

## Chapter ATCP 99

### GRAIN WAREHOUSE KEEPERS AND GRAIN DEALERS

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**Note:** This chapter is adopted under authority of s. 127.15, Stats. A person who violates this chapter, or any order issued under this chapter, is subject to penalties provided under s. 127.17, Stats.

#### Subchapter I—Definitions

**ATCP 99.01 Definitions.** As used in this chapter:

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

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

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

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

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

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

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

1. Generally accepted accounting principles.

2. The historical cost basis method of accounting if the auditor's opinion pertains to a sole proprietor's personal financial statement prepared on a historical cost basis.

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

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

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

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

- (a) Currency.
- (b) Certified check.
- (c) Money order.
- (d) Barter.
- (e) An irrevocable bank letter of credit.

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

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

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

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

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

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

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

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

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

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

**(11)** “Current liabilities” means those liabilities that are due and payable within one year after the date of the balance sheet.

**(11m)** “Custody” means possession of or control over grain, exercised directly or through an employe or agent.

**(12)** “Deferred payment contract” means a contract for the sale of grain from a producer to a grain dealer, under which the grain dealer takes custody of the grain more than 7 calendar days before paying the producer in full for the grain.

**(13)** “Deferred price contract” means a contract for the sale of grain from a producer to a grain dealer, under which the grain dealer takes custody of the grain before the grain dealer and the producer agree on the price that the grain dealer will pay for the grain.

**(14)** “Department” means the state of Wisconsin department of agriculture, trade and consumer protection.

**(15)** “Depositor” means any of the following:

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

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

**(16)** “Equity” means the excess of total assets over total liabilities.

**(17)** “Equity statement” means a report of the change in equity from the beginning to the end of the accounting period covered by the report.

**(18)** “Exempt grain dealer” means a person who buys grain from producers, and who makes full and final cash payment for all grain which that person receives from producers before taking custody of that grain.

**(19)** “Exempt warehouse keeper” means a warehouse keeper who has a total of less than 50,000 bushels of grain obligations to others, for all of the warehouse keeper’s warehouses, at any time during a license year. “Exempt warehouse keeper” does not include a warehouse keeper who represents to any person that the warehouse keeper is bonded or has filed security with the department for the benefit of depositors.

**(20)** “Federal act” means the federal warehouse act under 7 USC 241 to 271.

**(21)** “Financial statement” means any of the following:

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

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

**(22)** “Fixed assets” means those assets representing investments of a more permanent nature, such as land, buildings, machinery and equipment.

**(23)** “Grain” means corn, wheat, soybeans, oats, barley, rye, buckwheat, sorghum, flaxseed, milo, sunflower seed and mixed grain as defined in the federal grain standards act, 7 USC 71 to 87k. “Grain” does not include canning crops for processing or grain used or intended for use solely for planting purposes.

**(24)** “Grain dealer” means a class A grain dealer, class B grain dealer, class B2 grain dealer, class C grain dealer or exempt grain dealer. “Grain dealer” does not include any of the following:

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

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

**(25)** “Income statement” means a report of the financial results of business operations for the accounting period covered by the report.

**(26)** “Interim statement” means a financial statement prepared for a period shorter than a fiscal year.

**(27)** “Liability” means an obligation to pay money or other assets or to render a service to another person immediately or in the future.

**(27g)** “Licensed grain dealer” means a grain dealer who holds a license under s. ATCP 99.22.

**(27r)** “Licensed warehouse keeper” means a warehouse keeper who holds a license under s. ATCP 99.02.

**(28)** “Other assets” means noncurrent assets other than fixed assets.

**(29)** “Person” means a natural person, corporation, partnership, cooperative or any other business association or entity.

**(30)** “Producer” means a person who is not a class A grain dealer, class B grain dealer, class B2 grain dealer or exempt grain dealer, but who is one of the following:

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

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

**(33)** “Reviewed financial statement” means a financial statement, other than an audited financial statement, that meets all of the following requirements:

(a) The warehouse keeper or grain dealer attests in writing, under oath, that the financial statement is accurate.

(b) The financial statement is reviewed by an independent certified public accountant, or an independent public accountant who holds a certificate of authority under ch. 442, Stats.

**(33m)** “Scale ticket” means a receipt, issued by a warehouse keeper or grain dealer, that documents the weight of grain delivered to the warehouse keeper or grain dealer.

**(34)** “Secretary” means the secretary of the department. “Secretary” includes both of the following:

(a) The deputy secretary of the department.

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

**(35)** “Statement of cash flows” means a report of cash receipts and cash disbursements from operating, investing and financing activities, including an explanation of changes in cash and cash equivalents for the accounting period covered by the report.

**(36)** “Warehouse” means any building, bin or storage facility used for receiving, storing, conditioning, shipping or handling grain. “Warehouse” does not include transport vehicles or facilities used for on-farm drying of grain.

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

**(38)** “Warehouse receipt” means a receipt for grain, issued by a warehouse keeper to a depositor, which is also a document of title under s. 401.201 (15), Stats.

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94; r. and recr. (3) (a), (6) (e) and (30), am. (7) (intro.), (c), (8), (9) (intro.), (12), (13), (15) (intro.), (b), (17) to (20), (21) (intro.), (23), (24) (intro.), (26), (33) and (36), cr. (8m), (11m), (33m) and (38), renum. (31) and (32) to be (27g) and (27r) and am., Register, August, 1996, No. 488, eff. 9-1-96.

### Subchapter II – Warehouse Keepers

**Note:** A licensed warehouse keeper may store grain for producers, but may not buy grain from producers unless the warehouse keeper also complies with subch. III related to grain dealers. This subchapter applies to “exempt warehouse keepers” except where they are specifically excluded from coverage.

**ATCP 99.02 Warehouse keepers; license.**

(1) **LICENSE REQUIRED.** No warehouse keeper, other than an exempt warehouse keeper, may operate without an annual warehouse keeper's license issued by the department. A license expires on August 31 annually and is not transferable between persons or warehouse facilities.

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

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

(c) If the warehouse keeper has not previously applied for a license, a financial statement as required under s. ATCP 99.06 (1).

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

(3) **FEES.** (a) *License fee.* To obtain an annual license, a warehouse keeper shall pay an annual license fee of \$75. Beginning on September 1, 1997, the license fee is \$100. A warehouse keeper operating more than one warehouse in this state shall pay an additional license fee of \$50 for each additional location. Beginning on September 1, 1997, the additional license fee is \$75 for each additional location.

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

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

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

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

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

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

6. If the storage capacity is at least 1,000,000 bushels but less than 2,000,000 bushels, the inspection fee is \$700. Beginning on September 1, 1997, the fee is \$725.

7. If the storage capacity is at least 2,000,000 bushels but less than 3,000,000 bushels, the inspection fee is \$800. Beginning on September 1, 1997, the fee is \$825.

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

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

(c) *Supplementary inspection fee.* To obtain an annual license, a warehouse keeper shall pay, in addition to the annual inspection fee specified under par. (b), a supplementary annual inspection fee of \$175 for each additional warehouse location which the warehouse keeper operates in this state, other than the warehouse keeper's principal warehouse. Beginning on September 1, 1997, the fee is \$225 for each additional location.

(d) *Surcharge for operating without a license.* An applicant for an annual warehouse keeper's license shall pay a license fee

surcharge of \$500 if the department determines that, within 365 days prior to submitting an application for a warehouse keeper's license, the applicant acted as a warehouse keeper without a license in violation of s. 127.02 (1), Stats. Payment of the license fee surcharge does not relieve the applicant of other civil or criminal liability that may result from acting as a warehouse keeper without a license, but does not constitute evidence of a violation of law.

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

(5) **LICENSE DISPLAYED.** A warehouse keeper required to hold a license under sub. (1) shall prominently display a true copy of that license at each warehouse which the warehouse keeper operates in this state.

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94; am. (1), (2) (intro.) to (c), (3) to (5), cr. (3) (b) 7. to 9., Register, August, 1996, No. 488, eff. 9-1-96.

**ATCP 99.04 Warehouse keepers; insurance.**

(1) **INSURANCE AGAINST FIRE AND NATURAL PERILS.** (a) Every warehouse keeper shall maintain fire and extended coverage insurance issued by an insurance company authorized to do business in this state. The insurance policy shall cover all grain in the custody of the warehouse keeper, whether held for others or owned by the warehouse keeper, at the full local market value of the grain. This paragraph does not apply to an exempt warehouse keeper.

(b) An insurance policy under par. (a) shall provide that the policy may not be canceled by the warehouse keeper or insurance company except on 30 days' prior written notice served on the department in person or by certified mail. The warehouse keeper shall obtain satisfactory replacement insurance, and shall file satisfactory evidence of that replacement insurance with the department within 20 days after the cancellation notice is served on the department, and at least 10 days before the cancellation takes effect.

(2) **INSURANCE DISCLOSURE.** Before storing grain for any depositor, a warehouse keeper, including an exempt warehouse keeper, shall clearly disclose in writing, and post in a conspicuous location observable by the public, all of the following information:

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

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

(3) **WAREHOUSE KEEPER'S INSURANCE; DEDUCTIBLES.** Neither an insurance policy under sub. (1), nor a warehouse keeper's liability insurance policy, may contain any deductible clause which limits the insurer's liability to depositors for the full value of the depositors' covered losses under the policy. This subsection does not prohibit a clause under which the warehouse keeper agrees to indemnify the insurer for a portion of each claim by a depositor that is paid by the insurer under the policy, as long as the clause does not limit the insurer's obligation to pay each depositor the full amount of the depositor's covered losses.

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94; am. (1) (a), (2) and (3), Register, August, 1996, No. 488, eff. 9-1-96.

**ATCP 99.06 Warehouse keepers; financial statements.**

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

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

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

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

(3) SUPPLEMENTARY OR INTERIM FINANCIAL STATEMENTS. (a) The department may require an exempt warehouse keeper to file an annual financial statement with the department if the department determines that the filing is necessary to protect depositors.

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

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

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

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

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

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

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

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

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

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

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

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94; r. and recr. Register, August, 1996, No. 488, eff. 9-1-96.

**ATCP 99.08 Warehouse keepers; minimum financial standards. (1) REQUIREMENT.** A warehouse keeper, other than an exempt warehouse keeper, shall meet all of the following financial standards:

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

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

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

**Note:** In determining whether a warehouse keeper complies with the financial standards under this subsection, the department shall exclude assets as provided under s. ATCP 99.46.

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

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

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

(b) Files security with the department that complies with subch. V.

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94; am. (1) (a) and (c), Register, August, 1996, No. 488, eff. 9-1-96.

**ATCP 99.10 Warehouse keepers; supplementary reports. (1) REQUIREMENT.** (a) A warehouse keeper, other than an exempt warehouse keeper, shall file monthly reports with the department under this section unless the warehouse keeper meets the minimum financial standards under s. ATCP 99.08 (1). The warehouse keeper shall file each monthly report on or before the 10th day of the month.

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

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

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94.

**ATCP 99.12 Warehouse keepers; security. (1) REQUIREMENT.** Except as provided under sub. (2), a warehouse keeper shall file security with the department that complies with subch. V.

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

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

(b) An exempt warehouse keeper.

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94.

**ATCP 99.14 Warehouse keepers; receipts for grain.**

**(1) REQUIREMENT.** No warehouse keeper may receive grain from a depositor, for storage, unless the warehouse keeper immediately furnishes the depositor or the depositor's agent with a scale ticket, warehouse receipt or other storage receipt. Except as provided in pars. (g) and (h), every copy of the scale ticket, warehouse receipt or other storage receipt shall include all of the following:

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

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

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

(d) The kind of grain received.

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

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

(g) The conspicuous word "NEGOTIABLE," or the conspicuous word "NONNEGOTIABLE," if the document is issued in the form of a warehouse receipt. If a warehouse keeper receives depositor-owned grain for storage from another warehouse keeper, every copy of the warehouse receipt shall contain the conspicuous word "NONNEGOTIABLE."

(h) A statement indicating that the depositor must remove the grain from storage by a specified date, which shall be not more than 3 years after the date of deposit. This paragraph does not apply to grain for which the warehouse keeper gives the depositor a warehouse receipt, to grain owned by the commodity credit corporation, or to grain which is pledged as collateral for a price support loan from the agriculture stabilization and conservation service.

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

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

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

2. The owner transfers title to another person.

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

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94; am. (1) (intro.), (g) and (h), r. (1) (i), r. and recr. (2), Register, August, 1996, No. 488, eff. 9-1-96.

**ATCP 99.16 Warehouse keepers; records and accounts.** **(1) REQUIREMENT.** A warehouse keeper shall maintain current, complete and accurate records and accounts of all grain received into or withdrawn from the warehouse, including all of the following:

(a) Daily position records for each kind of grain, which will permit the ready determination of total grain in licensed storage, total grain under the control of the warehouse keeper, all obligations relating to grain received or withdrawn, and the total amount of grain to which the warehouse keeper claims title as of the close

of each business day. If the warehouse keeper maintains a computerized daily position record, or computerized records under par. (b), the warehouse keeper shall generate a hard copy print-out for each business day, unless the computer system can recall and print the records extending back for a period of at least 6 years.

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

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

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

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

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

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

(b) A warehouse keeper may, for the following reasons, correct a daily position record under sub. (1) (a) or (b) 3. without the department's approval:

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

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

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94; am. (1) (a), Register, August, 1996, No. 488, eff. 9-1-96.

**ATCP 99.18 Warehouse keepers; duties and prohibited practices.** **(1) GRAIN WEIGHT, GRADE AND QUALITY.** When determining the weight, grade or quality of grain, a warehouse keeper shall make accurate determinations using accurate weighing, testing and grading equipment, and shall accurately record those determinations.

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

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

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

(b) If, when a depositor demands the return of stored grain, the warehouse keeper does not have an adequate amount of the same grade of grain to fulfill the demand, the warehouse keeper may, with the depositor's written approval, substitute monetary payments or a sufficient amount of a better grade of grain to provide the depositor with equivalent value. The value of grain shall be based upon the local market value of that grade of grain at the time the depositor demands return of deposited grain. A warehouse keeper may not agree with a depositor to provide grain having

greater value than the grain to which the depositor is entitled under the storage receipt.

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

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

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

(b) Make any false or misleading statement in any application for a license or in any other statement or report which the warehouse keeper is required to submit to the department under this chapter or ch. 127, Stats.

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

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

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

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94; am. (6) (b), Register, August, 1996, No. 488, eff. 9-1-96.

**ATCP 99.20 Warehouse keepers; notice to depositors.** **(1) NOTICE REQUIRED.** A warehouse keeper shall post a written notice under sub. (2) in a place readily accessible to depositors. The warehouse keeper shall also give each depositor a copy of the notice at all of the following times during each license year:

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

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

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

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

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

"Under Wisconsin law, a grain warehouse keeper storing 50,000 bushels or more of grain for depositors must be licensed with the Wisconsin Department of Agriculture, Trade and Consumer Protection. A licensed warehouse keeper must meet minimum financial standards or file security with the department. The department also inspects licensed grain warehouses annually. Although these requirements promote financial responsibility and safekeeping of grain, they do not guarantee depositors against loss. Each depositor is responsible for determining the credit worthiness of a grain warehouse keeper with whom the depositor stores grain."

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

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

1. A current ratio of at least 1.25 to 1.00.

2. Equity equal to \$50,000, or the product of our storage capacity multiplied by 10¢ per bushel, whichever is greater."

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

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

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

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

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94; am. (1), (2) (b), (c) and (e), Register, August, 1996, No. 488, eff. 9-1-96.

### Subchapter III — Grain Dealers

**Note:** A grain dealer may not operate a facility to store grain for others unless the grain dealer also complies with subchapter II related to warehouse keepers. This subchapter applies to all classes of grain dealers, including "exempt grain dealers," except where a class of grain dealers is specifically excluded from coverage.

**ATCP 99.22 Grain dealers; license.** **(1) LICENSE REQUIRED.** (a) Except as provided under par. (b), no person may do any of the following:

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

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

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

(b) Paragraph (a) does not apply to an exempt grain dealer or a class C grain dealer. A class C grain dealer may voluntarily apply for a license.

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

**(2) APPLICATION.** An applicant for a 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) Any information reasonably required by the department for licensing purposes.

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

(c) If the grain dealer has not previously applied for a license, a financial statement if required under s. ATCP 99.26 (1).

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

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

2. A fee of \$175 for each grain dealer business location which the grain dealer operates in this state, other than the grain dealer's principal business location. For license years beginning on or after September 1, 1997, this fee is \$225 per location.

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

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

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

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

2. A fee of \$25 for each truck, in excess of one truck, which the grain dealer owns or leases and uses to haul grain. For license

years beginning on or after September 1, 1997, this fee is \$45 per truck.

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

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

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

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

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

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

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

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

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

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

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

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

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

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94; r. and recr. (1), (3) and (5), am. (2) and (4), Register, August, 1996, No. 488, eff. 9-1-96.

**ATCP 99.24 Nonresident grain dealers.** This subchapter applies to a nonresident grain dealer who buys grain from or sells grain for producers who produced the grain in this state, regardless of whether the grain dealer takes title to or custody of the grain in this state, and regardless of whether the grain dealer maintains an office or place of business in this state.

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94; am. Register, August, 1996, No. 488, eff. 9-1-96.

**ATCP 99.26 Grain dealers; financial statements.**

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

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

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

(c) The grain dealer represents to any person that the grain dealer is bonded or that the grain dealer's obligations to producers

are covered by security filed with the department for the benefit of producers.

**Note:** Par. (c) applies to any grain dealer, including an "exempt grain dealer" who makes any of the representations under par. (c).

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

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

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

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

**Note:** Subd. 3. applies to any grain dealer, including an "exempt grain dealer" who makes any of the representations under subd. 3.

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

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

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

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

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

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

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

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

(d) With every financial statement filed under this section, a grain dealer shall file a statement showing the total dollar value of grain which that grain dealer purchased from producers during the grain dealer's last completed fiscal year, and during each month of that fiscal year. The grain dealer shall file the statement on a form provided by the department.

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

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

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

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

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

(d) The department may accept a supplementary or interim financial statement under sub. (3) which is not a reviewed or audited financial statement if the statement includes a sworn and notarized statement, signed by the grain dealer, which states that the financial statement is correct.

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94; r. and recr. Register, August, 1996, No. 488, eff. 9-1-96.

**ATCP 99.28 Grain dealers; minimum financial standards.** (1) **REQUIREMENT.** Except as provided under sub. (2), a grain dealer who meets the criteria identified under s. ATCP 99.26 (1) or (2) shall meet the following minimum financial standards:

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

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

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

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

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

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

(b) Files monthly reports with the department under s. ATCP 99.30.

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

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94; r. and recr. Register, August, 1996, No. 488, eff. 9-1-96.

**ATCP 99.30 Grain dealers; monthly reports.** A grain dealer who meets the criteria identified under s. ATCP 99.26 (1) or (2) shall file a monthly report with the department, on or before the 10th day of each month, unless the grain dealer meets the minimum financial standards under s. ATCP 99.28 (1). The monthly report shall specify all of the following:

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

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

(3) The amount that the grain dealer owed to producers for each type of grain identified under sub. (2) as of the last day of the previous month. The grain dealer shall estimate the amount owed for grain purchased under deferred price contracts based on the pricing formulas in the contracts and the market prices for grain as of the last day of the previous month.

(4) Other relevant information required by the department.

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94; r. and recr. Register, August, 1996, No. 488, eff. 9-1-96.

**ATCP 99.32 Grain dealers; security.** (1) **REQUIRED SECURITY.** (a) Except as provided under par. (b), a grain dealer identified under s. ATCP 99.26 (1) or (2) shall file with the department security that complies with subch. V.

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

1. That the grain dealer is bonded.

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

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

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94; r. and recr. Register, August, 1996, No. 488, eff. 9-1-96.

**ATCP 99.34 Grain dealers; receipts for grain.**

(1) **REQUIREMENT.** No grain dealer may receive grain from or sell grain for a producer unless that grain dealer furnishes the producer or the producer's agent with a scale ticket or other purchase receipt when taking custody of or title to the grain. The scale ticket or purchase receipt shall include all of the following:

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

(b) An indication that the document is a scale ticket or purchase receipt for grain.

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

(d) The kind of grain received.

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

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

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

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

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

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

3. The scale ticket or receipt clearly specifies that the producer retains ownership of the grain and is depositing the grain for storage only.

(2) **GRAIN DEALER'S COPIES.** A grain dealer shall keep copies of all scale tickets and other purchase receipts which the grain



dealer issues under sub. (1). The grain dealer shall retain copies of the documents for at least 6 years after the documents are issued, and shall make copies available to the department for inspection and copying upon request.

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94; am. (1) (intro.), Register, August, 1996, No. 488, eff. 9-1-96.

**ATCP 99.36 Grain dealers; deferred payment and deferred price contracts.** (1) **CONTRACTS IN WRITING.**

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

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

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

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

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

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

(3) **GRAIN DEALER TAKES TITLE TO GRAIN.** No grain dealer may purchase grain under a deferred payment or deferred price contract unless the contract clearly specifies that the grain dealer takes title to the grain when it is received or, if the contract involves the purchase of grain already in storage, when the contract is made.

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

(b) No deferred payment or deferred price contract may specify a payment deadline that is more than 180 days after the date on which the contract price is established. The payment deadline may not be extended, except that the parties may sign a new contract which extends the deadline for up to 180 days.

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

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

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

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

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94; am. (4) (b), Register, August, 1996, No. 488, eff. 9-1-96.

**ATCP 99.38 Grain dealers; records and accounts.**

(1) **RECORDS AND ACCOUNTS; GENERAL.** A grain dealer shall keep complete records and accounts of all grain received and sold by the grain dealer. Records and accounts shall be complete, accurate, current, well organized and accessible, so that the grain dealer and the department can readily determine all of the following:

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

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

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

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

(e) The nature and amount of a grain dealer's current obligations to producers under grain purchase contracts, including deferred payment and deferred price contracts. The grain dealer shall keep a daily record of obligations under priced contracts, and a separate daily record of obligations under deferred price contracts that have not yet been priced.

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

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

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

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

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

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

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

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

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

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

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

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94.

**ATCP 99.40 Grain dealers; duties and prohibited practices.** (1) **GRAIN WEIGHT, GRADE AND QUALITY.**

When determining the weight, grade or quality of grain, a grain dealer shall make accurate determinations using accurate weighing, testing and grading equipment, and shall accurately record those determinations.

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

(3) **PERMANENT BUSINESS LOCATION.** (a) Every class A grain dealer, class B grain dealer and class B2 grain dealer shall maintain a permanent business address at which the grain dealer may be readily contacted during business hours. The grain dealer's permanent business address shall be included on every scale ticket

or receipt which the grain dealer issues under s. ATCP 99.34 for grain received from or sold for producers.

(b) Every class A grain dealer, class B grain dealer and class B2 grain dealer shall have business hours that begin at least one-half hour before the opening of the Chicago Board of Trade and continue at least one-half hour after the closing of the Chicago Board of Trade on each day that the Chicago Board of Trade is open for trading. Business hours complying with this paragraph shall be prominently posted at each of the grain dealer's business locations.

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

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

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

(b) Make any false or misleading statement in any application for a license or in any other statement or report which the grain dealer is required to submit to the department under this chapter or ch. 127, Stats.

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

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

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

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94; am. (2), (3) and (5) (b), Register, August, 1996, No. 488, eff. 9-1-96.

**ATCP 99.42 Grain dealers; notice to producers.**

(1) NOTICE REQUIRED. During each license year, a licensed grain dealer shall give written notice under sub. (2) to each producer from whom the grain dealer receives grain unless the grain dealer makes full cash payment for the grain before taking title to or custody of the grain. The grain dealer shall give the written notice to the producer at all of the following times during the license year:

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

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

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

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

(b) The following statement:

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

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

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

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

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

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

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

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

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94; r. and recr. Register, August, 1996, No. 488, eff. 9-1-96.

**Subchapter IV— Financial Statements And Accounting Standards**

**ATCP 99.44 Financial statements; accounting standards.**

(1) ACCOUNTING PRINCIPLES; GENERAL. Every reviewed or audited financial statement filed with the department under this chapter shall be prepared according to generally accepted accounting principles and this chapter.

(2) BALANCE SHEET; CLASSIFICATION OF ASSETS. In a balance sheet, assets shall be classified in the following categories, or in other categories specifically described in the balance sheet:

(a) Current assets including cash, marketable securities identified in the balance sheet, notes and accounts receivable, inventories, prepaid items and other current assets specifically identified in the balance sheet. The balance sheet shall identify receivables and inventories according to subs. (4) and (5). Marketable securities and other short-term investments shall be valued at cost or market value, whichever is lower.

(b) Long-term investments.

(c) Fixed assets, including property, plant and equipment, identified according to sub. (6).

(d) Intangible assets.

(e) Other assets specifically described in the balance sheet.

(3) BALANCE SHEET; CLASSIFICATION OF LIABILITIES. In a balance sheet, liabilities shall be classified in the following categories:

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

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

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

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

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

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

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

(d) A financial statement shall identify the method used to account for doubtful or uncollectible receivables. If a warehouse keeper or grain dealer maintains an allowance for doubtful or

uncollectible receivables, the amount of the allowance shall be shown in the balance sheet.

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

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

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

**(8) CURRENT LIABILITIES.** (a) A financial statement shall show current liabilities separately from long-term liabilities. Current liabilities shall include the current portion of all long-term obligations as well as any other items of a current nature. The financial statement shall set forth current liabilities, including all notes payable within one year of the balance sheet date, accounts payable, deferred income and accrued expenses, in sufficient detail that the specific nature of the liability and the amount owed can be readily determined.

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

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

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

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

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

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

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

(b) Defaults in payment of any obligations.

(c) A brief statement as to contingent liabilities.

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

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

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

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

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

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

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

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

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

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

(e) The total number of bushels of grain which the warehouse keeper is obligated to store for depositors who hold original non-negotiable warehouse receipts issued by the warehouse keeper.

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

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

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

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

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

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94; am. (8) (b), Register, August, 1996, No. 488, eff. 9-1-96.

**ATCP 99.46 Assets excluded from financial standard calculations.** The department shall exclude the following assets when calculating whether a warehouse keeper complies with the minimum financial standards under s. ATCP 99.08, or whether a grain dealer complies with the minimum financial standards under s. ATCP 99.28:

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

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

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

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94.

**ATCP 99.47 Liability adjustments.** (1) For purposes of s. ATCP 99.08 (1) (c) or 99.28 (1) (c), a warehouse keeper or grain dealer may deduct, from the amount of a liability reported in the warehouse keeper's or grain dealer's financial statement, any of the liability adjustments allowed for that warehouse keeper or

grain dealer under subs. (2) to (6) if the amount of the liability adjustments and the amount of the offsetting assets are disclosed in the notes to the financial statement. The total amount of the liability adjustments under subs. (2) to (6) may not exceed the total amount of the corresponding assets, identified in the notes to the financial statement, that justify the adjustments.

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

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

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

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

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

**History:** Cr. Register, August, 1996, No. 488, eff. 9-1-96.

#### ATCP 99.48 Financial statements; confidentiality.

Neither a financial statement filed with the department under this chapter, nor a disclosure of grain purchases filed with the department under s. ATCP 99.26 (4) (d) is open to public inspection under s. 19.35, Stats. The department may introduce these documents as evidence in an administrative hearing conducted by the department, in a court proceeding brought by or on behalf of the department, or in a court proceeding in which the department is a named party. The department's introduction of these documents in a department administrative hearing or court proceeding is subject to any protective order which the court or department hearing examiner may consider appropriate.

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94; am. Register, August, 1996, No. 488, eff. 9-1-96.

### Subchapter V—Security

**ATCP 99.50 Form of security.** Security filed with the department under s. ATCP 99.12 or 99.32 is subject to approval by the department. Security shall be in one or more of the following forms:

(1) A continuous surety bond that complies with s. ATCP 99.60.

(2) Cash, or negotiable securities that comply with s. ATCP 99.62.

(3) Stocks, bonds or other marketable securities at current market value. The stocks, bonds or other marketable securities shall comply with s. ATCP 99.64.

(4) Irrevocable bank letters of credit that comply with s. ATCP 99.66.

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

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94; r. (5), Register, August, 1996, No. 488, eff. 9-1-96.

**ATCP 99.52 Department custody of security.** The department or the department's agent shall maintain custody of all security filed by a warehouse keeper or grain dealer under this chapter. Security shall be payable to and held by the department for the benefit of depositors storing grain with the warehouse keeper or producers selling grain to the grain dealer.

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94.

**ATCP 99.54 Amount of security.** (1) **WAREHOUSE KEEPERS.** The amount of security filed by a warehouse keeper under this chapter shall be not less than 20% of the current market value of all grains stored in the warehouse for depositors, except that the amount of security shall be not less than \$25,000.

(2) **GRAIN DEALERS.** (a) Except as provided under par. (b), the amount of security filed by a grain dealer under this chapter shall be in a principal amount, to the next highest \$1,000, equal to the sum of the following:

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

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

3. 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.

(b) If a grain dealer has been engaged in business as a grain dealer for less than one year, or not at all, the grain dealer shall file and maintain security in an amount specified by the department. The department shall specify an amount that is equal to 35% of the projected dollar amount of the grain dealer's monthly average grain purchases during the 3 months in which the grain dealer is likely to make the largest monthly purchases from producers during the following 12 months.

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94; am. Register, August, 1996, No. 488, eff. 9-1-96.

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

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

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

(c) Security currently filed by the warehouse keeper or grain dealer falls below the amount required under s. ATCP 99.54 for any reason, including a depreciation in the value of the security or

an increase in the warehouse keeper's or grain dealer's maximum liability to producers.

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

(2) **DEMAND NOTICE.** If the department requires a warehouse keeper or grain dealer to file security under sub. (1), it shall issue a notice to the warehouse keeper or grain dealer indicating why the security is required, the basis on which the security amount has been or will be determined, and the deadline for filing security. A notice under this subsection shall be served in person or by certified mail.

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

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

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

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94.

**ATCP 99.58 Release of security.** The department may, upon request, release security filed under this chapter only if one of the following occurs:

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

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

(3) The warehouse keeper or grain dealer files alternative security of equivalent value.

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

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94; **renum. (a) to (d) to be (1) to (4) and am. (1) and (4), Register, August, 1996, No. 488, eff. 9-1-96.**

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

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

(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 90 days written notice to the department served in person or by certified mail. Notice of cancellation does not affect any liability incurred under the bond within 90 days after the notice is served on the department.

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94.

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

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

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

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

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

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94.

**ATCP 99.64 Stocks, bonds and other marketable securities.** A stock, bond, or other marketable security filed as security with the department under this chapter shall be all of the following:

(1) Issued or endorsed to the department.

(2) Valued for security purposes at current market value.

(3) Readily convertible by the department into cash.

(4) Subject to sale or redemption only with the department's written agreement.

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

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94.

**ATCP 99.66 Irrevocable bank letters of credit.** An irrevocable bank letter of credit filed as security with the department shall be all of the following:

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

(2) Issued on bank letterhead.

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

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

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

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94.

**ATCP 99.68 Security interests in accounts receivable and inventory.**  
**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94; **r. Register, August, 1996, No. 488, eff. 9-1-96.**

## Subchapter VI — Suspension Or Corrective Action Orders

**Note:** See ch. ATCP 1 for procedures related to administrative orders and contested cases generally.

**ATCP 99.70 Suspension or corrective action; general.** Following notice and hearing, the secretary may issue an order that does either of the following:

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

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

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94; am. (1), Register, August, 1996, No. 488, eff. 9-1-96.

**ATCP 99.72 Summary suspension or corrective action.** (1) The secretary may, without prior notice or hearing, do either of the following if the secretary finds that the action is necessary because there is a clear and imminent threat of harm to producers or depositors:

(a) Issue an order summarily suspending a warehouse keeper's or grain dealer's license.

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

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

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

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

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

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

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

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

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

(3) An order under sub. (1) shall set forth the basis for the order. If, within 10 days after the order is served, the warehouse keeper or grain dealer requests a hearing on the order, the department shall hold a hearing on the order. The department shall hold an informal hearing as soon as reasonably possible, but not more than 10 days after the department receives a request for hearing. The department shall promptly hold a formal contested case hearing under ch. 227, Stats., on any issues relevant to the order which are not resolved at the informal hearing.

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94; am. (1) (a), Register, August, 1996, No. 488, eff. 9-1-96.

### Subchapter VII — Collecting Producer Or Depositor Claims

**ATCP 99.74 Producer or depositor claims; default proceedings.** (1) **FILING CLAIMS.** If a depositor claims that a warehouse keeper has failed to return stored grain upon demand, or if a producer claims that a grain dealer has failed to pay for grain when due, the producer or depositor may file a written claim with the department. Upon receipt of a claim, or other evidence of default on the part of a warehouse keeper or grain dealer, the department may initiate a default proceeding under this section. Before initiating a default proceeding, the department may inspect the warehouse keeper's or grain dealer's records, and may conduct a preliminary investigation under s. 93.16, Stats.

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

pating in any recovery obtained by the department. Notice of the order shall be published as follows:

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

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

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

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

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

**Note:** See s. ATCP 1.08 for procedures related to financial default proceedings generally.

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

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

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

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

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

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

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94; am. (3), (4) (a) and (6) (a), Register, August, 1996, No. 488, eff. 9-1-96.

**ATCP 99.76 Payment of secured claims.** At any time after the department receives a notice of default, the department may convert any security that the warehouse keeper or grain dealer has filed with the department, and may apply the proceeds

of that security to pay allowed claims. The department shall distribute available funds to the claimants according to the final order allowing claims, on a proportionate basis, according to the amount of each allowed claim. If funds exceed allowed claims, the excess shall be returned to the person who provided the assets used as security.

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94; am. Register, August, 1996, No. 488, eff. 9-1-96.

**ATCP 99.78 Collecting producer or depositor claims.** (1) The department may, on behalf of producers or depositors, demand and receive grain, money or other assets for payment of claims allowed under s. ATCP 99.74 or commence an action in court to recover grain, money or other assets for payment

of allowed claims. Any amounts recovered by the department shall be distributed to represented claimants on a proportionate basis, according to the amount of each claimant's allowed claim.

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

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

**History:** Cr. Register, July, 1994, No. 463, eff. 9-1-94; am. (1), Register, August, 1996, No. 488, eff. 9-1-96.