

Clearinghouse Rule 96-015

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

Clearinghouse Rule
No. 96-015

CERTIFICATION:

I, Alan Tracy, Secretary of the Wisconsin Department of Agriculture, Trade and Consumer Protection and custodian of the department's official records, hereby certify that the attached rulemaking order relating to grain warehouse keepers and grain dealers was signed and adopted by the Department on July 12, 1996.

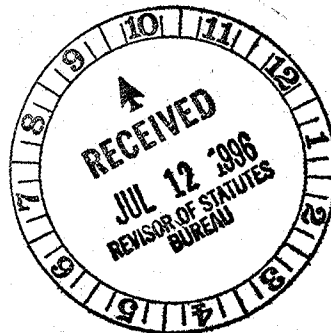
I further certify that I have compared the attached copy to the original on file in the department, and that the attached copy is a complete and accurate copy of the original.

Signed and sealed this 11th day of July, 1996.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____

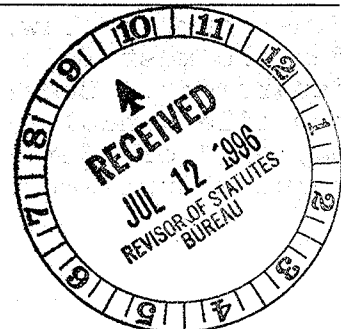

Alan T. Tracy, Secretary



9-1-96

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

1 The state of Wisconsin department of agriculture, trade and
2 consumer protection repeals ATCP 99.14(1)(i), 99.50(5) and 99.68;
3 renumbers 99.58(b) and (c); renumbers and amends ATCP 99.01(31)
4 and (32) and 99.58(a) and (d); amends ATCP 99.01(7)(intro.) and
5 (c), (8), (9)(intro.), (12), (13), (15)(intro.) and (b), (17) to
6 (20), (21)(intro.), (23), (24)(intro.), (26), (33) and (36), ch.
7 ATCP 99 subch. II (note), ATCP 99.02(title), (1)(title) and (1),
8 (2)(intro.) and (a) to (c), (3)(a)(title), (a) to (c), (d)(title)
9 and (d), (4), (5)(title) and (5), 99.04(1)(a), (2), (3)(title)
10 and (3), 99.08(1)(a) and (c), 99.14(1)(intro.), (g) and (h),
11 99.16(1)(a), 99.18(6)(b), 99.20(1), (2)(b), (c) and (e), 99.22(2)
12 and (4), 99.24, 99.34(1)(intro.), 99.36(4)(b), 99.40(2), (3) and
13 (5)(b), 99.44(8)(b), 99.48, 99.54, 99.70(1), 99.72(1)(a),
14 99.74(3), (4)(a) and (6)(a), 99.76 and 99.78(1); repeals and
15 recreates ATCP 99.01(3)(a), (6)(e) and (30), 99.06, 99.14(2),
16 99.22(title), (1), (3) and (5), 99.26, 99.28, 99.30, 99.32,
17 99.42; and creates ATCP 99.01(8m), (11m), (33m) and (38),
18 99.02(3)(b)7. to 9., and 99.47; relating to grain warehouse
19 keepers and grain dealers.



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

Statutory authority: ss. 127.02(3)(d) and 127.15, Stats.
Statutes interpreted: ch. 127, Stats.

In order to protect grain producers, the department of agriculture, trade and consumer protection currently regulates grain warehouse keepers and grain dealers under ch. 127, Stats. Grain warehouse keepers and grain dealers must be licensed, must file financial statements with the department, and must file security with the department if they fail to meet minimum financial standards.

The legislature recently made substantial changes to the grain security law under ch. 127, Stats. The changes, contained in 1995 Wisconsin Act 42, took effect on September 1, 1995.

The department has adopted rules under ch. ATCP 99, Wis. Adm. Code, to interpret ch. 127, Stats. This rule amends the department's current rules to incorporate the recent legislative changes. This rule also increases license and inspection fees, clarifies financial statement and security filing requirements, simplifies the disclosures which grain dealers must make to producers, and makes other changes designed to clarify the current rules.

Licensing Grain Warehouse Keepers and Grain Dealers

1995 Wis. Act 42 requires warehouse keepers and grain dealers to hold a "license" from the department, rather than a "registration certificate" as before. This rule incorporates this new terminology.

1995 Wis. Act 42 created a new license category of "class B2" grain dealers. "Class B2" grain dealers are feed mill operators who buy less than \$50,000 worth of grain from producers per year, and who use no "deferred payment" or "deferred price" contracts. "Class B2" grain dealers are no longer licensed as class B grain dealers. They will pay lower license fees than class B grain dealers, and will not have to file annual financial statements or meet minimum financial standards. This rule incorporates the new license category.

Financial Statements

Under current law, grain warehouse keepers and certain grain dealers must file annual financial statements with the department. Under 1995 Wis. Act 42, class B grain dealers must now file annual financial statements if they use "deferred payment" or "deferred price" contracts. The department may require supplementary or interim financial statements, as

necessary.

This rule modifies current rules related to financial statements, consistent with ch. 127, Stats.:

- It updates and clarifies current filing requirements, consistent with ch. 127, Stats.
- It clarifies current requirements related to the form and content of financial statements. It also clarifies which financial statements must be reviewed or audited by a CPA.
- It allows sole proprietors to prepare portions of their financial statements on a historical cost basis, thereby saving accounting costs.
- It allows the department, for good cause, to extend a filing deadline for up to 30 days.

Minimum Financial Standards

Under current law, grain warehouse keepers and certain grain dealers must meet minimum financial standards. 1995 Wis. Act 42 made the following changes which are incorporated in this rule:

- It required class B grain dealers to meet minimum financial standards if they use "deferred payment" or "deferred price" contracts.
- It changed the minimum financial standards for grain dealers to reflect financial risk. Under the new standards:
 - * Grain dealers must have a current ratio of at least 1.25 to 1.0 at fiscal year end, and at least 1.0 to 1.0 at other times.
 - * Grain dealers must have total assets which exceed total liabilities by at least \$15,000, or by the amount of equity needed to achieve a debt-to-equity ratio of not more than 5.0 to 1.0, whichever is greater. The equity requirement is no longer capped at a maximum of \$500,000.
- It made allowances for normal seasonal fluctuations of certain assets and liabilities. Under 1995 Wis. Act 42 and this rule, a warehouse keeper or grain dealer may offset certain liabilities against certain current assets, so that normal seasonal and operational fluctuations do not have an undue impact on equity requirements.

Security Requirements

Under current law, grain warehouse keepers and certain grain dealers must file security with the department if they fail to meet minimum financial standards. 1995 Wis. Act 42 made the following changes which are incorporated in this rule:

- It required class B grain dealers using "deferred payment" or "deferred price" contracts to file security with the department if they fail to meet minimum financial standards.
- It changed the method used to calculate the amount of security required of grain dealers. Under 1995 Wis. Act 42 and this rule, a grain dealer must file security equal to the sum of the following:
 - * The total amount which the grain dealer owed to producers on "deferred payment" contracts as of the last day of the previous month.
 - * The total amount which the grain dealer owed to producers on "deferred price" contracts as of the last day of the previous month (based on contract pricing formulas and market prices on that day).
 - * Beginning September 1, 1996, an amount equal to 35% of the dollar amount of the grain dealer's average monthly purchases from producers for the 3 months in which the grain dealer made the largest monthly purchases from producers during the preceding 12 months. (1995 Wis. Act 42 increased this percentage in stages, from 20% in the year ending August 31, 1996, to 35% in the year beginning September 1, 1996.)
- It eliminated the former security cap of \$500,000 for warehouse keepers and grain dealers.
- It eliminated, as a form of security that may be filed with the department, a security interest in grain inventory or accounts receivable.

Monthly Reports of Grain Purchases

Under current law, certain grain dealers who fail to meet minimum financial standards must file monthly reports with the department showing amounts of grain purchased. 1995 Wis. Act 42 extended this monthly reporting requirement to class B grain dealers who use "deferred payment" or "deferred price" contracts (if they fail to meet minimum financial standards). The department uses the monthly reports to monitor the adequacy of the security filed by grain dealers. This rule incorporates the statutory reporting requirements.

"Deferred Payment" and "Deferred Price" Contracts

"Deferred payment" and "deferred price" contracts, if not properly managed, can create serious financial risks. 1995 Wis. Act 42 made the following changes which are incorporated in this rule:

- The amount of security required of grain dealers depends, in part, on their use of "deferred payment" or "deferred price" contracts.
- A grain purchase contract must be in writing unless the grain dealer pays within 7 days. The new 7-day grace period recognizes operational realities in the grain business.
- A grain dealer must make full and final payment under a "deferred payment" or "deferred price" contract by a specified payment date which is not more than 180 days after the contract price is determined.

Warehouse Keeper and Grain Dealer Disclosures to Depositors and Producers

Under current rules, a warehouse keeper or grain dealer must disclose to depositors and producers the basis on which the warehouse keeper or grain dealer is licensed. The warehouse keeper or grain dealer must make this disclosure, in writing, whenever the warehouse keeper or grain dealer receives grain from a producer or depositor.

As a result of the statutory changes made by 1995 Wis. Act 42, the disclosures required by the current rule are no longer fully accurate. This rule simplifies and shortens the disclosures which warehouse keepers and grain dealers must make, and modifies the disclosures to make them consistent with current law.

This rule also reduces the frequency with which warehouse keepers and grain dealers must make written disclosures to producers and depositors. Under this rule, a warehouse keeper or grain dealer must make a written disclosure to a producer or depositor only at the following times in each license year:

- On the first day on which the grain dealer receives grain from the producer, or on the first day that the warehouse keeper issues a storage receipt to the depositor.
- On the first day, following any change in the basis on which the warehouse keeper or grain dealer is licensed, on which the grain dealer receives grain from the producer or the warehouse keeper issues a storage receipt to the depositor.

Ownership of Grain

This rule clarifies that when a grain owner delivers grain to a person who is both a warehouse keeper and a grain dealer, the grain owner retains ownership rights until one of the following occurs:

- The recipient acquires title to the grain pursuant to a sales contract that is documented by a purchase receipt or other writing.
- The grain owner transfers title to a third person.

Fee Changes; General

Under the grain security program, the department:

- Licenses grain warehouse keepers and grain dealers.
- Reviews annual financial statements for compliance with minimum financial standards.
- Demands security from warehouse keepers and grain dealers who fail to meet minimum financial standards. The department holds the security for the benefit of producers in the event that a grain warehouse keeper or grain dealer defaults in its obligations to producers.
- Monitors security amounts for compliance with legal standards, based on the amount of a warehouse keeper's or grain dealer's financial obligations to producers.
- Audits grain accounts and inspects grain inventories for compliance with legal requirements.
- Investigates default claims, and determines the amount of actual defaults to producers. The department may convert available security to pay allowed producer claims, or take other legal action to recover unpaid claims for producers.
- Regulates the business practices of grain warehouse keepers and grain dealers to reduce financial risks to producers, and to prevent fraudulent or deceptive practices.
- Enforces ch. 127, Stats., and ch. ATCP 99, Wis. Adm. Code.

The department's grain security program is funded by a combination of license fees (PRO, or program revenue), general tax dollars (GPR, or general purpose revenue) and federal contracts (FED revenue). Under the 1995-97 biennial budget act, a total of 1.68 FTE (full-time equivalent) positions in the department's grain security program were converted from GPR to

PRO funding, effective July 1, 1997.

This rule increases license and inspection fees for grain warehouse keepers and grain dealers in order to fund the conversion of staff from GPR to PRO revenue, and in order to offset projected license revenue shortfalls resulting from consolidated ownership of grain warehouse and grain dealer operations. The rule also changes the fee structure to create a more equitable distribution of fees.

Current license fees generate an average of approximately \$179,000 per year. The new fees will generate approximately \$223,000 in 1996 and \$270,000 in each subsequent year. License fees will fund approximately 59% of overall program costs, compared to 31% currently.

Warehouse Keepers; Fee Changes

This rule increases grain warehouse fees as follows:

- The current basic license fee of \$50 is increased to \$75 effective September 1, 1996, and to \$100 effective September 1, 1997.
- The current license fee of \$25 for each additional business location is increased to \$50 effective September 1, 1996, and to \$75 effective September 1, 1997.
- The current inspection fee of \$300 for warehouses with storage capacity of less than 150,000 bushels is increased to \$375 effective September 1, 1996, and to \$425 effective September 1, 1997.
- The current inspection fee of \$325 for warehouses with storage capacity of at least 150,000 bushels but less than 250,000 bushels is increased to \$425 effective September 1, 1996, and to \$475 effective September 1, 1997.
- The current inspection fee of \$375 for warehouses with storage capacity of at least 250,000 bushels but less than 500,000 bushels is increased to \$475 effective September 1, 1996, and to \$525 effective September 1, 1997.
- The current inspection fee of \$425 for warehouses with storage capacity of at least 500,000 bushels but less than 750,000 bushels is increased to \$525 effective September 1, 1996, and to \$575 effective September 1, 1997.
- The current inspection fee of \$475 for warehouses with storage capacity of at least 750,000 bushels but less than 1,000,000 bushels is increased to \$575 effective September 1, 1996, and to \$625 effective September 1, 1997.

- The current inspection fee of \$525 for warehouses with storage capacity of at least 1,000,000 bushels but less than 2,000,000 bushels is increased to \$700 effective September 1, 1996, and to \$725 effective September 1, 1997.
- The current inspection fee of \$525 for warehouses with storage capacity of at least 2,000,000 bushels but less than 3,000,000 bushels is increased to \$800 effective September 1, 1996, and to \$825 effective September 1, 1997.
- The current inspection fee of \$525 for warehouses with storage capacity of at least 3,000,000 bushels but less than 4,000,000 bushels is increased to \$900 effective September 1, 1996, and to \$925 effective September 1, 1997.
- The current inspection fee of \$525 for warehouses with storage capacity of 4,000,000 bushels or more is increased to \$1,000 effective September 1, 1996, and to \$1,025 effective September 1, 1997.

Grain Dealers; Fee Changes

This rule increases grain dealer fees as follows:

- A class A grain dealer currently pays a basic license fee of \$400, a fee of \$10 for each additional truck (if more than one), and a surcharge of \$250 if the grain dealer's annual financial statement is not audited. Effective September 1, 1996, this rule increases the basic license fee to \$500, imposes a fee of \$175 for each additional business location, increases the truck fee to \$25 per additional truck, and increases the surcharge for an unaudited financial statement to \$350. Effective September 1, 1997, this rule increases the basic license fee to \$525, increases the fee for each additional business location to \$225, increases the truck fee to \$45 per additional truck, and increases the surcharge for an unaudited financial statement to \$425.
- A class B grain dealer currently pays a basic license fee of \$175 and a fee of \$10 for each additional truck (if more than one). Effective September 1, 1996, this rule increases the basic license fee to \$200, increases the truck fee to \$25 per additional truck, and imposes a surcharge of \$350 if the grain dealer's annual financial statement is not audited. Effective September 1, 1997, this rule increases the basic license fee to \$225, increases the truck fee to \$45 per additional truck, and increases the surcharge for an unaudited financial statement to \$425.
- A class B2 grain dealer currently pays a basic license fee of \$50 and a fee of \$10 for each additional truck (if more than one). Effective September 1, 1996, this rule increases

the truck fee to \$25 per additional truck. Effective September 1, 1997, this rule increases the basic license fee to \$75, and increases the truck fee to \$45 per additional truck.

- A class C grain dealer is not required to be licensed, but may voluntarily apply for a license. A class C grain dealer who voluntarily applies for a license must currently pay a basic license fee of \$50. Effective September 1, 1996, this rule increases the basic license fee to \$75.
- Under current law, a grain dealer must pay a license fee surcharge of \$500 if the grain dealer is caught operating without a required license, except that 1995 Wis. Act 42 provides for a lesser surcharge of \$250 for class B2 grain dealers. This rule incorporates the lesser surcharge for class B2 grain dealers.

Rule Organization and Drafting

This rule makes a number of drafting changes to improve the organization and clarity of the current rules, and to make the current rules more consistent with the statutory language enacted under 1995 Wisconsin Act 42.

1 **SECTION 1.** ATCP 99.01(3)(a) is repealed and recreated to
2 read:

3 ATCP 99.01(3)(a) Expressed an opinion whether or not the
4 financial statements present fairly, in all material respects,
5 the financial position of a warehouse keeper or grain dealer as
6 of a specific date or for a specific period, according to one of
7 the following:

- 8 1. Generally accepted accounting principles.
- 9 2. The historical cost basis method of accounting if the
10 auditor's opinion pertains to a sole proprietor's personal
11 financial statement prepared on a historical cost basis.

12 **SECTION 2.** ATCP 99.01(6)(e) is repealed and recreated to
13 read:

1 ATCP 99.01(6)(e) An irrevocable bank letter of credit.

2 SECTION 3. ATCP 99.01(7)(intro.), (7)(c) and (8) are
3 amended to read:

4 ATCP 99.01(7)(intro.) "Class A grain dealer" means a
5 person, other than an exempt grain dealer, a class B grain
6 dealer, a class B2 grain dealer, or a class C grain dealer, who
7 does any of the following:

8 (7)(c) Spends \$400,000 or more during that person's fiscal
9 year to buy grain from producers, and either feeds grain to
10 livestock or poultry or operates a feed mill or other
11 manufacturing facility in which grain is used.

12 (8) "Class B grain dealer" means a person ~~that~~, other than
13 a class B2 grain dealer, who buys grain from producers only in
14 connection with ~~or incidental to~~ the operation of a feed mill or
15 manufacturing facility operated by that person, and who spends
16 less than \$400,000 during that person's fiscal year to buy grain
17 from producers.

18 SECTION 4. ATCP 99.01(8m) is created to read:

19 ATCP 99.01(8m) "Class B2 grain dealer" means a person who
20 buys grain from producers only in connection with the operation
21 of a feed mill or other manufacturing facility operated by that
22 person, who spends less than \$50,000 during that person's fiscal
23 year to buy grain from producers, and who does not buy any grain
24 under a deferred payment contract or a deferred price contract.

25 SECTION 5. ATCP 99.01(9)(intro.) is amended to read:

26 ATCP 99.01(9) "Class C grain dealer" means a feeder of

1 livestock or poultry, or a producer, or a feeder of livestock or
2 poultry, who buys grain from producers solely for his or her own
3 use as a feed or seed, or a producer that is engaged solely in
4 selling grain that he or she has produced. "Class C grain
5 dealer" does not include a person who does either any of the
6 following:

7 **SECTION 6.** ATCP 99.01(11m) is created to read:

8 ATCP 99.01(11m) "Custody" means possession of or control
9 over grain, exercised directly or through an employe or agent.

10 **SECTION 7.** ATCP 99.01(12), (13), (15) (intro.) and (b), (17)
11 to (20), (21) (intro.), (23), (24) (intro.) and (26) are amended to
12 read:

13 (12) "Deferred payment contract" means a contract for the
14 sale of grain from a producer to a grain dealer, under which the
15 grain dealer takes custody of the grain more than 7 calendar days
16 before ~~the grain dealer pays~~ paying the producer in full for ~~that~~
17 the grain.

18 (13) "Deferred price contract" means a contract for the
19 sale of grain from a producer to a grain dealer, under which the
20 grain dealer takes custody of the grain before the grain dealer
21 and the producer agree on the price ~~which~~ that the grain dealer
22 will pay ~~the producer~~ for ~~that~~ the grain.

23 (15) (intro.) "Depositor" means either any of the following:

24 (15) (b) A person who owns or legally holds a scale ticket,
25 warehouse receipt or other document, that is issued by a
26 warehouse keeper for grain, ~~which~~ and that entitles that person

1 to receive possession of that grain or its equivalent.

2 (17) "Equity statement" means a report of the change in
3 equity from the beginning to the end of the accounting period
4 ~~applicable to~~ covered by the report.

5 (18) "Exempt grain dealer" means a ~~grain dealer~~ person who
6 buys grain from producers, and who makes full and final cash
7 payment for all grain which ~~the grain dealer~~ that person receives
8 from producers, ~~before the grain dealer takes~~ taking custody of
9 that grain.

10 (19) "Exempt warehouse keeper" means a warehouse keeper
11 ~~who, for all of that warehouse keeper's warehouse facilities,~~ has
12 a ~~combined~~ total of less than 50,000 bushels of grain obligations
13 to others, for all of the warehouse keeper's warehouses, at any
14 time during ~~the registration~~ a license year. "Exempt warehouse
15 keeper" does not include a warehouse keeper who represents to any
16 person that the warehouse ~~operation~~ keeper is bonded, or that
17 ~~depositors are otherwise secured against loss~~ has filed security
18 with the department for the benefit of depositors.

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

21 (21) (intro.) "Financial statement" means ~~either~~ any of the
22 following:

23 (23) "Grain" means corn, wheat, soybeans, oats, barley,
24 rye, buckwheat, sorghum, flaxseed, milo, sunflower seed and mixed
25 grain as defined in the ~~Federal Grain Standards Act of 1916 (7~~
26 ~~USC 71 et. seq.)~~ as amended on July 1, 1980. The term federal

1 grain standards act, 7 USC 71 to 87k. "Grain" does not include
2 canning crops for processing or grain used or intended for use
3 solely for ~~sewing~~ planting purposes.

4 (24) (intro.) "Grain dealer" means a class A grain dealer,
5 class B grain dealer, class B2 grain dealer, class C grain dealer
6 or exempt grain dealer. "Grain dealer" does not include any of
7 the following:

8 (26) "Interim statement" means a financial statement
9 prepared ~~as of a date other than the end of~~ for a period shorter
10 than a fiscal year.

11 **SECTION 8.** ATCP 99.01(30) is repealed and recreated to
12 read:

13 ATCP 99.01(30) "Producer" means a person who is not a class
14 A grain dealer, class B grain dealer, class B2 grain dealer or
15 exempt grain dealer, but who is one of the following:

16 (a) An owner, tenant or operator of land who is engaged in
17 growing and producing grain on land in this state.

18 (b) An owner, tenant or operator of land who is engaged in
19 growing and producing grain on land outside of this state and who
20 sells that grain to a grain dealer in this state or deposits that
21 grain with a warehouse keeper in this state.

22 **SECTION 9.** ATCP 99.01(31) and (32) are renumbered (27g) and
23 (27r) and, as renumbered, are amended to read:

24 ATCP 99.01(27g) "Registered Licensed grain dealer" means a
25 grain dealer who holds a ~~certificate of registration~~ license
26 under s. ATCP 99.22.

1 (27r) "~~Registered~~ Licensed warehouse keeper" means a
2 warehouse keeper who holds a ~~certificate of registration~~ license
3 under s. ATCP 99.02.

4 **SECTION 10.** ATCP 99.01(33) is amended to read:

5 (33) "Reviewed financial statement" means a financial
6 statement, other than an audited financial statement, that ~~is~~
7 ~~both~~ meets all of the following requirements:

8 (a) ~~Sworn and notarized by the~~ The warehouse keeper or
9 grain dealer attests in writing, under oath, that the financial
10 statement is accurate.

11 (b) ~~Reviewed~~ The financial statement is reviewed according
12 ~~to generally accepted accounting principles~~ by an independent
13 certified public accountant, or a an independent public
14 accountant who holds a certificate of authority under ch. 442,
15 Stats.

16 **SECTION 11.** ATCP 99.01(33m) is created to read:

17 ATCP 99.01(33m) "Scale ticket" means a receipt, issued by a
18 warehouse keeper or grain dealer, that documents the weight of
19 grain delivered to the warehouse keeper or grain dealer.

20 **SECTION 12.** ATCP 99.01(36) is amended to read:

21 ATCP 99.01(36) "Warehouse" means any building, bin or
22 storage facility used for receiving, storing, conditioning,
23 shipping or handling grain. "Warehouse" does not include a
24 transport vehicle vehicles or a grain drier used to dry grain on
25 ~~a farm~~ facilities used for on-farm drying of grain.

26 **SECTION 13.** ATCP 99.01(38) is created to read:

1 ATCP 99.01(38) "Warehouse receipt" means a receipt for
2 grain, issued by a warehouse keeper to a depositor, which is also
3 a document of title under s. 401.201(15), Stats.

4 **SECTION 14.** Ch. ATCP 99, subch. II (note) is amended to
5 read:

6 NOTE: A ~~registered~~ licensed warehouse keeper may store
7 grain for producers, but may not buy grain from
8 producers unless the warehouse keeper also complies
9 with subch. III related to grain dealers. This
10 subchapter applies to "exempt warehouse keepers" except
11 where they are specifically excluded from coverage.

12 **SECTION 15.** ATCP 99.02(title), (1)(title) and (1),
13 (2)(intro.) and (a) to (c), and (3)(a)(title), (a) and (b) are
14 amended to read:

15 **ATCP 99.02(title) WAREHOUSE KEEPERS; LICENSE.** (1)(title)
16 LICENSE REQUIRED. No warehouse keeper, other than an exempt
17 warehouse keeper, may operate without an annual warehouse
18 keeper's ~~certificate of registration~~ license issued by the
19 department. A ~~certificate of registration~~ license expires on
20 August 31 annually and is not transferable between persons or
21 warehouse facilities.

22 (2)(intro.) APPLICATION. An applicant for an annual
23 ~~certificate of registration~~ license under sub. (1) shall submit
24 an application in writing, on a form provided by the department.
25 The application shall include all of the following:

26 (2)(a) Any information reasonably required by the
27 department for ~~registration~~ licensing purposes, including a
28 description of the location and size of every warehouse which the
29 warehouse keeper operates in this state.

1 (2) (b) All applicable fees and surcharges required under
2 sub. (3).

3 (2) (c) If the warehouse keeper has not previously applied
4 for a ~~certificate of registration license~~, a financial statement
5 as required under s. ATCP 99.06(1).

6 (3) (a) (title) License fee. To obtain an annual ~~certificate~~
7 ~~of registration license~~, a warehouse keeper shall pay an annual
8 ~~registration license~~ fee of ~~\$50~~ \$75. Beginning on September 1,
9 1997, the license fee is \$100. A warehouse keeper operating more
10 than one warehouse in this state shall pay an additional
11 ~~registration license~~ fee of ~~\$25~~ \$50 for each additional location.
12 Beginning on September 1, 1997, the additional license fee is \$75
13 for each additional location.

14 (3) (b) Inspection fee. To obtain an annual ~~certificate of~~
15 ~~registration license~~, a warehouse keeper shall pay an annual
16 inspection fee based on the combined storage capacity of all of
17 the warehouse keeper's warehouses in this state, as follows:

18 1. If the storage capacity is less than 150,000 bushels,
19 the inspection fee is ~~\$300~~ \$375. Beginning on September 1, 1997,
20 the fee is \$425.

21 2. If the storage capacity is at least 150,000 bushels but
22 less than 250,000 bushels, the inspection fee is ~~\$325~~ \$425.
23 Beginning on September 1, 1997, the fee is \$475.

24 3. If the storage capacity is at least 250,000 bushels but
25 less than 500,000 bushels, the inspection fee is ~~\$375~~ \$475.
26 Beginning on September 1, 1997, the fee is \$525.

1 4. If the storage capacity is at least 500,000 bushels but
2 less than 750,000 bushels, the inspection fee is ~~\$425~~ \$525.
3 Beginning on September 1, 1997, the fee is \$575.

4 5. If the storage capacity is at least 750,000 bushels but
5 less than 1,000,000 bushels, the inspection fee is ~~\$475~~ \$575.
6 Beginning on September 1, 1997, the fee is \$625.

7 6. If the storage capacity is at least one million
8 1,000,000 bushels or more, but less than 2,000,000 bushels, the
9 inspection fee is ~~\$525~~ \$700. Beginning on September 1, 1997, the
10 fee is \$725.

11 **SECTION 16.** ATCP 99.02(3)(b)7. to 9. are created to read:

12 ATCP 99.02(3)(b)7. If the storage capacity is at least
13 2,000,000 bushels but less than 3,000,000 bushels, the inspection
14 fee is \$800. Beginning on September 1, 1997, the fee is \$825.

15 8. If the storage capacity is at least 3,000,000 bushels
16 but less than 4,000,000 bushels, the inspection fee is \$900.
17 Beginning on September 1, 1997, the fee is \$925.

18 9. If the storage capacity is 4,000,000 bushels or more,
19 the inspection fee is \$1,000. Beginning on September 1, 1997,
20 the fee is \$1,025.

21 **SECTION 17.** ATCP 99.02(3)(c), (d)(title) and (d), (4),
22 (5)(title) and (5) are amended to read:

23 ATCP 99.02(3)(c) Supplementary inspection fee. To obtain
24 an annual ~~certificate of registration license~~, a warehouse keeper
25 shall pay, in addition to the annual inspection fee specified
26 under par. (b), a supplementary annual inspection fee of ~~\$100~~

1 \$175 for each additional warehouse location which the warehouse
2 keeper operates in this state, other than the warehouse keeper's
3 principal warehouse. Beginning on September 1, 1997, the fee is
4 \$225 for each additional location.

5 (3) (d) (title) Surcharge for operating without a license.

6 An applicant for an annual warehouse keeper's ~~certificate of~~
7 ~~registration~~ license shall pay a ~~registration~~ license fee
8 surcharge of \$500 if the department determines that, within 365
9 days prior to submitting an application for a warehouse keeper's
10 ~~certificate of registration~~ license, the applicant acted as a
11 warehouse keeper without a ~~certificate of registration~~ license in
12 violation of s. 127.02(1), Stats. Payment of the ~~registration~~
13 license fee surcharge does not relieve the applicant of other
14 civil or criminal liability that may result from acting as a
15 warehouse keeper without a ~~certificate of registration~~ license,
16 but does not constitute evidence of a violation of law.

17 (4) ACTION GRANTING OR DENYING APPLICATION. The department
18 shall grant or deny an application under sub. (2) within 60 days
19 after the department receives a complete application including
20 all applicable fees and surcharges.

21 (5) (title) LICENSE DISPLAYED. A warehouse keeper required
22 to hold a ~~certificate of registration~~ license under sub. (1)
23 shall prominently display a true copy of that ~~certificate~~ license
24 at each warehouse which the warehouse keeper operates in this
25 state.

26 SECTION 18. ATCP 99.04(1)(a), (2), (3)(title) and (3) are

1 amended to read:

2 ATCP 99.04(1)(a) Every warehouse keeper shall maintain fire
3 and extended coverage insurance issued by an insurance company
4 authorized to do business in this state. The insurance policy
5 shall cover all grain in the custody of the warehouse keeper,
6 whether held for others or owned by the warehouse keeper, at the
7 full local market value of the grain. This paragraph does not
8 apply to an exempt warehouse keeper ~~unless the exempt warehouse~~
9 ~~keeper claims to be a bonded warehouse keeper.~~

10 (2) INSURANCE DISCLOSURE. Before storing grain for any
11 depositor, ~~every~~ a warehouse keeper, including an exempt
12 warehouse keeper, shall clearly disclose in writing, and publicly
13 post in a conspicuous area location observable by the public, all
14 of the following information:

15 (a) Whether the grain is insured against fire and other
16 natural perils. The disclosure shall ~~specify~~ list the types of
17 perils, if any, that are covered.

18 (b) Whether the warehouse keeper has liability insurance
19 covering the warehouse keeper's grain storage operations, and
20 whether the insurance covers liability resulting from ~~the~~
21 ~~warehouse keeper's~~ fraud or malfeasance by the warehouse keeper.

22 (3)(title) WAREHOUSE KEEPER'S INSURANCE; DEDUCTIBLES.

23 Neither a ~~an~~ fire and extended coverage insurance policy under
24 ~~par. (a)~~ sub. (1), nor a warehouse keeper's liability insurance
25 policy, may contain any deductible clause which limits the
26 insurer's liability to depositors for the full value of the

1 depositors' covered losses under the policy. This subsection
2 does not prohibit a ~~deductible~~ clause under which the warehouse
3 keeper agrees to indemnify the insurer for a portion of each
4 ~~depositor~~ claim by a depositor that is paid by the insurer under
5 the policy, ~~provided that~~ as long as the ~~deductible~~ clause does
6 not limit the insurer's obligation to pay each depositor the full
7 amount of ~~each~~ the depositor's covered losses .

8 SECTION 19. ATCP 99.06 is repealed and recreated to read:

9 ATCP 99.06 WAREHOUSE KEEPERS; FINANCIAL STATEMENTS. (1)

10 INITIAL FINANCIAL STATEMENT. Every warehouse keeper required to
11 be licensed under s. ATCP 99.02(1) shall file a financial
12 statement with the warehouse keeper's initial application for a
13 license under s. ATCP 99.02.

14 (2) ANNUAL FINANCIAL STATEMENT. (a) Every warehouse
15 keeper required to be licensed under s. ATCP 99.02(1) shall file
16 an annual financial statement with the department.

17 (b) A warehouse keeper shall file an annual financial
18 statement under par. (a) on or before the 15th day of the 4th
19 month beginning after the close of the warehouse keeper's fiscal
20 year. The department may extend the filing deadline by up to 30
21 days in response to a written request from the warehouse keeper,
22 or from an independent certified public accountant or an
23 independent public accountant holding a certificate of authority
24 under ch. 442, Stats., who is auditing or reviewing the financial
25 statement for the warehouse keeper, if the department receives
26 the request on or before the 5th day of the 4th month beginning

1 after the close of the warehouse keeper's fiscal year and if the
2 request states the reason for the extension.

3 (c) An annual financial statement under par. (a) shall be
4 issued and dated prior to the filing deadline under par. (b).
5 The department may not accept an annual financial statement that
6 is issued or dated after the filing deadline.

7 (3) SUPPLEMENTARY OR INTERIM FINANCIAL STATEMENTS. (a)

8 The department may require an exempt warehouse keeper to file an
9 annual financial statement with the department if the department
10 determines that the filing is necessary to protect depositors.

11 (b) The department may require any warehouse keeper,
12 including an exempt warehouse keeper, to file a supplementary
13 financial statement or an interim financial statement whenever
14 the department determines that the filing is necessary to protect
15 depositors.

16 (4) FINANCIAL STATEMENTS; CONTENTS. (a) Except as
17 provided under par. (b)2. or (c), every financial statement under
18 this section shall consist of a balance sheet, income statement,
19 equity statement, statement of cash flows, notes to those
20 statements, and other relevant information required by the
21 department.

22 (b) A sole proprietor's financial statement shall include
23 both of the following:

24 1. A financial statement for the sole proprietor's grain
25 operations.

26 2. A personal financial statement. The personal financial

1 statement shall consist of a statement of financial condition,
2 statement of changes in net worth, notes to the financial
3 statements and other relevant information required by the
4 department for purposes of this chapter and ch. 127, Stats. If a
5 sole proprietor has not previously engaged in business as a
6 warehouse keeper, the sole proprietor's initial personal
7 financial statement under sub. (1) need not include a statement
8 of changes in net worth.

9 (c) If a warehouse keeper, other than a sole proprietor,
10 has not previously engaged in business as a warehouse keeper, the
11 warehouse keeper's initial financial statement under sub. (1) may
12 consist of an opening balance sheet, notes to that balance sheet,
13 and other relevant information required by the department.

14 (5) GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. Every
15 financial statement under this section shall be prepared
16 according to generally accepted accounting principles, except
17 that a sole proprietor's personal financial statement under sub.
18 (4) (b) 2. may be prepared according to the historical cost basis
19 method of accounting.

20 (6) REVIEWED OR AUDITED FINANCIAL STATEMENT. (a) Except
21 as provided under pars. (b) to (d), every financial statement
22 under this section shall be either a reviewed or audited
23 financial statement.

24 (b) A warehouse keeper's financial statement under sub. (1)
25 or (2) shall be an audited financial statement if the warehouse
26 keeper's warehouses have a combined storage capacity of 500,000

1 bushels or more.

2 (c) A sole proprietor's personal financial statement under
3 sub. (4)(b)2. shall be an audited financial statement if it is
4 not prepared according to the historical cost basis method of
5 accounting.

6 (d) The department may accept a supplementary or interim
7 financial statement under sub. (3) which is not a reviewed or
8 audited financial statement if the financial statement includes a
9 sworn and notarized statement, signed by the warehouse keeper,
10 which states that the financial statement is correct.

11 **SECTION 20.** ATCP 99.08(1)(a) and (c) are amended to read:

12 ATCP 99.08(1)(a) ~~At~~ On the date of the warehouse keeper's
13 initial financial statement and at the end of every fiscal year,
14 the warehouse keeper's ratio of current assets to current
15 liabilities shall be at least 1.25 to 1.

16 (1)(c) The warehouse keeper's total assets shall at all
17 times exceed total liabilities, adjusted as provided in s. ATCP
18 99.47, by at least \$50,000, or by the product obtained by
19 multiplying the bushel capacity of the warehouse keeper's
20 warehouse by 10 cents, whichever is greater.

21 **SECTION 21.** ATCP 99.14(1)(intro.), (g) and (h) are amended
22 to read:

23 ATCP 99.14(1)(intro.) **REQUIREMENT.** No warehouse keeper may
24 receive grain from a depositor, for storage, unless the warehouse
25 keeper immediately furnishes the depositor or the depositor's
26 agent with a scale ticket, warehouse receipt or other storage

1 receipt. The Except as provided in pars. (g) and (h), every copy
2 of the scale ticket, warehouse receipt or other storage receipt
3 shall include all of the following:

4 (1)(g) The conspicuous word "NEGOTIABLE," or the
5 conspicuous word "NONNEGOTIABLE," ~~to indicate whether the~~
6 ~~document is negotiable or nonnegotiable~~ if the document is issued
7 in the form of a warehouse receipt. If a warehouse keeper
8 receives depositor-owned grain for storage from another warehouse
9 keeper, every copy of the warehouse receipt shall contain the
10 conspicuous word "NONNEGOTIABLE."

11 (1)(h) A statement indicating that ~~the depositor's right to~~
12 ~~demand delivery of stored grain ends on~~ the depositor must remove
13 the grain from storage by a specified date, which shall be not
14 more than 3 years after the date of deposit. This paragraph does
15 not apply to grain for which the warehouse keeper gives the
16 depositor a warehouse receipt, to grain owned by the commodity
17 credit corporation, or to grain which is pledged as collateral
18 for a price support loan from the agriculture stabilization and
19 conservation service.

20 **SECTION 22.** ATCP 99.14(1)(i) is repealed.

21 **SECTION 23.** ATCP 99.14(2) is repealed and recreated to
22 read:

23 ATCP 99.14(2) GRAIN OWNERSHIP. (a) If a person who is
24 both a warehouse keeper and a grain dealer issues a scale ticket
25 or other receipt for grain, the receipt is considered a storage
26 receipt unless it is clearly designated as a purchase receipt.

1 (b) If a grain owner delivers grain to a person who is both
2 a warehouse keeper and a grain dealer, the grain owner is
3 entitled to the return of that grain or equivalent grain unless
4 one of the following occurs:

5 1. The recipient obtains title to the grain pursuant to a
6 sales contract with the owner that is documented by a purchase
7 receipt or other writing.

8 2. The owner transfers title to another person.

9 **SECTION 24.** ATCP 99.16(1)(a) is amended to read:

10 ATCP 99.16(1)(a) Daily position records for each kind of
11 grain, which will permit the ready determination of total grain
12 in registered licensed storage, total grain under the control of
13 the warehouse keeper, all obligations relating to grain received
14 or withdrawn, and the total amount of grain to which the
15 warehouse keeper claims title as of the close of each business
16 day. If the warehouse keeper maintains a computerized daily
17 position record, or computerized records under par. (b), the
18 warehouse keeper shall generate a hard copy print-out for each
19 business day, unless the computer system can recall and print the
20 records extending back for a period of at least 6 years.

21 **SECTION 25.** ATCP 99.18(6)(b) is amended to read:

22 ATCP 99.18(6)(b) Make any false or misleading statement in
23 any application for a certificate of registration license or in
24 any other statement or report required to be submitted which the
25 warehouse keeper is required to submit to the department under
26 this chapter or ch. 127, Stats.

1 SECTION 26. ATCP 99.20(1), (2)(b), (c) and (e) are amended
2 to read:

3 ATCP 99.20(1) NOTICE REQUIRED. A warehouse keeper shall
4 post a written notice under sub. (2) in a place readily
5 accessible to depositors. The warehouse keeper shall also give
6 each depositor a copy of the notice ~~when~~ at all of the following
7 times during each license year:

8 (a) On the first day on which the warehouse keeper gives
9 ~~the first that depositor a storage receipt to the depositor.~~

10 (b) On the first day, following any change in the basis on
11 which a warehouse keeper is licensed, on which the warehouse
12 keeper gives that depositor a storage receipt.

13 (2)(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 be licensed with the Wisconsin Department of Agriculture,
18 Trade and Consumer Protection. A ~~registered~~ licensed
19 warehouse keeper must meet minimum financial standards or
20 file security with the department. The department also
21 inspects ~~registered~~ licensed grain warehouses annually.
22 Although these requirements promote financial responsibility
23 and safekeeping of grain, they do not guarantee depositors
24 against loss. Each depositor is responsible for determining
25 the credit worthiness of a grain warehouse keeper with whom
26 the depositor stores grain."
27

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

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

1 minimum financial standards:

2
3 ~~(1)~~ 1. A current ratio of at least 1.25 to 1.00.

4
5 ~~(2)~~ 2. Equity equal to \$50,000, or the product of our
6 storage capacity multiplied by 10¢ per bushel,
7 whichever is greater."
8

9 (2) (e) If a grain warehouse keeper is an exempt warehouse
10 keeper, the notice shall contain the following in addition to the
11 statement under par. (b):

12 "(Name of warehouse keeper) is not ~~registered~~ licensed with
13 the department because we store less than 50,000 bushels of
14 grain for depositors. We have not filed financial
15 statements or security with the department, and the
16 department does not make annual examinations of our
17 operations."

18 **SECTION 27.** ATCP 99.22(title) and (1) are repealed and
19 recreated to read:

20 **ATCP 99.22 GRAIN DEALERS; LICENSE.** (1) LICENSE REQUIRED.

21 (a) Except as provided under par. (b), no person may do any of
22 the following:

23 1. Operate as a class A grain dealer unless the person
24 holds an annual class A grain dealer's license issued by the
25 department.

26 2. Operate as a class B grain dealer unless the person
27 holds an annual class A grain dealer license or class B grain
28 dealer license issued by the department.

29 3. Operate as a class B2 grain dealer unless the person
30 holds an annual class A grain dealer license, class B grain
31 dealer license or class B2 grain dealer license issued by the
32 department.

33 (b) Paragraph (a) does not apply to an exempt grain dealer

1 or a class C grain dealer. A class C grain dealer may
2 voluntarily apply for a license.

3 (c) A license under par. (a) expires on August 31 of each
4 year and is not transferable.

5 **SECTION 28.** ATCP 99.22(2) is amended to read:

6 ATCP 99.22(2) APPLICATION. An applicant for a ~~certificate~~
7 ~~of registration~~ license under sub. (1) shall submit an
8 application in writing, on a form provided by the department.
9 The application shall include all of the following:

10 (a) Any information reasonably required by the department
11 for ~~registration~~ licensing purposes.

12 (b) All applicable fees and surcharges required under sub.
13 (3).

14 (c) If the grain dealer has not previously applied for a
15 ~~certificate of registration~~ license, a financial statement if
16 required under s. ATCP 99.26(1).

17 **SECTION 29.** ATCP 99.22(3) is repealed and recreated to
18 read:

19 (3) FEES. (a) Class A grain dealer. To be licensed as a
20 class A grain dealer, a grain dealer shall pay the following
21 annual fees:

22 1. A basic license fee of \$500. For license years
23 beginning on or after September 1, 1997, this fee is \$525.

24 2. A fee of \$175 for each grain dealer business location
25 which the grain dealer operates in this state, other than the
26 grain dealer's principal business location. For license years

1 beginning on or after September 1, 1997, this fee is \$225 per
2 location.

3 3. A fee of \$25 for each truck, in excess of one truck,
4 which the grain dealer owns or leases and uses to haul grain.
5 For license years beginning on or after September 1, 1997, this
6 fee is \$45 per truck.

7 4. A surcharge of \$350 if the most recent financial
8 statement which the grain dealer filed with the department under
9 s. ATP 99.26(1) or (2) was not an audited financial statement.
10 For license years beginning on or after September 1, 1997, this
11 surcharge is \$425.

12 (b) Class B grain dealer. To be licensed as a class B
13 grain dealer, a grain dealer shall pay the following annual fees:

14 1. A basic license fee of \$200. For license years
15 beginning on or after September 1, 1997, this fee is \$225.

16 2. A fee of \$25 for each truck, in excess of one truck,
17 which the grain dealer owns or leases and uses to haul grain.
18 For license years beginning on or after September 1, 1997, this
19 fee is \$45 per truck.

20 3. A surcharge of \$350 if the most recent financial
21 statement which the grain dealer filed with the department under
22 s. ATP 99.26(1) or (2) was not an audited financial statement.
23 For license years beginning on or after September 1, 1997, this
24 surcharge is \$425.

25 (c) Class B2 grain dealer. To be licensed as a class B2
26 grain dealer, a grain dealer shall pay the following annual fees:

1 1. A basic license fee of \$50. For license years beginning
2 on or after September 1, 1997, this fee is \$75.

3 2. A fee of \$25 for each truck, in excess of one truck,
4 which the grain dealer owns or leases and uses to haul grain.
5 For license years beginning on or after September 1, 1997, this
6 fee is \$45 per truck.

7 (d) Class C grain dealer. To be licensed as a class C
8 grain dealer, a grain dealer shall pay an annual license fee of
9 \$75.

10 (e) Surcharge for operating without a proper license. 1.
11 Except as provided in subd. 2., an applicant for an annual grain
12 dealer's license shall pay a license fee surcharge of \$500 if the
13 department determines that, within 365 days prior to submitting
14 an application for a grain dealer's license, the applicant
15 operated as a grain dealer without a license in violation of sub.
16 (1).

17 2. If a grain dealer held a license as a class B2 grain
18 dealer but operated as a class A grain dealer or a class B grain
19 dealer, the surcharge under subd. 1. is \$250 rather than \$500.

20 3. Payment of a license fee surcharge under this paragraph
21 does not relieve the applicant of other civil or criminal
22 liability that may result from acting as a grain dealer without a
23 required license, but does not constitute evidence of a violation
24 of law.

25 **SECTION 30.** ATCP 99.22(4) is amended to read:

26 ATCP 99.22(4) ACTION GRANTING OR DENYING APPLICATION. The

1 department shall grant or deny an application under sub. (2)
2 within 60 days after the department receives a complete
3 application including all applicable fees and surcharges.

4 **SECTION 31.** ATCP 99.22(5) is repealed and recreated to
5 read:

6 ATCP 99.22(5) LICENSE DISPLAYED. If a grain dealer is
7 required to hold a license under sub. (1), the grain dealer shall
8 prominently display a true copy of the grain dealer's current
9 license at each of the following locations:

10 (a) On each truck which the grain dealer uses to haul
11 grain.

12 (b) At the grain dealer's permanent business address, if
13 the grain dealer is required to maintain a permanent business
14 address under s. ATCP 99.40(3).

15 (c) At each additional location which the grain dealer
16 operates in this state, other than the location under par. (b).

17 **SECTION 32.** ATCP 99.24 is amended to read:

18 **ATCP 99.24 NONRESIDENT GRAIN DEALERS.** This subchapter
19 applies to a nonresident grain dealer who buys grain from or
20 sells grain for producers who produced the grain in this state,
21 regardless of whether the grain dealer takes title to or custody
22 of the grain in this state, and regardless of whether the grain
23 dealer maintains an office or place of business in this state.

24 **SECTION 33.** ATCP 99.26, 99.28, 99.30 and 99.32 are repealed
25 and recreated to read:

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

1 INITIAL FINANCIAL STATEMENT. If any of the following apply, a
2 grain dealer shall file a financial statement with the grain
3 dealer's initial license application under s. ATCP 99.22:

4 (a) The grain dealer is applying for a class A grain dealer
5 license.

6 (b) The grain dealer is applying for a class B grain dealer
7 license, and uses or intends to use deferred payment contracts or
8 deferred price contracts to buy grain from producers.

9 (c) The grain dealer represents to any person that the
10 grain dealer is bonded or that the grain dealer's obligations to
11 producers are covered by security filed with the department for
12 the benefit of producers.

13 NOTE: Par. (c) applies to any grain dealer, including an
14 "exempt grain dealer" who makes any of the
15 representations under par. (c).
16

17 (2) ANNUAL FINANCIAL STATEMENT. (a) A grain dealer shall
18 annually file a year-end financial statement with the department
19 if any of the following apply:

20 1. The grain dealer holds or is required to hold a license
21 as a class A grain dealer.

22 2. The grain dealer holds or is required to hold a license
23 as a class B grain dealer, and uses or intends to use any
24 deferred payment contract or deferred price contract to buy grain
25 from a producer.

26 3. The grain dealer represents to any person that the grain
27 dealer is bonded or that the grain dealer's obligations to
28 producers are covered by security filed with the department for

1 the benefit of producers.

2 NOTE: Subd. 3. applies to any grain dealer, including an
3 "exempt grain dealer" who makes any of the
4 representations under subd. 3.
5

6 (b) A grain dealer shall file an annual financial statement
7 under par. (a) on or before the 15th day of the 4th month
8 beginning after the close of the grain dealer's fiscal year. The
9 department may extend the filing deadline by up to 30 days in
10 response to a written request from the grain dealer, or in
11 response to a written request from an independent certified
12 public accountant or an independent public accountant holding a
13 certificate of authority under ch. 442, Stats., who is auditing
14 or reviewing the grain dealer's financial statement, if the
15 department receives the request on or before the 5th day of the
16 4th month beginning after the close of the grain dealer's fiscal
17 year and if the request states the reason for the extension.

18 (c) A grain dealer's annual financial statement under par.
19 (a) shall be issued and dated prior to the filing deadline under
20 par. (b). The department may not accept an annual financial
21 statement that is issued or dated after the filing deadline.

22 (3) SUPPLEMENTARY OR INTERIM FINANCIAL STATEMENT. The
23 department may require a grain dealer identified under sub. (1)
24 or (2) to file a supplementary financial statement or interim
25 financial statement whenever the department determines that the
26 filing is necessary to protect producers.

27 (4) FINANCIAL STATEMENTS; CONTENTS. (a) Except as
28 provided under par. (b)2 or (c), every financial statement under

1 this section shall consist of a balance sheet, income statement,
2 equity statement, statement of cash flows, notes to those
3 statements, and other relevant information required by the
4 department.

5 (b) A sole proprietor's financial statement shall include
6 both of the following:

7 1. A financial statement for the sole proprietor's grain
8 operations.

9 2. A personal financial statement. The personal financial
10 statement shall consist of a statement of financial condition,
11 statement of changes in net worth, notes to the financial
12 statements and other relevant information required by the
13 department for purposes of this chapter and ch. 127, Stats. If a
14 sole proprietor has not previously engaged in business as a grain
15 dealer, the sole proprietor's initial personal financial
16 statement under sub. (1) need not include a statement of changes
17 in net worth.

18 (c) If a grain dealer, other than a sole proprietor, has
19 not previously engaged in business as a grain dealer, the grain
20 dealer's initial financial statement under sub. (1) may consist
21 of an opening balance sheet, notes to that balance sheet, and
22 other relevant information required by the department.

23 (d) With every financial statement filed under this
24 section, a grain dealer shall file a statement showing the total
25 dollar value of grain which that grain dealer purchased from
26 producers during the grain dealer's last completed fiscal year,

1 and during each month of that fiscal year. The grain dealer
2 shall file the statement on a form provided by the department.

3 (5) GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. Every
4 financial statement under this section shall be prepared
5 according to generally accepted accounting principles, except
6 that a sole proprietor's personal financial statement under sub.
7 (4) (b) 2. may be prepared according to the historical cost basis
8 method of accounting.

9 (6) REVIEWED OR AUDITED FINANCIAL STATEMENT. (a) Except
10 as provided under pars. (b) to (d), every financial statement
11 under this section shall be either a reviewed or audited
12 financial statement.

13 NOTE: If a class A or class B grain dealer submits a
14 required financial statement under sub. (1) or (2)
15 which is not an audited financial statement, that
16 grain dealer must pay a surcharge under s. ATCP
17 99.22 (3) (a) 4. or (b) 4.
18

19 (b) A grain dealer's financial statement under subs. (1)
20 and (2) shall be an audited financial statement if the grain
21 dealer bought or sold \$2,000,000 worth of grain, or more, from
22 producers during the grain dealer's last previous fiscal year.

23 (c) A sole proprietor's personal financial statement under
24 sub. (4) (b) 2. shall be an audited financial statement if it is
25 not prepared according to the historical cost basis method of
26 accounting.

27 (d) The department may accept a supplementary or interim
28 financial statement under sub. (3) which is not a reviewed or
29 audited financial statement if the statement includes a sworn and

1 notarized statement, signed by the grain dealer, which states
2 that the financial statement is correct.

3 **ATCP 99.28 GRAIN DEALERS; MINIMUM FINANCIAL STANDARDS.** (1)

4 REQUIREMENT. Except as provided under sub. (2), a grain dealer
5 who meets the criteria identified under s. ATCP 99.26(1) or (2)
6 shall meet the following minimum financial standards:

7 (a) On the date of the grain dealer's initial financial
8 statement under s. ATCP 99.26(1), and at the end of each fiscal
9 year, the ratio of the grain dealer's current assets to current
10 liabilities shall be at least 1.25 to 1.

11 (b) At all times other than those under par. (a), the ratio
12 of the grain dealer's current assets to current liabilities shall
13 be at least 1 to 1.

14 (c) The grain dealer's total assets shall at all times
15 exceed total liabilities, adjusted as provided in s. ATCP 99.47,
16 by \$15,000 or the amount required to achieve a ratio of total
17 liabilities to equity of not more than 5 to 1, whichever is
18 greater.

19 NOTE: A grain dealer may not claim to meet the minimum
20 financial standards under sub. (1) except on the basis
21 of a financial statement filed in compliance with s.
22 ATCP 99.26.
23

24 (2) EXEMPTIONS. A grain dealer need not meet the minimum
25 financial standards under sub. (1) if the grain dealer does all
26 of the following:

27 (a) Files with the department security that complies with
28 subch. V.

29 (b) Files monthly reports with the department under s. ATCP

1 99.30.

2 (3) NOTICE OF CHANGES. A grain dealer required to meet the
3 minimum financial standards under sub. (1) shall immediately
4 notify the department if the grain dealer knows or has reason to
5 know that the grain dealer is no longer meeting those financial
6 standards.

7 **ATCP 99.30 GRAIN DEALERS; MONTHLY REPORTS.** A grain dealer
8 who meets the criteria identified under s. ATCP 99.26(1) or (2)
9 shall file a monthly report with the department, on or before the
10 10th day of each month, unless the grain dealer meets the minimum
11 financial standards under s. ATCP 99.28(1). The monthly report
12 shall specify all of the following:

13 (a) The total number of bushels of each type of grain, and
14 the total cost of each type of grain, that the grain dealer
15 purchased from producers during the previous month.

16 (b) The total number of bushels of each type of grain
17 purchased from producers under a deferred payment or deferred
18 price contract for which the grain dealer had not paid as of the
19 last day of the previous month.

20 (c) The amount that the grain dealer owed to producers for
21 each type of grain identified under par. (b) as of the last day
22 of the previous month. The grain dealer shall estimate the
23 amount owed for grain purchased under deferred price contracts
24 based on the pricing formulas in the contracts and the market
25 prices for grain as of the last day of the previous month.

26 (d) Other relevant information required by the department.

1 **ATCP 99.32 GRAIN DEALERS; SECURITY.** (1) REQUIRED

2 SECURITY. (a) Except as provided under par. (b), a grain dealer
3 identified under s. ATCP 99.26(1) or (2) shall file with the
4 department security that complies with subchapter V.

5 (b) Paragraph (a) does not apply to a grain dealer who
6 meets the minimum financial standards under s. ATCP 99.28, unless
7 that grain dealer represents any of the following to any person:

8 1. That the grain dealer is bonded.

9 2. That the grain dealer's obligations to producers are
10 covered by security filed with the department for the benefit of
11 producers.

12 (2) VOLUNTARY SECURITY. Any grain dealer may voluntarily
13 file with the department security that complies with subchapter
14 V.

15 **SECTION 34.** ATCP 99.34(1)(intro.) is amended to read:

16 ATCP 99.34(1)(intro.) REQUIREMENT. No grain dealer may
17 receive grain from or sell grain for a producer unless that grain
18 dealer furnishes the producer or the producer's agent with a
19 scale ticket or other purchase receipt when taking ~~control~~
20 custody of or title to the grain. The scale ticket or purchase
21 receipt shall include all of the following:

22 **SECTION 35.** ATCP 99.36(4)(b) is amended to read:

23 ATCP 99.36(4)(b) No deferred payment or deferred price
24 contract may specify a payment deadline that is more than ~~one~~
25 year 180 days after the date on which the contract ~~is made~~ price
26 is established. The payment deadline may not be extended, except

1 that the parties may sign a new contract which extends the
2 deadline for up to ~~one year~~ 180 days.

3 **SECTION 36.** ATCP 99.40(2), (3) and (5)(b) are amended to
4 read:

5 ATCP 99.40(2) **TIMELY PAYMENT TO PRODUCERS.** A grain dealer
6 who purchases grain from or sells grain for a producer shall pay
7 for the grain when payment is due under the purchase grain
8 dealer's contract or agreement with the producer. A grain dealer
9 does not meet the grain dealer's payment obligation by issuing a
10 forged check, a check drawn on an account containing insufficient
11 funds, or any other nonnegotiable check.

12 (3) **PERMANENT BUSINESS LOCATION.** (a) Every class A ~~and~~
13 grain dealer, class B grain dealer and class B2 grain dealer
14 shall maintain a permanent business address at which the grain
15 dealer may be readily contacted during business hours. The grain
16 dealer's permanent business address shall be included on every
17 scale ticket or receipt which the grain dealer issues under s.
18 ATCP 99.34 for grain received from or sold for producers.

19 (b) Every class A ~~and~~ grain dealer, class B grain dealer
20 ~~who purchases grain under deferred price contracts and class B2~~
21 grain dealer shall have business hours that begin by ~~9:30 AM and~~
22 ~~continue until at least 1:30 PM every Monday through Friday~~
23 ~~except on official holidays when boards of trade and commodity~~
24 ~~exchanges are closed at least one-half hour before the opening of~~
25 the Chicago Board of Trade and continue at least one-half hour
26 after the closing of the Chicago Board of Trade on each day that

1 the Chicago Board of Trade is open for trading. Business hours
2 complying with this paragraph shall be prominently posted at each
3 of the grain dealer's business locations.

4 (5) (b) Make any false or misleading statement in any
5 application for a ~~certificate of registration~~ license or in any
6 other statement or report ~~required to be submitted~~ which the
7 grain dealer is required to submit to the department under this
8 chapter or ch. 127, Stats.

9 SECTION 37. ATCP 99.42 is repealed and recreated to read:

10 ATCP 99.42 GRAIN DEALERS; NOTICE TO PRODUCERS. (1) NOTICE
11 REQUIRED. During each license year, a licensed grain dealer
12 shall give written notice under sub. (2) to each producer from
13 whom the grain dealer receives grain unless the grain dealer
14 makes full cash payment for the grain before taking title to or
15 custody of the grain. The grain dealer shall give the written
16 notice to the producer at all of the following times during the
17 license year:

18 (a) On the first day on which the grain dealer receives
19 grain from that producer.

20 (b) On the first day, following any change in the basis on
21 which a grain dealer is licensed, on which the grain dealer
22 receives grain from that producer.

23 (2) NOTICE CONTENTS. A written notice under sub. (1) shall
24 be conspicuously titled "NOTICE TO PRODUCERS," and shall clearly
25 and conspicuously disclose all of the following information:

26 (a) The name and address of the grain dealer.

1 (b) The following statement:

2 "(Name of grain dealer) is currently licensed as a
3 grain dealer by the State of Wisconsin. However, the
4 State of Wisconsin does not guarantee that grain
5 dealers will pay producers in full for their grain.
6 When you sell grain to a grain dealer for payment
7 later, you become an unsecured creditor of that grain
8 dealer. Each producer is responsible for determining
9 the credit worthiness of the dealer to whom the
10 producer sells grain."
11

12 (c) One of the following statements, as applicable:

13
14 1. "(Name of grain dealer) is currently licensed on the
15 basis of a financial statement which meets the
16 following minimum financial standards:

17
18 a. A current ratio of at least 1.25 to 1.0 at fiscal
19 year-end, and 1.0 to 1.0 at other times.

20
21 b. Equity equal to at least \$15,000, or the equity
22 required to achieve a ratio of total liabilities
23 to equity of not more than 5.0 to 1.0, whichever
24 is greater.
25

26 A grain dealer licensed on the basis of its financial
27 statement does not file any bond or security with the
28 State of Wisconsin to secure payment to producers."
29

30 2. "(Name of grain dealer) has filed security with the
31 State of Wisconsin to secure a portion of its payment
32 obligations to producers."
33

34 3. "(Name of grain dealer) is not currently required to
35 file any financial statement or security with the State
36 of Wisconsin, and has not done so."
37

38 **SECTION 38.** ATCP 99.44(8) (b) is amended to read:

39 ATCP 99.44(8) (b) In a financial statement, grain accounts
40 payable to producers shall be shown separately from other trade
41 accounts payable. The financial statement shall identify the
42 amount payable to ~~Wisconsin~~ producers and their assignees for
43 grain received from those producers.

44 **SECTION 39.** ATCP 99.47 is created to read:

1 ATCP 99.47 LIABILITY ADJUSTMENTS.

2 (1) For purposes of s.
3 ATCP 99.08(1)(c) or 99.28(1)(c), a warehouse keeper or grain
4 dealer may deduct, from the amount of a liability reported in the
5 warehouse keeper's or grain dealer's financial statement, any of
6 the liability adjustments allowed for that warehouse keeper or
7 grain dealer under subs. (2) to (6) if the amount of the
8 liability adjustments and the amount of the offsetting assets are
9 disclosed in the notes to the financial statement. The total
10 amount of the liability adjustments under subs. (2) to (6) may
11 not exceed the total amount of the corresponding assets,
12 identified in the notes to the financial statement, that justify
13 the adjustments.

14 (2) A grain dealer may deduct amounts that the grain dealer
15 has borrowed from a lending institution and deposited with a
16 commodities broker to maintain an account to hedge grain
17 transactions. The amount of the deduction shall be the lesser of
18 the amount deposited with the commodities broker or the amount
19 owed to the lending institution for funds borrowed from the
20 lending institution and deposited with the commodities broker.

21 (3) A grain dealer may deduct amounts that the grain dealer
22 has borrowed from a lending institution to buy grain that has
23 been shipped and is in transit if the grain dealer has a
24 collectible account receivable for that grain on the date of the
25 balance sheet. The amount of the deduction shall be the lesser
26 of the amount receivable by the grain dealer for the grain that
27 has been shipped and is in transit or the amount that the grain

1 dealer owes to the lending institution for funds used to buy that
2 grain.

3 (4) A grain dealer may deduct amounts that the grain dealer
4 has borrowed from a lending institution and that are secured by
5 grain owned by the grain dealer and held in that grain dealer's
6 inventory. The amount of the deduction shall be the lesser of
7 the value of the grain pledged as security or the amount owed to
8 the lending institution.

9 (5) A grain dealer may deduct amounts that the grain dealer
10 has borrowed from a lending institution and used to buy grain
11 that the grain dealer holds in inventory on the date of the
12 balance sheet if the grain dealer has entered into a written
13 contract to sell the grain. The amount of the deduction shall be
14 the lesser of the amount owed to the lending institution or the
15 value of the grain purchased with the borrowed funds and held in
16 inventory to fill the sales contract.

17 (6) A warehouse keeper or grain dealer may deduct amounts
18 that the warehouse keeper or grain dealer has borrowed from a
19 lending institution and used to pay for fertilizer, pesticides,
20 herbicides or seed that the warehouse keeper or grain dealer
21 holds in inventory on the date of the balance sheet. The amount
22 of the deduction shall be the lesser of the amount owed to the
23 lending institution or the cost of the fertilizer, pesticides,
24 herbicides or seed purchased with the borrowed funds.

25 **SECTION 40.** ATCP 99.48 is amended to read:

26 **ATCP 99.48 FINANCIAL STATEMENTS; CONFIDENTIALITY.** A

1 Neither a financial statement filed with the department under
2 this chapter, nor a disclosure of grain purchases filed with the
3 department under s. ATCP 99.26(4)(d) is not open to public
4 inspection under s. 19.35, Stats. The department may introduce a
5 financial statement these documents as evidence in an
6 administrative hearing conducted by the department, in a court
7 proceeding brought by or on behalf of the department, or in a
8 court proceeding in which the department is a named party. The
9 department's introduction of ~~a financial statement~~ these
10 documents in a department administrative hearing or court
11 proceeding is subject to any protective order which the court or
12 department hearing examiner may consider appropriate.

13 SECTION 41. ATCP 99.50(5) is repealed.

14 SECTION 42. ATCP 99.54 is amended to read:

15 ATCP 99.54 AMOUNT OF SECURITY. (1) WAREHOUSE KEEPERS.

16 The amount of security filed by a warehouse keeper under this
17 chapter shall be not less than 20% of the current market value of
18 all grains stored in the warehouse for depositors, except that
19 the amount of security shall be not less than \$25,000 ~~and is not~~
20 ~~required to be more than \$500,000.~~

21 (2) GRAIN DEALERS. (a) Except as provided under par. (b)
22 ~~and (c)~~, the amount of security filed by a grain dealer under
23 this chapter shall be in a principal amount, to the next highest
24 \$1,000, equal to at least 10% of the aggregate amount which the
25 grain dealer paid producers for grain purchased from them during
26 the grain dealer's last completed fiscal year. the sum of the

1 following:

2 1. The total amount that the grain dealer owed to producers
3 under deferred payment contracts as of the last day of the
4 previous month or as of another date specified by the department.

5 2. The estimated total amount that the grain dealer owed to
6 producers under deferred price contracts as of the last day of
7 the previous month or as of another date specified by the
8 department. The grain dealer shall estimate the amount owed
9 based on the pricing formulas in the contracts and the market
10 prices for grain as of the last day of the previous month or as
11 of the date specified by the department.

12 3. An amount equal to 35% of the dollar amount of the grain
13 dealer's average monthly purchases from producers for the 3
14 months in which the grain dealer made the largest monthly
15 purchases from producers during the preceding 12 months.

16 ~~(b) Except as provided under par. (c), if~~ If a grain dealer
17 has been engaged in business as a grain dealer for less than one
18 year, or not at all, the amount of security filed by the grain
19 dealer shall be at least 10% of the amount which the department
20 estimates that the grain dealer will pay producers for grain
21 purchased from them during the next year the grain dealer shall
22 file and maintain security in an amount specified by the
23 department. The department shall specify an amount that is equal
24 to 35% of the projected dollar amount of the grain dealer's
25 monthly average grain purchases during the 3 months in which the
26 grain dealer is likely to make the largest monthly purchases from

1 producers during the following 12 months.

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

5 **SECTION 43.** ATCP 99.58(a) to (d) are renumbered ATCP
6 99.58(1) to (4) and ATCP 99.58(1) and (4), as renumbered, are
7 amended to read:

8 ATCP 99.58(1) The warehouse keeper or grain dealer achieves
9 and maintains ~~for 2 consecutive registration years~~ compliance
10 with the minimum financial standards required under s. ATCP 99.08
11 or ATCP 99.28, as evidenced by 2 consecutive annual financial
12 statements or one annual financial statement and a reviewed
13 financial statement for the first quarter of the following fiscal
14 year.

15 (4) The warehouse keeper or grain dealer is no longer in
16 business and ~~certifies~~ demonstrates, to the department's
17 satisfaction, that all producer and depositor obligations have
18 been satisfied in full.

19 **SECTION 44.** ATCP 99.68 is repealed.

20 **SECTION 45.** ATCP 99.70(1) is amended to read:

21 ATCP 99.70(1) Suspends or revokes a warehouse keeper or
22 grain dealer ~~certificate of registration~~ license for cause,
23 including any violation of this chapter or ch. 127, Stats.

24 **SECTION 46.** ATCP 99.72(1)(a) is amended to read:

25 ATCP 99.72(1)(a) Issue an order summarily suspending a
26 warehouse keeper's or grain dealer's ~~certificate of registration~~

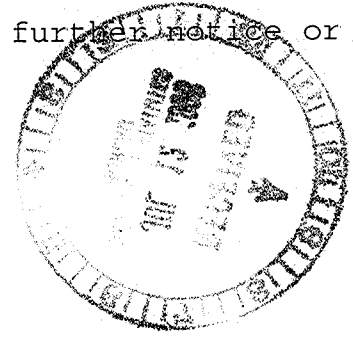
1 license.

2 SECTION 47. ATCP 99.74(3), (4)(a) and (6)(a) are amended to
3 read:

4 ATCP 99.74(3) AUDIT; PROPOSED ORDER. If the department
5 initiates a default proceeding under this section, the department
6 shall audit producer and depositor claims filed with the
7 department and shall issue a proposed order allowing or
8 disallowing claims. The proposed order shall be based on
9 proposed finding of facts and conclusions of law which shall
10 accompany the proposed order. The department shall mail a copy
11 of the proposed order to the warehouse keeper or grain dealer, to
12 the warehouse keeper's or grain dealer's surety if any, and to
13 every producer and depositor who filed a timely ~~producer~~ claim in
14 the proceeding.

15 (4) UNTIMELY CLAIMS DISALLOWED. (a) The department shall
16 disallow a claim filed which a producer or depositor files after
17 the claim filing deadline specified under sub. (2) unless the
18 department waives the claim filing deadline for good cause shown.

19 (6) FINAL ORDER AFTER HEARING. (a) Before issuing the a
20 final decision and order in a default proceeding under this
21 section, the department shall follow the procedures prescribed
22 under s. 227.46, Stats., except that if after the hearing under
23 sub. (5) there are no objections to the department's proposed
24 order, the department may adopt the proposed order as a final
25 decision and order of the department, without further notice or
26 hearing.



1 SECTION 48. ATCP 99.76 is amended to read:

2 ATCP 99.76 PAYMENT OF SECURED CLAIMS. At any time after
3 the department receives a notice of default, the department may
4 convert any security that the warehouse keeper or grain dealer
5 has filed with the department, and may apply the proceeds of that
6 security to pay allowed claims. The department shall distribute
7 available funds to the claimants according to the final order
8 allowing claims, on a proportionate basis, according to the
9 amount of each allowed claim. If funds exceed allowed claims,
10 the excess shall be returned to the person who ~~filed the security~~
11 with the department provided the assets used as security.


12 SECTION 49. ATCP 99.78(1) is amended to read:

13 ATCP 99.78(1) The department may, on behalf of producers or
14 depositors, demand and receive grain, money or other assets for
15 payment of claims allowed under s. ATCP 99.74 or commence an
16 action in court to recover grain, money or other assets for
17 payment of allowed claims. Any amounts recovered by the
18 department shall be distributed to represented claimants on a
19 proportionate basis, according to the amount of each claimant's
20 allowed claim.

21 SECTION 50. The rules contained in this order shall take
22 effect on the first day of September, 1996.

23 Dated this 11th day of July, 1996.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 
Alan T. Tracy, Secretary

