

## CHAPTER 126

## AGRICULTURAL PRODUCER SECURITY

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## SUBCHAPTER I

## GENERAL

**126.01 General definitions.** In this chapter:

(1) “Affiliate” means any of the following persons:

(a) An owner, major stockholder, partner, officer, director, member, employee, or agent of a contractor.

(b) A person owned, controlled, or operated by a person under par. (a).

(2) “Asset” means anything of value owned by a person.

(3) “Audited financial statement” means a financial statement on which an independent certified public accountant licensed or certified under ch. 442 has done all of the following:

(a) Stated that the financial statement presents fairly, in all material respects, the financial position of a contractor 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 financial statement is a sole proprietor’s personal financial statement and the financial statement is 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) “Contractor,” unless otherwise qualified, means any of the following:

(a) A grain dealer, as defined in s. 126.10 (9).

(b) A grain warehouse keeper, as defined in s. 126.25 (9).

(c) A milk contractor, as defined in s. 126.40 (8).

(d) A vegetable contractor, as defined in s. 126.55 (14).

(6) “Current assets” means cash and other assets, including trade or investment items, that may be readily converted into cash in the ordinary course of business within one year after the date as of which the value of those assets is determined.

(7) “Current liabilities” means those liabilities that are due within one year after the date as of which the value of those liabilities is determined.

(8) “Department” means the department of agriculture, trade and consumer protection.

(9) “Equity” means the value of assets less the value of liabilities.

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

(11) “Fund” means the agricultural producer security fund established under s. 25.463.

(12) “Generally accepted accounting principles” means the accounting standards adopted by the Financial Accounting Standards Board, except that for a business entity organized and operating outside the United States “generally accepted accounting principles” includes generally accepted foreign accounting standards that are substantially equivalent to standards adopted by the Financial Accounting Standards Board.

(13) “Grain” means corn, wheat, soybeans, oats, barley, rye, buckwheat, sorghum, flax seed, milo, sunflower seed, and mixed grain, as defined in 7 CFR 810.801, except that “grain” does not include any of the following:

(a) Sweet corn or other canning crops for processing.

(b) Seed corn, wheat, soybeans, oats, barley, rye, buckwheat, sorghum, flax seed, milo, sunflower seed, or mixed grain used or intended for use solely for planting purposes.

(c) Corn, wheat, soybeans, oats, barley, rye, buckwheat, sorghum, flax seed, milo, sunflower seed, or mixed grain that has been rolled, cracked, roasted, or otherwise processed.

(14) “Income statement” means a report of the financial results of business operations for a specific period.

(15) “Individual” means a natural person.

(16) “Interim financial statement” means a statement of financial condition prepared for a period shorter than a fiscal year.

(17) “Milk” has the meaning given in s. 97.22 (1) (e).

(18) “Person,” notwithstanding s. 990.01 (26), means an individual, a corporation, a cooperative, an unincorporated cooperative association, a partnership, a limited liability company, a trust, a state agency, as defined in s. 20.001 (1), a local governmental unit, as defined in s. 66.0131 (1) (a), or other legal entity.

(19) “Producer,” unless otherwise qualified, means a grain producer, as defined in s. 126.10 (10), milk producer, as defined in s. 126.40 (10), or vegetable producer, as defined in s. 126.55 (16).

(20) “Reviewed financial statement” means a contractor’s financial statement, other than an audited financial statement, if all of the following apply:

(a) The contractor attests in writing, under oath, that the financial statement is complete and accurate.

(b) The financial statement is reviewed by an independent certified public accountant licensed or certified under ch. 442.

(21) “Security” means security filed or maintained under s. 126.16, 126.31, 126.47, or 126.61.

(22) “Sole proprietor” means a contractor who is an individual.

(23) “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.

(24) “Vegetable” means any vegetable that is grown or sold for use in food processing, whether or not the vegetable is actually processed as food. “Vegetable” includes green beans, kidney beans, lima beans, romano beans, wax beans, beets, cabbage, carrots, celery, cucumbers, onions, peas, potatoes, spinach, squash, and sweet corn, but does not include grain.

History: 2001 a. 16; 2005 a. 441.

## SUBCHAPTER II

### AGRICULTURAL PRODUCER SECURITY FUND

**126.05 Agricultural producer security fund.** (1) The fund is a public trust and shall be administered to secure payments to producers. Moneys deposited into the fund may be used only for the purposes of this chapter.

(2) The department shall deposit into the fund all fees, surcharges, assessments, reimbursements, and proceeds of contin-

gent financial backing that the department collects under this chapter. The department shall keep a record by contractor and industry, of all deposits.

History: 2001 a. 16; 2003 a. 38.

**126.06 Contingent financial backing.** (1) DEPARTMENT TO ACQUIRE. Using moneys appropriated under s. 20.115 (1) (v), the department shall acquire contingent financial backing to secure payment under s. 126.72 (2) of claims against contributing contractors, as defined in s. 126.68 (1). The contingent financial backing may be in one or more of the following forms:

(a) A surety bond.

(b) A contract to provide a cash loan to the fund whenever the department requests a loan payable as provided in sub. (3).

(2) AMOUNT. The department shall acquire contingent financial backing under sub. (1) in the amount that, in the department’s judgment, is sufficient to meet reasonably foreseeable needs under s. 126.72 (2), except as follows:

(a) The department may acquire a smaller amount of contingent financial backing if, in the department’s judgment, that is necessary to avoid excessive acquisition costs or repayment liabilities.

(b) The department may not acquire contingent financial backing in an amount that exceeds \$17,000,000, unless the department establishes a different maximum amount by rule.

(3) REPAYMENT. The department shall pay principal and interest costs of any loan provided under sub. (1) (b) only from the appropriation from the agricultural producer security fund under s. 20.115 (1) (wc).

History: 2001 a. 16; 2003 a. 38.

**126.08 Start-up loan to fund; repayment.** On January 1, 2002, \$2,000,000 is transferred as a loan from the agrichemical management fund, to the agricultural producer security fund. The department shall repay this loan principal, plus interest, from the agricultural producer security fund by July 1, 2006. Interest shall be compounded at 5% annually before July 1, 2003, and at 2% annually beginning on July 1, 2003. The department shall transfer at least \$250,000 from the agricultural producer security fund to the agrichemical management fund on July 1 of each year, beginning on July 1, 2003. The department may accelerate the loan repayment, at its discretion.

History: 2001 a. 16; 2003 a. 38.

## SUBCHAPTER III

### GRAIN DEALERS

Cross Reference: See also ch. ATCP 99, Wis. adm. code.

**126.10 Definitions.** In this subchapter:

(1) “Cash on delivery” means full cash payment for grain when the grain dealer takes custody or control of the grain.

(2) “Cash payment” means payment in any of the following forms:

(a) Currency.

(b) A cashier’s check or a check that a bank issues and certifies.

(c) A wire transfer.

(d) Simultaneous barter.

(3) “Contributing grain dealer” means a grain dealer who is licensed under s. 126.11, who either has paid one or more quarterly installments under s. 126.15 (7) or is required to contribute to the fund, but the first quarterly installment under s. 126.15 (7) is not yet due, and who is not disqualified from the fund under s. 126.14 (2).

(4) “Current ratio” means the ratio of the value of current assets to the value of current liabilities, calculated according to s. 126.13 (6) (c) 1.

(5) “Debt to equity ratio” means the ratio of the value of liabilities to equity, calculated according to s. 126.13 (6) (c) 2.

(6) “Deferred payment contract” means a contract for the procurement of grain under which a grain dealer takes custody or control of producer grain more than 7 days before paying for the grain in full. “Deferred payment contract” includes a deferred price contract.

(7) “Deferred price contract” means a contract for the procurement of grain under which a grain dealer takes custody or control of producer grain more than 7 days before the price of that grain must be determined under the contract.

(8) “Disqualified grain dealer” means a grain dealer who is disqualified from the fund under s. 126.14 (2).

(9) “Grain dealer” means a person who buys producer grain or who markets producer grain as a producer agent. “Grain dealer” does not include any of the following:

(a) A person who merely brokers a contract between a grain producer and a grain dealer without becoming a party to the contract, taking control of grain, or accepting payment on behalf of the grain producer.

(b) A person who merely buys or sells grain on a board of trade or commodity exchange.

(10) “Grain producer” means a person who grows grain.

(10m) “License year” means the period beginning on September 1 and ending on the following August 31.

(11) “Procure grain” means to buy grain or acquire the right to market grain.

(12) “Procure producer grain in this state” means any of the following:

(a) To buy producer grain for receipt in this state.

(b) To acquire the right to market producer grain grown in this state.

(13) “Producer agent” means a person who acts on behalf of a grain producer to market or accept payment for the grain producer’s grain without taking title to that grain, including a person who uses a producer trust fund to market or accept payment for producer grain. “Producer agent” does not include any of the following:

(a) A person who merely brokers a contract between a grain producer and a grain dealer, without becoming a party to the contract, taking control of grain, or accepting payment on behalf of the grain producer.

(b) A person who merely holds or transports grain for a grain producer without marketing the grain or accepting payment on behalf of the grain producer.

(14) “Producer grain” means grain that is owned by or held in trust for one or more grain producers. “Producer grain” includes grain that a producer agent markets for a grain producer, without taking title to the grain.

*History:* 2001 a. 16.

**126.11 Grain dealers; licensing.** (1) LICENSE REQUIRED. Except as provided in sub. (2), no grain dealer may procure producer grain in this state without a current annual license from the department.

(2) EXEMPT GRAIN DEALERS. The following grain dealers are not required to hold a license under this section, but may volunteer to be licensed:

(a) A grain dealer who pays cash on delivery for all producer grain.

(b) A grain dealer who buys producer grain solely for the grain dealer’s own use as feed or seed and who spends less than \$400,000 per license year for that grain.

(2m) LICENSE TERMS. A license under this section expires on the August 31 following its issuance. No person may transfer or assign a license issued under this section.

(3) LICENSE APPLICATION. A grain dealer shall apply for an annual license under this section in writing, on a form provided by the department. An applicant shall provide all of the following:

(a) The applicant’s legal name and any trade name under which the applicant proposes to operate as a grain dealer.

(b) A statement of whether the applicant is an individual, corporation, partnership, cooperative, unincorporated cooperative association, limited liability company, trust, or other legal entity. If the applicant is a corporation, a cooperative, or an association, the applicant shall identify each officer of the corporation or cooperative. If the applicant is a partnership, the applicant shall identify each partner.

(c) The mailing address of the applicant’s primary business location and the name of a responsible individual who may be contacted at that location.

(d) The street address of each business location from which the applicant operates in this state as a grain dealer and the name of a responsible individual who may be contacted at each location that is staffed.

(e) All license fees and surcharges required under sub. (4).

(f) The sworn and notarized statement required under sub. (9).

(g) A financial statement if required under s. 126.13 (1) and not yet filed.

(h) Other relevant information required by the department.

(4) LICENSE FEES AND SURCHARGES. A grain dealer applying for an annual license under this section shall pay the following fees and surcharges, unless the department specifies a different fee or surcharge amount by rule:

(a) A nonrefundable license processing fee of \$25.

(b) The following license fees based on the grain dealer’s reported grain payments under sub. (9) (a), less any credit provided under sub. (6):

1. A fee of \$500, plus \$225 per business location in excess of one business location, if the amount under sub. (9) (a) is at least \$500,000.

2. A fee of \$200 if the amount under sub. (9) (a) is at least \$50,000 but less than \$500,000.

3. A fee of \$50 if the amount under sub. (9) (a) is less than \$50,000.

(c) A license fee of \$45 for each truck, in excess of one truck, that the grain dealer uses to haul grain in this state.

(d) A license surcharge of \$425 if the grain dealer files a financial statement under s. 126.13 (1) that is not an audited financial statement.

(e) A license surcharge of \$500 if the department determines that, within 365 days before submitting the license application, the applicant operated as a grain dealer without a license in violation of sub. (1). The applicant shall also pay any license fees, license surcharges, and fund assessments that are still due for any license year in which the applicant violated sub. (1).

(f) A license surcharge of \$100 if during the preceding 12 months the applicant failed to file an annual financial statement required under s. 126.13 (1) (b) by the deadline specified in s. 126.13 (1) (c).

(g) A license surcharge of \$100 if a renewal applicant fails to renew a license by the license expiration date of August 31. This paragraph does not apply to a grain dealer who is exempt under sub. (2) and is voluntarily licensed.

(4m) EFFECT OF PAYMENT OF SURCHARGE. Payment under sub. (4) (e) does not relieve the applicant of any other civil or criminal liability that results from the violation of sub. (1), but does not constitute evidence of any law violation.

(5) LICENSE FOR PART OF YEAR; FEES. A person who applies for an annual grain dealer license after the beginning of a license year shall pay the full annual fee amounts required under sub. (4).

(6) **FEE CREDITS.** If the balance in the fund contributed by grain dealers exceeds \$2,000,000 on June 30 of any license year, the department shall credit 50% of the excess amount against fees charged under sub. (4) (b) to contributing grain dealers who file timely license renewal applications for the next license year. The department shall credit each contributing grain dealer on a pro-rated basis, in proportion to the total fees that the grain dealer paid under sub. (4) (b) for the 4 preceding license years.

(7) **FEE STATEMENT.** The department shall provide, with each license application form, a written statement of all license fees and surcharges required under sub. (4) or the formula for determining them. The department shall specify any fee credit for which the applicant may qualify under sub. (6).

(8) **NO LICENSE WITHOUT FULL PAYMENT.** The department may not issue an annual license under sub. (1) until the applicant pays all license fees and surcharges identified in the department's statement under sub. (7). The department shall refund a fee or surcharge paid under protest if upon review the department determines that the fee or surcharge is not applicable.

(9) **SWORN AND NOTARIZED STATEMENT.** As part of a license application under sub. (3), an applicant shall provide a sworn and notarized statement, signed by the applicant or an officer of the applicant, that reports all of the following:

(a) The total amount that the applicant paid, during the applicant's last completed fiscal year, for producer grain procured in this state. If the applicant has not yet operated as a grain dealer in this state, the applicant shall estimate the amount that the applicant will pay during the applicant's first complete fiscal year for producer grain procured in this state.

(b) The amount of the payments under par. (a) made under deferred payment contracts.

(c) Whether the applicant has had any obligations under deferred payment contracts, for grain procured in this state, at any time since the beginning of the applicant's last completed fiscal year.

(10) **ACTION GRANTING OR DENYING APPLICATION.** The department shall grant or deny an application under sub. (3) within 30 days after the department receives a complete application. If the department denies a license application, the department shall give the applicant a written notice stating the reason for the denial.

(11) **LICENSE DISPLAYED.** A grain dealer licensed under sub. (1) shall prominently display a copy of that license at the following locations:

(a) On each truck that the grain dealer uses to haul grain in this state.

(b) At each business location from which the grain dealer operates in this state.

*History:* 2001 a. 16; 2005 a. 441.

**126.12 Grain dealers; insurance. (1) FIRE AND EXTENDED COVERAGE INSURANCE.** A grain dealer licensed, or required to be licensed, under s. 126.11 shall maintain fire and extended coverage insurance, issued by an insurance company authorized to do business in this state, that covers all grain in the custody of the grain dealer, whether owned by the grain dealer or held for others, at the full local market value of the grain.

(2) **INSURANCE CANCELLATION; REPLACEMENT.** Whenever an insurance policy under sub. (1) is canceled, the grain dealer shall replace the policy so that there is no lapse in coverage.

(3) **INSURANCE COVERAGE; MISREPRESENTATION.** No grain dealer may misrepresent any of the following to the department or to any grain producer or producer agent:

(a) That the grain dealer is insured.

(b) The nature, coverage, or material terms of the grain dealer's insurance policy.

*History:* 2001 a. 16.

**126.13 Grain dealers; financial statements. (1) REQUIRED ANNUAL FINANCIAL STATEMENT.** (a) A grain dealer

shall file an annual financial statement with the department, before the department first licenses the grain dealer under s. 126.11, if the grain dealer's license application reports any of the following:

1. More than \$500,000 in grain payments under s. 126.11 (9) (a).

2. Any deferred payment contract obligations under s. 126.11 (9) (c).

(b) A grain dealer licensed under s. 126.11 shall file an annual financial statement with the department during each license year if the grain dealer's license application for that year reports any of the following:

1. More than \$500,000 in grain payments under s. 126.11 (9) (a) unless the grain dealer is a contributing grain dealer who procures producer grain in this state solely as a producer agent.

2. Any deferred payment contract obligations under s. 126.11 (9) (c).

(c) A grain dealer shall file an annual financial statement under par. (b) by the 15th day of the 4th month following the close of the grain dealer's fiscal year, except that the department may extend the filing deadline for up to 30 days if the grain dealer, or the accountant reviewing or auditing the financial statement, files a written extension request at least 10 days before the filing deadline.

(d) A grain dealer licensed under s. 126.11 may not incur any obligations under deferred payment contracts for grain procured in this state unless the contractor first notifies the department and files an annual financial statement with the department.

(2) **VOLUNTARY ANNUAL FINANCIAL STATEMENT.** A contributing grain dealer who is not required to file a financial statement under sub. (1) may file an annual financial statement with the department to qualify for a lower fund assessment under s. 126.15.

(3) **REVIEWED OR AUDITED FINANCIAL STATEMENT.** (a) A grain dealer filing an annual financial statement under sub. (1) or (2) shall file an audited financial statement if any of the following applies:

1. The grain dealer's license application reports more than \$3,000,000 in payments under s. 126.11 (9) (a).

2. The grain dealer's last 2 license applications report more than \$2,000,000 in payments under s. 126.11 (9) (a).

(b) If par. (a) does not apply, a grain dealer filing an annual financial statement under sub. (1) or (2) shall file either a reviewed financial statement or an audited financial statement.

(4) **ACCOUNTING PERIOD.** A grain dealer filing an annual financial statement under sub. (1) or (2) shall file a financial statement that covers the grain dealer's last completed fiscal year unless the grain dealer has been in business for less than one year.

(4m) **INTERIM FINANCIAL STATEMENT.** The department may, at any time, require a grain dealer licensed under s. 126.11 to file an interim financial statement with the department. The grain dealer shall provide, with the interim financial statement, the grain dealer's sworn and notarized statement that the financial statement is correct. An interim financial statement need not be a reviewed financial statement or an audited financial statement.

(5) **GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.** (a) Except as provided in par. (b), a grain dealer filing an annual financial statement under this section shall file a financial statement that is prepared according to generally accepted accounting principles.

(b) If a grain dealer is a sole proprietor and the grain dealer's financial statement is not audited, the grain dealer shall file a financial statement that is prepared on a historical cost basis.

(6) **FINANCIAL STATEMENT CONTENTS.** (a) Except as provided in par. (b), a grain dealer filing a financial statement under this section shall file a financial statement that consists of a balance sheet, income statement, equity statement, statement of cash flows, notes to those statements, and any other information required by the department. If the grain dealer is a sole proprietor, the grain dealer shall file his or her business and personal financial state-



ments. A grain dealer shall disclose on the grain dealer's financial statement, separately and clearly, the grain dealer's unpaid obligations to grain producers and producer agents.

(b) If a grain dealer has been in business for less than one year, the grain dealer may file an annual financial statement under sub. (1) or (2) consisting of a balance sheet and notes.

(c) A grain dealer filing a financial statement under this section shall include in the financial statement, or in an attachment to the financial statement, calculations of all of the following:

1. The grain dealer's current ratio, excluding any assets required to be excluded under sub. (7).

2. The grain dealer's debt to equity ratio, excluding any assets required to be excluded under sub. (7).

(7) ASSETS EXCLUDED. A grain dealer may not include any of the following assets in the calculations under sub. (6) (c) unless the department specifically approves their inclusion:

(a) A nontrade note or account receivable from an officer, director, employee, partner, or stockholder, or from a member of the family of any of those individuals, unless the note or account receivable is secured by a first priority security interest in real or personal property.

(b) A note or account receivable from a parent organization, a subsidiary, or an affiliate, other than an employee.

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

(9) ENTITY COVERED. A person filing a financial statement under this section may not file, in lieu of that person's financial statement, the financial statement of the person's parent organization, subsidiary, predecessor, or successor.

(10) DEPARTMENT REVIEW. The department may analyze a financial statement submitted under this section and may reject a financial statement that fails to comply with this section.

History: 2001 a. 16.

### 126.14 Contributing grain dealers; disqualification.

(1) CONTRIBUTION REQUIRED. A grain dealer who is required to be licensed under s. 126.11 (1) shall pay fund assessments under s. 126.15 unless the grain dealer is disqualified under sub. (2). A grain dealer who is voluntarily licensed under s. 126.11 may pay voluntary assessments under s. 126.15, unless the grain dealer is disqualified under sub. (2).

(2) DISQUALIFIED GRAIN DEALER. (a) A grain dealer who is required to file security under s. 126.16 (1) (a) is disqualified from the fund until the department determines that one of the conditions in s. 126.16 (8) (a) 1. and 2. is satisfied.

(b) A grain dealer is disqualified from the fund, and required to pay cash on delivery for producer grain, if any of the following occurs:

1. The department denies, suspends, or revokes the grain dealer's license.

2. The department issues a written notice disqualifying the grain dealer for cause, including failure to pay fund assessments under s. 126.15 when due or failure to file a financial statement under s. 126.13 when due.

3. The grain dealer fails to reimburse the department, within 60 days after the department issues a reimbursement demand under s. 126.73 (1), for the full amount that the department pays to claimants under s. 126.72 (1) or under s. 126.72 (2) with the proceeds of a loan under s. 126.06 (1) (b) because of that grain dealer's default.

4. The grain dealer fails to reimburse a bond surety, within 60 days after the bond surety issues a reimbursement demand under s. 126.73 (2), for the full amount that the surety pays to the department under s. 126.72 (2) for the benefit of claimants affected by that grain dealer's default.

(3) PAYMENTS BY DISQUALIFIED GRAIN DEALER. (a) The department may not return to a disqualified grain dealer any fund assessments that the grain dealer paid as a contributing grain dealer.

(b) A disqualified grain dealer remains liable for any unpaid fund installment under s. 126.15 that became due while the grain dealer was a contributing grain dealer. A disqualified grain dealer is not liable for any fund installment that becomes due after the grain dealer is disqualified under sub. (2).

History: 2001 a. 16; 2003 a. 38.

### 126.15 Contributing grain dealers; fund assessments.

(1) GENERAL. A contributing grain dealer shall pay an annual fund assessment for each license year. Except as provided in sub. (6m), the assessment equals \$20 or the sum of the following, whichever is greater, unless the department by rule specifies a different assessment:

(a) The grain dealer's current ratio assessment. The current ratio assessment for a license year equals the grain dealer's current ratio assessment rate under sub. (2) multiplied by the amount reported under s. 126.11 (9) (a) in the grain dealer's license application for that license year.

(b) The grain dealer's debt to equity ratio assessment. The debt to equity ratio assessment for a license year equals the grain dealer's debt to equity ratio assessment rate under sub. (4) multiplied by the amount reported under s. 126.11 (9) (a) in the grain dealer's license application for that license year.

(c) The grain dealer's deferred payment assessment. The deferred payment assessment for a license year equals the grain dealer's deferred payment assessment rate under sub. (6) multiplied by the payment amount, if any, that the grain dealer reports under s. 126.11 (9) (b) in the grain dealer's license application for that license year.

(2) CURRENT RATIO ASSESSMENT RATE. A grain dealer's current ratio assessment rate is calculated, at the beginning of the license year, as follows:

(a) If the grain dealer has filed an annual financial statement under s. 126.13 and that financial statement shows a current ratio of at least 1.25 to 1.0, the grain dealer's current ratio assessment rate equals the greater of zero or the current ratio assessment factor in sub. (3) (a) multiplied by the following amount:

1. Subtract one from the current ratio.
2. Divide the amount determined under subd. 1. by 3.
3. Multiply the amount determined under subd. 2. by negative one.
4. Raise the amount determined under subd. 3. to the 3rd power.
5. Subtract 0.75 from the current ratio.
6. Divide 0.65 by the amount determined under subd. 5.
7. Raise the amount determined under subd. 6. to the 5th power.
8. Add the amount determined under subd. 4. to the amount determined under subd. 7.
9. Add 2 to the amount determined under subd. 8.

(b) If the grain dealer has filed an annual financial statement under s. 126.13 and that financial statement shows a current ratio of less than 1.25 to 1.0, but greater than 1.0 to 1.0, the grain dealer's current ratio assessment rate equals the current ratio assessment factor in sub. (3) (b) multiplied by the following amount:

1. Subtract one from the current ratio.
2. Divide the amount determined under subd. 1. by 3.
3. Multiply the amount determined under subd. 2. by negative one.
4. Raise the amount determined under subd. 3. to the 3rd power.
5. Subtract 0.75 from the current ratio.
6. Divide 0.65 by the amount determined under subd. 5.

7. Raise the amount determined under subd. 6. to the 5th power.

8. Add the amount determined under subd. 4. to the amount determined under subd. 7.

9. Add 2 to the amount determined under subd. 8.

(c) If the grain dealer has filed an annual financial statement under s. 126.13 and that financial statement shows a current ratio of less than or equal to 1.0 to 1.0, the grain dealer's current ratio assessment rate equals the current ratio assessment factor in sub. (3) (b) multiplied by 120.81376.

(d) Except as provided in par. (e), if the grain dealer has not filed an annual financial statement under s. 126.13, the grain dealer's current ratio assessment rate equals the current ratio assessment factor in sub. (3) (b) multiplied by 5.71235.

(e) If the grain dealer has not filed an annual financial statement under s. 126.13 and the grain dealer procures grain in this state solely as a producer agent, the grain dealer's current ratio assessment rate is 0.00025, except that, for the grain dealer's 5th or higher consecutive full license year of participation in the fund, the grain dealer's current ratio assessment rate is 0.000175.

**(3) CURRENT RATIO ASSESSMENT FACTOR.** (a) A grain dealer's current ratio assessment factor under sub. (2) (a) is 0.00003 except that, for the grain dealer's 5th or higher consecutive full license year as a contributing grain dealer, the grain dealer's current ratio assessment factor is zero.

(b) A grain dealer's current ratio assessment factor under sub. (2) (b) to (d) is 0.000045 except that, for the grain dealer's 5th or higher consecutive full license year as a contributing grain dealer, the grain dealer's current ratio assessment factor is 0.000036.

**(4) DEBT TO EQUITY ASSESSMENT RATE.** A grain dealer's debt to equity ratio assessment rate is calculated, at the beginning of the license year, as follows:

(a) If the grain dealer has filed an annual financial statement under s. 126.13 and that financial statement shows positive equity and a debt to equity ratio of not more than 4.0 to 1.0, the grain dealer's debt to equity ratio assessment rate equals the greater of zero or the debt to equity ratio assessment factor in sub. (5) (a) multiplied by the following amount:

1. Subtract 4 from the debt to equity ratio.
2. Divide the amount determined under subd. 1. by 3.
3. Raise the amount determined under subd. 2. to the 3rd power.
4. Subtract 1.7 from the debt to equity ratio.
5. Divide the amount determined under subd. 4. by 1.75.
6. Raise the amount determined under subd. 5. to the 7th power.

7. Add the amount determined under subd. 3. to the amount determined under subd. 6.

8. Add 2 to the amount determined under subd. 7.

(b) If the grain dealer has filed an annual financial statement under s. 126.13 and that financial statement shows a debt to equity ratio of greater than 4.0 to 1.0, but less than 5.0 to 1.0, the grain dealer's debt to equity ratio assessment rate equals the debt to equity ratio assessment factor in sub. (5) (b) multiplied by the following amount:

1. Subtract 4 from the debt to equity ratio.
2. Divide the amount determined under subd. 1. by 3.
3. Raise the amount determined under subd. 2. to the 3rd power.
4. Subtract 1.7 from the debt to equity ratio.
5. Divide the amount determined under subd. 4. by 1.75.
6. Raise the amount determined under subd. 5. to the 7th power.

7. Add the amount determined under subd. 3. to the amount determined under subd. 6.

8. Add 2 to the amount determined under subd. 7.

(c) If the grain dealer has filed an annual financial statement under s. 126.13 and that financial statement shows negative equity or a debt to equity ratio of at least 5.0 to 1.0, the grain dealer's debt to equity ratio assessment rate equals the debt to equity ratio assessment factor in sub. (5) (b) multiplied by 86.8244.

(d) Except as provided in par. (e), if the grain dealer has not filed an annual financial statement under s. 126.13, the grain dealer's debt to equity ratio assessment rate equals the debt to equity ratio assessment factor in sub. (5) (b) multiplied by 8.77374.

(e) If the grain dealer has not filed an annual financial statement under s. 126.13 and the grain dealer procures grain in this state solely as a producer agent, the grain dealer's debt to equity ratio assessment rate is 0.00025, except that it is 0.000175 for the grain dealer's 5th or higher consecutive full license year of participation in the fund.

**(5) DEBT TO EQUITY RATIO ASSESSMENT FACTOR.** (a) A grain dealer's debt to equity ratio assessment factor under sub. (4) (a) is 0.0000125, except that it is zero for the grain dealer's 5th or higher consecutive full license year as a contributing grain dealer.

(b) A grain dealer's debt to equity ratio assessment factor under sub. (4) (b) to (d) is 0.00001875, except that it is 0.000015 for the grain dealer's 5th or higher consecutive full license year as a contributing grain dealer.

**(6) DEFERRED PAYMENT ASSESSMENT RATE.** A grain dealer's deferred payment assessment rate is 0.0035, except that it is 0.002 for the grain dealer's 5th or higher consecutive full license year as a contributing grain dealer.

**(6m) REDUCED ASSESSMENT FOR CERTAIN GRAIN DEALERS FILING SECURITY.** If a grain dealer files security under s. 126.16 (1) (c), the grain dealer's assessment is the amount determined under sub. (1) reduced by an amount determined as follows:

(a) Divide the amount of security that the grain dealer is required to file as determined under s. 126.16 (3) (b) by the amount of the grain dealer's estimated default exposure, as defined in s. 126.16 (1) (c) 1.

(b) Multiply the amount of the assessment determined under sub. (1) by the amount determined under par. (a).

**(7) QUARTERLY INSTALLMENTS.** (a) A contributing grain dealer shall pay the grain dealer's annual fund assessment in equal quarterly installments that are due as follows:

1. The first installment is due on October 1 of the license year.
2. The 2nd installment is due on January 1 of the license year.
3. The 3rd installment is due on April 1 of the license year.
4. The 4th installment is due on July 1 of the license year.

(b) A contributing grain dealer may prepay any of the quarterly installments under par. (a).

(c) A contributing grain dealer who applies for an annual license after the beginning of a license year shall pay the full annual fund assessment required under this section. The grain dealer shall pay, with the first quarterly installment that becomes due after the day on which the department issues the license, all of that year's quarterly installments that became due before that day.

(d) A contributing grain dealer who fails to pay the full amount of any quarterly installment when due shall pay, in addition to that installment, a late payment penalty of \$50 or 10% of the overdue installment amount, whichever is greater.

**(8) NOTICE OF ANNUAL ASSESSMENT AND QUARTERLY INSTALLMENTS.** When the department issues an annual license to a contributing grain dealer, the department shall notify the grain dealer of all of the following:

(a) The amount of the grain dealer's annual fund assessment under this section.

(b) The amount of each required quarterly installment under sub. (7) and the date by which the grain dealer must pay each installment.

(c) The penalty that applies under sub. (7) (d) if the grain dealer fails to pay any quarterly installment when due.

**History:** 2001 a. 16; 2003 a. 38.

**126.16 Grain dealers; security. (1) SECURITY REQUIRED.** (a) A grain dealer shall file security with the department, and maintain that security until the department releases it under sub. (8) (a), if all of the following apply when the department first licenses the grain dealer under s. 126.11:

1. The grain dealer reports more than \$500,000 in grain payments under s. 126.11 (9) (a).

2. The grain dealer files an annual financial statement under s. 126.13 (1) (a) and that financial statement shows negative equity.

(b) A grain dealer who reports any deferred payment contract obligations under s. 126.11 (9) (c) or 126.13 (1) (d) shall file security with the department, and maintain that security until the department releases it under sub. (8) (b), unless the grain dealer has positive equity and one of the following applies:

1. The grain dealer's annual financial statement under s. 126.13 covers a fiscal year ending on or before January 1, 2006, and shows a debt to equity ratio of not more than 5.0 to 1.0.

2. The grain dealer's annual financial statement under s. 126.13 covers a fiscal year ending after January 1, 2006, and shows a debt to equity ratio of not more than 4.0 to 1.0.

(c) 1. In this paragraph, "estimated default exposure" means the sum of the following:

a. Thirty-five percent of the grain dealer's average monthly payment for the 3 months, during the preceding 12 months, in which the grain dealer made the largest monthly payments for producer grain procured in this state.

b. The grain dealer's highest total, at any time during the preceding 12 months, of unpaid obligations for producer grain procured in this state under deferred payment contracts.

2. A grain dealer shall file security with the department, and maintain that security until the department releases it under sub. (8) (bm), if the grain dealer files an annual financial statement under s. 126.13 (1) that shows negative equity, a current ratio of less than 1.25 to 1.0, or a debt to equity ratio of more than 4.0 to 1.0 and the grain dealer's estimated default exposure is greater than the following amount:

a. For the license year beginning on September 1, 2003, \$18,000,000.

b. For the license year beginning on September 1, 2004, \$19,000,000.

c. For a license year that begins on September 1, 2005, or later, \$20,000,000.

**(2) SECURITY CONTINUED.** A grain dealer who filed security under ch. 127, 1999 stats., before September 1, 2002, shall maintain that security until the department releases it under sub. (8) (c).

**(3) AMOUNT OF SECURITY.** (a) Except as provided in par. (b), a grain dealer who is required to file or maintain security under this section shall at all times maintain security that is at least equal to the sum of the following:

1. Thirty-five percent of the grain dealer's average monthly payment for the 3 months, during the preceding 12 months, in which the grain dealer made the largest monthly payments for producer grain procured in this state, except that this amount is not required of a contributing grain dealer.

2. The grain dealer's highest total, at any time during the preceding 12 months, of unpaid obligations for producer grain procured in this state under deferred payment contracts.

(b) A grain dealer who is only required to file or maintain security under sub. (1) (c) shall at all times maintain security equal to the grain dealer's estimated default exposure, as defined in sub. (1) (c) 1., less the following amount:

1. For the license year beginning on September 1, 2003, \$18,000,000.

2. For the license year beginning on September 1, 2004, \$19,000,000.

3. For a license year that begins on September 1, 2005, or later, \$20,000,000.

**(4) FORM OF SECURITY.** The department shall review, and determine whether to approve, security filed or maintained under this section. The department may approve only the following types of security:

(a) Currency.

(b) A commercial surety bond if all of the following apply:

1. The surety bond is made payable to the department for the benefit of grain producers and producer agents.

2. The surety bond is issued by a person authorized to operate a surety business in this state.

3. The surety bond is issued as a continuous term bond that may be canceled only with the department's written agreement or upon 90 days' prior written notice served on the department in person or by certified mail.

4. The surety bond is issued in a form, and subject to any terms and conditions, that the department considers appropriate.

(c) A certificate of deposit or money market certificate if all of the following apply:

1. The certificate is issued or endorsed to the department for the benefit of grain producers and producer agents who deliver grain to the grain dealer.

2. The certificate may not be canceled or redeemed without the department's written authorization.

3. No person may transfer or withdraw funds represented by the certificate without the department's written permission.

4. The certificate renews automatically without any action by the department.

5. The certificate is issued in a form, and subject to any terms and conditions, that the department considers appropriate.

(d) An irrevocable bank letter of credit if all of the following apply:

1. The letter of credit is payable to the department for the benefit of grain producers and producer agents.

2. The letter of credit is issued on bank letterhead.

3. The letter of credit is issued for an initial period of at least one year.

4. The letter of credit renews automatically unless at least 90 days before the scheduled renewal date the issuing bank gives the department written notice, in person or by certified mail, that the letter of credit will not be renewed.

5. The letter of credit is issued in a form, and subject to any terms and conditions, that the department considers appropriate.

(e) Security filed under ch. 127, 1999 stats., before September 1, 2002, except that on January 1, 2003, the department shall withdraw its approval of any security that is not approvable under pars. (a) to (d).

**(5) DEPARTMENT CUSTODY OF SECURITY.** The department shall hold, in its custody, all security filed and maintained under this section. The department shall hold the security for the benefit of grain producers and producer agents who deliver grain to a grain dealer.

**(6) MONTHLY REPORTS.** A grain dealer who is required to file or maintain security under this section shall file monthly reports with the department. The grain dealer shall file a report on or before the 10th day of each month, in a form specified by the department. In a monthly report, a grain dealer shall provide information reasonably required by the department, including all of the following:



(a) The grain dealer's average monthly payment for the 3 months, during the preceding 12 months, in which the grain dealer made the largest monthly payments for producer grain procured in this state.

(b) The grain dealer's highest total unpaid obligations, at any time during the preceding 12 months, for producer grain procured in this state under deferred payment contracts. If the amount owed on deferred price contracts has not yet been determined, the grain dealer shall estimate the amount based on contract terms and prevailing market prices on the last day of the previous month.

**(7) ADDITIONAL SECURITY.** (a) The department may, at any time, demand additional security from a grain dealer if any of the following applies:

1. The grain dealer's existing security falls below the amount required under sub. (3) for any reason, including depreciation in the value of the security filed with the department, an increase in grain payments or grain prices, or the cancellation of any security filed with the department.

2. The grain dealer fails to provide required information that is relevant to a determination of security requirements.

(b) The department shall issue a demand under par. (a) in writing. The department shall indicate why the security is required, the amount of security required, and the deadline date for filing security. The department may not specify a deadline for filing security that is more than 30 days after the date on which the department issues its demand for security.

(c) A grain dealer may request a hearing, under ch. 227, on a demand for security under par. (b). A request for hearing does not automatically stay a security demand.

(d) If a grain dealer fails to comply with the department's demand for security under this subsection, the grain dealer shall give written notice of that fact to all grain producers and producer agents from whom the grain dealer procures producer grain in this state. If the grain dealer fails to give accurate notice under this paragraph within 5 days after the deadline for filing security under par. (b) has passed, the department shall promptly notify those grain producers and producer agents by publishing a class 3 notice under ch. 985. The department may also give individual notice to those grain producers or producer agents of whom the department is aware.

(e) If a grain dealer fails to comply with the department's demand for security under this subsection, the department may do any of the following:

1. Issue a summary order under s. 126.85 (2) that prohibits the grain dealer from procuring producer grain or requires the grain dealer to pay cash on delivery for all producer grain.

2. Suspend or revoke the grain dealer's license.

**(8) RELEASING SECURITY.** (a) The department may release security filed under sub. (1) (a), except for any amount of security that the grain dealer is required to file because sub. (1) (b) or (c) applies to the grain dealer, if any of the following applies:

1. The grain dealer reports, for at least 2 consecutive years, no more than \$500,000 in annual grain payments under s. 126.11 (9) (a) and the grain dealer pays the quarterly fund assessment that would have been required of the grain dealer if the grain dealer had been a contributing grain dealer on the most recent quarterly installment date under s. 126.15 (7).

2. The grain dealer's annual financial statement under s. 126.13 shows positive equity for at least 2 consecutive years and the grain dealer pays the quarterly fund assessment that would have been required of the grain dealer if the grain dealer had been a contributing grain dealer on the most recent quarterly installment date under s. 126.15 (7).

(b) The department may release security filed under sub. (1) (b), except for any amount of security that the grain dealer is required to file because sub. (1) (a) or (c) applies to the grain dealer, if any of the following applies:

1. The grain dealer has not had any deferred payment contract obligations since the beginning of the grain dealer's last completed fiscal year.

2. The grain dealer files 2 consecutive annual financial statements under s. 126.13 showing that the grain dealer meets the applicable equity requirement and debt to equity ratio under sub. (1) (b).

(bm) The department may release security filed under sub. (1) (c), except for any amount of security that the grain dealer is required to file because sub. (1) (a) or (b) applies to the grain dealer, if the grain dealer files 2 consecutive annual financial statements under s. 126.13 showing that the grain dealer no longer has negative equity, a current ratio of less than 1.25 to 1.0, or a debt to equity ratio of more than 4.0 to 1.0.

(c) On December 1, 2002, the department may release security maintained under sub. (2), unless the grain dealer is required to file security under sub. (1).

(d) The department may release security to the extent that the security exceeds the amount required under sub. (3).

(e) The department may release security if the grain dealer files alternative security, of equivalent value, that the department approves.

(f) The department shall release security if the grain dealer is no longer in business and has paid all grain obligations in full.

**History:** 2001 a. 16, 104; 2003 a. 38.

**126.17 Grain dealers; records.** **(1) RECORDS AND ACCOUNTS; GENERAL.** A grain dealer shall keep records and accounts of all grain procured and all grain sold or marketed by the grain dealer. A grain dealer shall keep records that are 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 procured, the procurement dates, the procurement terms, and the persons from whom the grain dealer procured the grain.

(b) The kinds and amounts of grain sold or marketed, the sale or marketing dates, the sale or marketing terms, and the persons to whom the grain dealer sold or marketed the grain.

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

(d) The kinds and amounts of grain, received from others, that the grain dealer has on hand, including the kinds and amounts of grain owned by the grain dealer, and the kinds and amounts of grain held for others.

(e) The nature and amount of the grain dealer's obligations to grain producers and producer agents, including obligations under deferred payment 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 nature and amount of the grain dealer's obligations to depositors, as defined in s. 126.25 (5), under agreements for the storage of grain, if any.

(g) The grain dealer's accounts receivable from the sale or marketing of grain, including the names of the account debtors, the amount receivable from each account debtor, and the dates on which payment is due.

**(2) RECORDS OF GRAIN PROCURED.** A grain dealer shall keep records all of the following related to each shipment of grain procured by the grain dealer:

(a) The kind and weight of grain procured.

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

(c) The date on which the grain dealer procured the grain.

(d) The name and address of the person from whom the grain dealer procured the grain.



(e) Whether the grain dealer purchased the grain, holds it under an agreement for storage, or is marketing the grain as a producer agent.

(f) The terms of purchase, storage, or marketing.

(g) If the grain dealer procured the grain under a deferred payment contract, the terms of that contract.

**(3) RECORDS RETENTION; INSPECTION.** (a) A grain dealer shall keep copies of all of the following records for at least 6 years after the records are created:

1. Records required under this section and s. 126.18 (2).

2. Records that the grain dealer was required to keep, under ch. 127, 1999 stats., and department rules, before September 1, 2002.

(b) A grain dealer shall make records required under this section available to the department for inspection and copying upon request.

**History:** 2001 a. 16.

**126.18 Grain dealers; receipts for grain. (1) REQUIREMENT.** Whenever a grain dealer receives grain from any person, the grain dealer shall immediately give that person a written receipt for the grain that includes all of the following:

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

(b) A permanent business address at which the holder of the receipt can readily contact the grain dealer.

(c) A statement identifying the document as a receipt for grain.

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

(e) The kind of grain received.

(f) The net weight of grain received or, if the grain dealer receives the grain at the grain producer's farm, the approximate net weight of the grain.

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

(h) A statement identifying the receipt as a purchase receipt, storage receipt, or receipt for grain marketed by the grain dealer as a producer agent.

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

1. The grain dealer pays cash on delivery.

2. The grain dealer receives the grain under a deferred payment contract that complies with s. 126.19.

3. The receipt is clearly identified as a storage receipt.

**(1m) EFFECT OF FAILURE TO IDENTIFY RECEIPT.** A receipt not clearly identified under sub. (1) (h) is considered a purchase receipt except that, if the grain dealer also operates as a grain warehouse keeper, as defined in s. 126.25 (9), under the same name, a receipt not clearly identified is considered a storage receipt.

**(2) GRAIN DEALER'S COPIES.** A grain dealer shall keep copies of all receipts issued under sub. (1).

**History:** 2001 a. 16.

**126.19 Grain dealers; deferred payment contracts.**

**(1) CONTRACT IN WRITING.** A grain dealer may not procure grain from any grain producer or producer agent under a deferred payment contract before the contract is reduced to writing and signed by the parties. The grain dealer shall provide a copy of the signed contract to the other party.

**(2) CONTENTS OF CONTRACT.** A grain dealer may not enter into a deferred payment contract unless the deferred payment contract includes all of the following:

(a) A unique contract identification number.

(b) The type, weight, grade, and quality of grain procured and a statement that price adjustments may apply if delivered grain varies in grade or quality from that identified in the contract.

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

(d) The date by which the grain dealer agrees to make full payment for the grain, which may not be more than 180 days after the date on which the contract price is established or more than 180 days after the date on which the grain dealer takes custody or control of the grain, whichever is later.

(dm) If the contract is a deferred price contract, a pricing deadline that is not more than one year after the date on which the grain dealer takes custody or control of the grain.

(e) The grain dealer's permanent business location.

(f) Other information required under this section.

**(3) PAYMENT AND PRICING DEADLINES.** (a) A grain dealer shall make full payment under a deferred payment contract by the deadline date specified in the contract.

(b) The parties may not extend a payment or pricing deadline under sub. (2) (d) or (dm), except that they may sign a new contract that extends either deadline or both deadlines for up to 180 days if the new contract refers to the contract number of the original contract.

**(4) REQUIRED NOTICE.** A grain dealer may not enter into a deferred payment contract unless the deferred payment contract clearly discloses that it is not a storage contract. Whenever a grain dealer buys grain from a grain producer under a deferred payment contract, the grain dealer shall include the following statement in capitalized, boldface print immediately above the contract signature line: "This is not a storage contract. The grain dealer (buyer) becomes the owner of any grain that 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."

**(5) DEFERRED PAYMENT CONTRACT ASSESSMENT.** From the amount that a grain dealer pays to a grain producer or producer agent under a deferred payment contract, the grain dealer shall deduct a deferred payment contract assessment. The assessment shall equal the total amount owed under the contract before the assessment is deducted, multiplied by the deferred payment assessment rate that applies under s. 126.15 (6) when the contract is made. The grain dealer shall disclose the assessment amount or, if the contract is a deferred price contract, the method by which the assessment amount will be determined, in the written contract under sub. (1).

**History:** 2001 a. 16.

**126.20 Grain dealers; business practices. (1) GRAIN WEIGHT, GRADE, AND QUALITY.** A grain dealer shall do all of the following when determining the weight, grade, or quality of grain:

(a) Accurately determine the weight, grade, or quality using accurate weighing, testing, or grading equipment.

(b) Accurately record the determined weight, grade, or quality.

**(2) TIMELY PAYMENT TO PRODUCERS.** A grain dealer shall pay for grain when payment is due. A grain dealer may not make payment by nonnegotiable check or note or by check drawn on an account containing insufficient funds.

**(3) PERMANENT BUSINESS LOCATION.** A grain dealer licensed under s. 126.11 shall do all of the following:

(a) Maintain a permanent business address at which grain producers may readily contact the grain dealer during business hours.

(b) On each day that the Chicago Board of Trade is open for trading, keep business hours that start no later than 9 a.m. and end no earlier than 2:30 p.m.

(c) Prominently post the grain dealer's business hours at each of the grain dealer's business locations in this state.

**(4) 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) Falsify any record or account, or conspire with any other person to falsify a record or account.

(c) Make any false or misleading representation to the department.

(d) If the grain dealer is licensed under s. 126.11, engage in any activity that is inconsistent with a representation made in the grain dealer's annual license application.

(e) Make any false or misleading representation to a grain producer or producer agent related to any matters regulated under this chapter.

(f) Fail to file the full amount of security required under s. 126.16 (7) by the date that the department specifies.

History: 2001 a. 16.

**126.21 Grain producer obligations. (1) DELIVERY PER CONTRACT.** No grain producer or producer agent who contracts to sell and deliver grain to a grain dealer at an agreed price may wrongfully refuse to deliver that grain according to the contract.

**(2) DISCLOSURE OF LIENS AND SECURITY INTERESTS.** A grain dealer procuring grain from a grain producer or producer agent may require the grain producer or producer agent to disclose any liens or security interests that apply to the grain. The grain dealer may require the disclosure in writing. The grain dealer may require the grain producer or producer agent to specify the nature and amount of each lien or security interest and the identity of the person holding that lien or security interest. No grain producer may falsify or fraudulently withhold information required under this subsection in order to sell grain.

History: 2001 a. 16.

#### SUBCHAPTER IV

##### GRAIN WAREHOUSE KEEPERS

Cross Reference: See also ch. ATCP 99, Wis. adm. code.

**126.25 Definitions.** In this subchapter:

**(1)** "Capacity" means the maximum amount of grain, measured in bushels, that can be stored in a grain warehouse. The capacity of a grain warehouse is determined by dividing the cubic volume of all bins, expressed in cubic feet, by 1.244 cubic feet per bushel, and applying a pack factor that the department specifies by rule.

**(2)** "Contributing grain warehouse keeper" means a grain warehouse keeper who is licensed under s. 126.26, who either has paid one or more quarterly installments under s. 126.30 (6) or is required to contribute to the fund, but the first quarterly installment under s. 126.30 (6) is not yet due, and who is not disqualified under s. 126.29 (2).

**(3)** "Current ratio" means the ratio of the value of current assets to the value of current liabilities, calculated according to s. 126.28 (6) (c) 1.

**(4)** "Debt to equity ratio" means the ratio of the value of liabilities to equity, calculated according to s. 126.28 (6) (c) 2.

**(5)** "Depositor" means any of the following:

(a) A person who delivers grain to a grain warehouse keeper for storage, conditioning, shipping, or handling, without transferring ownership to the warehouse keeper.

(b) A person who owns or legally holds a warehouse receipt or other document that is issued by a grain warehouse keeper and that entitles the person to receive stored grain.

**(6)** "Disqualified grain warehouse keeper" means a grain warehouse keeper who is disqualified from the fund under s. 126.29 (2).

**(8)** "Grain warehouse" means a facility in this state that is used to receive, store, or condition grain for others or that is used in the shipment of grain for others, except that "grain warehouse" does not include a transport vehicle.

**(9)** "Grain warehouse keeper" means a person who operates one or more grain warehouses in this state to receive, store, condition, or ship grain for others, except that "grain warehouse keeper" does not include a person licensed under the United States Warehouse Act, 7 USC 241 to 271.

**(9m)** "License year" means the period beginning on September 1 and ending on the following August 31.

**(11)** "Warehouse receipt" means a receipt for grain, issued by a grain warehouse keeper, that is also a document of title under s. 401.201 (15).

History: 2001 a. 16.

##### 126.26 Grain warehouse keepers; licensing.

**(1) LICENSE REQUIRED.** (a) No grain warehouse keeper may hold at any time more than 50,000 bushels of grain for others without a current annual license from the department. A grain warehouse keeper who has grain warehouses with a combined capacity of more than 50,000 bushels shall obtain a license unless the grain warehouse keeper proves to the department that the grain warehouse keeper holds no more than 50,000 bushels of grain for others at any time.

(b) A license under par. (a) expires on the August 31 following its issuance. No person may transfer or assign a license issued under par. (a).

**(2) LICENSE APPLICATION.** A person shall apply for a grain warehouse keeper license in writing, on a form provided by the department. The applicant shall provide all of the following:

(a) The applicant's legal name and any trade name under which the applicant proposes to operate as a grain warehouse keeper.

(b) A statement of whether the applicant is an individual, a corporation, a partnership, a cooperative, an unincorporated cooperative association, a limited liability company, a trust, or other legal entity. If the applicant is a corporation, a cooperative, or an association, the applicant shall identify each officer of the corporation or cooperative. If the applicant is a partnership, the applicant shall identify each partner.

(c) The mailing address of the applicant's primary business location and the name of a responsible individual who may be contacted at that location.

(d) The street address and capacity of every grain warehouse that the applicant operates or proposes to operate in this state and the name of a responsible individual who may be contacted at each warehouse.

(e) The combined capacity of all grain warehouses identified under par. (d).

(f) All license fees and surcharges required under sub. (3).

(g) Proof that the applicant is insured as required under s. 126.27, unless the applicant has previously filed proof that remains current. The proof may consist of a certification provided by an insurance company licensed to do business in this state.

(h) A financial statement if required under s. 126.28 (1) and not yet filed.

(i) Other relevant information required by the department.

**(3) LICENSE FEES AND SURCHARGES.** A person applying for a grain warehouse keeper license shall pay the following fees and surcharges, unless the department specifies a different fee or surcharge amount by rule:

(a) A nonrefundable license processing fee of \$25 plus \$25 for each grain warehouse identified under sub. (2) (d). If a grain warehouse keeper operates 2 or more grain warehouses located within 0.5 mile of each other, the grain warehouse keeper may treat those grain warehouses as a single grain warehouse for purposes of this paragraph and par. (c).

(b) The following inspection fee, less any credit provided under sub. (5):

1. A fee of \$500 if the combined capacity of the applicant's grain warehouses is less than 150,000 bushels.

2. A fee of \$550 if the combined capacity of the applicant's grain warehouses is at least 150,000 bushels but less than 250,000 bushels.

3. A fee of \$600 if the combined capacity of the applicant's grain warehouses is at least 250,000 bushels but less than 500,000 bushels.

4. A fee of \$650 if the combined capacity of the applicant's grain warehouses is at least 500,000 bushels but less than 750,000 bushels.

5. A fee of \$700 if the combined capacity of the applicant's grain warehouses is at least 750,000 bushels but less than 1,000,000 bushels.

6. A fee of \$800 if the combined capacity of the applicant's grain warehouses is at least 1,000,000 bushels but less than 2,000,000 bushels.

7. A fee of \$900 if the combined capacity of the applicant's grain warehouses is at least 2,000,000 bushels but less than 3,000,000 bushels.

8. A fee of \$1,000 if the combined capacity of the applicant's grain warehouses is at least 3,000,000 bushels but less than 4,000,000 bushels.

9. A fee of \$1,100 if the combined capacity of the applicant's grain warehouses is 4,000,000 bushels or more.

(c) A supplementary inspection fee of \$275 for each grain warehouse that the applicant operates in excess of one grain warehouse.

(d) A license surcharge of \$500 if the department determines that, within 365 days before submitting the license application, the applicant operated as a grain warehouse keeper without a license in violation of sub. (1). The applicant shall also pay any license fees, license surcharges, and fund assessments that are still due for the license year in which the applicant violated sub. (1).

(e) A license surcharge of \$100 if during the preceding 12 months the applicant failed to file an annual financial statement required under s. 126.28 (1) (b) by the applicable deadline.

(f) A license surcharge of \$100 if a renewal applicant fails to renew a license by the license expiration date of August 31.

**(3m) EFFECT OF PAYMENT OF SURCHARGE.** Payment under sub. (3) (d) does not relieve the applicant of any other civil or criminal liability that results from the violation of sub. (1), but does not constitute evidence of any law violation.

**(4) LICENSE FOR PART OF YEAR; FEES.** A person who applies for an annual grain warehouse keeper license after the beginning of a license year shall pay the full annual fee amounts required under sub. (3).

**(5) FEE CREDIT.** If the fund balance contributed by grain warehouse keepers exceeds \$300,000 on June 30 of any license year, the department shall credit 12.5% of the excess amount against fees charged under sub. (3) (b) to contributing grain warehouse keepers who file timely license renewal applications for the next license year. The department shall credit each contributing grain warehouse keeper on a prorated basis, in proportion to the total fees that the warehouse keeper has paid under sub. (3) (b) for the 4 preceding license years.

**(6) FEE STATEMENT.** The department shall provide, with each license application form, a written statement of all license fees and surcharges required under sub. (3) or the formula for determining them. The department shall specify any fee credit for which the applicant may qualify under sub. (5).

**(7) NO LICENSE WITHOUT FULL PAYMENT.** The department may not grant a license under sub. (1) until the applicant pays all license fees and surcharges identified in the department's statement under sub. (6). The department shall refund a fee or surcharge paid under protest if upon review the department determines that the fee or surcharge is not applicable.

**(8) ACTION GRANTING OR DENYING APPLICATION.** The department shall grant or deny a license application under sub. (2) within 30 days after the department receives a complete application. If

the department denies a license application, the department shall give the applicant a written notice stating the reasons for the denial.

**(9) LICENSE DISPLAYED.** A grain warehouse keeper who is required to hold a license under sub. (1) shall prominently display a copy of that license at each grain warehouse.

**(10) NOTIFICATION.** A licensed warehouse keeper shall notify the department, in writing, before the warehouse keeper adds a grain warehouse or changes the location or capacity of any grain warehouse. In the notice, the grain warehouse keeper shall specify any change in the combined capacity of grain warehouses operated by the grain warehouse keeper resulting from the proposed addition or change.

History: 2001 a. 16; 2005 a. 441.

**126.27 Grain warehouse keepers; insurance. (1) FIRE AND EXTENDED COVERAGE INSURANCE.** A grain warehouse keeper licensed under s. 126.26 (1) shall maintain fire and extended coverage insurance, issued by an insurance company authorized to do business in this state, that covers all grain in the custody of the grain warehouse keeper, whether owned by the grain warehouse keeper or held for others, at the full local market value of the grain.

**(2) INSURANCE CANCELLATION; REPLACEMENT.** (a) No person may cancel an insurance policy required under sub. (1) unless that person serves a written notice of the intended cancellation on the department at least 30 days before the cancellation takes effect.

(b) Whenever an insurance policy under sub. (1) is canceled, the grain warehouse keeper shall replace the policy so that there is no lapse in coverage. Within 20 days after a cancellation notice under par. (a) is served on the department, and at least 10 days before the cancellation takes effect, the grain warehouse keeper shall provide the department with proof of the replacement policy. The department may accept, as proof, a certification provided by an insurance company licensed to do business in this state.

**(3) INSURANCE DEDUCTIBLES.** An insurance policy does not comply with sub. (1) if it contains any deductible clause that limits the insurer's obligation to pay to each depositor the full value of the depositor's covered losses under the policy. The grain warehouse keeper may agree to indemnify the insurer for a portion of each depositor claim that the insurer pays under the policy if the agreement does not limit the insurer's obligation to pay each depositor the full amount of the depositor's covered losses.

**(4) INSURANCE DISCLOSURES.** A grain warehouse keeper licensed under s. 126.26 (1) shall disclose all of the following to a depositor if the depositor requests that information:

(a) The material terms of the grain warehouse keeper's fire and extended coverage insurance policy under sub. (1).

(b) Whether the grain warehouse keeper has liability insurance covering the grain warehouse keeper's grain operations, and the material terms of that liability insurance policy.

**(5) INSURANCE COVERAGE; MISREPRESENTATION.** No grain warehouse keeper may misrepresent any of the following to the department or a depositor:

(a) That the grain warehouse keeper is insured.

(b) The nature, coverage, or material terms of the grain warehouse keeper's insurance policy.

History: 2001 a. 16.

**126.28 Grain warehouse keepers; financial statements. (1) REQUIRED ANNUAL FINANCIAL STATEMENT.** (a) A grain warehouse keeper shall file an annual financial statement with the department before the department first licenses the warehouse keeper under s. 126.26 (1), if the warehouse keeper operates grain warehouses with a combined capacity of more than 300,000 bushels.

(b) A grain warehouse keeper licensed under s. 126.26 (1) shall file an annual financial statement with the department during each license year if the grain warehouse keeper operates warehouses with a combined capacity of more than 300,000 bushels. The grain warehouse keeper shall file the annual financial statement



by the 15th day of the 4th month following the close of the grain warehouse keeper's fiscal year, except that the department may extend the annual filing deadline for up to 30 days if the grain warehouse keeper, or the accountant reviewing or auditing the financial statement, files a written extension request at least 10 days before the filing deadline.

**(2) VOLUNTARY ANNUAL FINANCIAL STATEMENT.** A contributing grain warehouse keeper who is not required to file an annual financial statement under sub. (1) may file an annual financial statement with the department in order to qualify for a lower fund assessment under s. 126.30.

**(3) REVIEWED OR AUDITED FINANCIAL STATEMENT.** (a) A grain warehouse keeper filing an annual financial statement under sub. (1) or (2) shall file an audited financial statement if the warehouse keeper operates grain warehouses with a combined capacity of more than 500,000 bushels.

(b) If par. (a) does not apply, a grain warehouse keeper filing an annual financial statement under sub. (1) or (2) shall file either a reviewed financial statement or an audited financial statement.

**(4) ACCOUNTING PERIOD.** A grain warehouse keeper filing an annual financial statement under sub. (1) or (2) shall file a financial statement that covers the grain warehouse keeper's last completed fiscal year unless the grain warehouse keeper has been in business for less than one year.

**(4m) INTERIM FINANCIAL STATEMENT.** The department may, at any time, require a grain warehouse keeper licensed under s. 126.26 (1) to file an interim financial statement with the department. The grain warehouse keeper shall provide, with the interim financial statement, the warehouse keeper's sworn and notarized statement that the financial statement is correct. An interim financial statement need not be a reviewed financial statement or an audited financial statement.

**(5) GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.** (a) Except as provided in par. (b), a grain warehouse keeper filing an annual financial statement under this section shall file a financial statement that is prepared according to generally accepted accounting principles.

(b) If a grain warehouse keeper is a sole proprietor and the grain warehouse keeper's financial statement is not audited, the grain warehouse keeper shall file a financial statement that is prepared on a historical cost basis.

**(6) FINANCIAL STATEMENT CONTENTS.** (a) Except as provided in par. (b), a grain warehouse keeper filing a financial statement under this section shall file a financial statement that consists of a balance sheet, income statement, equity statement, statement of cash flows, notes to those statements, and any other information required by the department. A grain warehouse keeper who is a sole proprietor shall file his or her business and personal financial statements.

(b) If a grain warehouse keeper has been in business for less than one year, the grain warehouse keeper may file an annual financial statement under sub. (1) or (2) that consists of a balance sheet and notes.

(c) A grain warehouse keeper filing a financial statement under this section shall include in the financial statement, or in an attachment to the financial statement, calculations of all of the following:

1. The grain warehouse keeper's current ratio, excluding any assets required to be excluded under sub. (7).
2. The grain warehouse keeper's debt to equity ratio, excluding any assets required to be excluded under sub. (7).

**(7) ASSETS EXCLUDED.** A grain warehouse keeper may not include any of the following assets in calculating the ratios under sub. (6) (c), unless the department specifically approves their inclusion:

(a) A nontrade note or account receivable from an officer, director, employee, partner, or stockholder, or from a member of the family of any of those individuals, unless the note or account

receivable is secured by a first priority security interest in real or personal property.

(b) A note or account receivable from a parent organization, a subsidiary, or an affiliate other than an employee.

(c) A note or account that has been receivable for more than one year, unless the grain warehouse keeper has established an equal offsetting reserve for uncollectible notes and accounts receivable.

**(9) ENTITY COVERED.** A person filing a financial statement under this section may not file, in lieu of that person's financial statement, the financial statement of the person's parent organization, subsidiary, predecessor, or successor.

**(10) DEPARTMENT REVIEW.** The department may analyze a financial statement submitted under this section and may reject a financial statement that fails to comply with this section.

History: 2001 a. 16.

**126.29 Contributing grain warehouse keepers; disqualification.** **(1) CONTRIBUTION REQUIRED.** A grain warehouse keeper licensed under s. 126.26 (1) shall pay fund assessments under s. 126.30 unless the grain warehouse keeper is disqualified under sub. (2).

**(2) DISQUALIFIED WAREHOUSE KEEPER.** (a) A grain warehouse keeper who is required to file security under s. 126.31 (1) (a) is disqualified from the fund until the department releases that security under s. 126.31 (8) (a).

(b) A grain warehouse keeper is disqualified from the fund if the department denies, suspends, or revokes the grain warehouse keeper's license.

**(3) PAYMENTS BY DISQUALIFIED GRAIN WAREHOUSE KEEPER.** (a) The department may not return, to a disqualified grain warehouse keeper, any fund assessments that the warehouse keeper paid as a contributing grain warehouse keeper.

(b) A disqualified grain warehouse keeper remains liable for any unpaid fund installment under s. 126.30 that became due while the grain warehouse keeper was a contributing grain warehouse keeper. A disqualified grain warehouse keeper is not liable for any fund installment that becomes due after the grain warehouse keeper is disqualified under sub. (2).

History: 2001 a. 16; 2003 a. 38.

**126.30 Grain warehouse keepers; fund assessments.**

**(1) GENERAL.** A contributing grain warehouse keeper shall pay an annual fund assessment for each license year. Except as provided in sub. (5m), the assessment equals \$20 or the sum of the following, whichever is greater, unless the department by rule specifies a different assessment:

(a) The grain warehouse keeper's current ratio assessment. The current ratio assessment for a license year is the amount, expressed as dollars, equal to the grain warehouse keeper's current ratio assessment rate under sub. (2) multiplied by the number of bushels that the grain warehouse keeper reports under s. 126.26 (2) (e) or (10).

(b) The warehouse keeper's debt to equity ratio assessment. The debt to equity ratio assessment for each license year is the amount, expressed as dollars, equal to the grain warehouse keeper's debt to equity ratio assessment rate under sub. (4) multiplied by the number of bushels that the warehouse keeper reports under s. 126.26 (2) (e) or (10).

**(2) CURRENT RATIO ASSESSMENT RATE.** A grain warehouse keeper's current ratio assessment rate is calculated, at the beginning of the license year, as follows:

(a) If the grain warehouse keeper has filed an annual financial statement under s. 126.28 and that financial statement shows a current ratio of at least 1.25 to 1.0, the grain warehouse keeper's current ratio assessment rate equals the greater of zero or the current ratio assessment factor in sub. (3) (a) multiplied by an amount determined as follows:

1. Subtract one from the current ratio.

2. Divide the amount determined under subd. 1. by 3.
3. Multiply the amount determined under subd. 2. by negative one.
4. Raise the amount determined under subd. 3. to the 3rd power.
5. Subtract 0.75 from the current ratio.
6. Divide 0.65 by the amount determined under subd. 5.
7. Raise the amount determined under subd. 6. to the 5th power.
8. Add the amount determined under subd. 4. to the amount determined under subd. 7.

9. Add 2 to the amount determined under subd. 8.

(b) If the grain warehouse keeper has filed an annual financial statement under s. 126.28 and that financial statement shows a current ratio of less than 1.25 to 1.0, but greater than 1.0 to 1.0, the grain warehouse keeper's current ratio assessment rate equals the current ratio assessment factor in sub. (3) (b) multiplied by the following amount:

1. Subtract one from the current ratio.
2. Divide the amount determined under subd. 1. by 3.
3. Multiply the amount determined under subd. 2. by negative one.
4. Raise the amount determined under subd. 3. to the 3rd power.
5. Subtract 0.75 from the current ratio.
6. Divide 0.65 by the amount determined under subd. 5.
7. Raise the amount determined under subd. 6. to the 5th power.
8. Add the amount determined under subd. 4. to the amount determined under subd. 7.

9. Add 2 to the amount determined under subd. 8.

(c) If the grain warehouse keeper has filed an annual financial statement under s. 126.28 and that financial statement shows a current ratio of less than or equal to 1.0 to 1.0, the warehouse keeper's current ratio assessment rate equals the current ratio assessment factor in sub. (3) (b) multiplied by 120.81376.

(d) If the grain warehouse keeper has not filed an annual financial statement under s. 126.28, the warehouse keeper's current ratio assessment rate equals the current ratio assessment factor in sub. (3) (b) multiplied by 5.71235.

**(3) CURRENT RATIO ASSESSMENT FACTOR.** (a) A grain warehouse keeper's current ratio assessment factor under sub. (2) (a) is 0.00003 except that, for the grain warehouse keeper's 5th or higher consecutive full license year as a contributing grain warehouse keeper, the grain warehouse keeper's current ratio assessment factor is zero.

(b) A grain warehouse keeper's current ratio assessment factor under sub. (2) (b) to (d) is 0.000045 except that, for the grain warehouse keeper's 5th or higher consecutive full license year as a contributing grain warehouse keeper, the grain warehouse keeper's current ratio assessment factor is 0.000036.

**(4) DEBT TO EQUITY RATIO ASSESSMENT RATE.** A grain warehouse keeper's debt to equity ratio assessment rate is calculated, at the beginning of the license year, as follows:

(a) If the grain warehouse keeper has filed an annual financial statement under s. 126.28 and that financial statement shows positive equity and a debt to equity ratio of not more than 4.0 to 1.0, the grain warehouse keeper's debt to equity ratio assessment rate equals the greater of zero or the debt to equity ratio assessment factor in sub. (5) (a) multiplied by the following amount:

1. Subtract 4 from the debt to equity ratio.
2. Divide the amount determined under subd. 1. by 3.
3. Raise the amount determined under subd. 2. to the 3rd power.
4. Subtract 1.7 from the debt to equity ratio.

5. Divide the amount determined under subd. 4. by 1.75.

6. Raise the amount determined under subd. 5. to the 7th power.

7. Add the amount determined under subd. 3. to the amount determined under subd. 6.

8. Add 2 to the amount determined under subd. 7.

(b) If the grain warehouse keeper has filed an annual financial statement under s. 126.28 and that financial statement shows a debt to equity ratio of greater than 4.0 to 1.0 but less than 5.0 to 1.0, the grain warehouse keeper's debt to equity ratio assessment rate equals the debt to equity ratio assessment factor in sub. (5) (b) multiplied by the following amount:

1. Subtract 4 from the debt to equity ratio.
2. Divide the amount determined under subd. 1. by 3.
3. Raise the amount determined under subd. 2. to the 3rd power.
4. Subtract 1.7 from the debt to equity ratio.
5. Divide the amount determined under subd. 4. by 1.75.
6. Raise the amount determined under subd. 5. to the 7th power.

7. Add the amount determined under subd. 3. to the amount determined under subd. 6.

8. Add 2 to the amount determined under subd. 7.

(c) If the grain warehouse keeper has filed an annual financial statement under s. 126.28 and that financial statement shows negative equity or a debt to equity ratio of at least 5.0 to 1.0, the grain warehouse keeper's debt to equity ratio assessment rate equals the debt to equity ratio assessment factor in sub. (5) (b) multiplied by 86.8244.

(d) If the grain warehouse keeper has not filed an annual financial statement under s. 126.28, the grain warehouse keeper's debt to equity ratio assessment rate equals the debt to equity ratio assessment factor in sub. (5) (b) multiplied by 8.77374.

**(5) DEBT TO EQUITY RATIO ASSESSMENT FACTOR.** (a) A grain warehouse keeper's debt to equity ratio assessment factor under sub. (4) (a) is 0.0000125, except that it is zero for the grain warehouse keeper's 5th or higher consecutive full license year as a contributing grain warehouse keeper.

(b) A grain warehouse keeper's debt to equity ratio assessment factor under sub. (4) (b) to (d) is 0.00001875, except that it is 0.000015 for the grain warehouse keeper's 5th or higher consecutive full license year as a contributing grain warehouse keeper.

**(5m) REDUCED ASSESSMENT FOR CERTAIN GRAIN WAREHOUSE KEEPERS FILING SECURITY.** If a grain warehouse keeper files security under s. 126.31 (1) (b), the grain warehouse keeper's assessment is the amount determined under sub. (1) reduced by an amount determined as follows:

(a) Divide the amount of security that the grain warehouse keeper is required to file as determined under s. 126.31 (3) (b) by the amount of the grain warehouse keeper's estimated default exposure, as defined in s. 126.31 (1) (b) 1.

(b) Multiply the amount of the assessment determined under sub. (1) by the amount determined under par. (a).

**(6) QUARTERLY INSTALLMENTS.** (a) A contributing grain warehouse keeper shall pay the grain warehouse keeper's annual fund assessment in equal quarterly installments that are due as follows:

1. The first installment is due on October 1 of the license year.
2. The 2nd installment is due on January 1 of the license year.
3. The 3rd installment is due on April 1 of the license year.
4. The 4th installment is due on July 1 of the license year.

(b) A contributing grain warehouse keeper may prepay any of the quarterly installments under par. (a).

(c) A contributing grain warehouse keeper who applies for an annual license after the beginning of a license year shall pay the full annual fund assessment required under this section. The grain warehouse keeper shall pay, with the first quarterly installment

that becomes due after the day on which the department issues the license, all of the quarterly installments that were due before that day.

(d) A contributing grain warehouse keeper who fails to pay the full amount of any quarterly installment when due shall pay, in addition to that installment, a late payment penalty of \$50 or 10% of the overdue installment amount, whichever is greater.

(7) NOTICE OF ANNUAL ASSESSMENT AND QUARTERLY INSTALLMENTS. When the department issues an annual license to a contributing grain warehouse keeper, the department shall notify the grain warehouse keeper of all of the following:

(a) The amount of the grain warehouse keeper's annual fund assessment under this section.

(b) The amount of each required quarterly installment under sub. (6), and the date by which the grain warehouse keeper must pay each installment.

(c) The penalty that applies under sub. (6) (d) if the grain warehouse keeper fails to pay any quarterly installment when due.

History: 2001 a. 16; 2003 a. 38.

**126.31 Grain warehouse keepers; security. (1) SECURITY REQUIRED.** (a) A grain warehouse keeper shall file security with the department, and maintain that security until the department releases it under sub. (8), if all of the following apply when the department first licenses the grain warehouse keeper under s. 126.26 (1):

1. The grain warehouse keeper operates grain warehouses with a combined capacity of more than 300,000 bushels.

2. The grain warehouse keeper's annual financial statement under s. 126.28 (1) (a) shows negative equity.

(b) 1. In this paragraph, "estimated default exposure" means 20% of the current local market value of grain that the grain warehouse keeper holds in this state for others.

2. A grain warehouse keeper shall file security with the department, and maintain that security until the department releases it under sub. (8) (am), if the grain warehouse keeper files an annual financial statement under s. 126.28 (1) that shows negative equity, a current ratio of less than 1.25 to 1.0, or a debt to equity ratio of more than 4.0 to 1.0 and the grain warehouse keeper's estimated default exposure is greater than the following amount:

a. For the license year beginning on September 1, 2003, \$18,000,000.

b. For the license year beginning on September 1, 2004, \$19,000,000.

c. For a license year that begins on September 1, 2005, or later, \$20,000,000.

(2) SECURITY CONTINUED. A grain warehouse keeper who filed security under ch. 127, 1999 stats., before September 1, 2002, shall maintain that security until the department releases it under sub. (8).

(3) AMOUNT OF SECURITY. (a) Except as provided in par. (b), a grain warehouse keeper who is required to file or maintain security under this section shall at all times maintain security equal to at least 20% of the current local market value of grain that the grain warehouse keeper holds in this state for others.

(b) A grain warehouse keeper who is only required to file or maintain security under sub. (1) (b) shall at all times maintain security equal to the grain warehouse keeper's estimated default exposure, as defined in sub. (1) (b) 1., less the following amount:

1. For the license year beginning on September 1, 2003, \$18,000,000.

2. For the license year beginning on September 1, 2004, \$19,000,000.

3. For a license year that begins on September 1, 2005, or later, \$20,000,000.

(4) FORM OF SECURITY. The department shall review, and determine whether to approve, security filed or maintained under

this section. The department may approve only the following types of security:

(a) Currency.

(b) A commercial surety bond if all of the following apply:

1. The surety bond is made payable to the department for the benefit of depositors.

2. The surety bond is issued by a person authorized to operate a surety business in this state.

3. The surety bond is issued as a continuous term bond that may be canceled only with the department's written agreement, or upon 90 days' prior written notice served on the department in person or by certified mail.

4. The surety bond is issued in a form, and subject to any terms and conditions, that the department considers appropriate.

(c) A certificate of deposit or money market certificate, if all of the following apply:

1. The certificate is issued or endorsed to the department for the benefit of depositors.

2. The certificate may not be canceled or redeemed without the department's written permission.

3. No person may transfer or withdraw funds represented by the certificate without the department's written permission.

4. The certificate renews automatically without any action by the department.

5. The certificate is issued in a form, and subject to any terms and conditions, that the department considers appropriate.

(d) An irrevocable bank letter of credit if all of the following apply:

1. The letter of credit is payable to the department for the benefit of depositors.

2. The letter of credit is issued on bank letterhead.

3. The letter of credit is issued for an initial period of at least one year.

4. The letter of credit renews automatically unless at least 90 days before the scheduled renewal date the issuing bank gives the department written notice, in person or by certified mail, that the letter of credit will not be renewed.

5. The letter of credit is issued in a form, and subject to any terms and conditions, that the department considers appropriate.

(e) Security filed under ch. 127, 1999 stats., before September 1, 2002, except that on January 1, 2003, the department shall withdraw its approval of any security that is not approvable under pars. (a) to (d).

(5) DEPARTMENT CUSTODY OF SECURITY. The department shall hold, in its custody, all security filed and maintained under this section. The department shall hold the security for the benefit of depositors.

(6) ADDITIONAL SECURITY. (a) The department may, at any time during a license year, demand additional security from a grain warehouse keeper if any of the following applies:

1. The grain warehouse keeper's existing security falls below the amount required under sub. (3) for any reason, including depreciation in the value of the security, increased obligations to depositors, or the cancellation of any security filed with the department.

2. The grain warehouse keeper fails to provide required information that is relevant to a determination of security requirements.

(b) The department shall issue a demand under par. (a) in writing. The department shall indicate why additional security is required, the amount of security required, and the deadline date for filing security. The department may not specify a deadline for filing security that is more than 30 days after the date on which the department issues its demand for security.

(c) A grain warehouse keeper may request a hearing, under ch. 227, on a demand for security under par. (b). A request for hearing does not automatically stay a security demand.



(d) If a grain warehouse keeper fails to comply with the department's demand for security under this subsection, the grain warehouse keeper shall give written notice of that fact to all depositors. If the grain warehouse keeper fails to give accurate notice under this paragraph within 5 days after the deadline for filing security under par. (b) has passed, the department shall promptly notify depositors by publishing a class 3 notice under ch. 985. The department may also give individual notice to depositors of whom the department is aware.

(e) If a grain warehouse keeper fails to comply with the department's demand for security under this subsection, the department may do any of the following:

1. Issue an appropriate summary order under s. 126.85 (2).
2. Suspend or revoke the grain warehouse keeper's license.

**(7) MONTHLY REPORTS.** A grain warehouse keeper who is required to file or maintain security under this section shall file monthly reports with the department. The grain warehouse keeper shall file the report by the 10th day of each month, in a form specified by the department. In a monthly report, the grain warehouse keeper shall provide information reasonably required by the department, including the amount of each type of grain stored in each grain warehouse on the last day of the preceding month.

**(8) RELEASING SECURITY.** (a) The department may release security filed under sub. (1) (a) if any of the following applies:

1. The grain warehouse keeper reports grain warehouse capacity under s. 126.26 (2) (e) of less than 300,000 bushels for at least 2 consecutive license years and the grain warehouse keeper pays the quarterly fund assessment that would have been required of the grain warehouse keeper if the grain warehouse keeper had been a contributing grain warehouse keeper on the most recent quarterly installment date under s. 126.30 (6).

2. The grain warehouse keeper's annual financial statement under s. 126.28 shows positive equity for at least 2 consecutive years and the grain warehouse keeper pays the quarterly fund assessment that would have been required of the grain warehouse keeper if the grain warehouse keeper had been a contributing grain warehouse keeper on the most recent quarterly installment date under s. 126.30 (6).

(am) The department may release security filed under sub. (1) (b), except for any amount of security that the grain warehouse keeper is required to file because sub. (1) (a) applies to the grain warehouse keeper, if the grain warehouse keeper files 2 consecutive annual financial statements under s. 126.28 showing that the grain warehouse keeper no longer has negative equity, a current ratio of less than 1.25 to 1.0, or a debt to equity ratio of more than 4.0 to 1.0.

(b) On December 1, 2002, the department may release security maintained under sub. (2), unless the grain warehouse keeper is required to file security under sub. (1).

(c) The department may release security to the extent that the security exceeds the amount required under sub. (3).

(d) The department may release security if the grain warehouse keeper files alternative security, of equivalent value, that the department approves.

(e) The department shall release security if the grain warehouse keeper has gone out of business and has fulfilled all grain obligations to depositors.

**History:** 2001 a. 16; 2003 a. 38, 320.

### **126.32 Grain warehouse keepers; records.**

**(1) RECORDS AND ACCOUNTS; GENERAL.** A grain warehouse keeper shall maintain current, complete, and accurate records and accounts of all grain received into and withdrawn from each grain warehouse, including records required under subs. (2) and (3).

**(2) DAILY POSITION RECORDS.** A grain warehouse keeper shall keep daily position records for each type of grain, so that the grain warehouse keeper and the department can easily determine all of the following on a daily basis:

(a) The total amount of grain held by the warehouse keeper, including grain under pars. (b) and (c).

(b) The total amount of grain that the warehouse keeper holds for others.

(c) The total amount of grain held by the warehouse keeper of which the warehouse keeper claims ownership.

(d) The warehouse keeper's total grain obligations to depositors.

**(3) DEPOSITOR RECORDS.** A grain warehouse keeper shall keep for each depositor, in a form that the grain warehouse keeper and the department can easily retrieve, records of all of the following:

(a) The depositor's name and address.

(b) The kinds and amounts of grain that the grain warehouse keeper received from the depositor, the receipt dates, and the terms under which the grain warehouse keeper received the grain.

(c) The kinds and amounts of grain that the grain warehouse keeper has released to the depositor and the release dates.

(d) The kinds and amounts of grain that the grain warehouse keeper holds for the depositor. The grain warehouse keeper shall update this record on a daily basis.

**(4) ADJUSTING RECORDS.** (a) Whenever a grain warehouse keeper alters a record entry under sub. (2) or (3), the grain warehouse keeper shall clearly identify and explain the alteration so that the reason for the alteration is clear to a person reviewing the records.

(b) Except as provided in par. (c), a grain warehouse keeper may not alter a record entry under sub. (2) or (3) without the department's prior approval.

(c) A grain warehouse keeper may, without the department's prior approval, correct a record entry under sub. (2) or (3) for any of the following reasons:

1. To account for handling losses, if the warehouse keeper corrects for handling losses at least monthly.

2. To account for errors or omissions related to the receipt or withdrawal of grain, if the warehouse keeper has documentation to support the correction.

**(5) RECORDS RETENTION; AVAILABILITY.** (a) A grain warehouse keeper shall retain all of the following records for at least 6 years from the date of their creation:

1. Records required under this section and s. 126.33 (3).

2. Records that the grain warehouse keeper was required to keep under ch. 127, 1999 stats., and department rules, before January 1, 2002.

(b) If a grain warehouse keeper keeps records under subs. (2) and (3) in computerized form, the grain warehouse keeper shall generate a hard copy printout for each business day unless the grain warehouse keeper retains the ability to retrieve and print that day's computerized record for at least 6 years.

(c) A grain warehouse keeper shall make records required under this section available to the department for inspection and copying upon request.

**(6) REVIEWING RECORDS.** (a) The department shall review the records that a grain warehouse keeper is required to keep under this section. The department shall review a grain warehouse keeper's records at least annually, except as provided in par. (b).

(b) The department shall review a grain warehouse keeper's records at least once every 2 years if the grain warehouse keeper files an annual financial statement under s. 126.28 and that annual financial statement shows a current ratio of at least 2.0 to 1.0, positive equity, and a debt to equity ratio of not more than 2.0 to 1.0.

**History:** 2001 a. 16.

**126.33 Receipts for grain. (1) REQUIREMENT.** Immediately after a grain warehouse keeper receives grain from a depositor, the grain warehouse keeper shall give the depositor a warehouse receipt or other storage receipt that includes all of the following:

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

(b) A statement identifying the document as a warehouse receipt or other storage receipt.

(c) The date on which the grain warehouse keeper received the grain.

(d) The kind of grain received.

(e) The net weight of grain received.

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

(g) The word “negotiable” or “nonnegotiable,” conspicuously, if the document is issued as a warehouse receipt. If a grain warehouse keeper transfers depositor-owned grain to another warehouse keeper, the receiving grain warehouse keeper shall issue a receipt that conspicuously bears the word “nonnegotiable.”

(h) A statement indicating that the depositor must remove the grain from storage by a specified date that is not more than 3 years after the date of deposit. This requirement does not apply to any of the following:

1. A warehouse receipt.
2. A receipt for grain owned by the federal commodity credit corporation.
3. A receipt for grain pledged as collateral for a loan from the federal department of agriculture.

**(2) GRAIN OWNERSHIP.** If a person delivers grain to a recipient who is both a grain warehouse keeper and a grain dealer, as defined in s. 126.10 (9), the delivery is considered a deposit for storage unless it is clearly documented as a delivery of purchased grain. A receipt issued by such a recipient is considered a storage receipt unless it is clearly designated as a receipt for the delivery of purchased grain.

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

*History:* 2001 a. 16.

### 126.34 Grain warehouse keepers; business practices.

**(1) GRAIN WEIGHT, GRADE, AND QUALITY.** A grain warehouse keeper shall do all of the following when determining the weight, grade, or quality of grain:

(a) Accurately determine the weight, grade, or quality using accurate weighing, testing, or grading equipment.

(b) Accurately record the determined weight, grade, or quality.

**(2) CARE OF GRAIN; FACILITIES.** A grain warehouse keeper shall safeguard grain held for others and shall protect that grain from loss or abnormal deterioration. A grain warehouse keeper shall maintain adequate facilities and equipment for that purpose.

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

**(4) RETURNING GRAIN TO DEPOSITORS.** (a) Except as provided in par. (b), a grain warehouse keeper shall deliver to a depositor, upon demand, the same grade and amount of grain as was deposited.

(b) If a grain warehouse keeper does not have enough grain of the appropriate grade to satisfy a depositor’s demand under par. (a), the warehouse keeper may substitute any of the following with the agreement of the depositor:

1. A monetary payment sufficient to provide the depositor with equivalent value, based on current local grain prices.
2. A sufficient amount of a higher grade of grain to provide the depositor with equivalent value, based on current local grain prices.

(c) A grain warehouse keeper may not provide grain or payments under par. (b) whose value exceeds the current value of the grain that was deposited.

**(5) PROHIBITED PRACTICES.** No grain 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) Falsify any record or account, or conspire with any other person to falsify a record or account.

(c) Make any false or misleading representation to the department.

(d) If the grain warehouse keeper is licensed under s. 126.26 (1), engage in any activity that is inconsistent with representations made in the grain warehouse keeper’s annual license application.

(e) Make any false or misleading representation to a depositor related to matters regulated under this chapter.

(f) Fail to file the full amount of security required under s. 126.31 (6) by the date that the department specifies.

*History:* 2001 a. 16.

## SUBCHAPTER V

### MILK CONTRACTORS

**Cross Reference:** See also ch. ATCP 100, Wis. adm. code.

**126.40 Definitions.** In this subchapter:

**(1)** “Contributing milk contractor” means a milk contractor who is licensed under s. 126.41 (1), who either has paid one or more quarterly installments under s. 126.46 or is required to contribute to the fund, but the first quarterly installment under s. 126.46 (6) is not yet due, and who is not disqualified from the fund under s. 126.45 (3).

**(2)** “Current ratio” means the ratio of the value of current assets to the value of current liabilities, calculated according to s. 126.44 (8) (c) 1.

**(3)** “Dairy farm” has the meaning given in s. 97.22 (1) (a).

**(4)** “Dairy plant” has the meaning given in s. 97.20 (1) (a).

**(5)** “Dairy plant operator” means a person who holds or is required to hold a dairy plant license under s. 97.20.

**(6)** “Debt to equity ratio” means the ratio of the value of liabilities to equity, calculated according to s. 126.44 (8) (c) 2.

**(7)** “Disqualified milk contractor” means a milk contractor who is disqualified from the fund under s. 126.45 (3).

**(7m)** “License year” means the period beginning on May 1 and ending on the following April 30.

**(8)** “Milk contractor” means a person who buys producer milk or who markets producer milk as a producer agent. “Milk contractor” does not include any of the following:

(a) A person who merely brokers a contract between a milk producer and a milk contractor, without becoming a party to the contract, taking control of milk, or accepting payment on behalf of the milk producer.

(b) A person who merely buys or sells milk on a board of trade or commodity exchange.

**(9)** “Milk payroll obligation” means a milk contractor’s gross obligation to a milk producer or producer agent, whether paid or unpaid, for producer milk that the milk contractor procures in this state.

**(10)** “Milk producer” means a person who produces milk on a dairy farm.

**(11)** “Procure producer milk” means to buy producer milk or acquire the right to market producer milk.

**(12)** “Procure producer milk in this state” means any of the following:

- (a) To buy producer milk for receipt in this state.
- (b) To receive producer milk directly from a dairy farm in this state.

(c) To collect producer milk from a dairy farm in another state, for direct shipment to a dairy plant that the milk contractor operates in this state.

(d) To acquire the right to market producer milk that is produced in this state.

**(13)** “Producer agent” means a person who acts on behalf of a milk producer to market or accept payment for producer milk without taking title to that milk, including a person who uses a producer trust fund to market or accept payment for producer milk. “Producer agent” does not include any of the following:

(a) A person who merely brokers a contract between a milk producer and a milk contractor, without becoming a party to the contract, taking control of milk, or accepting payment on behalf of the milk producer.

(b) A person who merely holds or transports milk for a milk producer without marketing or accepting payment for milk on behalf of the milk producer.

**(14)** “Producer milk” means milk that is owned by or held in trust for one or more milk producers. “Producer milk” includes milk that a producer agent markets for a producer, without taking title to the milk.

**(15)** “Qualified producer agent” means a milk contractor who does all of the following:

- (a) Procures milk in this state solely as a producer agent.
- (b) Complies with the rules promulgated under s. 126.51.

History: 2001 a. 16.

**126.41 Milk contractors; licensing. (1) ANNUAL LICENSE.**

(a) No milk contractor may do any of the following without a current annual license from the department:

1. Receive producer milk in this state.
2. Collect producer milk from a dairy farm in another state for direct shipment to a dairy plant that the milk contractor operates in this state.
3. Acquire the right to market, as a producer agent, producer milk produced in this state.

(b) A milk contractor who is not engaged in any activities under par. (a) may volunteer to be licensed if the milk contractor receives, outside this state, direct shipments of producer milk from dairy farms in this state.

(c) The department shall issue annual milk contractor licenses under pars. (a) and (b). A license expires on the April 30 following its issuance. No person may transfer or assign a license issued under par. (a) or (b).

**(2) LICENSE APPLICATION.** A milk contractor shall apply for a license under sub. (1) in writing, on a form provided by the department. An applicant shall provide all of the following:

(a) The applicant’s legal name and any trade name under which the applicant proposes to operate as a milk contractor. If the milk contractor is a dairy plant operator licensed under s. 97.20, the milk contractor shall use the same legal name in both license applications.

(b) A statement of whether the applicant is an individual, a corporation, partnership, cooperative, unincorporated cooperative association, limited liability company, trust, or other legal entity. If the applicant is a corporation, a cooperative, or an association, the applicant shall identify each officer of the corporation or cooperative. If the applicant is a partnership, the applicant shall identify each partner.

(c) The mailing address of the applicant’s primary business location and the name of a responsible individual who may be contacted at that location.

(d) The street address of each business location from which the applicant will operate under the license and the name of a responsible person who may be contacted at each location that is staffed.

(e) All license fees and surcharges required under sub. (3).

(f) The sworn and notarized statement required under sub. (6).

(g) A financial statement if required under s. 126.44 (1) and not yet filed.

(h) Other relevant information required by the department.

**(3) ANNUAL LICENSE FEES AND SURCHARGES.** A milk contractor applying for a license under sub. (1) shall include the following fees and surcharges with the license application, unless the department specifies a different fee or surcharge amount by rule:

(a) A nonrefundable license processing fee of \$25, regardless of whether application is made after the beginning of a license year.

(b) A license surcharge of \$500 if the department determines that, within 365 days before submitting the license application, the applicant operated without a license in violation of sub. (1). The applicant shall also pay any license fees, license surcharges, and fund assessments that are still due for any license year in which the applicant violated sub. (1).

(c) A license surcharge of \$100 if during the preceding 12 months the applicant failed to file an annual financial statement required under s. 126.44 (1) (b) by the applicable deadline.

(d) A license surcharge of \$100 if a renewal applicant fails to renew a license by the license expiration date of April 30.

**(3m) EFFECT OF PAYMENT OF SURCHARGE.** Payment under sub. (3) (b) does not relieve the applicant of any other civil or criminal liability that results from the violation of sub. (1), but does not constitute evidence of any law violation.

**(4) FEE STATEMENT.** The department shall provide, with each license application form, a written statement of all license fees and surcharges required under sub. (3).

**(5) NO LICENSE WITHOUT FULL PAYMENT.** The department may not issue a license under sub. (1) until the applicant pays all license fees and surcharges identified in the department’s statement under sub. (4). The department shall refund a fee or surcharge paid under protest if upon review the department determines that the fee or surcharge is not applicable.

**(6) SWORN AND NOTARIZED STATEMENT.** As part of a license application under sub. (2), an applicant shall provide a sworn and notarized statement, signed by the applicant or an authorized officer of the applicant, that reports all of the following information:

(a) The total milk payroll obligations that the applicant incurred during the applicant’s last completed fiscal year. If the applicant has not yet operated as a milk contractor, the applicant shall estimate the total milk payroll obligations that the applicant will incur during the applicant’s first complete fiscal year.

(b) The largest amount of unpaid milk payroll obligations that the milk contractor had at any time during the milk contractor’s last completed fiscal year.

(c) The identity of any producer agents from whom the milk contractor procures producer milk.

(d) Other relevant information required by the department.

**(7) ACTION GRANTING OR DENYING APPLICATION.** The department shall grant or deny a license application under sub. (2) within 30 days after the department receives a complete application. If the department denies a license application, the department shall give the applicant written notice stating the reasons for the denial.

**(8) LICENSE DISPLAYED.** A milk contractor licensed under sub. (1) shall prominently display a true copy of that license at each business location from which the milk contractor operates in this state.

**(9) NOTIFICATION REQUIRED.** A milk contractor who files security under s. 126.47 shall immediately notify the department if, at any time, the milk contractor’s unpaid milk payroll obligations exceed the amount last reported under sub. (6) (b).

History: 2001 a. 16; 2005 a. 441.

**126.42 Milk contractors; monthly license fee.**

**(1) MONTHLY LICENSE FEE PAYMENT.** Except as provided under sub. (5) or (6), a milk contractor licensed under s. 126.41 (1) shall pay to the department, by the 25th day of each month, a monthly



license fee of 0.15 cent for each 100 pounds of producer milk that the milk contractor procured in this state during the preceding month. The milk contractor shall submit, with the fee payment, a report stating the number of pounds of producer milk that the milk contractor procured in this state during the preceding month.

(2) **LATE PAYMENT SURCHARGE.** If a milk contractor fails to pay a monthly fee under sub. (1) when due, the milk contractor shall pay, in addition to that monthly fee, a surcharge equal to 20% of the monthly fee. The milk contractor shall pay the surcharge by the 25th day of the following month.

(3) **FEE CREDITS.** If the balance in the fund contributed by milk contractors exceeds \$4,000,000 on February 28 of any license year, the department shall credit 50% of the excess amount against fees charged under sub. (1) to contributing milk contractors who file timely renewal applications for the next license year. The department shall credit each contributing milk contractor on a pro-rated basis, in proportion to the total fees that the milk contractor has paid under sub. (1) for the 4 preceding license years. Each month that a contributing contractor who qualifies for a credit under this subsection pays fees under sub. (1), the department shall credit to the contributing milk contractor one-twelfth of the total annual credit determined under this subsection.

(4) **FEE STATEMENT.** Whenever the department issues an annual license to a milk contractor under s. 126.41 (1), the department shall give the milk contractor notice of the monthly fees required under this section. The department shall specify all of the following:

- (a) The method for computing the monthly fee.
- (b) The date by which the milk contractor must pay the fee each month.
- (c) The late payment surcharge that may apply under sub. (2).
- (d) The fee credit, if any, that applies under sub. (3).

(5) **PRODUCER AGENTS; EXEMPTION.** A producer agent is not required to pay the monthly fee under sub. (1) for producer milk that the producer agent markets to a milk contractor who is licensed under s. 126.41 (1) and who pays the monthly fee on the same milk.

(6) **FEE CHANGES.** The department may modify the license fees under sub. (1) by rule, as provided under s. 126.81 (2).

*History:* 2001 a. 16.

**126.43 Milk contractors; insurance.** (1) **FIRE AND EXTENDED COVERAGE INSURANCE.** A milk contractor licensed under s. 126.41 (1) shall maintain fire and extended coverage insurance that covers, at their full value, all milk and milk products in the possession, custody, or control of the milk contractor. If the milk contractor is required to be licensed under s. 126.41 (1) (a), the milk contractor shall maintain insurance issued by an insurance company authorized to do business in this state.

(2) **INSURANCE CANCELLATION; REPLACEMENT.** Whenever an insurance policy under sub. (1) is canceled, the milk contractor shall replace the policy so that there is no lapse in coverage.

(3) **INSURANCE COVERAGE; MISREPRESENTATION.** No milk contractor may misrepresent any of the following to the department or to any milk producer or producer agent:

- (a) That the milk contractor is insured.
- (b) The nature, coverage, or material terms of the milk contractor's insurance policy.

*History:* 2001 a. 16.

**126.44 Milk contractors; financial statements.**

(1) **REQUIRED ANNUAL FINANCIAL STATEMENT.** (a) A milk contractor shall file an annual financial statement with the department before the department first licenses the milk contractor under s. 126.41 (1), unless the milk contractor reports no more than \$1,500,000 in annual milk payroll obligations under s. 126.41 (6) (a).

(b) Except as provided in par. (c) or (d), a milk contractor licensed under s. 126.41 (1) shall file an annual financial state-

ment with the department during each license year. The milk contractor shall file the annual financial statement by the 15th day of the 4th month following the close of the milk contractor's fiscal year. The department may extend the filing deadline for up to 30 days if the milk contractor, or the accountant preparing the financial statement, files a written extension request at least 10 days before the filing deadline.

(c) Paragraph (b) does not apply to any of the following:

1. A contributing milk contractor who reports no more than \$1,500,000 in annual milk payroll obligations under s. 126.41 (6) (a).

2. A contributing milk contractor who procures producer milk in this state solely as a producer agent.

(d) Rather than filing an annual financial statement under par. (b), a milk contractor who is disqualified under s. 126.45 (3) (a) may file, during each fiscal year, a compilation of financial information that is satisfactory to the department along with the milk contractor's sworn and notarized statement that the financial information is correct. The milk contractor shall file the financial information by the 15th day of the 4th month following the close of the milk contractor's fiscal year. The department may extend the filing deadline for up to 30 days if the milk contractor, or an accountant preparing the financial information, files a written extension request at least 10 days before the filing deadline.

(2) **VOLUNTARY ANNUAL FINANCIAL STATEMENT.** A milk contractor licensed under s. 126.41 (1) who is not required to file a financial statement under sub. (1) may file an annual financial statement with the department for any of the following reasons:

(a) To avoid being required to contribute to the fund under s. 126.45 (1) (a).

(b) To qualify for a lower fund assessment under s. 126.46.

(3) **QUARTERLY FINANCIAL STATEMENTS.** A milk contractor licensed under s. 126.41 (1) who is not a contributing milk contractor shall file quarterly financial statements with the department for the first 3 quarters in each of the milk contractor's fiscal years. The milk contractor shall file each quarterly financial statement no later than 60 days after the end of the fiscal quarter to which the financial statement pertains. With each quarterly financial statement, the milk contractor shall include the milk contractor's sworn and notarized statement that the financial statement is correct.

(5) **REVIEWED OR AUDITED FINANCIAL STATEMENT.** (a) A milk contractor filing an annual financial statement under sub. (1) or (2) shall file an audited financial statement if the milk contractor reports more than \$6,000,000 in annual milk payroll obligations under s. 126.41 (6) (a).

(b) If par. (a) does not apply, a milk contractor filing an annual financial statement under sub. (1) or (2) shall file either a reviewed financial statement or an audited financial statement.

(6) **ACCOUNTING PERIOD.** A milk contractor filing an annual financial statement under sub. (1) or (2) shall file a financial statement that covers the milk contractor's last completed fiscal year unless the milk contractor has been in business for less than one year.

(6m) **INTERIM FINANCIAL STATEMENT.** The department may, at any time, require a milk contractor licensed under s. 126.41 (1) to file an interim financial statement with the department. With the interim financial statement, the milk contractor shall provide the milk contractor's sworn and notarized statement that the financial statement is correct. An interim financial statement need not be a reviewed financial statement or an audited financial statement.

(7) **GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.** (a) Except as provided in par. (b), a milk contractor filing an annual financial statement under this section shall file a financial statement that is prepared according to generally accepted accounting principles.

(b) If a milk contractor is a sole proprietor and the milk contractor's financial statement is not audited, the milk contractor shall file a financial statement that is prepared on a historical cost basis.

**(8) FINANCIAL STATEMENT CONTENTS.** (a) Except as provided in par. (b), a milk contractor filing a financial statement under this section shall file a financial statement that consists of a balance sheet, income statement, equity statement, statement of cash flows, notes to those statements, and any other information required by the department. If the milk contractor is a sole proprietor, the milk contractor shall file his or her business and personal financial statements.

(b) If a milk contractor has been in business for less than one year, the milk contractor may file an annual financial statement under sub. (1) or (2) consisting of a balance sheet and notes. A milk contractor may file a quarterly financial statement under sub. (3) consisting of a balance sheet and income statement.

(c) A milk contractor filing a financial statement under this section shall include in the financial statement, or in an attachment to the financial statement, calculations of all of the following:

1. The milk contractor's current ratio, excluding any assets required to be excluded under sub. (9).
2. The milk contractor's debt to equity ratio, excluding any assets required to be excluded under sub. (9).

**(9) ASSETS EXCLUDED.** A milk contractor may not include any of the following assets in the calculations under sub. (8) (c), unless the department specifically approves their inclusion:

(a) A nontrade note or account receivable from an officer, director, employee, partner, or stockholder, or from a member of the family of any of those individuals, unless the note or account receivable is secured by a first priority security interest in real or personal property.

(b) A note or account receivable from a parent organization, a subsidiary, or an affiliate other than an employee.

(c) A note or account that has been receivable for more than one year, unless the milk contractor has established an equal offsetting reserve for uncollectible notes and accounts receivable.

**(10) ENTITY COVERED.** A person filing a financial statement under this section may not file, in lieu of that person's financial statement, the financial statement of the person's parent organization, subsidiary, predecessor, or successor.

**(11) DEPARTMENT REVIEW.** The department may analyze a financial statement submitted under this section and may reject a financial statement that fails to comply with this section.

*History:* 2001 a. 16; 2003 a. 238.

**126.45 Contributing milk contractors; disqualification.** **(1) REQUIRED CONTRIBUTORS.** (a) Except as provided in sub. (3), a licensed milk contractor shall pay fund assessments under s. 126.46 if the milk contractor does not file annual and quarterly financial statements under s. 126.44.

(b) Except as provided in sub. (3), a licensed milk contractor shall pay fund assessments under s. 126.46 if the milk contractor files an annual, quarterly, or interim financial statement under s. 126.44 that shows a current ratio of less than 1.25 to 1.0, a debt to equity ratio of more than 2.0 to 1.0, or negative equity. The milk contractor shall continue to pay fund assessments until the milk contractor files 2 consecutive annual financial statements under s. 126.44 that show a current ratio of at least 1.25 to 1.0, positive equity, and a debt to equity ratio of not more than 2.0 to 1.0.

**(2) VOLUNTARY CONTRIBUTORS.** Except as provided in sub. (3), a licensed milk contractor who is not required to pay fund assessments under s. 126.46 may elect to do so.

**(3) DISQUALIFIED CONTRACTORS.** (a) A milk contractor who is required to file security under s. 126.47 (1) (a) is disqualified from the fund until the department releases that security under s. 126.47 (7) (a). This paragraph does not apply, during the period beginning on May 1, 2002, and ending on April 30, 2007, to a qualified producer agent who files security under s. 126.47 (3) (a) 3.

(b) A milk contractor is disqualified from the fund if the department denies, suspends, or revokes the milk contractor's license.

(c) The department may, by written notice, disqualify a milk contractor for any of the following reasons:

1. Failure to pay fund assessments under s. 126.46 when due.
2. Failure to file a financial statement under s. 126.44 when due.
3. Failure to reimburse the department, within 60 days after the department issues a reimbursement demand under s. 126.73 (1), for the full amount that the department pays to claimants under s. 126.72 (1) or under s. 126.72 (2) with the proceeds of a loan under s. 126.06 (1) (b) because of that milk contractor's default.
4. Failure to reimburse a bond surety, within 60 days after the bond surety issues a reimbursement demand under s. 126.73 (2), for the full amount that the surety pays to the department under s. 126.72 (2) for the benefit of claimants affected by that milk contractor's default.

**(4) EFFECT OF DISQUALIFICATION.** (a) A milk contractor disqualified under sub. (3) (c) may not engage in any activities for which a license is required under s. 126.41 (1) (a) if the milk contractor files an annual, quarterly, or interim financial statement under s. 126.44 that shows a current ratio of less than 1.25 to 1.0, a debt to equity ratio of more than 2.0 to 1.0, or negative equity.

(b) The department may not return, to a disqualified milk contractor, any fund assessments that the milk contractor paid as a contributing milk contractor.

(c) A disqualified milk contractor remains liable for any unpaid fund installment under s. 126.46 that became due while the milk contractor was a contributing milk contractor. A disqualified milk contractor is not liable for any fund installment that becomes due after the milk contractor is disqualified under sub. (3).

*History:* 2001 a. 16; 2003 a. 38.

**126.46 Contributing milk contractors; fund assessments.** **(1) GENERAL.** A contributing milk contractor shall pay an annual fund assessment for each license year. Except as provided in sub. (5m), the assessment equals \$20 or the sum of the following, whichever is greater, unless the department by rule specifies a different assessment:

(a) The milk contractor's current ratio assessment. The current ratio assessment for a license year equals the milk contractor's current ratio assessment rate under sub. (2) multiplied by the annual milk payroll obligations reported under s. 126.41 (6) (a) in the milk contractor's license application for that license year.

(b) The milk contractor's debt to equity ratio assessment. The debt to equity ratio assessment for a license year equals the milk contractor's debt to equity ratio assessment rate under sub. (4) multiplied by the annual milk payroll obligations reported under s. 126.41 (6) (a) in the milk contractor's license application for that license year.

**(2) CURRENT RATIO ASSESSMENT RATE.** A milk contractor's current ratio assessment rate is calculated, at the beginning of the license year, as follows:

(a) If the milk contractor has filed an annual financial statement under s. 126.44 and that financial statement shows a current ratio of at least 1.25 to 1.0, the milk contractor's current ratio assessment rate equals the greater of zero or the current ratio assessment factor in sub. (3) (a) multiplied by the following amount:

1. Subtract 3 from the current ratio.
2. Divide the amount determined under subd. 1. by 6.
3. Multiply the amount determined under subd. 2. by negative one.

4. Raise the amount determined under subd. 3. to the 3rd power.

5. Divide 0.55 by the current ratio.

6. Raise the amount determined under subd. 5. to the 7th power.

7. Add the amount determined under subd. 4. to the amount determined under subd. 6.

8. Add 0.075 to the amount determined under subd. 7.

(b) If the milk contractor has filed an annual financial statement under s. 126.44 and that financial statement shows a current ratio of less than 1.25 to 1.0, but greater than 1.05 to 1.0, the milk contractor's current ratio assessment rate equals the current ratio assessment factor in sub. (3) (b) multiplied by the following amount:

1. Subtract 3 from the current ratio.

2. Divide the amount determined under subd. 1. by 6.

3. Multiply the amount determined under subd. 2. by negative one.

4. Raise the amount determined under subd. 3. to the 3rd power.

5. Divide 0.55 by the current ratio.

6. Raise the amount determined under subd. 5. to the 7th power.

7. Add the amount determined under subd. 4. to the amount determined under subd. 6.

8. Add 0.075 to the amount determined under subd. 7.

(c) Except as provided in par. (e), if the milk contractor has filed an annual financial statement under s. 126.44 and that financial statement shows a current ratio of less than or equal to 1.05 to 1.0, the milk contractor's current ratio assessment rate equals the current ratio assessment factor in sub. (3) (b) multiplied by 0.1201478.

(d) Except as provided in par. (e), if the milk contractor has not filed an annual financial statement under s. 126.44, the milk contractor's current ratio assessment rate equals the current ratio assessment factor in sub. (3) (b) multiplied by 0.103005.

(e) If the milk contractor procures producer milk in this state solely as a producer agent and the milk contractor has not filed an annual financial statement under s. 126.44 or has filed an annual financial statement that shows a current ratio of less than or equal to 1.05 to 1.0, the milk contractor's current ratio assessment rate is 0.00025, except that for the milk contractor's 5th or higher consecutive full license year of participation in the fund the milk contractor's current ratio assessment rate is 0.000175.

**(3) CURRENT RATIO ASSESSMENT FACTOR.** (a) A milk contractor's current ratio assessment factor under sub. (2) (a) is 0.001, except as follows:

1. For the milk contractor's 3rd consecutive full license year as a contributing milk contractor, the milk contractor's current ratio assessment factor is 0.0007.

2. For the milk contractor's 4th consecutive full license year as a contributing milk contractor, the milk contractor's current ratio assessment factor is 0.0003.

3. For the milk contractor's 5th or higher consecutive full license year as a contributing milk contractor, the milk contractor's current ratio assessment factor is zero.

(b) A milk contractor's current ratio assessment factor under sub. (2) (b) to (d) is 0.0015, except that, for the milk contractor's 5th or higher consecutive full license year of participation in the fund, the milk contractor's current ratio assessment factor is 0.000675.

**(4) DEBT TO EQUITY RATIO ASSESSMENT RATE.** A milk contractor's debt to equity ratio assessment rate is calculated, at the beginning of the license year, as follows:

(a) If the milk contractor has filed an annual financial statement under s. 126.44 and that financial statement shows positive equity and a debt to equity ratio of not more than 2.0 to 1.0, the

milk contractor's debt to equity ratio assessment rate equals the greater of zero or the debt to equity ratio assessment factor in sub. (5) (a) multiplied by the following amount:

1. Subtract 2 from the debt to equity ratio.

2. Divide the amount determined under subd. 1. by 3.

3. Raise the amount determined under subd. 2. to the 9th power.

4. Divide the debt to equity ratio by 3.25.

5. Raise the amount determined under subd. 4. to the 5th power.

6. Add the amount determined under subd. 3. to the amount determined under subd. 5.

7. Add 0.025 to the amount determined under subd. 6.

(b) If the milk contractor files an annual financial statement under s. 126.44 and that financial statement shows a debt to equity ratio of greater than 2.0 to 1.0 but less than 3.1 to 1.0, the milk contractor's debt to equity ratio assessment rate equals the debt to equity ratio assessment factor in sub. (5) (b) multiplied by the following amount:

1. Subtract 2 from the debt to equity ratio.

2. Divide the amount determined under subd. 1. by 3.

3. Raise the amount determined under subd. 2. to the 9th power.

4. Divide the debt to equity ratio by 3.25.

5. Raise the amount determined under subd. 4. to the 5th power.

6. Add the amount determined under subd. 3. to the amount determined under subd. 5.

7. Add 0.025 to the amount determined under subd. 6.

(c) Except as provided in par. (e), if the milk contractor has filed an annual financial statement under s. 126.44 and that financial statement shows negative equity or a debt to equity ratio of at least 3.1 to 1.0, the milk contractor's debt to equity ratio assessment rate equals the debt to equity ratio assessment factor in sub. (5) (b) multiplied by 0.8146917.

(d) Except as provided in par. (e), if the milk contractor has not filed an annual financial statement under s. 126.44, the milk contractor's debt to equity ratio assessment rate equals the debt to equity ratio assessment factor in sub. (5) (b) multiplied by 0.11325375.

(e) If the milk contractor procures producer milk in this state solely as a producer agent and the milk contractor has not filed an annual financial statement under s. 126.44 or has filed an annual financial statement that shows negative equity or a debt to equity ratio of at least 3.1 to 1.0, the milk contractor's debt to equity ratio assessment rate is 0.00025, except that for the milk contractor's 5th or higher consecutive full license year of participation in the fund the milk contractor's debt to equity ratio assessment rate is 0.000175.

**(5) DEBT TO EQUITY RATIO ASSESSMENT FACTOR.** (a) A milk contractor's debt to equity ratio assessment factor under sub. (4) (a) is 0.0015, except as follows:

1. For the milk contractor's 3rd consecutive full license year as a contributing milk contractor, the milk contractor's current ratio assessment factor is 0.001.

2. For the milk contractor's 4th consecutive full license year as a contributing milk contractor, the milk contractor's current ratio assessment factor is 0.0005.

3. For the milk contractor's 5th or higher consecutive full license year as a contributing milk contractor, the milk contractor's current ratio assessment factor is zero.

(b) A milk contractor's debt to equity ratio assessment factor under sub. (4) (b) to (d) is 0.00225, except that, for the milk contractor's 5th or higher consecutive full license year as a contributing milk contractor, the milk contractor's debt to equity ratio assessment factor is 0.001.



**(5m) REDUCED ASSESSMENT FOR CERTAIN MILK CONTRACTORS FILING SECURITY.** If a milk contractor files security under s. 126.47 (1) (b), the milk contractor's assessment is the amount determined under sub. (1) reduced by an amount determined as follows:

(a) Divide the amount of security that the milk contractor is required to file as determined under s. 126.47 (3) (b) by the amount of the milk contractor's estimated default exposure, as defined in s. 126.47 (1) (b) 1.

(b) Multiply the amount of the assessment determined under sub. (1) by the amount determined under par. (a).

**(6) QUARTERLY INSTALLMENTS.** (a) A contributing milk contractor shall pay the milk contractor's annual fund assessment in equal quarterly installments that are due as follows:

1. The first installment is due on June 1 of the license year.
2. The 2nd installment is due on September 1 of the license year.
3. The 3rd installment is due on December 1 of the license year.
4. The 4th installment is due on March 1 of the license year.

(b) A contributing milk contractor may prepay any of the quarterly installments under par. (a).

(c) A contributing milk contractor who applies for an annual license after the beginning of a license year shall pay the full annual fund assessment required under this section. The milk contractor shall pay, with the first quarterly installment that becomes due after the day on which the department issues the license, all of the quarterly installments for that license year that were due before that day.

(d) If s. 126.45 (1) (b) requires a licensed milk contractor to become a contributing milk contractor during the license year, the milk contractor shall pay only those quarterly installments that become due after the requirement takes effect.

(e) A contributing milk contractor who fails to pay the full amount of any quarterly installment when due shall pay, in addition to that installment, a late payment penalty of \$50 or 10% of the overdue installment amount, whichever is greater.

**(7) NOTICE OF ANNUAL ASSESSMENT AND QUARTERLY INSTALLMENTS.** When the department issues an annual license to a contributing milk contractor, the department shall notify the milk contractor of all of the following:

(a) The amount of the milk contractor's annual fund assessment under this section.

(b) The amount of each required quarterly installment under sub. (6) and the date by which the milk contractor must pay each installment.

(c) The penalty that applies under sub. (6) (e) if the milk contractor fails to pay any quarterly installment when due.

**History:** 2001 a. 16; 2003 a. 38.

**126.47 Milk contractors; security.** **(1) SECURITY REQUIRED.** (a) A milk contractor shall file security with the department, and maintain that security until the department releases it under sub. (7), if all of the following apply when the department first licenses the milk contractor under s. 126.41 (1):

1. The milk contractor reports more than \$1,500,000 in annual milk payroll obligations under s. 126.41 (6) (a).

2. The milk contractor files an annual financial statement under s. 126.44 (1) and that financial statement shows negative equity.

(b) 1. In this paragraph, "estimated default exposure" means 75% of the amount last reported under s. 126.41 (6) (b) or (9).

2. A milk contractor shall file security with the department, and maintain that security until the department releases it under sub. (7) (am), if the milk contractor files an annual financial statement under s. 126.44 (1) that shows negative equity, a current ratio of less than 1.25 to 1.0, or a debt to equity ratio of more than 2.0 to 1.0 and the milk contractor's estimated default exposure is greater than the following amount:

a. For the license year beginning on May 1, 2003, \$18,000,000.

b. For the license year beginning on May 1, 2004, \$19,000,000.

c. For a license year that begins on May 1, 2005, or later, \$20,000,000.

**(2) SECURITY CONTINUED.** A milk contractor who filed security under s. 100.06, 1999 stats., before May 1, 2002, shall maintain that security until the department releases it under sub. (7).

**(3) AMOUNT OF SECURITY.** (a) Except as provided in par. (b), a milk contractor who is required to file or maintain security under this section shall at all times maintain the following amount of security:

1. Except as provided in subd. 2. or 3., security equal to at least 75% of the amount last reported under s. 126.41 (6) (b) or (9).

2. Except as provided in subd. 3., for a milk contractor who procures milk in this state solely as a qualified producer agent, security equal to at least the following amounts:

a. For the license year beginning on May 1, 2002, 15% of the amount last reported under s. 126.41 (6) (b) or (9).

b. For the license year beginning on May 1, 2003, 30% of the amount last reported under s. 126.41 (6) (b) or (9).

c. For the license year beginning on May 1, 2004, 45% of the amount last reported under s. 126.41 (6) (b) or (9).

d. For the license year beginning on May 1, 2005, 60% of the amount last reported under s. 126.41 (6) (b) or (9).

e. For a license year beginning after May 1, 2005, 75% of the amount last reported under s. 126.41 (6) (b) or (9).

3. For a contributing milk contractor who procures milk in this state solely as a qualified producer agent, for the period beginning on May 1, 2002, and ending on April 30, 2007, security equal to at least 7.5% of the amount last reported under s. 126.41 (6) (b) or (9), but not more than \$500,000.

(b) A milk contractor who is only required to file or maintain security under sub. (1) (b) shall at all times maintain security equal to the milk contractor's estimated default exposure, as defined in sub. (1) (b) 1., less the following amount:

1. For the license year beginning on May 1, 2003, \$18,000,000.

2. For the license year beginning on May 1, 2004, \$19,000,000.

3. For a license year that begins on May 1, 2005, or later, \$20,000,000.

**(4) FORM OF SECURITY.** The department shall review, and determine whether to approve, security filed under this section. The department may approve only the following types of security:

(a) Currency.

(b) A commercial surety bond if all of the following apply:

1. The surety bond is made payable to the department for the benefit of milk producers and producer agents.

2. The surety bond is issued by a person authorized to operate a surety business in this state.

3. The surety bond is issued as a continuous term bond that may be canceled only with the department's written agreement or upon 90 days' prior written notice served on the department in person or by certified mail.

4. The surety bond is issued in a form, and subject to any terms and conditions, that the department considers appropriate.

(c) A certificate of deposit or money market certificate, if all of the following apply:

1. The certificate is issued or endorsed to the department for the benefit of milk producers and producer agents.

2. The certificate may not be canceled or redeemed without the department's written permission.

3. No person may transfer or withdraw funds represented by the certificate without the department's written permission.

4. The certificate renews automatically without any action by the department.

5. The certificate is issued in a form, and subject to any terms and conditions, that the department considers appropriate.

(d) An irrevocable bank letter of credit if all of the following apply:

1. The letter of credit is payable to the department for the benefit of milk producers or producer agents.

2. The letter of credit is issued on bank letterhead.

3. The letter of credit is issued for an initial period of at least one year.

4. The letter of credit renews automatically unless, at least 90 days before the scheduled renewal date, the issuing bank gives the department written notice, in person or by certified mail, that the letter of credit will not be renewed.

5. The letter of credit is issued in a form, and subject to any terms and conditions, that the department considers appropriate.

(e) Security filed with the department under s. 100.06, 1999 stats., before May 1, 2002, except that on January 1, 2003, the department shall withdraw its approval of any security that is not approvable under pars. (a) to (d).

(5) DEPARTMENT CUSTODY OF SECURITY. The department shall hold, in its custody, all security filed and maintained under this section. The department shall hold the security for the benefit of milk producers and producer agents.

(6) ADDITIONAL SECURITY. (a) The department may, at any time, demand additional security from a milk contractor if any of the following applies:

1. The milk contractor's existing security falls below the amount required under sub. (3) for any reason, including depreciation in the value of the security, increased obligations to milk producers or producer agents, or the cancellation of any security filed with the department.

2. The milk contractor fails to provide required information that is relevant to a determination of security requirements.

(b) The department shall issue a demand under par. (a) in writing. The department shall indicate why additional security is required, the amount of security required, and the deadline date for filing security. The department may not specify a deadline for filing security that is more than 30 days after the date on which the department issues its demand for security.

(c) A milk contractor may request a hearing, under ch. 227, on a demand for security under par. (b). A request for hearing does not automatically stay a security demand.

(d) If a milk contractor fails to comply with the department's demand for security under this subsection, the milk contractor shall give written notice of that fact to all milk producers and producer agents from whom the contractor procures producer milk in this state. If the milk contractor fails to give accurate notice under this paragraph within 5 days after the deadline for filing security under par. (b) has passed, the department shall promptly notify milk producers and producer agents by publishing a class 3 notice under ch. 985. The department may also give individual notice to those milk producers or producer agents of whom the department is aware.

(e) If a milk contractor fails to comply with the department's demand for security under this subsection, the department may do any of the following:

1. Issue a summary order under s. 126.85 (2).

2. Suspend or revoke the milk contractor's license.

(7) RELEASING SECURITY. (a) The department may release security filed under sub. (1) (a) if any of the following applies:

1. The milk contractor reports not more than \$1,500,000 in milk payroll obligations under s. 126.41 (6) (a) for at least 2 consecutive years and the milk contractor pays the quarterly fund assessment that would have been required of the milk contractor if the milk contractor had been a contributing milk contractor on the most recent quarterly installment date under s. 126.46 (6).

2. The milk contractor's annual financial statement under s. 126.44 shows positive equity for at least 2 consecutive years, the financial statements are audited or, if the milk contractor reports \$6,000,000 or less in annual milk payroll obligations under s. 126.41 (6) (a), reviewed, and the milk contractor pays the quarterly fund assessment that would have been required of the milk contractor if the milk contractor had been a contributing milk contractor on the most recent quarterly installment date under s. 126.46 (6).

(am) The department may release security filed under sub. (1) (b), except for any amount of security that the milk contractor is required to file because sub. (1) (a) applies to the milk contractor, if the milk contractor files 2 consecutive annual financial statements under s. 126.44 showing that the milk contractor no longer has negative equity, a current ratio of less than 1.25 to 1.0, or a debt to equity ratio of more than 2.0 to 1.0.

(b) On August 1, 2002, the department may release security maintained under sub. (2), unless the milk contractor is required to file security under sub. (1).

(c) The department may release security to the extent that the security exceeds the amount required under sub. (3).

(d) The department may release security if the milk contractor files alternative security, of equivalent value, that the department approves.

(e) The department shall release security if the milk contractor has gone out of business and paid all milk payroll obligations in full.

History: 2001 a. 16; 2003 a. 38, 238, 320; 2005 a. 253.

#### 126.48 Milk contractors; payments to producers.

(1) FIRST MONTHLY PAYMENT. By the 4th day of each month, a milk contractor shall pay for producer milk received during the first 15 days of the preceding month. The milk contractor shall base the payment on an estimated price that is at least 80% of the class III price published by the regional federal milk market administrator for the month preceding the month in which the milk is received, or 80% of the contract price, whichever is greater.

(2) SECOND MONTHLY PAYMENT. By the 19th day of each month, a milk contractor shall pay the balance due for producer milk received during the preceding month.

(3) PAYMENT EXPLANATION. The department may, by rule, require a milk contractor to provide a milk producer or producer agent with a written explanation of each payment under this section. The department may specify the content of the explanation, including information related to any of the following:

(a) Milk contractor identification.

(b) Milk producer or producer agent identification.

(c) Pay period.

(d) Volume of milk received.

(e) Grade of milk.

(f) Milk test results.

(g) Milk price and adjustments.

(h) Gross amount due.

(i) Average gross pay per hundredweight less hauling charges.

(j) Net amount due.

(k) Deductions and assignments.

History: 2001 a. 16.

#### 126.49 Milk contractors; records and reports.

(1) REQUIRED RECORDS. A milk contractor shall keep accurate records and accounts of milk receipts, payments for milk received, and amounts owed to milk producers. The department may, by rule, specify records that a milk contractor must keep.

(2) REQUIRED REPORTS. The department may, by rule, require a milk contractor to file with the department periodic reports of information needed for the administration of this chapter.

(3) RECORDS RETENTION; INSPECTION. A milk contractor shall retain records required under sub. (1) for at least 6 years after the records are created. A milk contractor shall make the records available to the department for inspection and copying upon request.

History: 2001 a. 16.

**126.50 Milk contractors; prohibited practices.** No milk contractor may do any of the following:

(1) Falsify any record or account, or conspire with any other person to falsify a record or account.

(2) Make any false or misleading representation to the department.

(3) If the milk contractor is licensed under s. 126.41 (1), engage in any activity that is inconsistent with representations made in the milk contractor's annual license application.

(4) Make any false or misleading representation to a milk producer or producer agent related to matters regulated under this chapter.

(5) Fail to file the full amount of security required under s. 126.47 (6) by the date that the department specifies.

History: 2001 a. 16.

**126.51 Rules for qualified producer agents.** The department shall promulgate rules specifying requirements for qualified producer agents, including a requirement that a qualified producer agent have a written contract with each milk producer from whom the qualified producer agent procures milk in this state and that the contract disclose all of the following:

(1) That the producer agent does not take title to the milk producer's milk.

(2) That the producer agent holds all milk receipts in trust for milk producers.

(3) That the producer agent's obligations to milk producers are not secured or indemnified under this chapter to the same degree as are the obligations of other milk contractors.

History: 2001 a. 16.

## SUBCHAPTER VI

### VEGETABLE CONTRACTORS

Cross Reference: See also ch. ATCP 101, Wis. adm. code.

**126.55 Definitions.** In this subchapter:

(1) "Cash on delivery" means cash payment of the full agreed price for processing vegetables at the time of delivery or, if the vegetables are graded, within 72 hours after the time of delivery.

(2) "Cash payment" means payment in any of the following forms:

(a) Currency.

(b) A cashier's check, or a check that a bank issues and certifies.

(c) A wire transfer.

(d) Simultaneous barter.

(3) "Contract obligation" means the net amount, whether paid or unpaid, that a vegetable contractor owes a vegetable producer or producer agent under a vegetable procurement contract. "Contract obligation" includes a net amount owed for unharvested acreage.

(4) "Contributing vegetable contractor" means a vegetable contractor who is licensed under s. 126.56 (1), who either has paid one or more quarterly installments under s. 126.60 (6) or is required to contribute to the fund, but the first quarterly installment under s. 126.60 (6) is not yet due, who has not elected not to participate in the fund under s. 126.595 (1), and who is not disqualified under s. 126.59 (2).

(6) "Current ratio" means the ratio of the value of current assets to the value of current liabilities, calculated according to s. 126.58 (6) (c) 1.

(7) "Debt to equity ratio" means the ratio of the value of liabilities to equity, calculated according to s. 126.58 (6) (c) 2.

(8) "Deferred payment contract" means a vegetable procurement contract in which the vegetable producer or a producer agent agrees to accept payment after January 31 for processing vegetables harvested during the previous calendar year.

(9) "Disqualified vegetable contractor" means a vegetable contractor who is disqualified from the fund under s. 126.59 (2).

(10) "Food processing" has the meaning given in s. 97.29 (1) (g).

(10m) "License year" means the period beginning on February 1 and ending on the following January 31.

(10r) "Processing potato buyer" means a vegetable contractor who purchases processing potatoes and no other processing vegetables.

(10t) "Processing potatoes" means potatoes grown or sold for use in food processing, regardless of whether those potatoes are actually harvested or processed as food.

(11) "Processing vegetables" means vegetables grown or sold for use in food processing, regardless of whether those vegetables are actually harvested or processed as food. "Processing vegetables" includes sweet corn grown or sold for use in food processing, but does not include grain.

(12) "Producer agent" means a person who, without taking title to vegetables, acts on behalf of a vegetable producer to market or accept payment for processing vegetables that the vegetable producer grows in this state. "Producer agent" does not include any of the following:

(a) A person who merely brokers a contract between a vegetable producer and a vegetable contractor, without becoming a party to the contract or accepting payment on behalf of the vegetable producer.

(b) A person who merely holds or transports processing vegetables for a vegetable producer, without marketing the vegetables or accepting payment on behalf of the vegetable producer.

(13) "Time of delivery" under a vegetable procurement contract means the time at which one of the following occurs:

(a) The vegetable contractor harvests the vegetables.

(b) The vegetable producer delivers harvested vegetables to the custody or control of the vegetable contractor.

(c) The vegetable contractor notifies the vegetable producer of the vegetable contractor's refusal to harvest or accept delivery of vegetables.

(14) "Vegetable contractor" means a person who does any of the following:

(a) Contracts with a vegetable producer or a producer agent to procure processing vegetables that a vegetable producer grows in this state.

(b) Contracts with a vegetable producer to market, as a producer agent, processing vegetables that the vegetable producer grows in this state.

(15) "Vegetable procurement contract" means an oral or written agreement under which a vegetable contractor does any of the following:

(a) Contracts with a vegetable producer or a producer agent to procure processing vegetables that a vegetable producer grows in this state.

(b) Contracts with a vegetable producer to market, as a producer agent, processing vegetables that the vegetable producer grows in this state.

(16) "Vegetable producer" means a person who grows processing vegetables in this state.

(17) "Unharvested acreage" means land on which vegetables are grown, under a vegetable procurement contract, that a vegeta-



ble contractor leaves unharvested for any reason. “Unharvested acreage” includes all of the following:

(a) Land on which the vegetables are suitable for processing, but are not harvested.

(b) Land on which the vegetables are abandoned as being unsuitable for processing.

**History:** 2001 a. 16; 2005 a. 80.

**126.56 Vegetable contractors; licensing. (1) LICENSE REQUIRED.** (a) Except as provided in sub. (2), no person may operate as a vegetable contractor without a current annual license from the department.

(b) A license under par. (a) expires on the January 31 following its issuance. No person may transfer or assign a license issued under par. (a).

**(2) EXEMPT CONTRACTORS.** The following vegetable contractors are exempt from licensing under sub. (1):

(a) A vegetable contractor who procures vegetables primarily for unprocessed, fresh market use and is licensed under the federal Perishable Agricultural Commodities Act, 7 USC 499a to 499t.

(b) A restaurant or retail food establishment that procures processing vegetables solely for retail sale at the restaurant or retail food establishment.

**(3) LICENSE APPLICATION.** A vegetable contractor shall apply for a license under sub. (1) in writing, on a form provided by the department. The applicant shall provide all of the following:

(a) The applicant’s legal name and any trade name under which the applicant proposes to operate as a vegetable contractor.

(b) A statement of whether the applicant is an individual, a corporation, a partnership, a cooperative, an unincorporated cooperative association, a limited liability company, a trust, or other legal entity. If the applicant is a corporation, a cooperative, or an association, the application shall identify each officer of the corporation or cooperative. If the applicant is a partnership, the application shall identify each partner.

(c) The mailing address of the applicant’s principal business location and the name of a responsible individual who may be contacted at that address.

(d) The street address of each business location from which the applicant operates as a vegetable contractor in this state and the name of a responsible individual who may be contacted at each location that is staffed.

(e) All license fees and surcharges required under sub. (4).

(f) The sworn and notarized statement required under sub. (9).

(g) A financial statement if required under s. 126.58 (1) and not yet filed.

(h) Other relevant information required by the department.

**(4) LICENSE FEES AND SURCHARGES.** A vegetable contractor applying for a license under sub. (1) shall pay the following fees and surcharges, unless the department specifies a different fee or surcharge amount by rule:

(a) A nonrefundable license processing fee of \$25.

(b) A fee of \$25 plus 5.75 cents for each \$100 in contract obligations reported under sub. (9) (a), less any credit provided under sub. (6), except that this paragraph does not apply to a vegetable contractor to whom par. (f) applies.

(c) A license surcharge of \$500 if the department determines that, within 365 days before submitting the license application, the applicant operated as a vegetable contractor without a license in violation of sub. (1). The applicant shall also pay any license fees, license surcharges, and fund assessments that are still due for the license year in which the applicant violated sub. (1).

(d) A license surcharge of \$100 if during the preceding 12 months the applicant failed to file an annual financial statement required under s. 126.58 (1) (b) by the applicable deadline.

(e) A license surcharge of \$100 if a renewal applicant fails to renew a license by the license expiration date of January 31.

(f) If the vegetable contractor is a processing potato buyer who has elected not to participate in the fund in accordance with s. 126.595 (1), a fee of \$500 or another amount established by the department by rule.

**(4m) EFFECT OF PAYMENT OF SURCHARGE.** Payment under sub. (3) (c) does not relieve the applicant of any other civil or criminal liability that results from the violation of sub. (1), but does not constitute evidence of any law violation.

**(5) LICENSE FOR PART OF YEAR; FEES.** A person who applies for an annual vegetable contractor license after the beginning of a license year shall pay the full annual fee amounts required under sub. (4).

**(6) FEE CREDITS.** (a) If the balance in the fund contributed by vegetable contractors exceeds \$825,000 on November 30 of any license year, the department shall credit 50% of the excess amount against fees charged under sub. (4) (b) to contributing vegetable contractors who file timely license renewal applications for the next license year. The department shall credit each contributing vegetable contractor on a prorated basis, in proportion to the total fees that the vegetable contractor has paid under sub. (4) (b) for the 4 preceding license years.

(b) The fee under sub. (4) (b) is reduced by one cent for each \$100 in contract obligations reported under sub. (9) (a) if the department, under a contract with the applicant, grades all of the graded vegetables that the applicant procures from vegetable producers or producer agents.

**(7) FEE STATEMENT.** The department shall provide, with each license application form, a written statement of all license fees and surcharges required under sub. (4). The department shall specify any fee credits for which the applicant may qualify under sub. (6).

**(8) NO LICENSE WITHOUT FULL PAYMENT.** The department may not issue a license under sub. (1) until the applicant pays all license fees and surcharges identified in the department’s statement under sub. (7). The department shall refund a fee or surcharge paid under protest if upon review the department determines that the fee or surcharge is not applicable.

**(9) SWORN AND NOTARIZED STATEMENT.** As part of a license application under sub. (3), an applicant shall provide a sworn and notarized statement, signed by the applicant or an officer of the applicant, that reports all of the following:

(a) The total amount of contract obligations that the applicant incurred during the applicant’s last completed fiscal year. If the applicant has not yet operated as a vegetable contractor, the applicant shall estimate the amount of contract obligations that the applicant will incur during the applicant’s first complete fiscal year.

(b) The largest amount of unpaid contract obligations that the vegetable contractor had at any time during the vegetable contractor’s last completed fiscal year.

(c) The amount of unpaid contract obligations that the vegetable contractor has at the time of application.

(d) The amount of unpaid contract obligations under par. (c) that are due for payment before the license year for which the applicant is applying.

(e) The amount of unpaid obligations under par. (c) that the contractor has under deferred payment contracts.

(f) Whether the applicant and the applicant’s affiliates and subsidiaries will collectively grow more than 10% of the total acreage of any vegetable species grown or procured by the applicant during the license year for which the applicant is applying.

(g) Whether the applicant will pay cash on delivery under all vegetable procurement contracts during the license year for which the applicant is applying.

(h) Whether the applicant is a producer–owned cooperative or unincorporated cooperative association or organization that procures vegetables solely from its producer owners on the basis of a cooperative marketing method under which the producer–owned cooperative, unincorporated cooperative association, or

organization pays its producer owners a prorated share of sales proceeds for the marketing year after a final accounting and the deduction of marketing expenses.

**(10) ACTION GRANTING OR DENYING APPLICATION.** (a) The department shall grant or deny a license application under sub. (3) within 30 days after the department receives a complete application. If the department denies a license application, the department shall give the applicant a written notice stating the reasons for the denial.

(b) A license becomes invalid after February 5 of the license year for which it is issued unless the license holder has by February 5 paid all producer obligations that were due and payable during the preceding license year.

**(11) LICENSE DISPLAYED.** A vegetable contractor licensed under sub. (1) shall prominently display a copy of that license at each business location from which the vegetable contractor operates in this state.

**(12) NOTICE REQUIRED.** (a) A vegetable contractor who files security under s. 126.61 shall immediately notify the department if, at any time, the vegetable contractor's unpaid contract obligations exceed the amount last reported under sub. (9) (b).

(b) A vegetable contractor shall immediately notify the department if the amount of unpaid obligations under deferred payment contracts exceeds the amount last reported under sub. (9) (e).

**History:** 2001 a. 16; 2005 a. 80, 441.

**126.57 Vegetable contractors; insurance. (1) FIRE AND EXTENDED COVERAGE INSURANCE.** (a) Except as provided in par. (b), a vegetable contractor who is required to be licensed under s. 126.56 (1) shall maintain fire and extended coverage insurance, issued by an insurance company authorized to do business in this state, that covers all vegetables in the custody of the vegetable contractor, whether owned by the vegetable contractor or held for others, at the full local market value of the vegetables.

(b) Paragraph (a) does not apply to a vegetable contractor if any of the following applies:

1. The vegetable contractor pays cash on delivery under all vegetable procurement contracts.

2. The vegetable contractor is a producer-owned cooperative or unincorporated cooperative association or organization that procures processing vegetables only from its producer owners.

3. The vegetable contractor is a processing potato buyer who has elected not to participate in the fund in accordance with s. 126.595 (1).

**(2) INSURANCE CANCELLATION; REPLACEMENT.** Whenever an insurance policy under sub. (1) is canceled, the vegetable contractor shall replace the policy so that there is no lapse in coverage.

**(3) INSURANCE COVERAGE; MISREPRESENTATION.** No vegetable contractor may misrepresent any of the following to the department or to any vegetable producer or producer agent:

(a) That the vegetable contractor is insured.

(b) The nature, coverage, or material terms of the vegetable contractor's insurance policy.

**History:** 2001 a. 16; 2005 a. 80, 441.

**126.58 Vegetable contractors; financial statements.**

**(1) REQUIRED ANNUAL FINANCIAL STATEMENT.** (a) Except as provided in par. (c), a vegetable contractor shall file an annual financial statement with the department, before the department first licenses the vegetable contractor under s. 126.56 (1), if the vegetable contractor reports more than \$500,000 in contract obligations under s. 126.56 (9) (a).

(b) Except as provided in par. (c), a vegetable contractor licensed under s. 126.56 (1) shall file an annual financial statement with the department during each license year if the vegetable contractor's license application for that year reports more than \$500,000 in contract obligations under s. 126.56 (9) (a). The vegetable contractor shall file the annual financial statement by the

15th day of the 4th month following the close of the vegetable contractor's fiscal year, except that the department may extend the filing deadline for up to 30 days if the vegetable contractor, or the accountant reviewing or auditing the financial statement, files a written extension request at least 10 days before the filing deadline.

(c) A vegetable contractor is not required to file a financial statement under par. (a) or (b) if any of the following applies:

1. The vegetable contractor pays cash on delivery under all vegetable procurement contracts.

2. The vegetable contractor is a producer-owned cooperative or unincorporated cooperative association that procures processing vegetables only from its producer owners.

3. The vegetable contractor is a processing potato buyer who has elected not to participate in the fund in accordance with s. 126.595 (1).

**(2) VOLUNTARY FINANCIAL STATEMENT.** A contributing vegetable contractor who is not required to file a financial statement under sub. (1) may file an annual financial statement with the department for any of the following reasons:

(a) To qualify for a lower fund assessment under s. 126.60.

(b) To avoid filing security under s. 126.61 (1) (b).

**(3) REVIEWED OR AUDITED FINANCIAL STATEMENT.** (a) A vegetable contractor filing an annual financial statement under sub. (1) or (2) shall file an audited financial statement if the vegetable contractor's latest annual license application reported more than \$4,000,000 in annual contract obligations under s. 126.56 (9) (a).

(b) If par. (a) does not apply, a vegetable contractor filing an annual financial statement under sub. (1) or (2) shall file either a reviewed financial statement or an audited financial statement.

**(4) ACCOUNTING PERIOD.** A vegetable contractor filing an annual financial statement under sub. (1) or (2) shall file a financial statement that covers the vegetable contractor's last completed fiscal year unless the vegetable contractor has been in business for less than one year.

**(4m) INTERIM FINANCIAL STATEMENT.** The department may, at any time, require a vegetable contractor licensed under s. 126.56 (1) to file an interim financial statement with the department. The vegetable contractor shall provide, with the interim financial statement, the vegetable contractor's sworn and notarized statement that the financial statement is correct. An interim financial statement need not be a reviewed or audited financial statement.

**(5) GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.** (a) Except as provided in par. (b), a vegetable contractor filing a financial statement under this section shall file a financial statement that is prepared according to generally accepted accounting principles.

(b) If a vegetable contractor is a sole proprietor and the vegetable contractor's financial statement is not audited, the vegetable contractor shall file a financial statement that is prepared on a historical cost basis.

**(6) FINANCIAL STATEMENT CONTENTS.** (a) Except as provided in par. (b), a vegetable contractor filing a financial statement under this section shall file a financial statement that consists of a balance sheet, income statement, equity statement, statement of cash flows, notes to those statements, and any other information required by the department. If the vegetable contractor is a sole proprietor, the vegetable contractor shall file his or her business and personal financial statements.

(b) If a vegetable contractor has been in business for less than one year, the vegetable contractor may file an annual financial statement under sub. (1) or (2) consisting of a balance sheet and notes.

(c) A vegetable contractor filing a financial statement under this section shall include in the financial statement, or in an attachment to the financial statement, calculations of all of the following:

1. The vegetable contractor's current ratio, excluding any assets required to be excluded under sub. (7).
2. The vegetable contractor's debt to equity ratio, excluding any assets required to be excluded under sub. (7).

**(7) ASSETS EXCLUDED.** A vegetable contractor may not include any of the following assets in the calculations under sub. (6) (c), unless the department specifically approves their inclusion:

(a) A nontrade note or account receivable from an officer, director, employee, partner, or stockholder, or from a member of the family of any of those individuals, unless the note or account receivable is secured by a first priority security interest in real or personal property.

(b) A note or account receivable from a parent organization, a subsidiary, or an affiliate other than an employee.

(c) A note or account that has been receivable for more than one year, unless the vegetable contractor has established an equal offsetting reserve for uncollectible notes and accounts receivable.

**(9) ENTITY COVERED.** A person filing a financial statement under this section may not file, in lieu of that person's financial statement, the financial statement of the person's parent organization, subsidiary, predecessor, or successor.

**(10) DEPARTMENT REVIEW.** The department may analyze a financial statement filed under this section and may reject a financial statement that fails to comply with this section.

**History:** 2001 a. 16; 2005 a. 80, 441.

**126.59 Contributing vegetable contractors; disqualification. (1) CONTRIBUTION REQUIRED.** A vegetable contractor licensed under s. 126.56 (1) shall pay fund assessments under s. 126.60 unless one of the following applies:

- (a) The vegetable contractor is disqualified under sub. (2).
- (b) The vegetable contractor pays cash on delivery under all vegetable procurement contracts.
- (c) The vegetable contractor is a producer-owned cooperative or unincorporated cooperative association that procures processing vegetables only from its producer owners.
- (d) The vegetable contractor is a processing potato buyer who has elected not to participate in the fund in accordance with s. 126.595 (1).

**(1m) VOLUNTARY CONTRIBUTION.** A vegetable contractor who is exempt under sub. (1) (b) or (c) may volunteer to pay fund assessments under s. 126.60.

**(2) DISQUALIFIED CONTRACTOR.** (a) A vegetable contractor who is required to file security under s. 126.61 (1) (a) is disqualified from the fund until the department determines that one of the conditions in s. 126.61 (7) (a) 1. or 2. is satisfied.

(b) A vegetable contractor is disqualified from the fund if the department denies, suspends, or revokes the vegetable contractor's license.

(c) A vegetable contractor is disqualified from the fund, and required to pay cash on delivery under vegetable procurement contracts, if the department issues a written notice disqualifying the vegetable contractor for cause. Cause may include any of the following:

1. Failure to pay fund assessments under s. 126.60 when due.
2. Failure to file a financial statement under s. 126.58 when due.
3. Failure to reimburse the department, within 60 days after the department issues a reimbursement demand under s. 126.73 (1), for the full amount that the department pays to claimants under s. 126.72 (1) or under s. 126.72 (2) with the proceeds of a loan under s. 126.06 (1) (b) because of that vegetable contractor's default.
4. Failure to reimburse a bond surety, within 60 days after the bond surety issues a reimbursement demand under s. 126.73 (2), for the full amount that the surety pays to the department under s.

126.72 (2) for the benefit of claimants affected by that vegetable contractor's default.

**(3) PAYMENTS BY DISQUALIFIED VEGETABLE CONTRACTOR.** (a) The department may not return, to a disqualified vegetable contractor, any fund assessments that the vegetable contractor paid as a contributing vegetable contractor.

(b) A disqualified vegetable contractor remains liable for any unpaid fund installment under s. 126.60 that became due while the vegetable contractor was a contributing vegetable contractor. A disqualified vegetable contractor is not liable for any fund installment that becomes due after the vegetable contractor is disqualified under sub. (2).

**History:** 2001 a. 16; 2003 a. 38; 2005 a. 80, 441.

**126.595 Processing potato buyer optional nonparticipation. (1) ELIGIBILITY.** A processing potato buyer may elect not to participate in the fund by doing all of the following:

(a) Submitting a notification of nonparticipation to the department by January 31 of each year or, for a new processing potato buyer, at the time of application for its first license.

(b) Certifying in a statement to the department that the processing potato buyer will not, in the next licensing year, enter into any of the following:

1. An unwritten contract with a vegetable producer in this state under which the processing potato buyer takes custody or control of processing potatoes more than 10 days before paying for the processing potatoes in full.

2. A written contract with a vegetable producer in this state under which the processing potato buyer takes custody or control of processing potatoes more than 30 days before paying for the processing potatoes in full.

(c) Certifying in a statement to the department that the processing potato buyer does not at the time of certification have any unpaid obligations to vegetable producers under any of the following:

1. An unwritten contract with a vegetable producer in this state under which the processing potato buyer takes custody or control of processing potatoes more than 10 days before paying for the processing potatoes in full.

2. A written contract with a vegetable producer in this state under which the processing potato buyer takes custody or control of processing potatoes more than 30 days before paying for the processing potatoes in full.

(d) Providing evidence to the department that the processing potato buyer has a license under the federal Perishable Agricultural Commodities Act, 7 USC 499a to 499t, that is in good standing.

(e) Certifying that it will disclose to all vegetable producers with whom the processing potato buyer contracts that the processing potato buyer does not participate in the fund by providing the following statement, in at least 10-point bold type, in each written contract for processed potatoes or, for unwritten contracts, in a written statement signed by the vegetable processor and the vegetable producer: "The undersigned processing potato buyer, as defined in s. 126.55 (10r), Wisconsin Statutes, does not participate in the Wisconsin agricultural producer security fund, established under s. 25.463, Wisconsin Statutes. As a result the producer does not have the security or other protections against nonpayment provided by that fund. The parties to this contract acknowledge that the Wisconsin Department of Agriculture, Trade and Consumer Protection and the State of Wisconsin cannot be held liable for any default under the contract between the parties."

(f) Maintaining documentation that every purchase of potatoes grown in this state for processing under contract with the processing potato buyer qualifies for trust protection under the federal Perishable Agricultural Commodities Act, 7 USC 499a to 499t, and that the vegetable producers' trust rights have been validly preserved.



(2) RESUMING PARTICIPATION. (a) 1. A processing potato buyer that has elected not to participate in the fund may rescind its election and participate in the fund by notifying the department of its intention to participate and complying with par. (b). Participation is effective the 30th day after the day on which the department receives the notice or on the effective date of the security described in par. (b) 1., whichever is later.

2. A processing potato buyer that has elected not to participate in the fund shall participate in the fund if the processing potato buyer ceases to meet the requirements in sub. (1). Participation is effective on the day on which the department notifies the processing potato buyer that the potato buyer is no longer eligible under sub. (1) or on the effective date of the security described in par. (b) 1., whichever is later.

(b) 1. A processing potato buyer that decides or is required to participate in the fund under par. (a) shall file security with the department in a form that satisfies the requirements in s. 126.61 (4) and that is in an amount equal to at least 75 percent of the amount last reported under s. 126.56 (9) (b). The processing potato buyer shall maintain the security until the department releases it. The department may not release the security until the processing potato buyer has participated in the fund for 2 continuous complete license years.

2. A processing potato buyer that decides or is required to participate in the fund under par. (a) shall begin contributing to the fund at the beginning of its 2nd complete license year of participation, except that this requirement does not apply to a processing potato buyer that is disqualified under s. 126.59 (2).

**History:** 2005 a. 80.

**126.60 Contributing vegetable contractors; fund assessments.** (1) GENERAL. A contributing vegetable contractor shall pay an annual fund assessment for each license year. Except as provided in sub. (5m), the assessment equals \$20 or the sum of the following, whichever is greater, unless the department by rule specifies a different assessment:

(a) The vegetable contractor's current ratio assessment. The current ratio assessment for a license year equals the vegetable contractor's current ratio assessment rate under sub. (2) multiplied by the amount reported under s. 126.56 (9) (a) in the vegetable contractor's license application for that license year.

(b) The vegetable contractor's debt to equity ratio assessment. The debt to equity ratio assessment for a license year equals the vegetable contractor's debt to equity ratio assessment rate under sub. (4) multiplied by the amount reported under s. 126.56 (9) (a) in the vegetable contractor's license application for that license year.

(c) The vegetable contractor's deferred contract assessment. The deferred contract assessment for a license year equals the amount, if any, reported under s. 126.56 (9) (e) in the vegetable contractor's license application for that license year, multiplied by a deferred vegetable contract assessment rate of 0.0025.

(2) CURRENT RATIO ASSESSMENT RATE. A vegetable contractor's current ratio assessment rate is calculated, at the beginning of the license year, as follows:

(a) If the vegetable contractor has filed an annual financial statement under s. 126.58 and that financial statement shows a current ratio of at least 1.25 to 1.0, the vegetable contractor's current ratio assessment rate equals the greater of zero or the current ratio assessment factor in sub. (3) (a) multiplied by the following amount:

1. Subtract 4 from the current ratio.
2. Divide the amount determined under subd. 1. by 2.
3. Multiply the amount determined under subd. 2. by negative one.
4. Raise the amount determined under subd. 3. to the 3rd power.
5. Subtract 0.65 from the current ratio.

6. Divide 0.60 by the amount determined under subd. 5.

7. Raise the amount determined under subd. 6. to the 5th power.

8. Add the amount determined under subd. 4. to the amount determined under subd. 7.

9. Add 0.25 to the amount determined under subd. 8.

(b) If the vegetable contractor has filed an annual financial statement under s. 126.58 and that financial statement shows a current ratio of less than 1.25 to 1.0, but greater than 1.1 to 1.0, the vegetable contractor's current ratio assessment rate equals the current ratio assessment factor in sub. (3) (b) multiplied by the following amount:

1. Subtract 4 from the current ratio.
2. Divide the amount determined under subd. 1. by 2.
3. Multiply the amount determined under subd. 2. by negative one.
4. Raise the amount determined under subd. 3. to the 3rd power.
5. Subtract 0.65 from the current ratio.
6. Divide 0.60 by the amount determined under subd. 5.
7. Raise the amount determined under subd. 6. to the 5th power.
8. Add the amount determined under subd. 4. to the amount determined under subd. 7.

9. Add 0.25 to the amount determined under subd. 8.

(c) If the vegetable contractor has filed an annual financial statement under s. 126.58 and that financial statement shows a current ratio of less than or equal to 1.1 to 1.0, the vegetable contractor's current ratio assessment rate equals the current ratio assessment factor in sub. (3) (b) multiplied by 7.512617.

(d) If the vegetable contractor has not filed an annual financial statement under s. 126.58, the vegetable contractor's current ratio assessment rate equals the current ratio assessment factor in sub. (3) (b) multiplied by 3.84961.

(3) CURRENT RATIO ASSESSMENT FACTOR. (a) A vegetable contractor's current ratio assessment factor under sub. (2) (a) is 0.00048, except as follows:

1. For the vegetable contractor's 4th and 5th consecutive full license years as a contributing vegetable contractor, the vegetable contractor's current ratio assessment factor is 0.00029.

2. For the vegetable contractor's 6th or higher consecutive full license year as a contributing vegetable contractor, the vegetable contractor's current ratio assessment factor is zero.

(b) A vegetable contractor's current ratio assessment factor under sub. (2) (b) to (d) is 0.00072, except as follows:

1. For the vegetable contractor's 4th and 5th consecutive full license years as a contributing vegetable contractor, the vegetable contractor's current ratio assessment factor is 0.00058.

2. For the vegetable contractor's 6th or higher consecutive full license year as a contributing vegetable contractor, the vegetable contractor's current ratio assessment factor is 0.00035.

(4) DEBT TO EQUITY RATIO ASSESSMENT RATE. A vegetable contractor's debt to equity ratio assessment rate for a license year is calculated, at the beginning of the license year, as follows:

(a) If the vegetable contractor has filed an annual financial statement under s. 126.58 and that financial statement shows positive equity and a debt to equity ratio of not more than 4.0 to 1.0, the vegetable contractor's debt to equity ratio assessment rate equals the greater of zero or the debt to equity ratio assessment factor in sub. (5) (a) multiplied by the following amount:

1. Subtract 4 from the debt to equity ratio.
2. Divide the amount determined under subd. 1. by 4.
3. Raise the amount determined under subd. 2. to the 3rd power.
4. Subtract 1.85 from the debt to equity ratio.
5. Divide the amount determined under subd. 4. by 2.5.

6. Raise the amount determined under subd. 5. to the 7th power.

7. Add the amount determined under subd. 3. to the amount determined under subd. 6.

8. Add one to the amount determined under subd. 7.

(b) If the vegetable contractor has filed an annual financial statement under s. 126.58 and that financial statement shows a debt to equity ratio of greater than 4.0 to 1.0 but less than 6.0 to 1.0, the vegetable contractor's debt to equity ratio assessment rate equals the debt to equity ratio assessment factor in sub. (5) (b) multiplied by the following amount:

1. Subtract 4 from the debt to equity ratio.

2. Divide the amount determined under subd. 1. by 4.

3. Raise the amount determined under subd. 2. to the 3rd power.

4. Subtract 1.85 from the debt to equity ratio.

5. Divide the amount determined under subd. 4. by 2.5.

6. Raise the amount determined under subd. 5. to the 7th power.

7. Add the amount determined under subd. 3. to the amount determined under subd. 6.

8. Add one to the amount determined under subd. 7.

(c) If the vegetable contractor has filed an annual financial statement under s. 126.58 and that financial statement shows negative equity or a debt to equity ratio of at least 6.0 to 1.0, the vegetable contractor's debt to equity ratio assessment rate equals the debt to equity ratio assessment factor in sub. (5) (b) multiplied by 35.859145.

(d) If the vegetable contractor has not filed an annual financial statement under s. 126.58, the vegetable contractor's debt to equity ratio assessment rate equals the debt to equity ratio assessment factor in sub. (5) (b) multiplied by 1.34793.

**(5) DEBT TO EQUITY RATIO ASSESSMENT FACTOR.** (a) A vegetable contractor's debt to equity ratio assessment factor under sub. (4) (a) is 0.000135, except as follows:

1. For the vegetable contractor's 4th and 5th consecutive full license years as a contributing vegetable contractor, the vegetable contractor's debt to equity ratio assessment factor is 0.00008.

2. For the vegetable contractor's 6th or higher consecutive full license year as a contributing vegetable contractor, the vegetable contractor's debt to equity ratio assessment factor is zero.

(b) A vegetable contractor's debt to equity ratio assessment factor under sub. (4) (b) to (d) is 0.000203, except as follows:

1. For the vegetable contractor's 4th and 5th consecutive full license years as a contributing vegetable contractor, the vegetable contractor's debt to equity ratio assessment factor is 0.00016.

2. For the vegetable contractor's 6th or higher consecutive full license year as a contributing vegetable contractor, the vegetable contractor's debt to equity ratio assessment factor is 0.0001.

**(5m) REDUCED ASSESSMENT FOR CERTAIN VEGETABLE CONTRACTORS FILING SECURITY.** If a vegetable contractor files security under s. 126.61 (1) (bm), the vegetable contractor's assessment is the amount determined under sub. (1) reduced by an amount determined as follows:

(a) Divide the amount of security that the vegetable contractor is required to file as determined under s. 126.61 (3) (b) by the amount of the vegetable contractor's estimated default exposure, as defined in s. 126.61 (1) (bm) 1.

(b) Multiply the amount of the assessment determined under sub. (1) by the amount determined under par. (a).

**(6) QUARTERLY INSTALLMENTS.** (a) A contributing vegetable contractor shall pay the vegetable contractor's annual fund assessment in equal quarterly installments that are due as follows:

1. The first installment is due on March 1 of the license year.

2. The 2nd installment is due on June 1 of the license year.

3. The 3rd installment is due on September 1 of the license year.

4. The 4th installment is due on December 1 of the license year.

(b) A contributing vegetable contractor may prepay any of the quarterly installments under par. (a).

(c) A contributing vegetable contractor who applies for an annual license after the beginning of a license year shall pay the full annual fund assessment required under this section. The vegetable contractor shall pay, with the first quarterly installment that becomes due after the day on which the department issues the license, all of that year's quarterly installments that were due before that day.

(d) A contributing vegetable contractor who fails to pay the full amount of any quarterly installment when due shall pay, in addition to that installment, a late payment penalty of \$50 or 10% of the overdue installment amount, whichever is greater.

**(7) NOTICE OF ANNUAL ASSESSMENT AND QUARTERLY INSTALLMENTS.** When the department issues an annual license to a contributing vegetable contractor, the department shall notify the vegetable contractor of all of the following:

(a) The amount of the vegetable contractor's annual fund assessment under this section.

(b) The amount of each required quarterly installment under sub. (6) and the date by which the vegetable contractor must pay each installment.

(c) The penalty that applies under sub. (6) (d) if the vegetable contractor fails to pay any quarterly installment when due.

**History:** 2001 a. 16; 2003 a. 38, 326.

**126.61 Vegetable contractors; security. (1) SECURITY REQUIRED.** (a) Except as provided in par. (c), a vegetable contractor shall file security with the department, and maintain that security until the department releases it under sub. (7), if all of the following apply when the department first licenses the vegetable contractor under s. 126.56 (1):

1. The vegetable contractor reports more than \$1,000,000 in annual contract obligations under s. 126.56 (9) (a).

2. The vegetable contractor files a financial statement under s. 126.58 (1) and that financial statement shows negative equity.

(b) Except as provided in par. (c), a vegetable contractor shall file security with the department to cover the full amount of the unpaid deferred contract obligations last reported under s. 126.56 (9) (e) or (12) (b), and maintain that security until it is released under sub. (7), unless the vegetable contractor files an annual financial statement under s. 126.58 and that financial statement shows positive equity, a current ratio of at least 1.25 to 1.0, and a debt to equity ratio of not more than 4.0 to 1.0.

(bm) 1. In this paragraph, "estimated default exposure" means the sum of the following:

a. Seventy-five percent of the amount last reported under s. 126.56 (9) (b) or (12) (a).

b. The full amount of the unpaid deferred contract obligations last reported under s. 126.56 (9) (e) or (12) (b).

2. Except as provided in par. (c), a vegetable contractor shall file security with the department, and maintain that security until the department releases it under sub. (7) (bm), if the vegetable contractor files an annual financial statement under s. 126.58 (1) that shows negative equity, a current ratio of less than 1.25 to 1.0, or a debt to equity ratio of more than 4.0 to 1.0 and the vegetable contractor's estimated default exposure is greater than the following amount:

a. For the license year beginning on February 1, 2003, \$18,000,000.

b. For the license year beginning on February 1, 2004, \$19,000,000.

c. For a license year that begins on February 1, 2005, or later, \$20,000,000.

(c) A vegetable contractor is not required to file security under this subsection if any of the following applies:

1. The vegetable contractor pays cash on delivery under all vegetable procurement contracts.

2. The vegetable contractor is a producer–owned cooperative or unincorporated cooperative association that procures processing vegetables only from its producer members.

3. The vegetable contractor is a processing potato buyer who has elected not to participate in the fund in accordance with s. 126.595 (1).

**(2) SECURITY CONTINUED.** A vegetable contractor who filed security under s. 100.03, 1999 stats., before February 1, 2002, shall maintain that security until the department releases it under sub. (7).

**(3) AMOUNT OF SECURITY.** (a) Except as provided in par. (b), a vegetable contractor who is required to file or maintain security under this section shall, at all times, maintain security that is at least equal to the sum of the following:

1. Seventy–five percent of the amount last reported under s. 126.56 (9) (b) or (12) (a), except that this amount is not required of a contributing vegetable contractor.

2. The amount required under sub. (1) (b), if any.

(b) A vegetable contractor who is only required to file or maintain security under sub. (1) (bm) shall at all times maintain security equal to the vegetable contractor’s estimated default exposure, as defined in sub. (1) (bm) 1., less the following amount:

1. For the license year beginning on February 1, 2003, \$18,000,000.

2. For the license year beginning on February 1, 2004, \$19,000,000.

3. For a license year that begins on February 1, 2005, or later, \$20,000,000.

**(4) FORM OF SECURITY.** The department shall review, and determine whether to approve, security filed under this section. The department may approve only the following types of security:

(a) Currency.

(b) A commercial surety bond if all of the following apply:

1. The surety bond is made payable to the department for the benefit of vegetable producers and producer agents.

2. The surety bond is issued by a person authorized to operate a surety business in this state.

3. The surety bond is issued as a continuous term bond that may be canceled only with the department’s written agreement, or upon 90 days’ prior written notice served on the department in person or by certified mail.

4. The surety bond is issued in a form, and subject to any terms and conditions, that the department considers appropriate.

(c) A certificate of deposit or money market certificate, if all of the following apply:

1. The certificate is issued or endorsed to the department for the benefit of vegetable producers and producer agents.

2. The certificate may not be canceled or redeemed without the department’s written permission.

3. No person may transfer or withdraw funds represented by the certificate without the department’s written permission.

4. The certificate renews automatically without any action by the department.

5. The certificate is issued in a form, and subject to any terms and conditions, that the department considers appropriate.

(d) An irrevocable bank letter of credit if all of the following apply:

1. The letter of credit is payable to the department for the benefit of vegetable producers and producer agents.

2. The letter of credit is issued on bank letterhead.

3. The letter of credit is issued for an initial period of at least one year.

4. The letter of credit renews automatically unless, at least 90 days before the scheduled renewal date, the issuing bank gives the

department written notice, in person or by certified mail, that the letter of credit will not be renewed.

5. The letter of credit is issued in a form, and subject to any terms and conditions, that the department considers appropriate.

(e) Security filed with the department under s. 100.03, 1999 stats., before February 1, 2002, except that on January 1, 2003, the department shall withdraw its approval of any security that is not approvable under pars. (a) to (d).

**(5) DEPARTMENT CUSTODY OF SECURITY.** The department shall hold, in its custody, all security filed and maintained under this section. The department shall hold the security for the benefit of vegetable producers and producer agents.

**(6) ADDITIONAL SECURITY.** (a) The department may, at any time, demand additional security from a vegetable contractor if any of the following applies:

1. The vegetable contractor’s existing security falls below the amount required under sub. (3) for any reason, including a depreciation in the value of the security filed with the department, increased obligations to vegetable producers or producer agents, or the cancellation of any security filed with the department.

2. The vegetable contractor fails to provide required information that is relevant to a determination of security requirements.

(b) The department shall issue a demand under par. (a) in writing. The department shall indicate why additional security is required, the amount of security required, and the deadline date for filing security. The department may not specify a deadline for filing security that is more than 30 days after the date on which the department issues its demand for security.

(c) A vegetable contractor may request a hearing, under ch. 227, on a security demand under par. (b). A request for hearing does not automatically stay a security demand.

(d) If a vegetable contractor fails to comply with the department’s security demand under this subsection, the vegetable contractor shall give written notice of that fact to all vegetable producers and producer agents from whom the vegetable contractor procures processing vegetables. If the vegetable contractor fails to give accurate notice under this paragraph within 5 days after the security filing deadline under par. (b) has passed, the department shall promptly notify vegetable producers and producer agents by publishing a class 3 notice under ch. 985. The department may also give individual notice to vegetable producers or producer agents of whom the department is aware.

(e) If a vegetable contractor fails to comply with the department’s demand for security under this subsection, the department may do any of the following:

1. Issue a summary order under s. 126.85 (2) that prohibits the vegetable contractor from procuring processing vegetables from vegetable producers or producer agents, or requires the vegetable contractor to pay cash on delivery under all vegetable procurement contracts.

2. Suspend or revoke the vegetable contractor’s license.

**(7) RELEASING SECURITY.** (a) The department may release security filed under sub. (1) (a), except for any amount of security that the vegetable contractor is required to file because sub. (1) (b) or (bm) applies to the vegetable contractor, if any of the following applies:

1. The vegetable contractor reports less than \$1,000,000 in annual contract obligations under s. 126.56 (9) (a) for at least 2 consecutive years and the vegetable contractor pays the quarterly fund assessment that would have been required of the vegetable contractor if the vegetable contractor had been a contributing vegetable contractor on the most recent quarterly installment date under s. 126.60 (6).

2. The vegetable contractor’s annual financial statement under s. 126.58 shows positive equity for at least 2 consecutive years and the vegetable contractor pays the quarterly fund assessment that would have been required of the vegetable contractor if the vegetable contractor had been a contributing vegetable con-



tractor on the most recent quarterly installment date under s. 126.60 (6).

(b) The department may release security filed under sub. (1) (b), except for any amount of security that the vegetable contractor is required to file because sub. (1) (a) or (bm) applies to the vegetable contractor, if any of the following applies:

1. The vegetable contractor has no unpaid obligations under deferred payment contracts, and will not use deferred payment contracts in the current license year.

2. The vegetable contractor files 2 consecutive annual financial statements under s. 126.58 that show a current ratio of at least 1.25 to 1.0, positive equity, and a debt to equity ratio of not more than 4.0 to 1.0.

(bm) The department may release security filed under sub. (1) (bm), except for any amount of security that the vegetable contractor is required to file because sub. (1) (a) or (b) applies to the vegetable contractor, if the vegetable contractor files 2 consecutive annual financial statements under s. 126.58 showing that the vegetable contractor no longer has negative equity, a current ratio of less than 1.25 to 1.0, or a debt to equity ratio of more than 4.0 to 1.0.

(c) On May 1, 2002, the department may release security maintained under sub. (2), unless the vegetable contractor is required to file security under sub. (1).

(d) The department may release security to the extent that the security exceeds the amount required under sub. (3).

(e) The department may release security if the vegetable contractor files alternative security, of equivalent value, that the department approves.

(f) The department shall release security if the vegetable contractor has gone out of business and paid all contract obligations in full.

**History:** 2001 a. 16; 2003 a. 38; 2005 a. 80, 441.

**126.62 Vegetable contractors; records.** (1) RECORDS REQUIRED. A vegetable contractor shall keep all of the following:

(a) Copies of all written vegetable procurement contracts.

(b) A current record of all vegetable contract obligations, payments, and unpaid balances.

(2) RECORDS RETENTION. A vegetable contractor shall keep all of the following records for at least 6 years from the date of their creation:

(a) Records required under sub. (1).

(b) Records that the vegetable contractor was required to keep, under s. 100.03, 1999 stats., and department rules, before February 1, 2002.

(3) RECORDS INSPECTION. A vegetable contractor shall make records required under this section available to the department for inspection and copying upon request.

**History:** 2001 a. 16; 2003 a. 321.

**126.63 Vegetable contractors; business practices.**

(1) VEGETABLE GRADING AND TARE. (a) A vegetable contractor shall grade vegetables according to the following standards if the vegetable grade may affect the amount received by the vegetable producer:

1. Standard grading procedures that the department establishes by rule.

2. Uniform grade standards that the department establishes by rule, unless the vegetable procurement contract clearly specifies alternative grade standards.

(b) If a vegetable contractor makes any deduction for tare, the vegetable contractor shall determine tare according to procedures that the department establishes by rule.

(c) The department shall establish grade standards for vegetables that conform to grade standards adopted by the federal department of agriculture under 7 USC 1621 to 1632.

(2) PROHIBITED DEDUCTIONS. No vegetable purchaser may deduct, from the amount payable under a vegetable procurement contract, an amount designated for the payment of any vegetable contractor license fee, surcharge, or fund assessment under this subchapter.

(3) TIMELY PAYMENT. A vegetable contractor shall pay a vegetable producer or producer agent according to the vegetable procurement contract. The vegetable contractor shall make the following payments by the following dates, unless the contract specifies a different payment date in writing:

(a) The 15th day of the month immediately following the month in which the vegetable contractor harvests or accepts delivery of processing vegetables, the full amount owed under the contract for those vegetables.

(b) The 15th day of the month immediately following the month in which the vegetable contractor rejects or fails to harvest processing vegetables tendered under the vegetable procurement contract, the full amount owed under the contract for those vegetables.

(4) ANNUAL PAYMENT DEADLINE. (a) Except as provided in par. (b) or (c), a vegetable contractor shall pay all outstanding obligations to vegetable producers by January 31 of each license year.

(b) For processing vegetables tendered or delivered in January of any license year, a vegetable contractor shall pay the full amount owed under the vegetable procurement contract by February 15 or by the 30th day after the date of delivery, whichever date is later.

(c) A vegetable contractor may pay outstanding producer obligations in accordance with a deferred payment contract that complies with sub. (5) and specifies a payment date after January 31 for processing vegetables delivered on or before December 31.

(5) DEFERRED PAYMENT CONTRACT. (a) Before a vegetable contractor offers a deferred payment contract to any vegetable producer, the vegetable contractor shall put the deferred payment contract to a vote of vegetable producers, as provided in par. (b), obtain the approval of a majority of the voting vegetable producers, and comply with par. (c).

(b) To put a deferred payment contract to a vote of vegetable producers, the vegetable contractor shall give written notice to all vegetable producers in this state from whom the vegetable contractor procured the same type of processing vegetables during the preceding license year. In the notice, the vegetable contractor shall include a copy of the proposed contract, shall announce a meeting at which the vegetable producers will be asked to vote on the proposed contract, and shall include a mail ballot by which a vegetable producer may vote without attending the meeting. The vegetable contractor shall conduct the voting by secret ballot.

(c) To comply with this paragraph, a vegetable contractor shall file all of the following with the department:

1. A sworn statement certifying that the contract was approved in a vote of vegetable producers under this subsection.

2. Any additional security required under s. 126.61 (3).

(6) CASH ON DELIVERY. A vegetable contractor shall pay cash on delivery under all vegetable procurement contracts if any of the following applies:

(a) The vegetable contractor stated, in the vegetable contractor's last annual statement under s. 126.56 (9) (g), that the vegetable contractor would pay cash on delivery.

(b) The department disqualifies the vegetable contractor, under s. 126.59 (2) (c), or requires the vegetable contractor to pay cash on delivery under s. 126.61 (6) (e).

**History:** 2001 a. 16.

**126.64 Vegetable contractors; prohibited practices.**

No vegetable contractor may do any of the following:

(1) Misrepresent the weight, grade, or quality of processing vegetables under a vegetable procurement contract.

- (2) Falsify any record or account, or conspire with any other person to falsify a record or account.
- (3) Make any false or misleading representation to the department.
- (4) If the vegetable contractor is licensed under s. 126.56, engage in any activity that is inconsistent with representations made in the vegetable contractor's annual license application.
- (5) Make any false or misleading representation to a vegetable producer or producer agent related to matters regulated under this chapter.
- (6) Fail to file the full amount of security required under s. 126.61 (6) by the date that the department specifies.
- History:** 2001 a. 16.

## SUBCHAPTER VII

## RECOVERY PROCEEDINGS

**126.68 Definitions.** In this subchapter:

- (1) "Contributing contractor" means any of the following:
- A contributing grain dealer, as defined in s. 126.10 (3).
  - A contributing grain warehouse keeper, as defined in s. 126.25 (2).
  - A contributing milk contractor, as defined in s. 126.40 (1).
  - A contributing vegetable contractor, as defined in s. 126.55 (4).
- (2) "Depositor" has the meaning given in s. 126.25 (5).
- (3) "Grain dealer" has the meaning given in s. 126.10 (9).
- (4) "Grain producer" has the meaning given in s. 126.10 (10).
- (5) "Grain warehouse keeper" has the meaning given in s. 126.25 (9).
- (6) "Milk contractor" has the meaning given in s. 126.40 (8).
- (7) "Milk producer" has the meaning given in s. 126.40 (10).
- (8) "Producer grain" has the meaning given in s. 126.10 (14).
- (9) "Producer milk" has the meaning given s. 126.40 (14).
- (10) "Vegetable contractor" has the meaning given in s. 126.55 (14).
- (11) "Vegetable procurement contract" has the meaning given in s. 126.55 (15).
- (12) "Vegetable producer" has the meaning given in s. 126.55 (16).
- History:** 2001 a. 16.

**126.70 Recovery proceedings.** (1) **DEFAULT CLAIMS.** Any of the following persons may file a default claim with the department against a contractor who is licensed, or required to be licensed, under this chapter:

- A grain producer or producer agent, as defined in s. 126.10 (13), who claims that a grain dealer has failed to pay, when due, for producer grain that the grain dealer procured in this state.
- A depositor who is either a grain producer or a producer agent, as defined in s. 126.10 (13), and who claims that a grain warehouse keeper has failed to return stored grain or its equivalent upon demand.
- A milk producer or producer agent, as defined in s. 126.40 (13), who claims that a milk contractor has failed to pay, when due, for producer milk procured in this state.
- A vegetable producer or producer agent, as defined in s. 126.55 (12), who claims that a vegetable contractor has failed to make payment when due under a vegetable procurement contract.

(2) **FILING DEFAULT CLAIMS.** A claimant shall file a default claim under sub. (1) within 30 days after the claimant first learns of the default, subject to sub. (3). The claimant shall specify the nature and amount of the default. The department may investigate

the alleged default and may require the claimant to provide supporting documentation.

(3) **INITIATING A RECOVERY PROCEEDING.** (a) The department may initiate a recovery proceeding in response to one or more default claims under sub. (1). The department shall issue a written notice announcing the recovery proceeding. The department shall mail or deliver a copy of the notice to the contractor and each claimant in the proceeding.

(b) If the department has reason to believe that other persons may have default claims under sub. (1) against the same contractor, the department may invite those persons to file their claims in the recovery proceeding. The department may publish the invitation in any of the following ways:

- By posting it at the contractor's place of business.
- By publishing it as a class 3 notice under ch. 985.
- By mailing or delivering it to prospective claimants known to the department.
- By other means that the department considers appropriate.

(c) In its invitation under par. (b), the department may specify a deadline date and a procedure for filing default claims. An invitation may indicate the amount of a prospective claimant's apparent claim and may ask the prospective claimant to verify or correct that amount.

(d) The department may initiate separate recovery proceedings for default claims that comply with sub. (2) but are filed after the deadline date under par. (c).

(4) **AUDITING CLAIMS.** The department shall audit each claim included in a recovery proceeding. The department shall disallow a claim if the department finds any of the following:

- That the claim is false or not adequately documented.
- That the claimant filed the claim more than 30 days after the claimant first learned of the contractor's default, unless the department specifies a later claim-filing deadline under sub. (3) (c).
- That the claimant, without any contractual obligation to do so, continued to deliver grain, milk, or vegetables to the defaulting contractor more than 10 days after the claimant first learned of the contractor's default.
- That the claimant failed to comply with claim-filing deadlines or procedures specified under sub. (3) (c).
- That the person filing the claim is not an authorized claimant under sub. (1).

(5) **ALLOWED CLAIM AMOUNTS.** (a) The department shall determine the amount of an allowed claim based on the contract between the parties. If the contract terms are unclear, the department may determine the allowed claim amount based on local market prices, applicable milk marketing order prices, customs in the trade, or other evidence that the department considers appropriate.

(b) Notwithstanding par. (a), if the default involves a grain warehouse keeper's failure to return stored grain to a depositor upon demand, the department shall calculate the value of the grain based on local market prices on the day on which the depositor made the demand.

(c) The department shall subtract from the allowed claim amount any offsetting payments made by the contractor and any obligations for which the claimant is liable to the contractor.

(6) **PROPOSED DECISION.** After the department completes its audit under sub. (4), the department shall issue a proposed decision. The department shall mail or deliver a copy of the proposed decision to the contractor and each claimant. The department shall do all of the following in the proposed decision:

- Specify proposed findings of fact, proposed conclusions of law, and a proposed order.
- Allow or disallow each default claim and specify the amount of each allowed claim. The department may disallow part of a claim.

(c) Specify, for each allowed claim, the amount that the department is authorized to pay under s. 126.71.

(d) Specify the method, under s. 126.71, by which the department will pay the authorized amounts under par. (c).

(e) Explain a claimant's right under s. 126.87 (4) to seek court recovery of that portion of an allowed claim that is not paid by the department.

(f) Specify a date by which the contractor or claimant may file written objections to the proposed decision.

**(7) FINAL DECISION IF NO OBJECTIONS.** If no contractor or claimant files a timely written objection to the proposed decision under sub. (6), the department may issue the proposed decision as the department's final decision in the recovery proceeding, without further notice or hearing. The department shall mail or deliver a copy of the final decision to the contractor and each claimant.

**(8) OBJECTIONS TO PROPOSED DECISION; NOTICE, HEARING, AND FINAL DECISION.** (a) If a contractor or claimant files a timely written objection to the proposed decision under sub. (6), the department shall hold a public hearing on the objection. The department shall follow applicable contested case procedures under ch. 227. The department may hear all objections in a single proceeding. At the conclusion of the contested case proceeding, the department shall issue a final decision affirming or modifying the proposed decision under sub. (6).

(b) The department may issue a final decision under sub. (7) related to default claims that are not affected by objections under par. (a), regardless of whether the department has completed the contested case proceeding under par. (a).

**History:** 2001 a. 16.

**126.71 Paying default claims. (1) CLAIMS AGAINST CONTRIBUTING CONTRACTOR.** Except as provided in sub. (2) or (3), the department shall pay from the appropriate sources under s. 126.72 the following default claim amounts:

(a) Except as provided in par. (d) or (e), for each default claim allowed under s. 126.70 against a grain dealer or milk contractor who was a contributing contractor when the default occurred:

1. Eighty percent of the first \$60,000 allowed.
2. Seventy-five percent of any amount allowed in excess of \$60,000.

(b) For each default claim allowed under s. 126.70 against a grain warehouse keeper who was a contributing contractor when the default occurred, 100% of the first \$100,000 allowed.

(c) For each default claim allowed under s. 126.70 against a vegetable contractor who was a contributing contractor when the default occurred:

1. Ninety percent of the first \$40,000 allowed.
2. Eighty-five percent of the next \$40,000 allowed.
3. Eighty percent of the next \$40,000 allowed.
4. Seventy-five percent of any amount allowed in excess of \$120,000.

(d) For each default claim allowed under s. 126.70 against a qualified producer agent who, at the time of the default, was a contributing contractor and maintained security under s. 126.47 (3) (a) 3., if the default occurs after April 30, 2002, and before May 1, 2004, 15% of the amount allowed.

(e) For each default claim allowed under s. 126.70 against a qualified producer agent who, at the time of the default, was a contributing contractor and maintained security under s. 126.47 (3) (a) 3., if the default occurs after April 30, 2004, and before May 1, 2007, 20% of the amount allowed.

**(1m) WHEN DEFAULT OCCURS.** For the purposes of this chapter, a default occurs on the date on which payment or delivery becomes overdue.

**(2) CLAIMS AGAINST CONTRACTOR WHO HAS FILED SECURITY.** If the department allows default claims under s. 126.70 against a contractor who has security on file with the department, the

department shall convert that security and use the proceeds as follows:

(a) If the contractor was not a contributing contractor when the default occurred, the department shall use the security proceeds to pay the full amount of the allowed claims, except that, if the security is not adequate to pay the full amount of the allowed claims, the department shall pay claimants on a prorated basis in proportion to their allowed claims.

(b) If the contractor was a contributing contractor when the default occurred, the department shall use the security proceeds to reimburse the sources under s. 126.72 from which the department makes any claim payment under sub. (1). If the security amount exceeds the amount payable under sub. (1) from the sources under s. 126.72, the department shall use the remaining security proceeds to pay the balance of the allowed claims. If the security amount is not adequate to pay the full remaining balance, the department shall pay claimants on a prorated basis in proportion to their allowed claims.

(c) Notwithstanding par. (b), if the contractor was a contributing contractor when the default occurred, the department may, at its discretion, pay claims directly from security proceeds rather than from a fund source under s. 126.72. If the department acts under this paragraph, the department shall first pay claims in the amounts provided in sub. (1). If the security amount exceeds the amount payable under sub. (1) from the sources under s. 126.72, the department shall use the remaining security proceeds to pay the balance of the allowed claims. If the security amount is not adequate to pay the full remaining balance, the department shall pay claimants on a prorated basis in proportion to their allowed claims.

**(3) PAYMENT RESTRICTIONS.** (a) The department may not pay any portion of the following from any source identified in s. 126.72:

1. A default claim related to a default by a grain dealer or grain warehouse keeper that occurs before September 1, 2002.

2. A default claim related to a default by a milk contractor that occurs before May 1, 2002.

3. A default claim related to a default by a vegetable contractor that occurs before February 1, 2002.

4. A default claim allowed against a contractor who was not a contributing contractor when the default occurred.

5. A default claim allowed against a vegetable contractor who is a processing potato buyer, as defined in s. 126.55 (10r), if the default claim is related to a default on an obligation that was outstanding when the processing potato buyer's participation in the fund became effective under s. 126.595 (2).

(b) The department may not pay any default claim under this chapter, except as provided in sub. (1) or (2).

(c) If the total amount of default claims exceeds the amount available under s. 126.72, the department shall prorate the available amount among the eligible claimants in proportion to the amount of their allowed claims.

**(4) EFFECT OF PAYMENT.** A claimant who accepts payment under sub. (1) or (2) releases his or her claim against the contractor to the extent of the payment. A payment under sub. (1) or (2) does not prevent a claimant from recovering the balance of an allowed claim directly from the contractor.

**History:** 2001 a. 16; 2003 a. 38; 2005 a. 80.

**126.72 Claims against contributing contractor; payment sources. (1) PRODUCER SECURITY FUND.** From the appropriation under s. 20.115 (1) (w), the department shall make payments authorized under s. 126.71 (1), up to the deductible amount in sub. (3).

**(2) PROCEEDS OF CONTINGENT FINANCIAL BACKING.** The department, at the direction of the secretary of agriculture, trade and consumer protection, shall draw on the contingent financial backing acquired under s. 126.06 to make payments authorized



under s. 126.71 (1), to the extent that those payments exceed the deductible amount in sub. (3).

(3) **DEDUCTIBLE AMOUNT.** The deductible amount, for purposes of subs. (1) and (2), is 60% of the cash balance in the agricultural producer security fund on the last day of the month preceding the month in which the default occurs.

History: 2001 a. 16; 2003 a. 38.

**126.73 Reimbursing payments.** (1) **PAYMENTS FROM THE FUND.** The department may demand and collect, from a contractor, any claim amounts that the department pays under s. 126.72 (1) or under s. 126.72 (2) with the proceeds of a loan under s. 126.06 (1) (b) because of the contractor's default.

(2) **BOND PAYMENTS.** A bond surety may demand and collect, from a contractor, any claim amounts that the bond surety pays to the department under s. 126.72 (2) because of the contractor's default. The bond surety shall provide the department with a copy of each demand under this subsection.

History: 2001 a. 16; 2003 a. 38.

## SUBCHAPTER VIII

### ADMINISTRATION AND ENFORCEMENT

**126.78 Definitions.** In this subchapter:

(1) "Contributing contractor" has the meaning given in s. 126.68 (1).

(2) "Depositor" has the meaning given in s. 126.25 (5).

(3) "Grain dealer" has the meaning given in s. 126.10 (9).

(4) "Grain warehouse keeper" has the meaning given in s. 126.25 (9).

(5) "Milk contractor" has the meaning given in s. 126.40 (8).

(6) "Producer agent" means a person who is a producer agent, as defined in s. 126.10 (13), 126.40 (13), or 126.55 (12).

(7) "Vegetable contractor" has the meaning given in s. 126.55 (14).

(8) "Vegetable producer" has the meaning given in s. 126.55 (16).

History: 2001 a. 16.

**126.80 Department authority; general.** The department shall administer this chapter.

History: 2001 a. 16.

**126.81 Rule-making.** The department may promulgate rules to do any of the following:

(1) Interpret and implement this chapter.

(2) Modify the license fees and surcharges provided in s. 126.11 (4), 126.26 (3), 126.41 (3), 126.42, or 126.56 (4).

(3) Modify the fund assessments provided under s. 126.15, 126.30, 126.46, or 126.60, as provided in s. 126.88.

(4) Require a contractor to notify producers and producer agents of the contractor's license, security, or fund contribution status under this chapter.

History: 2001 a. 16.

**126.82 Investigations.** The department may conduct investigations that it considers necessary for the administration of this chapter, including investigations to determine any of the following:

(1) Whether a contractor complies with this chapter.

(2) Whether a contractor is able to honor contract obligations when due.

(3) Whether a contractor has failed to honor contract obligations when due.

(4) Whether a grain warehouse keeper has sufficient grain on hand to meet the grain warehouse keeper's obligations to depositors.

(5) The nature and amount of a contractor's storage obligations or other contract obligations.

History: 2001 a. 16.

**126.83 Information.** The department may require a contractor to provide information that is relevant to the administration and enforcement of this chapter.

History: 2001 a. 16.

**126.84 Records; confidentiality.** (1) **PUBLIC RECORDS EXEMPTION.** The following records obtained by the department under this chapter are not open to public inspection under s. 19.35:

(a) Contractor financial statements.

(b) A contractor's purchase, storage, or procurement records.

(2) **USE OF RECORDS IN COURT OR ADMINISTRATIVE PROCEEDINGS.** Notwithstanding sub. (1), the department may introduce any information obtained under this chapter in a court proceeding or administrative contested case, subject to any protective order that the court or administrative tribunal determines to be appropriate.

History: 2001 a. 16.

**126.85 Remedial orders.** (1) **GENERAL.** The department may, by special order, require a contractor to remedy a violation of this chapter or a rule promulgated under this chapter. The department may order the contractor to take specific remedial actions, including actions to remedy deficiencies or to prevent losses to persons protected under this chapter. Except as provided in sub. (2), the department shall give the contractor notice and an opportunity for hearing before the department issues an order.

(2) **SUMMARY ORDER.** The department may issue an order under sub. (1) without prior notice or hearing if the department finds that the order is necessary to prevent a clear and imminent threat of harm to persons protected under this chapter. Conditions indicating a clear and imminent threat of harm include the following:

(a) A contractor fails to pay producers according to this chapter or according to the contractor's contracts with producers.

(b) A contractor fails to file replacement insurance within the time required under this chapter.

(c) A contractor fails to file security according to this chapter, or in response to the department's demand under this chapter.

(d) A contractor fails to pay a fund assessment when due.

(e) A vegetable contractor fails to pay vegetable producers by January 31 for vegetables delivered by December 31 of the previous year, except as authorized in a deferred payment contract.

(f) A grain warehouse keeper fails to return grain to depositors upon demand, as required under s. 126.34 (4).

(g) A grain warehouse keeper fails to maintain adequate grain inventory as required under s. 126.34 (3), and at least one of the following applies:

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

2. The grain warehouse keeper fails to correct the deficiency within 15 days after receiving the department's written notice that a deficiency exists.

(3) **HEARING ON SUMMARY ORDER.** (a) A contractor named in a summary order under sub. (2) may, within 10 days after receiving the order, request a hearing on the order. The department shall hold an informal hearing as soon as possible after receiving a hearing request, but not later than 10 days after receiving the hearing request, unless the contractor waives the informal hearing or agrees to hold it at a later date. If the matter is not resolved at the informal hearing, the department shall hold a contested case hearing under ch. 227 as soon as reasonably possible.

(b) A hearing request under par. (a) does not automatically stay a summary order. The department may stay a summary order pending hearing.

History: 2001 a. 16.

**126.86 License actions.** (1) **GENERAL.** The department may for cause deny, suspend, revoke, or impose conditions on a contractor's license, as provided in s. 93.06 (7) and (8). Cause may include any of the following:

(a) The contractor fails to comply with this chapter or a rule promulgated under this chapter.

(b) The contractor fails to comply with an order that the department issues under this chapter.

(c) The contractor fails to provide relevant information that the department requests under this chapter or falsifies information provided to the department.

(d) The contractor fails to file a financial statement, security, fees, or assessments required under this chapter, or fails to meet other requirements for licensing.

(e) The contractor fails to honor contract obligations to persons who are authorized to file default claims under s. 126.70 (1).

(f) The contractor fails to reimburse the department, within 60 days after the department issues a reimbursement demand under s. 126.73 (1), for the full amount that the department pays to claimants under s. 126.72 (1) or under s. 126.72 (2) with the proceeds of a loan under s. 126.06 (1) (b) because of the contractor's default.

(g) The contractor fails to reimburse a bond surety, within 60 days after the bond surety issues a reimbursement demand under s. 126.73 (2), for the full amount that the surety pays to the department under s. 126.72 (2) for the benefit of claimants affected by the contractor's default.

(2) **HEARING ON LICENSE ACTION; GENERAL.** Except as provided in sub. (3), the department shall give a contractor notice and an opportunity for hearing before the department suspends, revokes, or imposes conditions on a license held by the contractor.

(3) **SUMMARY ACTION.** (a) The department may, without prior notice or hearing, summarily suspend, revoke, or impose conditions on a license held by a contractor if the department finds that summary action is necessary to prevent a clear and imminent threat of harm to persons protected under this chapter. Conditions indicating a clear and imminent threat of harm include those identified in s. 126.85 (2).

(b) A contractor who is the subject of a summary action under par. (a) may, within 10 days after receiving notice of that action, request a hearing on the action. The department shall hold an informal hearing as soon as possible after receiving a hearing request, but not later than 10 days after receiving the hearing request, unless the contractor waives the informal hearing or agrees to hold it at a later date. If the matter is not resolved at the informal hearing, the department shall hold a contested case hearing under ch. 227 as soon as reasonably possible.

(c) A request for hearing under par. (b) does not automatically stay a summary action under par. (a). The department may stay a summary action pending hearing.

**History:** 2001 a. 16; 2003 a. 38.

**126.87 Court actions.** (1) **INJUNCTION.** The department may petition the circuit court for an ex parte temporary restraining order, a temporary injunction, or a permanent injunction to prevent, restrain, or enjoin any person from violating this chapter, any rule promulgated under this chapter, or any order issued under this chapter. The department may seek this remedy in addition to any other penalty or remedy provided under this chapter.

(2) **PENALTIES.** (a) A person who violates this chapter, a rule promulgated under this chapter, or an order issued under this

chapter is subject to a forfeiture of not less than \$250 nor more than \$5,000 for each violation.

(b) A person who intentionally violates this chapter, a rule promulgated under this chapter, or an order issued under this chapter may be fined not more than \$10,000 or imprisoned for not more than one year in the county jail or both.

(4) **PRIVATE REMEDY.** (a) A person whose claim is allowed under s. 126.70 may bring an action against the contractor to recover the amount of the allowed claim, less any recovery amount that the department pays to the claimant under s. 126.71. In any court action under this subsection, the claimant may recover costs including all reasonable attorney fees, notwithstanding s. 814.04 (1). This subsection does not limit any other legal cause of action that the claimant may have against the contractor.

(b) A claim allowed under s. 126.70 has the same priority in an insolvency proceeding or creditor's action as a claim for wages, except as otherwise provided by federal law.

(5) **COLLECTIONS.** The department may bring an action in court to recover any unpaid amount that a contractor owes the department under this chapter, including any unpaid fund assessment or reimbursement.

**History:** 2001 a. 16.

**126.88 Modifying fund assessments.** The department may by rule modify the fund assessments provided under s. 126.15, 126.30, 126.46, or 126.60. The department shall modify fund assessments as necessary to do all of the following:

(1) Maintain an overall fund balance of at least \$5,000,000 after January 1, 2006, but not more than \$22,000,000 at any time.

(2) Maintain a fund balance attributable to grain dealers of at least \$1,000,000 after January 1, 2006, but not more than \$6,000,000 at any time.

(3) Maintain a fund balance attributable to grain warehouse keepers of at least \$200,000 after January 1, 2006, but not more than \$1,000,000 at any time.

(4) Maintain a fund balance attributable to milk contractors of at least \$3,000,000 after January 1, 2006, but not more than \$12,000,000 at any time.

(5) Maintain a fund balance attributable to vegetable contractors of at least \$800,000 after January 1, 2006, but not more than \$3,000,000 at any time.

**History:** 2001 a. 16.

**126.89 Calculations.** If a number used in or resulting from a calculation made to determine the amount of an assessment under s. 126.15, 126.30, 126.46, or 126.60, other than a number that appears in one of those sections, extends more than 6 decimal places to the right of the decimal point, a person making the calculation shall round the number to the nearest whole digit in the 6th decimal place to the right of the decimal point. The amount of an assessment may be rounded to the nearest whole dollar.

**History:** 2001 a. 16.

**126.90 Agricultural producer security council.** The agricultural producer security council shall advise the department on the administration and enforcement of this chapter. The council shall meet as often as the department considers necessary, but at least once annually. The department shall inform the council of fund balances and payments. The department shall consult with the council before acquiring any contingent financial backing under s. 126.06 and before modifying any license fee, license surcharge, or fund assessment under this chapter.

**History:** 2001 a. 16; 2003 a. 38.