

1 (b) A license becomes invalid after February 5<sup>✓</sup> of the license year for which it  
2 is issued unless the license holder has by February 5<sup>✓</sup> paid all producer obligations  
3 that were due and payable during the preceding license year.

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

7 (12) NOTICE REQUIRED. (a) A vegetable contractor who files security under s.  
8 127.61<sup>✓</sup> shall immediately notify the department if, at any time, the vegetable  
9 contractor's unpaid contract obligations exceed the amount last reported under sub.

10 (10) (b). (9)

11 (b) A vegetable contractor shall immediately notify the department if the  
12 amount of unpaid obligations under deferred payment contracts exceeds the amount  
13 last reported under sub. (10) (e). (9)

14 **127.57 Vegetable contractors; insurance.** (1) FIRE AND EXTENDED COVERAGE  
15 INSURANCE. (a) Except as provided in par. (b), a vegetable contractor who is required  
16 to be licensed under s. 127.56 (1) shall maintain fire and extended coverage  
17 insurance, issued by an insurance company authorized to do business in this state,  
18 that covers all vegetables in the custody of the vegetable contractor, whether owned  
19 by the vegetable contractor or held for others, at the full local market value of the  
20 vegetables.

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

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

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

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

6           (3) INSURANCE COVERAGE; MISREPRESENTATION. No vegetable contractor may  
7 misrepresent any of the following to the department or to any vegetable producer or  
8 producer agent:

9           (a) That the vegetable contractor is insured.

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

12           **127.58 Vegetable contractors; financial statements.** (1) REQUIRED  
13 ANNUAL FINANCIAL STATEMENT. (a) Except as provided in par. (c), a vegetable  
14 contractor shall file an annual financial statement with the department, before the  
15 department first licenses the vegetable contractor under s. 127.56 (1), if the  
16 vegetable contractor reports more than \$500,000 in contract obligations under s.  
17 127.56 (9) (a).

18          (b) Except as provided in par. (c), a vegetable contractor licensed under s.  
19 127.56 (1) shall file an annual financial statement with the department during each  
20 license year if the vegetable contractor's license application for that year reports  
21 more than \$500,000 in contract obligations under s. 127.56 (9) (a). The vegetable  
22 contractor shall file the annual financial statement by the 15th day of the 4th month  
23 following the close of the vegetable contractor's fiscal year, except that the  
24 department may extend the filing deadline for up to 30 days if the vegetable

1 contractor, or the accountant reviewing or auditing the financial statement, files a  
2 written extension request at least 10 days before the filing deadline.

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

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

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

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

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

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

\*14 (3) REVIEWED OR AUDITED FINANCIAL STATEMENT. (a) A vegetable contractor filing  
15 an annual financial statement under sub. (1) or (2) shall file an audited financial  
16 statement if the vegetable contractor's latest annual license application reported  
17 more than \$4,000,000 in annual contract obligations under s. 127.56 (9) (a).

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

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

1           **(4m) INTERIM FINANCIAL STATEMENT.** The department may, at any time, require  
2 a vegetable contractor licensed under s. 127.56 (1) to file an interim financial  
3 statement with the department. The vegetable contractor shall provide, with the  
4 interim financial statement, the vegetable contractor's sworn and notarized  
5 statement that the financial statement is correct. An interim financial statement  
6 need not be a reviewed or audited financial statement.

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

11           (b) If a vegetable contractor is a sole proprietor and the vegetable contractor's  
12 financial statement<sup>g</sup> is not audited, the vegetable contractor shall file a financial  
13 statement that is prepared on a historical cost basis.

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

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

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

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

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

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

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

15 (b) A note or account receivable from a parent organization, subsidiary, or  
16 affiliate.

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

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

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

NP / (8) → ✓

1           **127.59 Contributing vegetable contractors; disqualification. (1)**

2           CONTRIBUTION REQUIRED. A vegetable contractor licensed under s. 127.56 (1) shall pay  
3           fund assessments under s. 127.60<sup>✓</sup> unless one of the following applies:

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

5           (b) The vegetable contractor pays cash on delivery under all vegetable  
6           procurement contracts.

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

9           **(1m) VOLUNTARY CONTRIBUTION.** A vegetable contractor who is exempt under  
10          sub. (1) (b) or (c) may volunteer to pay fund assessments under s. 127.60.

11          **(2) DISQUALIFIED CONTRACTOR.** (a) A vegetable contractor who is required to file  
12          security under s. 127.61 (1) (a)<sup>✓</sup> is disqualified from the fund until the department  
13          releases that security under s. 127.61 (7) (a).<sup>✓</sup>

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

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

20               1. Failure to pay fund assessments under s. 127.60<sup>✓</sup> when due.

21               2. Failure to file a financial statement under s. 127.58<sup>✓</sup> 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 vegetable  
25          contractor's 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 vegetable contractor's default.

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

8           (b) A disqualified vegetable contractor remains liable for any unpaid fund  
9 installment under s. 127.60 that became due while the vegetable contractor was a  
10 contributing vegetable contractor. A disqualified vegetable contractor is not liable  
11 for any fund installment that becomes due after the vegetable contractor is  
12 disqualified under sub. (2).

13           **127.60 Contributing vegetable contractors; fund assessments. (1)**  
14 **GENERAL.** A contributing vegetable contractor shall pay an annual fund assessment  
15 for each license year. The assessment equals \$20 or the sum of the following,  
16 whichever is greater, unless the department by rule specifies a different assessment:

17           (a) The vegetable contractor's current ratio assessment. The current ratio  
18 assessment for a license year equals the vegetable contractor's current ratio  
19 assessment rate under sub. (2) multiplied by the amount reported under s. 127.56  
20 (9) (a) in the vegetable contractor's license application for that license year.

21           (b) The vegetable contractor's debt to equity ratio assessment. The debt to  
22 equity ratio assessment for a license year equals the vegetable contractor's debt to  
23 equity ratio assessment rate under sub. (4) multiplied by the amount reported under  
24 s. 127.56 (9) (a) in the vegetable contractor's license application for that license year.

1 (c) The vegetable contractor's deferred contract assessment. The deferred  
2 contract assessment for a license year equals the amount, if any, reported under s.  
3 127.56 (9) (e) in the vegetable contractor's license application for that license year,  
4 multiplied by a deferred vegetable contract assessment rate of 0.0025.

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

7 (a) If the vegetable contractor has filed an annual financial statement under  
8 s. 127.58<sup>✓</sup> and that financial statement shows a current ratio of at least 1.25 to 1.0,  
9 the vegetable contractor's current ratio assessment rate equals the greater of zero  
10 or the current ratio assessment factor in sub. (3) (a)<sup>✓</sup> multiplied by the following  
11 amount:

12 **\*Insert Graphic Here\***

13 (b) If the vegetable contractor has filed an annual financial statement under  
14 s. 127.58<sup>✓</sup> and that financial statement shows a current ratio<sup>of</sup> less than 1.25 to 1.0, but  
15 greater than 1.1 to 1.0, the vegetable contractor's current ratio assessment rate  
16 equals the current ratio assessment factor in sub. (3) (b) multiplied by the following  
17 amount:

18 **\*Insert Graphic Here\***

19 (c) If the vegetable contractor has filed an annual financial statement under  
20 s. 127.58<sup>✓</sup> and that financial statement shows a current ratio<sup>of</sup> less than or equal to 1.1  
21 to 1.0, the vegetable contractor's current ratio assessment rate equals the current  
22 ratio assessment factor in sub. (3) (b)<sup>✓</sup> multiplied by 7.512617.

23 (d) If the vegetable contractor has not filed an annual financial statement  
24 under s. 127.58<sup>✓</sup>, the vegetable contractor's current ratio assessment rate equals the  
25 current ratio assessment factor in sub. (3) (b)<sup>✓</sup> 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 0.00048, except as follows:

3 1. For the vegetable contractor's 4th and 5th consecutive full license year<sup>s</sup> as a  
4 contributing vegetable contractor, the vegetable contractor's current ratio  
5 assessment factor is 0.00029.

6 2. For the vegetable contractor's 6th or higher consecutive full license year<sup>✓</sup> as  
7 a contributing vegetable contractor, the vegetable contractor's current ratio  
8 assessment factor is zero.

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

11 1. For the vegetable contractor's 4th and 5th consecutive full license year<sup>s</sup> as a  
12 contributing vegetable contractor, the vegetable contractor's current ratio  
13 assessment factor is 0.00058.

14 2. For the vegetable contractor's 6th or higher consecutive full license year<sup>✓</sup> as  
15 a contributing vegetable contractor, the vegetable contractor's current ratio  
16 assessment factor is 0.00035.

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, at the beginning of the  
19 license year, as follows:

20 (a) If the vegetable contractor has filed an annual financial statement under  
21 s. 127.58<sup>✓</sup> and that financial statement shows a debt to equity ratio of not more than  
22 4.0 to 1.0, the vegetable contractor's debt to equity ratio assessment rate equals the  
23 greater of zero or the debt to equity ratio assessment factor in sub. (5) (a)<sup>✓</sup> multiplied  
24 by the following amount:

25 \*Insert Graphic Here\*

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

6 **\*Insert Graphic Here\***

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

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

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

16 1. For the vegetable contractor's 4th and 5th consecutive full license year<sup>s</sup> as a  
17 contributing vegetable contractor, the vegetable contractor's debt to equity ratio  
18 assessment factor is 0.00008.

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

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

1 1. For the vegetable contractor's 4th and 5th consecutive full license year<sup>s</sup> as a  
2 contributing vegetable contractor, the vegetable contractor's debt to equity ratio  
3 assessment factor is 0.00016.

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

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

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

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

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

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

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

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

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

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

10           **127.61 Vegetable contractors; security. (1) SECURITY REQUIRED.** (a) Except  
11 as provided in par. (c), a vegetable contractor shall file security with the department,  
12 and maintain that security until the department releases it under sub. (7), if all of  
13 the following apply when the department first licenses the vegetable contractor  
14 under s. 127.56 (1):

15           1. The vegetable contractor reports more than \$1,000,000 in annual contract  
16 obligations under s. 127.56 (9) (a).

17           2. The vegetable contractor files a financial statement under s. 127.58 (1) and  
18 that financial statement shows negative equity.

19           (b) Except as provided in par. (c), a vegetable contractor shall file security with  
20 the department to cover the full amount of the unpaid deferred contract obligations  
21 last reported under s. 127.56 (9) (e) or (12) (b), and maintain that security until it is  
22 released under sub. (7), unless the vegetable contractor files an annual financial  
23 statement under s. 127.58 and that financial statement shows a current ratio of at  
24 least 1.25 to 1.0 and a debt to equity ratio of not more than 4.0 to 1.0.

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

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

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

7 (2) SECURITY CONTINUED. A vegetable contractor who filed security under s.  
8 100.03, 1999 stats., before February 1, 2002, shall maintain that security until the  
9 department releases it under sub. (7).

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

13 (a) Seventy-five percent of the amount last reported under s. 127.56 (9) (b) or  
14 (12) (a).

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

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

19 (a) Currency.

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

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

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

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

days

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (7) **RELEASING SECURITY.** (a) The department may release security filed under  
18 sub. (1) (a), unless the vegetable ~~dealer~~<sup>contractor</sup> is required to file security under sub. (1) (b),  
19 if any of the following applies:

20 1. The vegetable contractor reports less than \$1,000,000 in annual contract  
21 obligations under s. 127.56 (9) (a) for at least 2 consecutive years and the vegetable  
22 contractor pays the quarterly fund assessment that would have been required of the  
23 vegetable contractor if the vegetable contractor had been a contributing vegetable  
24 contractor on the most recent quarterly installment date under s. 127.60 (6).



1           2. The vegetable contractor's annual financial statement under s. 127.58 shows  
2 positive equity for at least 2 consecutive years and the vegetable contractor pays the  
3 quarterly fund assessment that would have been required of the vegetable contractor  
4 if the vegetable contractor had been a contributing vegetable contractor on the most  
5 recent quarterly installment date under s. 127.60 (6).

6           (b) The department may release security filed under sub. (1) (b), unless the  
7 ~~grain dealer~~ is required to file security under sub. (1) (a), if any of the following  
8 applies: *vegetable contractor*

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

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

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

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

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

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

22           **127.62 Vegetable contractors; records.** (1) RECORDS REQUIRED. A vegetable  
23 contractor shall keep all of the following:

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

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

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

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

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

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*STET*

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

11 **127.63 Vegetable contractors; business practices.** (1) VEGETABLE GRADING  
12 AND TARE. (a) A vegetable contractor shall grade vegetables according to the following  
13 standards if the vegetable grade may affect the amount received by the vegetable  
14 producer:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13           The vegetable contractor shall ~~shall~~ conduct the voting by secret ballot.

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

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

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

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

21           (a) The vegetable contractor stated, in the vegetable contractor's last annual  
22 statement under s. 127.56 (9) (g), that the vegetable contractor would pay cash on  
23 delivery. ✓

1 (b) The department disqualifies the vegetable contractor, under s. 127.59 (2)

2 (c),<sup>✓</sup> or requires the vegetable contractor to pay cash on delivery under s. 127.61 (6)

3 (e).<sup>✓</sup>

~~4~~ <sup>g</sup> **127.64 Vegetable contractors; prohibited practices.** No vegetable  
5 contractor may do any of the following:

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

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

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

11 (4) If the vegetable contractor is licensed under s. 127.56,<sup>✓</sup> engage in any activity  
12 that is inconsistent with representations made in the vegetable contractor's annual  
13 license application.

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

16 (6) Fail to file the full amount of security required under s. 127.61 (6)<sup>✓</sup> by the  
17 date that the department specifies.

## 18 SUBCHAPTER VII

### 19 RECOVERY PROCEEDINGS

20 **127.68 Definitions.** In this subchapter:

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

22 (a) A contributing grain dealer, as defined in s. 127.10 (3).<sup>✓</sup>

23 (b) A contributing grain warehouse keeper, as defined in s. 127.25 (2).<sup>✓</sup>

24 (c) A contributing milk contractor, as defined in s. 127.40 (1).<sup>✓</sup>

25 (d) A contributing vegetable contractor, as defined in s. 127.55 (4).<sup>✓</sup>

- 1 (2) "Depositor" has the meaning given in s. 127.25 (5). ✓
- 2 (3) "Grain dealer" has the meaning given in s. 127.10 (9). ✓
- 3 (4) "Grain producer" has the meaning given in s. 127.10 (10). ✓
- 4 (5) "Grain warehouse keeper" has the meaning given in s. 127.25 (9). ✓
- 5 (6) "Milk contractor" has the meaning given in s. 127.40 (8). ✓
- 6 (7) "Milk producer" has the meaning given in s. 127.40 (10). ✓
- 7 (8) "Producer grain" has the meaning given in s. 127.10 (14). ✓
- 8 (9) "Producer milk" has the meaning given s. 127.40 (14). ✓
- 9 (10) "Vegetable contractor" has the meaning given in s. 127.55 (14). ✓
- 10 (11) "Vegetable procurement contract" has the meaning given in s. 127.55 (15). ✓
- 11 (12) "Vegetable producer" has the meaning given in s. 127.55 (16). ✓

12 **127.70 Recovery proceedings.** (1) **DEFAULT CLAIMS.** Any of the following  
13 persons may file a default claim with the department against a contractor who is  
14 licensed, or required to be licensed, under this chapter:

15 (a) A grain producer or producer agent, as defined in s. 127.10 (13), who claims  
16 that a grain dealer has failed to pay, when due, for producer grain that the grain  
17 dealer procured in this state.

18 (b) A depositor who is either a grain producer or a producer agent, as defined  
19 in s. 127.10 (13), and who claims that a grain warehouse keeper has failed to return  
20 stored grain or its equivalent upon demand.

21 (c) A milk producer or producer agent, as defined in s. 127.40 (13), who claims  
22 that a milk contractor has failed to pay, when due, for producer milk procured in this  
23 state.

1 (d) A vegetable producer or producer agent, as defined in s. 127.55 (12)<sup>✓</sup>, who  
2 claims that a vegetable contractor has failed to make payment when due under a  
3 vegetable procurement contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



*on which*

1 calculate the value of the grain based on local market prices on the day ~~that~~ <sup>on which</sup> the  
2 depositor made the demand.

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

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

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

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

14 (c) Specify, for each allowed claim, the amount that the department is  
15 authorized to pay under s. 127.71.<sup>✓</sup>

16 (d) Specify the method, under s. 127.71<sup>✓</sup>, by which the department will pay the  
17 authorized amounts under par. (c).

18 (e) Explain a claimant's right under s. 127.87<sup>✓</sup> (4) to seek court recovery of that  
19 portion of an allowed claim that is not paid by the department.

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

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

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

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

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

13 **127.71 Paying default claims. (1) CLAIMS AGAINST CONTRIBUTING**  
14 **CONTRACTOR.** Except as provided in sub. (2) or (3), the department shall pay from the  
15 appropriate sources under s. 127.72 the following default claim amounts:

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

- 18 1. Ninety percent of the first \$20,000 allowed.
- 19 2. Eighty-five percent of the next \$20,000 allowed.
- 20 3. Eighty percent of the next \$20,000 allowed.
- 21 4. Seventy-five percent of any amount allowed in excess of \$60,000.

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

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

- 3 1. Ninety percent of the first \$40,000 allowed.
- 4 2. Eighty-five percent of the next \$40,000 allowed.
- 5 3. Eighty percent of the next \$40,000 allowed.
- 6 4. Seventy-five percent of any amount allowed in excess of \$120,000.

7 (1m) WHEN DEFAULT OCCURS. For the purposes of this chapter, a default occurs  
8 on the date on which payment or delivery becomes overdue.

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

13 (a) If the contractor was not a contributing contractor when the default  
14 occurred, the department shall use the security proceeds to pay the full amount of  
15 the allowed claims, except that if the security is not adequate to pay the full amount  
16 of the allowed claims, the department shall pay claimants ~~pro rata~~ <sup>on a</sup> prorated basis in proportion to  
17 their allowed claims.

18 (b) If the contractor was a contributing contractor when the default occurred,  
19 the department shall use the security proceeds to reimburse the sources under s.  
20 127.72 from which the department makes any claim payment under sub. (1). If the  
21 security amount exceeds the amount payable under sub. (1) from the sources under  
22 s. 127.72, the department shall use the remaining security proceeds to pay the  
23 balance of the allowed claims. If the security amount is not adequate to pay the full  
24 remaining balance, the department shall pay claimants ~~pro rata~~ <sup>on a</sup> prorated basis in proportion to

1 their allowed claims. The department may, at its discretion, pay claims directly from  
2 security proceeds rather than from a fund source under s. 127.72.

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

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

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

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

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

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

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

19 **127.72 Claims against contributing contractor; payment sources. (1)**

20 PRODUCER SECURITY FUND. From the appropriation under s. 20.115 (1) (w), the  
21 department shall make payments authorized under s. 127.71 (1), up to the deductible  
22 amount in sub. (4).

23 (2) INDUSTRY BOND PROCEEDS. The department shall make a demand against  
24 the appropriate industry bond under s. 127.06 and shall use the proceeds of that bond

1 to make payments authorized under s. 127.71 (1), to the extent that those payments  
2 exceed the deductible amount in sub. (4).

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

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

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

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

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

15 3. If the department allows the claims on or after September 1, 2006,  
16 \$1,000,000.

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

19 1. If the department allows the claims on or after May 1, 2002, but before May  
20 1, 2004, \$1,000,000.

21 2. If the department allows the claims on or after May 1, 2004, but before May  
22 1, 2006, \$1,500,000.

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

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

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

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

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

6 **127.73 Reimbursing payments.** (1) PAYMENTS FROM <sup>(CS) the</sup> FUND. The department  
7 may demand and collect, from a contractor, any claim amounts that the department  
8 pays under s. 127.72 (1) <sup>because</sup> ~~on account~~ of the contractor's default.

9 (2) BOND PAYMENTS. A bond surety may demand and collect, from a contractor,  
10 any claim amounts that the bond surety pays to the department under s. 127.72 (2)  
11 or (3) <sup>because</sup> ~~on account~~ of the contractor's default. The bond surety shall provide the  
12 department with a copy of each demand under this subsection.

### 13 SUBCHAPTER VIII

#### 14 ADMINISTRATION AND ENFORCEMENT

15 **127.78 Definitions.** In this subchapter:

16 (1) "Contributing contractor" has the meaning given in s. 127.68 (1). ✓

17 (2) "Depositor" has the meaning given in s. 127.25 (5). ✓

18 (3) "Grain dealer" has the meaning given in s. 127.10 (9). ✓

19 (4) "Grain warehouse keeper" has the meaning given in s. 127.25 (9). ✓

20 (5) "Milk contractor" has the meaning given in s. 127.40 (8). ✓

21 (6) "Producer agent" means a person who is a producer agent, as defined in s.  
22 127.10 (13), 127.40 <sup>(13)</sup> (10), or 127.55 (12). ✓

23 (7) "Vegetable contractor" has the meaning given in s. 127.55 (14). ✓

24 (8) "Vegetable producer" has the meaning given in s. 127.55 (16). ✓

1           **127.80 Department authority; general.** The department shall administer  
2 this chapter.

3           **127.81 Rule-making.** The department may promulgate rules to do any of the  
4 following:

5           (1) Interpret and implement this chapter.

6           (2) Modify the license fees and surcharges provided in s. 127.11 (4), 127.26 (3),  
7 127.41 (3), 127.42, or 127.56 (4).

8           (3) Modify the fund assessments provided under s. 127.15, 127.30, 127.46, or  
9 127.60, as provided in s. 127.88.

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

12           **127.82 Investigations.** The department may conduct investigations that it  
13 considers necessary for the administration of this chapter, including investigations  
14 to determine any of the following:

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

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

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

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

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

22           **127.83 Information.** The department may require a contractor to provide  
23 information that is relevant to the administration and enforcement of this chapter.

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

4           (a) Contractor financial statements.

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

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

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

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

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

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



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

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

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

7 (f) A grain warehouse keeper fails to return grain to depositors upon demand,  
8 as required under ~~sec.~~ 127.34 (4). ✓ S.

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

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

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

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

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

1           **127.86 License actions. (1) GENERAL.** The department may for cause deny,  
2 suspend, revoke, or impose conditions on a contractor's license, as provided in s.  
3 93.06 (7) and (8). Cause may include any of the following:

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

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

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

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

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

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

18           **(3) SUMMARY ACTION.** (a) The department may, without prior notice or hearing,  
19 summarily suspend, revoke, or impose conditions on a license held by a contractor  
20 if the department finds that summary action is necessary to prevent a clear and  
21 imminent threat of harm to persons protected under this chapter. Conditions  
22 indicating a clear and imminent threat of harm include those identified in s. 127.85  
23 (2).

24           (b) A contractor who is the subject of a summary action under par. (a) may,  
25 within 10 days after receiving notice of that action, request a hearing on the action.

1 The department shall hold an informal hearing as soon as possible after receiving a  
2 hearing request, but not later than 10 days after receiving the hearing request,  
3 unless the contractor waives the informal hearing or agrees to hold it at a later date.  
4 If the matter is not resolved at the informal hearing, the department shall hold a  
5 contested case hearing under ch. 227 as soon as reasonably possible.

6 (c) A request for hearing under par. (b) does not automatically stay a summary  
7 action under ~~par~~<sup>par.</sup> (a). The department may stay a summary action pending hearing.

8 **127.87 Court actions.** (1) INJUNCTION. The department may petition the  
9 circuit court for an ex parte temporary restraining order, a temporary injunction, or  
10 a permanent injunction to prevent, restrain, or enjoin any person from violating this  
11 chapter, any rule promulgated under this chapter, or any order issued under this  
12 chapter. The department may seek this remedy in addition to any other penalty or  
13 remedy provided under this chapter.

14 (2) PENALTIES. (a) A person who violates this chapter, a rule promulgated under  
15 this chapter, or an order issued under this chapter is subject to a forfeiture of not less  
16 than \$250 nor more than \$5,000 for each violation.

17 (b) A person who intentionally violates this chapter, a rule promulgated under  
18 this chapter, or an order issued under this chapter may be fined not more than  
19 \$10,000 or imprisoned for not more than one year in the county jail or both.

20 (4) PRIVATE REMEDY. (a) A person whose claim is allowed under s. 127.70 may  
21 bring an action against the contractor to recover the amount of the allowed claim, less  
22 any recovery amount that the department pays to the claimant under s. 127.71. In  
23 any court action under this subsection, the claimant may recover costs including all  
24 reasonable attorney fees, notwithstanding s. 814.04 (1). This subsection does not

1 limit any other legal cause of action that the claimant may have against the  
2 contractor.

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

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

9 **127.88 Modifying fund assessments.** The department may by rule modify  
10 the fund assessments provided under s. 127.15, 127.30, 127.46, or 127.60. The  
11 department shall modify fund assessments as necessary to do all of the following:

12 (1) Maintain an overall fund balance of at least \$5,000,000 after January 1,  
13 2006, ~~and~~ <sup>but</sup> not more than \$22,000,000 at any time.

14 (2) Maintain a fund balance attributable to grain dealers of at least \$1,000,000  
15 after January 1, 2006, ~~and~~ <sup>but</sup> not more than \$6,000,000 at any time.

16 (3) Maintain a fund balance attributable to grain warehouse keepers of at least  
17 \$200,000 after January 1, 2006, ~~and~~ <sup>but</sup> not more than \$1,000,000 at any time.

18 (4) Maintain a fund balance attributable to milk contractors of at least  
19 \$3,000,000 after January 1, 2006, ~~and~~ <sup>but</sup> not more than \$12,000,000 at any time.

20 (5) Maintain a fund balance attributable to vegetable contractors of at least  
21 \$800,000 after January 1, 2006, ~~and~~ <sup>but</sup> not more than \$3,000,000 at any time.

22 **127.89 Agricultural producer security council.** The agricultural producer  
23 security council shall advise the department on the administration and enforcement  
24 of this chapter. The council shall meet as often as the department considers  
25 necessary, but at least once annually. The department shall inform the council of

1 fund balances and payments, and shall consult with the council before modifying any  
2 license fee, license surcharge, or fund assessment under this chapter.

3 SECTION 29. 165.25 (4) (ar) of the statutes is amended to read:

4 165.25 (4) (ar) The department of justice shall furnish all legal services  
5 required by the department of agriculture, trade and consumer protection relating  
6 to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,  
7 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.50 and 100.51 and  
8 chs. 127, 136, 344, 704, 707 and 779, together with any other services as are  
9 necessarily connected to the legal services.

10 SECTION 30. 221.0320 (2) (a) (intro.) of the statutes is amended to read:

11 221.0320 (2) (a) (intro.) A liability secured by warehouse receipts issued by  
12 warehouse keepers licensed and bonded in this state under ss. 99.02 and 99.03 or  
13 under the federal bonded warehouse act or holding a registration certificate license  
14 under ~~ch. 127~~ s. 127.26, if all of the following requirements are met:

→ INS. 137-14 ←

..History: 1995 a. 336.

15 SECTION 9204. Appropriation changes; agriculture, trade and  
16 consumer protection.

17 (1) WAREHOUSE KEEPER AND GRAIN DEALER FEES. The unencumbered balance in  
18 the appropriation account under section 20.115 (1) (jm), 1999 stats., is transferred  
19 to the agricultural producer security fund.

20 (2) DAIRY AND VEGETABLE PRODUCER SECURITY. From the unencumbered balance  
21 in the appropriation account under section 20.115 (1) (gm), 1999 stats., the secretary  
22 of administration shall transfer to the agricultural producer security fund the  
23 amount that the secretary determines is derived from moneys received under  
24 sections 100.03 (3) (a) 2, and 3, and 100.06 (9), 1999 stats.

P.W.F.

auto ref. "KA"

auto ref. "KN"

section 100.03 (3) (a)

1999 stats.

section

1999 stats.

1 SECTION 9404. Effective dates; agriculture, trade and consumer  
2 protection.

3 (1) AGRICULTURAL PRODUCER SECURITY. The treatment of sections 15.137 (1),  
4 20.115 (1) (g), (gf), (gm), (jm), (q), (v), (w), and (wb), 25.17(1)(ag), 25.463, 93.135(1) (rm), (s), and  
5 (sm), 93.50 (1) (g), 97.20 (2) (d) 2. and (3m), 97.22 (10), 97.29 (4), 100.03, 100.06,  
6 100.235 (1) (b) and (em), (2), (3), (4), and (5), 100.26(5), 165.25, and 221.0320 (2) (a) (intro.) and  
7 chapter 127 of the statutes and take effect on January 1, 2002. (4)(ar)

and 348.27  
(10)

(END)

Note

SECTION 9204

(1) and (2) of this act  
auto ref. "KA"  
auto ref. "KM"

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0392/P2dn

RCT: King

This is a preliminary version of the agricultural producer security draft. A major concern about any draft that makes extensive repeals and then recreates laws in a different form is that the draft might make unintentional changes from current law. I believe some of that happened with the nursery regulation draft last session. Please review this draft carefully to ensure that it complies with your intent.

Many of the changes that I made in the draft were made to conform to statutory style. I made a number of the other changes to eliminate redundant language or to eliminate language that was unnecessary for some other reason. We have a computer program that produces a document comparing versions of drafts. That document is sometimes difficult to follow, but I would be glad to provide it to you for whatever help it might provide.

The following are comments or questions about specific aspects of the draft:

1. We have not yet determined whether the Legislature's computer system will enable us to show the formulas in this draft in the format in which DATCP submitted them. This version of the draft has placeholders rather than the formulas. If we cannot show the formulas as submitted, I will have to write the formulas, step by step, in words (e.g.,

④ Subtract one from the current ratio. ②

2. The calculations required by the assessment formulas in this draft may result in numbers that extend far beyond the decimal point (infinitely in some cases). The way in which these numbers are rounded may have a significant effect on the amount that a contractor must pay. Should this draft address the issue of rounding (if only to say that DATCP may promulgate rules concerning rounding)? See s. 38.28 (1m) (b) 3., stats. ✓

3. There are a number of current statutes that reference parts of ch. 127 and that must be modified because of the repeal and recreation of that chapter. Please review the treatment of those statutes by this draft, especially ss. 93.50 (1) (g), 97.20 (3m), 97.22 (10), and 100.235 (2) to (4). ✓

4. This draft creates s. 20.115 (1) (wb) because proceeds of the industry bonds and the blanket bonds would be paid to the department. The department needs an appropriation from which to pay the producers.

5. It might be easier (and less likely to leave anything out) to say, in s. 25.463, that the agricultural producer security fund consists of all moneys received by DATCP under ch. 127.

6. The definition of "affiliate," in s. 127.01 (1), includes "major stockholder," as does the current definition under s. 100.03 (1) (a). The term "major stockholder," however, is not defined. The meaning of "major stockholder" is not obvious without definition. I suggest either defining or deleting "major stockholder".

7. The proposed definition of "asset" specified that "asset" includes current assets, fixed assets, and other assets. The language about what the term includes exists in current s. 127.01 (1g), although it is not necessary. This draft omits the "includes" portion of the definition because it is not necessary and because, unlike under current law, this draft does not contain definitions of "fixed assets" or "other assets."

8. Should the definition of "person" in proposed s. 127.01 (18) include governmental agencies, especially state agencies? It should probably be explicit either way.

9. In s. 127.10 (12), I changed the defined term "procure grain in this state" to "procure producer grain in this state" because s. 127.11 (1) generally prohibits procuring producer grain without a license. The draft does use the term "procures grain in this state" in s. 127.15 (2) (e) and (4) (e). Should that term also be defined? An alternative might be to use "procures producer grain in this state" in s. 127.15 (2) (e) and (4) (e).

10. There were a number of references in the DATCP proposal to grain dealers licensed under s. 127.11 (1). I deleted sub. (1) from most of those references so that the references include dealers who are voluntarily licensed. However, any of those references that were intended to limit a provision's application to those grain dealers who are **required** to be licensed will have to be changed. Please review ss. 127.12 (1), 127.13 (1) (d) and (8), and 127.20 (3) (intro.).

11. I deleted the second sentence of proposed s. 127.11 (9) (c) because s. 127.13 (1) (d) contains the same requirement and seems to be in a more logical location.

12. Should proposed s. 127.12 (1) require grain dealers who are **required** to be licensed to have insurance (in case a grain dealer who is supposed to be licensed is operating without a license)? Do grain dealers who are voluntarily licensed have to maintain insurance?

13. As I understand it, proposed s. 127.13 (1) (a) requires a financial statement to be filed before a grain dealer receives its first license under s. 127.11 (1). If that is the case, the grain dealer could not be a contributing grain dealer, as provided in the "unless" clause in s. 127.13 (1) (a) 1. as proposed by the department. A grain dealer must be licensed before the grain dealer can be a contributing grain dealer. Therefore, this draft omits the reference to being a contributing grain dealer in proposed s. 127.13 (1) (a) 1. If proposed s. 127.13 (1) (a) is intended to apply at times other than before a grain dealer receives its first license under this proposal, I do not understand how sub. (1) (a) relates to sub. (1) (b), which requires a financial statement to be filed during each license year.

14. The analysis provided by DATCP indicates that a grain dealer must file an annual financial statement if the grain dealer pays more than \$500,000 for producer grain,



unless the grain dealer contributes to the fund and operates solely as a producer agent. Should that exception be added to s. 127.13 (1) (b) 1.?

15. Proposed s. 127.13 (2) (b), concerning voluntary annual financial statements, said that a contributing grain dealer who uses deferred payment contracts could file a financial statement in order to avoid filing security under proposed s. 127.16 (1) (b). As I understand it, a grain contractor who uses deferred payment contracts must file a financial statement, so this draft omits proposed s. 127.13 (2) (b). Please let me know if my reasoning is incorrect.

16. Please review s. 127.13 (5) in this draft to ensure that it complies with your intent. I am somewhat confused about the definitions of "audited financial statement" and "reviewed financial statement" and this provision, as they relate to generally accepted accounting principles and to historical cost basis for sole proprietor's financial statements. The same issues arise with respect to proposed s. 127.28 (5), 127.44 (5), and 127.58 (5).

17. I believe that the substance of proposed s. 127.14 (3) (a) and (b) is covered in ss. 127.71 and 127.73, so this draft omits those provisions. See also, ss. 127.29 (3), 127.45 (4), and 127.59 (3).

18. Proposed 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). Under proposed s. 127.16 (8) (a) DATCP does not release the security when the grain dealer satisfies the condition in that provision if s. 127.16 (1) (b) applies to the grain dealer. Is it OK that a grain dealer who satisfies the condition in s. 127.16 (8) (a) 1. or 2. remains disqualified as long as s. 127.16 (1) (b) applies? I believe that this same issue arises with respect to milk contractors.

19. Proposed s. 127.15 (1) provides that each assessment equals an assessment rate multiplied by a dollar amount. The assessment rates are expressed as percentages. Multiplying by a percentage is confusing. I think that multiplying by 1% is the same as multiplying by 0.01. This draft expresses the assessment rates as numbers rather than as percentages. If the intent was not to multiply by the percentages but rather that the assessment equals the specified percentage of the dollar amount, this will have to be changed. This issue arises in the parallel provisions for the other industries.

20. The formulas in s. 127.15 (2) and (4) (and the parallel statutes for the other industries) have ratios as variables. The text of the draft shows the ratios as, for example, "1.25 to 1.0." It seems to be the intent of the draft that "1.25", rather than "1.25 to 1.0", be put into the formula. I am not certain what to do about this situation. The ratios could all be shown as the numbers representing the quotients of the relevant values (e.g., a debt to equity ratio of 1.25). There are a number of statutes that show ratios as quotients.

21. The amount of the current ratio assessment that must be paid by a grain dealer to whom s. 127.15 (2) (c) applies appears to be much larger than the amount that must be paid by a grain dealer whose financial situation is a little bit better so that s. 127.15 (2) (b) applies. Is this your intent?

22. Is the amount of security required under s. 127.16 (3) intended to apply to those who are required to maintain security because they were required to file security under former law?

23. Under s. 127.16 (8) (and the parallel provisions for the other industries), the department may, but is not required to, release security under most of the paragraphs. Is that your intent? There is no indication of the factors that the department should rely on in deciding whether to keep a grain dealer's security beyond the date on which it could be released.

24. Proposed s. 127.10 (15) defines "scale ticket" as a receipt that states the weight of grain. The section concerning receipts for grain, proposed s. 127.18, requires any receipt for grain to state the net weight of grain received, unless the grain dealer receives the grain at the producer's farm. Thus, it sounds as if all receipts, except those issued when the grain dealer receives the grain on the farm, are scale tickets. Is there something else that distinguishes a scale ticket? If not, is it necessary to define "scale ticket" or use the term at all?

(1) 25. Proposed s. 127.14 (1) states that a grain dealer who is voluntarily licensed may pay voluntary assessments. Should it say "unless the grain dealer is disqualified"?

\* 26. Proposed ss. 127.18 (1) (f) and 127.33(e) refer to "dockage." That may be a common term in the industry, but it is not familiar to others. Would it be possible to define the term or to use a phrase that persons outside of the industry will understand?

\* 27. The definition of <sup>the term</sup> "capacity" in s. 127.25 (1), as in current law, specifies that the maximum amount of grain is measured in bushels and then provides that the capacity of a warehouse is determined by dividing the cubic volume of all bins by 1.244 cubic feet. This is very confusing. In what units is the cubic volume expressed before it is divided by 1.244 cubic feet? Is the result then expressed in bushels? Should this provision simply say that the cubic volume is divided by 1.244 (omitting "cubic feet")? We should make the law clear in this regard.

28. The definition of "grain warehouse" in s. 127.25 (8), as in current law, includes a facility that is used to "ship" grain for others. Then the definition provides that "grain warehouse" does not include a transport vehicle. I do not understand how a warehouse can be used to ship grain. Can we clarify this? Please also see the definition of "grain warehouse keeper."

29. The proposed definition of "grain warehouse" stated that a warehouse keeper may treat two warehouses located within half a mile of each other as one warehouse. That kind of substantive language does not really belong in a definition. I moved that language to s. 127.26 (3) (a) and specified that it applies to s. 127.26 (3) (a) and (c). Please let me know if that language is intended to apply more broadly.

30. In s. 127.30 (1) (a) and (b) and s. 127.31 (9) (a) 1., should I add a reference to s. 127.26 (10)? That is, should those determinations be made on the number of bushels reported in the license application or should they be based on the number of bushels indicated in any later report?

31. I cannot tell the reasons for some differences in the way that the department's draft treats the different industries and I wonder whether these differences are intentional.

For example, compare s. 127.14 (2) (b) to s. 127.29 (2) (b). Another, minor, example: proposed s. 127.56 (3) requires mailing addresses, while the parallel provisions for the other industries do not specify "mailing."

32. As for s. 127.29 (2) (b), s. 127.86<sup>the</sup> also lists situations that provide cause for taking action on a contractor's license. It is unnecessary to have two lists and it is confusing to have differing lists. A court might conclude that fact that there are two different lists has a substantive legal effect. If that is not intended, the draft should be changed.

33. Section 127.40 contains a definition of "procure milk in this state." The proposal uses "procures producer milk in this state" (in s. 127.44 (1) (c) 2. and 127.47 (6) (d)) as well as "procures milk in this state" (ss. 127.41 (6) (c) and ~~127.42~~ (2) (e) and (4) (e)). I wonder whether "procure producer milk in this state" should also be defined. Or perhaps the draft could be changed to use only one of these terms.

34. I do not think that the milk contractor licensing provision has the language about licenses for part of the year requiring full payment of fees (under s. 127.41 (3)) that exists in the other subchapters. OK?

35. Is it clear how the credits under proposed s. 127.42 (3) will work considering that the fees are monthly, rather than annual as for the other industries?

36. The intent of proposed s. 127.44 (1) (a), I believe, is to require a milk contractor to file an annual financial statement before the contractor is first licensed under the new law, except that under par. (c) the contractor need not file if the contractor is a contributing contractor and meets one of two specified criteria. The problem is that a contractor cannot be a contributing contractor until the contractor is licensed. Thus, as the draft stands, every milk contractor must file an annual statement before the contractor is first licensed. What would you like to do about this?

37. I am puzzled by proposed s. 127.45 (4) (a), which says that a milk contractor disqualified under sub. (3) (c) may not engage in activities for which a license is required if, as a result of that disqualification, the milk contractor no longer complies with sub. (1). Subsection (1) states that certain contractors must pay assessments unless they are disqualified. Disqualification cannot cause a contractor to be out of compliance with sub. (1) because a disqualified contractor does not have to comply with sub. (1). Should this say that a contractor who is disqualified under sub. (3) (c) may not engage in activities for which a license is required until the contractor files a financial statement under s. 127.44 (perhaps one that shows 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), or something like that? Or should it say that a milk contractor disqualified under sub. (3) (c) may not engage in activities for which a license is required if, as a result of that disqualification, the milk contractor does not comply with s. 127.44 (1) (b)?

38. The only place in the proposed draft that used the term "cooperative pooling" was s. 127.56 (9) (h), so I deleted the definition and put the substance of the definition into s. 127.56 (9) (h).

39. Proposed s. 127.71 (1) states that the department shall pay the specified amounts from the sources under s. 127.72. Is there a possibility that there would not be enough

127.46

\*  
\*

money from those sources to make those payments in full? If so, the draft should say what happens in that case.

40. The last sentence of proposed s. 127.71 (2) (b) authorizes DATCP to pay claims directly from security proceeds rather than from the fund. Would the payment in that case be made in the amounts under s. 127.71 (1) or would they be made as provided in s. 127.71 (2) (a)?

*↑ be*

41. Proposed s. 127.87 (4) (b) could reference the wage claim statute, s. 109.09. Do you want that? I am told, by the way, that wage claims do not have as high a priority as they used to have because of changes in s. 109.09.

42. Do you want the terms of the members of the council staggered so that they do not all expire at the same time? Whether you do or not, I will need to add a nonstatutory provision to the draft concerning the length of the terms of the initial members of the council.

43. Proposed ss. 127.11 (3) (d), 127.41 (2) (d), and 127.56 (3) (d) require an applicant to provide the name of a responsible individual who may be contacted at each business location that is staffed. Will questions arise about how much time an employee must be present at a location for it to be considered staffed?

44. I am still considering how to handle the transition, over the course of 2002, to the new law created by this proposal. I am not certain that the initial applicability provision proposed by DATCP fully covers all of the issues. It might simplify this issue to some extent if the draft created a new chapter, perhaps ch. 126, and then delayed the repeal of the existing statutes to a date that is appropriate for each industry. I will be considering this matter while awaiting redrafting instructions.

*matter*

\* Please do not hesitate to contact me with questions about the draft or this note or with redraft instructions.

Rebecca C. Tradewell  
Managing Attorney  
Phone: (608) 266-7290  
E-mail: becky.tradewell@legis.state.wi.us

→ 44. should proposed s. 127.57(1) (b) 2. <sup>b</sup> ~~also~~ refer to "organizations" in addition to "cooperatives"? If not, should "organization" be deleted from proposed s. 127.56(9) (h)?

**2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0392/P2ins  
RCT:kmg:kmg

**INS. 137-14**

**SECTION 1.** 348.27 (10) of the statutes is amended to read:

**348.27 (10) TRANSPORTATION OF GRAIN OR COAL OR IRON.** The department may issue annual or consecutive month permits for the transportation of loads of grain, as defined in s. 127.01 ~~(18)~~ (13), coal, iron ore concentrates or alloyed iron on a vehicle or a combination of 2 or more vehicles that exceeds statutory weight or length limitations and for the return of the empty vehicle or combination of vehicles over any class of highway for a distance not to exceed 5 miles from the Wisconsin state line. If the roads desired to be used by the applicant involve streets or highways other than those within the state trunk highway system, the application shall be accompanied by a written statement of route approval by the officer in charge of maintenance of the other highway. This subsection does not apply to highways designated as part of the national system of interstate and defense highways.

**History:** 1973 c. 157, 316; 1973 c. 333 c. 190m; 1973 c. 336; 1975 c. 25, 285; 1977 c. 29 ss. 1488m, 1654 (8) (a); 1977 c. 30 s. 5; 1977 c. 191, 197, 272, 273, 418; 1979 c. 34, 315, 326; 1981 c. 20, 69, 163, 215, 391; 1983 a. 78 ss. 32 to 35, 37; 1983 a. 529; 1985 a. 29 s. 3202 (3); 1985 a. 202, 212; 1987 a. 27; 1989 a. 31, 35, 130, 305; 1991 a. 258; 1993 a. 62, 439; 1995 a. 113, 163, 227, 347, 348; 1997 a. 27, 35, 237; 1999 a. 85.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0392/P2dn  
RCT:kmg:jf

December 5, 2000

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11. I deleted the second sentence of proposed s. 127.11 (9) (c) because s. 127.13 (1) (d) contains the same requirement and seems to be in a more logical location.

12. Should proposed s. 127.12 (1) require grain dealers who are **required** to be licensed to have insurance (in case a grain dealer who is supposed to be licensed is operating without a license)? Do grain dealers who are voluntarily licensed have to maintain insurance?

13. As I understand it, proposed s. 127.13 (1) (a) requires a financial statement to be filed before a grain dealer receives its first license under s. 127.11 (1). If that is the case, the grain dealer could not be a contributing grain dealer, as provided in the "unless" clause in s. 127.13 (1) (a) 1. as proposed by the department. A grain dealer must be licensed before the grain dealer can be a contributing grain dealer. Therefore, this draft omits the reference to being a contributing grain dealer in proposed s. 127.13 (1) (a) 1. If proposed s. 127.13 (1) (a) is intended to apply at times other than before a grain dealer receives its first license under this proposal, I do not understand how sub. (1) (a) relates to sub. (1) (b), which requires a financial statement to be filed during each license year.

14. The analysis provided by DATCP indicates that a grain dealer must file an annual financial statement if the grain dealer pays more than \$500,000 for producer grain, unless the grain dealer contributes to the fund and operates solely as a producer agent. Should that exception be added to s. 127.13 (1) (b) 1.?

15. Proposed s. 127.13 (2) (b), concerning voluntary annual financial statements, said that a contributing grain dealer who uses deferred payment contracts could file a financial statement in order to avoid filing security under proposed s. 127.16 (1) (b). As I understand it, a grain contractor who uses deferred payment contracts must file a financial statement, so this draft omits proposed s. 127.13 (2) (b). Please let me know if my reasoning is incorrect.

16. Please review s. 127.13 (5) in this draft to ensure that it complies with your intent. I am somewhat confused about the definitions of "audited financial statement" and "reviewed financial statement" and this provision, as they relate to generally accepted accounting principles and to historical cost basis for sole proprietor's financial statements. The same issues arise with respect to proposed ss. 127.28 (5), 127.44 (5), and 127.58 (5).

17. I believe that the substance of proposed s. 127.14 (3) (a) and (b) is covered in ss. 127.71 and 127.73, so this draft omits those provisions. See also, ss. 127.29 (3), 127.45 (4), and 127.59 (3).

18. Proposed 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). Under proposed s. 127.16 (8) (a), DATCP does not release the security when the grain dealer satisfies the condition in that provision if s. 127.16 (1) (b) applies to the grain dealer. Is it OK that a grain dealer who satisfies the condition in s. 127.16 (8) (a) 1. or 2. remains disqualified as long as s. 127.16 (1) (b) applies? I believe that this same issue arises with respect to milk contractors.

19. Proposed s. 127.15 (1) provides that each assessment equals an assessment rate multiplied by a dollar amount. The assessment rates are expressed as percentages. Multiplying by a percentage is confusing. I think that multiplying by 1% is the same as multiplying by 0.01. This draft expresses the assessment rates as numbers rather than as percentages. If the intent was not to multiply by the percentages but rather that the assessment equals the specified percentage of the dollar amount, this will have to be changed. This issue arises in the parallel provisions for the other industries.

20. The formulas in s. 127.15 (2) and (4) (and the parallel statutes for the other industries) have ratios as variables. The text of the draft shows the ratios as, for example, "1.25 to 1.0." It seems to be the intent of the draft that "1.25," rather than "1.25 to 1.0," be put into the formula. I am not certain what to do about this situation. The ratios could all be shown as the numbers representing the quotients of the relevant values (e.g., a debt to equity ratio of 1.25). There are a number of statutes that show ratios as quotients.

21. The amount of the current ratio assessment that must be paid by a grain dealer to whom s. 127.15 (2) (c) applies appears to be much larger than the amount that must be paid by a grain dealer whose financial situation is a little bit better so that s. 127.15 (2) (b) applies. Is this your intent?

22. Is the amount of security required under s. 127.16 (3) intended to apply to those who are required to maintain security because they were required to file security under former law?



23. Under s. 127.16 (8) (and the parallel provisions for the other industries), the department may, but is not required to, release security under most of the paragraphs. Is that your intent? There is no indication of the factors that the department should rely on in deciding whether to keep a grain dealer's security beyond the date on which it could be released.

24. Proposed s. 127.10 (15) defines "scale ticket" as a receipt that states the weight of grain. The section concerning receipts for grain, proposed s. 127.18, requires any receipt for grain to state the net weight of grain received, unless the grain dealer receives the grain at the producer's farm. Thus, it sounds as if all receipts, except those issued when the grain dealer receives the grain on the farm, are scale tickets. Is there something else that distinguishes a scale ticket? If not, is it necessary to define "scale ticket" or use the term at all?

25. Proposed s. 127.14 (1) states that a grain dealer who is voluntarily licensed may pay voluntary assessments. Should it say "unless the grain dealer is disqualified"?

26. Proposed ss. 127.18 (1) (f) and 127.33 (1) (e) refer to "dockage." That may be a common term in the industry, but it is not familiar to others. Would it be possible to define the term or to use a term or phrase that persons outside of the industry will understand?

27. The definition of "capacity" in s. 127.25 (1), as in current law, specifies that the maximum amount of grain is measured in bushels and then provides that the capacity of a warehouse is determined by dividing the cubic volume of all bins by 1.244 cubic feet. This is very confusing. In what units is the cubic volume expressed before it is divided by 1.244 cubic feet? Is the result then expressed in bushels? Should this provision simply say that the cubic volume is divided by 1.244 (omitting "cubic feet")? We should make the law clear in this regard.

28. The definition of "grain warehouse" in s. 127.25 (8), as in current law, includes a facility that is used to "ship" grain for others. Then the definition provides that "grain warehouse" does not include a transport vehicle. I do not understand how a warehouse can be used to ship grain. Can we clarify this? Please also see the definition of "grain warehouse keeper."

29. The proposed definition of "grain warehouse" stated that a warehouse keeper may treat two warehouses located within half a mile of each other as one warehouse. That kind of substantive language does not really belong in a definition. I moved that language to s. 127.26 (3) (a) and specified that it applies to s. 127.26 (3) (a) and (c). Please let me know if that language is intended to apply more broadly.

30. In s. 127.30 (1) (a) and (b) and s. 127.31 (8) (a) 1., should I add a reference to s. 127.26 (10)? That is, should those determinations be made on the number of bushels reported in the license application or should they be based on the number of bushels indicated in any later report?

31. I cannot tell the reasons for some differences in the way that the department's draft treats the different industries and I wonder whether these differences are intentional. For example, compare s. 127.14 (2) (b) to s. 127.29 (2) (b). Another, minor, example:

proposed s. 127.56 (3) requires mailing addresses, while the parallel provisions for the other industries do not specify "mailing."

32. As for s. 127.29 (2) (b), s. 127.86 also lists situations that provide cause for taking action on a contractor's license. It is unnecessary to have two lists and it is confusing to have differing lists. A court might conclude that the fact that there are two different lists has a substantive legal effect. If that is not intended, the draft should be changed.

33. Section 127.40 contains a definition of "procure milk in this state." The proposal uses "procures producer milk in this state" (in s. 127.44 (1) (c) 2. and 127.47 (6) (d)) as well as "procures milk in this state" (ss. 127.41 (6) (c) and 127.46 (2) (e) and (4) (e)). I wonder whether "procure producer milk in this state" should also be defined. Or perhaps the draft could be changed to use only one of these terms.

34. I do not think that the milk contractor licensing provision has the language about licenses for part of the year requiring full payment of fees (under s. 127.41 (3)) that exists in the other subchapters. OK?

35. Is it clear how the credits under proposed s. 127.42 (3) will work considering that the fees are monthly, rather than annual as for the other industries?

36. The intent of proposed s. 127.44 (1) (a), I believe, is to require a milk contractor to file an annual financial statement before the contractor is first licensed under the new law, except that under par. (c) the contractor need not file if the contractor is a contributing contractor and meets one of two specified criteria. The problem is that a contractor cannot be a contributing contractor until the contractor is licensed. Thus, as the draft stands, every milk contractor must file an annual statement before the contractor is first licensed. What would you like to do about this?

37. I am puzzled by proposed s. 127.45 (4) (a), which says that a milk contractor disqualified under sub. (3) (c) may not engage in activities for which a license is required if, as a result of that disqualification, the milk contractor no longer complies with sub. (1). Subsection (1) states that certain contractors must pay assessments unless they are disqualified. Disqualification cannot cause a contractor to be out of compliance with sub. (1) because a disqualified contractor does not have to comply with sub. (1). Should this say that a contractor who is disqualified under sub. (3) (c) may not engage in activities for which a license is required until the contractor files a financial statement under s. 127.44 (perhaps one that shows 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), or something like that? Or should it say that a milk contractor disqualified under sub. (3) (c) may not engage in activities for which a license is required if, as a result of that disqualification, the milk contractor does not comply with s. 127.44 (1) (b)?

38. The only place in the proposed draft that used the term "cooperative pooling" was s. 127.56 (9) (h), so I deleted the definition and put the substance of the definition into s. 127.56 (9) (h).

39. Proposed s. 127.71 (1) states that the department **shall** pay the specified amounts from the sources under s. 127.72. Is there a possibility that there would not be enough money from those sources to make those payments in full? If so, the draft should say what happens in that case.

40. The last sentence of proposed s. 127.71 (2) (b) authorizes DATCP to pay claims directly from security proceeds rather than from the fund. Would the payment in that case be made in the amounts under s. 127.71 (1) or would they be made as provided in s. 127.71 (2) (a)?

41. Proposed s. 127.87 (4) (b) could reference the wage claim statute, s. 109.09. Do you want that? I am told, by the way, that wage claims do not have as high a priority as they used to have because of changes in s. 109.09.

42. Do you want the terms of the members of the council staggered so that they do not all expire at the same time? Whether you do or not, I will need to add a nonstatutory provision to the draft concerning the length of the terms of the initial members of the council.

43. Proposed ss. 127.11 (3) (d), 127.41 (2) (d), and 127.56 (3) (d) require an applicant to provide the name of a responsible individual who may be contacted at each business location that is staffed. Will questions arise about how much time an employee must be present at a location for it to be considered staffed?

44. Should proposed s. 127.57 (1) (b) 2. refer to "organizations" in addition to "cooperatives"? If not, should "organization" be deleted from proposed s. 127.56 (9) (h)?

45. I am still considering how to handle the transition, over the course of 2002, to the new law created by this proposal. I am not certain that the initial applicability provision proposed by DATCP fully covers all of the issues. It might simplify this matter to some extent if the draft created a new chapter, perhaps ch. 126, and then delayed the repeal of the existing statutes to a date that is appropriate for each industry. I will be considering this matter while awaiting redrafting instructions.

Please do not hesitate to contact me with questions about the draft or this note.

Rebecca C. Tradewell  
Managing Attorney  
Phone: (608) 266-7290  
E-mail: becky.tradewell@legis.state.wi.us

## Tradewell, Becky

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**From:** Matson, James K DATCP  
**Sent:** Thursday, December 21, 2000 12:05 PM  
**To:** Tradewell, Becky; Walker, William  
**Cc:** Knapp, Barb H DATCP; Norton, John C DATCP; Leroy, Kevin J DATCP; Hanson, Eric J DATCP; Oemichen, William L DATCP  
**Subject:** Agricultural Producer Security Program; Budget Legislation (LRB-0392/p2)



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Agent Phas...



LRB  
01-0392P2.knapp.txt

Attached are the department's responses to the questions posed in the drafter's note to the Ag Producer Security legislation (LRB-0392/p2). We are also enclosing supplementary attachments referenced in the responses. Generally speaking, we think the draft looks good. We will continue to review for any other possible issues. Barb Knapp and I will be out next week, but you may contact Kevin LeRoy (224-4928) or Eric Hanson (224-4968) in our Bureau of Trade Practices if you have follow-up questions.

Thanks!

Jim Matson  
DATCP Counsel  
(224-5022)

## **Agricultural Producer Security; Budget Legislation**

### **DATCP Response to LRB Drafter's Notes**

1. We prefer formulas to words, but words will be OK if formulas are not technically feasible.
2. Any number used in or resulting from the calculation, if extending more than 6 decimal places to the right of the decimal point, may be rounded to the nearest whole digit in the 6<sup>th</sup> decimal place to the right of the decimal point. The final calculated assessment may be rounded to the nearest dollar.
3. The LRB treatment of the cross-references is correct. Section 100.235(3) could be repealed, because the same requirement is contained in proposed s. 127.56(9)(f).
4. Please refer to Barb Knapp's comment attached.
5. Please refer to Barb Knapp's comment attached.
6. We would prefer to leave the term "major stockholder" undefined. As is true in many areas of accounting, the question of whether a particular person can be considered a major stockholder may depend on a variety of factors. It may depend on how the company and the stockholder interact with each other, whether or not the stockholder has management duties, the nature of the balance sheet item in question, and many other factors. We believe that the determination can best be made on a case by case basis.
7. The LRB draft is fine.
8. The definition of "person" should include state and local government entities and the UW system.
9. The LRB draft is fine.
10. The LRB draft is fine.
11. We would prefer to restore the second sentence of s. 127.11(9)(c). Although it is redundant, it is not inconsistent with s. 127.13(1)(d). We would like to see this disclosure in the license application because it serves as a crucial reminder to license applicants on an important issue. The use of deferred payment contracts triggers a number of important requirements.

12. The draft should probably say "licensed or required to be licensed". We do want voluntary license holders to have insurance.
13. The LRB draft is fine, except that DATCP has requested additional changes to this provision in its letter dated November 13, 2000 (copy attached).
14. In its letter dated November 13, 2000 (copy attached), DATCP has requested additional changes that will address this issue.
15. The LRB draft is fine.
16. The LRB draft is fine.
17. We would prefer to retain proposed ss. 127.14(3)(a) and (b). While they are somewhat redundant, they are not inconsistent with the provisions in ss. 127.71 and 127.73 and they serve a useful explanatory purpose at this point in the draft. The same comments apply to ss. 127.29(3), 127.45(4), and 127.59(3).
18. The LRB draft is fine. Section 127.14(2)(a) provides that "A grain dealer who is required to file security under s. **127.16(1)(a)** is disqualified from the fund until the department releases **that security [i.e., the security filed under s. 127.16(1)(a)]....** Once the department releases security filed under s. 127.16(1)(a), the grain dealer may participate in the fund even though the grain dealer is still required to maintain security under s. 127.16(1)(b). This is what the department intended.

We have, however, noted a slight problem (our mistake) with s. 127.16(1)(b)(intro.). That intro. should be modified to read:

"A grain dealer who reports any deferred payment contract obligations...shall file security...until the department releases it...unless the grain dealer has positive equity and one of the following applies:"

This issue does not arise for milk contractors or grain warehouse keepers because there are no provisions regarding deferred payment contracts. However, it does arise for vegetable contractors. The vegetable contractor provision under s. 127.61(1)(b) should also be modified to read:

"...a vegetable contractor shall file security...unless...that financial statement shows positive equity, a current ratio of at least 1.25 to 1.0 and a debt to equity ratio of not more than 4.0 to 1.0.

19. The LRB draft is fine.
20. We would leave this to the drafter's discretion.
21. The LRB draft is fine.

22. The LRB draft is fine.
23. The LRB draft is fine. The department would like to retain the discretion provided by current law. While the department would normally release security when the stated requirements are met, there may be unique circumstances that warrant the retention of security in some cases.
24. The definition of "scale ticket" could be deleted. The term is commonly used in the industry (normally to designate a weight receipt issued immediately after weighing), but is used in this draft only for illustrative purposes.
25. The draft should be modified as suggested by the LRB.
26. The references to "dockage" are not essential and can be deleted.
27. The second sentence of s. 127.25(1) should be redrafted as follows:

"The capacity of a grain warehouse is determined by dividing the volume of all bins, expressed in cubic feet, by 1.244 cu. ft./bu., and applying a pack factor that the department specifies by rule."
28. A "facility used to ship grain for others" may include, for example, a structure used to load a transport vehicle, or a loading facility at which grain is temporarily unloaded and stored during the shipment process.
29. The LRB draft is fine.
30. A grain warehouse keeper who adds capacity during the license year must file a supplementary report showing that additional capacity, and must pay supplementary assessments based on that report. A grain warehouse keeper with security on file could not have it released under s.127.31(8)(a)1. unless the warehouse keeper maintains a capacity under 300,000 bushels for two entire license years consecutively. The department would not release security based solely on a supplementary report filed during the license year. We would not object to drafting changes that clarify this.
31. The differences in ss. 127.14(2)(b) and 127.29(2)(b) are intentional, subject to the comments in #32 below. Regarding s.127.56(3)(c) and the parallel provisions in ss.127.11(3)(c), 127.26(2)(c) and 127.41(2)(c), the application should include the "mailing" address of the applicant's primary business location. Regarding s.127.56(3)(d) and the parallel provisions in ss.127.11(3)(d), 127.26(2)(d) and 127.41(2)(d), the application should include the "street address" of each business location from which the applicant operates in this state.

32. Sections 127.29(2)(b)3. and 4. could be moved to s. 127.86(1)(f) and (g). Sections 127.29(2)(b)1. and 2., and the second sentence of s. 127.29(2)(b)(intro.) could be deleted as redundant with s. 127.86.
33. The definitions in ss. 127.40(11) and (12) could be modified to refer to "producer milk" rather than "milk." Substantive provisions using these terms could be modified accordingly.
34. We should probably add the language requiring partial year license holders to pay a full annual license fee (comparable to s. 127.11(5)), even though the annual license fee is only \$25.
35. We could add a sentence stating that the department shall credit 1/12 of the total annual credit in each month that the contractor pays license fees.
36. In its letter dated November 13, 2000 (copy attached), DATCP has requested additional changes that will address this issue.
37. A disqualified contractor does not violate sub. (1) if the contractor files financial statements that meet minimum financial standards, or if the contractor files security that is required under s. 127.47(1). Disqualification may cause a contractor to violate sub. (1) if the contractor is unable to file financial statements that meet minimum financial standards or is unable to file security required under s. 127.47. We think the LRB draft is OK, and would be inclined to leave it as is.
38. The LRB draft is fine.
39. We could add a provision stating that, if the total of all claims exceeds the total amount available under 127.72, the department shall prorate the available amount among the claimants in proportion to the amount of their claims.
40. We think the draft is correct as written, and needs no change. The department may pay from the fund the amounts provided under sub. (1), and may then use the security to reimburse the fund. If there is security left over after the fund is reimbursed, the department may use that excess security to make additional payments to the farmers (up to the full amount of their allowed claims). The department also has discretion to use *only* the security to pay farmers, without ever resorting to the fund (for example, if there is ample security in a form that can be quickly and easily converted to cash).
41. We would rather not reference s. 109.09, Stats. We prefer the current reference to federal bankruptcy proceedings.
42. We would prefer simultaneous, rather than staggered, terms. Section 15.137(1), created by the draft, provides that members are to be appointed for 3-year terms. Nonstatutory language should be consistent.
43. We don't believe that this will be a significant issue.



44. We agree that "organizations" should be added to s. 127.57(1)(b)2.
45. We believe that the transition provisions are generally adequate, but will defer to LRB's expertise if technical changes are needed.

**ADDITIONAL COMMENTS:**

1. We transmitted additional changes by letter dated November 13, 2000 which we would like included in the draft. A copy of that transmittal is attached. We would also like to propose one additional change to s. 127.47 (copy attached), which would phase in security requirements for milk contractors who are "producer agents."
2. DATCP budget and accounting director Barb Knapp has previously commented on certain appropriation provisions in the draft. A copy of her comments is attached.



State of Wisconsin  
Tommy G. Thompson, Governor

COPY

**Department of Agriculture, Trade and Consumer Protection**  
Ben Brancel, Secretary

DATE: November 13, 2000

TO: Bill Walker, Budget Analyst  
Department of Administration

FROM: Ben Brancel, Secretary *Ben Brancel*  
Department of Agriculture, Trade and Consumer Protection

SUBJECT: **Agricultural Producer Security Legislation**

As part of this department's biennial budget request, we included a major legislative proposal to overhaul current producer security laws and establish an agricultural producer security fund.

Based on industry comments and further staff review, we are now proposing minor modifications to the legislative draft (dated September 14, 2000) that we included with our budget request. We are enclosing excerpts from the revised draft bill, highlighting our proposed changes. The proposed changes would do the following:

- **Clarify the treatment of grain dealers and milk contractors who procure grain or milk as "producer agents."**

Recent events have demonstrated the need for this change, and we believe that it enjoys broad industry support. The prior draft would have allowed "producer agents" to participate in the fund without filing a financial statement with the department. In order to limit financial risks to the fund, this revised draft would require a "producer agent" (like other grain dealers and milk contractors) to file a financial statement showing positive equity in order to participate in the fund. (A "producer agent" who shows negative equity must file individual security.) There are exemptions for small "producer agents," just as for other small grain dealers and milk contractors.

Once a "producer agent" is admitted to the fund, the producer agent may continue to participate without filing annual financial statements. However, a "producer agent" in good financial condition may elect to file an annual financial statement in order to qualify for lower fund assessments.

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

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

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

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

9 **127.12 Grain dealers; insurance. (1) FIRE AND EXTENDED COVERAGE INSURANCE.** A  
10 grain dealer licensed under s. 127.11(1) shall maintain fire and extended coverage insurance  
11 issued by an insurance company authorized to do business in this state. The insurance policy  
12 shall cover all grain in the custody of the grain dealer, whether owned by the grain dealer or held  
13 for others, at the full local market value of the grain.

14 (2) INSURANCE CANCELLATION; REPLACEMENT. Whenever an insurance policy under  
15 sub. (1) is canceled, the grain dealer shall replace the policy so there is no lapse in coverage. The  
16 replacement policy shall comply with sub. (1).

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

19 (a) That the grain dealer is insured.

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

21 ✓ **127.13 Grain dealers; financial statements. (1) REQUIRED ANNUAL FINANCIAL**  
22 **STATEMENT.** (a) A grain dealer shall file an annual financial statement with the department,  
23 before the department first licenses the grain dealer under s. 127.11(1), if the grain dealer's  
24 license application reports any of the following:

25 1. More than \$500,000 in grain payments under s. 127.11(9)(a), ~~unless the grain dealer is~~  
26 ~~a contributing grain dealer who procures grain in this state solely as a producer agent.~~

27 2. Any deferred payment contract obligations under s. 127.11(9)(c).

28 (b) A grain dealer licensed under s. 127.11(1) shall file an annual financial statement  
29 with the department during each license year if the grain dealer's license application for that year  
30 reports any of the following:

1 statement of cash flows, notes to those statements, and any other information required by the  
2 department. A sole proprietor's financial statement shall include the sole proprietor's business  
3 and personal financial statement. A financial statement shall disclose, separately and clearly, the  
4 grain dealer's unpaid obligations to producers and producer agents.

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

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

- 9 1. The grain dealer's current ratio, excluding any assets identified in sub. (7).
- 10 2. The grain dealer's debt to equity ratio, excluding any assets identified in sub. (7).

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

15  
16 (7) ASSETS EXCLUDED. A financial statement may not include any of the following  
17 assets in the calculations under sub. (6)(c) unless the department specifically approves their  
18 inclusion:

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

22 (b) Notes or accounts receivable from parent organizations, subsidiaries, or affiliates  
23 other than employees.

24 (c) Notes or accounts that have been receivable for more than one year, unless the grain  
25 dealer has established an offsetting reserve for uncollectible notes and accounts receivable.

26 (8) INTERIM FINANCIAL STATEMENT. The department may, at any time, require a grain  
27 dealer licensed under s. 127.11(1) to file an interim financial statement with the department. The  
28 department may require an interim financial statement in addition to any annual financial  
29 statement required under sub. (1) or (2). The grain dealer shall include, with the interim financial  
30 statement, the contractor's sworn and notarized statement that the financial statement is correct.  
31 An interim financial statement need not be a reviewed or audited financial statement.

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

$$3 \left( \frac{\text{Debt / Equity Ratio} - 4}{3} \right)^3 + \left( \frac{\text{Debt / Equity Ratio} - 1.7}{1.75} \right)^7 + 2.$$

4 (b) If the grain dealer's annual financial statement under s. 127.13 shows a debt to equity  
5 ratio greater than 4.0 to 1.0, but less than 5.00 to 1.0, the grain dealer's debt to equity ratio  
6 assessment rate equals the debt to equity ratio assessment factor in sub. (5)(b) multiplied by the  
7 following amount:

$$8 \left( \frac{\text{Debt / Equity Ratio} - 4}{3} \right)^3 + \left( \frac{\text{Debt / Equity Ratio} - 1.7}{1.75} \right)^7 + 2.$$

9 (c) If the grain dealer's annual financial statement under s. 127.13 shows a debt to equity  
10 ratio of at least 5.00 to 1.0, the grain dealer's debt to equity ratio assessment equals the debt to  
11 equity ratio assessment factor in sub. (5)(b) multiplied by 86.8244.

12 (d) If the grain dealer has not filed an annual financial statement under s. 127.13, the  
13 grain dealer's debt to equity ratio assessment equals the debt to equity ratio assessment factor in  
14 sub. (5)(b) multiplied by 8.77374 unless the grain dealer procures grain in this state solely as a  
15 producer agent. If the grain dealer procures grain in this state solely as a producer agent, the  
16 grain dealer's debt to equity ratio assessment rate is ~~0.25%~~ 0.025% except that, for the grain  
17 dealer's fifth or higher consecutive full license year of participation in the fund, the grain dealer's  
18 debt to equity ratio assessment rate is ~~0.175%~~ 0.0175%.

19 (5) DEBT TO EQUITY RATIO ASSESSMENT FACTOR. (a) A grain dealer's debt to equity  
20 ratio assessment factor under sub. (4)(a) is 0.00125%, except that it is 0.0% for the grain dealer's  
21 fifth and higher consecutive full license year as a contributing grain dealer.

22 (b) A grain dealer's debt to equity ratio assessment factor under sub. (4)(b) to (d) is  
23 0.001875%, except that it is 0.0015% for the grain dealer's fifth and higher consecutive full  
24 license year as a contributing grain dealer.

25 (6) DEFERRED PAYMENT ASSESSMENT RATE. A grain dealer's deferred payment  
26 assessment rate is 0.35%, except that it is 0.20% for the grain dealer's fifth and higher  
27 consecutive full license year as a contributing grain dealer.

1 contractor on a pro rata basis, in proportion to the total fees that the contractor has paid under  
2 sub. (1) for the 4 preceding license years.

3 (4) FEE STATEMENT. Whenever the department issues an annual license to a milk  
4 contractor under s. 127.41(1), the department shall give the milk contractor notice of the monthly  
5 fees required under this section. The notice shall include all the following:

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

10 (5) PRODUCER AGENTS; EXEMPTION. A producer agent is not required to pay the monthly  
11 fee under sub. (1) for producer milk that the producer agent markets to a milk contractor,  
12 licensed under s. 127.41(1), who pays a monthly fee on the same milk.

13 (6) FEE-CHANGES. The department may modify the license fees under sub. (1) by rule, as  
14 provided under s. 127.81(2).

15 **127.43 Milk contractors; insurance. (1) FIRE AND EXTENDED COVERAGE INSURANCE.**

16 A milk contractor licensed under s. 127.41(1) shall maintain fire and extended coverage  
17 insurance. The insurance policy shall cover at their full value all milk or milk products in the  
18 possession, custody or control of the milk contractor. If the milk contractor is required to be  
19 licensed under s. 127.41(1)(a), the insurance policy shall be issued by an insurance company  
20 authorized to do business in this state.

21 (2) INSURANCE CANCELLATION; REPLACEMENT. Whenever an insurance policy under  
22 sub. (1) is canceled, the milk contractor shall replace the policy so there is no lapse in coverage.  
23 The replacement policy shall comply with sub. (1).

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

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

28 **127.44 Milk contractors; financial statements. (1) REQUIRED ANNUAL FINANCIAL**  
29 **STATEMENT.** (a) ~~Except as provided in par. (c), a~~ A milk contractor shall file an annual financial  
30 statement with the department before the department first licenses the milk contractor under s.

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

4 (b) Notes or accounts receivable from parent organizations, subsidiaries, or affiliates  
5 other than employees.

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

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

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

14 **127.45 Contributing milk contractors. (1) REQUIRED CONTRIBUTORS.** Except as  
15 provided in sub. (3)(a):

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

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

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

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

1 ✓ current ratio assessment rate is ~~0.25%~~ 0.025%, except that for the contractor's fifth or higher  
2 consecutive full license year of participation in the fund, the contractor's current ratio assessment  
3 rate is ~~0.175%~~ 0.0175%.

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

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

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

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

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

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

17 (a) If the contractor's annual financial statement under s. 127.44 shows a debt to equity  
18 ratio of not more than 2.0 to 1.0, the contractor's debt to equity ratio assessment rate equals the  
19 greater of zero or the debt to equity ratio assessment factor in sub. (5)(a) multiplied by the  
20 following amount:

$$21 \left( \frac{\text{Debt / Equity Ratio} - 2}{3} \right)^9 + \left( \frac{\text{Debt / Equity Ratio}}{3.25} \right)^5 + 0.025.$$

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

$$26 \left( \frac{\text{Debt / Equity Ratio} - 2}{3} \right)^9 + \left( \frac{\text{Debt / Equity Ratio}}{3.25} \right)^5 + 0.025.$$



1 department. A sole proprietor's financial statement shall include the sole proprietor's business  
2 and personal financial statement.

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

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

7 1. The vegetable contractor's current ratio, excluding any assets identified in sub. (7).  
8

9 2. The vegetable contractor's debt to equity ratio, excluding any assets identified in sub.  
10 (7).

11 **NOTE:** A vegetable contractor may append the ratios under par. (c) to the contractor's  
12 normal financial statement if the contractor's normal financial statement does not  
13 include them or calculates them in a different way. The department will check the  
14 vegetable contractor's ratio calculations for compliance with par. (c).  
15

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

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

22 ✓ (b) Notes or accounts receivable from parent organizations, subsidiaries, or affiliates  
23 other than employees.

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

27 (8) INTERIM FINANCIAL STATEMENT. The department may, at any time, require a  
28 vegetable contractor licensed under s. 127.56(1) to file an interim financial statement with the  
29 department. The department may require an interim financial statement in addition to any  
30 financial statement required under sub. (1). The vegetable contractor shall include, with the  
31 interim financial statement, the contractor's sworn and notarized statement that the financial

**127.47 Milk contractors; security. (1) SECURITY REQUIRED.** A milk contractor shall file security with the department, and maintain that security until the department releases it under sub. (7), if all of the following apply when the department first licenses the milk contractor under s.127.41(1):

(a) The milk contractor reports more than \$1,500,000 in annual milk payroll obligations under s.127.41(6)(a).

(b) The milk contractor files an annual financial statement under s.127.44(1) and that financial statement shows negative equity.

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

**(3) AMOUNT OF SECURITY. A milk contractor who is required to file or maintain security under this section shall at all times maintain security equal to the following amount:**

(a) Except for milk contractors who procure milk in this state solely as a producer agent, at least 75% of the amount last reported under s.127.41(6)(b) or (9).

(b) A milk contractor who procures milk in this state solely as a producer agent shall file security in at least the following amounts for the license years indicated:

1. For the license year beginning May 1, 2002, 15% of the amount last reported under s.127.41(6)(b) or (9).

2. For the license year beginning May 1, 2003, 30% of the amount last reported under s.127.41(6)(b) or (9).

3. For the license year beginning May 1, 2004, 45% of the amount last reported under s.127.41(6)(b) or (9).

4. For the license year beginning May 1, 2005, 60% of the amount last reported under s.127.41(6)(b) or (9).

5. For all license years beginning after May 1, 2005, 75% of the amount last reported under s.127.41(6)(b) or (9).

LRB 01-0392P2.knapp

From: Knapp, Barb H DATCP  
Sent: Thursday, December 21, 2000 8:20 AM  
To: Walker, William  
Cc: Norton, John C DATCP; Matson, James K DATCP; Moll, Keeley A DATCP  
Subject: LRB 01-0392/P2

Becky sets up a new appropriation in this draft - 20.115(1)(wb) - to receive and expend bond proceeds. I think our intent was to use (1)(w) for payments - whether from the "deductible" or the bond. I don't have a problem setting up another appropriation. However, she has set it up as "all moneys received under s.127.72". An "all moneys received" account under PR requires DOA approval to increase the spending authority. I'm not sure how an "all moneys received" account under SEG would be handled since SEG is treated like GPR for spending increases. I.e. - to get an increase we'd have to do a 13.10 request. We've set up our producer security payments appropriation as "sum sufficient." I'd prefer to have the new one set up as sum sufficient also. I'm not sure why spending controls would be needed on the new one Becky set up since we're only authorized to use it for a very narrow purpose. I want to make sure that we will have the spending authority we need when we need it without having to go to DOA or JCF. When there is a default and producers are waiting for payment, they want it as soon as possible.

Could you check on how we would increase spending, if needed, in the new appropriation that Becky proposes?

Thanks.

## **Tradewell, Becky**

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**From:** Walker, William  
**Sent:** Wednesday, December 27, 2000 2:29 PM  
**To:** Tradewell, Becky  
**Subject:** Producer Security Continuing Appropriation Issue

Responding to Barb's all-monies-received concern:

If we make the bond proceeds appropriation continuing, the expenditure authority can be adjusted by DOA without input from Joint Finance. This is the procedure taken in the Transportation accounts and is consistent with s. 20.001(3)(c). Hence, having the bond proceeds appropriation as "all monies received" presents no technical problems.

QUESTION: I don't see why the bond proceeds and the payments appropriation should be different types. If control over the proceeds appropriation is worth having, then control over the payments appropriation is worth having as well. Your thoughts?

DRAFTING INSTRUCTION: I definitely do want to keep the separate bond proceeds appropriation as you drafted it. It's no more difficult to administer and allows better tracking.

More later...

**Bill Walker**  
Executive Policy and Budget Analyst  
Department of Administration  
(608) 266-7329

## **Tradewell, Becky**

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**From:** Walker, William  
**Sent:** Wednesday, December 27, 2000 3:36 PM  
**To:** Tradewell, Becky  
**Subject:** More Producer Security

Some thought on your numbered drafter's notes and DATCP's responses.

1-10: I don't care.

11: I support you. DATCP seems to feel that they cannot include the point in the application materials unless it is in the statute which is not true, of course.

12-16: I don't care.

17: I agree with you.

18-39: I don't care.

40: Did they address your concern?

41-44: I don't care.

45: What did you decide on the transition issue? I tend to think that a new chapter will be less confusing and less vulnerable to residual drafting errors.

Next, I'm going to read the draft itself and see if I spot any major issues (I doubt there are any left that DATCP and the industries haven't spotted).

It appears that there is much less for us to discuss than I had thought.

Do you have additional questions for me?

**Bill Walker**  
Executive Policy and Budget Analyst  
Department of Administration  
(608) 266-7329