse keeper or grain dealer.

14 (c) A person who, as agent for a warehouse keeper or grain
15 dealer, buys or receives grain from a producer or contracts with
16 a producer to grow grain for delivery to a warehouse keeper or
17 grain dealer.

18 (2) "Asset" means anything of value owned, including
19 current assets, fixed assets and other assets.

20 (3) "Audited financial statement" means a financial
21 statement on which an independent certified public accountant, or
22 an independent public accountant holding a certificate of
23 authority under ch. 442, Stats., has done both of the following:

24 (a) Expressed an opinion according to generally accepted
25 accounting principles.

26 (b) Conducted an audit according to generally accepted
27 auditing standards.

28 (4) "Balance sheet" means a statement of assets,
29 liabilities and equity on a specific date.

1 (5) "Capacity" means the maximum amount of grain, measured
2 in bushels, that can be stored in a warehouse. The capacity of a
3 warehouse is determined by dividing the cubic volume of all bins
4 by 1.244 cubic feet.

5 (6) "Cash payment" means payment to a producer, for grain,
6 in one or more of the following forms:

7 (a) Currency.

8 (b) Certified check.

9 (c) Money order.

10 (d) Barter.

11 (e) An irrevocable bank letter of credit which is all of
12 the following:

13 1. Issued by a bank located within 30 miles of the home of
14 the producer to whom payment is owed.

15 2. Issued to the named producer to whom payment is owed.

16 3. Issued in an amount at least equal to the full amount
17 owed to the producer.

18 NOTE: The term "cash payment" is used in s. ATCP 99.01(18),
19 99.34(1)(h)1 and 99.42(1).

20 (7) "Class A grain dealer" means a person, other than an
21 exempt grain dealer, a class B grain dealer, or a class C grain
22 dealer, who does any of the following:

23 (a) Buys grain from producers for resale or for
24 introduction into commercial channels.

25 (b) Sells, on behalf of producers, grain received from
26 those producers.

27 (c) Spends \$400,000 or more during that person's fiscal
28 year to buy grain from producers.

1 (8) "Class B grain dealer" means a person that buys grain
2 from producers only in connection with or incidental to the
3 operation of a feed mill or manufacturing facility operated by
4 that person, and who spends less than \$400,000 during that
5 person's fiscal year to buy grain from producers.

6 (9) "Class C grain dealer" means a producer, or a feeder of
7 livestock or poultry, who buys grain from producers solely for
8 his or her use as feed or seed. "Class C grain dealer" does not
9 include a person who does either of the following:

10 (a) Spends \$400,000 or more during that person's fiscal
11 year to buy grain from producers.

12 (b) Sells grain other than grain that he or she has
13 produced.

14 (10) "Current assets" means cash and assets that can be
15 readily converted into cash in the ordinary course of business
16 within one year after the date of the balance sheet, except as
17 provided under s. ATCP 99.46.

18 (11) "Current liabilities" means those liabilities that are
19 due and payable within one year after the date of the balance
20 sheet.

21 (12) "Deferred payment contract" means a contract for the
22 sale of grain from a producer to a grain dealer, under which the
23 grain dealer takes custody of the grain more than 7 calendar days
24 before the grain dealer pays the producer in full for that grain.

25 (13) "Deferred price contract" means a contract for the
26 sale of grain from a producer to a grain dealer, under which the
27 grain dealer takes custody of the grain before the grain dealer

1 and the producer agree on the price which the grain dealer will
2 pay the producer for that grain.

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

5 (15) "Depositor" means either of the following:

6 (a) A person who delivers grain to a warehouse keeper for
7 storage, conditioning, shipping or handling.

8 (b) A person who owns or legally holds a scale ticket,
9 warehouse receipt or other document, issued by a warehouse keeper
10 for grain, which entitles that person to receive possession of
11 that grain or its equivalent.

12 (16) "Equity" means the excess of total assets over total
13 liabilities.

14 (17) "Equity statement" means a report of change in equity
15 from the beginning to the end of the accounting period applicable
16 to the report.

17 (18) "Exempt grain dealer" means a grain dealer who makes
18 full and final cash payment for all grain which the grain dealer
19 receives from producers, before the grain dealer takes custody of
20 that grain.

21 (19) "Exempt warehouse keeper" means a warehouse keeper
22 who, for all of that warehouse keeper's warehouse facilities, has
23 a combined total of less than 50,000 bushels of grain obligations
24 to others at any time during the registration year. "Exempt
25 warehouse keeper" does not include a warehouse keeper who
26 represents to any person that the warehouse operation is bonded,
27 or that depositors are otherwise secured against loss.

1 (20) "Federal act" means the federal warehouse act under 7
2 USC 241 to 271, in effect on September 1, 1985.

3 (21) "Financial statement" means either of the following:

4 (a) A warehouse keeper's financial statement that complies
5 with s. ATCP 99.06(4).

6 (b) A grain dealer's financial statement that complies with
7 s. ATCP 99.26(4).

8 (22) "Fixed assets" means those assets representing
9 investments of a more permanent nature, such as land, buildings,
10 machinery and equipment.

11 (23) "Grain" means corn, wheat, soybeans, oats, barley,
12 rye, buckwheat, sorghum, flaxseed, milo, sunflower seed and mixed
13 grain as defined in the federal grain standards act of 1916 (7
14 USC 71 et. seq.) as amended on July 1, 1980. The term does not
15 include canning crops for processing or grain used or intended
16 for use solely for sowing purposes.

17 (24) "Grain dealer" means a class A grain dealer, class B
18 grain dealer, class C grain dealer or exempt grain dealer.

19 "Grain dealer" does not include:

20 (a) A broker who acts solely as an agent to bring buyers
21 and sellers together, without taking title to or possession of
22 any grain or grain proceeds.

23 (b) A person engaged solely in buying or selling commodity
24 futures on a board of trade or commodity exchange.

25 (25) "Income statement" means a report of the financial
26 results of business operations for the accounting period covered
27 by the report.

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

3 (27) "Liability" means an obligation to pay money or other
4 assets or to render a service to another person immediately or in
5 the future.

6 (28) "Other assets" means noncurrent assets other than
7 fixed assets.

8 (29) "Person" means a natural person, corporation,
9 partnership, cooperative or any other business association or
10 entity.

11 (30) "Producer" means an owner, tenant or operator of land
12 who grows and produces grain on that land.

13 (31) "Registered grain dealer" means a grain dealer who
14 holds a certificate of registration under s. ATCP 99.22.

15 (32) "Registered warehouse keeper" means a warehouse keeper
16 who holds a certificate of registration under s. ATCP 99.02.

17 (33) "Reviewed financial statement" means a financial
18 statement, other than an audited financial statement, that is
19 both of the following:

20 (a) Sworn and notarized by the warehouse keeper or grain
21 dealer.

22 (b) Reviewed according to generally accepted accounting
23 principles by an independent certified public accountant, or a
24 public accountant who holds a certificate of authority under ch.
25 442, stats.

26 (34) "Secretary" means the secretary of the department.
27 "Secretary" includes both of the following:

1 (a) The deputy secretary of the department.

2 (b) A department official whom the secretary has
3 specifically authorized to act on the secretary's behalf.

4 (35) "Statement of cash flows" means a report of cash
5 receipts and cash disbursements from operating, investing and
6 financing activities, including an explanation of changes in cash
7 and cash equivalents for the accounting period covered by the
8 report.

9 (36) "Warehouse" means any building, bin or storage
10 facility used for receiving, storing, conditioning, shipping or
11 handling grain. "Warehouse" does not include a transport vehicle
12 or a grain drier used to dry grain on a farm.

13 (37) "Warehouse keeper" means any person, including a
14 cooperative association, that operates one or more warehouses in
15 this state to receive, condition, store or ship grain for others.
16 "Warehouse keeper" does not include a person licensed under the
17 federal act.

18
19 **SUBCHAPTER II**

20 **WAREHOUSE KEEPERS**

21 NOTE: A registered warehouse keeper may store grain for
22 producers, but may not buy grain from producers unless
23 the warehouse keeper also complies with subchapter III
24 related to grain dealers. This subchapter applies to
25 "exempt warehouse keepers" except where they are
26 specifically excluded from coverage.
27

28 **ATCP 99.02 WAREHOUSE KEEPERS; REGISTRATION CERTIFICATE.**

29 (1) REGISTRATION CERTIFICATE REQUIRED. No warehouse keeper,
30 other than an exempt warehouse keeper, may operate without an
31 annual warehouse keeper's certificate of registration issued by

1 the department. A certificate of registration expires on August
2 31 annually and is not transferable between persons or warehouse
3 facilities.

4 (2) APPLICATION. An applicant for an annual certificate of
5 registration under sub. (1) shall submit an application in
6 writing, on a form provided by the department. The application
7 shall include all of the following:

8 (a) Any information reasonably required by the department
9 for registration purposes, including a description of the
10 location and size of every warehouse which the warehouse keeper
11 operates in this state.

12 (b) All applicable fees required under sub. (3).

13 (c) If the warehouse keeper has not previously applied for
14 a certificate of registration, a financial statement as required
15 under s. ATCP 99.06(1).

16 (d) Evidence of insurance coverage, as required under s.
17 ATCP 99.04(1).

18 (3) FEES. (a) Registration fee. To obtain an annual
19 certificate of registration, a warehouse keeper shall pay an
20 annual registration fee of \$50. A warehouse keeper operating
21 more than one warehouse in this state shall pay an additional
22 registration fee of \$25 for each additional location.

23 (b) Inspection fee. To obtain an annual certificate of
24 registration, a warehouse keeper shall pay an annual inspection
25 fee based on the combined storage capacity of all of the
26 warehouse keeper's warehouses in this state, as follows:

27 1. If the storage capacity is less than 150,000 bushels,

1 the inspection fee is \$300.

2 2. If the storage capacity is at least 150,000 bushels but
3 less than 250,000 bushels, the inspection fee is \$325.

4 3. If the storage capacity is at least 250,000 bushels but
5 less than 500,000 bushels, the inspection fee is \$375.

6 4. If the storage capacity is at least 500,000 bushels but
7 less than 750,000 bushels, the inspection fee is \$425.

8 5. If the storage capacity is at least 750,000 bushels but
9 less than 1,000,000 bushels, the inspection fee is \$475.

10 6. If the storage capacity is one million bushels or more,
11 the inspection fee is \$525.

12 (c) Supplementary inspection fee. To obtain an annual
13 certificate of registration, a warehouse keeper shall pay, in
14 addition to the annual inspection fee specified under par. (b), a
15 supplementary annual inspection fee of \$100 for each additional
16 warehouse location which the warehouse keeper operates in this
17 state, other than the warehouse keeper's principal warehouse.

18 (d) Surcharge for operating without a certificate of
19 registration. An applicant for an annual warehouse keeper's
20 certificate of registration shall pay a registration fee
21 surcharge of \$500 if the department determines that, within 365
22 days prior to submitting an application for a warehouse keeper's
23 certificate of registration, the applicant acted as a warehouse
24 keeper without a certificate of registration in violation of s.
25 127.02(1), Stats. Payment of the registration fee surcharge does
26 not relieve the applicant of other civil or criminal liability
27 that may result from acting as a warehouse keeper without a

1 certificate of registration, but does not constitute evidence of
2 a violation of law.

3 (4) ACTION GRANTING OR DENYING APPLICATION. The department
4 shall grant or deny an application under sub. (2) within 60 days
5 after the department receives a complete application including
6 all applicable fees.

7 (5) CERTIFICATE DISPLAYED. A warehouse keeper required to
8 hold a certificate of registration under sub. (1) shall
9 prominently display a true copy of that certificate at each
10 warehouse which the warehouse keeper operates in this state.

11 **ATCP 99.04 WAREHOUSE KEEPERS; INSURANCE.** (1) INSURANCE
12 AGAINST FIRE AND NATURAL PERILS. (a) Every warehouse keeper
13 shall maintain fire and extended coverage insurance issued by an
14 insurance company authorized to do business in this state. The
15 insurance policy shall cover all grain in the custody of the
16 warehouse keeper, whether held for others or owned by the
17 warehouse keeper, at the full local market value of the grain.
18 This paragraph does not apply to an exempt warehouse keeper
19 unless the exempt warehouse keeper claims to be a bonded
20 warehouse keeper.

21 (b) An insurance policy under par. (a) shall provide that
22 the policy may not be canceled by the warehouse keeper or
23 insurance company except on 30 days' prior written notice served
24 on the department in person or by certified mail. The warehouse
25 keeper shall obtain satisfactory replacement insurance, and shall
26 file satisfactory evidence of that replacement insurance with the
27 department within 20 days after the cancellation notice is served

1 on the department, and at least 10 days before the cancellation
2 takes effect.

3 (2) INSURANCE DISCLOSURE. Before storing grain for any
4 depositor, every warehouse keeper, including an exempt warehouse
5 keeper, shall clearly disclose in writing, and publicly post in a
6 conspicuous area, all of the following:

7 (a) Whether the grain is insured against fire and other
8 natural perils. The disclosure shall specify the types of perils
9 covered.

10 (b) Whether the warehouse keeper has liability insurance
11 covering the warehouse keeper's grain storage operations, and
12 whether the insurance covers liability resulting from the
13 warehouse keeper's fraud or malfeasance.

14 (3) WAREHOUSE KEEPER'S INSURANCE; DEDUCTIBLE. Neither a
15 fire and extended coverage insurance policy under par. (a), nor a
16 warehouse keeper's liability insurance policy, may contain any
17 deductible clause which limits the insurer's liability to
18 depositors for the full value of the depositors' covered losses
19 under the policy. This subsection does not prohibit a deductible
20 clause under which the warehouse keeper agrees to indemnify the
21 insurer for a portion of each depositor claim paid by the insurer
22 under the policy, provided that the deductible clause does not
23 limit the insurer's obligation to pay the full amount of each
24 depositor's covered losses.

25 **ATCP 99.06 WAREHOUSE KEEPERS; FINANCIAL STATEMENTS.** (1)
26 INITIAL FINANCIAL STATEMENT. (a) Every warehouse keeper, other
27 than an exempt warehouse keeper, shall file a financial statement

1 with the warehouse keeper's initial application for a certificate
2 of registration under s. ATCP 99.02.

3 (b) A financial statement under par. (a) shall comply with
4 sub. (4). If a warehouse keeper has not previously engaged in
5 business as a warehouse keeper, the warehouse keeper's initial
6 financial statement need not comply with sub. (4)(a), but may
7 instead consist of an opening balance sheet and notes to that
8 balance sheet.

9 (c) If an applicant's financial statement under par. (a)
10 does not meet the minimum year-end financial standards under s.
11 ATCP 99.08(1), the applicant shall file security with the
12 department under s. ATCP 99.12.

13 (2) ANNUAL FINANCIAL STATEMENT. (a) A registered
14 warehouse keeper, other than an exempt warehouse keeper, shall
15 file an annual financial statement with the department. The
16 financial statement shall comply with sub. (4). The warehouse
17 keeper shall file the annual financial statement on or before the
18 15th day of the 4th month after the close of the warehouse
19 keeper's fiscal year.

20 (b) An annual financial statement under par. (a) shall be
21 issued and dated prior to the filing deadline under par. (a).
22 The department may not accept a financial statement that is
23 issued or dated after the filing deadline.

24 (3) SUPPLEMENTARY OR INTERIM FINANCIAL STATEMENTS. (a)
25 The department may require an exempt warehouse keeper to file an
26 annual financial statement with the department if the department
27 considers it necessary to protect depositors.

1 (b) The department may require any warehouse keeper,
2 including an exempt warehouse keeper, to file supplementary or
3 interim financial statement whenever the department considers it
4 necessary to protect depositors.

5 (c) A financial statement under par. (a) or (b) shall
6 contain a sworn and notarized statement by the warehouse keeper
7 stating that the financial statement is correct. The financial
8 statement shall be a reviewed or audited financial statement
9 except as permitted by the department.

10 (4) FINANCIAL STATEMENTS; PREPARATION AND CONTENTS. (a)
11 Except as provided under sub. (1)(b), a financial statement under
12 this section shall consist of a balance sheet, income statement,
13 equity statement, statement of cash flows, notes to those
14 statements, and any other information required by the department.

15 (b) If a warehouse keeper's warehouses have a combined
16 storage capacity of less than 500,000 bushels, a financial
17 statement required under sub. (1) or (2) shall be either a
18 reviewed financial statement or an audited financial statement.

19 (c) If a warehouse keeper's warehouses have a combined
20 storage capacity of 500,000 bushels or more, a financial
21 statement required under sub. (1) or (2) shall be an audited
22 financial statement.

23 (d) A reviewed or audited financial statement shall comply
24 with s. ATCP 99.44.

25 **ATCP 99.08 WAREHOUSE KEEPERS; MINIMUM FINANCIAL STANDARDS.**

26 (1) REQUIREMENT. A warehouse keeper, other than an exempt
27 warehouse keeper, shall meet all of the following financial

1 standards:

2 (a) At the end of every fiscal year, the warehouse keeper's
3 ratio of current assets to current liabilities shall be at least
4 1.25 to 1.

5 (b) At all times other than at the end of the warehouse
6 keeper's fiscal year, the warehouse keeper's ratio of current
7 assets to current liabilities shall be at least 1.0 to 1.0.

8 (c) The warehouse keeper's total assets shall at all times
9 exceed total liabilities by at least \$50,000, or by the product
10 obtained by multiplying the bushel capacity of the warehouse by
11 10 cents, whichever is greater.

12 NOTE: In determining whether a warehouse keeper complies
13 with the financial standards under this subsection, the
14 department shall exclude assets as provided under
15 s. ATCP 99.46.
16

17 (2) NOTIFICATION OF CHANGES. A warehouse keeper required
18 to meet the financial standards under sub. (1) shall immediately
19 notify the department if the warehouse keeper knows or has reason
20 to know that any of the financial standards under sub. (1) are no
21 longer being met.

22 (3) EXEMPTIONS. A warehouse keeper is not required to meet
23 the financial standards under sub. (1) if the warehouse keeper
24 does both of the following:

25 (a) Files supplementary reports with the department under
26 s. ATCP 99.10.

27 (b) Files security with the department that complies with
28 subchapter V.

29 **ATCP 99.10 WAREHOUSE KEEPERS; SUPPLEMENTARY REPORTS.** (1)
30 REQUIREMENT. (a) A warehouse keeper, other than an exempt

1 warehouse keeper, shall file monthly reports with the department
2 under this section unless the warehouse keeper meets the minimum
3 financial standards under s. ATCP 99.08(1). The warehouse keeper
4 shall file each monthly report on or before the 10th day of the
5 month.

6 (b) The department shall, in conjunction with any notice
7 demanding security under s. ATCP 99.56(2), provide the warehouse
8 keeper with a form on which the warehouse keeper may file an
9 initial supplementary report under par. (a). The warehouse
10 keeper shall return the initial supplementary report to the
11 department within 10 days after the warehouse keeper receives the
12 department's notice demanding security.

13 (2) REPORT CONTENTS. A monthly report under sub. (1) shall
14 include information required by the department, and shall be in a
15 form prescribed by the department. The report shall specify the
16 amount of each type of grain stored in each of the warehouse
17 keeper's warehouses on the last day of the previous month.

18 **ATCP 99.12 WAREHOUSE KEEPERS; SECURITY.** (1) REQUIREMENT.
19 Except as provided under sub. (2), a warehouse keeper shall file
20 security with the department that complies with subchapter V.

21 (2) EXEMPTIONS. Subsection (1) does not apply to either of
22 the following:

23 (a) A warehouse keeper who meets the minimum financial
24 standards under s. ATCP 99.08(1).

25 (b) An exempt warehouse keeper.

26 **ATCP 99.14 WAREHOUSE KEEPERS; RECEIPTS FOR GRAIN.** (1)
27 REQUIREMENT. No warehouse keeper may receive grain from a

1 depositor unless the warehouse keeper immediately furnishes the
2 depositor or the depositor's agent with a scale ticket, warehouse
3 receipt or other storage receipt. The storage receipt shall
4 include all of the following:

5 (a) The name and permanent address of the warehouse keeper,
6 the location of the warehouse, and a statement indicating whether
7 the warehouse keeper is a corporation.

8 (b) A statement identifying the document as a scale ticket,
9 warehouse receipt or other storage receipt for grain.

10 (c) The date on which the grain is received.

11 (d) The kind of grain received.

12 (e) The net weight of grain received, including dockage if
13 determined.

14 (f) The grade and quality of the grain, if determined.

15 (g) The conspicuous word "NEGOTIABLE" or the conspicuous
16 word "NONNEGOTIABLE," to indicate whether the document is
17 negotiable or nonnegotiable. If a warehouse keeper receives
18 depositor-owned grain for storage from another warehouse keeper,
19 the warehouse receipt shall contain the conspicuous word
20 "NONNEGOTIABLE."

21 (h) A statement indicating that the depositor's right to
22 demand delivery of stored grain ends on a specified date, which
23 shall be not more than 3 years after the date of deposit. This
24 paragraph does not apply to grain owned by the commodity credit
25 corporation, or grain which is pledged as collateral for a price
26 support loan from the agriculture stabilization and conservation
27 service.

1 (i) A statement indicating whether stored grain is insured
2 against loss by fire and other natural perils while in the
3 warehouse keeper's custody, and indicating the nature and scope
4 of the insurance coverage.

5 (2) If a warehouse keeper issues a receipt for grain, the
6 receipt is considered a storage receipt unless it is clearly
7 designated as a purchase receipt.

8 NOTE: A warehouse keeper, when purchasing grain from
9 producers, is considered a grain dealer and must comply with
10 subch. III related to grain dealers.
11

12 (3) WAREHOUSE KEEPER'S COPY. A warehouse keeper shall keep
13 a copy of every scale ticket, warehouse receipt or other document
14 which the warehouse keeper issues under sub. (1). The warehouse
15 keeper shall retain a copy of each document for at least 6 years
16 after the document is issued, and shall make copies available to
17 the department for inspection and copying upon request.

18 **ATCP 99.16 WAREHOUSE KEEPERS; RECORDS AND ACCOUNTS.** (1)
19 REQUIREMENT. A warehouse keeper shall maintain current, complete
20 and accurate records and accounts of all grain received into or
21 withdrawn from the warehouse, including all of the following:

22 (a) Daily position records for each kind of grain, which
23 will permit the ready determination of total grain in registered
24 storage, total grain under the control of the warehouse keeper,
25 all obligations relating to grain received or withdrawn, and the
26 total amount of grain to which the warehouse keeper claims title
27 as of the close of each business day. If the warehouse keeper
28 maintains a computerized daily position record, or computerized
29 records under par. (b), the warehouse keeper shall generate a

1 hard copy print-out for each business day, unless the computer
2 system can recall and print the records extending back for a
3 period of at least 6 years.

4 (b) Records, for each depositor of grain, which will
5 readily permit a determination of all of the following:

6 1. The kinds and amounts of grain which the warehouse
7 keeper has received for storage from that depositor, the dates of
8 receipt, the name and address of the depositor, and the terms
9 under which the grain was received.

10 2. The kinds and amounts of grain which the warehouse
11 keeper has released from storage for or to that depositor, and
12 the dates of release.

13 3. The amount of each kind of grain which the warehouse
14 keeper currently holds in storage for that depositor. This
15 record shall be updated on a daily basis.

16 (2) COPIES. A warehouse keeper shall keep a copy of every
17 record and account entry made under sub. (1). The warehouse
18 keeper shall retain the copies for at least 6 years, and shall
19 make them available for inspection and copying by the department
20 upon request.

21 (3) ADJUSTMENTS TO DAILY POSITION RECORD. (a) Except as
22 provided under par. (b), a warehouse keeper may make corrections
23 to the daily position records under sub. (1)(a) and (b)3 only at
24 the direction, or with the approval, of the department. Every
25 correction shall be clearly labeled or footnoted as a correction,
26 and shall include an explanation for the correction.

27 (b) A warehouse keeper may, for the following reasons,

1 correct a daily position record under sub. (1)(a) or (b)3 without
2 the department's approval:

3 1. Handling losses for grain received into and withdrawn
4 from storage. If adjustments are made for handling losses, they
5 shall be made at least monthly.

6 2. Errors or omissions which are supported by documents
7 related to the receipt of grain into, or the withdrawal of grain
8 from the warehouse.

9 **ATCP 99.18 WAREHOUSE KEEPERS; DUTIES AND PROHIBITED**

10 **PRACTICES.** (1) **GRAIN WEIGHT, GRADE AND QUALITY.** When
11 determining the weight, grade or quality of grain, a warehouse
12 keeper shall make accurate determinations using accurate
13 weighing, testing and grading equipment, and shall accurately
14 record those determinations.

15 (2) **CARE OF GRAIN; FACILITIES.** A warehouse keeper is
16 responsible for the care and safekeeping of grain in storage, and
17 shall provide equipment and facilities which are adequate to
18 protect stored grain from loss or abnormal deterioration.

19 (3) **SUFFICIENT INVENTORY.** A warehouse keeper shall at all
20 times maintain grain inventories sufficient in quantity and
21 quality to meet all outstanding obligations to grain depositors.

22 (4) **RETURN OF STORED GRAIN.** (a) Whenever a depositor
23 presents a storage receipt and demands the return of stored
24 grain, the depositor is entitled to receive the same grade and
25 amount of grain deposited.

26 (b) If, when a depositor demands the return of stored
27 grain, the warehouse keeper does not have an adequate amount of

1 the same grade of grain to fulfill the demand, the warehouse
2 keeper may, with the depositor's written approval, substitute
3 monetary payments or a sufficient amount of a better grade of
4 grain to provide the depositor with equivalent value. The value
5 of grain shall be based upon the local market value of that grade
6 of grain at the time the depositor demands return of deposited
7 grain. A warehouse keeper may not agree with a depositor to
8 provide grain having greater value than the grain to which the
9 depositor is entitled under the storage receipt.

10 (5) RECORDS; INSPECTION BY DEPARTMENT. A warehouse keeper
11 shall keep records and accounts required under s. ATCP 99.16, and
12 shall make the records and accounts available to the department
13 for inspection and copying upon request.

14 (6) PROHIBITED PRACTICES. No warehouse keeper may do any
15 of the following:

16 (a) Misrepresent the weight, grade or quality of grain
17 received from or delivered to any person.

18 (b) Make any false or misleading statement in any
19 application for a certificate of registration or in any other
20 statement or report required to be submitted to the department.

21 (c) Fail to provide relevant information required by the
22 department under this chapter, or falsify any information
23 provided to the department.

24 (d) Fail to file the full amount of security required under
25 s. ATCP 99.12 and subchapter V by the date which the department
26 specifies.

27 (e) Violate any provision of ch. 127, Stats., this chapter,

1 or any order issued by the department under this chapter.

2 **ATCP 99.20 WAREHOUSE KEEPERS; NOTICE TO DEPOSITORS.** (1)

3 NOTICE REQUIRED. A warehouse keeper shall post a written notice
4 under sub. (2) in a place readily accessible to depositors. The
5 warehouse keeper shall also give each depositor a copy of the
6 notice when the warehouse keeper gives the first storage receipt
7 to the depositor.

8 (2) NOTICE CONTENTS. A notice under sub. (1) shall include
9 the following information, as applicable:

10 (a) Every notice shall bear the name and address of the
11 warehouse keeper and the conspicuous title "NOTICE TO
12 DEPOSITORS."

13 (b) Every notice shall contain the following statement,
14 conspicuously printed under the title:

15 "Under Wisconsin law, a grain warehouse keeper storing
16 50,000 bushels or more of grain for depositors must register
17 with the Wisconsin Department of Agriculture, Trade and
18 Consumer Protection. A registered warehouse keeper must
19 meet minimum financial standards or file security with the
20 department. The department also inspects registered grain
21 warehouses annually. Although these requirements promote
22 financial responsibility and safekeeping of grain, they do
23 not guarantee depositors against loss. Each depositor is
24 responsible for determining the credit worthiness of a grain
25 warehouse keeper with whom the depositor stores grain."
26

27 (c) If the grain warehouse keeper is registered on the
28 basis of the warehouse keeper's financial statement, the notice
29 shall contain the following statement in addition to the
30 statement under par. (b):

31 "(Name of warehouse keeper) is currently registered on
32 the basis of its financial statement. Our most recent year-
33 end financial statement meets both of the following minimum
34 financial standards:

35 (1) A current ratio of at least 1.25 to 1.00.

36 (2) Equity equal to \$50,000, or the product of our storage

1 capacity multiplied by 10¢ per bushel, whichever is
2 greater."
3

4 (d) If the grain warehouse keeper has filed security with
5 the department under s. ATCP 99.12 and subchapter V, the notice
6 shall contain the following statement in addition to the
7 statement under par. (b):

8 "(Name of warehouse keeper) has filed security with the
9 department in an amount equal to at least 20% of the current
10 market value of the grain stored in the warehouse, up to a
11 maximum security amount of \$500,000."
12

13 (e) If a grain warehouse keeper is an exempt warehouse
14 keeper, the notice shall contain the following in addition to the
15 statement under par. (b):

16 "(Name of warehouse keeper) is not registered with the
17 department because we store less than 50,000 bushels of
18 grain for depositors. We have not filed financial
19 statements or security with the department, and the
20 department does not make annual examinations of our
21 operations."
22
23
24

25 SUBCHAPTER III

26 GRAIN DEALERS

27
28
29 NOTE: A grain dealer may not operate a facility to store
30 grain for others unless the grain dealer also complies
31 with subchapter II related to warehouse keepers. This
32 subchapter applies to all classes of grain dealers,
33 including "exempt grain dealers," except where a class
34 of grain dealers is specifically excluded from
35 coverage.
36

37 ATCP 99.22 GRAIN DEALERS; REGISTRATION CERTIFICATE. (1)

38 REGISTRATION CERTIFICATE REQUIRED. (a) Except as provided under
39 par. (b), no person may operate as a grain dealer without an
40 annual grain dealer's certificate of registration issued by the
41 department. A certificate of registration expires on August 31
42 of each year and is not transferable.

1 (b) Paragraph (a) does not apply to an exempt grain dealer
2 or a class C grain dealer. Class C grain dealers may voluntarily
3 apply for a certificate of registration.

4 (2) APPLICATION. An applicant for a certificate of
5 registration under sub. (1) shall submit an application in
6 writing, on a form provided by the department. The application
7 shall include all of the following:

8 (a) Any information reasonably required by the department
9 for registration purposes.

10 (b) All applicable fees required under sub. (3).

11 (c) If the grain dealer has not previously applied for a
12 certificate of registration, a financial statement if required
13 under s. ATCP 99.26(1).

14 (3) FEES. To obtain a certificate of registration under
15 sub. (1), a grain dealer shall pay the following applicable fees:

16 (a) Registration fee. 1. A class A grain dealer shall
17 pay a registration fee of \$400, plus a surcharge of \$250 if the
18 grain dealer's financial statement is not audited.

19 2. A class B grain dealer shall pay a registration fee of
20 \$175.

21 3. A class C grain dealer who voluntarily applies for a
22 certificate of registration shall pay a registration fee of \$50.

23 (b) Supplementary registration fee. In addition to the fee
24 specified under par. (a), a grain dealer who operates more than
25 one truck shall pay an additional registration fee of \$10 for
26 each additional truck that the grain dealer owns or leases and
27 uses to haul grain.

1 (c) Surcharge for operating without a certificate of
2 registration. An applicant for an annual grain dealer's
3 certificate of registration shall pay a registration fee
4 surcharge of \$500 if the department determines that, within 365
5 days prior to submitting an application for a grain dealer's
6 certificate of registration, the applicant acted as a grain
7 dealer without a certificate of registration in violation of s.
8 127.03(1), Stats. Payment of the registration fee surcharge does
9 not relieve the applicant of other civil or criminal liability
10 that may result from acting as a grain dealer without a
11 certificate of registration, but does not constitute evidence of
12 a violation of law.

13 (4) ACTION GRANTING OR DENYING APPLICATION. The department
14 shall grant or deny an application under sub. (2) within 60 days
15 after the department receives a complete application including
16 all applicable fees.

17 (5) CERTIFICATE DISPLAYED. If a grain dealer is required
18 to hold a certificate of registration under sub. (1), the grain
19 dealer shall prominently display a true copy of the grain
20 dealer's current certificate of registration on each truck used
21 to haul grain. The grain dealer shall also display a true copy
22 of the certificate of registration at the grain dealer's
23 permanent business address if the grain dealer is required to
24 maintain a permanent business address under s. ATCP 99.40(3).

25 **ATCP 99.24 NONRESIDENT GRAIN DEALERS**. This subchapter
26 applies to a nonresident grain dealer who buys grain from or
27 sells grain for producers who produced the grain in this state,

1 regardless of whether the grain dealer takes title to or custody
2 of the grain in this state.

3 **ATCP 99.26 GRAIN DEALERS; FINANCIAL STATEMENTS.** (1)

4 INITIAL FINANCIAL STATEMENT. (a) If either of the following
5 apply, a grain dealer shall file a financial statement with the
6 grain dealer's initial application for a certificate of
7 registration under s. ATCP 99.22:

8 1. The grain dealer is a class A grain dealer.

9 2. The grain dealer represents to any person that the grain
10 dealer is bonded or that the grain dealer's obligations to
11 producers are covered by security.

12 (b) A financial statement under par. (a) shall comply with
13 sub. (4). If a grain dealer has not previously engaged in
14 business, the grain dealer's initial financial statement need not
15 comply with sub. (4)(a), but may instead consist of an opening
16 balance sheet and notes to that balance sheet.

17 (c) If the applicant's financial statement under par. (a)
18 does not meet the minimum year-end financial standards under s.
19 ATCP 99.28, the applicant shall file security with the department
20 under s. ATCP 99.32.

21 (2) ANNUAL FINANCIAL STATEMENT. (a) A registered class A
22 grain dealer shall annually file a year-end financial statement
23 with the department. The annual financial statement shall comply
24 with sub. (4). The grain dealer shall file the annual financial
25 statement on or before the 15th day of the 4th month after the
26 close of the grain dealer's fiscal year.

27 (b) An annual financial statement under par. (a) shall be

1 issued and dated prior to the filing deadline under par. (a).
2 The department may not accept a financial statement that is
3 issued or dated after the filing deadline.

4 (3) SUPPLEMENTARY OR INTERIM FINANCIAL STATEMENTS. (a)
5 The department may require a class A grain dealer to file a
6 supplementary or interim financial statement whenever the
7 department considers it necessary.

8 (b) A financial statement under par. (a) shall contain a
9 sworn and notarized statement by the grain dealer stating that
10 the financial statement is correct. The financial statement
11 shall be a reviewed or audited financial statement, except as
12 permitted by the department.

13 (4) FINANCIAL STATEMENTS; PREPARATION AND CONTENTS. (a)
14 Except as provided under sub. (1)(b), a financial statement under
15 this section shall consist of a balance sheet, income statement,
16 equity statement, statement of cash flows, notes to those
17 statements, and any other information required by the department.

18 (b) If a class A grain dealer makes at least \$2,000,000 of
19 grain purchases or sales during the grain dealer's fiscal year,
20 the grain dealer's financial statements under subs. (1) and (2)
21 shall be audited financial statements. Otherwise, they shall be
22 reviewed or audited financial statements.

23 (c) A reviewed or audited financial statement under this
24 section shall comply with s. ATCP 99.44.

25 **ATCP 99.28 CLASS A GRAIN DEALERS; MINIMUM FINANCIAL**
26 **STANDARDS.** (1) Except as provided under sub. (3), a class A
27 grain dealer shall meet all of the following financial standards:

1 (a) At the end of every fiscal year, the grain dealer's
2 ratio of current assets to current liabilities shall be at least
3 1.2 to 1, except that on and after September 1, 1994, the ratio
4 shall be at least 1.25 to 1.

5 (b) At all times other than at the end of the grain
6 dealer's fiscal year, the grain dealer's ratio of current assets
7 to current liabilities shall be at least 1.0 to 1.0.

8 (c) The grain dealer's total assets shall at all times
9 exceed total liabilities by at least \$10,000, or 5% of the amount
10 that the grain dealer paid producers for grain during the grain
11 dealer's last completed fiscal year, whichever is greater, except
12 that the grain dealer's total assets need not exceed total
13 liabilities by more than \$500,000.

14 NOTE: In determining whether a grain dealer complies with
15 the financial standards under this subsection, the
16 department shall exclude assets as provided under
17 s. ATCP 99.46.
18

19 (2) NOTICE OF CHANGES. A class A grain dealer required to
20 meet the financial standards under sub. (1) shall immediately
21 notify the department if the grain dealer knows or has reason to
22 know that any of the financial standards under sub. (1) are no
23 longer being met.

24 (3) EXEMPTIONS. A class A grain dealer is not required to
25 meet the financial standards under sub. (1) if the grain dealer
26 does both of the following:

27 (a) Files supplementary reports with the department under
28 s. ATCP 99.30.

29 (b) Files with the department security that complies with
30 subchapter V.

1 **ATCP 99.30 GRAIN DEALERS; SUPPLEMENTARY REPORTS.** (1)

2 CLASS A GRAIN DEALERS. A class A grain dealer shall file monthly
3 reports with the department under this section unless the grain
4 dealer meets the minimum financial standards under s. ATCP 99.28.

5 (2) GRAIN DEALERS CLAIMING TO BE BONDED OR SECURED. If a
6 grain dealer represents to any person that the grain dealer is
7 bonded, or that the grain dealer's obligations to producers are
8 covered by security, the grain dealer shall file monthly reports
9 with the department under this section. This requirement applies
10 to all grain dealers, including exempt grain dealers, regardless
11 of whether those grain dealers comply with the minimum financial
12 standards under s. ATCP 99.28.

13 (3) MONTHLY REPORTS; FILING DEADLINE. A grain dealer's
14 monthly report shall be filed on or before the 10th day of the
15 month. If the department demands supplementary reports when the
16 department issues a notice demanding security under s. ATCP
17 99.56(2), the grain dealer shall file an initial supplementary
18 report with the department within ten days after the grain dealer
19 receives the department's notice.

20 (4) MONTHLY REPORTS; CONTENTS. A grain dealer's monthly
21 report shall specify, for each type of grain, all of the
22 following:

23 (a) The total number of bushels purchased during the
24 previous month for which the grain dealer has paid in full, and
25 the total amount paid for that grain.

26 (b) The total number of bushels for which the grain dealer
27 has not yet paid in full, and the total amount which the grain

1 dealer owes for that grain.

2 (c) Any other information required by the department.

3 **ATCP 99.32 GRAIN DEALERS; SECURITY.** (1) CLASS A GRAIN
4 DEALERS. A class A grain dealer shall file with the department
5 security that complies with subchapter V unless the grain dealer
6 meets the minimum financial standards under s. ATCP 99.28.

7 (2) GRAIN DEALERS VOLUNTARILY FILING SECURITY. Any grain
8 dealer may voluntarily file with the department security that
9 complies with subchapter V.

10 (3) GRAIN DEALERS CLAIMING TO BE BONDED OR SECURED. If any
11 grain dealer represents to any person that the grain dealer is
12 bonded, or that the grain dealer's obligations to producers are
13 covered by security, that grain dealer shall file with the
14 department security that complies with subchapter V. This
15 requirement applies regardless of whether the grain dealer
16 complies with the minimum financial standards under s. ATCP
17 99.28.

18 **ATCP 99.34 GRAIN DEALERS; RECEIPTS FOR GRAIN.** (1)
19 REQUIREMENT. No grain dealer may receive grain from or sell
20 grain for a producer unless that grain dealer furnishes the
21 producer or the producer's agent with a scale ticket or other
22 purchase receipt when taking control of or title to the grain.
23 The scale ticket or purchase receipt shall include all of the
24 following:

25 (a) The name and permanent address of the grain dealer, and
26 a statement indicating whether the grain dealer is a corporation.

27 (b) An indication that the document is a scale ticket or

1 purchase receipt for grain.

2 (c) The date on which the grain is received.

3 (d) The kind of grain received.

4 (e) The net weight of grain received, including dockage if
5 determined. If a grain dealer receives a producer's grain at the
6 producer's farm, the purchase receipt may specify the approximate
7 net weight of the grain.

8 (f) The grade and quality of the grain, if determined.

9 (g) An indication whether the grain dealer is purchasing
10 the grain or receiving it for storage. If a scale ticket or
11 receipt fails to indicate whether it is a purchase receipt or
12 storage receipt, it is considered a purchase receipt unless the
13 grain dealer also operates as a warehouse keeper under the same
14 name, in which case it is considered a storage receipt.

15 (h) The grain dealer's promise to pay the producer the
16 total amount due for grain, less any discounts that may apply,
17 within 7 calendar days after the receipt date specified under
18 par. (c). This paragraph does not apply if any of the following
19 applies:

20 1. The grain dealer makes full cash payment for the grain
21 before taking custody of the grain.

22 2. The grain dealer, before taking custody of the grain,
23 provides the producer with a copy of a deferred payment contract
24 or deferred price contract for that grain, signed by the grain
25 dealer and the producer. The deferred payment or deferred price
26 contract shall comply with s. ATCP 99.36.

27 3. The scale ticket or receipt clearly specifies that the

1 producer retains ownership of the grain and is depositing the
2 grain for storage only.

3 (2) GRAIN DEALER'S COPIES. A grain dealer shall keep
4 copies of all scale tickets and other purchase receipts which the
5 grain dealer issues under sub. (1). The grain dealer shall
6 retain copies of the documents for at least 6 years after the
7 documents are issued, and shall make copies available to the
8 department for inspection and copying upon request.

9 **ATCP 99.36 GRAIN DEALERS; DEFERRED PAYMENT AND DEFERRED**
10 **PRICE CONTRACTS.** (1) CONTRACTS IN WRITING. Deferred payment
11 and deferred price contracts shall be in writing, and shall be
12 signed by the grain dealer and the producer. The grain dealer
13 shall provide the producer with a copy of every contract when the
14 contract is made.

15 (2) CONTENTS OF CONTRACT. Deferred payment and deferred
16 price contracts shall include all of the following:

17 (a) The type, weight, grade and quality of grain purchased.
18 The contract shall specify that discounts and charges may apply
19 if the grain delivered is not the same grade and quality as the
20 grain purchased.

21 (b) The price for the grain or, under a deferred price
22 contract, the method and deadline by which the price will be
23 determined.

24 (c) The date by which the grain dealer agrees to pay the
25 producer in full for the grain.

26 (d) The permanent business location of the grain dealer.

27 (3) GRAIN DEALER TAKES TITLE TO GRAIN. No grain dealer may

1 purchase grain under a deferred payment or deferred price
2 contract unless the contract clearly specifies that the grain
3 dealer takes title to the grain when it is received or, if the
4 contract involves the purchase of grain already in storage, when
5 the contract is made.

6 (4) PAYMENT DEADLINE. (a) A grain dealer shall pay the
7 producer in full under every deferred payment or deferred price
8 contract by the deadline date specified in the contract.

9 (b) No deferred payment or deferred price contract may
10 specify a payment deadline that is more than one year after the
11 date on which the contract is made. The payment deadline may not
12 be extended, except that the parties may sign a new contract
13 which extends the deadline for up to one year.

14 (5) NOTICE TO PRODUCER. (a) Every deferred payment or
15 deferred price contract shall contain the following statement in
16 capitalized bold print immediately preceding the producer's
17 signature line:

18 **"THIS IS NOT A STORAGE CONTRACT. THE GRAIN DEALER (BUYER)**
19 **BECOMES THE OWNER OF ANY GRAIN WHICH THE PRODUCER (SELLER)**
20 **DELIVERS TO THE GRAIN DEALER UNDER THIS CONTRACT. THE**
21 **PRODUCER RELINQUISHES OWNERSHIP AND CONTROL OF THE GRAIN,**
22 **AND BECOMES AN UNSECURED CREDITOR PENDING PAYMENT."**
23

24 (b) Every deferred payment or deferred price contract
25 between a producer and a class B or class C grain dealer shall
26 contain the following statement, in capitalized bold print,
27 immediately following the statement under par. (a) and
28 immediately preceding the producer's signature line:

29 **"AS A CLASS B OR CLASS C GRAIN DEALER, WE ARE NOT REQUIRED**
30 **TO MEET MINIMUM FINANCIAL STANDARDS, NOR ARE WE REQUIRED TO**
31 **FILE SECURITY WITH THE STATE OF WISCONSIN TO SECURE OUR**
32 **PAYMENT OBLIGATIONS TO PRODUCERS."**

1 **ATCP 99.38 GRAIN DEALERS; RECORDS AND ACCOUNTS.** (1)

2 RECORDS AND ACCOUNTS; GENERAL. A grain dealer shall keep
3 complete records and accounts of all grain received and sold by
4 the grain dealer. Records and accounts shall be complete,
5 accurate, current, well organized and accessible, so that the
6 grain dealer and the department can readily determine all of the
7 following:

8 (a) The kinds and amounts of grain which the grain dealer
9 has received, the dates of receipt, the persons from whom the
10 grain was received, and the terms under which the grain was
11 received.

12 (b) The kinds and amounts of grain which the grain dealer
13 has sold, the dates of sale, the persons to whom the grain was
14 sold, and the terms of sale.

15 (c) The kinds and amounts of grain, received from others,
16 which the grain dealer has used for feed, seed, milling,
17 manufacturing, processing or other purposes.

18 (d) The kinds and amounts of grain, received from others,
19 which the grain dealer has currently on hand. Of this grain on
20 hand, the records and accounts shall indicate which kinds and
21 amounts are owned by the grain dealer, and which kinds and
22 amounts are held in storage for others.

23 (e) The nature and amount of a grain dealer's current
24 obligations to producers under grain purchase contracts,
25 including deferred payment and deferred price contracts. The
26 grain dealer shall keep a daily record of obligations under
27 priced contracts, and a separate daily record of obligations

1 under deferred price contracts that have not yet been priced.

2 (f) The grain dealer's current obligations to producers
3 under storage agreements, if any, including the nature and amount
4 of those obligations.

5 (g) The grain dealer's accounts receivable from the sale of
6 grain, including amounts receivable and due dates.

7 (2) GRAIN RECEIVED FROM PRODUCERS; RECORDS. With respect
8 to grain received from producers, a grain dealer shall keep
9 records of all of the following:

10 (a) The kind and weight of grain received, and the grade
11 and quality of the grain if determined.

12 (b) The date on which the grain dealer received the grain.

13 (c) The name and address of the producer from whom the
14 grain was received.

15 (d) Whether the grain dealer purchased the grain or
16 received it for storage.

17 (e) If the grain dealer purchased the grain from the
18 producer, the terms of the purchase.

19 (f) If the grain dealer did not purchase the grain, but
20 received it for storage, the terms and conditions of the storage
21 agreement.

22 (g) The terms of every deferred payment and deferred price
23 contract.

24 (3) COPIES. A grain dealer shall keep a copy of every
25 record and account entry which the grain dealer makes under subs.
26 (1) and (2), and shall retain that copy for at least 6 years.
27 The grain dealer shall make copies available to the department

1 for inspection and copying upon request.

2 **ATCP 99.40 GRAIN DEALERS; DUTIES AND PROHIBITED PRACTICES.**

3 (1) GRAIN WEIGHT, GRADE AND QUALITY. When determining the
4 weight, grade or quality of grain, a grain dealer shall make
5 accurate determinations using accurate weighing, testing and
6 grading equipment, and shall accurately record those
7 determinations.

8 (2) TIMELY PAYMENT TO PRODUCERS. A grain dealer who
9 purchases grain from a producer shall pay for the grain when
10 payment is due under the purchase agreement. A grain dealer does
11 not meet the grain dealer's payment obligation by issuing a
12 forged check, a check drawn on an account containing insufficient
13 funds, or any other nonnegotiable check.

14 (3) PERMANENT BUSINESS LOCATION. (a) Every class A and
15 class B grain dealer shall maintain a permanent business address
16 at which the grain dealer may be readily contacted during
17 business hours. The grain dealer's permanent business address
18 shall be included on every scale ticket or receipt which the
19 grain dealer issues under s. ATCP 99.34 for grain received from
20 or sold for producers.

21 (b) Every class A and class B grain dealer who purchases
22 grain under deferred price contracts shall have business hours
23 that begin by 9:30 AM and continue until at least 1:30 PM every
24 Monday through Friday except on official holidays when boards of
25 trade and commodity exchanges are closed. Business hours
26 complying with this paragraph shall be prominently posted at each
27 of the grain dealer's business locations.

1 (4) RECORDS; INSPECTION BY DEPARTMENT. A grain dealer
2 shall keep records and accounts required under s. ATCP 99.38, and
3 shall make the records and accounts available to the department
4 for inspection and copying upon request.

5 (5) PROHIBITED PRACTICES. No grain dealer may do any of
6 the following:

7 (a) Misrepresent the weight, grade or quality of grain
8 received from or delivered to any person.

9 (b) Make any false or misleading statement in any
10 application for a certificate of registration or in any other
11 statement or report required to be submitted to the department.

12 (c) Fail to provide relevant information required by the
13 department under this chapter, or falsify any information
14 provided to the department.

15 (d) Fail to file the full amount of security required under
16 s. ATCP 99.32 and subchapter V by the date which the department
17 specifies.

18 (e) Violate any provision of ch. 127, Stats., this chapter,
19 or any order issued by the department under this chapter.

20 **ATCP 99.42 GRAIN DEALER; NOTICE TO PRODUCERS.** (1) NOTICE
21 REQUIRED. Whenever a grain dealer receives grain from any
22 producer, the grain dealer shall give the producer a written
23 notice under sub. (2) unless the grain dealer makes full cash
24 payment for the grain before taking title to or custody of the
25 grain.

26 (2) NOTICE CONTENTS. A notice under sub. (1) shall contain
27 the following information:

1 (a) The name and address of the grain dealer, followed by
2 the conspicuous title "NOTICE TO PRODUCERS."

3 (b) The following statement, conspicuously printed under
4 the title:

5 "(Name of grain dealer) is a (choose one as appropriate:
6 class A grain dealer registered on the basis of its
7 financial statement, class A grain dealer registered on the
8 basis of security, class B grain dealer or class C grain
9 dealer)."

10
11 Under Wisconsin law, class A grain dealers must meet minimum
12 financial standards or file security with the Department of
13 Agriculture, Trade and Consumer Protection. OTHER GRAIN
14 DEALERS ARE NOT REQUIRED TO MEET MINIMUM FINANCIAL STANDARDS
15 OR FILE SECURITY. The law does not guarantee that class A
16 grain dealers or other grain dealers will pay producers for
17 their grain. Each producer is responsible for determining
18 the credit worthiness of the dealer to whom the producer
19 sells grain.
20

21 A class A grain dealer can be registered on the basis of a
22 financial statement showing that the grain dealer meets the
23 following minimum financial standards: (1) a current ratio
24 of at least 1.2 to 1.0, or 1.25 to 1.0 on or after September
25 1, 1994; and (2) equity equal to at least \$10,000 or 5% of
26 the amount the dealer paid to producers for grain during the
27 dealer's last fiscal year, whichever is greater, up to a
28 maximum equity of \$500,000. Class A grain dealers
29 registered on the basis of their financial statements do not
30 file any bond or security with the department to secure
31 payment to producers.
32

33 A class A grain dealer can also be registered by filing
34 security with the department to secure payment to producers.
35 The amount of security must equal at least 10% of the total
36 amount the dealer paid producers for grain during the
37 dealer's last fiscal year, up to a required maximum security
38 of \$500,000.
39

40 Neither class B nor class C grain dealers are required to
41 file with the department any financial statement or any bond
42 or security to secure payment to producers."
43
44

1 (a) Current liabilities, including producer obligations and
2 other current liabilities, identified according to sub. (8).

3 (b) Long-term liabilities, identified according to sub.
4 (9).

5 (4) NOTES AND ACCOUNTS RECEIVABLE. (a) In a financial
6 statement, notes and accounts receivable arising in the ordinary
7 course of trade shall be identified separately from notes and
8 receivables which do not arise in the ordinary course of trade.
9 A financial statement shall describe any note or account
10 receivable representing 15% or more of all notes or accounts
11 receivable, respectively. The description of that note or
12 account receivable shall indicate the name of the person from
13 whom payment is receivable and the amount receivable.

14 (b) A financial statement shall specifically identify and
15 explain the following notes and accounts receivable:

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

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

23 (c) If the warehouse keeper or grain dealer does not
24 maintain an allowance for doubtful or uncollectible receivables,
25 a financial statement shall contain an aging summary of all notes
26 and accounts receivable.

1 (d) A financial statement shall identify the method used to
2 account for doubtful or uncollectible receivables. If a
3 warehouse keeper or grain dealer maintains an allowance for
4 doubtful or uncollectible receivables, the amount of the
5 allowance shall be shown in the balance sheet.

6 (5) INVENTORY. A financial statement shall identify grain
7 inventories separately from other kinds of inventory.
8 Inventories not in marketable or salable condition are not
9 current assets. Financial statements shall describe the basis on
10 which inventory values are determined.

11 (6) FIXED ASSETS. A financial statement shall identify
12 fixed assets, including property, plant and equipment, according
13 to each major class of property included. The warehouse keeper
14 or grain dealer shall report all property, plant and equipment at
15 cost less depreciation.

16 (7) PERSONAL ASSETS NOT INCLUDED. In a financial
17 statement, the warehouse keeper or grain dealer may not claim as
18 assets any personal assets that are exempt from execution or
19 attachment by creditors, including grain owned by depositors.

20 (8) CURRENT LIABILITIES. (a) A financial statement shall
21 show current liabilities separately from long-term liabilities.
22 Current liabilities shall include the current portion of all
23 long-term obligations as well as any other items of a current
24 nature. The financial statement shall set forth current
25 liabilities, including all notes payable within one year of the
26 balance sheet date, accounts payable, deferred income and accrued

1 expenses, in sufficient detail that the specific nature of the
2 liability and the amount owed can be readily determined.

3 (b) In a financial statement, grain accounts payable shall
4 be shown separately from other trade accounts payable. The
5 financial statement shall identify the amount payable to
6 Wisconsin producers and their assignees for grain received from
7 those producers.

8 (c) A financial statement shall detail each trade account
9 representing 15% or more of all trade accounts, showing for each
10 of those accounts the name of each trade creditor and the amount
11 owed.

12 (d) A financial statement shall specifically identify the
13 current portion of all notes and mortgages payable. The
14 financial statement shall separately identify notes and mortgages
15 payable to officers, directors, employees or stockholders, or to
16 members of their families, as well as to parent, subsidiary or
17 affiliated organizations.

18 (e) Any note payable to officers, directors, employees or
19 stockholders, or to members of their families, or to parent,
20 subsidiary or affiliated organizations, which is due on demand
21 shall be classified as a current liability, regardless of
22 amortization or any stated intention of the payee.

23 (9) LONG-TERM LIABILITIES. A financial statement shall
24 fully describe all notes, mortgages or other long-term
25 liabilities not due or payable within one year, including the
26 nature of the liability, the amount owed, the due date, and the
27 terms of payment.

1 (10) GENERAL NOTES TO FINANCIAL STATEMENTS. A financial
2 statement shall include the following information, if material:

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

5 (b) Defaults in payment of any obligations.

6 (c) A brief statement as to contingent liabilities.

7 (d) A statement of judgments, suits, liens or claims
8 pending against the warehouse keeper or grain dealer.

9 (e) A statement indicating whether the warehouse keeper or
10 grain dealer has acted as surety, bondsman or accommodation party
11 on notes or obligations of another.

12 (f) A description of any changes in accounting principles
13 that may affect the comparability of the financial statement to
14 prior financial statements.

15 (g) Contingent liabilities including, but not limited to, a
16 statement that the warehouse keeper is liable for any quantity
17 shortages and quality deficiencies for grain held in storage for
18 depositors.

19 (h) Any other facts or circumstances that may affect the
20 reliability of the financial statement, the financial liquidity
21 of the warehouse keeper or grain dealer, or the warehouse
22 keeper's or grain dealer's ability to pay producers.

23 (11) WAREHOUSE KEEPERS; ADDITIONAL NOTES TO FINANCIAL
24 STATEMENT. A warehouse keeper's financial statement shall
25 separately and clearly disclose, in the notes to the financial
26 statement, all of the following information as of the date of the
27 balance sheet and for each kind of grain:

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

3 (b) The total number of bushels of grain forwarded to
4 another warehouse keeper, for which the warehouse keeper filing
5 the financial statement holds either a negotiable or a
6 nonnegotiable warehouse receipt.

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

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

13 (e) The total number of bushels of grain which the
14 warehouse keeper is obligated to store for depositors who hold
15 original nonnegotiable warehouse receipts issued by the warehouse
16 keeper.

17 (f) The total number of bushels of grain which the
18 warehouse keeper is obligated to store for depositors who hold
19 scale tickets or other types of receipts, except for negotiable
20 and nonnegotiable warehouse receipts, issued by the warehouse
21 keeper.

22 (g) The combined total bushels of grain which the warehouse
23 keeper is obligated to store for depositors identified under
24 pars. (d) to (f).

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

1 (i) The total number of bushels of grain represented by
2 outstanding original negotiable warehouse receipts issued by the
3 warehouse keeper, and held as collateral by a creditor.

4 (j) The warehouse keeper's net grain position for each type
5 of grain.

6 **ATCP 99.46 ASSETS EXCLUDED FROM FINANCIAL STANDARD**

7 **CALCULATIONS.** The department shall exclude the following assets
8 when calculating whether a warehouse keeper complies with the
9 minimum financial standards under s. ATCP 99.08, or whether a
10 grain dealer complies with the minimum financial standards under
11 s. ATCP 99.28:

12 (1) Nontrade notes and accounts receivable from officers,
13 directors, employees, partners or stockholders, or from members
14 of their families, unless the notes and accounts receivable are
15 secured by a first priority security interest in real or personal
16 property or the department determines that the current position
17 of the debtor justifies the inclusion of these assets.

18 (2) Notes and accounts receivable from parent
19 organizations, subsidiaries or affiliates unless the department
20 finds that the current financial position of the parent
21 organization, subsidiary or affiliate justifies the inclusion of
22 these assets.

23 (3) Notes receivable that are more than one year in
24 arrears, and accounts receivable that have been outstanding for
25 more than one year, unless the warehouse keeper or grain dealer
26 has established an offsetting reserve for uncollectible notes and
27 accounts receivable.

1 (5) A perfected security interest in accounts receivable
2 and inventory that complies with s. ATCP 99.68.

3 (6) Personal surety bonds or other third party guarantees
4 that are supported by security under sub. (2) or (3).

5 **ATCP 99.52 DEPARTMENT CUSTODY OF SECURITY.** The department
6 or the department's agent shall maintain custody of all security
7 filed by a warehouse keeper or grain dealer under this chapter.
8 Security shall be payable to and held by the department for the
9 benefit of depositors storing grain with the warehouse keeper or
10 producers selling grain to the grain dealer.

11 **ATCP 99.54 AMOUNT OF SECURITY.** (1) **WAREHOUSE KEEPERS.**
12 The amount of security filed by a warehouse keeper under this
13 chapter shall be not less than 20% of the current market value of
14 all grains stored in the warehouse, except that the amount of
15 security shall be not less than \$25,000 and is not required to be
16 more than \$500,000.

17 (2) **GRAIN DEALERS.** (a) Except as provided under par. (b)
18 and (c), the amount of security filed by a grain dealer under
19 this chapter shall be in a principal amount, to the next highest
20 \$1,000, equal to at least 10% of the aggregate amount which the
21 grain dealer paid producers for grain purchased from them during
22 the grain dealer's last completed fiscal year.

23 (b) Except as provided under par. (c), if a grain dealer
24 has been engaged in business as a grain dealer for less than one
25 year, or not at all, the amount of security filed by the grain
26 dealer shall be at least 10% of the amount which the department

1 estimates that the grain dealer will pay producers for grain
2 purchased from them during the next year.

3 (c) The total amount of security filed by a grain dealer
4 may not be less than \$25,000 and is not required to be more than
5 \$500,000.

6 **ATCP 99.56 DEMANDS FOR SECURITY.** (1) DEPARTMENT MAY
7 DEMAND SECURITY. The department may require a warehouse keeper
8 or grain dealer to file security at any time if any of the
9 following occurs:

10 (a) The warehouse keeper no longer meets the minimum
11 financial standards under s. ATCP 99.08, or the grain dealer no
12 longer meets the minimum financial standards under s. ATCP 99.28.

13 (b) The department receives notice of cancellation of a
14 surety bond under s. ATCP 99.60, or the nonrenewal of a letter of
15 credit under s. ATCP 99.66.

16 (c) Security currently filed by the warehouse keeper or
17 grain dealer falls below the amount required under s. ATCP 99.54
18 for any reason, including a depreciation in the value of the
19 security or an increase in the warehouse keeper's or grain
20 dealer's maximum liability to producers.

21 (d) The warehouse keeper or grain dealer fails to provide
22 relevant information requested by the department or required by
23 this chapter.

24 (2) DEMAND NOTICE. If the department requires a warehouse
25 keeper or grain dealer to file security under sub. (1), it shall
26 issue a notice to the warehouse keeper or grain dealer indicating
27 why the security is required, the basis on which the security

1 amount has been or will be determined, and the deadline for
2 filing security. A notice under this subsection shall be served
3 in person or by certified mail.

4 (3) FILING DEADLINE. A notice under sub. (2) shall specify
5 a security filing deadline that is not more than 30 days after
6 the date on which the notice is served on the warehouse keeper or
7 grain dealer according to sub. (2).

8 (4) FAILURE TO FILE SECURITY; NOTICE TO PRODUCERS AND
9 DEPOSITORS. (a) If a warehouse keeper or grain dealer fails to
10 file security by the final deadline date specified by the
11 department under sub. (2), the warehouse keeper or grain dealer
12 shall, within 5 days after the deadline date, give notice to all
13 producers and depositors to whom the warehouse keeper or grain
14 dealer owes storage or payment obligations. The notice shall
15 inform producers and depositors that the warehouse keeper or
16 grain dealer has failed to file security in response to the
17 department's demand.

18 (b) If the department finds that the warehouse keeper or
19 grain dealer has failed to notify all producers and depositors
20 under this paragraph, or has notified them incorrectly, the
21 department shall promptly notify producers and depositors by
22 publishing a class 3 public notice under ch. 985, Stats.

23 **ATCP 99.58 RELEASE OF SECURITY.** The department may, upon
24 request, release security filed under this chapter only if one of
25 the following occurs:

1 (a) The warehouse keeper or grain dealer achieves and
2 maintains for 2 consecutive registration years the minimum
3 financial standards required under s. ATCP 99.08 or ATCP 99.28.

4 (b) The warehouse keeper or grain dealer demonstrates to
5 the department's satisfaction that the amount of security on file
6 exceeds the amount required under s. ATCP 99.54 because of a
7 substantial reduction in maximum liability to producers and
8 depositors, a substantial appreciation in the value of the
9 security, or other reasons.

10 (c) The warehouse keeper or grain dealer files alternative
11 security of equivalent value.

12 (d) The warehouse keeper or grain dealer is no longer in
13 business and certifies, to the department's satisfaction, that
14 all producer and depositor obligations have been satisfied in
15 full.

16 **ATCP 99.60 SURETY BONDS.** A surety bond filed with the
17 department under this chapter shall secure the warehouse keeper's
18 or grain dealer's faithful compliance with ch. 127, Stats., and
19 this chapter. The surety bond shall be all of the following:

20 (1) Made payable to the department for the benefit of
21 depositors storing grain with the warehouse or producers selling
22 grain to the grain dealer.

23 (2) Endorsed by a surety company authorized to do business
24 in this state.

25 (3) In a form approved by the department containing all of
26 the terms and conditions required by the department.

1 (4) Continuing, and subject to cancellation by the surety
2 company only upon 90 days written notice to the department served
3 in person or by certified mail. Notice of cancellation does not
4 affect any liability incurred under the bond within 90 days after
5 the notice is served on the department.

6 **ATCP 99.62 NEGOTIABLE SECURITIES.** Negotiable securities
7 filed as security with the department under this chapter shall be
8 either certificates of deposit or money market certificates that
9 are all of the following:

10 (1) Issued or endorsed to the department, for the benefit
11 of depositors storing grain with the warehouse keeper or
12 producers selling grain to the grain dealer, so that the
13 certificate cannot be canceled or redeemed without the
14 department's written authorization, and so that the funds
15 represented by the certificate cannot be transferred or withdrawn
16 without the department's written authorization.

17 (2) Issued for an initial period of at least one year.

18 (3) Subject to automatic renewal without any action by the
19 department.

20 (4) Issued in a form, and subject to any terms and
21 conditions, that the department considers necessary and
22 appropriate.

23 **ATCP 99.64 STOCKS, BONDS AND OTHER MARKETABLE SECURITIES.**

24 A stock, bond, or other marketable security filed as security
25 with the department under this chapter shall be all of the
26 following:

27 (1) Issued or endorsed to the department.

1 (2) Valued for security purposes at current market value.
2 (3) Readily convertible by the department into cash.
3 (4) Subject to sale or redemption only with the
4 department's written agreement.

5 (5) Held by the department subject to any terms and
6 conditions that the department considers necessary or
7 appropriate.

8 **ATCP 99.66 IRREVOCABLE BANK LETTERS OF CREDIT.** An
9 irrevocable bank letter of credit filed as security with the
10 department shall be all of the following:

11 (1) Payable to the department for the benefit of depositors
12 storing grain with the warehouse keeper or producers selling
13 grain to the grain dealer.

14 (2) Issued on bank letterhead.

15 (3) Issued for an initial period of one year.

16 (4) Issued in a form that provides for automatic annual
17 renewal unless, at least 90 days before the scheduled renewal
18 date, the issuing bank gives the department written notice that
19 the letter of credit will not be renewed. Written notice shall
20 be served on the department in person or by certified mail.

21 (5) Issued in a form, and subject to any terms and
22 conditions, that the department considers necessary or
23 appropriate.

24 **ATCP 99.68 SECURITY INTERESTS IN ACCOUNTS RECEIVABLE AND**
25 **INVENTORY.** If the department permits a warehouse keeper or grain
26 dealer to provide, as security under this chapter, a security
27 interest in accounts receivable and inventory, the warehouse

1 keeper or grain dealer and the department shall do all of the
2 following:

3 (1) The warehouse keeper or grain dealer shall enter into a
4 security agreement under which the warehouse keeper or grain
5 dealer grants the department, for the benefit of depositors
6 storing grain in the warehouse or producers selling grain to the
7 grain dealer, a first priority security interest in all of the
8 warehouse keeper's or grain dealer's grain inventory, and in all
9 accounts receivable and proceeds from the sale of grain. The
10 security agreement shall include any terms and conditions
11 required by the department.

12 (2) The department shall perfect its security interest by
13 filing according to ch. 409, Stats.

14 (3) The warehouse keeper or grain dealer may not grant any
15 other security interest which has priority over the department's
16 security interest. The warehouse keeper or grain dealer shall
17 notify the department of every other lien, security interest or
18 encumbrance, known to the warehouse keeper or grain dealer, which
19 may affect assets covered by the department's security interest.
20 The department shall not accept, as security, a security interest
21 which is subordinate to any other known lien, security interest
22 or encumbrance.

23 (4) The warehouse keeper or grain dealer shall, in a report
24 filed with the department every 30 days, identify and report the
25 status of all assets covered by the department's security
26 interest, including company-owned and depositor-owned grain, all
27 accounts receivable, and all proceeds from the sale of grain.

1 The report shall identify every account receivable, including the
2 age of each receivable.

3 (5) The warehouse keeper or grain dealer shall have all
4 payments on accounts receivable made to a bank lock box, under an
5 arrangement approved by the department. A record of all lock box
6 receipts shall be provided to the department at least every 30
7 days.

8 9 SUBCHAPTER VI

10 SUSPENSION OR CORRECTIVE ACTION ORDERS

11 NOTE: See ch. ATCP 1 for procedures related to
12 administrative orders and contested cases generally.

13 ATCP 99.70 SUSPENSION OR CORRECTIVE ACTION; GENERAL.

14 Following notice and hearing, the secretary may issue an order
15 that does either of the following:

16 (1) Suspends or revokes a warehouse keeper or grain dealer
17 certificate of registration for cause, including any violation of
18 this chapter or ch. 127, Stats.

19 (2) Requires a warehouse keeper or grain dealer to take
20 specific actions to remedy any violation of this chapter or ch.
21 127, Stats.

22 ATCP 99.72 SUMMARY SUSPENSION OR CORRECTIVE ACTION. (1)

23 The secretary may, without prior notice or hearing, do either of
24 the following if the secretary finds that the action is necessary
25 because there is a clear and imminent threat of harm to producers
26 or depositors:

27 (a) Issue an order summarily suspending a warehouse
28 keeper's or grain dealer's certificate of registration.

1 (b) Issue an order requiring a warehouse keeper or grain
2 dealer to take specific actions to remedy a violation of this
3 chapter or ch. 127, Stats.

4 (2) There is a clear and imminent threat of harm under sub.
5 (1) if any of the following occurs:

6 (a) A warehouse keeper fails to file replacement insurance
7 within the time period specified under s. ATCP 99.04(1)(b).

8 (b) A warehouse keeper or grain dealer fails to file
9 security in response to the department's demand under s. ATCP
10 99.56(2).

11 (c) A grain dealer fails to pay a producer according to the
12 terms of the grain dealer's contract with that producer.

13 (d) A warehouse keeper fails to return grain to a depositor
14 upon demand, as required under s. ATCP 99.18(4).

15 (e) A warehouse keeper fails to maintain a sufficient
16 quantity and quality of each type of grain in storage, and either
17 of the following applies:

18 1. The amount of the deficiency exceeds 10,000 bushels or
19 10% of the warehouse keeper's obligations to depositors.

20 2. The amount of the deficiency does not exceed 10,000
21 bushels or 10% of the warehouse keeper's obligations to
22 depositors, but the warehouse keeper has failed to correct the
23 deficiency within 15 days after receiving written notification
24 from the department that a deficiency exists.

25 (3) An order under sub. (1) shall set forth the basis for
26 the order. If, within 10 days after the order is served, the
27 warehouse keeper or grain dealer requests a hearing on the order,

1 the department shall hold a hearing on the order. The department
2 shall hold an informal hearing as soon as reasonably possible,
3 but not more than 10 days after the department receives a request
4 for hearing. The department shall promptly hold a formal
5 contested case hearing under ch. 227, Stats., on any issues
6 relevant to the order which are not resolved at the informal
7 hearing.

8
9 **SUBCHAPTER VII**

10 **COLLECTING PRODUCER OR DEPOSITOR CLAIMS**

11 **ATCP 99.74 PRODUCER OR DEPOSITOR CLAIMS; DEFAULT**

12 **PROCEEDINGS**. (1) **FILING CLAIMS**. If a depositor claims that a
13 warehouse keeper has failed to return stored grain upon demand,
14 or if a producer claims that a grain dealer has failed to pay for
15 grain when due, the producer or depositor may file a written
16 claim with the department. Upon receipt of a claim, or other
17 evidence of default on the part of a warehouse keeper or grain
18 dealer, the department may initiate a default proceeding under
19 this section. Before initiating a default proceeding, the
20 department may inspect the warehouse keeper's or grain dealer's
21 records, and may conduct a preliminary investigation under s.
22 93.16, Stats.

23
24 (2) **INITIATING DEFAULT PROCEEDINGS**. To initiate a default
25 proceeding, the department shall issue an order requiring all
26 interested producers or depositors to file verified proofs of
27 claim with the department before a specified date or be barred

1 from participating in any recovery obtained by the department.

2 Notice of the order shall be published as follows:

3 (a) By posting a copy of the order in a prominent location
4 at each place of business in this state operated by the warehouse
5 keeper or grain dealer, and on each truck operated by the
6 warehouse keeper or grain dealer if the truck can be readily
7 located.

8 (b) By mailing a copy of the order to the warehouse keeper
9 or grain dealer, and to the warehouse keeper's or grain dealer's
10 surety if any.

11 (c) By publishing the contents of the order as a class 3
12 notice under ch. 985, Stats. The date of the last insertion of
13 the class 3 notice under ch. 985, Stats., shall be not less than
14 30 days before the deadline date for filing claims.

15 (d) By mailing a copy of the order or equivalent notice to
16 other producers or depositors, identified by the department, who
17 appear to have an unpaid claim against the warehouse keeper or
18 grain dealer. In its notice, the department may indicate the
19 amount of the apparent claim and ask the producer or depositor to
20 verify or correct the claim on or before the claim filing
21 deadline.

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

24 NOTE: See s. ATCP 1.08 for procedures related to financial
25 default proceedings generally.

26 (3) AUDIT; PROPOSED ORDER. If the department initiates a
27 default proceeding, the department shall audit producer and
28 depositor claims filed with the department and shall issue a

1 proposed order allowing or disallowing claims. The proposed
2 order shall be based on proposed finding of facts and conclusions
3 of law which shall accompany the proposed order. The department
4 shall mail a copy of the proposed order to the warehouse keeper
5 or grain dealer, to the warehouse keeper's or grain dealer's
6 surety if any, and to every producer and depositor who filed a
7 timely producer claim in the proceeding.

8 (4) UNTIMELY CLAIMS DISALLOWED. (a) The department shall
9 disallow a claim filed after the claim filing deadline specified
10 under sub. (2) unless the department waives the claim filing
11 deadline for good cause shown.

12 (b) The department shall disallow a claim for any payment
13 that was due more than 60 days before the date on which the
14 department received the first written default notice under sub.
15 (1).

16 (5) NOTICE AND HEARING. The department shall hold a public
17 hearing on its proposed order under sub. (3). A notice of
18 hearing shall be issued to each person who is required to receive
19 a copy of the proposed order under sub. (3). The notice of
20 hearing shall comply with s. 227.44, Stats. The notice may
21 require affected parties to file objections to the proposed
22 order, if any, in writing before the date of hearing. The
23 hearing examiner may hold a prehearing conference before the
24 hearing and may reschedule or continue the hearing as necessary.
25 The hearing and related proceedings shall be conducted under
26 ch. 227, Stats., and ch. ATCP 1.

1 (6) FINAL ORDER AFTER HEARING. (a) Before issuing the
2 final decision and order, the department shall follow the
3 procedures prescribed under s. 227.46, Stats., except that if
4 after the hearing under sub. (5) there are no objections to the
5 proposed order, the department may adopt the proposed order as a
6 final decision and order of the department, without further
7 notice or hearing.

8 (b) The department shall serve its final decision and order
9 on each person who was required to receive a copy of the proposed
10 order under sub. (3). The department shall serve the warehouse
11 keeper or grain dealer, and the warehouse keeper's or grain
12 dealer's surety if any, in person or by certified mail.

13 **ATCP 99.76 PAYMENT OF SECURED CLAIMS.** At any time after
14 the department receives a notice of default, the department may
15 convert any security that the warehouse keeper or grain dealer
16 has filed with the department, and may apply the proceeds of that
17 security to pay allowed claims. The department shall distribute
18 available funds to the claimants according to the final order
19 allowing claims, on a proportionate basis, according to the
20 amount of each allowed claim. If funds exceed allowed claims,
21 the excess shall be returned to the person who filed the security
22 with the department.

23 **ATCP 99.78 COLLECTING PRODUCER OR DEPOSITOR CLAIMS.** (1)
24 The department may, on behalf of producers or depositors, demand
25 and receive payment of claims allowed under s. ATCP 99.74 or
26 commence an action in court to recover allowed claims. Any
27 amounts recovered by the department shall be distributed to

1 represented claimants on a proportionate basis, according to the
2 amount of each claimant's allowed claim.

3 (2) The department may settle any producer or depositor
4 claim with consent of the claimant and may decline to represent a
5 claimant who does not agree to a settlement recommended by the
6 department.

7 (3) A producer or depositor who sustains a loss because of
8 a violation of ch. 127, Stats., or this chapter, may bring a
9 court action under s. 127.17(5), Stats., against a warehouse
10 keeper or grain dealer to recover the amount of the loss,
11 together with costs and reasonable attorney fees.

12 **SECTION 2.** The rules contained in this order shall take
13 effect on September 1, 1994.

14
15 Dated this 13th day of May, 1994.

16 STATE OF WISCONSIN
17 DEPARTMENT OF AGRICULTURE,
18 TRADE AND CONSUMER PROTECTION

19 By Alan T. Tracy
20 Alan T. Tracy, Secretary
21

