

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

3 **(2) VOLUNTARY ANNUAL FINANCIAL STATEMENT.** A milk contractor licensed under
4 s. 127.41(1) may file an annual financial statement with the department for any of
5 the following reasons, regardless of whether the contractor is required to file a
6 financial statement under sub. (1):

7 (a) To qualify for the fund exemption under s. 127.45(1)(a).

8 (b) To qualify for a lower fund assessment under s. 127.46.

9 **(3) QUARTERLY FINANCIAL STATEMENTS.** A milk contractor licensed under s.
10 127.41(1), other than a contributing milk contractor, shall file quarterly financial
11 statements with the department for the first 3 quarters in each of the contractor's
12 fiscal years. The milk contractor shall file each quarterly financial statement no
13 later than 60 days after the end of the fiscal quarter to which the financial statement
14 pertains. The milk contractor shall include, with each quarterly financial statement,
15 the contractor's sworn and notarized statement that the financial statement is
16 correct.

17 **(4) INTERIM FINANCIAL STATEMENT.** The department may, at any time, require a
18 milk contractor licensed under s. 127.41(1) to file an interim financial statement with
19 the department. The department may require an interim financial statement in
20 addition to any other financial statement required under this section. The milk
21 contractor shall include, with the interim financial statement, the contractor's sworn
22 and notarized statement that the financial statement is correct.

23 **(5) REVIEWED OR AUDITED FINANCIAL STATEMENT.** An annual financial statement
24 under sub. (1) or (2) shall be a reviewed or audited financial statement. It shall be

1 an audited financial statement if the contractor reports more than \$6 million in
2 annual milk payroll obligations under s. 127.41(6)(a).

3 (6) ACCOUNTING PERIOD. Except as provided in sub. (8)(b), an annual financial
4 statement under sub. (1) or (2) shall cover the milk contractor's last completed fiscal
5 year.

6 (7) GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. A financial statement under
7 this section shall be prepared according to generally accepted accounting principles.
8 A sole proprietor's financial statement, if not audited, shall be prepared on a
9 historical cost basis.

10 (8) FINANCIAL STATEMENT CONTENTS. (a) Except as provided in par. (b), a
11 financial statement under this section shall include a balance sheet, income
12 statement, equity statement, statement of cash flows, notes to those statements, and
13 any other information required by the department. A sole proprietor's financial
14 statement shall include the sole proprietor's business and personal financial
15 statement.

16 (b) If a milk contractor has been in business for less than one year, the milk
17 contractor's annual financial statement under sub. (1) or (2) may consist of a balance
18 sheet and notes. A milk contractor's quarterly financial statement under sub. (3)
19 may consist of a balance sheet and income statement.

20 (c) A financial statement under this section shall, for purposes of this chapter,
21 calculate and report all the following:

22 1. The milk contractor's current ratio, excluding any assets identified in sub.
23 (9).

24 2. The milk contractor's debt to equity ratio, excluding any assets identified in
25 sub. (9).

NOTE: A milk contractor may append the ratios under par. (c) to the contractor's normal financial statement if the contractor's normal financial statement does not include them or calculates them in a different way. The department will check the contractor's ratio calculations for compliance with par. (c).

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

4 (a) Non-trade notes and accounts receivable from officers, directors,
5 employees, partners, or stockholders, or from members of their families, unless the
6 notes and accounts receivable are secured by a first priority security interest in real
7 or personal property.

8 (b) Notes or accounts receivable from parent organizations, subsidiaries or
9 affiliates.

10 (c) Notes or accounts that have been receivable for more than one year, unless
11 the milk contractor has established an equal offsetting reserve for uncollectible notes
12 and accounts receivable.

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

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

18 **127.45 Contributing milk contractors. (1) REQUIRED CONTRIBUTORS.**
19 Except as provided in sub. (3)(a):

20 (a) A licensed milk contractor shall pay fund assessments under s. 127.46
21 unless the contractor files annual and quarterly financial statements under s.
22 127.44.

1 (b) A licensed milk contractor shall pay fund assessments under s. 127.46 if the
2 contractor files an annual, quarterly or interim financial statement under s. 127.44
3 that shows a current ratio of less than 1.25 to 1.0, or a debt to equity ratio of more
4 than 2.0 to 1.0. The contractor shall continue to pay fund assessments until the
5 contractor files 2 consecutive annual financial statements under s. 127.44 that show
6 a current ratio of at least 1.25 to 1.0, and a debt to equity ratio of not more than 2.0
7 to 1.0.

8 (2) VOLUNTARY CONTRIBUTORS. Except as provided in sub. (3), a licensed milk
9 contractor who is not required to pay fund assessments under s. 127.46 may elect to
10 do so.

11 (3) DISQUALIFIED CONTRACTORS. (a) A milk contractor who is required to file
12 security under s. 127.47(1) is disqualified from the fund until the department
13 releases that security under s. 127.47(7)(a). A licensed milk contractor who files
14 security required under s. 127.47(1) may continue to engage in activities for which
15 a license is required under s. 127.41(1)(a).

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

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

- 20 1. Failure to pay fund assessments under s. 127.46 when due.
- 21 2. Failure to file a financial statement under s. 127.44 when due.
- 22 3. Failure to reimburse the department, within 60 days after the department
23 issues a reimbursement demand under s. 127.73(1), for the full amount that the
24 department pays to claimants under s. 127.72(1) because of that milk contractor's
25 default.

1 4. Failure to reimburse a bond surety, within 60 days after the bond surety
2 issues a reimbursement demand under s. 127.73(2), for the full amount that the
3 surety pays to the department under s. 127.72(2) or (3) for the benefit of claimants
4 affected by that milk contractor's default.

5 (4) EFFECT OF DISQUALIFICATION. (a) A milk contractor disqualified under sub.
6 (3)(c) may not engage in any activities for which a license is required under s.
7 127.41(1)(a) if, as a result of the disqualification, the milk contractor no longer
8 complies with sub. (1).

9 (b) The department may not pay default claims under s. 127.71(1) against a
10 milk contractor who was a disqualified milk contractor when the default occurred.

11 (c) The department may pay default claims under s. 127.71(1) against a
12 disqualified milk contractor who was a contributing milk contractor when the
13 default occurred. The department and the bond surety, if any, retain their rights
14 under s. 127.73 to demand and collect reimbursement from the disqualified
15 contractor.

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

18 (e) A disqualified milk contractor remains liable for any unpaid fund
19 installment under s. 127.46 that became due while the contractor was a contributing
20 milk contractor. A disqualified milk contractor is not liable for any fund installment
21 that becomes due after the contractor is disqualified under sub. (3).

22 **127.46 Contributing milk contractors; fund assessments. (1) GENERAL.**
23 A contributing milk contractor shall pay an annual fund assessment for each license
24 year. The assessment equals \$20 or the sum of the following, whichever is greater,
25 unless the department by rule specifies a different assessment:

1 (a) The contractor's current ratio assessment. The current ratio assessment
2 for each license year equals the contractor's current ratio assessment rate under sub.
3 (2) multiplied by the annual milk payroll obligations reported under s. 127.41(6)(a)
4 in the contractor's license application.

5 (b) The contractor's debt to equity ratio assessment. The debt to equity ratio
6 assessment for each license year equals the contractor's debt to equity ratio
7 assessment rate under sub. (4) multiplied by the annual milk payroll obligations
8 reported under s. 127.41(6)(a) in the contractor's license application.

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

11 (a) If the contractor's annual financial statement under s. 127.44 shows a
12 current ratio of at least 1.25 to 1.0, the contractor's current ratio assessment rate
13 equals the greater of zero or the current ratio assessment factor in sub. (3)(a)
14 multiplied by the following amount:

15 ***Insert Graphic Here***

16 (b) If the contractor's annual financial statement under s. 127.44 shows a
17 current ratio less than 1.25 to 1.0, but greater than 1.05 to 1.0, the contractor's
18 current ratio assessment rate equals the current ratio assessment factor in sub.
19 (3)(b) multiplied by the following amount:

20 ***Insert Graphic Here***

21 (c) If the contractor's annual financial statement under s. 127.44 shows a
22 current ratio less than or equal to 1.05 to 1.0, the contractor's current ratio
23 assessment rate equals the current ratio assessment factor in sub. (3)(b) multiplied
24 by 0.1201478.

1 (d) If the contractor has not filed an annual financial statement under s. 127.44,
2 the contractor's current ratio assessment rate equals the current ratio assessment
3 factor in sub. (3)(b) multiplied by 0.103005 unless the contractor procures milk in
4 this state solely as a producer agent. If the contractor procures milk in this state
5 solely as a producer agent, the contractor's current ratio assessment rate is 0.25%,
6 except that for the contractor's fifth or higher consecutive full license year of
7 participation in the fund, the contractor's current ratio assessment rate is 0.175%.

8 (3) CURRENT RATIO ASSESSMENT FACTOR. (a) A milk contractor's current ratio
9 assessment factor under sub. (2)(a) is 0.10%, except that:

10 1. For the contractor's third consecutive full license year as a contributing milk
11 contractor, the contractor's current ratio assessment factor is 0.07%.

12 2. For the contractor's fourth consecutive full license year as a contributing
13 milk contractor, the contractor's current ratio assessment factor is 0.03%.

14 3. For the contractor's fifth or higher consecutive full license year as a
15 contributing milk contractor, the contractor's current ratio assessment factor is
16 0.0000%.

17 (b) A milk contractor's current ratio assessment factor under sub. (2)(b) to (d)
18 is 0.15%, except that for the contractor's fifth or higher consecutive full license year
19 of participation in the fund, the contractor's current ratio assessment factor is
20 0.0675%.

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

23 (a) If the contractor's annual financial statement under s. 127.44 shows a debt
24 to equity ratio of not more than 2.0 to 1.0, the contractor's debt to equity ratio

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

3 ***Insert Graphic Here***

4 (b) If the contractor's annual financial statement under s. 127.44 shows a debt
5 to equity ratio greater than 2.0 to 1.0 but less than 3.1 to 1.0, the contractor's debt
6 to equity ratio assessment rate equals the debt to equity ratio assessment factor in
7 sub. (5)(b) multiplied by the following amount:

8 ***Insert Graphic Here***

9 (c) If the contractor's annual financial statement under s. 127.44 shows a debt
10 to equity ratio of at least 3.1 to 1.0, the contractor's debt to equity ratio assessment
11 equals the debt to equity ratio assessment factor in sub. (5)(b) multiplied by
12 0.8146917.

13 (d) If the contractor has not filed an annual financial statement under s. 127.44,
14 the contractor's debt to equity ratio assessment equals the debt to equity ratio
15 assessment factor in sub. (5)(b) multiplied by 0.11325375 unless the contractor
16 procures milk in this state solely as a producer agent. If the contractor procures milk
17 in this state solely as a producer agent, the contractor's debt to equity ratio
18 assessment rate is 0.25%, except that for the contractor's fifth or higher consecutive
19 full license year of participation in the fund, the contractor's debt to equity ratio
20 assessment rate is 0.175%.

21 (5) DEBT TO EQUITY RATIO ASSESSMENT FACTOR. (a) A milk contractor's debt to
22 equity ratio assessment factor under sub. (4)(a) is 0.150%, except that:

23 1. For the contractor's third consecutive full license year as a contributing milk
24 contractor, the contractor's current ratio assessment factor is 0.10%.

1 2. For the contractor's fourth consecutive full license year as a contributing
2 milk contractor, the contractor's current ratio assessment factor is 0.050%.

3 3. For the contractor's fifth or higher consecutive full license year as a
4 contributing milk contractor, the contractor's current ratio assessment factor is
5 0.0%.

6 (b) A milk contractor's debt to equity ratio assessment factor under sub. (4)(b)
7 to (d) is 0.225%, except that for the contractor's fifth or higher consecutive full license
8 year as a contributing milk contractor, the contractor's debt to equity ratio
9 assessment factor is 0.100%.

10 **(6) QUARTERLY INSTALLMENTS.** (a) A contributing milk contractor shall pay the
11 contractor's annual fund assessment in equal quarterly installments that are due on
12 the following dates:

- 13 1. The first installment is due on June 1 of the license year.
- 14 2. The second installment is due on September 1 of the license year.
- 15 3. The third installment is due on December 1 of the license year.
- 16 4. The fourth installment is due on March 1 of the license year.

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

19 (c) A contributing milk contractor who applies for an annual license after the
20 beginning of a license year shall pay the full annual fund assessment required under
21 this section. The contractor shall pay, with the first quarterly installment that
22 becomes due after the department issues the license, all of the quarterly installments
23 for that license year that were due prior to the licensing date.

1 (d) If s. 127.45(1)(b) requires a licensed milk contractor to become a
2 contributing milk contractor during the license year, the contractor shall pay only
3 those quarterly installments that become due after the requirement takes effect.

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

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

11 (a) The contractor's annual fund assessment under this section.

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

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

16 **127.47 Milk contractors; security. (1) SECURITY REQUIRED.** A milk
17 contractor shall file security with the department if both the following apply when
18 the department first licenses the milk contractor under s. 127.41(1):

19 (a) The milk contractor reports more than \$1.5 million in annual milk payroll
20 obligations under s. 127.41(6)(a).

21 (b) The milk contractor's financial statement under s. 127.44(1) shows negative
22 equity.

NOTE: A milk contractor who is required to file security under par. (a) is disqualified from the fund, as provided under s. 127.45(3)(a). If a contractor's first financial statement under s. 127.44(1) shows positive equity, that contractor is not required to file security under par. (a) even if subsequent financial statements show negative equity. That contractor is instead required to contribute to the fund.

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

4 (3) AMOUNT OF SECURITY. A milk contractor who is required to file or maintain
5 security under this section shall at all times maintain security equal to at least 75%
6 of the amount last reported under s. 127.41(6)(b).

7 (4) FORM OF SECURITY. The department shall approve security filed under this
8 section. The department may approve only the following types of security:

9 (a) Currency.

10 (b) Commercial surety bonds that are all the following:

11 1. Made payable to the department for the benefit of milk producers and
12 producer agents.

13 2. Issued by a surety company authorized to operate a surety business in this
14 state.

15 3. Issued as a continuous term bond that may be cancelled only with the
16 department's written agreement, or upon 90 days prior written notice served on the
17 department. A cancellation notice shall be served on the department in person or by
18 certified mail.

19 4. Issued in a form, and subject to any terms and conditions, that the
20 department considers appropriate.

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

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

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

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

3 4. The certificate is subject to automatic renewal without any action by the
4 department.

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

7 (d) Irrevocable bank letters of credit that are all the following:

8 1. Payable to the department, for the benefit of milk producers or producer
9 agents.

10 2. Issued on bank letterhead.

11 3. Issued for an initial period of at least one year.

12 4. Automatically renewed unless, at least 90 days before the scheduled renewal
13 date, the issuing bank gives the department written notice that the letter of credit
14 will not be renewed. Written notice shall be served on the department in person or
15 by certified mail.

16 5. Issued in a form, and subject to any terms and conditions, that the
17 department considers appropriate.

18 (e) Security filed with the department under s. 100.06 prior to May 1, 2002,
19 except that on January 1, 2003 the department shall withdraw its approval of any
20 security that is not in a form provided under pars. (a) to (d).

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

23 (5) DEPARTMENT CUSTODY OF SECURITY. The department shall hold, under its
24 custody, all security filed under this section. The department shall hold the security
25 for the benefit of producers and producer agents, and may use the security under s.

1 127.71(2) to pay default claims allowed against the milk contractor who filed the
2 security.

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

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

8 2. The contractor fails to provide required information that is relevant to a
9 determination of security needs.

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

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

17 (d) If a milk contractor fails to comply with the department's security demand
18 under this subsection, the contractor shall give written notice of that fact to all
19 producers and producer agents from whom the contractor procures producer milk in
20 this state. If the contractor fails to give accurate notice under this paragraph within
21 5 days after the security filing deadline under par. (b) has passed, the department
22 shall promptly notify producers and producer agents by publishing a class 3 public
23 notice under ch. 985. The department may also give individual notice to those
24 producers or producer agents of whom the department is aware.

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

3 1. Issue a summary order under s. 127.85(2).

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

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

7 1. The milk contractor reports not more than \$1.5 million in milk payroll
8 obligations under s. 127.41(6)(a) for at least 2 consecutive years. The department
9 may release security under this subdivision if the contractor first pays the quarterly
10 fund assessment that would have been required of the contractor, had the contractor
11 been a contributing milk contractor on the last quarterly installment date under s.
12 127.46(6).

13 2. The milk contractor's annual financial statement under s. 127.44 shows
14 positive equity for at least 2 consecutive years. The department may release security
15 under this subdivision if the contractor first pays the quarterly fund assessment that
16 would have been required of the contractor, had the contractor been a contributing
17 milk contractor on the last quarterly installment date under s. 127.46(6).

18 (b) On August 1, 2002, the department may release security filed or maintained
19 under sub. (2), except for security that is still required under sub. (1).

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

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

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

1 **127.48 Milk contractors; payments to producers.** (1) FIRST MONTHLY
2 PAYMENT. By the 4th day of each month, a milk contractor shall pay for producer milk
3 received during the first 15 days of the preceding month. The payment shall be based
4 on an estimated price that is at least 80% of the class III price published by the
5 regional federal milk market administrator for the month preceding the month in
6 which the milk is received, or 80% of the contract price, whichever is greater.

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

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

13 (a) Milk contractor identification.

14 (b) Producer or producer agent identification.

15 (c) Pay period.

16 (d) Volume of milk received.

17 (e) Grade of milk.

18 (f) Milk test results.

19 (g) Milk price and adjustments.

20 (h) Gross amount due.

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

22 (j) Net amount due.

23 (k) Deductions and assignments.

24 **127.49 Milk contractors; records and reports.** (1) REQUIRED RECORDS. A
25 milk contractor shall keep accurate records and accounts of milk receipts, payments

1 for milk received, and amounts owed to milk producers. The department may, by
2 rule, specify records that a milk contractor must keep.

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

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

10 **127.50 Milk contractors; prohibited practices.** No milk contractor may
11 do any of the following:

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

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

15 (3) Engage in any activity that is inconsistent with representations made in
16 the contractor's annual license application.

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

19 (5) Fail to file the full amount of security required under s. 127.47(6) by the date
20 that the department specifies.

21 SUBCHAPTER VI

22 VEGETABLE CONTRACTORS

23 **127.55 Definitions.** In this subchapter:

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

25 (a) Currency.

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

3 (c) A wire transfer.

4 (d) Simultaneous barter.

5 (2) "Cash on delivery" means cash payment of the full agreed price for
6 processing vegetables at the time of delivery or, if the vegetables are graded, within
7 72 hours after the time of delivery.

8 (3) "Contract obligation" means the net amount, whether paid or unpaid, that
9 a vegetable contractor owes to a vegetable producer or producer agent under a
10 vegetable procurement contract. "Contract obligation" includes a net amount owed
11 for unharvested acreage.

12 (4) "Contributing vegetable contractor" means a vegetable contractor, licensed
13 under s. 127.56(1), who contributes to the fund according to ss. 127.59 and 127.60.
14 "Contributing vegetable contractor" includes an initial license holder who is required
15 to contribute to the fund, but whose first quarterly installment under s. 127.60(6) is
16 not yet due. "Contributing vegetable contractor" does not include a vegetable
17 contractor who is disqualified under s. 127.59(2). A vegetable contractor who pays
18 one or more quarterly installments under s. 127.60(6) continues to be a "contributing
19 vegetable contractor" until and unless the vegetable contractor is disqualified under
20 s. 127.59(2).

21 (5) "Cooperative pooling" means a cooperative marketing method under which
22 a producer-owned cooperative or organization pays its producer owners a prorated
23 share of sales proceeds for the marketing year after a final accounting and the
24 deduction of marketing expenses.

1 **(6)** “Current ratio” means the ratio of current assets to current liabilities,
2 calculated according to s. 127.58(6)(c)1.

3 **(7)** “Debt to equity ratio” means the ratio of total liabilities to equity, calculated
4 according to s. 127.58(6)(c)2.

5 **(8)** “Deferred payment contract” means a vegetable procurement contract in
6 which the producer or the producer’s agent agrees to accept payment after January
7 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. 127.59(2).

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

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

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

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

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

NOTE: A producer agent must be licensed as a vegetable contractor. A vegetable producer may file a claim under s. 127.70 against a defaulting producer agent. A producer agent may file a claim under s. 127.70 against a defaulting vegetable contractor to whom the producer agent markets a producer's vegetables.

1 **(13)** "Time of delivery" under a vegetable procurement contract means the time
2 at which any of the following occurs:

3 (a) The vegetable contractor harvests the vegetables.

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

6 (c) The vegetable contractor notifies the producer of the contractor's refusal to
7 harvest or accept delivery of vegetables.

8 **(14)** "Vegetable contractor" means a person who does any of the following:

9 (a) Contracts with a vegetable producer or the producer's agent to procure
10 processing vegetables that the producer grows in this state.

11 (b) Contracts with a vegetable producer to market, as the producer's agent,
12 processing vegetables that the producer grows in this state.

13 **(15)** "Vegetable procurement contract" means an oral or written agreement
14 under which a vegetable contractor does any of the following:

15 (a) Contracts with a vegetable producer or the producer's agent to procure
16 processing vegetables that the producer grows in this state.

17 (b) Contracts with a vegetable producer to market, as the producer's agent,
18 processing vegetables that the producer grows in this state.

19 **(16)** "Vegetable producer" or "producer" means a person who grows processing
20 vegetables in this state.

NOTE: A producer agent must be licensed as a vegetable contractor. A vegetable producer may file a claim under s. 127.70 against a defaulting producer agent. A producer agent may file a claim under s. 127.70 against a defaulting vegetable contractor to whom the producer agent markets a producer's vegetables.

1 (17) “Unharvested acreage” means vegetable acreage, subject to a vegetable
2 procurement contract, that a vegetable contractor leaves unharvested for any
3 reason. Unharvested acreage includes all the following:

4 (a) Acreage that is suitable for processing, but not harvested.

5 (b) Acreage that is abandoned as being unsuitable for processing.

6 **127.56 Vegetable contractors; licensing.** (1) LICENSE REQUIRED. Except as
7 provided in sub. (2), no person may operate as a vegetable contractor without a
8 current annual license from the department. A license expires on January 31 each
9 year, and may not be transferred or assigned. A licensed vegetable contractor shall
10 comply with this subchapter.

11 (2) EXEMPT CONTRACTORS. The following vegetable contractors are exempt from
12 licensing under sub. (1):

13 (a) A vegetable contractor who procures vegetables primarily for unprocessed
14 fresh market use and is licensed under the federal perishable agricultural
15 commodities act, 7 USC 499.

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

18 (3) LICENSE APPLICATION. A vegetable contractor shall apply for a license under
19 sub. (1) in writing, on a form provided by the department. The application shall
20 include all the following:

21 (a) The applicant’s correct legal name, and any trade name under which the
22 applicant proposes to operate as a vegetable contractor.

23 (b) Whether the applicant is an individual, corporation, partnership,
24 cooperative, limited liability company, trust or other legal entity. If the applicant is
25 a corporation or cooperative, the application shall identify each officer of the

1 corporation or cooperative. If the applicant is a partnership, the application shall
2 identify each partner.

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

5 (d) The mailing address of each business location from which the applicant
6 operates as a vegetable contractor in this state, and the name of a responsible
7 individual who may be contacted at each staffed location.

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

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

10 (g) A financial statement if required under s. 127.58(1) and not yet filed.

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

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

15 (a) A license processing fee of \$25. The department may not refund this fee if
16 the department denies the license application.

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

19 (c) A license surcharge of \$500 if the department determines that, within 365
20 days prior to submitting the license application, the applicant operated as a
21 vegetable contractor without a license in violation of sub. (1). The applicant shall
22 also pay any license fees, license surcharges and fund assessments that are still due
23 for the license year in which the applicant violated sub. (1). Payment under this
24 paragraph does not relieve the applicant of any other civil or criminal liability that

1 results from the violation of sub. (1), but does not constitute evidence of any law
2 violation.

3 (d) A license surcharge of \$100 if, during the preceding 12 months, the
4 applicant failed to file an annual financial statement required under s. 127.58(1)(b)
5 by the applicable deadline.

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

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

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

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

22 (7) FEE STATEMENT. The department shall provide, with each license application
23 form, a written statement of all license fees and surcharges required under sub. (4).
24 The department shall include, in the statement, any fee credits for which the
25 applicant may qualify under sub. (6).

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

6 **(9) Sworn and notarized statement.** A license application under sub. (3) shall
7 include a sworn and notarized statement, signed by the applicant or an officer of the
8 applicant, that states all the following:

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

13 (b) The largest amount of unpaid contract obligations that the contractor had
14 at any time during the contractor's last completed fiscal year. A vegetable contractor
15 who files security under s. 127.61 shall immediately notify the department if, at any
16 time, the vegetable contractor's unpaid contract obligations exceed the amount last
17 reported under this paragraph.

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

20 (d) The amount of unpaid contract obligations under par. (c) that are due for
21 payment prior to 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. A vegetable contractor shall immediately notify
24 the department if the amount of unpaid obligations under deferred payment
25 contracts exceeds the amount last reported under this paragraph.

1 (f) Whether the applicant and the applicant's affiliates and subsidiaries will
2 collectively grow more than 10 percent of the total acreage of any vegetable species
3 grown or procured by the applicant during the license year for which the applicant
4 is applying.

NOTE: See s. 100.235, Stats.

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

7 (h) Whether the applicant is a producer-owned cooperative or organization
8 that procures vegetables solely from its producer owners on a cooperative pooling
9 basis.

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 ending January 31.

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

21 **127.57 Vegetable contractors; insurance. (1) FIRE AND EXTENDED COVERAGE**
22 **INSURANCE.** (a) Except as provided in par. (b), a vegetable contractor who is required
23 to be licensed under s. 127.56(1) shall maintain fire and extended coverage insurance
24 issued by an insurance company authorized to do business in this state. The

1 insurance policy shall cover all vegetables in the custody of the vegetable contractor,
2 whether owned by the vegetable contractor or held for others, at the full local market
3 value of the vegetables.

4 (b) Paragraph (a) does not apply to a vegetable contractor if any of the following
5 apply:

6 1. The contractor makes cash payment on delivery under all vegetable
7 procurement contracts.

8 2. The contractor is a producer-owned cooperative that procures processing
9 vegetables only from its producer owners.

10 (2) **INSURANCE CANCELLATION; REPLACEMENT.** Whenever an insurance policy
11 under sub. (1) is canceled, the vegetable contractor shall replace the policy so there
12 is no lapse in coverage. The replacement policy shall comply with sub. (1).

13 (3) **INSURANCE COVERAGE; MISREPRESENTATION.** No vegetable contractor may
14 misrepresent any of the following to the department, or to any vegetable producer
15 or producer agent:

16 (a) That the contractor is insured.

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

18 **127.58 Vegetable contractors; financial statements.** (1) **REQUIRED**
19 **ANNUAL FINANCIAL STATEMENT.** (a) A vegetable contractor shall file an annual
20 financial statement with the department, before the department licenses the
21 contractor under s. 127.56(1), if the contractor reports more than \$500,000 in
22 contract obligations under s. 127.56(9)(a).

23 (b) A vegetable contractor licensed under s. 127.56(1) shall file an annual
24 financial statement with the department during each license year if the contractor's
25 license application for that year reports more than \$500,000 in contract obligations

1 under s. 127.56(9)(a). The contractor shall file the annual financial statement by the
2 15th day of the 4th month following the close of the contractor's fiscal year. The
3 department may extend the filing deadline for up to 30 days if the contractor, or the
4 accountant reviewing or auditing the financial statement, files a written extension
5 request at least 10 days before the filing deadline.

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

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

10 2. The contractor is a producer-owned cooperative that procures processing
11 vegetables only from its producer owners.

12 (2) VOLUNTARY FINANCIAL STATEMENT. A contributing vegetable contractor may
13 file an annual financial statement with the department for any of the following
14 reasons, regardless of whether the contractor is required to file a financial statement
15 under sub. (1):

16 (a) To qualify for a lower fund assessment under s. 127.60.

17 (b) To avoid filing security under s. 127.61(1)(b).

18 (3) REVIEWED OR AUDITED FINANCIAL STATEMENT. An annual financial statement
19 under sub. (1) or (2) shall be a reviewed or audited financial statement. It shall
20 be an audited financial statement if the contractor's latest annual license application
21 reported more than \$4 million in annual contract obligations under s. 127.56(9)(a).

22 (4) ACCOUNTING PERIOD. Except as provided in sub. (6)(b), an annual financial
23 statement under sub. (1) or (2) shall cover the vegetable contractor's last completed
24 fiscal year.

1 (5) GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. A financial statement under
2 this section shall be prepared according to generally accepted accounting principles.
3 A sole proprietor's financial statement, if not audited, shall be prepared on a
4 historical cost basis.

5 (6) FINANCIAL STATEMENT CONTENTS. (a) Except as provided in par. (b), a
6 financial statement under this section shall include a balance sheet, income
7 statement, equity statement, statement of cash flows, notes to those statements, and
8 any other information required by the department. A sole proprietor's financial
9 statement shall include the sole proprietor's business and personal financial
10 statement.

11 (b) If a vegetable contractor has been in business for less than one year, the
12 contractor's annual financial statement under sub. (1) or (2) may consist of a balance
13 sheet and notes.

14 (c) A financial statement under this section shall, for purposes of this chapter,
15 calculate and report all the following:

16 1. The vegetable contractor's current ratio, excluding any assets identified in
17 sub. (7).

18 2. The vegetable contractor's debt to equity ratio, excluding any assets
19 identified in sub. (7).

NOTE: A vegetable contractor may append the ratios under par. (c) to the contractor's normal financial statement if the contractor's normal financial statement does not include them or calculates them in a different way. The department will check the vegetable contractor's ratio calculations for compliance with par. (c).

20 (7) ASSETS EXCLUDED. A financial statement may not include any of the
21 following assets in the calculations under sub. (6)(c), unless the department
22 specifically approves their inclusion:

1 (a) Non-trade notes and accounts receivable from officers, directors,
2 employees, partners, or stockholders, or from members of their families, unless the
3 notes and accounts receivable are secured by a first priority security interest in real
4 or personal property.

5 (b) Notes or accounts receivable from parent organizations, subsidiaries or
6 affiliates.

7 (c) Notes or accounts that have been receivable for more than one year, unless
8 the vegetable contractor has established an equal offsetting reserve for uncollectible
9 notes and accounts receivable.

10 **(8) INTERIM FINANCIAL STATEMENT.** The department may, at any time, require a
11 vegetable contractor licensed under s. 127.56(1) to file an interim financial
12 statement with the department. The department may require an interim financial
13 statement in addition to any financial statement required under sub. (1). The
14 vegetable contractor shall include, with the interim financial statement, the
15 contractor's sworn and notarized statement that the financial statement is correct.
16 An interim financial statement need not be a reviewed or audited financial
17 statement.

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

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

23 **127.59 Contributing vegetable contractors. (1) CONTRIBUTION REQUIRED.**
24 A vegetable contractor licensed under s. 127.56(1) shall pay fund assessments under
25 s. 127.60 unless one of the following applies:

1 (a) The contractor is disqualified under sub. (2).

2 (b) The contractor pays cash on delivery under all vegetable procurement
3 contracts. A vegetable contractor who pays cash on delivery may volunteer to pay
4 fund assessments under s. 127.60.

5 (c) The contractor is a producer-owned cooperative that procures processing
6 vegetables only from its producer owners. A vegetable contractor under this
7 paragraph may volunteer to pay fund assessments under s. 127.60.

8 (2) DISQUALIFIED CONTRACTOR. (a) A vegetable contractor who is required to file
9 security under s. 127.61(1)(a) is disqualified from the fund until the department
10 releases that security under s. 127.61(7)(a). A vegetable contractor who files security
11 required under s. 127.61(1)(a) is not required to pay cash on delivery under vegetable
12 procurement contracts.

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

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

- 19 1. Failure to pay fund assessments under s. 127.60 when due.
- 20 2. Failure to file a financial statement under s. 127.58 when due.
- 21 3. Failure to reimburse the department, within 60 days after the department
22 issues a reimbursement demand under s. 127.73(1), for the full amount that the
23 department pays to claimants under s. 127.72(1) because of that contractor's default.
- 24 4. Failure to reimburse a bond surety, within 60 days after the bond surety
25 issues a reimbursement demand under s. 127.73(2), for the full amount that the

1 surety pays to the department under s. 127.72(2) or (3) for the benefit of claimants
2 affected by that contractor's default.

3 (3) EFFECT OF DISQUALIFICATION. (a) The department may not pay, under s.
4 127.71(1), any default claim against a vegetable contractor who was a disqualified
5 vegetable contractor when the default occurred.

6 (b) The department may pay default claims under s. 127.71(1) against a
7 disqualified vegetable contractor who was a contributing vegetable contractor when
8 the default occurred. The department and the bond sureties retain their rights under
9 s. 127.73 to demand and collect reimbursement from the disqualified vegetable
10 contractor.

11 (c) The department may not return, to a disqualified vegetable contractor, any
12 fund assessments that the contractor paid as a contributing vegetable contractor.

13 (d) A disqualified vegetable contractor remains liable for any unpaid fund
14 installment under s. 127.60 that became due while the vegetable contractor was a
15 contributing vegetable contractor. A disqualified contractor is not liable for any fund
16 installment that becomes due after the contractor is disqualified under sub. (2).

17 **127.60 Contributing vegetable contractors; fund assessments. (1)**

18 GENERAL. A contributing vegetable contractor shall pay an annual fund assessment
19 for each license year. The assessment equals \$20 or the sum of the following,
20 whichever is greater, unless the department by rule specifies a different assessment:

21 (a) The contractor's current ratio assessment. The current ratio assessment
22 for each license year equals the contractor's current ratio assessment rate under sub.
23 (2) multiplied by the amount reported under s. 127.56(9)(a) in the contractor's license
24 application.

1 (b) The contractor's debt to equity ratio assessment. The debt to equity ratio
2 assessment for each license year equals the contractor's debt to equity ratio
3 assessment rate under sub. (4) multiplied by the amount reported under s.
4 127.56(9)(a) in the contractor's license application.

5 (c) The amount reported under s. 127.56(9)(e) in the contractor's license
6 application, multiplied by a deferred vegetable contract assessment rate of 0.25%.

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

9 (a) If the contractor's annual financial statement under s. 127.58 shows a
10 current ratio of at least 1.25 to 1.0, the contractor's current ratio assessment rate
11 equals the greater of zero or the current ratio assessment factor in sub. (3)(a)
12 multiplied by the following amount:

13 ***Insert Graphic Here***

14 (b) If the contractor's annual financial statement under s. 127.58 shows a
15 current ratio less than 1.25 to 1.0, but greater than 1.1 to 1.0, the contractor's current
16 ratio assessment rate equals the current ratio assessment factor in sub. (3)(b)
17 multiplied by the following amount:

18 ***Insert Graphic Here***

19 (c) If the contractor's annual financial statement under s. 127.58 shows a
20 current ratio less than or equal to 1.1 to 1.0, the contractor's current ratio assessment
21 rate equals the current ratio assessment factor in sub. (3)(b) multiplied by 7.512617.

22 (d) If the contractor has not filed an annual financial statement under s. 127.58,
23 the contractor's current ratio assessment rate equals the current ratio assessment
24 factor in sub. (3)(b) multiplied by 3.84961.

1 **(3) CURRENT RATIO ASSESSMENT FACTOR.** (a) A vegetable contractor's current
2 ratio assessment factor under sub. (2)(a) is 0.048%, except that:

3 1. For the contractor's fourth and fifth consecutive full license year as a
4 contributing vegetable contractor, the contractor's current ratio assessment factor
5 is 0.029%.

6 2. For the contractor's sixth or higher consecutive full license year as a
7 contributing vegetable contractor, the contractor's current ratio assessment factor
8 is 0.000%.

9 (b) A vegetable contractor's current ratio assessment factor under sub. (2)(b)
10 to (d) is 0.072%, except that:

11 1. For the contractor's fourth and fifth consecutive full license year as a
12 contributing vegetable contractor, the contractor's current ratio assessment factor
13 is 0.058%.

14 2. For the contractor's sixth or higher consecutive full license year as a
15 contributing vegetable contractor, the contractor's current ratio assessment factor
16 is 0.035%.

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

20 (a) If the contractor's annual financial statement under s. 127.58 shows a debt
21 to equity ratio of not more than 4.0 to 1.0, the contractor's debt to equity ratio
22 assessment rate equals the greater of zero or the debt to equity ratio assessment
23 factor in sub. (5)(a) multiplied by the following amount.

24 ***Insert Graphic Here***

1 (b) If the contractor's annual financial statement under s. 127.58 shows a debt
2 to equity ratio greater than 4.0 to 1.0 but less than 6.0 to 1.0, the contractor's debt
3 to equity ratio assessment rate equals the debt to equity ratio assessment factor in
4 sub. (5)(b) multiplied by the following amount:

5 ***Insert Graphic Here***

6 (c) If the contractor's annual financial statement under s. 127.58 shows a debt
7 to equity ratio of at least 6.0 to 1.0, the contractor's debt to equity ratio assessment
8 equals the debt to equity ratio assessment factor in sub. (5)(b) multiplied by
9 35.859145.

10 (d) If the contractor has not filed an annual financial statement under s. 127.58,
11 the contractor's debt to equity ratio assessment equals the debt to equity ratio
12 assessment factor in sub. (5)(b) multiplied by 1.34793.

13 (5) DEBT TO EQUITY RATIO ASSESSMENT FACTOR. (a) A vegetable contractor's debt
14 to equity ratio assessment factor under sub. (4)(a) is 0.0135%, except that:

15 1. For the contractor's fourth and fifth consecutive full license year as a
16 contributing vegetable contractor, the contractor's debt to equity ratio assessment
17 factor is 0.008%.

18 2. For the contractor's sixth or higher consecutive full license year as a
19 contributing vegetable contractor, the contractor's debt to equity ratio assessment
20 factor is 0.0%.

21 (b) A vegetable contractor's debt to equity ratio assessment factor under sub.
22 (4)(b) to (d) is 0.0203%, except that:

23 1. For the contractor's fourth and fifth consecutive full license year as a
24 contributing vegetable contractor, the contractor's debt to equity ratio assessment
25 factor is 0.016%.

1 2. For the contractor's sixth or higher consecutive full license year as a
2 contributing vegetable contractor, the contractor's debt to equity ratio assessment
3 factor is 0.010%.

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

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

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

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

10 4. The fourth 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 contractor shall pay, with the first quarterly installment that
16 becomes due after the department issues the license, all of the quarterly installments
17 that were due prior to the licensing date.

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 contractor of all the following:

25 (a) The contractor's annual fund assessment under this section.

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

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

5 **127.61 Vegetable contractors; security. (1) SECURITY REQUIRED.** (a) A
6 vegetable contractor shall file security with the department if all the following apply
7 when the department first licenses the contractor under s. 127.56(1):

8 1. The contractor reports more than \$1 million in annual contract obligations
9 under s. 127.56(9)(a).

10 2. The contractor's financial statement under s. 127.58(1) shows negative
11 equity.

NOTE: A vegetable contractor who is required to file security under par. (a) is disqualified from the fund, as provided in s. 127.59(2)(a), until the department releases that security under sub. (7)(a). If a contractor's first financial statement under s. 127.58(1) shows positive equity, that contractor is not required to file security under par. (a) even if subsequent annual financial statements show negative equity. The contractor is instead required to contribute to the fund.

12 (b) A vegetable contractor shall file security with the department to cover the
13 full amount of the unpaid deferred contract obligations last reported under s.
14 127.56(9)(e) unless the contractor's annual financial statement under s. 127.58
15 shows a current ratio of at least 1.25 to 1.0 and a debt to equity ratio of not more than
16 4.0 to 1.0.

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

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

21 2. The contractor is a producer-owned cooperative that procures processing
22 vegetables only from its producer members.

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

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

7 (a) 75% of the amount last reported under s. 127.56(9)(b).

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

9 (4) FORM OF SECURITY. The department shall approve security filed under this
10 section. The department may approve only the following types of security:

11 (a) Currency.

12 (b) Commercial surety bonds that are all the following:

13 1. Made payable to the department for the benefit of vegetable producers and
14 producer agents.

15 2. Issued by an insurer authorized to operate a surety business in this state.

16 3. Issued as a continuous term bond that may be cancelled only with the
17 department's written agreement, or upon 90 days prior written notice served on the
18 department. A cancellation notice shall be served on the department in person or by
19 certified mail.

20 4. Issued in a form, and subject to any terms and conditions, that the
21 department considers appropriate.

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

23 1. The certificate is issued or endorsed to the department, for the benefit of
24 vegetable producers and producer agents.

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

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

5 4. The certificate is subject to automatic renewal without any action by the
6 department.

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

9 (d) Irrevocable bank letters of credit that are all the following:

10 1. Payable to the department, for the benefit of vegetable producers and
11 producer agents.

12 2. Issued on bank letterhead.

13 3. Issued for an initial period of at least one year.

14 4. Automatically renewed unless, at least 90 days before the scheduled renewal
15 date, the issuing bank gives the department written notice that the letter of credit
16 will not be renewed. Written notice shall be served on the department in person or
17 by certified mail.

18 5. Issued in a form, and subject to any terms and conditions, that the
19 department considers appropriate.

20 (e) Security filed with the department under s. 100.03 before February 1, 2002,
21 except that on January 1, 2003 the department shall withdraw its approval of any
22 security that is not in a form provided under pars. (a) to (d).

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

1 use the security under s. 127.71(2) to pay default claims allowed against the
2 vegetable contractor who filed the security.

3 (6) ADDITIONAL SECURITY. (a) The department may, at any time during a license
4 year, demand additional security from a vegetable contractor if any of the following
5 apply:

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

9 2. The contractor fails to provide required information that is relevant to a
10 determination of security needs.

11 (b) The department shall issue a demand under par. (a) in writing. The demand
12 shall indicate why additional security is required, the amount of security required,
13 and the deadline date for filing security. The filing deadline shall be not more than
14 30 days after the date on which the department issues its demand for security.

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

17 (d) If a vegetable contractor fails to comply with the department's security
18 demand under this subsection, the contractor shall give written notice of that fact to
19 all producers and producer agents from whom the contractor procures processing
20 vegetables. If the contractor fails to give accurate notice under this paragraph within
21 5 days after the security filing deadline under par. (b) has passed, the department
22 shall promptly notify producers and producer agents by publishing a class 3 public
23 notice under ch. 985. The department may also give individual notice to producers
24 or producer agents of whom the department is aware.

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

3 1. Issue a summary order under s. 127.85(2) that prohibits the contractor from
4 procuring processing vegetables from producers or producer agents, or requires the
5 contractor to pay cash on delivery under all vegetable procurement contracts.

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

7 (7) RELEASING SECURITY. (a) The department may release security filed under
8 sub. (1)(a), except for security that is still required under sub. (1)(b), if any of the
9 following apply:

10 1. The contractor reports less than \$1 million in annual contract obligations
11 under s. 127.56(9)(a) for at least 2 consecutive years. The department may release
12 security under this subdivision if the contractor first pays the quarterly fund
13 assessment that would have been required of the contractor, had the contractor been
14 a contributing milk contractor on the last quarterly installment date under s.
15 127.60(6).

16 2. The contractor's annual financial statement under s. 127.58 shows positive
17 equity for at least 2 consecutive years. The department may release security under
18 this subdivision if the contractor first pays the quarterly fund assessment that would
19 have been required of the contractor, had the contractor been a contributing milk
20 contractor on the last quarterly installment date under s. 127.60(6).

21 (b) On May 1, 2002, the department may release security filed or maintained
22 under sub. (2), except for security that is still required under sub. (1) .

23 (c) The department may release security filed under sub. (1)(b), except for
24 security that is still required under sub. (1)(a), if any of the following apply:

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

3 2. The vegetable contractor files 2 consecutive annual financial statements
4 under s. 127.58 that show a current ratio of at least 1.25 to 1.0 and a debt to equity
5 ratio of not more than 4.0 to 1.0.

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

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

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

12 **127.62 Vegetable contractors; records. (1) RECORDS REQUIRED.** A vegetable
13 contractor shall keep all the following:

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

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

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

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

20 2. Records that the contractor was required to keep, under s. 100.03 and
21 department rules, prior to February 1, 2002.

22 **(3) RECORDS INSPECTION.** A vegetable contractor shall make available to the
23 department, for inspection and copying upon request, records that the contractor is
24 required to make or retain under this section.

1 **127.63 Vegetable contractors; business practices. (1) VEGETABLE GRADING**
2 AND TARE. (a) A vegetable contractor shall grade vegetables according to the following
3 standards if the vegetable grade may affect the amount received by the vegetable
4 producer:

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

6 2. Uniform grade standards that the department establishes by rule, unless the
7 vegetable procurement contract clearly specifies alternative grade standards. The
8 department's grade standards shall conform to grade standards adopted by the
9 United States department of agriculture under 7 USC 1621 et seq.

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

12 **(2) PROHIBITED DEDUCTIONS.** No vegetable purchaser may deduct, from the
13 amount payable under a vegetable procurement contract, an amount designated for
14 the payment of any vegetable contractor license fee, surcharge or fund assessment
15 under this subchapter.

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

20 (a) The contractor shall pay, by the 15th day of the month immediately
21 following the month in which the contractor harvests or accepts delivery of
22 processing vegetables, the full amount owed under the contract for those vegetables.

23 (b) The contractor shall pay, by the 15th day of the month immediately
24 following the month in which the contractor rejects or fails to harvest processing

1 vegetables tendered under the vegetable procurement contract, the full amount
2 owed under the contract for those vegetables.

3 (4) ANNUAL PAYMENT DEADLINE. (a) Except as provided in par. (b) or (c), a
4 vegetable contractor shall pay all outstanding producer obligations by January 31
5 of each license year.

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

10 (c) A deferred vegetable procurement contract that complies with sub. (5) may
11 specify a payment date after January 31 for processing vegetables delivered on or
12 before December 31.

13 (5) DEFERRED PAYMENT CONTRACT. Before a vegetable contractor offers a
14 deferred payment contract to any vegetable producer, the contractor shall do all the
15 following:

16 (a) Put the contract to a vote of producers. To put the contract to a vote of
17 producers, the contractor shall give written notice to all producers in this state from
18 whom the contractor procured the same type of processing vegetables during the
19 preceding license year. The notice shall include a copy of the proposed contract and
20 shall announce a meeting at which the producers will be asked to vote on the
21 proposed contract. The notice shall also include a mail ballot by which a producer
22 may vote without attending the meeting. Voting shall be by secret ballot.

23 (b) Obtain the approval of a majority of the voting producers under par. (a).

24 (c) File all the following with the department:

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

3 2. Any additional security required under s. 127.61(3).

4 **(6) CASH ON DELIVERY.** A vegetable contractor shall pay cash on delivery under
5 all vegetable procurement contracts if any of the following apply:

6 (a) The contractor stated, in the contractor's last annual statement under s.
7 127.56(9)(g), that the contractor would pay cash on delivery.

8 (b) The department orders the contractor, under s. 127.59(2)(c) or 127.61(6)(e),
9 to pay cash on delivery.

10 **127.64 Vegetable contractors; prohibited practices.** No vegetable
11 contractor may do any of the following:

12 **(1)** Misrepresent the weight, grade or quality of processing vegetables under
13 a vegetable procurement contract.

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

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

17 **(4)** Engage in any activity that is inconsistent with representations made in
18 the contractor's annual license application.

19 **(5)** Make any false or misleading representation, to a producer or producer
20 agent, related to matters regulated under this chapter.

21 **(6)** Fail to file the full amount of security required under s. 127.61(6) by the date
22 that the department specifies.

23

SUBCHAPTER VII

24

RECOVERY PROCEEDINGS

1 **127.70 Recovery proceedings. (1) DEFAULT CLAIMS.** Any of the following
2 persons may file a default claim with the department against a contractor who is
3 licensed, or required to be licensed, under this chapter:

4 (a) A grain producer or producer agent who claims that a grain dealer has failed
5 to pay, when due, for producer grain that the grain dealer procured in this state.

6 (b) A depositor who claims that a grain warehouse keeper has failed to return
7 stored grain or its equivalent upon demand. A depositor may not file a default claim
8 under this paragraph unless the depositor is either a producer or a producer agent.

 NOTE: Subchapter IV regulates grain warehouse transactions with depositors,
including but not limited to producers and producer agents. However, only those
depositors who are producers or producer agents may file default claims with the
department under this subchapter.

9 (c) A milk producer or producer agent who claims that a milk contractor has
10 failed to pay, when due, for producer milk procured in this state.

11 (d) A vegetable producer or producer agent who claims that a vegetable
12 contractor has failed to make payment when due under a vegetable procurement
13 contract.

14 **(2) FILING DEFAULT CLAIMS.** A claimant shall file a default claim under sub. (1)
15 within 30 days after the claimant first learns of the default. The claimant shall
16 specify the nature and amount of the default. The department may investigate the
17 alleged default, and may require the claimant to provide supporting documentation.

18 **(3) INITIATING A RECOVERY PROCEEDING.** (a) The department may initiate a
19 recovery proceeding in response to one or more default claims under sub. (1). The
20 department shall issue a written notice announcing the recovery proceeding. The
21 department shall mail or deliver a copy of the notice to the contractor and each
22 claimant in the proceeding.

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

- 5 1. By posting it at the contractor's place of business.
- 6 2. By publishing it as a class 3 notice under ch. 985.
- 7 3. By mailing or delivering it to prospective claimants known to the
8 department.
- 9 4. By other means that the department considers appropriate.

10 (c) In its invitation under par. (b), the department may specify a deadline date
11 and a procedure for filing default claims. An invitation may indicate the amount of
12 a prospective claimant's apparent claim, and may ask the prospective claimant to
13 verify or correct that claim.

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

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

19 (a) The claim is false or not adequately documented.

20 (b) The claimant filed the claim more than 30 days after the claimant first
21 learned of the contractor's default, unless the department specifies a later claim
22 filing deadline under sub. (3)(c).

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

1 (d) The claimant failed to comply with claim filing deadlines or procedures
2 specified under sub. (3)(c).

3 (e) The person filing the claim is not an authorized claimant under sub. (1).

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

9 (b) If the default involves a grain warehouse keeper's failure to return stored
10 grain to a depositor upon demand, the department shall calculate the value of the
11 grain based on local market prices on the day that the depositor made the demand.

12 (c) The department shall subtract, from the allowed claim amount, any
13 offsetting payments and claimant obligations.

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

18 (a) Specify proposed findings of fact, proposed conclusions of law and a
19 proposed order.

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

22 (c) Specify, for each allowed claim, the amount that the department is
23 authorized to pay under s. 127.71.

24 (d) Specify the method, under s. 127.71, by which the department will pay the
25 authorized amounts under par. (c).

1 (e) Explain a claimant's right under s. 127.87(4) to seek court recovery of that
2 portion of an allowed claim that is not paid by the department.

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

5 (7) FINAL DECISION IF NO OBJECTIONS. If no contractor or claimant files a timely
6 written objection to the proposed decision under sub. (6), the department may issue
7 the proposed decision as the department's final decision in the recovery proceeding,
8 without further notice or hearing. The department shall mail or deliver a copy of the
9 final decision to the contractor and each claimant.

10 (8) Objections to proposed decision; notice, hearing and final decision. (a) If
11 a contractor or claimant files a timely written objection to the proposed decision
12 under sub. (6), the department shall hold a public hearing on the objection. The
13 department shall follow applicable contested case procedures under ch. 227, Stats.
14 The department may hear all objections in a single proceeding. At the conclusion of
15 the contested case proceeding, the department shall issue a final decision affirming
16 or modifying the proposed decision under sub. (6).

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

20 **127.71 Paying default claims. (1) CLAIMS AGAINST CONTRIBUTING**
21 **CONTRACTOR.** Except as provided in sub. (2) or (3), the department shall pay from the
22 appropriate sources under s. 127.72 the following default claim amounts:

23 (a) For each default claim allowed under s. 127.70 against a grain dealer or milk
24 contractor who was a contributing contractor when the default occurred:

25 1. Ninety percent of the first \$20,000 allowed.

1 2. Eighty-five percent of the next \$20,000 allowed.

2 3. Eighty percent of the next \$20,000 allowed.

3 4. Seventy-five percent of any amount allowed in excess of \$60,000.

4 (b) For each default claim allowed under s. 127.70 against a grain warehouse
5 keeper who was a contributing grain warehouse keeper when the default occurred,
6 100% of the first \$100,000 allowed.

7 (c) For each default claim allowed under s. 127.70 against a vegetable
8 contractor who was a contributing contractor when the default occurred:

9 1. Ninety percent of the first \$40,000 allowed.

10 2. Eighty-five percent of the next \$40,000 allowed.

11 3. Eighty percent of the next \$40,000 allowed.

12 4. Seventy-five percent of any amount allowed in excess of \$120,000.

NOTE: The date on which a default "occurred" is the date on which payment became overdue, not the date on which the department allowed the default claim amount.

13 (2) CLAIMS AGAINST CONTRACTOR WHO HAS FILED SECURITY. If the department
14 allows default claims under s. 127.70 against a contractor who has security on file
15 with the department, the department shall convert that security and use the
16 proceeds as follows:

17 (a) If the contractor was not a contributing contractor when the default
18 occurred, the department shall use the security proceeds to pay the full amount of
19 the allowed claims. If the security is not adequate to pay the full amount of the
20 allowed claims, the department shall pay claimants pro rata in proportion to their
21 allowed claims.

22 (b) If the contractor was a contributing contractor when the default occurred,
23 the department shall use the security proceeds to reimburse the sources under s.

1 127.72 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. 127.72, 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 pro rata in proportion to
6 their allowed claims. The department may, at its discretion, pay claims directly from
7 security proceeds rather than from a fund source under s. 127.72.

8 (3) PAYMENT RESTRICTIONS. (a) The department may not pay any portion of the
9 following from any source identified under s. 127.72:

10 1. A default claim related to a grain dealer or grain warehouse keeper default
11 that occurs prior to September 1, 2002.

12 2. A default claim related to a milk contractor default that occurs prior to May
13 1, 2002.

14 3. A default claim related to a vegetable contractor default that occurs prior to
15 February 1, 2002.

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

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

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

24 **127.72 Claims against contributing contractor; payment sources. (1)**
25 PRODUCER SECURITY FUND. The department shall use funds appropriated under s.

1 20.115(1)(w) to make payments authorized under s. 127.71(1), up to the deductible
2 amount in sub. (4).

3 (2) INDUSTRY BOND PROCEEDS. The department shall make a demand against
4 the appropriate industry bond under s. 127.06 and shall use the proceeds of that bond
5 to make payments authorized under s. 127.71(1), to the extent that those payments
6 exceed the deductible amount in sub. (4).

7 (3) BLANKET BOND PROCEEDS. The department shall make a demand against the
8 blanket bond under s. 127.07 and shall use the bond proceeds to pay any remaining
9 amounts authorized under s. 127.71(1) after the department makes payments under
10 subs. (1) and (2).

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

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

15 1. \$500,000 if the department allows the claims on or after September 1, 2002
16 but before September 1, 2004.

17 2. \$750,000 if the department allows the claims on or after September 1, 2004
18 but before September 1, 2006.

19 3. \$1 million if the department allows the claims on or after September 1, 2006.

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

22 1. \$1 million if the department allows the claims on or after May 1, 2002 but
23 before May 1, 2004.

24 2. \$1.5 million if the department allows the claims on or after May 1, 2004 but
25 before May 1, 2006.

1 3. \$2 million if the department allows the claims on or after May 1, 2006.

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

4 1. \$500,000 if the department allows the claims on or after February 1, 2002,
5 but before February 1, 2004.

6 2. \$750,000 if the department allows the claims on or after February 1, 2004
7 but before February 1, 2006.

8 3. \$1 million if the department allows the claims on or after February 1, 2006.

9 **127.73 Reimbursing payments.** (1) PAYMENTS FROM FUND. The department
10 may demand and collect, from a contractor, any claim amounts that the department
11 pays under s. 127.72(1) on account of the contractor's default.

12 (2) BOND PAYMENTS. A bond surety may demand and collect, from a contractor,
13 any claim amounts that the bond surety pays to the department under s. 127.72(2)
14 or (3) on account of the contractor's default. The bond surety shall provide the
15 department with a copy of each demand under this subsection.

16 **SUBCHAPTER VIII**

17 **ADMINISTRATION AND ENFORCEMENT**

18 **127.80 Department authority; general.** The department shall administer
19 this chapter. In the administration of this chapter, the department may exercise its
20 authority under ch. 93 and this chapter.

21 **127.81 Rule-making.** The department may promulgate rules to do any of the
22 following:

23 (1) Interpret and implement this chapter.

1 (2) Modify the license fees and surcharges provided in s. 127.11(4), 127.26(3),
2 127.41(3), 127.42 or 127.56(4). The department shall consult with the advisory
3 council established under s. 127.89 before modifying any license fee or surcharge.

4 (3) Modify the fund assessments provided under s. 127.15, 127.30, 127.46 or
5 127.60, as provided under s. 127.88. The department shall consult with the advisory
6 council established under s. 127.89 before modifying any fund assessment.

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

9 **127.82 Investigations.** The department may conduct investigations that it
10 considers necessary for the administration of this chapter, including investigations
11 to determine any of the following:

12 (1) Whether a contractor complies with this chapter.

13 (2) Whether a contractor is able to honor contract obligations when due.

14 (3) Whether a contractor has failed to honor contract obligations when due.

15 (4) Whether a grain warehouse keeper has sufficient grain on hand to meet the
16 warehouse keeper's obligations to depositors.

17 (5) The nature and amount of a contractor's storage obligations or other
18 contract obligations.

19 **127.83 Information.** The department may require a contractor to provide
20 information that is relevant to the administration and enforcement of this chapter.

21 **127.84 Records; confidentiality.** (1) PUBLIC RECORDS EXEMPTION. The
22 following records obtained by the department under this chapter are not open to
23 public inspection under s. 19.35:

24 (a) Contractor financial statements.

25 (b) A contractor's purchase, storage or procurement records.

1 (2) USE OF RECORDS IN COURT OR ADMINISTRATIVE PROCEEDINGS. Notwithstanding
2 sub. (1), the department may introduce any information obtained under this chapter
3 in a court proceeding or administrative contested case, subject to any protective
4 order that the court or administrative tribunal deems appropriate.

5 **127.85 Remedial orders. (1) GENERAL.** The department may, by special
6 order, require a contractor to remedy a violation of this chapter or a rule promulgated
7 under this chapter. The department may order the contractor to take specific
8 remedial actions, including actions to remedy deficiencies or prevent losses to
9 persons protected under this chapter. Except as provided in sub. (2), the department
10 shall give the contractor notice and an opportunity for hearing before it issues the
11 order.

12 (2) SUMMARY ORDER. The department may issue an order under par. (a) without
13 prior notice or hearing if the department finds that the order is necessary to prevent
14 a clear and imminent threat of harm to persons protected under this chapter.
15 Conditions indicating a clear and imminent threat of harm include the following:

16 (a) A contractor fails to pay producers according to this chapter, or according
17 to the contractor's contracts with producers.

18 (b) A contractor fails to file replacement insurance within the time period
19 required under this chapter.

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

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

23 (e) A vegetable contractor fails to pay producers by January 31 for vegetables
24 delivered by December 31 of the previous year, except as provided in a deferred
25 payment contract.

1 (f) A grain warehouse keeper fails to return grain to depositors upon demand,
2 as required under sec. 127.34(4).

3 (g) A grain warehouse keeper fails to maintain adequate grain inventory as
4 required under s. 127.34(3), and at least one of the following applies:

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

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

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

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

18 **127.86 License actions. (1) General.** The department may for cause deny,
19 suspend, revoke or impose conditions on a contractor's license, as provided in s.
20 93.06(7) and (8). Cause may include any of the following:

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

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

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

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

6 (e) The contractor fails to honor contract obligations to persons who are
7 authorized to file default claims under s. 127.70(1).

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

11 **(3) SUMMARY ACTION.** (a) The department may, without prior notice or hearing,
12 summarily suspend, revoke or impose conditions on a license currently held by a
13 contractor if the department finds that summary action is necessary to prevent a
14 clear and imminent threat of harm to persons protected under this chapter.
15 Conditions indicating a clear and imminent threat of harm include those identified
16 under s. 127.85(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.

1 **127.87 Court actions.** (1) Injunction. The department may, in the name of
2 the state, petition any court of competent jurisdiction for an ex parte temporary
3 restraining order, a temporary injunction or a permanent injunction to prevent,
4 restrain or enjoin any person from violating this chapter, any rule promulgated
5 under this chapter, or any order issued under this chapter. The department may seek
6 this remedy in addition to any other penalty or remedy provided under this chapter.

7 (2) Civil Forfeiture. The department may, in the name of the state, commence
8 an action to recover a forfeiture of not less than \$250 nor more than \$5,000 for each
9 violation of this chapter, of a rule promulgated under this chapter, or of an order
10 issued under this chapter.

11 (3) Fine or imprisonment. A person who intentionally violates this chapter, a
12 rule promulgated under this chapter, or an order issued under this chapter shall for
13 each violation be fined not more than \$10,000 or imprisoned not more than one year
14 in the county jail or both.

15 (4) PRIVATE REMEDY. (a) A person whose claim is allowed under s. 127.70 may
16 bring a court action against the contractor to recover the amount of the allowed
17 claim, less any recovery amount that the department pays to the claimant under s.
18 127.71. In any court action under this subsection, the claimant may recover costs
19 including all reasonable attorney fees, notwithstanding s. 814.04(1). This subsection
20 does not limit any other legal cause of action that the claimant may have against the
21 contractor.

22 (b) A claim allowed under s. 127.70 has the same priority in an insolvency
23 proceeding or creditor's action as a claim for labor, except as otherwise provided by
24 federal law.

1 (5) COLLECTIONS. The department may bring an action in court to recover any
2 unpaid amount that a contractor owes the department under this chapter, including
3 any unpaid fund assessment or reimbursement.

4 **127.88 Modifying fund assessments.** The department may by rule, after
5 consulting with the advisory council appointed under s. 127.89, modify the fund
6 assessments provided under s. 127.15, 127.30, 127.46 or 127.60. The department
7 shall modify fund assessments, as necessary, to do all the following:

8 (1) Maintain an overall fund balance of at least \$5 million after January 1,
9 2006, and not more than \$22 million at any time.

10 (2) Maintain a fund balance attributable to grain dealers of at least \$1 million
11 after January 1, 2006, and not more than \$6 million at any time.

12 (3) Maintain a fund balance attributable to grain warehouse keepers of at least
13 \$200,000 after January 1, 2006, and not more than \$1 million at any time.

14 (4) Maintain a fund balance attributable to milk contractors of at least \$3
15 million after January 1, 2006, and not more than \$12 million at any time.

16 (5) Maintain a fund balance attributable to vegetable contractors of at least
17 \$800,000 after January 1, 2006, and not more than \$3 million at any time.

18 **127.89 Advisory council.** (1) DEPARTMENT TO APPOINT. The department shall
19 appoint an advisory council to advise the department on the administration and
20 enforcement of this chapter. The advisory council shall meet as often as the
21 department deems necessary, but at least once annually. The department shall
22 inform the advisory council of fund balances and payments, and shall consult with
23 the advisory council before modifying any license fee, license surcharge or fund
24 assessment under this chapter.

1 **(2) MEMBERSHIP.** The advisory council under sub. (1) shall include all the
2 following:

3 (a) One person representing the farmers' educational and cooperative union of
4 America, Wisconsin division.

5 (b) One person representing the midwest food processors association, inc.

6 (c) One person representing the national farmers' organization, inc.

7 (d) One person representing the Wisconsin agriservice association.

8 (e) One person representing the Wisconsin cheese makers association.

9 (f) One person representing both the Wisconsin corn growers association, inc.
10 and the Wisconsin soybean association, inc.

11 (g) One person representing the Wisconsin dairy products association, inc.

12 (h) One person representing the Wisconsin farm bureau federation.

13 (i) One person representing the Wisconsin federation of cooperatives.

14 (j) One person representing the Wisconsin potato and vegetable growers
15 association, inc.

16 **(3) APPOINTING MEMBERS.** Each organization identified under sub. (2) shall
17 nominate 2 persons to represent that organization on the advisory committee. The
18 department shall appoint advisory committee members from among the nominees,
19 according to sub. (2).

20 **(4) MEMBERSHIP TERM.** An advisory committee member shall sit on the advisory
21 committee for a term of 3 years. The department shall appoint replacements
22 according to sub. (3).

23 **SECTION 13.** 165.25 (4) (ar) of the statutes is amended to read:

24 165.25 (4) (ar) The department of justice shall furnish all legal services
25 required by the department of agriculture, trade and consumer protection relating

1 to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,
2 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.50 and 100.51 and
3 chs. 127, 136, 344, 704, 707 and 779, together with any other services as are
4 necessarily connected to the legal services.

5 **SECTION 14. Effective date.**

6 (1) This act takes effect on January 1, 2002.

7 **SECTION 15. Initial applicability.**

8 (1) The treatment of ch. 127 first applies to the regulation of grain dealers and
9 grain warehouse keepers on September 1, 2002, except that:

10 (a) All license fees and surcharges paid under ch. 127 on or after January 1,
11 2002 shall be deposited to the agricultural producer security fund under s. 25.463.

12 (b) Grain dealer and grain warehouse keeper license applications for the
13 license year that begins on September 1, 2002 shall comply with ch. 127 as recreated
14 by this act.

15 (c) Chapter 127, as repealed by this act, shall continue to govern proceedings
16 related to grain dealer and grain warehouse keeper defaults and violations of ch. 127,
17 as repealed by this act, that occur prior to September 1, 2002.

18 (2) The treatment of s. 100.06 and ch.127 first applies to the regulation of dairy
19 plant operators and other milk contractors on May 1, 2002, except that:

20 (a) All milk producer security fees paid under s. 100.06(9) on or after January
21 1, 2002 shall be deposited to the agricultural producer security fund under s. 25.463.

22 (b) Milk contractor license applications for the license year that begins on May
23 1, 2002, shall comply with ch. 127 as recreated by this act.

24 (c) Section 100.06 shall continue to govern proceedings related to dairy plant
25 operator defaults and violations of s. 100.06 that occur prior to May 1, 2002.

1 (3) The treatment of s. 100.03 and ch.127 first applies to the regulation of
2 vegetable contractors on February 1, 2002, except that:

3 (a) All registration fees and surcharges paid under s. 100.03(3) on or after
4 January 1, 2002 shall be deposited to the agricultural producer security fund under
5 s. 25.463.

6 (b) Vegetable contractor license applications for the license year that begins on
7 February 1, 2002 shall comply with ch. 127 as recreated by this act.

8 (c) Section 100.03 shall continue to govern proceedings related to vegetable
9 contractor defaults and violations of s. 100.03 that occur prior to February 1, 2002.

10

(END)

Tradewell, Becky

From: Hanson, Eric J DATCP
Sent: Tuesday, January 09, 2001 3:36 PM
To: Walker, William; Tradewell, Becky
Cc: Knapp, Barb H DATCP; Norton, John C DATCP; Matson, James K DATCP; Leroy, Kevin J DATCP
Subject: DATCP responses to LRB draft notes



2nd response to
drafter's comm...

Attached are our responses to the 2nd set of drafter's notes.

Per our telephone conversation, I will meet you both at 100 N. Hamilton at 9:00 a.m. tomorrow morning (Wed. 1/10) to resolve any remaining questions about the draft.

Thank you.

Eric Hanson
Agriculture Auditor
Grain Security Section
WDATCP
(608)224-4968

Department of Agriculture, Trade and Consumer Protection

Response to 2nd set of Legislative Reference Bureau Drafter's Notes

- ✓ 1. N/A
- ✓ 2. The LRB draft is fine, except for a drafting error in the debt/equity formulas for both grain dealers and grain warehouses. Please see: 126.15(4)(a)3, 126.15(4)(b)3, 126.30(4)(a)3 and 126.30(4)(b)3. Where the draft says: "Raise the amount determined under subd. 2 to the 4th power." It should say: "Raise the amount determined under subd. 2 to the 3rd power."
- ✓ 3. The LRB draft is fine.
- ✓ 4. The LRB draft is fine.
- ✓ 5. The LRB draft is fine.
- ✓ 6. The main place "major stockholder" becomes an issue is with exclusions of receivables from affiliates in determining their financial ratios. Due to the complex nature of this issue, we need a high level of discretion. Affiliate also appears under s.126.56(9)(f), however we do not believe it to be material.
- ✓ 7. The LRB draft is fine.
8. There can be a difference in the amount of security filed under s.126.16(1)(a) & (b) because the amount required under s.126.16(3)(a) will be discontinued after 12/1/2002, **but only for contributing grain dealers**. Because disqualified grain dealers are **not contributing grain dealers** they must continue to file this amount, whereas a contributing grain dealer who uses deferred payment contracts and who meets the standards under s.126.16(1)(a), but not the standards under s.126.16(1)(b), must file **only** the amount required under s.126.16(3)(b), and **not** the amount under s.126.16(3)(a) after December 1, 2002.

Therefore, the LRB changes to s.126.14(2)(a) are fine, however, s.126.16(8)(a) must remain as originally written as follows "The department may release security filed under sub. (1)(a), except for any security still required under sub. (1)(b), if any of the following applies:

We also need to modify (due to our oversight) the vegetable contractor provision under s.126.61(3)(a) to make it similar to the grain dealer provision.

- (a) An amount equal to 75% of the amount last reported under s.126.56(9)(b) or (12)(a). This amount is not required of a contributing vegetable contractor after May 1, 2002.

*2 consecutive positive statements
can it be
moved?*

- ✓ 9. The LRB draft is fine.
- ✓ 10. The LRB draft is fine, except that we need to include additional language regarding equity requirements under s. 126.45(4) and, due to our oversight, under 126.45(1)(b), as follows:

126.45(1)(b) A licensed milk contractor shall pay fund assessments under s. 126.46 if the 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, or a debt to equity ratio of more than 2.0 to 1.0 or negative equity. The contractor shall continue to pay fund assessments until the contractor files 2 consecutive annual financial statements under s. 126.44 that show positive equity, a current ratio of at least 1.25 to 1.0, and a debt to equity ratio of not more than 2.0 to 1.0.

(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 or a debt to equity ratio of more than 2.0 to 1.0 or negative equity.

- ✓ 11. Our intent under s.126.71(2)(b) is to follow the default claim payment schedules under s.126.71(1). However, if the security on file is sufficient to cover 100% of allowable claims, 100% of allowable claims will be paid out. Finally, if the security on file exceeds the amounts payable according to the schedules under s.126.71(1), but is not adequate to pay the full amount of the default claims allowed, the remaining difference will be prorated in proportion to their allowed claims.

We understand that the language in s.126.71(2)(b) may not clearly convey the intent described above and would appreciate your assistance in making it do so.

Tradewell, Becky

From: Hanson, Eric J DATCP
Sent: Thursday, January 11, 2001 9:41 AM
To: Tradewell, Becky
Cc: Matson, James K DATCP; Leroy, Kevin J DATCP; Norton, John C DATCP; Walker, William
Subject: RE: Agricultural producer security

Yes, that is correct and we intend that the department be authorized to release the security, but not required to release the security. We believe 126.16(8)(d) accomplishes that intention.

I will be in all day until 5:00 pm today if you need to discuss this.

Eric Hanson
224-4968

-----Original Message-----

From: Tradewell, Becky
Sent: Wednesday, January 10, 2001 4:02 PM
To: Hanson, Eric J DATCP
Cc: Matson, James K DATCP; Walker, William
Subject: Agricultural producer security

Eric,

I want to see whether I understand what is wanted with respect to grain dealers, disqualification, and security.

In DATCP's original draft, s. 127.14 (2) (a) provides that a grain dealer who is required to file security under s. 127.16 (1) (a) is disqualified until DATCP releases that security under s. 127.16 (8) (a). A grain dealer who is required to file security under s. 127.16 (1) (a) must file security in an amount equal to 35% of the average monthly payment for producer grain in the three highest months out of the past 12. If the grain dealer does not use deferred payment contracts, that is all of the security that the grain dealer must file. If the grain dealer uses deferred payment contracts, the grain dealer must file an additional amount of security.

For a grain dealer who is required to file security under s. 127.16 (1) (a), the second sentence of s. 127.16 (3) (a) is unnecessary. The only way that such a dealer can become a contributing grain dealer is for DATCP to release that security under sub. (8) (a). (And it seems that this could not happen before 12/1/2002.)

If a grain dealer is not required to file security under s. 127.16 (1) (a) but, before 12/1/2002, must file security only because the grain dealer uses deferred payment contracts and does not have a good enough debt to equity ratio (under s. 127.16 (1) (b)), the grain dealer must originally file the same amount of security that the grain dealer would have had to file if required to file security under s. 127.16 (1) (a), but that amount is quickly reduced (reduced on 12/1/2002). Is that correct? If so, do you want DATCP to be required to release the excess security at that point, or to be authorized to do so?

I suppose it is rather late to bring this up, but it seems that the whole situation would be much simpler if the draft did not require a grain dealer who only has to file security because of deferred payment contracts to file the amount of security described in sub. (3) (a) for those two months.

I realize that we may need to discuss this, but I wanted to put my thoughts in writing to try to get them straightened out before we talk.

Becky Tradewell
266-7290

Tradewell, Becky

From: Tradewell, Becky
Sent: Wednesday, January 10, 2001 4:02 PM
To: Hanson, Eric J DATCP
Cc: Matson, James K DATCP; Walker, William
Subject: Agricultural producer security

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Becky Tradewell
266-7290