

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

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

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

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

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

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

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

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

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

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

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

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

22 (e) Security filed with the department under s. 100.06, 1999 stats., before May
23 1, 2002, except that on January 1, 2003, the department shall withdraw its approval
24 of any security that is not approvable under pars. (a) to (d).

1 (f) A dairy plant trusteeship created before May 1, 2002, under s. 100.06, 1999
2 stats. This paragraph does not apply after January 1, 2003.

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

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

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

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

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

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

22 (d) If a milk contractor fails to comply with the department's demand for
23 security under this subsection, the milk contractor shall give written notice of that
24 fact to all milk producers and producer agents from whom the contractor procures
25 producer milk in this state. If the milk contractor fails to give accurate notice under

1 this paragraph within 5 days after the deadline for filing security under par. (b) has
2 passed, the department shall promptly notify milk producers and producer agents
3 by publishing a class 3 notice under ch. 985. The department may also give
4 individual notice to those milk producers or producer agents of whom the department
5 is aware.

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

- 8 1. Issue a summary order under s. 126.85 (2).
- 9 2. Suspend or revoke the milk contractor's license.

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

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

17 2. The milk contractor's annual financial statement under s. 126.44 shows
18 positive equity for at least 2 consecutive years and the milk contractor pays the
19 quarterly fund assessment that would have been required of the milk contractor if
20 the milk contractor had been a contributing milk contractor on the most recent
21 quarterly installment date under s. 126.46 (6).

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

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

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

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

5 **126.48 Milk contractors; payments to producers.** (1) FIRST MONTHLY
6 PAYMENT. By the 4th day of each month, a milk contractor shall pay for producer milk
7 received during the first 15 days of the preceding month. The milk contractor shall
8 base the payment on an estimated price that is at least 80% of the class III price
9 published by the regional federal milk market administrator for the month
10 preceding the month in which the milk is received, or 80% of the contract price,
11 whichever is greater. This subsection does not apply to a qualified producer agent
12 who complies with sub. (4).

13 (2) SECOND MONTHLY PAYMENT. By the 19th day of each month, a milk contractor
14 shall pay the balance due for producer milk received during the preceding month.
15 This subsection does not apply to a qualified producer agent who complies with sub.
16 (4).

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

- 21 (a) Milk contractor identification.
- 22 (b) Milk producer or producer agent identification.
- 23 (c) Pay period.
- 24 (d) Volume of milk received.
- 25 (e) Grade of milk.

1 (f) Milk test results.

2 (g) Milk price and adjustments.

3 (h) Gross amount due.

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

5 (j) Net amount due.

6 (k) Deductions and assignments.

7 (4) QUALIFIED PRODUCER AGENTS. (a) By the last day of each month, a qualified
8 producer agent shall pay for producer milk received during the first 10 days of that
9 month. The qualified producer agent shall base the payment on an estimated price
10 that is at least 80% of the class III price published by the regional federal milk market
11 administrator for the month preceding the month in which the milk is received, or
12 80% of the contract price, whichever is greater.

13 (b) By the 10th day of each month, a qualified producer agent shall pay for
14 producer milk received from the 11th day to the 20th day of the preceding month.
15 The qualified producer agent shall base the payment on an estimated price that is
16 at least 80% of the class III price published by the regional federal milk market
17 administrator for the month preceding the month in which the milk is received, or
18 80% of the contract price, whichever is greater.

19 (c) By the 20th day of each month, a qualified producer agent shall pay the
20 balance due for producer milk received during the preceding month.

21 **126.49 Milk contractors; records and reports. (1) REQUIRED RECORDS.** A
22 milk contractor shall keep accurate records and accounts of milk receipts, payments
23 for milk received, and amounts owed to milk producers. The department may, by
24 rule, specify records that a milk contractor must keep.

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

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

8 **126.50 Milk contractors; prohibited practices.** No milk contractor may
9 do any of the following:

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

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

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

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

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

20 **126.51 Rules for qualified producer agents.** The department shall
21 promulgate rules specifying requirements for qualified producer agents, including
22 a requirement that a qualified producer agent have a written contract with each milk
23 producer from whom the qualified producer agent procures milk in this state and
24 that the contract disclose all of the following:

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

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

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

5 SUBCHAPTER VI

6 VEGETABLE CONTRACTORS

7 126.55 Definitions. In this subchapter:

8 (1) "Cash on delivery" means cash payment of the full agreed price for
9 processing vegetables at the time of delivery or, if the vegetables are graded, within
10 72 hours after the time of delivery.

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

12 (a) Currency.

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

14 (c) A wire transfer.

15 (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, and who is not disqualified under s. 126.59 (2).

1 (6) “Current ratio” means the ratio of the value of current assets to the value
2 of current liabilities, calculated according to s. 126.58 (6) (c) 1.

3 (7) “Debt to equity ratio” means the ratio of the value of liabilities to equity,
4 calculated according to s. 126.58 (6) (c) 2.

5 (8) “Deferred payment contract” means a vegetable procurement contract in
6 which the vegetable producer or a producer agent agrees to accept payment after
7 January 31 for processing vegetables harvested during the previous calendar year.

8 (9) “Disqualified vegetable contractor” means a vegetable contractor who is
9 disqualified from the fund under s. 126.59 (2).

10 (10) “Food processing” has the meaning given in s. 97.29 (1) (g).

11 (10m) “License year” means the period beginning on February 1 and ending
12 on the following January 31.

13 (11) “Processing vegetables” means vegetables grown or sold for use in food
14 processing, regardless of whether those vegetables are actually harvested or
15 processed as food. “Processing vegetables” includes sweet corn grown or sold for use
16 in food processing, but does not include grain.

17 (12) “Producer agent” means a person who, without taking title to vegetables,
18 acts on behalf of a vegetable producer to market or accept payment for processing
19 vegetables that the vegetable producer grows in this state. “Producer agent” does not
20 include any of the following:

21 (a) A person who merely brokers a contract between a vegetable producer and
22 a vegetable contractor, without becoming a party to the contract or accepting
23 payment on behalf of the vegetable producer.

1 (b) A person who merely holds or transports processing vegetables for a
2 vegetable producer, without marketing the vegetables or accepting payment on
3 behalf of the vegetable producer.

4 (13) “Time of delivery” under a vegetable procurement contract means the time
5 at which one of the following occurs:

6 (a) The vegetable contractor harvests the vegetables.

7 (b) The vegetable producer delivers harvested vegetables to the custody or
8 control of the vegetable contractor.

9 (c) The vegetable contractor notifies the vegetable producer of the vegetable
10 contractor’s refusal to harvest or accept delivery of vegetables.

11 (14) “Vegetable contractor” means a person who does any of the following:

12 (a) Contracts with a vegetable producer or a producer agent to procure
13 processing vegetables that a vegetable producer grows in this state.

14 (b) Contracts with a vegetable producer to market, as a producer agent,
15 processing vegetables that the vegetable producer grows in this state.

16 (15) “Vegetable procurement contract” means an oral or written agreement
17 under which a vegetable contractor does any of the following:

18 (a) Contracts with a vegetable producer or a producer agent to procure
19 processing vegetables that a vegetable producer grows in this state.

20 (b) Contracts with a vegetable producer to market, as a producer agent,
21 processing vegetables that the vegetable producer grows in this state.

22 (16) “Vegetable producer” means a person who grows processing vegetables in
23 this state.

1 (17) “Unharvested acreage” means land on which vegetables are grown, under
2 a vegetable procurement contract, that a vegetable contractor leaves unharvested for
3 any reason. “Unharvested acreage” includes all of the following:

4 (a) Land on which the vegetables are suitable for processing, but are not
5 harvested.

6 (b) Land on which the vegetables are abandoned as being unsuitable for
7 processing.

8 **126.56 Vegetable contractors; licensing. (1) LICENSE REQUIRED.** (a) Except
9 as provided in sub. (2), no person may operate as a vegetable contractor without a
10 current annual license from the department.

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

13 **(2) EXEMPT CONTRACTORS.** The following vegetable contractors are exempt from
14 licensing under sub. (1):

15 (a) A vegetable contractor who procures vegetables primarily for unprocessed,
16 fresh market use and is licensed under the federal Perishable Agricultural
17 Commodities Act, 7 USC 499a to 499t.

18 (b) A restaurant or retail food establishment that procures processing
19 vegetables solely for retail sale at the restaurant or retail food establishment.

20 **(3) LICENSE APPLICATION.** A vegetable contractor shall apply for a license under
21 sub. (1) in writing, on a form provided by the department. The applicant shall
22 provide all of the following:

23 (a) The applicant’s legal name and any trade name under which the applicant
24 proposes to operate as a vegetable contractor.

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

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

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

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

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

13 (g) A financial statement if required under s. 126.58 (1) and not yet filed.

14 (h) Other relevant information required by the department.

15 (4) LICENSE FEES AND SURCHARGES. A vegetable contractor applying for a license
16 under sub. (1) shall pay the following fees and surcharges, unless the department
17 specifies a different fee or surcharge amount by rule:

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

19 (b) A fee of \$25 plus 5.75 cents for each \$100 in contract obligations reported
20 under sub. (9) (a), less any credit provided under sub. (6).

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

1 (d) A license surcharge of \$100 if during the preceding 12 months the applicant
2 failed to file an annual financial statement required under s. 126.58 (1) (b) by the
3 applicable deadline.

4 (e) A license surcharge of \$100 if a renewal applicant fails to renew a license
5 by the license expiration date of January 31.

6 **(4m) EFFECT OF PAYMENT OF SURCHARGE.** Payment under sub. (3) (c) does not
7 relieve the applicant of any other civil or criminal liability that results from the
8 violation of sub. (1), but does not constitute evidence of any law violation.

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

12 **(6) FEE CREDITS.** (a) If the balance in the fund contributed by vegetable
13 contractors exceeds \$1,000,000 on November 30 of any license year, the department
14 shall credit 50% of the excess amount against fees charged under sub. (4) (b) to
15 contributing vegetable contractors who file timely license renewal applications for
16 the next license year. The department shall credit each contributing vegetable
17 contractor on a prorated basis, in proportion to the total fees that the vegetable
18 contractor has paid under sub. (4) (b) for the 4 preceding license years.

19 (b) The fee under sub. (4) (b) is reduced by one cent for each \$100 in contract
20 obligations reported under sub. (9) (a) if the department, under a contract with the
21 applicant, grades all of the graded vegetables that the applicant procures from
22 vegetable producers or producer agents.

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

1 The department shall specify any fee credits for which the applicant may qualify
2 under sub. (6).

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

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

11 (a) The total amount of contract obligations that the applicant incurred during
12 the applicant's last completed fiscal year. If the applicant has not yet operated as a
13 vegetable contractor, the applicant shall estimate the amount of contract obligations
14 that the applicant will incur during the applicant's first complete fiscal year.

15 (b) The largest amount of unpaid contract obligations that the vegetable
16 contractor had at any time during the vegetable contractor's last completed fiscal
17 year.

18 (c) The amount of unpaid contract obligations that the vegetable contractor has
19 at the time of application.

20 (d) The amount of unpaid contract obligations under par. (c) that are due for
21 payment before the license year for which the applicant is applying.

22 (e) The amount of unpaid obligations under par. (c) that the contractor has
23 under deferred payment contracts.

24 (f) Whether the applicant and the applicant's affiliates and subsidiaries will
25 collectively grow more than 10% of the total acreage of any vegetable species grown

1 or procured by the applicant during the license year for which the applicant is
2 applying.

3 (g) Whether the applicant will pay cash on delivery under all vegetable
4 procurement contracts during the license year for which the applicant is applying.

5 (h) Whether the applicant is a producer-owned cooperative or organization
6 that procures vegetables solely from its producer owners on the basis of a cooperative
7 marketing method under which the producer-owned cooperative or organization
8 pays its producer owners a prorated share of sales proceeds for the marketing year
9 after a final accounting and the deduction of marketing expenses.

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

15 (b) A license becomes invalid after February 5 of the license year for which it
16 is issued unless the license holder has by February 5 paid all producer obligations
17 that were due and payable during the preceding license year.

18 (11) LICENSE DISPLAYED. A vegetable contractor licensed under sub. (1) shall
19 prominently display a copy of that license at each business location from which the
20 vegetable contractor operates in this state.

21 (12) NOTICE REQUIRED. (a) A vegetable contractor who files security under s.
22 126.61 shall immediately notify the department if, at any time, the vegetable
23 contractor's unpaid contract obligations exceed the amount last reported under sub.

24 (9) (b).

1 (b) A vegetable contractor shall immediately notify the department if the
2 amount of unpaid obligations under deferred payment contracts exceeds the amount
3 last reported under sub. (9) (e).

4 **126.57 Vegetable contractors; insurance. (1) FIRE AND EXTENDED COVERAGE**
5 **INSURANCE.** (a) Except as provided in par. (b), a vegetable contractor who is required
6 to be licensed under s. 126.56 (1) shall maintain fire and extended coverage
7 insurance, issued by an insurance company authorized to do business in this state,
8 that covers all vegetables in the custody of the vegetable contractor, whether owned
9 by the vegetable contractor or held for others, at the full local market value of the
10 vegetables.

11 (b) Paragraph (a) does not apply to a vegetable contractor if any of the following
12 applies:

13 1. The vegetable contractor pays cash on delivery under all vegetable
14 procurement contracts.

15 2. The vegetable contractor is a producer-owned cooperative or organization
16 that procures processing vegetables only from its producer owners.

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

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

23 (a) That the vegetable contractor is insured.

24 (b) The nature, coverage, or material terms of the vegetable contractor's
25 insurance policy.

1 **126.58 Vegetable contractors; financial statements. (1) REQUIRED**
2 ANNUAL FINANCIAL STATEMENT. (a) Except as provided in par. (c), a vegetable
3 contractor shall file an annual financial statement with the department, before the
4 department first licenses the vegetable contractor under s. 126.56 (1), if the
5 vegetable contractor reports more than \$500,000 in contract obligations under s.
6 126.56 (9) (a).

7 (b) Except as provided in par. (c), a vegetable contractor licensed under s.
8 126.56 (1) shall file an annual financial statement with the department during each
9 license year if the vegetable contractor's license application for that year reports
10 more than \$500,000 in contract obligations under s. 126.56 (9) (a). The vegetable
11 contractor shall file the annual financial statement by the 15th day of the 4th month
12 following the close of the vegetable contractor's fiscal year, except that the
13 department may extend the filing deadline for up to 30 days if the vegetable
14 contractor, or the accountant reviewing or auditing the financial statement, files a
15 written extension request at least 10 days before the filing deadline.

16 (c) A vegetable contractor is not required to file a financial statement under par.
17 (a) or (b) if any of the following applies:

18 1. The vegetable contractor pays cash on delivery under all vegetable
19 procurement contracts.

20 2. The vegetable contractor is a producer-owned cooperative that procures
21 processing vegetables only from its producer owners.

22 **(2) VOLUNTARY FINANCIAL STATEMENT.** A contributing vegetable contractor who
23 is not required to file a financial statement under sub. (1) may file an annual
24 financial statement with the department for any of the following reasons:

25 (a) To qualify for a lower fund assessment under s. 126.60.

1 (b) To avoid filing security under s. 126.61 (1) (b).

2 (3) REVIEWED OR AUDITED FINANCIAL STATEMENT. (a) A vegetable contractor filing
3 an annual financial statement under sub. (1) or (2) shall file an audited financial
4 statement if the vegetable contractor's latest annual license application reported
5 more than \$4,000,000 in annual contract obligations under s. 126.56 (9) (a).

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

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

13 (4m) INTERIM FINANCIAL STATEMENT. The department may, at any time, require
14 a vegetable contractor licensed under s. 126.56 (1) to file an interim financial
15 statement with the department. The vegetable contractor shall provide, with the
16 interim financial statement, the vegetable contractor's sworn and notarized
17 statement that the financial statement is correct. An interim financial statement
18 need not be a reviewed or audited financial statement.

19 (5) GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. (a) Except as provided in par.
20 (b), a vegetable contractor filing a financial statement under this section shall file a
21 financial statement that is prepared according to generally accepted accounting
22 principles.

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

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

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

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

14 1. The vegetable contractor's current ratio, excluding any assets required to be
15 excluded under sub. (7).

16 2. The vegetable contractor's debt to equity ratio, excluding any assets
17 required to be excluded under sub. (7).

18 **(7) ASSETS EXCLUDED.** A vegetable contractor may not include any of the
19 following assets in the calculations under sub. (6) (c), unless the department
20 specifically approves their inclusion:

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

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

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

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

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

12 **126.59 Contributing vegetable contractors; disqualification. (1)**
13 CONTRIBUTION REQUIRED. A vegetable contractor licensed under s. 126.56 (1) shall pay
14 fund assessments under s. 126.60 unless one of the following applies:

15 (a) The vegetable contractor is disqualified under sub. (2).

16 (b) The vegetable contractor pays cash on delivery under all vegetable
17 procurement contracts.

18 (c) The vegetable contractor is a producer-owned cooperative that procures
19 processing vegetables only from its producer owners.

20 (1m) VOLUNTARY CONTRIBUTION. A vegetable contractor who is exempt under
21 sub. (1) (b) or (c) may volunteer to pay fund assessments under s. 126.60.

22 (2) DISQUALIFIED CONTRACTOR. (a) A vegetable contractor who is required to file
23 security under s. 126.61 (1) (a) is disqualified from the fund until the department
24 determines that one of the conditions in s. 126.61 (7) (a) 1. or 2. is satisfied.

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

3 (c) A vegetable contractor is disqualified from the fund, and required to pay
4 cash on delivery under vegetable procurement contracts, if the department issues a
5 written notice disqualifying the vegetable contractor for cause. Cause may include
6 any of the following:

7 1. Failure to pay fund assessments under s. 126.60 when due.

8 2. Failure to file a financial statement under s. 126.58 when due.

9 3. Failure to reimburse the department, within 60 days after the department
10 issues a reimbursement demand under s. 126.73 (1), for the full amount that the
11 department pays to claimants under s. 126.72 (1) because of that vegetable
12 contractor's default.

13 4. Failure to reimburse a bond surety, within 60 days after the bond surety
14 issues a reimbursement demand under s. 126.73 (2), for the full amount that the
15 surety pays to the department under s. 126.72 (2) or (3) for the benefit of claimants
16 affected by that vegetable contractor's default.

17 (3) PAYMENTS BY DISQUALIFIED VEGETABLE CONTRACTOR. (a) The department may
18 not return, to a disqualified vegetable contractor, any fund assessments that the
19 vegetable contractor paid as a contributing vegetable contractor.

20 (b) A disqualified vegetable contractor remains liable for any unpaid fund
21 installment under s. 126.60 that became due while the vegetable contractor was a
22 contributing vegetable contractor. A disqualified vegetable contractor is not liable
23 for any fund installment that becomes due after the vegetable contractor is
24 disqualified under sub. (2).

126.60 Contributing vegetable contractors; fund assessments. (1)

GENERAL. A contributing vegetable contractor shall pay an annual fund assessment for each license year. 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.

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

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

3 5. Subtract 0.65 from the current ratio.

4 6. Divide 0.60 by the amount determined under subd. 5.

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

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

8 9. Add 0.25 to the amount determined under subd. 8.

9 (b) If the vegetable contractor has filed an annual financial statement under
10 s. 126.58 and that financial statement shows a current ratio of less than 1.25 to 1.0,
11 but greater than 1.1 to 1.0, the vegetable contractor's current ratio assessment rate
12 equals the current ratio assessment factor in sub. (3) (b) multiplied by the following
13 amount:

14 1. Subtract 4 from the current ratio.

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

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

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

18 5. Subtract 0.65 from the current ratio.

19 6. Divide 0.60 by the amount determined under subd. 5.

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

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

23 9. Add 0.25 to the amount determined under subd. 8.

24 (c) If the vegetable contractor has filed an annual financial statement under
25 s. 126.58 and that financial statement shows a current ratio of less than or equal to

1 1.1 to 1.0, the vegetable contractor's current ratio assessment rate equals the current
2 ratio assessment factor in sub. (3) (b) multiplied by 7.512617.

3 (d) If the vegetable contractor has not filed an annual financial statement
4 under s. 126.58, the vegetable contractor's current ratio assessment rate equals the
5 current ratio assessment factor in sub. (3) (b) multiplied by 3.84961.

6 (3) CURRENT RATIO ASSESSMENT FACTOR. (a) A vegetable contractor's current
7 ratio assessment factor under sub. (2) (a) is 0.00048, except as follows:

8 1. For the vegetable contractor's 4th and 5th consecutive full license years as
9 a contributing vegetable contractor, the vegetable contractor's current ratio
10 assessment factor is 0.00029.

11 2. For the vegetable contractor's 6th or higher consecutive full license year as
12 a contributing vegetable contractor, the vegetable contractor's current ratio
13 assessment factor is zero.

14 (b) A vegetable contractor's current ratio assessment factor under sub. (2) (b)
15 to (d) is 0.00072, except as follows:

16 1. For the vegetable contractor's 4th and 5th consecutive full license years as
17 a contributing vegetable contractor, the vegetable contractor's current ratio
18 assessment factor is 0.00058.

19 2. For the vegetable contractor's 6th or higher consecutive full license year as
20 a contributing vegetable contractor, the vegetable contractor's current ratio
21 assessment factor is 0.00035.

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

1 (a) If the vegetable contractor has filed an annual financial statement under
2 s. 126.58 and that financial statement shows positive equity and a debt to equity
3 ratio of not more than 4.0 to 1.0, the vegetable contractor's debt to equity ratio
4 assessment rate equals the greater of zero or the debt to equity ratio assessment
5 factor in sub. (5) (a) multiplied by the following amount:

- 6 1. Subtract 4 from the debt to equity ratio.
- 7 2. Divide the amount determined under subd. 1. by 4.
- 8 3. Raise the amount determined under subd. 2. to the 3rd power.
- 9 4. Subtract 1.85 from the debt to equity ratio.
- 10 5. Divide the amount determined under subd. 4. by 2.5.
- 11 6. Raise the amount determined under subd. 5. to the 7th power.
- 12 7. Add the amount determined under subd. 3. to the amount determined under
13 subd. 6.

- 14 8. Add one to the amount determined under subd. 7.

15 (b) If the vegetable contractor has filed an annual financial statement under
16 s. 126.58 and that financial statement shows a debt to equity ratio of greater than
17 4.0 to 1.0 but less than 6.0 to 1.0, the vegetable contractor's debt to equity ratio
18 assessment rate equals the debt to equity ratio assessment factor in sub. (5) (b)
19 multiplied by the following amount:

- 20 1. Subtract 4 from the debt to equity ratio.
- 21 2. Divide the amount determined under subd. 1. by 4.
- 22 3. Raise the amount determined under subd. 2. to the 3rd power.
- 23 4. Subtract 1.85 from the debt to equity ratio.
- 24 5. Divide the amount determined under subd. 4. by 2.5.
- 25 6. Raise the amount determined under subd. 5. to the 7th power.

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

3 8. Add one to the amount determined under subd. 7.

4 (c) If the vegetable contractor has filed an annual financial statement under
5 s. 126.58 and that financial statement shows negative equity or a debt to equity ratio
6 of at least 6.0 to 1.0, the vegetable contractor's debt to equity ratio assessment rate
7 equals the debt to equity ratio assessment factor in sub. (5) (b) multiplied by
8 35.859145.

9 (d) If the vegetable contractor has not filed an annual financial statement
10 under s. 126.58, the vegetable contractor's debt to equity ratio assessment rate
11 equals the debt to equity ratio assessment factor in sub. (5) (b) multiplied by 1.34793.

12 (5) DEBT TO EQUITY RATIO ASSESSMENT FACTOR. (a) A vegetable contractor's debt
13 to equity ratio assessment factor under sub. (4) (a) is 0.000135, except as follows:

14 1. For the vegetable contractor's 4th and 5th consecutive full license years as
15 a contributing vegetable contractor, the vegetable contractor's debt to equity ratio
16 assessment factor is 0.00008.

17 2. For the vegetable contractor's 6th or higher consecutive full license year as
18 a contributing vegetable contractor, the vegetable contractor's debt to equity ratio
19 assessment factor is zero.

20 (b) A vegetable contractor's debt to equity ratio assessment factor under sub.
21 (4) (b) to (d) is 0.000203, except as follows:

22 1. For the vegetable contractor's 4th and 5th consecutive full license years as
23 a contributing vegetable contractor, the vegetable contractor's debt to equity ratio
24 assessment factor is 0.00016.

1 2. For the vegetable contractor's 6th or higher consecutive full license year as
2 a contributing vegetable contractor, the vegetable contractor's debt to equity ratio
3 assessment factor is 0.0001.

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

7 1. The first installment is due on March 1 of the license year.

8 2. The 2nd installment is due on June 1 of the license year.

9 3. The 3rd installment is due on September 1 of the license year.

10 4. The 4th installment is due on December 1 of the license year.

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

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

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

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

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

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

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

7 **126.61 Vegetable contractors; security. (1) SECURITY REQUIRED.** (a) Except
8 as provided in par. (c), a vegetable contractor shall file security with the department,
9 and maintain that security until the department releases it under sub. (7), if all of
10 the following apply when the department first licenses the vegetable contractor
11 under s. 126.56 (1):

12 1. The vegetable contractor reports more than \$1,000,000 in annual contract
13 obligations under s. 126.56 (9) (a).

14 2. The vegetable contractor files a financial statement under s. 126.58 (1) and
15 that financial statement shows negative equity.

16 (b) Except as provided in par. (c), a vegetable contractor shall file security with
17 the department to cover the full amount of the unpaid deferred contract obligations
18 last reported under s. 126.56 (9) (e) or (12) (b), and maintain that security until it is
19 released under sub. (7), unless the vegetable contractor files an annual financial
20 statement under s. 126.58 and that financial statement shows positive equity, a
21 current ratio of at least 1.25 to 1.0, and a debt to equity ratio of not more than 4.0 to
22 1.0.

23 (c) A vegetable contractor is not required to file security under par. (a) or (b) if
24 any of the following applies:

1 1. The vegetable contractor pays cash on delivery under all vegetable
2 procurement contracts.

3 2. The vegetable contractor is a producer-owned cooperative that procures
4 processing vegetables only from its producer members.

5 (2) SECURITY CONTINUED. A vegetable contractor who filed security under s.
6 100.03, 1999 stats., before February 1, 2002, shall maintain that security until the
7 department releases it under sub. (7).

8 (3) AMOUNT OF SECURITY. A vegetable contractor who is required to file or
9 maintain security under this section shall, at all times, maintain security that is at
10 least equal to the sum of the following:

11 (a) Seventy-five percent of the amount last reported under s. 126.56 (9) (b) or
12 (12) (a), except that this amount is not required of a contributing vegetable contractor
13 after May 1, 2002.

14 (b) The amount required under sub. (1) (b), if any.

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

18 (a) Currency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (e) Security filed with the department under s. 100.03, 1999 stats., before
4 February 1, 2002, except that on January 1, 2003, the department shall withdraw
5 its approval of any security that is not approvable under pars. (a) to (d).

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

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

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

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

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

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

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

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

12 1. Issue a summary order under s. 126.85 (2) that prohibits the vegetable
13 contractor from procuring processing vegetables from vegetable producers or
14 producer agents, or requires the vegetable contractor to pay cash on delivery under
15 all vegetable procurement contracts.

16 2. Suspend or revoke the vegetable contractor's license.

17 (7) RELEASING SECURITY. (a) The department may release security filed under
18 sub. (1) (a), except for any amount of security that the vegetable contractor is
19 required to file because sub. (1) (b) applies to the vegetable contractor, if any of the
20 following applies:

21 1. The vegetable contractor reports less than \$1,000,000 in annual contract
22 obligations under s. 126.56 (9) (a) for at least 2 consecutive years and the vegetable
23 contractor pays the quarterly fund assessment that would have been required of the
24 vegetable contractor if the vegetable contractor had been a contributing vegetable
25 contractor on the most recent quarterly installment date under s. 126.60 (6).

1 2. The vegetable contractor's annual financial statement under s. 126.58 shows
2 positive equity for at least 2 consecutive years and the vegetable contractor pays the
3 quarterly fund assessment that would have been required of the vegetable contractor
4 if the vegetable contractor had been a contributing vegetable contractor on the most
5 recent quarterly installment date under s. 126.60 (6).

6 (b) The department may release security filed under sub. (1) (b), except for any
7 amount of security that the vegetable contractor is required to file because sub. (1)
8 (a) applies to the vegetable contractor, if any of the following applies:

9 1. The vegetable contractor has no unpaid obligations under deferred payment
10 contracts, and will not use deferred payment contracts in the current license year.

11 2. The vegetable contractor files 2 consecutive annual financial statements
12 under s. 126.58 that show a current ratio of at least 1.25 to 1.0, positive equity, and
13 a debt to equity ratio of not more than 4.0 to 1.0.

14 (c) On May 1, 2002, the department may release security maintained under
15 sub. (2), unless the vegetable contractor is required to file security under sub. (1).

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

18 (e) The department may release security if the vegetable contractor files
19 alternative security, of equivalent value, that the department approves.

20 (f) The department shall release security if the vegetable contractor has gone
21 out of business and paid all contract obligations in full.

22 **126.62 Vegetable contractors; records.** (1) RECORDS REQUIRED. A vegetable
23 contractor shall keep all of the following:

24 (a) Copies of all written vegetable procurement contracts.

1 (b) A current record of all vegetable contract obligations, payments, and unpaid
2 balances.

3 (2) RECORDS RETENTION. A vegetable contractor shall keep all of the following
4 records for at least 6 years from the date of their creation:

5 1. Records required under sub. (1).

6 2. Records that the vegetable contractor was required to keep, under s. 100.03,
7 1999 stats., and department rules, before February 1, 2002.

8 (3) RECORDS INSPECTION. A vegetable contractor shall make records required
9 under this section available to the department for inspection and copying upon
10 request.

11 **126.63 Vegetable contractors; business practices.** (1) VEGETABLE GRADING
12 AND TARE. (a) A vegetable contractor shall grade vegetables according to the following
13 standards if the vegetable grade may affect the amount received by the vegetable
14 producer:

15 1. Standard grading procedures that the department establishes by rule.

16 2. Uniform grade standards that the department establishes by rule, unless the
17 vegetable procurement contract clearly specifies alternative grade standards.

18 (b) If a vegetable contractor makes any deduction for tare, the vegetable
19 contractor shall determine tare according to procedures that the department
20 establishes by rule.

21 (c) The department shall establish grade standards for vegetables that conform
22 to grade standards adopted by the federal department of agriculture under 7 USC
23 1621 to 1632.

24 (2) PROHIBITED DEDUCTIONS. No vegetable purchaser may deduct, from the
25 amount payable under a vegetable procurement contract, an amount designated for

1 the payment of any vegetable contractor license fee, surcharge, or fund assessment
2 under this subchapter.

3 (3) TIMELY PAYMENT. A vegetable contractor shall pay a vegetable producer or
4 producer agent according to the vegetable procurement contract. The vegetable
5 contractor shall make the following payments by the following dates, unless the
6 contract specifies a different payment date in writing:

7 (a) The 15th day of the month immediately following the month in which the
8 vegetable contractor harvests or accepts delivery of processing vegetables, the full
9 amount owed under the contract for those vegetables.

10 (b) The 15th day of the month immediately following the month in which the
11 vegetable contractor rejects or fails to harvest processing vegetables tendered under
12 the vegetable procurement contract, the full amount owed under the contract for
13 those vegetables.

14 (4) ANNUAL PAYMENT DEADLINE. (a) Except as provided in par. (b) or (c), a
15 vegetable contractor shall pay all outstanding obligations to vegetable producers by
16 January 31 of each license year.

17 (b) For processing vegetables tendered or delivered in January of any license
18 year, a vegetable contractor shall pay the full amount owed under the vegetable
19 procurement contract by February 15 or by the 30th day after the date of delivery,
20 whichever date is later.

21 (c) A vegetable contractor may pay outstanding producer obligations in
22 accordance with a deferred payment contract that complies with sub. (5) and
23 specifies a payment date after January 31 for processing vegetables delivered on or
24 before December 31.

1 (5) DEFERRED PAYMENT CONTRACT. (a) Before a vegetable contractor offers a
2 deferred payment contract to any vegetable producer, the vegetable contractor shall
3 put the deferred payment contract to a vote of vegetable producers, as provided in
4 par. (b), obtain the approval of a majority of the voting vegetable producers, and
5 comply with par. (c).

6 (b) To put a deferred payment contract to a vote of vegetable producers, the
7 vegetable contractor shall give written notice to all vegetable producers in this state
8 from whom the vegetable contractor procured the same type of processing vegetables
9 during the preceding license year. In the notice, the vegetable contractor shall
10 include a copy of the proposed contract, shall announce a meeting at which the
11 vegetable producers will be asked to vote on the proposed contract, and shall include
12 a mail ballot by which a vegetable producer may vote without attending the meeting.
13 The vegetable contractor shall conduct the voting by secret ballot.

14 (c) To comply with this paragraph, a vegetable contractor shall file all of the
15 following with the department:

16 1. A sworn statement certifying that the contract was approved in a vote of
17 vegetable producers under this subsection.

18 2. Any additional security required under s. 126.61 (3).

19 (6) CASH ON DELIVERY. A vegetable contractor shall pay cash on delivery under
20 all vegetable procurement contracts if any of the following applies:

21 (a) The vegetable contractor stated, in the vegetable contractor's last annual
22 statement under s. 126.56 (9) (g), that the vegetable contractor would pay cash on
23 delivery.

- 1 (b) The department disqualifies the vegetable contractor, under s. 126.59 (2)
2 (c), or requires the vegetable contractor to pay cash on delivery under s. 126.61 (6)
3 (e).

4 **126.64 Vegetable contractors; prohibited practices.** No vegetable
5 contractor may do any of the following:

6 (1) Misrepresent the weight, grade, or quality of processing vegetables under
7 a vegetable procurement contract.

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

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

11 (4) If the vegetable contractor is licensed under s. 126.56, engage in any activity
12 that is inconsistent with representations made in the vegetable contractor's annual
13 license application.

14 (5) Make any false or misleading representation to a vegetable producer or
15 producer agent related to matters regulated under this chapter.

16 (6) Fail to file the full amount of security required under s. 126.61 (6) by the
17 date that the department specifies.

18 SUBCHAPTER VII

19 RECOVERY PROCEEDINGS

20 **126.68 Definitions.** In this subchapter:

21 (1) "Contributing contractor" means any of the following:

22 (a) A contributing grain dealer, as defined in s. 126.10 (3).

23 (b) A contributing grain warehouse keeper, as defined in s. 126.25 (2).

24 (c) A contributing milk contractor, as defined in s. 126.40 (1).

25 (d) A contributing vegetable contractor, as defined in s. 126.55 (4).

- 1 (2) “Depositor” has the meaning given in s. 126.25 (5).
2 (3) “Grain dealer” has the meaning given in s. 126.10 (9).
3 (4) “Grain producer” has the meaning given in s. 126.10 (10).
4 (5) “Grain warehouse keeper” has the meaning given in s. 126.25 (9).
5 (6) “Milk contractor” has the meaning given in s. 126.40 (8).
6 (7) “Milk producer” has the meaning given in s. 126.40 (10).
7 (8) “Producer grain” has the meaning given in s. 126.10 (14).
8 (9) “Producer milk” has the meaning given s. 126.40 (14).
9 (10) “Vegetable contractor” has the meaning given in s. 126.55 (14).
10 (11) “Vegetable procurement contract” has the meaning given in s. 126.55 (15).
11 (12) “Vegetable producer” has the meaning given in s. 126.55 (16).

12 **126.70 Recovery proceedings.** (1) DEFAULT CLAIMS. Any of the following
13 persons may file a default claim with the department against a contractor who is
14 licensed, or required to be licensed, under this chapter:

15 (a) A grain producer or producer agent, as defined in s. 126.10 (13), who claims
16 that a grain dealer has failed to pay, when due, for producer grain that the grain
17 dealer procured in this state.

18 (b) A depositor who is either a grain producer or a producer agent, as defined
19 in s. 126.10 (13), and who claims that a grain warehouse keeper has failed to return
20 stored grain or its equivalent upon demand.

21 (c) A milk producer or producer agent, as defined in s. 126.40 (13), who claims
22 that a milk contractor has failed to pay, when due, for producer milk procured in this
23 state.

1 (d) A vegetable producer or producer agent, as defined in s. 126.55 (12), who
2 claims that a vegetable contractor has failed to make payment when due under a
3 vegetable procurement contract.

4 (2) FILING DEFAULT CLAIMS. A claimant shall file a default claim under sub. (1)
5 within 30 days after the claimant first learns of the default, subject to sub. (3). The
6 claimant shall specify the nature and amount of the default. The department may
7 investigate the alleged default and may require the claimant to provide supporting
8 documentation.

9 (3) INITIATING A RECOVERY PROCEEDING. (a) The department may initiate a
10 recovery proceeding in response to one or more default claims under sub. (1). The
11 department shall issue a written notice announcing the recovery proceeding. The
12 department shall mail or deliver a copy of the notice to the contractor and each
13 claimant in the proceeding.

14 (b) If the department has reason to believe that other persons may have default
15 claims under sub. (1) against the same contractor, the department may invite those
16 persons to file their claims in the recovery proceeding. The department may publish
17 the invitation in any of the following ways:

- 18 1. By posting it at the contractor's place of business.
- 19 2. By publishing it as a class 3 notice under ch. 985.
- 20 3. By mailing or delivering it to prospective claimants known to the
21 department.
- 22 4. By other means that the department considers appropriate.

23 (c) In its invitation under par. (b), the department may specify a deadline date
24 and a procedure for filing default claims. An invitation may indicate the amount of

1 a prospective claimant's apparent claim and may ask the prospective claimant to
2 verify or correct that amount.

3 (d) The department may initiate separate recovery proceedings for default
4 claims that comply with sub. (2) but are filed after the deadline date under par. (c).

5 (4) AUDITING CLAIMS. The department shall audit each claim included in a
6 recovery proceeding. The department shall disallow a claim if the department finds
7 any of the following:

8 (a) That the claim is false or not adequately documented.

9 (b) That the claimant filed the claim more than 30 days after the claimant first
10 learned of the contractor's default, unless the department specifies a later
11 claim-filing deadline under sub. (3) (c).

12 (c) That the claimant, without any contractual obligation to do so, continued
13 to deliver grain, milk, or vegetables to the defaulting contractor more than 10 days
14 after the claimant first learned of the contractor's default.

15 (d) That the claimant failed to comply with claim-filing deadlines or
16 procedures specified under sub. (3) (c).

17 (e) That the person filing the claim is not an authorized claimant under sub.
18 (1).

19 (5) ALLOWED CLAIM AMOUNTS. (a) The department shall determine the amount
20 of an allowed claim based on the contract between the parties. If the contract terms
21 are unclear, the department may determine the allowed claim amount based on local
22 market prices, applicable milk marketing order prices, customs in the trade, or other
23 evidence that the department considers appropriate.

24 (b) Notwithstanding par. (a), if the default involves a grain warehouse keeper's
25 failure to return stored grain to a depositor upon demand, the department shall

1 calculate the value of the grain based on local market prices on the day on which the
2 depositor made the demand.

3 (c) The department shall subtract from the allowed claim amount any
4 offsetting payments made by the contractor and any obligations for which the
5 claimant is liable to the contractor.

6 (6) PROPOSED DECISION. After the department completes its audit under sub. (4),
7 the department shall issue a proposed decision. The department shall mail or deliver
8 a copy of the proposed decision to the contractor and each claimant. The department
9 shall do all of the following in the proposed decision:

10 (a) Specify proposed findings of fact, proposed conclusions of law, and a
11 proposed order.

12 (b) Allow or disallow each default claim and specify the amount of each allowed
13 claim. The department may disallow part of a claim.

14 (c) Specify, for each allowed claim, the amount that the department is
15 authorized to pay under s. 126.71.

16 (d) Specify the method, under s. 126.71, by which the department will pay the
17 authorized amounts under par. (c).

18 (e) Explain a claimant's right under s. 126.87 (4) to seek court recovery of that
19 portion of an allowed claim that is not paid by the department.

20 (f) Specify a date by which the contractor or claimant may file written
21 objections to the proposed decision.

22 (7) FINAL DECISION IF NO OBJECTIONS. If no contractor or claimant files a timely
23 written objection to the proposed decision under sub. (6), the department may issue
24 the proposed decision as the department's final decision in the recovery proceeding.

1 without further notice or hearing. The department shall mail or deliver a copy of the
2 final decision to the contractor and each claimant.

3 (8) OBJECTIONS TO PROPOSED DECISION; NOTICE, HEARING, AND FINAL DECISION. (a)
4 If a contractor or claimant files a timely written objection to the proposed decision
5 under sub. (6), the department shall hold a public hearing on the objection. The
6 department shall follow applicable contested case procedures under ch. 227. The
7 department may hear all objections in a single proceeding. At the conclusion of the
8 contested case proceeding, the department shall issue a final decision affirming or
9 modifying the proposed decision under sub. (6).

10 (b) The department may issue a final decision under sub. (7) related to default
11 claims that are not affected by objections under par. (a), regardless of whether the
12 department has completed the contested case proceeding under par. (a).

13 **126.71 Paying default claims.** (1) CLAIMS AGAINST CONTRIBUTING
14 CONTRACTOR. Except as provided in sub. (2) or (3), the department shall pay from the
15 appropriate sources under s. 126.72 the following default claim amounts:

16 (a) Except as provided in par. (d) or (e), for each default claim allowed under
17 s. 126.70 against a grain dealer or milk contractor who was a contributing contractor
18 when the default occurred:

- 19 1. Eighty percent of the first \$60,000 allowed.
20 2. Seventy-five percent of any amount allowed in excess of \$60,000.

21 (b) For each default claim allowed under s. 126.70 against a grain warehouse
22 keeper who was a contributing contractor when the default occurred, 100% of the
23 first \$100,000 allowed.

24 (c) For each default claim allowed under s. 126.70 against a vegetable
25 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) (c), 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) (c), 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.

1 126.72 from which the department makes any claim payment under sub. (1). If the
2 security amount exceeds the amount payable under sub. (1) from the sources under
3 s. 126.72, the department shall use the remaining security proceeds to pay the
4 balance of the allowed claims. If the security amount is not adequate to pay the full
5 remaining balance, the department shall pay claimants on a prorated basis in
6 proportion to their allowed claims.

7 (c) Notwithstanding par. (b), if the contractor was a contributing contractor
8 when the default occurred, the department may, at its discretion, pay claims directly
9 from security proceeds rather than from a fund source under s. 126.72. If the
10 department acts under this paragraph, the department shall first pay claims in the
11 amounts provided in sub. (1). If the security amount exceeds the amount payable
12 under sub. (1) from the sources under s. 126.72, the department shall use the
13 remaining security proceeds to pay the balance of the allowed claims. If the security
14 amount is not adequate to pay the full remaining balance, the department shall pay
15 claimants on a prorated basis in proportion to their allowed claims.

16 (3) PAYMENT RESTRICTIONS. (a) The department may not pay any portion of the
17 following from any source identified in s. 126.72:

18 1. A default claim related to a default by a grain dealer or grain warehouse
19 keeper that occurs before September 1, 2002.

20 2. A default claim related to a default by a milk contractor that occurs before
21 May 1, 2002.

22 3. A default claim related to a default by a vegetable contractor that occurs
23 before February 1, 2002.

24 4. A default claim allowed against a contractor who was not a contributing
25 contractor when the default occurred.

1 (b) The department may not pay any default claim under this chapter, except
2 as provided in sub. (1) or (2).

3 (c) If the total amount of default claims exceeds the amount available under s.
4 126.72, the department shall prorate the available amount among the eligible
5 claimants in proportion to the amount of their allowed claims.

6 (4) EFFECT OF PAYMENT. A claimant who accepts payment under sub. (1) or (2)
7 releases his or her claim against the contractor to the extent of the payment. A
8 payment under sub. (1) or (2) does not prevent a claimant from recovering the
9 balance of an allowed claim directly from the contractor.

10 **126.72 Claims against contributing contractor; payment sources. (1)**
11 PRODUCER SECURITY FUND. From the appropriation under s. 20.115 (1) (w), the
12 department shall make payments authorized under s. 126.71 (1), up to the deductible
13 amount in sub. (4).

14 (2) INDUSTRY BOND PROCEEDS. The department shall make a demand against the
15 appropriate industry bond under s. 126.06 and shall use the proceeds of that bond
16 to make payments authorized under s. 126.71 (1), to the extent that those payments
17 exceed the deductible amount in sub. (4).

18 (3) BLANKET BOND PROCEEDS. The department shall make a demand against the
19 blanket bond under s. 126.07 and shall use the bond proceeds to pay any remaining
20 amounts authorized under s. 126.71 (1) after the department makes payments under
21 subs. (1) and (2).

22 (4) DEDUCTIBLE AMOUNT. The deductible amount, for purposes of subs. (1) and
23 (2), is as follows:

24 (a) For default claims against a grain dealer or grain warehouse keeper who
25 was a contributing contractor when the default occurred:

1 1. If the department allows the claims on or after September 1, 2002, but before
2 September 1, 2004, \$500,000.

3 2. If the department allows the claims on or after September 1, 2004, but before
4 September 1, 2006, \$750,000.

5 3. If the department allows the claims on or after September 1, 2006,
6 \$1,000,000.

7 (b) For default claims against a milk contractor who was a contributing
8 contractor when the default occurred:

9 1. If the department allows the claims on or after May 1, 2002, but before May
10 1, 2004, \$1,000,000.

11 2. If the department allows the claims on or after May 1, 2004, but before May
12 1, 2006, \$1,500,000.

13 3. If the department allows the claims on or after May 1, 2006, \$2,000,000.

14 (c) For claims against a vegetable contractor who was a contributing contractor
15 when the default occurred:

16 1. If the department allows the claims on or after February 1, 2002, but before
17 February 1, 2004, \$500,000.

18 2. If the department allows the claims on or after February 1, 2004, but before
19 February 1, 2006, \$750,000.

20 3. If the department allows the claims on or after February 1, 2006, \$1,000,000.

21 **126.73 Reimbursing payments.** (1) PAYMENTS FROM THE FUND. The
22 department may demand and collect, from a contractor, any claim amounts that the
23 department pays under s. 126.72 (1) because of the contractor's default.

24 (2) BOND PAYMENTS. A bond surety may demand and collect, from a contractor,
25 any claim amounts that the bond surety pays to the department under s. 126.72 (2)

1 or (3) because of the contractor's default. The bond surety shall provide the
2 department with a copy of each demand under this subsection.

3 SUBCHAPTER VIII

4 ADMINISTRATION AND ENFORCEMENT

5 **126.78 Definitions.** In this subchapter:

6 (1) "Contributing contractor" has the meaning given in s. 126.68 (1).

7 (2) "Depositor" has the meaning given in s. 126.25 (5).

8 (3) "Grain dealer" has the meaning given in s. 126.10 (9).

9 (4) "Grain warehouse keeper" has the meaning given in s. 126.25 (9).

10 (5) "Milk contractor" has the meaning given in s. 126.40 (8).

11 (6) "Producer agent" means a person who is a producer agent, as defined in s.
12 126.10 (13), 126.40 (13), or 126.55 (12).

13 (7) "Vegetable contractor" has the meaning given in s. 126.55 (14).

14 (8) "Vegetable producer" has the meaning given in s. 126.55 (16).

15 **126.80 Department authority; general.** The department shall administer
16 this chapter.

17 **126.81 Rule-making.** The department may promulgate rules to do any of the
18 following:

19 (1) Interpret and implement this chapter.

20 (2) Modify the license fees and surcharges provided in s. 126.11 (4), 126.26 (3),
21 126.41 (3), 126.42, or 126.56 (4).

22 (3) Modify the fund assessments provided under s. 126.15, 126.30, 126.46, or
23 126.60, as provided in s. 126.88.

24 (4) Require a contractor to notify producers and producer agents of the
25 contractor's license, security, or fund contribution status under this chapter.

1 **126.82 Investigations.** The department may conduct investigations that it
2 considers necessary for the administration of this chapter, including investigations
3 to determine any of the following:

- 4 (1) Whether a contractor complies with this chapter.
- 5 (2) Whether a contractor is able to honor contract obligations when due.
- 6 (3) Whether a contractor has failed to honor contract obligations when due.
- 7 (4) Whether a grain warehouse keeper has sufficient grain on hand to meet the
8 grain warehouse keeper's obligations to depositors.
- 9 (5) The nature and amount of a contractor's storage obligations or other
10 contract obligations.

11 **126.83 Information.** The department may require a contractor to provide
12 information that is relevant to the administration and enforcement of this chapter.

13 **126.84 Records; confidentiality.** (1) PUBLIC RECORDS EXEMPTION. The
14 following records obtained by the department under this chapter are not open to
15 public inspection under s. 19.35:

- 16 (a) Contractor financial statements.
- 17 (b) A contractor's purchase, storage, or procurement records.
- 18 (2) USE OF RECORDS IN COURT OR ADMINISTRATIVE PROCEEDINGS. Notwithstanding
19 sub. (1), the department may introduce any information obtained under this chapter
20 in a court proceeding or administrative contested case, subject to any protective
21 order that the court or administrative tribunal determines to be appropriate.

22 **126.85 Remedial orders.** (1) GENERAL. The department may, by special
23 order, require a contractor to remedy a violation of this chapter or a rule promulgated
24 under this chapter. The department may order the contractor to take specific
25 remedial actions, including actions to remedy deficiencies or to prevent losses to

1 persons protected under this chapter. Except as provided in sub. (2), the department
2 shall give the contractor notice and an opportunity for hearing before the department
3 issues an order.

4 (2) SUMMARY ORDER. The department may issue an order under sub. (1) without
5 prior notice or hearing if the department finds that the order is necessary to prevent
6 a clear and imminent threat of harm to persons protected under this chapter.
7 Conditions indicating a clear and imminent threat of harm include the following:

8 (a) A contractor fails to pay producers according to this chapter or according
9 to the contractor's contracts with producers.

10 (b) A contractor fails to file replacement insurance within the time required
11 under this chapter.

12 (c) A contractor fails to file security according to this chapter, or in response to
13 the department's demand under this chapter.

14 (d) A contractor fails to pay a fund assessment when due.

15 (e) A vegetable contractor fails to pay vegetable producers by January 31 for
16 vegetables delivered by December 31 of the previous year, except as authorized in a
17 deferred payment contract.

18 (f) A grain warehouse keeper fails to return grain to depositors upon demand,
19 as required under s. 126.34 (4).

20 (g) A grain warehouse keeper fails to maintain adequate grain inventory as
21 required under s. 126.34 (3), and at least one of the following applies:

22 1. The amount of the deficiency exceeds 10,000 bushels or 10% of the grain
23 warehouse keeper's obligations to depositors, whichever amount is less.

24 2. The grain warehouse keeper fails to correct the deficiency within 15 days
25 after receiving the department's written notice that a deficiency exists.

1 (3) HEARING ON SUMMARY ORDER. (a) A contractor named in a summary order
2 under sub. (2) may, within 10 days after receiving the order, request a hearing on the
3 order. The department shall hold an informal hearing as soon as possible after
4 receiving a hearing request, but not later than 10 days after receiving the hearing
5 request, unless the contractor waives the informal hearing or agrees to hold it at a
6 later date. If the matter is not resolved at the informal hearing, the department shall
7 hold a contested case hearing under ch. 227 as soon as reasonably possible.

8 (b) A hearing request under par. (a) does not automatically stay a summary
9 order. The department may stay a summary order pending hearing.

10 **126.86 License actions. (1) GENERAL.** The department may for cause deny,
11 suspend, revoke, or impose conditions on a contractor's license, as provided in s.
12 93.06 (7) and (8). Cause may include any of the following:

13 (a) The contractor fails to comply with this chapter or a rule promulgated under
14 this chapter.

15 (b) The contractor fails to comply with an order that the department issues
16 under this chapter.

17 (c) The contractor fails to provide relevant information that the department
18 requests under this chapter or falsifies information provided to the department.

19 (d) The contractor fails to file a financial statement, security, fees, or
20 assessments required under this chapter, or fails to meet other requirements for
21 licensing.

22 (e) The contractor fails to honor contract obligations to persons who are
23 authorized to file default claims under s. 126.70 (1).

24 (f) The contractor fails to reimburse the department, within 60 days after the
25 department issues a reimbursement demand under s. 126.73 (1), for the full amount

1 that the department pays to claimants under s. 126.72 (1) because of the contractor's
2 default.

3 (g) The contractor fails to reimburse a bond surety, within 60 days after the
4 bond surety issues a reimbursement demand under s. 126.73 (2), for the full amount
5 that the surety pays to the department under s. 126.72 (2) or (3) for the benefit of
6 claimants affected by the contractor's default.

7 (2) HEARING ON LICENSE ACTION; GENERAL. Except as provided in sub. (3), the
8 department shall give a contractor notice and an opportunity for hearing before the
9 department suspends, revokes, or imposes conditions on a license held by the
10 contractor.

11 (3) SUMMARY ACTION. (a) The department may, without prior notice or hearing,
12 summarily suspend, revoke, or impose conditions on a license held by a contractor
13 if the department finds that summary action is necessary to prevent a clear and
14 imminent threat of harm to persons protected under this chapter. Conditions
15 indicating a clear and imminent threat of harm include those identified in s. 126.85
16 (2).

17 (b) A contractor who is the subject of a summary action under par. (a) may,
18 within 10 days after receiving notice of that action, request a hearing on the action.
19 The department shall hold an informal hearing as soon as possible after receiving a
20 hearing request, but not later than 10 days after receiving the hearing request,
21 unless the contractor waives the informal hearing or agrees to hold it at a later date.
22 If the matter is not resolved at the informal hearing, the department shall hold a
23 contested case hearing under ch. 227 as soon as reasonably possible.

24 (c) A request for hearing under par. (b) does not automatically stay a summary
25 action under par. (a). The department may stay a summary action pending hearing.