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

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

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

9 (2) SECURITY CONTINUED. A milk contractor who filed security under s. 100.06,
10 1999 stats., before May 1, 2002, shall maintain that security until the department
11 releases it under sub. (7).

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

15 (a) Except for a milk contractor who procures producer milk in this state solely
16 as a producer agent, at least 75% of the amount last reported under s. 126.41 (6) (b)
17 or (9).

18 (b) For a milk contractor who procures milk in this state solely as a producer
19 agent, at least the following amounts:

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

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

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

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

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

5 (4) FORM OF SECURITY. The department shall review, and determine whether
6 to approve, security filed under this section. The department may approve only the
7 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 milk
11 producers and producer agents.

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 milk
22 producers and producer agents.

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

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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 milk
8 producers or producer agents.

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

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

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

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

16 (e) Security filed with the department under s. 100.06, 1999 stats., before May
17 1, 2002, except that on January 1, 2003, the department shall withdraw its approval
18 of any security that is not approvable under pars. (a) to (d).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 **126.48 Milk contractors; payments to producers.** (1) **FIRST MONTHLY**
24 **PAYMENT.** By the 4th day of each month, a milk contractor shall pay for producer milk
25 received during the first 15 days of the preceding month. The milk contractor shall

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1 base the payment on an estimated price that is at least 80% of the class III price
2 published by the regional federal milk market administrator for the month
3 preceding the month in which the milk is received, or 80% of the contract price,
4 whichever is greater.

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

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

11 (a) Milk contractor identification.

12 (b) Milk producer or producer agent identification.

13 (c) Pay period.

14 (d) Volume of milk received.

15 (e) Grade of milk.

16 (f) Milk test results.

17 (g) Milk price and adjustments.

18 (h) Gross amount due.

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

20 (j) Net amount due.

21 (k) Deductions and assignments.

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

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

2 (a) Currency.

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

4 (c) A wire transfer.

5 (d) Simultaneous barter.

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

10 (4) “Contributing vegetable contractor” means a vegetable contractor who is
11 licensed under s. 126.56 (1), who either has paid one or more quarterly installments
12 under s. 126.60 (6) or is required to contribute to the fund, but the first quarterly
13 installment under s. 126.60 (6) is not yet due, and who is not disqualified under s.
14 126.59 (2).

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

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

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

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

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

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

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

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

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

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

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

19 (a) The vegetable contractor harvests the vegetables.

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

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

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

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

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

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

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

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

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

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

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

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

20 **126.56 Vegetable contractors; licensing.** (1) LICENSE REQUIRED. (a) Except
21 as provided in sub. (2), no person may operate as a vegetable contractor without a
22 current annual license from the department.

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

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

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

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

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

11 (a) The applicant's legal name and any trade name under which the applicant
12 proposes to operate as a vegetable contractor.

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (4m) EFFECT OF PAYMENT OF SURCHARGE. Payment under sub. (3) (c) does not
19 relieve the applicant of any other civil or criminal liability that results from the
20 violation of sub. (1), but does not constitute evidence of any law violation.

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

24 (6) FEE CREDITS. (a) If the balance in the fund contributed by vegetable
25 contractors exceeds \$1,000,000 on November 30 of any license year, the department

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1 shall credit 50% of the excess amount against fees charged under sub. (4) (b) to
2 contributing vegetable contractors who file timely license renewal applications for
3 the next license year. The department shall credit each contributing vegetable
4 contractor on a prorated basis, in proportion to the total fees that the vegetable
5 contractor has paid under sub. (4) (b) for the 4 preceding license years.

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

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

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

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

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

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

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

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

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

10 (f) Whether the applicant and the applicant's affiliates and subsidiaries will
11 collectively grow more than 10% of the total acreage of any vegetable species grown
12 or procured by the applicant during the license year for which the applicant is
13 applying.

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

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

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

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

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

7 (12) NOTICE REQUIRED. (a) A vegetable contractor who files security under s.
8 126.61 shall immediately notify the department if, at any time, the vegetable
9 contractor's unpaid contract obligations exceed the amount last reported under sub.
10 (9) (b).

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

14 **126.57 Vegetable contractors; insurance. (1) FIRE AND EXTENDED COVERAGE**
15 **INSURANCE.** (a) Except as provided in par. (b), a vegetable contractor who is required
16 to be licensed under s. 126.56 (1) shall maintain fire and extended coverage
17 insurance, issued by an insurance company authorized to do business in this state,
18 that covers all vegetables in the custody of the vegetable contractor, whether owned
19 by the vegetable contractor or held for others, at the full local market value of the
20 vegetables.

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

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

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

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

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

9 (a) That the vegetable contractor is insured.

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

12 **126.58 Vegetable contractors; financial statements.** **(1) REQUIRED**
13 **ANNUAL FINANCIAL STATEMENT.** (a) Except as provided in par. (c), a vegetable
14 contractor shall file an annual financial statement with the department, before the
15 department first licenses the vegetable contractor under s. 126.56 (1), if the
16 vegetable contractor reports more than \$500,000 in contract obligations under s.
17 126.56 (9) (a).

18 (b) Except as provided in par. (c), a vegetable contractor licensed under s.
19 126.56 (1) shall file an annual financial statement with the department during each
20 license year if the vegetable contractor's license application for that year reports
21 more than \$500,000 in contract obligations under s. 126.56 (9) (a). The vegetable
22 contractor shall file the annual financial statement by the 15th day of the 4th month
23 following the close of the vegetable contractor's fiscal year, except that the
24 department may extend the filing deadline for up to 30 days if the vegetable

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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2 CONTRIBUTION REQUIRED. A vegetable contractor licensed under s. 126.56 (1) shall pay
3 fund assessments under s. 126.60 unless one of the following applies:

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

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

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

9 **(1m)** VOLUNTARY CONTRIBUTION. A vegetable contractor who is exempt under
10 sub. (1) (b) or (c) may volunteer to pay fund assessments under s. 126.60.

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

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

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

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

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

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

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

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

8 (b) A disqualified vegetable contractor remains liable for any unpaid fund
9 installment under s. 126.60 that became due while the vegetable contractor was a
10 contributing vegetable contractor. A disqualified vegetable contractor is not liable
11 for any fund installment that becomes due after the vegetable contractor is
12 disqualified under sub. (2).

13 **126.60 Contributing vegetable contractors; fund assessments. (1)**
14 **GENERAL.** A contributing vegetable contractor shall pay an annual fund assessment
15 for each license year. The assessment equals \$20 or the sum of the following,
16 whichever is greater, unless the department by rule specifies a different assessment:

17 (a) The vegetable contractor's current ratio assessment. The current ratio
18 assessment for a license year equals the vegetable contractor's current ratio
19 assessment rate under sub. (2) multiplied by the amount reported under s. 126.56
20 (9) (a) in the vegetable contractor's license application for that license year.

21 (b) The vegetable contractor's debt to equity ratio assessment. The debt to
22 equity ratio assessment for a license year equals the vegetable contractor's debt to
23 equity ratio assessment rate under sub. (4) multiplied by the amount reported under
24 s. 126.56 (9) (a) in the vegetable contractor's license application for that license year.

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1 (c) The vegetable contractor's deferred contract assessment. The deferred
2 contract assessment for a license year equals the amount, if any, reported under s.
3 126.56 (9) (e) in the vegetable contractor's license application for that license year,
4 multiplied by a deferred vegetable contract assessment rate of 0.0025.

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

7 (a) If the vegetable contractor has filed an annual financial statement under
8 s. 126.58 and that financial statement shows a current ratio of at least 1.25 to 1.0,
9 the vegetable contractor's current ratio assessment rate equals the greater of zero
10 or the current ratio assessment factor in sub. (3) (a) multiplied by the following
11 amount:

- 12 1. Subtract 4 from the current ratio.
- 13 2. Divide the amount determined under subd. 1. by 2.
- 14 3. Multiply the amount determined under subd. 2. by negative one.
- 15 4. Raise the amount determined under subd. 3. to the 3rd power.
- 16 5. Subtract 0.65 from the current ratio.
- 17 6. Divide 0.60 by the amount determined under subd. 5.
- 18 7. Raise the amount determined under subd. 6. to the 5th power.
- 19 8. Add the amount determined under subd. 4. to the amount determined under
20 subd. 7.
- 21 9. Add 0.25 to the amount determined under subd. 8.

22 (b) If the vegetable contractor has filed an annual financial statement under
23 s. 126.58 and that financial statement shows a current ratio of less than 1.25 to 1.0,
24 but greater than 1.1 to 1.0, the vegetable contractor's current ratio assessment rate

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1 equals the current ratio assessment factor in sub. (3) (b) multiplied by the following
2 amount:

- 3 1. Subtract 4 from the current ratio.
- 4 2. Divide the amount determined under subd. 1. by 2.
- 5 3. Multiply the amount determined under subd. 2. by negative one.
- 6 4. Raise the amount determined under subd. 3. to the 3rd power.
- 7 5. Subtract 0.65 from the current ratio.
- 8 6. Divide 0.60 by the amount determined under subd. 5.
- 9 7. Raise the amount determined under subd. 6. to the 5th power.
- 10 8. Add the amount determined under subd. 4. to the amount determined under
11 subd. 7.
- 12 9. Add 0.25 to the amount determined under subd. 8.

13 (c) If the vegetable contractor has filed an annual financial statement under
14 s. 126.58 and that financial statement shows a current ratio of less than or equal to
15 1.1 to 1.0, the vegetable contractor's current ratio assessment rate equals the current
16 ratio assessment factor in sub. (3) (b) multiplied by 7.512617.

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

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

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

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

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

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

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

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

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

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

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

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

4 (b) If the vegetable contractor has filed an annual financial statement under
5 s. 126.58 and that financial statement shows a debt to equity ratio of greater than
6 4.0 to 1.0 but less than 6.0 to 1.0, the vegetable contractor's debt to equity ratio
7 assessment rate equals the debt to equity ratio assessment factor in sub. (5) (b)
8 multiplied by the following amount:

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

10 2. Divide the amount determined under subd. 1. by 4.

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

12 4. Subtract 1.85 from the debt to equity ratio.

13 5. Divide the amount determined under subd. 4. by 2.5.

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

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

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

18 (c) If the vegetable contractor has filed an annual financial statement under
19 s. 126.58 and that financial statement shows negative equity or a debt to equity ratio
20 of at least 6.0 to 1.0, the vegetable contractor's debt to equity ratio assessment rate
21 equals the debt to equity ratio assessment factor in sub. (5) (b) multiplied by
22 35.859145.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 **126.61 Vegetable contractors; security. (1) SECURITY REQUIRED.** (a) Except
20 as provided in par. (c), a vegetable contractor shall file security with the department,
21 and maintain that security until the department releases it under sub. (7), if all of
22 the following apply when the department first licenses the vegetable contractor
23 under s. 126.56 (1):

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

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

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

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

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

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

16 (2) SECURITY CONTINUED. A vegetable contractor who filed security under s.
17 100.03, 1999 stats., before February 1, 2002, shall maintain that security until the
18 department releases it under sub. (7).

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

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

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

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

4 (a) Currency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 **126.62 Vegetable contractors; records.** (1) RECORDS REQUIRED. A vegetable
8 contractor shall keep all of the following:

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

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

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

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

15 2. Records that the vegetable contractor was required to keep, under s. 100.03,
16 1999 stats., and department rules, before February 1, 2002.

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

20 **126.63 Vegetable contractors; business practices.** (1) VEGETABLE GRADING
21 AND TARE. (a) A vegetable contractor shall grade vegetables according to the following
22 standards if the vegetable grade may affect the amount received by the vegetable
23 producer:

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

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

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

6 (c) The department shall establish grade standards for vegetables that conform
7 to grade standards adopted by the federal department of agriculture under 7 USC
8 1621 to 1632.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 **126.64 Vegetable contractors; prohibited practices.** No vegetable
15 contractor may do any of the following:

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

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

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

21 **(4)** If the vegetable contractor is licensed under s. 126.56, engage in any activity
22 that is inconsistent with representations made in the vegetable contractor's annual
23 license application.

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

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

SUBCHAPTER VII**RECOVERY PROCEEDINGS**

5 **126.68 Definitions.** In this subchapter:

6 (1) “Contributing contractor” means any of the following:

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

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

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

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

11 (2) “Depositor” has the meaning given in s. 126.25 (5).

12 (3) “Grain dealer” has the meaning given in s. 126.10 (9).

13 (4) “Grain producer” has the meaning given in s. 126.10 (10).

14 (5) “Grain warehouse keeper” has the meaning given in s. 126.25 (9).

15 (6) “Milk contractor” has the meaning given in s. 126.40 (8).

16 (7) “Milk producer” has the meaning given in s. 126.40 (10).

17 (8) “Producer grain” has the meaning given in s. 126.10 (14).

18 (9) “Producer milk” has the meaning given s. 126.40 (14).

19 (10) “Vegetable contractor” has the meaning given in s. 126.55 (14).

20 (11) “Vegetable procurement contract” has the meaning given in s. 126.55 (15).

21 (12) “Vegetable producer” has the meaning given in s. 126.55 (16).

22 **126.70 Recovery proceedings.** (1) **DEFAULT CLAIMS.** Any of the following
23 persons may file a default claim with the department against a contractor who is
24 licensed, or required to be licensed, under this chapter:

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

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

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

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

13 **(2) FILING DEFAULT CLAIMS.** A claimant shall file a default claim under sub. (1)
14 within 30 days after the claimant first learns of the default, subject to sub. (3). The
15 claimant shall specify the nature and amount of the default. The department may
16 investigate the alleged default and may require the claimant to provide supporting
17 documentation.

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

23 (b) If the department has reason to believe that other persons may have default
24 claims under sub. (1) against the same contractor, the department may invite those

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1 persons to file their claims in the recovery proceeding. The department may publish
2 the invitation in any of the following ways:

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

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

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

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

- 17 (a) That the claim is false or not adequately documented.
- 18 (b) That the claimant filed the claim more than 30 days after the claimant first
19 learned of the contractor's default, unless the department specifies a later
20 claim-filing deadline under sub. (3) (c).
- 21 (c) That the claimant, without any contractual obligation to do so, continued
22 to deliver grain, milk, or vegetables to the defaulting contractor more than 10 days
23 after the claimant first learned of the contractor's default.

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

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

2 (1).

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **126.71 Paying default claims.** (1) CLAIMS AGAINST CONTRIBUTING
23 CONTRACTOR. Except as provided in sub. (2) or (3), the department shall pay from the
24 appropriate sources under s. 126.72 the following default claim amounts:

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1 (a) For each default claim allowed under s. 126.70 against a grain dealer or milk
2 contractor who was a contributing contractor when the default occurred:

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

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

10 (c) For each default claim allowed under s. 126.70 against a vegetable
11 contractor who was a contributing contractor when the default occurred:

- 12 1. Ninety percent of the first \$40,000 allowed.
- 13 2. Eighty–five percent of the next \$40,000 allowed.
- 14 3. Eighty percent of the next \$40,000 allowed.
- 15 4. Seventy–five percent of any amount allowed in excess of \$120,000.

16 **(1m) WHEN DEFAULT OCCURS.** For the purposes of this chapter, a default occurs
17 on the date on which payment or delivery becomes overdue.

18 **(2) CLAIMS AGAINST CONTRACTOR WHO HAS FILED SECURITY.** If the department
19 allows default claims under s. 126.70 against a contractor who has security on file
20 with the department, the department shall convert that security and use the
21 proceeds as follows:

22 (a) If the contractor was not a contributing contractor when the default
23 occurred, the department shall use the security proceeds to pay the full amount of
24 the allowed claims, except that, if the security is not adequate to pay the full amount

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1 of the allowed claims, the department shall pay claimants on a prorated basis in
2 proportion to their allowed claims.

3 (b) If the contractor was a contributing contractor when the default occurred,
4 the department shall use the security proceeds to reimburse the sources under s.
5 126.72 from which the department makes any claim payment under sub. (1). If the
6 security amount exceeds the amount payable under sub. (1) from the sources under
7 s. 126.72, the department shall use the remaining security proceeds to pay the
8 balance of the allowed claims. If the security amount is not adequate to pay the full
9 remaining balance, the department shall pay claimants on a prorated basis in
10 proportion to their allowed claims.

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

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

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

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

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

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

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

7 (c) If the total amount of default claims exceeds the amount available under s.
8 126.72, the department shall prorate the available amount among the eligible
9 claimants in proportion to the amount of their allowed claims.

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

14 **126.72 Claims against contributing contractor; payment sources.** (1)
15 PRODUCER SECURITY FUND. From the appropriation under s. 20.115 (1) (w), the
16 department shall make payments authorized under s. 126.71 (1), up to the deductible
17 amount in sub. (4).

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

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

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

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

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

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

9 3. If the department allows the claims on or after September 1, 2006,
10 \$1,000,000.

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

13 1. If the department allows the claims on or after May 1, 2002, but before May
14 1, 2004, \$1,000,000.

15 2. If the department allows the claims on or after May 1, 2004, but before May
16 1, 2006, \$1,500,000.

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

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

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

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

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

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

3 (3) Modify the fund assessments provided under s. 126.15, 126.30, 126.46, or
4 126.60, as provided in s. 126.88.

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

7 **126.82 Investigations.** The department may conduct investigations that it
8 considers necessary for the administration of this chapter, including investigations
9 to determine any of the following:

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

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

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

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

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

17 **126.83 Information.** The department may require a contractor to provide
18 information that is relevant to the administration and enforcement of this chapter.

19 **126.84 Records; confidentiality.** (1) PUBLIC RECORDS EXEMPTION. The
20 following records obtained by the department under this chapter are not open to
21 public inspection under s. 19.35:

22 (a) Contractor financial statements.

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

24 (2) USE OF RECORDS IN COURT OR ADMINISTRATIVE PROCEEDINGS. Notwithstanding
25 sub. (1), the department may introduce any information obtained under this chapter

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1 in a court proceeding or administrative contested case, subject to any protective
2 order that the court or administrative tribunal determines to be appropriate.

3 **126.85 Remedial orders. (1) GENERAL.** The department may, by special
4 order, require a contractor to remedy a violation of this chapter or a rule promulgated
5 under this chapter. The department may order the contractor to take specific
6 remedial actions, including actions to remedy deficiencies or to prevent losses to
7 persons protected under this chapter. Except as provided in sub. (2), the department
8 shall give the contractor notice and an opportunity for hearing before the department
9 issues an order.

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

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

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

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

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

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

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

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

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

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

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

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

16 **126.86 License actions.** (1) **GENERAL.** The department may for cause deny,
17 suspend, revoke, or impose conditions on a contractor's license, as provided in s.
18 93.06 (7) and (8). Cause may include any of the following:

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

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

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

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

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

6 (f) The contractor fails to reimburse the department, within 60 days after the
7 department issues a reimbursement demand under s. 126.73 (1), for the full amount
8 that the department pays to claimants under s. 126.72 (1) because of the contractor's
9 default.

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

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

18 (3) SUMMARY ACTION. (a) The department may, without prior notice or hearing,
19 summarily suspend, revoke, or impose conditions on a license held by a contractor
20 if the department finds that summary action is necessary to prevent a clear and
21 imminent threat of harm to persons protected under this chapter. Conditions
22 indicating a clear and imminent threat of harm include those identified in s. 126.85
23 (2).

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