

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

4 (21) "Security" means security filed or maintained under s. 126.16, 126.31,
5 126.47, or 126.61.

6 (22) "Sole proprietor" means a contractor who is an individual.

7 (23) "Statement of cash flows" means a report of cash receipts and cash
8 disbursements from operating, investing, and financing activities, including an
9 explanation of changes in cash and cash equivalents for the accounting period
10 covered by the report.

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

16 SUBCHAPTER II

17 AGRICULTURAL PRODUCER

18 SECURITY FUND

19 **126.05 Deposits into the fund.** The department shall deposit into the fund
20 all fees, surcharges, assessments, reimbursements, and proceeds of surety bonds
21 that the department collects under this chapter. The department shall keep a record
22 by contractor and industry, of all deposits.

23 **126.06 Industry bonds.** (1) DEPARTMENT TO ACQUIRE BONDS. Using moneys
24 appropriated under s. 20.115 (1) (v), the department shall acquire and maintain all
25 of the following surety bonds:

1 (a) A surety bond that takes effect on May 1, 2002, to secure payment under
2 s. 126.72 (2) of claims against contributing milk contractors, as defined in s. 126.40
3 (1).

4 (b) A surety bond that takes effect on September 1, 2002, to secure payment
5 under s. 126.72 (2) of claims against contributing grain dealers, as defined in s.
6 126.10 (3), and contributing grain warehouse keepers, as defined in s. 126.25 (2).

7 (c) A surety bond that takes effect on February 1, 2002, to secure payment
8 under s. 126.72 (2) of claims against contributing vegetable contractors, as defined
9 in s. 126.55 (4).

10 (2) BOND TERMS. The department shall ensure all of the following:

11 (a) That the amount of each bond under sub. (1) is at least \$5,000,000 but not
12 more than \$20,000,000.

13 (b) That the amount of each bond under sub. (1) renews annually.

14 (c) That each bond under sub. (1) is payable to the department for the benefit
15 of the appropriate claimants under sub. (1).

16 (d) That each bond under sub. (1) is issued by a person who is authorized to
17 operate a surety business in this state.

18 (dm) That no surety issues more than one of the 3 bonds under sub. (1).

19 (e) That no bond issued under sub. (1) may be canceled or modified unless one
20 of the following applies:

21 1. The department agrees to the cancellation or modification.

22 2. The department receives written notice from the issuer in person or by
23 certified mail at least one year before the proposed cancellation or modification.

24 (f) That the issuer of each bond under sub. (1) issues the bond in a form, and
25 subject to any terms and conditions, that the department considers appropriate.

1 **(3) BOND PROCUREMENT.** The department shall procure the surety bonds under
2 sub. (1) according to the procedures provided in subch. IV of ch. 16.

3 **126.07 Blanket bond. (1) DEPARTMENT TO ACQUIRE BOND.** Using moneys
4 appropriated under s. 20.115 (1) (v), the department shall acquire and maintain a
5 surety bond, that takes effect on February 1, 2002, to secure payment under s. 126.72
6 (3) of claims against contributing contractors, as defined in s. 126.68 (1).

7 **(2) BOND TERMS.** The department shall ensure all of the following:

8 (a) That the amount of the bond under sub. (1) is at least \$20,000,000 but not
9 more than \$40,000,000.

10 (b) That the amount of the bond under sub. (1) renews annually.

11 (c) That the bond under sub. (1) is payable to the department for the benefit of
12 claimants described in sub. (1).

13 (d) That the bond under sub. (1) is jointly issued by at least 3 persons acting
14 as cosureties on the bond and that each of the persons is authorized to operate a
15 surety business in this state.

16 (e) That no issuer of the bond under sub. (1) may cancel or modify the bond, or
17 withdraw as a cosurety, unless one of the following applies:

18 1. The department agrees to the cancellation, modification, or withdrawal.

19 2. The department receives written notice from the issuer that is delivered in
20 person or by certified mail and is received at least one year before the proposed
21 cancellation, modification, or withdrawal.

22 (f) That the issuers of the bond under sub. (1) issue the bond in a form, and
23 subject to any terms and conditions, that the department considers appropriate.

24 **(3) BOND PROCUREMENT.** The department shall procure the surety bond under
25 sub. (1) according to the procedures provided in subch. IV of ch. 16.

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

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

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

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

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

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

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

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

21 (10m) “License year” means the period beginning on September 1 and ending
22 on the following August 31.

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

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

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

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

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

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

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

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

14 **126.11 Grain dealers; licensing.** (1) LICENSE REQUIRED. Except as provided
15 in sub. (2), no grain dealer may procure producer grain in this state without a current
16 annual license from the department.

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

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

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

22 (2m) LICENSE TERMS. A license under this section expires on the August 31
23 following its issuance. No person may transfer or assign a license issued under this
24 section.

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

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

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

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

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

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

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

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

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

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

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

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

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

3 2. A fee of \$200 if the amount under sub. (9) (a) is at least \$50,000 but less than
4 \$500,000.

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

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

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

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

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

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

21 **(4m)** EFFECT OF PAYMENT OF SURCHARGE. Payment under sub. (4) (e) does not
22 relieve the applicant of any other civil or criminal liability that results from the
23 violation of sub. (1), but does not constitute evidence of any law violation.

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

4 **(6) FEE CREDITS.** If the balance in the fund contributed by grain dealers exceeds
5 \$2,000,000 on June 30 of any license year, the department shall credit 50% of the
6 excess amount against fees charged under sub. (4) (b) to contributing grain dealers
7 who file timely license renewal applications for the next license year. The
8 department shall credit each contributing grain dealer on a prorated basis, in
9 proportion to the total fees that the grain dealer paid under sub. (4) (b) for the 4
10 preceding license years.

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

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

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

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

1 amount that the applicant will pay during the applicant's first complete fiscal year
2 for producer grain procured in this state.

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

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

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

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

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

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

16 **126.12 Grain dealers; insurance.** (1) FIRE AND EXTENDED COVERAGE
17 INSURANCE. A grain dealer licensed, or required to be licensed, under s. 126.11 shall
18 maintain fire and extended coverage insurance, issued by an insurance company
19 authorized to do business in this state, that covers all grain in the custody of the grain
20 dealer, whether owned by the grain dealer or held for others, at the full local market
21 value of the grain.

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

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

4 (a) That the grain dealer is insured.

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

7 **126.13 Grain dealers; financial statements.** **(1) REQUIRED ANNUAL**
8 **FINANCIAL STATEMENT.** (a) A grain dealer shall file an annual financial statement with
9 the department, before the department first licenses the grain dealer under s. 126.11,
10 if the grain dealer's license application reports any of the following:

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

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

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

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

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

20 (c) A grain dealer shall file an annual financial statement under par. (b) by the
21 15th day of the 4th month following the close of the grain dealer's fiscal year, except
22 that the department may extend the filing deadline for up to 30 days if the grain
23 dealer, or the accountant reviewing or auditing the financial statement, files a
24 written extension request at least 10 days before the filing deadline.

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

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

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

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

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

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

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

23 (4m) INTERIM FINANCIAL STATEMENT. The department may, at any time, require
24 a grain dealer licensed under s. 126.11 to file an interim financial statement with the
25 department. The grain dealer shall provide, with the interim financial statement,

1 the grain dealer's sworn and notarized statement that the financial statement is
2 correct. An interim financial statement need not be a reviewed financial statement
3 or an audited financial statement.

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

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

11 (6) FINANCIAL STATEMENT CONTENTS. (a) Except as provided in par. (b), a grain
12 dealer filing a financial statement under this section shall file a financial statement
13 that consists of a balance sheet, income statement, equity statement, statement of
14 cash flows, notes to those statements, and any other information required by the
15 department. If the grain dealer is a sole proprietor, the grain dealer shall file his or
16 her business and personal financial statements. A grain dealer shall disclose on the
17 grain dealer's financial statement, separately and clearly, the grain dealer's unpaid
18 obligations to grain producers and producer agents.

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

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

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

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

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

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

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

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

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

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

23 **126.14 Contributing grain dealers; disqualification.** **(1) CONTRIBUTION**
24 **REQUIRED.** A grain dealer who is required to be licensed under s. 126.11 (1) shall pay
25 fund assessments under s. 126.15 unless the grain dealer is disqualified under sub.

1 (2). A grain dealer who is voluntarily licensed under s. 126.11 may pay voluntary
2 assessments under s. 126.15, unless the grain dealer is disqualified under sub. (2).

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

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

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

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

12 3. The grain dealer fails to reimburse the department, within 60 days after the
13 department issues a reimbursement demand under s. 126.73 (1), for the full amount
14 that the department pays to claimants under s. 126.72 (1) because of that grain
15 dealer's default.

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

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

23 (b) A disqualified grain dealer remains liable for any unpaid fund installment
24 under s. 126.15 that became due while the grain dealer was a contributing grain

1 dealer. A disqualified grain dealer is not liable for any fund installment that becomes
2 due after the grain dealer is disqualified under sub. (2).

3 **126.15 Contributing grain dealers; fund assessments.** (1) GENERAL. A
4 contributing grain dealer shall pay an annual fund assessment for each license year.
5 The assessment equals \$20 or the sum of the following, whichever is greater, unless
6 the department by rule specifies a different assessment:

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

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

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

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

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

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

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

- 15 1. Subtract one from the current ratio.
- 16 2. Divide the amount determined under subd. 1. by 3.
- 17 3. Multiply the amount determined under subd. 2. by negative one.
- 18 4. Raise the amount determined under subd. 3. to the 3rd power.
- 19 5. Subtract 0.75 from the current ratio.
- 20 6. Divide 0.65 by the amount determined under subd. 5.
- 21 7. Raise the amount determined under subd. 6. to the 5th power.
- 22 8. Add the amount determined under subd. 4. to the amount determined under
- 23 subd. 7.
- 24 9. Add 2 to the amount determined under subd. 8.

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

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

8 (e) If the grain dealer has not filed an annual financial statement under s.
9 126.13 and the grain dealer procures grain in this state solely as a producer agent,
10 the grain dealer's current ratio assessment rate is 0.00025, except that, for the grain
11 dealer's 5th or higher consecutive full license year of participation in the fund, the
12 grain dealer's current ratio assessment rate is 0.000175.

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

17 (b) A grain dealer's current ratio assessment factor under sub. (2) (b) to (d) is
18 0.000045 except that, for the grain dealer's 5th or higher consecutive full license year
19 as a contributing grain dealer, the grain dealer's current ratio assessment factor is
20 0.000036.

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

23 (a) If the grain dealer has filed an annual financial statement under s. 126.13
24 and that financial statement shows positive equity and a debt to equity ratio of not
25 more than 4.0 to 1.0, the grain dealer's debt to equity ratio assessment rate equals

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

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

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

- 17 1. Subtract 4 from the debt to equity ratio.
- 18 2. Divide the amount determined under subd. 1. by 3.
- 19 3. Raise the amount determined under subd. 2. to the 3rd power.
- 20 4. Subtract 1.7 from the debt to equity ratio.
- 21 5. Divide the amount determined under subd. 4. by 1.75.
- 22 6. Raise the amount determined under subd. 5. to the 7th power.
- 23 7. Add the amount determined under subd. 3. to the amount determined under
24 subd. 6.
- 25 8. Add 2 to the amount determined under subd. 7.

1 (c) If the grain dealer has filed an annual financial statement under s. 126.13
2 and that financial statement shows negative equity or a debt to equity ratio of at least
3 5.0 to 1.0, the grain dealer's debt to equity ratio assessment rate equals the debt to
4 equity ratio assessment factor in sub. (5) (b) multiplied by 86.8244.

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

9 (e) If the grain dealer has not filed an annual financial statement under s.
10 126.13 and the grain dealer procures grain in this state solely as a producer agent,
11 the grain dealer's debt to equity ratio assessment rate is 0.00025, except that it is
12 0.000175 for the grain dealer's 5th or higher consecutive full license year of
13 participation in the fund.

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

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

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

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

4 1. The first installment is due on October 1 of the license year.

5 2. The 2nd installment is due on January 1 of the license year.

6 3. The 3rd installment is due on April 1 of the license year.

7 4. The 4th installment is due on July 1 of the license year.

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

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

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

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

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

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

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

3 **126.16 Grain dealers; security. (1) SECURITY REQUIRED.** (a) A grain dealer
4 shall file security with the department, and maintain that security until the
5 department releases it under sub. (8) (a), if all of the following apply when the
6 department first licenses the grain dealer under s. 126.11:

7 1. The grain dealer reports more than \$500,000 in grain payments under s.
8 126.11 (9) (a).

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

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

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

18 2. The grain dealer's annual financial statement under s. 126.13 covers a fiscal
19 year ending after January 1, 2006, and shows a debt to equity ratio of not more than
20 4.0 to 1.0.

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

1 **(3) AMOUNT OF SECURITY.** A grain dealer who is required to file or maintain
2 security under this section shall at all times maintain security that is at least equal
3 to the sum of the following:

4 (a) An amount equal to 35% of the grain dealer's average monthly payment for
5 the 3 months, during the preceding 12 months, in which the grain dealer made the
6 largest monthly payments for producer grain procured in this state, except that this
7 amount is not required of a contributing grain dealer after December 1, 2002.

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

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

14 (a) Currency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 1. Issue a summary order under s. 127.85 (2) that prohibits the grain dealer
21 from procuring producer grain or requires the grain dealer to pay cash on delivery
22 for all producer grain.

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

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

4 1. The grain dealer reports, for at least 2 consecutive years, no more than
5 \$500,000 in annual grain payments under s. 126.11 (9) (a) and the grain dealer pays
6 the quarterly fund assessment that would have been required of the grain dealer if
7 the grain dealer had been a contributing grain dealer on the most recent quarterly
8 installment date under s. 126.15 (7).

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

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

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

19 2. The grain dealer files 2 consecutive annual financial statements under s.
20 126.13 showing that the grain dealer meets the applicable equity requirement and
21 debt to equity ratio under sub. (1) (b).

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

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

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

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

5 **126.17 Grain dealers; records.** (1) RECORDS AND ACCOUNTS; GENERAL. A grain
6 dealer shall keep records and accounts of all grain procured and all grain sold or
7 marketed by the grain dealer. A grain dealer shall keep records that are complete,
8 accurate, current, well-organized, and accessible, so that the grain dealer and the
9 department can readily determine all of the following:

10 (a) The kinds and amounts of grain procured, the procurement dates, the
11 procurement terms, and the persons from whom the grain dealer procured the grain.

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

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

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

20 (e) The nature and amount of the grain dealer's obligations to grain producers
21 and producer agents, including obligations deferred payment contracts. The grain
22 dealer shall keep a daily record of obligations under priced contracts and a separate
23 daily record of obligations under deferred price contracts that have not yet been
24 priced.

1 (f) The nature and amount of the grain dealer's obligations to depositors, as
2 defined in s. 126.25 (5), under agreements for the storage of grain, if any.

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

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

8 (a) The kind and weight of grain procured.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (e) The kind of grain received.

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

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

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

16 (i) The grain dealer's promise to pay the total amount due for grain, less any
17 discounts that may apply, within 7 calendar days after the date of receipt of the grain.

18 This requirement does not apply if any of the following applies:

19 1. The grain dealer pays cash on delivery.

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

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

23 **(1m) EFFECT OF FAILURE TO IDENTIFY RECEIPT.** A receipt not clearly identified
24 under sub. (1) (h) is considered a purchase receipt except that, if the grain dealer also

1 operates as a grain warehouse keeper, as defined in s. 126.25 (9), under the same
2 name, a receipt not clearly identified is considered a storage receipt.

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

5 **126.19 Grain dealers; deferred payment contracts.** (1) CONTRACT IN
6 WRITING. A grain dealer may not procure grain from any grain producer or producer
7 agent under a deferred payment contract before the contract is reduced to writing
8 and signed by the parties. The grain dealer shall provide a copy of the signed contract
9 to the other party.

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

12 (a) A unique contract identification number.

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

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

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

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

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

1 (f) Other information required under this section.

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

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

8 (4) REQUIRED NOTICE. A grain dealer may not enter into a deferred payment
9 contract unless the deferred payment contract clearly discloses that it is not a storage
10 contract. Whenever a grain dealer buys grain from a grain producer under a deferred
11 payment contract, the grain dealer shall include the following statement in
12 capitalized, boldface print immediately above the contract signature line: "This is
13 not a storage contract. The grain dealer (buyer) becomes the owner of any grain that
14 the producer (seller) delivers to the grain dealer under this contract. The producer
15 relinquishes ownership and control of the grain, and becomes an unsecured creditor
16 pending payment."

17 (5) DEFERRED PAYMENT CONTRACT ASSESSMENT. From the amount that a grain
18 dealer pays to a grain producer or producer agent under a deferred payment contract,
19 the grain dealer shall deduct a deferred payment contract assessment. The
20 assessment shall equal the total amount owed under the contract before the
21 assessment is deducted, multiplied by the deferred payment assessment rate that
22 applies under s. 126.15 (6) when the contract is made. The grain dealer shall disclose
23 the assessment amount or, if the contract is a deferred price contract, the method by
24 which the assessment amount will be determined, in the written contract under sub.
25 (1).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **126.21 Grain producer obligations. (1) DELIVERY PER CONTRACT.** No grain
9 producer or producer agent who contracts to sell and deliver grain to a grain dealer
10 at an agreed price may wrongfully refuse to deliver that grain according to the
11 contract.

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

20 SUBCHAPTER IV

21 GRAIN WAREHOUSE KEEPERS

22 **126.25 Definitions.** In this subchapter:

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

1 cubic feet per bushel, and applying a pack factor that the department specifies by
2 rule.

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

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

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

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

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

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

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

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

24 (9) "Grain warehouse keeper" means a person who operates one or more grain
25 warehouses in this state to receive, store, condition, or ship grain for others, except

1 that “grain warehouse keeper” does not include a person licensed under the United
2 States Warehouse Act, 7 USC 241 to 271.

3 (9m) “License year” means the period beginning on September 1 and ending
4 on the following August 31.

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

7 **126.26 Grain warehouse keepers; licensing. (1) LICENSE REQUIRED. (a)**
8 No grain warehouse keeper may hold at any time more than 50,000 bushels of grain
9 for others without a current annual license from the department. A grain warehouse
10 keeper who has grain warehouses with a combined capacity of more than 50,000
11 bushels shall obtain a license unless the grain warehouse keeper proves to the
12 department that the grain warehouse keeper holds no more than 50,000 bushels of
13 grain for others at any time.

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

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

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

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

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

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

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

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

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

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

13 (i) Other relevant information required by the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 **(7) NO LICENSE WITHOUT FULL PAYMENT.** The department may not grant a license
24 under sub. (1) until the applicant pays all license fees and surcharges identified in
25 the department's statement under sub. (6). The department shall refund a fee or

1 surcharge paid under protest if upon review the department determines that the fee
2 or surcharge is not applicable.

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

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

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

17 **126.27 Grain warehouse keepers; insurance.** (1) FIRE AND EXTENDED
18 COVERAGE INSURANCE. A grain warehouse keeper licensed under s. 126.26 (1) shall
19 maintain fire and extended coverage insurance, issued by an insurance company
20 authorized to do business in this state, that covers all grain in the custody of the grain
21 warehouse keeper, whether owned by the grain warehouse keeper or held for others,
22 at the full local market value of the grain.

23 (2) INSURANCE CANCELLATION; REPLACEMENT. (a) No person may cancel an
24 insurance policy required under sub. (1) unless that person serves a written notice

1 of the intended cancellation on the department at least 30 days before the
2 cancellation takes effect.

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

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

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

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

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

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

3 (a) That the grain warehouse keeper is insured.

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

6 **126.28 Grain warehouse keepers; financial statements.** (1) **REQUIRED**
7 **ANNUAL FINANCIAL STATEMENT.** (a) A grain warehouse keeper shall file an annual
8 financial statement with the department before the department first licenses the
9 warehouse keeper under s. 126.26 (1), if the warehouse keeper operates grain
10 warehouses with a combined capacity of more than 300,000 bushels.

11 (b) A grain warehouse keeper licensed under s. 126.26 (1) shall file an annual
12 financial statement with the department during each license year if the grain
13 warehouse keeper operates warehouses with a combined capacity of more than
14 300,000 bushels. The grain warehouse keeper shall file the annual financial
15 statement by the 15th day of the 4th month following the close of the grain warehouse
16 keeper's fiscal year, except that the department may extend the annual filing
17 deadline for up to 30 days if the grain warehouse keeper, or the accountant reviewing
18 or auditing the financial statement, files a written extension request at least 10 days
19 before the filing deadline.

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

24 (3) **REVIEWED OR AUDITED FINANCIAL STATEMENT.** (a) A grain warehouse keeper
25 filing an annual financial statement under sub. (1) or (2) shall file an audited

1 financial statement if the warehouse keeper operates grain warehouses with a
2 combined capacity of more than 500,000 bushels.

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

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

10 (4m) INTERIM FINANCIAL STATEMENT. The department may, at any time, require
11 a grain warehouse keeper licensed under s. 126.26 (1) to file an interim financial
12 statement with the department. The grain warehouse keeper shall provide, with the
13 interim financial statement, the warehouse keeper's sworn and notarized statement
14 that the financial statement is correct. An interim financial statement need not be
15 a reviewed financial statement or an audited financial statement.

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

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

23 (6) FINANCIAL STATEMENT CONTENTS. (a) Except as provided in par. (b), a grain
24 warehouse keeper filing a financial statement under this section shall file a financial
25 statement that consists of a balance sheet, income statement, equity statement,

1 statement of cash flows, notes to those statements, and any other information
2 required by the department. A grain warehouse keeper who is a sole proprietor shall
3 file his or her business and personal financial statements.

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

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

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

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

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

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

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

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

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

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

7 **126.29 Contributing grain warehouse keepers; disqualification. (1)**
8 **CONTRIBUTION REQUIRED.** A grain warehouse keeper licensed under s. 126.26 (1) shall
9 pay fund assessments under s. 126.30 unless the grain warehouse keeper is
10 disqualified under sub. (2).

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

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

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

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

24 **126.30 Grain warehouse keepers; fund assessments. (1) GENERAL.** A
25 contributing grain warehouse keeper shall pay an annual fund assessment for each

1 license year. The assessment equals \$20 or the sum of the following, whichever is
2 greater, unless the department by rule specifies a different assessment:

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

8 (b) The warehouse keeper's debt to equity ratio assessment. The debt to equity
9 ratio assessment for each license year is the amount, expressed as dollars, equal to
10 the grain warehouse keeper's debt to equity ratio assessment rate under sub. (4)
11 multiplied by the number of bushels that the warehouse keeper reports under s.
12 126.26 (2) (e) or (10).

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

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

- 20 1. Subtract one from the current ratio.
- 21 2. Divide the amount determined under subd. 1. by 3.
- 22 3. Multiply the amount determined under subd. 2. by negative one.
- 23 4. Raise the amount determined under subd. 3. to the 3rd power.
- 24 5. Subtract 0.75 from the current ratio.
- 25 6. Divide 0.65 by the amount determined under subd. 5.

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

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

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

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

10 1. Subtract one from the current ratio.

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

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

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

14 5. Subtract 0.75 from the current ratio.

15 6. Divide 0.65 by the amount determined under subd. 5.

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

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

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

20 (c) If the grain warehouse keeper has filed an annual financial statement under
21 s. 126.28 and that financial statement shows a current ratio of less than or equal to
22 1.0 to 1.0, the warehouse keeper's current ratio assessment rate equals the current
23 ratio assessment factor in sub. (3) (b) multiplied by 120.81376.

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

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

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

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

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

- 21 1. Subtract 4 from the debt to equity ratio.
- 22 2. Divide the amount determined under subd. 1. by 3.
- 23 3. Raise the amount determined under subd. 2. to the 3rd power.
- 24 4. Subtract 1.7 from the debt to equity ratio.
- 25 5. Divide the amount determined under subd. 4. by 1.75.

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

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

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

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

10 1. Subtract 4 from the debt to equity ratio.

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

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

13 4. Subtract 1.7 from the debt to equity ratio.

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

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

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

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

19 (c) If the grain warehouse keeper has filed an annual financial statement under
20 s. 126.28 and that financial statement shows negative equity or a debt to equity ratio
21 of at least 5.0 to 1.0, the grain warehouse keeper's debt to equity ratio assessment
22 rate equals the debt to equity ratio assessment factor in sub. (5) (b) multiplied by
23 86.8244.

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

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

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

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

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

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

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

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

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

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

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

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

14 **126.31 Grain warehouse keepers; security. (1) SECURITY REQUIRED.** A
15 grain warehouse keeper shall file security with the department, and maintain that
16 security until the department releases it under sub. (8), if all of the following apply
17 when the department first licenses the grain warehouse keeper under s. 126.26 (1):

18 (a) The grain warehouse keeper operates grain warehouses with a combined
19 capacity of more than 300,000 bushels.

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

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

1 (3) AMOUNT OF SECURITY. A grain warehouse keeper who is required to file or
2 maintain security under this section shall at all times maintain security equal to at
3 least 20% of the current local market value of grain that the grain warehouse keeper
4 holds in this state for others.

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

8 (a) Currency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 1. The grain warehouse keeper's existing security falls below the amount
25 required under sub. (3) for any reason, including depreciation in the value of the

1 security, increased obligations to depositors, or the cancellation of any security filed
2 with the department.

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

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

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

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

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

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

24 (7) MONTHLY REPORTS. A grain warehouse keeper who is required to file or
25 maintain security under this section shall file monthly reports with the department.

1 The grain warehouse keeper shall file the report by the 10th day of each month, in
2 a form specified by the department. In a monthly report, the grain warehouse keeper
3 shall provide information reasonably required by the department, including the
4 amount of each type of grain stored in each grain warehouse on the last day of the
5 preceding month.

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

8 1. The grain warehouse keeper reports grain warehouse capacity under s.
9 126.26 (2) (e) of less than 300,000 bushels for at least 2 consecutive license years and
10 the grain warehouse keeper pays the quarterly fund assessment that would have
11 been required of the grain warehouse keeper if the grain warehouse keeper had been
12 a contributing grain warehouse keeper on the most recent quarterly installment date
13 under s. 126.30 (6).

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

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

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

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

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

3 **126.32 Grain warehouse keepers; records.** (1) RECORDS AND ACCOUNTS;
4 GENERAL. A grain warehouse keeper shall maintain current, complete, and accurate
5 records and accounts of all grain received into and withdrawn from each grain
6 warehouse, including records required under subs. (2) and (3).

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

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

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

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

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

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

19 (a) The depositor's name and address.

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

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

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

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

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

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

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

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

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

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

18 2. Records that the grain warehouse keeper was required to keep under ch. 127,
19 1999 stats., and department rules, before January 1, 2002.

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

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

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

5 (b) The department shall review a grain warehouse keeper's records at least
6 once every 2 years if the grain warehouse keeper files an annual financial statement
7 under s. 126.28 and that annual financial statement shows a current ratio of at least
8 2.0 to 1.0, positive equity, and a debt to equity ratio of not more than 2.0 to 1.0.

9 **126.33 Receipts for grain. (1) REQUIREMENT.** Immediately after a grain
10 warehouse keeper receives grain from a depositor, the grain warehouse keeper shall
11 give the depositor a warehouse receipt or other storage receipt that includes all of the
12 following:

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

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

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

19 (d) The kind of grain received.

20 (e) The net weight of grain received.

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

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

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

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

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

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

18 **126.34 Grain warehouse keepers; business practices.** (1) GRAIN WEIGHT,
19 GRADE, AND QUALITY. A grain warehouse keeper shall do all of the following when
20 determining the weight, grade, or quality of grain:

- 21 (a) Accurately determine the weight, grade, or quality using accurate weighing,
22 testing, or grading equipment.
- 23 (b) Accurately record the determined weight, grade, or quality.

24 (2) CARE OF GRAIN; FACILITIES. A grain warehouse keeper shall safeguard grain
25 held for others and shall protect that grain from loss or abnormal deterioration. A

1 grain warehouse keeper shall maintain adequate facilities and equipment for that
2 purpose.

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

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

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

12 1. A monetary payment sufficient to provide the depositor with equivalent
13 value, based on current local grain prices.

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

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

18 (5) PROHIBITED PRACTICES. No grain warehouse keeper may do any of the
19 following:

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

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

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

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

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

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

8 SUBCHAPTER V

9 MILK CONTRACTORS

10 **126.40 Definitions.** In this subchapter:

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

16 (2) "Current ratio" means the ratio of the value of current assets to the value
17 of current liabilities, calculated according to s. 126.44 (8) (c) 1.

18 (3) "Dairy farm" has the meaning given in s. 97.22 (1) (a).

19 (4) "Dairy plant" has the meaning given in s. 97.20 (1) (a).

20 (5) "Dairy plant operator" means a person who holds or is required to hold a
21 dairy plant license under s. 97.20.

22 (6) "Debt to equity ratio" means the ratio of the value of liabilities to equity,
23 calculated according to s. 126.44 (8) (c) 2.

24 (7) "Disqualified milk contractor" means a milk contractor who is disqualified
25 from the fund under s. 126.45 (3).

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

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

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

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

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

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

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

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

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

19 (b) To receive producer milk directly from a dairy farm in this state.

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

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

23 **(13)** “Producer agent” means a person who acts on behalf of a milk producer
24 to market or accept payment for producer milk without taking title to that milk,

1 including a person who uses a producer trust fund to market or accept payment for
2 producer milk. "Producer agent" does not include any of the following:

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

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

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

11 **126.41 Milk contractors; licensing.** (1) ANNUAL LICENSE. (a) No milk
12 contractor may do any of the following without a current annual license from the
13 department:

14 1. Receive producer milk in this state.

15 2. Collect producer milk from a dairy farm in another state for direct shipment
16 to a dairy plant that the milk contractor operates in this state.

17 3. Acquire the right to market, as a producer agent, producer milk produced in
18 this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 **(3m) EFFECT OF PAYMENT OF SURCHARGE.** Payment under sub. (3) (b) does not
14 relieve the applicant of any other civil or criminal liability that results from the
15 violation of sub. (1), but does not constitute evidence of any law violation.

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

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

23 **(6) SWORN AND NOTARIZED STATEMENT.** As part of a license application under sub.
24 (2), an applicant shall provide a sworn and notarized statement, signed by the

1 applicant or an authorized officer of the applicant, that reports all of the following
2 information:

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

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

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

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

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

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

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

22 **126.42 Milk contractors; monthly licensc fee. (1) MONTHLY LICENSE FEE**
23 **PAYMENT.** Except as provided under sub. (5) or (6), a milk contractor licensed under
24 s. 126.41 (1) shall pay to the department, by the 25th day of each month, a monthly
25 license fee of 0.15 cent for each 100 pounds of producer milk that the milk contractor

1 procured in this state during the preceding month. The milk contractor shall submit,
2 with the fee payment, a report stating the number of pounds of producer milk that
3 the milk contractor procured in this state during the preceding month.

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

8 (3) FEE CREDITS. If the balance in the fund contributed by milk contractors
9 exceeds \$4,000,000 on February 28 of any license year, the department shall credit
10 50% of the excess amount against fees charged under sub. (1) to contributing milk
11 contractors who file timely renewal applications for the next license year. The
12 department shall credit each contributing milk contractor on a prorated basis, in
13 proportion to the total fees that the milk contractor has paid under sub. (1) for the
14 4 preceding license years. Each month that a contributing contractor who qualifies
15 for a credit under this subsection pays fees under sub. (1), the department shall credit
16 to the contributing milk contractor one-twelfth of the total annual credit determined
17 under this subsection.

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

22 (a) The method for computing the monthly fee.

23 (b) The date by which the milk contractor must pay the fee each month.

24 (c) The late payment surcharge that may apply under sub. (2).

25 (d) The fee credit, if any, that applies under sub. (3).

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

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

7 **126.43 Milk contractors; insurance.** (1) FIRE AND EXTENDED COVERAGE
8 INSURANCE. A milk contractor licensed under s. 126.41 (1) shall maintain fire and
9 extended coverage insurance that covers, at their full value, all milk and milk
10 products in the possession, custody, or control of the milk contractor. If the milk
11 contractor is required to be licensed under s. 126.41 (1) (a), the milk contractor shall
12 maintain insurance issued by an insurance company authorized to do business in
13 this state.

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

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

20 (a) That the milk contractor is insured.

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

23 **126.44 Milk contractors; financial statements.** (1) REQUIRED ANNUAL
24 FINANCIAL STATEMENT. (a) A milk contractor shall file an annual financial statement
25 with the department before the department first licenses the milk contractor under

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

3 (b) Except as provided in par. (c), a milk contractor licensed under s. 126.41 (1)
4 shall file an annual financial statement with the department during each license
5 year. The milk contractor shall file the annual financial statement by the 15th day
6 of the 4th month following the close of the milk contractor's fiscal year. The
7 department may extend the filing deadline for up to 30 days if the milk contractor,
8 or the accountant preparing the financial statement, files a written extension
9 request at least 10 days before the filing deadline.

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

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

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

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

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

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

20 (3) QUARTERLY FINANCIAL STATEMENTS. A milk contractor licensed under s.
21 126.41 (1) who is not a contributing milk contractor shall file quarterly financial
22 statements with the department for the first 3 quarters in each of the milk
23 contractor's fiscal years. The milk contractor shall file each quarterly financial
24 statement no later than 60 days after the end of the fiscal quarter to which the
25 financial statement pertains. With each quarterly financial statement, the milk

1 contractor shall include the milk contractor's sworn and notarized statement that
2 the financial statement is correct.

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

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

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

14 (6m) INTERIM FINANCIAL STATEMENT. The department may, at any time, require
15 a milk contractor licensed under s. 126.41 (1) to file an interim financial statement
16 with the department. With the interim financial statement, the milk contractor shall
17 provide the milk contractor's sworn and notarized statement that the financial
18 statement is correct. An interim financial statement need not be a reviewed financial
19 statement or an audited financial statement.

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

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

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

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

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

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

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

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

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

js (on green marker) - 972

KMG

1 unless the note or account receivable is secured by a first priority security interest
2 in real or personal property.

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

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

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

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

14 **126.45 Contributing milk contractors; disqualification.** (1) REQUIRED
15 CONTRIBUTORS. (a) Except as provided in sub. (3), a licensed milk contractor shall pay
16 fund assessments under s. 126.46 if the milk contractor does not file annual and
17 quarterly financial statements under s. 126.44.

18 (b) Except as provided in sub. (3), a licensed milk contractor shall pay fund
19 assessments under s. 126.46 if the milk contractor files an annual, quarterly, or
20 interim financial statement under s. 126.44 that shows a current ratio of less than
21 1.25 to 1.0, a debt to equity ratio of more than 2.0 to 1.0, or negative equity. The milk
22 contractor shall continue to pay fund assessments until the milk contractor files 2
23 consecutive annual financial statements under s. 126.44 that show a current ratio
24 of at least 1.25 to 1.0, positive equity, and a debt to equity ratio of not more than 2.0
25 to 1.0.

Yours ed. for
for green
markup: JJS

Your editor
for this part:
WLJ

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

4 (3) DISQUALIFIED CONTRACTORS. (a) A milk contractor who is required to file
5 security under s. 126.47 (1) is disqualified from the fund until the department
6 releases that security under s. 126.47 (7) (a).

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

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

- 11 1. Failure to pay fund assessments under s. 126.46 when due.
- 12 2. Failure to file a financial statement under s. 126.44 when due.
- 13 3. Failure to reimburse the department, within 60 days after the department
14 issues a reimbursement demand under s. 126.73 (1), for the full amount that the
15 department pays to claimants under s. 126.72 (1) because of that milk contractor's
16 default.
- 17 4. Failure to reimburse a bond surety, within 60 days after the bond surety
18 issues a reimbursement demand under s. 126.73 (2), for the full amount that the
19 surety pays to the department under s. 126.72 (2) or (3) for the benefit of claimants
20 affected by that milk contractor's default.

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

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

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

7 **126.46 Contributing milk contractors; fund assessments. (1) GENERAL.**

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

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

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

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

22 (a) If the milk contractor has filed an annual financial statement under s.
23 126.44 and that financial statement shows a current ratio of at least 1.25 to 1.0, the
24 milk contractor's current ratio assessment rate equals the greater of zero or the
25 current ratio assessment factor in sub. (3) (a) multiplied by the following amount:

- 1 1. Subtract 3 from the current ratio.
- 2 2. Divide the amount determined under subd. 1. by 6.
- 3 3. Multiply the amount determined under subd. 2. by negative one.
- 4 4. Raise the amount determined under subd. 3. to the 3rd power.
- 5 5. Divide 0.55 by the current ratio.
- 6 6. Raise the amount determined under subd. 5. to the 7th power.
- 7 7. Add the amount determined under subd. 4. to the amount determined under
- 8 subd. 6.
- 9 8. Add 0.075 to the amount determined under subd. 7.

10 (b) If the milk contractor has filed an annual financial statement under s.
11 126.44 and that financial statement shows a current ratio of less than 1.25 to 1.0, but
12 greater than 1.05 to 1.0, the milk contractor's current ratio assessment rate equals
13 the current ratio assessment factor in sub. (3) (b) multiplied by the following amount:

- 14 1. Subtract 3 from the current ratio.
- 15 2. Divide the amount determined under subd. 1. by 6.
- 16 3. Multiply the amount determined under subd. 2. by negative one.
- 17 4. Raise the amount determined under subd. 3. to the 3rd power.
- 18 5. Divide 0.55 by the current ratio.
- 19 6. Raise the amount determined under subd. 5. to the 7th power.
- 20 7. Add the amount determined under subd. 4. to the amount determined under
- 21 subd. 6.
- 22 8. Add 0.075 to the amount determined under subd. 7.

23 (c) If the milk contractor has filed an annual financial statement under s.
24 126.44 and that financial statement shows a current ratio of less than or equal to 1.05

1 to 1.0, the milk contractor's current ratio assessment rate equals the current ratio
2 assessment factor in sub. (3) (b) multiplied by 0.1201478.

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

6 (e) If the milk contractor has not filed an annual financial statement under s.
7 126.44 and the milk contractor procures producer milk in this state solely as a
8 producer agent, the milk contractor's current ratio assessment rate is 0.00025,
9 except that, for the milk contractor's 5th or higher consecutive full license year of
10 participation in the fund, the milk contractor's current ratio assessment rate is
11 0.000175.

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

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

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

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

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