

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

Clearinghouse Rule
No. 93-233

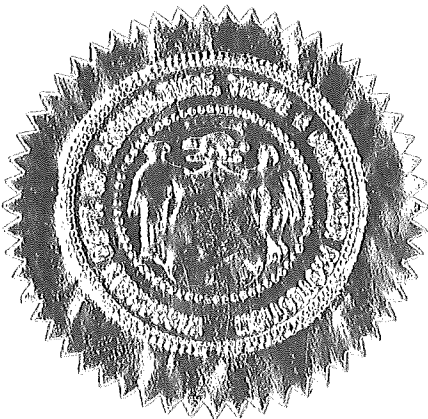
CERTIFICATION:

I, Alan T. Tracy, Secretary of the State of 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 warehouse keeper licensing and regulation was signed and adopted by the department on April 25, 1994.

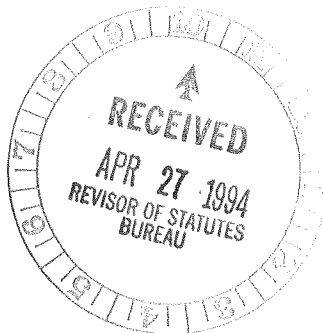
I further certify that I have compared the attached copy to the original on file in the department, and that the attached copy is a complete and accurate copy of the original.

Signed and sealed this 25th day of April, 1994.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION



By 
Alan T. Tracy, Secretary



7-1-94



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

The Wisconsin department of agriculture, trade and consumer protection adopts the following order to create chapter ATCP 97 relating to public warehouse keepers.

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

Statutory authority: ss. 99.02(3)(a) and 99.08, Stats.
Statutes interpreted: ch. 99, Stats.

This rule codifies the department's current regulatory program related to public warehouse keepers under ch. 99, Stats. It also increases current fees for public warehouse keepers' licenses.

License Required

Currently, under s. 99.02, Stats., a person who stores the property of others for hire must be licensed by the department as a public warehouse keeper. The operator of a food warehouse licensed under s. 97.27, Stats., must also be licensed as a public warehouse keeper if the warehouse is used to store food for others. This rule incorporates current license requirements without change.

A public warehouse keeper license expires on June 30 annually and is not transferable. To obtain a license, a public warehouse keeper must have storage facilities that are suitable for the type of property being stored, and must file security with the department. These requirements help protect the owners of property stored by a public warehouse keeper.

License Exemptions

This rule clarifies, but does not change, current public warehouse keeper license exemptions. No public warehouse keeper license is required under this rule, or under current statutes, for any of the following:

- A person who operates a warehouse solely for the storage of property belonging to that person.
- A municipal corporation.
- A person operating a warehouse storing only grain.
- A person operating a frozen food locker plant as defined

- under s. 97.27(1)(c), Stats.
- A cooperative association storing farm products and merchandise only for its members.
 - A person who owns and operates a warehouse only to store dairy products or canned fruits or vegetables manufactured by that person.
 - A common carrier engaged solely in the transit and storage of property for periods not exceeding 30 days.
 - A person operating a warehouse pursuant to a license issued under the United States warehouse act, 7 USC 241 et seq.
 - A person (e.g., the operator of a "mini-warehouse" facility) who merely rents storage space to a renter, provided that the renter has free access to the storage space during normal business hours and is responsible for property stored in the rented space.

Warehouses Classified

Currently, under s. 99.015, Stats., a public warehouse is classified according to the amount of floor space in the warehouse. This rule incorporates the statutory classification without change. Under this rule, warehouses are classified as follows:

- Class 1: less than 10,000 square feet.
- Class 2: at least 10,000 square feet but less than 50,000 square feet.
- Class 3: at least 50,000 square feet but less than 100,000 square feet.
- Class 4: at least 100,000 square feet but less than 150,000 square feet.
- Class 5: at least 150,000 square feet.

License Application

To obtain a license, a public warehouse keeper must file an application with the department. An applicant must pay specified fees, and must file security with the department. This rule incorporates current license application requirements without change. Under this rule, the department must grant or deny a license application within 40 days after the department receives a complete application.

Annual License Fees

Currently, under s. 99.02(3), Stats., an applicant for a public warehouse keeper license must pay an annual license fee, based on the size of the warehouse. The department is authorized to modify license fees by rule. This rule establishes a new annual license fee schedule as follows:

- For a class 1 public warehouse, \$ 75

- For a class 2 public warehouse, \$150
- For a class 3 public warehouse, \$240
- For a class 4 public warehouse, \$320
- For a class 5 public warehouse, \$400

Under current statutes, a warehouse keeper who applies for renewal of an annual license after that license has expired must pay, in addition to the annual license fee, a late fee which is 20% of the annual license fee. This rule incorporates the current late fee without change.

Reinspection Fee

Currently, under s. 99.02(3)(d), Stats., if the department reinspects a public warehouse because of a violation found on a previous inspection, the department must charge the public warehouse keeper a reinspection fee as follows:

- For a class 1 public warehouse, \$50.
- For a class 2 public warehouse, \$100.
- For a class 3 public warehouse, \$150.
- For a class 4 public warehouse, \$200.
- For a class 5 public warehouse, \$250.

This rule incorporates the current reinspection fees without change.

License Suspension or Revocation

Currently, under s. 93.06(7) and (8), Stats., the department may deny, suspend, revoke or impose conditions on a public warehouse keeper's license for cause, including violations of ch. 99, Stats. Currently, under s. 99.03(6), Stats., the department may summarily suspend a public warehouse keeper's license if the department finds that the warehouse keeper's security does not comply with ch. 99, Stats., or that security has been canceled without required notice to the department.

This rule incorporates current statutory requirements. It also specifies that the department may summarily suspend a license for any violation that poses an imminent threat of substantial harm to stored property. Under this rule, a summary suspension order must be issued by the department secretary, or the secretary's designee.

Security Filing

Currently, under s. 99.03, Stats., an applicant for a public warehouse keeper license must file security with the department. This rule incorporates the current security filing requirement, and clarifies the forms of security that are acceptable. Under this rule, security may be filed in any of the following forms:

- A continuous surety bond that cannot be canceled except upon 30 days prior written notice to the department.
- Personal surety bonds or other 3rd party guarantees that are supported by one of the following forms of security:
 - Cash.
 - Certificates of deposit.
 - Bonds.
 - Irrevocable bank letters of credit that are issued by a financial institution in this state for a term of at least 1 year. Letters of credit must automatically renew unless the issuing financial institution gives the department at least 90 days advance prior notice of nonrenewal.
- A liability insurance policy in a form approved by the department. The insurance policy must be in a form that is acceptable to the department. The insurance policy may not be canceled, nor may the insurer fail to renew the policy, except upon 30 days prior written notice to the department.
- If a warehouse keeper stores only wearing apparel, an insurance policy that protects owners of that wearing apparel against loss or damage by fire, wind, water or theft. The insurance policy may not be canceled, nor may the insurer fail to renew the policy, except upon 30 days prior written notice to the department.

Security Amount

Currently, under s. 99.03(2), Stats., a public warehouse keeper must file a specified minimum amount of security, based on the size of the public warehouse. Minimum security amounts are as follows:

- For a class 1 public warehouse, \$10,000.
- For a class 2 public warehouse, \$20,000.
- For a class 3 public warehouse, \$30,000.
- For a class 4 public warehouse, \$40,000.
- For a class 5 public warehouse, \$50,000.

This rule incorporates these current statutory amounts without change.

Release of Security

Currently, under s. 99.03(6), Stats., the department holds custody of security filed by a public warehouse keeper. Security filed in conjunction with a personal surety bond or 3rd party guarantee can only be released if one of the following occurs:

- A period of 180 days elapses after the warehouse keeper gives written notice to the department that the warehouse keeper is no longer engaged in the business of storage for hire.
- A period of 180 days elapses after the warehouse keeper's license expires or is revoked.
- The department determines that the warehouse keeper is no longer engaged in the business of storage for hire and that all claims of persons storing property at the warehouse have been satisfied.

This rule incorporates, without change, current statutory requirements related to the release of security.

Warehouse Facilities and Operations

Currently, under s. 99.04(1), Stats., public warehouse facilities must be suitable for the type of storage operations conducted at the warehouse, and a warehouse must be maintained and operated in a manner which will reasonably protect stored property against loss or damage. This rule incorporates these current statutory requirements without change.

Disclosure Requirements; Receipts

Currently, under s. 99.02(4), Stats., a public warehouse keeper must post a conspicuous sign on the main outside entrance of each public warehouse. The sign must identify the public warehouse keeper, and must indicate that the warehouse is a public warehouse. This rule incorporates this current statutory requirement without change.

Currently, under s. 99.03(5), Stats., before a public warehouse keeper contracts to store noncommercial personal, family or household goods for any person, the public warehouse keeper must notify that person of any limit on the public warehouse keeper's liability for loss or damage to that property while in storage, and of that person's responsibility to provide additional coverage if desired. This rule incorporates this current statutory requirement without change.

Currently, under s. 99.05(1), Stats., whenever a public warehouse keeper receives goods for storage, the warehouse keeper must issue a warehouse or storage receipt for those goods. Receipts must identify the goods placed in storage, the location of the warehouse where the goods are to be stored, the terms and conditions of storage, and the date the receipt is issued. A warehouse keeper may use standard receipt forms which are accepted in the warehousing industry, and which comply with ch. 99 and chs. 401 to 411, Stats. This rule incorporates this current statutory requirement without change.

Records

Currently, under s. 99.05(2), Stats., public warehouse keepers must keep records of all property received for storage, and of all warehouse or storage receipts issued. Such records must be open at all reasonable times to inspection by the department. Persons holding an interest in stored property may also inspect records relating to that property at reasonable times. This rule incorporates these current statutory requirements without change.

Inspection

Currently, under s. 99.04(2), Stats., the department may inspect public warehouses and public warehouse records as necessary. This rule incorporates this current inspection authority without change.

SECTION 1. Chapter ATCP 97 is created to read:

CHAPTER ATCP 97

PUBLIC WAREHOUSE KEEPERS

ATCP 97.01	Definitions
ATCP 97.02	Classification of public warehouses
ATCP 97.04	License requirement; application and fees
ATCP 97.06	License suspension or revocation
ATCP 97.08	Security
ATCP 97.10	Warehouse facilities and operations
ATCP 97.12	Disclosure requirements; receipts
ATCP 97.14	Records
ATCP 97.16	Inspection

NOTE: This chapter is adopted under authority of ss. 99.02(3)(a) and 99.08, Stats. A person who violates this chapter, or any order issued under this chapter, is subject to penalties provided under s. 99.07, Stats.

ATCP 97.01 DEFINITIONS. As used in this chapter: (1)

"Damage by water" includes those water-related damages normally covered under a fire and extended coverage insurance policy.

"Damage by water" does not include flood damage.

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

(3) "Floor space" means the area, expressed in square feet, that is available for the storage of property in a warehouse.

(4) "Food" means all of the following:

(a) Articles used for food or drink by persons.

(b) Chewing gum.

(c) Articles used for components of matters specified in pars. (a) and (b).

(5) "Person" means a natural person, corporation, partnership, limited liability company, cooperative, trust, or any other business association or entity.

(6) "Property" has the meaning specified under s. 99.01(2), Stats.

(7) "Public warehouse" means a warehouse which a public warehouse keeper operates to store the property of other persons for hire. "Public warehouse" includes a food warehouse, as defined in s. 97.27(1)(b), Stats., if a public warehouse keeper operates that food warehouse to store the property of other persons for hire. "Public Warehouse" does not include a frozen food locker plant as defined in s. 97.27(1)(c), Stats.

(8) "Public warehouse keeper" means a person who operates a warehouse and who stores for hire, in that warehouse, the property of other persons.

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

(10) "Store for hire" means to accept and maintain custody of the property of another person in return for consideration.

"Store for hire" does not include the rental of designated storage space to a renter who has access to that space during normal business hours and who is responsible for the safekeeping of property stored in that space.

NOTE: The rental of designated storage space to a person who has access to that space, and who is responsible for storing his or her own property in that space, may be subject to regulation under s. 704.90, Stats.

(11) "Warehouse" means any building, room, structure or facility used to store property. "Warehouse" includes an open-air facility, such as a fenced enclosure or a restricted-access boat docking facility, which is used to store property.

ATCP 97.02 CLASSIFICATION OF PUBLIC WAREHOUSES. For purposes of this chapter, a public warehouse is classified according to the amount of floor space in that warehouse as follows:

- (1) Class 1: less than 10,000 square feet.
- (2) Class 2: at least 10,000 square feet but less than 50,000 square feet.
- (3) Class 3: at least 50,000 square feet but less than 100,000 square feet.
- (4) Class 4: at least 100,000 square feet but less than 150,000 square feet.
- (5) Class 5: at least 150,000 square feet.

ATCP 97.04 LICENSE REQUIREMENT; APPLICATION AND FEES. (1) LICENSE REQUIRED. Except as provided under sub. (2), no person may operate as a public warehouse keeper unless that person holds an annual license from the department under this section. A

license expires on June 30 annually and is not transferable. No license may be issued under this section for part of a year for less than the full annual fee specified under sub. (4).

(2) LICENSE NOT REQUIRED. No license is required under sub. (1) for any of the following:

(a) A municipal corporation.

(b) A person operating a warehouse storing only grain, as defined under s. 127.01(18), Stats.

(c) A cooperative association storing farm products and merchandise only for its members.

(d) A person who owns and operates a warehouse only to store dairy products or canned fruits or vegetables manufactured by that person.

(e) A common carrier engaged solely in the transit and storage of property for periods not exceeding 30 days.

(f) A person operating a warehouse pursuant to a license issued under the federal bonded warehouse act, 7 USC 241 et seq.

(3) APPLICATION. An applicant for an annual license under sub. (1) shall submit an application in writing on a form provided by the department. The application shall include all of the following:

(a) The applicant's correct legal name and any trade name used by the applicant. If the applicant is a corporation or cooperative, the application shall identify each officer of the corporation or cooperative. If the applicant is a partnership, the application shall identify each partner.

(b) The street address at which the applicant will accept mail deliveries, and the name of a responsible person who may be contacted at that address.

(c) The location, size, character and equipment of the building or premises which the applicant will operate as a public warehouse.

(d) The kind of property to be stored at the public warehouse.

(e) The fees required under sub. (4).

(f) Any reinspection fees that are due and payable by the applicant under sub. (5) but not yet paid.

(g) If the applicant is applying for an initial license, the security required under s. ATCP 97.08.

(h) Any information required by the department to show that the warehouse facilities are adequate and that the applicant is qualified as a public warehouse keeper.

(4) LICENSE FEES. (a) An applicant under sub. (3) shall pay an annual license fee as follows:

1. For a Class 1 public warehouse, \$ 75.
2. For a Class 2 public warehouse, \$150.
3. For a Class 3 public warehouse, \$240.
4. For a Class 4 public warehouse, \$320.
5. For a Class 5 public warehouse, \$400.

(b) A public warehouse keeper who applies to renew an annual license after that license has expired shall pay, in addition to the annual license fee under par. (a), a surcharge of

20% of that license fee.

NOTE: The 20% surcharge for late license renewal applications is required by s. 93.21(5), Stats. Payment of the surcharge does not relieve the public warehouse keeper from any other civil or criminal liability that may result from the unlicensed operation of a public warehouse. If more than one year has elapsed since an applicant's license expired, the applicant's license application is not considered a renewal application for purposes of s. 93.21(5), Stats.

(5) REINSPECTION FEE. (a) If the department reinspects a public warehouse because the department has, upon prior inspection, found a violation of this chapter, ch. 97 or 99, Stats., or any other state or federal law administered by the department, the department shall charge the public warehouse keeper a reinspection fee as follows:

1. For a Class 1 public warehouse, \$50.
2. For a Class 2 public warehouse, \$100.
3. For a Class 3 public warehouse, \$150.
4. For a Class 4 public warehouse, \$200.
5. For a Class 5 public warehouse, \$250.

(b) A reinspection fee under par. (a) is payable when the reinspection is completed, and is due upon written demand from the department. The department may issue a demand for payment when it issues a license renewal application to the public warehouse keeper under sub. (3), or at any other time after the reinspection fee becomes payable.

(6) ACTION GRANTING OR DENYING APPLICATION. The department shall grant or deny an application under sub. (3) within 40 days after the department receives a complete application. The

department may deny a license application for cause pursuant to s. 93.06(7), Stats. Cause may include any violation of this chapter.

ATCP 97.06 LICENSE SUSPENSION OR REVOCATION. (1) GENERAL.

The secretary may suspend, revoke or impose conditions on a public warehouse keeper's license for cause pursuant to ss. 93.06(7) and (8), Stats. Cause may include any violation of this chapter.

NOTE: See ch. ATCP 1 for procedure in suspension or revocation proceedings.

(2) SUMMARY SUSPENSION. (a) The secretary may issue a summary order suspending a public warehouse keeper's license without prior notice or hearing if the secretary determines that any of the following conditions exists:

1. The public warehouse keeper has failed to file security required under s. ATCP 97.08.

2. The security filed by the public warehouse keeper does not comply with s. ATCP 97.08.

3. The security filed by the public warehouse keeper has been canceled without adequate prior notice to the department under s. ATCP 97.08.

4. The public warehouse keeper has failed to file satisfactory security to replace a canceled surety bond before the effective date of the cancellation.

5. The public warehouse keeper has failed to file satisfactory security to replace an expiring letter of credit at least 31 days before that letter of credit expires.

6. The public warehouse keeper has failed to file satisfactory security to replace a canceled or expired insurance policy before the effective date of the cancellation or expiration.

7. There is an imminent threat of substantial harm to stored property because the public warehouse keeper's warehouse is unsuitable for storing that type of property, or because the public warehouse keeper is not adequately protecting stored property from loss or damage.

(b) A summary order under this par. (a) shall set forth the specific basis for the order.

NOTE: A person adversely affected by a summary suspension is entitled to a prompt informal hearing and a full evidentiary hearing upon request, as provided under s. ATCP 1.03(3).

ATCP 97.08 SECURITY. (1) REQUIREMENT. Every public warehouse keeper shall maintain on file with the department security that complies with this section.

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

(a) Continuous surety bond. A continuous surety bond that is all of the following:

1. Made payable to the department for the benefit of owners of stored property or their assignees.

2. Endorsed by a surety company authorized to do business in this state.

3. In a form approved by the department containing all of

the terms and conditions required by the department.

4. Continuing, and subject to cancellation by the surety company only upon 30 days written notice to the department served in person or by certified mail.

(b) Personal surety bond supported by other security.

Personal surety bonds or other third party guarantees that are supported by one of the following forms of security held by the department under subs. (4) and (6):

1. Cash.
2. Certificates of Deposit.
3. Bonds.
4. Irrevocable bank letters of credit that are all of the following:
 - a. Issued by a financial institution in this state.
 - b. Issued for a term of at least one year.
 - c. Made payable to the department for the benefit of owners of stored property or their assignees.
 - d. In a form approved by the department, written on bank letterhead and containing all the terms and conditions required by the department.
 - e. Continuing, and subject to non-renewal by the issuing bank only upon 90 days prior written notice to the department served in person or by certified mail.

(c) Liability insurance policy. An original or certified copy of a legal liability insurance policy that is all of the following:

1. Payable to the department for the benefit of owners of stored property or their assignees.

2. In a form approved by the department containing all of the terms and conditions required by the department.

3. Subject to cancellation or non-renewal by the insurer only upon 30 days written notice to the department served in person or by certified mail.

(d) Wearing apparel; insurance policy. If a public warehouse keeper stores only wearing apparel, an original or certified copy of an insurance policy that protects the owners of that wearing apparel against loss or damage by fire, wind, water or theft. The insurance policy shall comply with all of the following:

1. The insurance policy shall name the department as an additional insured party for the benefit of owners of stored property.

2. The insurance policy shall be in a form that is acceptable to the department.

3. The insurance policy shall be continuing, and subject to cancellation or nonrenewal by the insurer only upon 30 days prior written notice to the department served in person or by certified mail.

(3) INSURANCE POLICIES; DEDUCTIBLE CLAUSE. In an insurance policy filed as security under sub. (2)(c) or (d), the insurer's liability to the owners of stored property or their assignees shall not be subject to any deductible. This does not prohibit a

deductible agreement between a public warehouse keeper and an insurer under which the public warehouse keeper agrees to reimburse the insurer for a portion of any claim paid by the insurer.

(4) DEPARTMENT CUSTODY OF SECURITY. The department or the department's agent shall maintain custody of all security filed by a public warehouse keeper under this section.

(5) AMOUNT OF SECURITY. Security filed under this section shall be in an aggregate amount not less than the following:

- (a) For a Class 1 public warehouse, \$10,000.
- (b) For a Class 2 public warehouse, \$20,000.
- (c) For a Class 3 public warehouse, \$30,000.
- (d) For a Class 4 public warehouse, \$40,000.
- (e) For a Class 5 public warehouse, \$50,000.

(6) RELEASE OF SECURITY. Security filed under sub. (2)(b) shall remain in effect and may not be released by the department until one of the following occurs:

(a) A period of 180 days elapses after the public warehouse keeper gives written notice to the department that the warehouse keeper is no longer engaged in the business of storage for hire.

(b) A period of 180 days elapses after the public warehouse keeper's license expires or is revoked.

(c) The department determines that the public warehouse keeper is no longer storing property for hire, and that all claims of persons storing property at the warehouse have been satisfied.

ATCP 97.10 WAREHOUSE FACILITIES AND OPERATIONS. (1) Every public warehouse shall be suitable for the type of storage operation conducted at that warehouse. Public warehouse facilities shall be maintained and operated in a manner which will reasonably protect stored property against loss or damage. A public warehouse used for the storage of food shall comply with the requirements of ch. 97, Stats., and ch. ATCP 71.

(2) A public warehouse keeper is subject to the standards and duties of care specified under s. 407.204(1), Stats., this chapter, and law related to the storage of property for hire, including law related to the issuance of warehouse receipts, the maintenance of warehouse receipt registers, and the enforcement of warehouse keepers' liens.

NOTE: The department may deny, suspend, revoke or impose conditions on a public warehouse keeper's license for cause, including a violation of this section. See s. 93.06(7) and (8), Stats., and ss. ATCP 97.04 and 97.06.

ATCP 97.12 DISCLOSURE REQUIREMENTS; RECEIPTS. (1) SIGN POSTED. Every public warehouse keeper shall keep posted, at the main outside entrance of each public warehouse operated by that warehouse keeper, a conspicuous sign which clearly states the name of the warehouse keeper and identifies that warehouse as a public warehouse.

(2) NOTICE OF LIABILITY LIMITS. Before a public warehouse keeper contracts to store noncommercial personal, recreational, family or household goods for any person, the warehouse keeper shall notify that person of any limit on the warehouse keeper's

liability for loss or damage to property in storage, and of that person's responsibility to provide additional coverage if desired.

(3) RECEIPTS. Whenever a public warehouse keeper receives property from any person for storage, the public warehouse keeper shall issue to that person a warehouse or storage receipt for that property. The receipt shall clearly identify the property which the public warehouse keeper has received from that person, the location of the warehouse where the property will be stored, the terms and conditions of storage, and the date on which the receipt is issued. A public warehouse keeper may use standard warehouse or storage receipt forms that are accepted in the warehousing industry, provided that those forms comply with chs. 401 to 411, Stats., and this chapter.

NOTE: See specific requirements for warehouse receipts under s. 407.202(2), Stats.

ATCP 97.14 RECORDS. A public warehouse keeper shall keep a record of all property received for storage, and of all warehouse or storage receipts issued. Records shall include the warehouse or storage receipt number, a description of the property received for storage, the date on which the property was received for storage, and the date on which the property was withdrawn from storage. Persons holding an interest in stored property may, at any reasonable time, inspect the warehouse keeper's records related to that property.

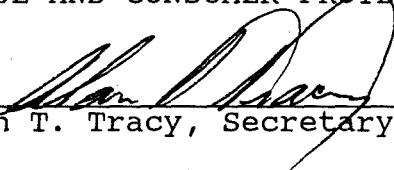
ATCP 97.16 INSPECTION. The department may inspect public warehouses as necessary to secure compliance with this chapter.

For purposes of inspection and enforcement, the department may enter a public warehouse and inspect all records which the public warehouse keeper is required to keep under s. ATCP 97.14.

SECTION 2. The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided under s. 227.22(2), Stats.

Dated this 25th day of April, 1994.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 
Alan T. Tracy, Secretary

