

Chapter ATCP 99

GRAIN DEALERS AND GRAIN WAREHOUSE KEEPERS

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Note: Chapter ATCP 99 as it existed on April 30, 2003 was repealed and a new ch.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

Note: This chapter is adopted under authority of ss. 93.07 (1), 126.49, 126.51 and 126.81, Stats., and interprets ch. 126, Stats. The Wisconsin department of agriculture, trade and consumer protection may enforce this chapter under subch. VIII of ch. 126, Stats.

Subchapter I — General Provisions

ATCP 99.01 Definitions. In this chapter:

- (1) "Affiliate" has the meaning given in s. 126.01 (1), Stats.
- (2) "Audited financial statement" has the meaning given in s. 126.01 (3), Stats.
- (3) "Balance sheet" has the meaning given in s. 126.01 (4), Stats.
- (4) "Capacity" has the meaning given in s. 126.25 (1), Stats.
- (5) "Contributing grain dealer" has the meaning given in s. 126.10 (3), Stats.
- (6) "Contributing grain warehouse keeper" has the meaning given in s. 126.25 (2), Stats.
- (7) "Deferred payment contract" has the meaning given in s. 126.10 (6), Stats.
- (8) "Depositor" has the meaning given in s. 126.25 (5), Stats.
- (9) "Fund" has the meaning given in s. 126.01 (11), Stats.
- (10) "Grain" has the meaning given in s. 126.01 (13), Stats.
- (11) "Grain dealer" has the meaning given in s. 126.10 (9), Stats.
- (12) "Grain producer" has the meaning given in s. 126.10 (10), Stats.
- (13) "Grain warehouse" has the meaning given in s. 126.25 (8), Stats.
- (14) "Grain warehouse keeper" has the meaning given in s. 126.25 (9), Stats.
- (15) "Producer agent" has the meaning given in s. 126.10 (13), Stats.
- (16) "Procure grain" has the meaning given in s. 126.10 (11), Stats.
- (17) "Procure producer grain in this state" has the meaning given in s. 126.10 (12), Stats.
- (18) "Producer grain" has the meaning given in s. 126.10 (14), Stats. "Producer grain" does not include grain that a producer has purchased from another person, or represents as grain purchased from another person.
- (19) "Reviewed financial statement" has the meaning given in s. 126.01 (20), Stats.
- (20) "Warehouse receipt" has the meaning given in s. 126.25 (11), Stats.

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

Subchapter II — Grain Dealers

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

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

ATCP 99.12 Grain dealer; financial statement.

(1) GENERAL. A grain dealer's financial statement filed under s. 126.13, Stats., shall comply with this section and s. 126.13, Stats.

(2) LIABILITY DISCLOSURES. A financial statement filed under s. 126.13, Stats., shall include a detailed description of all notes, mortgages and other long-term liabilities not due or payable within one year. The description shall be included in the financial statement notes, or as an attachment to the financial statement. The description shall indicate the nature of the liabilities, the due dates and the payment terms.

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

(4) ASSET DISCLOSURES. (a) A financial statement filed under s. 126.13, Stats., shall specifically identify and explain, in the financial statement notes or as an attachment to the financial statement, the following assets:

1. Every non-trade note or account receivable from an officer, director, employee, partner, or stockholder, or from a member of the family of any of those individuals.

2. Every note or account receivable from a parent organization, a subsidiary, or an affiliate, other than an employee.

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

(b) A financial statement filed under s. 126.13, Stats., shall include at least one of the following:

1. An allowance for doubtful or uncollectible receivables. The notes to the financial statement shall describe the method used to account for doubtful or uncollectible receivables.

2. A summary classifying the age of all notes and accounts receivable.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The attachment shall be on the letterhead of the certified public accountant who reviewed or audited the financial statement.

(b) The certified public accountant who reviewed or audited the financial statement shall certify, in the attachment, whether the certified public accountant has reviewed or audited the attachment.

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

ATCP 99.14 Grain dealer; disclosure to producers.

(1) DISCLOSURE REQUIRED. A grain dealer shall make a disclosure under sub. (2) to every grain producer and producer agent from whom the grain dealer procures producer grain in this state. The grain dealer shall make the disclosure, in the form prescribed under sub. (2), in a written document given to the producer or producer agent. The disclosure shall be clear and conspicuous, and shall be set apart from every other writing. The grain dealer shall make the disclosure to a producer or producer agent at all of the following times:

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

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

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

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

(a) The following statement if the grain dealer is a contributing grain dealer who is not required to file security under s. 126.16 (1), Stats.:

IMPORTANT NOTICE

[Name of grain dealer] contributes to Wisconsin's Agricultural Producer Security Fund. This fund helps ensure that grain producers will be paid for the grain they ship to contributing grain dealers. If a contributing grain dealer fails to pay a producer or producer agent, the fund may pay up to 80% of the first \$60,000 of the producer's unpaid claim, and up to 75% of any additional unpaid claim.

(b) The following statement if the grain dealer is a contributing grain dealer and is required to file security under s. 126.16 (1) (b), Stats., but is not required to file security under s. 126.16 (1) (a), Stats.:

IMPORTANT NOTICE

[Name of grain dealer] contributes to Wisconsin's Agricultural Producer Security Fund. This fund helps ensure that grain producers will be paid for the grain they ship to contributing grain dealers. If a contributing grain dealer fails to pay a producer or producer agent, the fund may pay up to 80% of the first \$60,000 of the producer's unpaid claim, and up to 75% of any additional unpaid claim. We have also filed security with the State of Wisconsin to help secure grain payments to producers. The security is at least equal to the highest total unpaid obligations that we have had, at any time during the past 12 months, under deferred payment contracts. The security is in the following form(s): *[Specify forms of security]*.

(c) The following statement if the grain dealer is not a contributing grain dealer and is required to file security under s. 126.16 (1) (a), Stats.:

IMPORTANT NOTICE

[Name of grain dealer] does not contribute to Wisconsin's Agricultural Producer Security Fund. We have filed security with the State of Wisconsin to cover part, but not all, of our grain payment obligations to grain producers and producer agents. The security is at least equal to the sum of the following:

- 35% or our average monthly payments for the 3 months during the past 12 months in which we had the largest monthly payments for producer grain.
- Our highest total unpaid obligations, at any time during the past 12 months, under deferred payment contracts.

The security is in the following form(s): *[specify form(s) of security]*.

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

Subchapter III — Grain Warehouse Keepers

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

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

ATCP 99.22 Grain warehouse keeper licensing.

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

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

each vertical foot of the grain bin based on the bushels per foot for that vertical foot and the horizontal cross-sectional shape of the grain bin at that level.

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

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

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

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

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

(2) LIABILITY DISCLOSURES. A financial statement shall include a detailed description of all notes, mortgages and other long-term liabilities not due or payable within one year. The description shall be included in the financial statement notes, or as an attachment to the financial statement. The description shall indicate the nature of the liabilities, the due dates and the payment terms.

(3) LIABILITY CLASSIFICATION. A financial statement shall classify, as current liabilities, notes payable that do not have specific due dates.

(4) ASSET DISCLOSURES. (a) A financial statement shall specifically identify and explain, in the financial statement notes or as an attachment to the financial statement, the following assets:

1. Every non-trade note or account receivable from an officer, director, employee, partner, or stockholder, or from a member of the family of any of those individuals.
2. Every note or account receivable from a parent organization, a subsidiary, or an affiliate, other than an employee.
3. Every note or account that has been receivable for more than one year, unless the grain warehouse keeper has established an offsetting reserve for uncollectible notes and accounts receivable.

(b) A financial statement shall include at least one of the following:

1. An allowance for doubtful or uncollectible receivables. The notes to the financial statement shall describe the method used to account for doubtful or uncollectible receivables.
2. A summary classifying the age of all notes and accounts receivable.

(5) ADDITIONAL INFORMATION. A financial statement shall separately and clearly disclose, in the financial statement notes or as an attachment to the financial statement, all of the following information for each kind of grain as of the date of the balance sheet:

- (a) The total number of bushels of grain in the warehouse keeper's warehouse.
- (b) The total number of bushels of grain forwarded to another warehouse keeper, for which the warehouse keeper filing the financial statement holds a warehouse receipt.
- (c) The combined total bushels of grain under pars. (a) and (b).
- (d) The total number of bushels of grain that the warehouse keeper is obligated to store for depositors who hold original negotiable warehouse receipts issued by the warehouse keeper.
- (e) The total number of bushels of grain that the warehouse keeper is obligated to store for depositors who hold original non-negotiable warehouse receipts issued by the warehouse keeper.
- (f) The total number of bushels of grain that the warehouse keeper is obligated to store for depositors who hold scale tickets or other types of receipts, except for negotiable and nonnegotiable warehouse receipts, issued by the warehouse keeper.
- (g) The combined total bushels of grain, under pars. (d) to (f), that the warehouse keeper is obligated to store for depositors.
- (h) The total number of bushels of grain to which the warehouse keeper claims title.
- (i) The total number of bushels of grain for which the warehouse keeper has issued outstanding negotiable warehouse receipts that are held as collateral by creditors.
- (j) The warehouse keeper's net grain position.

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

1. The individual liability adjustments and offsetting assets are disclosed in the financial statement notes or in an attachment to the financial statement.
2. No individual liability adjustment exceeds the corresponding asset, identified in a note or attachment to the financial statement, that justifies the liability adjustment.
3. Liability adjustments and offsetting assets are determined as of the date of the balance sheet.

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

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

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

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

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

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

(a) The attachment shall be prepared on the letterhead of the certified public accountant who reviewed or audited the financial statement.

(b) The certified public accountant who reviewed or audited the financial statement shall certify, in the attachment, whether the certified public accountant has reviewed or audited the attachment.

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

ATCP 99.26 Grain warehouse keeper; disclosure to depositors. (1) DISCLOSURE REQUIRED.

A grain warehouse keeper shall make a disclosure under sub. (2) to every grain producer or producer agent who is a depositor for whom the grain warehouse keeper stores grain in this state. The grain warehouse keeper shall make the disclosure, in the form prescribed under sub. (2), in a written document given to the depositor. The disclosure shall be clear and conspicuous, and shall be set apart from every other writing. The grain warehouse keeper shall make the disclosure at all of the following times:

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

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

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

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

(a) The following statement if the grain warehouse keeper is a contributing grain warehouse keeper who is not required to file security under s. 126.31 (1), Stats.:

IMPORTANT NOTICE

***[Name of grain warehouse keeper]* contributes to Wisconsin's Agricultural Producer Security Fund. This fund helps secure producer grain stored in warehouses operated by contributing grain warehouse keepers. If a contributing grain warehouse keeper fails to return producer grain on demand, the fund may reimburse the producer (or producer agent) for up to \$100,000 worth of grain.**

(b) The following statement if the grain warehouse keeper is not a contributing grain warehouse keeper and is required to file security under s. 126.31 (1), Stats.:

IMPORTANT NOTICE

***[Name of grain warehouse keeper]* does not contribute to Wisconsin's Agricultural Producer Security Fund. We have filed security with the State of Wisconsin to cover part, but not all, of our grain storage obligations. The security is at least equal to 20% of the current local market value of grain stored in our Wisconsin warehouse(s). The security is in the following form(s): *[specify forms of security]*.**

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