

2001 DRAFTING REQUEST

Assembly Amendment (AA-ASA1-SB55)

Received: 06/21/2001

Received By: traderc

Wanted: Soon

Identical to LRB:

For: Assembly Republican Caucus

By/Representing: Jefferson

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Subject: Agriculture - miscellaneous

Extra Copies:

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Pre Topic:

ARC:.....Jefferson - AM20,

Topic:

Producer security fund

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/1			haugeca 06/24/2001	_____	lrb_docadmin 06/24/2001		
/2	traderc	gilfokm	pgreensl	_____	lrb_docadmin		

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6257 <END>

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MSS
+ RMC

3. **Producer Security Fund** (Governor's Summary, page 104, item #17)

This was originally introduced by the Governor but was removed as a policy item by the co-chairs of Joint Finance. This provision consolidates the current vegetable processor, dairy plant operator, and grain dealer and warehouse keeper programs. Further, convert security requirements to the consolidated program to an insurance pool funded by industry assessments.

In addition to the Governor's language, these assessments would be put into a separate non-lapsible trust fund designated as the agricultural producer security fund, to consist of all fees, surcharges, assessments, reimbursements, and proceeds of surety bonds received by the Department of Agriculture, Trade and Consumer Protection.

Also, the agricultural producer security fund is a public trust established to secure payments to agricultural producers. Moneys deposited to the fund shall not be used for any other purpose.

Fiscal Impact: No GPR. However, there is a fiscal impact to each group depending on what type of dealer and the difference between their current, individual security plan. Varying impact on each.

RET

4. **Drainage District** (requested by Ainsworth) (Governor's Summary, pg. 94, item #9)

This item, proposed by the Governor, was removed as a policy item by the co-chairs of Joint Finance. This would restore the Governor's position.

In addition, (requested by Albers) require counties to submit any preliminary GIS maps they produce that include streams, ditches, dikes or levees to the drainage district with land in that county. Within 120 days, the drainage district must send notice to the county of any needed changes due to errors or omission. If the county does not concur with the drainage district's changes and make the changes, require the Land Information Council in DOA to mediate the dispute between the county and the drainage district, objectively resolving the conflict.

Also, modify language in 2001 Wisconsin Act 6 (wetlands bill) (requested by Ainsworth) to remove the Department of Natural Resources new regulatory authority to write "best management practices" and administrative rules regulating farm roads and forest roads.

Fiscal Impact: None

MGG

✓ 5. **Funding for Johne's Disease (paratuberculosis) Testing** (requested by Loeffholz, motion request #155 (modified funding)):

RET



State of Wisconsin
2001 - 2002 LEGISLATURE

500N (ARC-M 6/22)

b1461/1
LRBb1027/1
RCT:kmg:kjf

will have Acc tag line
ARC

SENATE AMENDMENT,
TO ~~SENATE~~ SUBSTITUTE AMENDMENT 1,

TO 2001 SENATE BILL 55

ARC

point to caucus b1461/1
only copy
Please do
not email this to
the Fiscal Bureau
(It's so large that they
want to get it in hard
copy) - but I guess that
it should be emailed to the
caucus. Ret

Note

See pp. 4/13

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 26, line 25: after that line insert:

3 "SECTION 168. 15.137 (1) of the statutes is created to read:

4 15.137 (1) AGRICULTURAL PRODUCER SECURITY COUNCIL. (a) There is created in
5 the department of agriculture, trade and consumer protection an agricultural
6 producer security council consisting of the following members appointed by the
7 secretary of agriculture for 3-year terms:

8 1. One person representing the Farmers' Educational and Cooperative Union
9 of America, Wisconsin Division.

10 2. One person representing the Midwest Food Processors Association, Inc.

11 3. One person representing the National Farmers' Organization, Inc.

12 4. One person representing the Wisconsin Agri-Service Association, Inc.

1	“(v) Agricultural producer				
2	security; bonds	SEG	S	-0-	-0-
3	(w) ^{ve} Agricultural producer				
4	security; payments	SEG	S	-0-	-0-
5	(w) ^b Agricultural producer				
6	security; bond proceeds	SEG	C	-0-	-0-”.

7 **6.** Page 294, line 2: before that line insert:

8 “**SECTION 397b.** 20.115 (1) (g) of the statutes is amended to read:

9 20.115 (1) (g) *Related services.* The amounts in the schedule for the conduct of
 10 services related to food and trade regulation, including special and overtime meat
 11 inspection services under s. 97.42 (3), and investigative and audit services under ss.
 12 93.06 (6) (b), ~~100.06 (1g) (e)~~ and 100.07 (1), but excluding services financed under
 13 pars. (gf) and (h). Except as provided in pars. (gf) and (h), all moneys received from
 14 authorized service fees related to food and trade regulation shall be credited to this
 15 appropriation.

16 **SECTION 398.** 20.115 (1) (gf) of the statutes is amended to read:

17 20.115 (1) (gf) *Fruit and vegetable inspection.* All moneys received for the
 18 inspection of fruits and vegetables under ss. 93.06 (1m), and 93.09 (10) ~~and 100.03~~
 19 ~~(3)(a) 1.~~ to carry out the purposes for which those moneys are received.

20 **SECTION 400.** 20.115 (1) (gm) of the statutes is amended to read:

21 20.115 (1) (gm) ~~*Dairy and vegetable security and trade practices regulation.*~~
 22 The amounts in the schedule for the regulation of ~~vegetable procurement under s.~~
 23 ~~100.03, of dairy plant financial condition under s. 100.06 and of dairy trade practices~~

1 under s. 100.201. All moneys received under ~~ss. 100.03 (3) (a) 2. and 3., 100.06 (9)~~
2 ~~and s. 100.201 (6)~~ shall be credited to this appropriation.”.

3 **7.** Page 294, line 6: after that line insert:

4 “SECTION 403. 20.115 (1) (jm) of the statutes is repealed.

5 SECTION 404. 20.115 (1) (q) of the statutes is created to read:

6 20.115 (1) (q) *Dairy, grain, and vegetable security.* From the agricultural
7 producer security fund, the amounts in the schedule to administer dairy, grain, and
8 vegetable producer security programs under ch. 126.

9 SECTION 405. 20.115 (1) (v) of the statutes is created to read:

10 20.115 (1) (v) *Agricultural producer security; bonds.* From the agricultural
11 producer security fund, a sum sufficient to acquire the surety bonds required under
12 ss. 126.06 and 126.07.

13 SECTION 406. 20.115 (1) (w) of the statutes is created to read:

14 20.115 (1) (w) *Agricultural producer security; payments.* From the agricultural
15 producer security fund, a sum sufficient to make default claim payments authorized
16 under s. 126.72 (1).

17 SECTION 407. 20.115 (1) (wb) of the statutes is created to read:

18 20.115 (1) (wb) *Agricultural producer security; bond proceeds.* From the
19 agricultural producer security fund, all moneys received under s. 126.72 (2) and (3)
20 to be used to make default claim payments under s. 126.71 (1).”.

21 **8.** Page 468, line 17: after that line insert:

22 “SECTION 1104. 25.17 (1) (ag) of the statutes is created to read:

23 25.17 (1) (ag) *Agricultural producer security fund (s. 25.463);*”.

24 **9.** Page 473, line 8: after that line insert:

1 **“SECTION 1128.** 25.463 of the statutes is created to read:

2 **25.463 Agricultural producer security fund.** There is established a
3 separate nonlapsible trust fund designated as the agricultural producer security
4 fund, to consist of all fees, surcharges, assessments, reimbursements, and proceeds
5 of surety bonds received by the department of agriculture, trade and consumer
6 protection under ch. 126.”.

7 **10.** Page 882, line 11: after that line insert:

8 **“SECTION 2382.** 93.06 (8) of the statutes is amended to read:

9 93.06 (8) *PRESCRIBE CONDITIONS OF LICENSES.* Except as provided in s. 93.135,
10 issue any permit, certificate, registration or license on a temporary or conditional
11 basis, contingent upon pertinent circumstances or acts. If the temporary or
12 conditional permit, certificate, registration or license is conditioned upon compliance
13 with chs. 93 to 100, ch. ~~127~~ 126, a rule promulgated by the department or a regulation
14 adopted under s. 97.41 (7) within a specified period of time and the condition is not
15 met within the specified period, the permit, certificate, registration or license shall
16 be void.”.

17 **11.** Page 882, line 16: after that line insert:

18 **“SECTION 2385.** 93.135 (1) (rm) of the statutes is amended to read:

19 93.135 (1) (rm) A ~~registration certificate~~ license under s. ~~100.03 (2)~~ 126.56.

20 **SECTION 2386.** 93.135 (1) (s) of the statutes is amended to read:

21 93.135 (1) (s) A license under s. ~~127.02 (1)~~ 126.26.

22 **SECTION 2387.** 93.135 (1) (sm) of the statutes is amended to read:

23 93.135 (1) (sm) A license under s. ~~127.03 (1)~~ 126.11.

24 **SECTION 2388.** 93.20 (1) of the statutes is amended to read:

1 93.20 (1) DEFINITION. In this section, “action” means an action that is
2 commenced in court by, or on behalf of, the department of agriculture, trade and
3 consumer protection to enforce chs. 88, 91 to 100 or ~~127~~ 126.

4 **SECTION 2389.** 93.21 (5) (a) of the statutes is amended to read:

5 93.21 (5) (a) In this subsection, “license” means a permit, certificate,
6 registration or license issued by the department under chs. 91 to 100 or ch. ~~127~~ 126.”.

7 **12.** Page 882, line 24: after that line insert:

8 “**SECTION 2394.** 93.50 (1) (g) of the statutes is amended to read:

9 93.50 (1) (g) “Procurement contract” has the meaning given for “vegetable
10 procurement contract” in s. ~~100.03 (1) (vm)~~ 126.55 (15).”.

11 **13.** Page 888, line 15: after that line insert:

12 “**SECTION 2400.** 97.20 (2) (d) 2. of the statutes is amended to read:

13 97.20 (2) (d) 2. The license applicant has filed all financial information required
14 under s. 126.44 and any security required under s. ~~100.06~~ 126.47. If an applicant has
15 not filed all financial information under s. 126.44 and any security required under
16 s. ~~100.06~~ 126.47, the department may issue a conditional dairy plant license under
17 s. 93.06 (8) which prohibits the licensed operator from purchasing milk or fluid milk
18 products from milk producers or their agents, but allows the operator to purchase
19 milk or fluid milk products from other sources.

20 **SECTION 2401.** 97.20 (3m) of the statutes is amended to read:

21 97.20 (3m) CONFIDENTIALITY. Any information kept by the department under
22 this section or s. 97.24 that identifies individual milk producers who deliver milk to
23 a dairy plant licensed under this section and that is a composite list for that dairy
24 plant is not subject to inspection under s. 19.35 unless inspection is required under

1 s. ~~100.06 (4)~~ 126.70 or unless the department determines that inspection is necessary
2 to protect the public health, safety or welfare.

3 **SECTION 2402.** 97.22 (10) of the statutes is amended to read:

4 97.22 (10) CONFIDENTIALITY. Any information obtained and kept by the
5 department under this section, under s. 97.24 or 97.52, or under rules promulgated
6 under those sections, that pertains to individual milk producer production, milk fat
7 and other component tests and quality records is not subject to inspection under s.
8 19.35 except as required under s. ~~100.06 (4)~~ 126.70 or except as the department
9 determines is necessary to protect the public health, safety or welfare.

10 **SECTION 2403.** 97.29 (4) of the statutes is amended to read:

11 97.29 (4) FOOD PROCESSING PLANTS BUYING VEGETABLES FROM PRODUCERS. The
12 department may not issue or renew a license to operate a food processing plant to any
13 applicant who is a vegetable contractor, as defined in s. ~~100.03 (1) (f)~~ 126.55 (14),
14 unless the applicant has filed all financial information required under s. 126.58 and
15 any security that is required under s. ~~100.03~~ 126.61. If an applicant has not filed all
16 financial information required under s. 126.58 and any security that is required
17 under s. ~~100.03~~ 126.61, the department may issue a conditional license under s. 93.06
18 (8) that prohibits the licensed operator from procuring vegetables from a producer
19 or a producer's agent, but allows the operator to procure vegetables from other
20 sources.”.

21 **14.** Page 889, line 1: after that line insert:

22 “**SECTION 2404.** 100.03 of the statutes is repealed.

23 **SECTION 2405.** 100.06 of the statutes is repealed.”.

24 **15.** Page 889, line 8: after that line insert:

1 **SECTION 2414.** 100.235 (1) (b) of the statutes is amended to read:

2 100.235 (1) (b) “Contractor” has the meaning given for “vegetable contractor”
3 under s. ~~100.03 (1) (f)~~ 126.55 (14).

4 **SECTION 2415.** 100.235 (1) (em) of the statutes is renumbered 100.235 (1) (dm)
5 and amended to read:

6 100.235 (1) (dm) “Registration License year” has the meaning given under s.
7 ~~100.03 (1) (y)~~ 126.55 (10m).

8 **SECTION 2416.** 100.235 (2) of the statutes is amended to read:

9 100.235 (2) CONTRACTOR MAY NOT PAY PRODUCER LESS THAN CONTRACTOR'S COST TO
10 GROW. If a contractor and the contractor's affiliates and subsidiaries collectively grow
11 more than 10% of the acreage of any vegetable species grown and procured by the
12 contractor in any registration license year, the contractor shall pay a producer, for
13 vegetables of that species tendered or delivered under a vegetable procurement
14 contract, a price not less than the contractor's cost to grow that vegetable species in
15 the same growing region. For vegetables contracted on a tonnage basis and for
16 open-market tonnage purchased, acreage under this subsection shall be determined
17 using the state average yield per acre during the preceding registration license year.

18 **SECTION 2417.** 100.235 (3) of the statutes is repealed.

19 **SECTION 2418.** 100.235 (4) of the statutes is amended to read:

20 100.235 (4) COST TO GROW; REPORT TO DEPARTMENT UPON REQUEST. If the
21 department determines that a contractor and the contractor's affiliates and
22 subsidiaries will collectively grow more than 10% of the acreage of any vegetable
23 species grown and procured by the contractor during a registration license year, the
24 department may require the contractor to file a statement of the contractor's cost to
25 grow that vegetable species. The contractor shall file the report with the department

1 within 30 days after the department makes its request, unless the department
2 grants an extension of time. The department may permit the contractor to report
3 different costs to grow for different growing regions if the contractor can define the
4 growing regions to the department's satisfaction, and can show to the department's
5 satisfaction that the contractor's costs to grow are substantially different between
6 the growing regions.

7 **SECTION 2420.** 100.26 (5) of the statutes is amended to read:

8 100.26 (5) Any person violating ~~s. 100.06 or any order or regulation of the~~
9 ~~department thereunder, or s. 100.18 (9)~~, shall be fined not less than \$100 nor more
10 than \$1,000 or imprisoned for not more than 2 years or both. Each day of violation
11 constitutes a separate offense.”.

12 **16.** Page 939, line 16: after that line insert:

13 **“SECTION 2813.** Chapter 126 of the statutes is created to read:

14 **CHAPTER 126**

15 **AGRICULTURAL PRODUCER SECURITY**

16 **SUBCHAPTER I**

17 **GENERAL**

18 **126.01 General definitions.** In this chapter:

19 (1) “Affiliate” means any of the following persons:

20 (a) An owner, major stockholder, partner, officer, director, member, employee,
21 or agent of a contractor.

22 (b) A person owned, controlled, or operated by a person under par. (a).

23 (2) “Asset” means anything of value owned by a person.

1 (3) “Audited financial statement” means a financial statement on which an
2 independent certified public accountant, or an independent public accountant
3 holding a certificate of authority under ch. 442, has done all of the following:

4 (a) Stated that the financial statement presents fairly, in all material respects,
5 the financial position of a contractor as of a specific date or for a specific period,
6 according to one of the following:

7 1. Generally accepted accounting principles.

8 2. The historical cost basis method of accounting, if the financial statement is
9 a sole proprietor’s personal financial statement and the financial statement is
10 prepared on a historical cost basis.

11 (b) Conducted an audit according to generally accepted auditing standards.

12 (4) “Balance sheet” means a statement of assets, liabilities, and equity on a
13 specific date.

14 (5) “Contractor,” unless otherwise qualified, means any of the following:

15 (a) A grain dealer, as defined in s. 126.10 (9).

16 (b) A grain warehouse keeper, as defined in s. 126.25 (9).

17 (c) A milk contractor, as defined in s. 126.40 (8).

18 (d) A vegetable contractor, as defined in s. 126.55 (14).

19 (6) “Current assets” means cash and other assets, including trade or
20 investment items, that may be readily converted into cash in the ordinary course of
21 business within one year after the date as of which the value of those assets is
22 determined.

23 (7) “Current liabilities” means those liabilities that are due within one year
24 after the date as of which the value of those liabilities is determined.

1 (8) “Department” means the department of agriculture, trade and consumer
2 protection.

3 (9) “Equity” means the value of assets less the value of liabilities.

4 (10) “Equity statement” means a report of the change in equity from the
5 beginning to the end of the accounting period covered by the report.

6 (11) “Fund” means the agricultural producer security fund established under
7 s. 25.463.

8 (12) “Generally accepted accounting principles” means the accounting
9 standards adopted by the Financial Accounting Standards Board, except that for a
10 business entity organized and operating outside the United States “generally
11 accepted accounting principles” includes generally accepted foreign accounting
12 standards that are substantially equivalent to standards adopted by the Financial
13 Accounting Standards Board.

14 (13) “Grain” means corn, wheat, soybeans, oats, barley, rye, buckwheat,
15 sorghum, flax seed, milo, sunflower seed, and mixed grain, as defined in 7 CFR
16 810.801, except that “grain” does not include any of the following:

17 (a) Sweet corn or other canning crops for processing.

18 (b) Seed corn, wheat, soybeans, oats, barley, rye, buckwheat, sorghum, flax
19 seed, milo, sunflower seed, or mixed grain used or intended for use solely for planting
20 purposes.

21 (c) Corn, wheat, soybeans, oats, barley, rye, buckwheat, sorghum, flax seed,
22 milo, sunflower seed, or mixed grain that has been rolled, cracked, roasted, or
23 otherwise processed.

24 (14) “Income statement” means a report of the financial results of business
25 operations for a specific period.

1 (15) “Individual” means a natural person.

2 (16) “Interim financial statement” means a statement of financial condition
3 prepared for a period shorter than a fiscal year.

4 (17) “Milk” has the meaning given in s. 97.22 (1) (e).

5 (18) “Person,” notwithstanding s. 990.01 (26), means an individual,
6 corporation, cooperative, partnership, limited liability company, trust, state agency,
7 as defined in s. 20.001 (1), local governmental unit, as defined in s. 66.0131 (1) (a),
8 or other legal entity.

9 (19) “Producer,” unless otherwise qualified, means a grain producer, as defined
10 in s. 126.10 (10), milk producer, as defined in s. 126.40 (10), or vegetable producer,
11 as defined in s. 126.55 (16).

12 (20) “Reviewed financial statement” means a contractor’s financial statement,
13 other than an audited financial statement, if all of the following apply:

14 (a) The contractor attests in writing, under oath, that the financial statement
15 is complete and accurate.

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

19 (21) “Security” means security filed or maintained under s. 126.16, 126.31,
20 126.47, or 126.61.

21 (22) “Sole proprietor” means a contractor who is an individual.

22 (23) “Statement of cash flows” means a report of cash receipts and cash
23 disbursements from operating, investing, and financing activities, including an
24 explanation of changes in cash and cash equivalents for the accounting period
25 covered by the report.

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

SUBCHAPTER II

AGRICULTURAL PRODUCER

SECURITY FUND

6 *Insert*
 7 *13-9*

8 *(B) Agricultural producer security*
 9 *(2) (B)*

9 **126.05 Deposits into the fund.** The department shall deposit into the fund
 10 all fees, surcharges, assessments, reimbursements, and proceeds of surety bonds
 11 that the department collects under this chapter. The department shall keep a record
 12 by contractor and industry, of all deposits.

13 **126.06 Industry bonds. (1) DEPARTMENT TO ACQUIRE BONDS.** Using moneys
 14 appropriated under s. 20.115 (1) (v), the department shall acquire and maintain all
 15 of the following surety bonds:

16 (a) A surety bond that takes effect on May 1, 2002, to secure payment under
 17 s. 126.72 (2) of claims against contributing milk contractors, as defined in s. 126.40
 18 (1).

19 (b) A surety bond that takes effect on September 1, 2002, to secure payment
 20 under s. 126.72 (2) of claims against contributing grain dealers, as defined in s.
 21 126.10 (3), and contributing grain warehouse keepers, as defined in s. 126.25 (2).

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

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

Insert 13-9 ✓

(B)

NO P

(1) The ~~agricultural producer~~ ~~sea~~ fund is a public trust and shall be administered to secure payments to producers. Money deposited into the fund may be used only for the purposes of this chapter.

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

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

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

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

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

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

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

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

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

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

18 **126.07 Blanket bond.** (1) DEPARTMENT TO ACQUIRE BOND. Using moneys
19 appropriated under s. 20.115 (1) (v), the department shall acquire and maintain a
20 surety bond, that takes effect on February 1, 2002, to secure payment under s. 126.72
21 (3) of claims against contributing contractors, as defined in s. 126.68 (1).

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

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

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

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

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

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

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

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

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

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

16 **126.08 Start-up loan to fund; repayment.** On January 1, 2002, \$2,000,000
17 is transferred as a loan from the agrichemical management fund, to the agricultural
18 producer security fund. The department shall repay this loan principal, plus interest
19 compounded at 5% annually, from the agricultural producer security fund by July 1,
20 2006. The department shall transfer at least \$250,000 from the agricultural
21 producer security fund to the agrichemical management fund on July 1 of each year,
22 beginning on July 1, 2003. The department may accelerate the loan repayment, at
23 its discretion.

24 SUBCHAPTER III

25 GRAIN DEALERS

1 **126.10 Definitions.** In this subchapter:

2 (1) “Cash on delivery” means full cash payment for grain when the grain dealer
3 takes custody or control of the grain.

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

5 (a) Currency.

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

7 (c) A wire transfer.

8 (d) Simultaneous barter.

9 (3) “Contributing grain dealer” means a grain dealer who is licensed under s.
10 126.11, who either has paid one or more quarterly installments under s. 126.15 (7)
11 or is required to contribute to the fund, but the first quarterly installment under s.
12 126.15 (7) is not yet due, and who is not disqualified from the fund under s. 126.14
13 (2).

14 (4) “Current ratio” means the ratio of the value of current assets to the value
15 of current liabilities, calculated according to s. 126.13 (6) (c) 1.

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

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

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

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

3 **(9)** “Grain dealer” means a person who buys producer grain or who markets
4 producer grain as a producer agent. “Grain dealer” does not include any of the
5 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 buys or sells grain on a board of trade or commodity
10 exchange.

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

12 **(10m)** “License year” means the period beginning on September 1 and ending
13 on the following August 31.

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

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

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

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

18 **(13)** “Producer agent” means a person who acts on behalf of a grain producer
19 to market or accept payment for the grain producer’s grain without taking title to
20 that grain, including a person who uses a producer trust fund to market or accept
21 payment for producer grain. “Producer agent” does not include any of the following:

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

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

3 (14) “Producer grain” means grain that is owned by or held in trust for one or
4 more grain producers. “Producer grain” includes grain that a producer agent
5 markets for a grain producer, without taking title to the grain.

6 **126.11 Grain dealers; licensing.** (1) LICENSE REQUIRED. Except as provided
7 in sub. (2), no grain dealer may procure producer grain in this state without a current
8 annual license from the department.

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

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

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

14 (2m) LICENSE TERMS. A license under this section expires on the August 31
15 following its issuance. No person may transfer or assign a license issued under this
16 section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 2. A fee of \$200 if the amount under sub. (9) (a) is at least \$50,000 but less than
21 \$500,000.

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

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

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

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

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

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

14 **(4m) EFFECT OF PAYMENT OF SURCHARGE.** Payment under sub. (4) (e) does not
15 relieve the applicant of any other civil or criminal liability that results from the
16 violation of sub. (1), but does not constitute evidence of any law violation.

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

20 **(6) FEE CREDITS.** If the balance in the fund contributed by grain dealers exceeds
21 \$2,000,000 on June 30 of any license year, the department shall credit 50% of the
22 excess amount against fees charged under sub. (4) (b) to contributing grain dealers
23 who file timely license renewal applications for the next license year. The
24 department shall credit each contributing grain dealer on a prorated basis, in

1 proportion to the total fees that the grain dealer paid under sub. (4) (b) for the 4
2 preceding license years.

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

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

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

15 (a) The total amount that the applicant paid, during the applicant's last
16 completed fiscal year, for producer grain procured in this state. If the applicant has
17 not yet operated as a grain dealer in this state, the applicant shall estimate the
18 amount that the applicant will pay during the applicant's first complete fiscal year
19 for producer grain procured in this state.

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

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

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

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

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

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

9 **126.12 Grain dealers; insurance. (1) FIRE AND EXTENDED COVERAGE**
10 **INSURANCE.** A grain dealer licensed, or required to be licensed, under s. 126.11 shall
11 maintain fire and extended coverage insurance, issued by an insurance company
12 authorized to do business in this state, that covers all grain in the custody of the grain
13 dealer, whether owned by the grain dealer or held for others, at the full local market
14 value of the grain.

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

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

21 (a) That the grain dealer is insured.

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

24 **126.13 Grain dealers; financial statements. (1) REQUIRED ANNUAL**
25 **FINANCIAL STATEMENT.** (a) A grain dealer shall file an annual financial statement with

1 the department, before the department first licenses the grain dealer under s. 126.11,
2 if the grain dealer's license application reports any of the following:

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

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

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

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

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

12 (c) A grain dealer shall file an annual financial statement under par. (b) by the
13 15th day of the 4th month following the close of the grain dealer's fiscal year, except
14 that the department may extend the filing deadline for up to 30 days if the grain
15 dealer, or the accountant reviewing or auditing the financial statement, files a
16 written extension request at least 10 days before the filing deadline.

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

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

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

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

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

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

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

15 **(4m) INTERIM FINANCIAL STATEMENT.** The department may, at any time, require
16 a grain dealer licensed under s. 126.11 to file an interim financial statement with the
17 department. The grain dealer shall provide, with the interim financial statement,
18 the grain dealer's sworn and notarized statement that the financial statement is
19 correct. An interim financial statement need not be a reviewed financial statement
20 or an audited financial statement.

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

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

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

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

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

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

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

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

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

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

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

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

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

16 **126.14 Contributing grain dealers; disqualification.** (1) CONTRIBUTION
17 REQUIRED. A grain dealer who is required to be licensed under s. 126.11 (1) shall pay
18 fund assessments under s. 126.15 unless the grain dealer is disqualified under sub.
19 (2). A grain dealer who is voluntarily licensed under s. 126.11 may pay voluntary
20 assessments under s. 126.15, unless the grain dealer is disqualified under sub. (2).

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

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

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

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

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

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

13 **(3) PAYMENTS BY DISQUALIFIED GRAIN DEALER.** (a) The department may not return
14 to a disqualified grain dealer any fund assessments that the grain dealer paid as a
15 contributing grain dealer.

16 (b) A disqualified grain dealer remains liable for any unpaid fund installment
17 under s. 126.15 that became due while the grain dealer was a contributing grain
18 dealer. A disqualified grain dealer is not liable for any fund installment that becomes
19 due after the grain dealer is disqualified under sub. (2).

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

24 (a) The grain dealer's current ratio assessment. The current ratio assessment
25 for a license year equals the grain dealer's current ratio assessment rate under sub.

1 (2) multiplied by the amount reported under s. 126.11 (9) (a) in the grain dealer's
2 license application for that license year.

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

7 (c) The grain dealer's deferred payment assessment. The deferred payment
8 assessment for a license year equals the grain dealer's deferred payment assessment
9 rate under sub. (6) multiplied by the payment amount, if any, that the grain dealer
10 reports under s. 126.11 (9) (b) in the grain dealer's license application for that license
11 year.

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

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

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

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

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

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

8 1. Subtract one from the current ratio.

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

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

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

12 5. Subtract 0.75 from the current ratio.

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

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

15 8. Add the amount determined under subd. 4. to the amount determined under
16 subd. 7.

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

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

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

1 (e) If the grain dealer has not filed an annual financial statement under s.
2 126.13 and the grain dealer procures grain in this state solely as a producer agent,
3 the grain dealer's current ratio assessment rate is 0.00025, except that, for the grain
4 dealer's 5th or higher consecutive full license year of participation in the fund, the
5 grain dealer's current ratio assessment rate is 0.000175.

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

10 (b) A grain dealer's current ratio assessment factor under sub. (2) (b) to (d) is
11 0.000045 except that, for the grain dealer's 5th or higher consecutive full license year
12 as a contributing grain dealer, the grain dealer's current ratio assessment factor is
13 0.000036.

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

16 (a) If the grain dealer has filed an annual financial statement under s. 126.13
17 and that financial statement shows positive equity and a debt to equity ratio of not
18 more than 4.0 to 1.0, the grain dealer's debt to equity ratio assessment rate equals
19 the greater of zero or the debt to equity ratio assessment factor in sub. (5) (a)
20 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 dealer has filed an annual financial statement under s. 126.13
- 6 and that financial statement shows a debt to equity ratio of greater than 4.0 to 1.0,
- 7 but less than 5.0 to 1.0, the grain dealer's debt to equity ratio assessment rate equals
- 8 the debt to equity ratio assessment factor in sub. (5) (b) multiplied by the following
- 9 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 dealer has filed an annual financial statement under s. 126.13
- 20 and that financial statement shows negative equity or a debt to equity ratio of at least
- 21 5.0 to 1.0, the grain dealer's debt to equity ratio assessment rate equals the debt to
- 22 equity ratio assessment factor in sub. (5) (b) multiplied by 86.8244.
- 23 (d) Except as provided in par. (e), if the grain dealer has not filed an annual
- 24 financial statement under s. 126.13, the grain dealer's debt to equity ratio

1 assessment rate equals the debt to equity ratio assessment factor in sub. (5) (b)
2 multiplied by 8.77374.

3 (e) If the grain dealer has not filed an annual financial statement under s.
4 126.13 and the grain dealer procures grain in this state solely as a producer agent,
5 the grain dealer's debt to equity ratio assessment rate is 0.00025, except that it is
6 0.000175 for the grain dealer's 5th or higher consecutive full license year of
7 participation in the fund.

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

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

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

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

- 21 1. The first installment is due on October 1 of the license year.
- 22 2. The 2nd installment is due on January 1 of the license year.
- 23 3. The 3rd installment is due on April 1 of the license year.
- 24 4. The 4th installment is due on July 1 of the license year.

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

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

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

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

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

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

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

20 **126.16 Grain dealers; security. (1) SECURITY REQUIRED.** (a) A grain dealer
21 shall file security with the department, and maintain that security until the
22 department releases it under sub. (8) (a), if all of the following apply when the
23 department first licenses the grain dealer under s. 126.11:

24 1. The grain dealer reports more than \$500,000 in grain payments under s.
25 126.11 (9) (a).

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

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

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

10 2. The grain dealer's annual financial statement under s. 126.13 covers a fiscal
11 year ending after January 1, 2006, and shows a debt to equity ratio of not more than
12 4.0 to 1.0.

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

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

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

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

1 (4) FORM OF SECURITY. The department shall review, and determine whether
2 to approve, security filed or maintained under this section. The department may
3 approve only the 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 grain
7 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 grain
18 producers and producer agents who deliver grain to the grain dealer.

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

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.

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 grain
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 under ch. 127, 1999 stats., before September 1, 2002, except
12 that on January 1, 2003, the department shall withdraw its approval of any security
13 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 grain producers and producer agents who deliver grain to
17 a grain dealer.

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

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

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

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

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

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

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

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

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

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

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

8 1. Issue a summary order under s. 126.55 (2) that prohibits the grain dealer
9 from procuring producer grain or requires the grain dealer to pay cash on delivery
10 for all producer grain.

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

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

15 1. The grain dealer reports, for at least 2 consecutive years, no more than
16 \$500,000 in annual grain payments under s. 126.11 (9) (a) and the grain dealer pays
17 the quarterly fund assessment that would have been required of the grain dealer if
18 the grain dealer had been a contributing grain dealer on the most recent quarterly
19 installment date under s. 126.15 (7).

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

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

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

6 2. The grain dealer files 2 consecutive annual financial statements under s.
7 126.13 showing that the grain dealer meets the applicable equity requirement and
8 debt to equity ratio under sub. (1) (b).

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

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

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

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

17 **126.17 Grain dealers; records. (1) RECORDS AND ACCOUNTS; GENERAL.** A grain
18 dealer shall keep records and accounts of all grain procured and all grain sold or
19 marketed by the grain dealer. A grain dealer shall keep records that are complete,
20 accurate, current, well-organized, and accessible, so that the grain dealer and the
21 department can readily determine all of the following:

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

1 (b) The kinds and amounts of grain sold or marketed, the sale or marketing
2 dates, the sale or marketing terms, and the persons to whom the grain dealer sold
3 or marketed the grain.

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

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

9 (e) The nature and amount of the grain dealer's obligations to grain producers
10 and producer agents, including obligations under deferred payment contracts. The
11 grain dealer shall keep a daily record of obligations under priced contracts and a
12 separate daily record of obligations under deferred price contracts that have not yet
13 been priced.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 **126.18 Grain dealers; receipts for grain. (1) REQUIREMENT.** Whenever a
14 grain dealer receives grain from any person, the grain dealer shall immediately give
15 that person a written receipt for the grain that includes all of the following:

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

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

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

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

22 (e) The kind of grain received.

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

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

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

3 (i) The grain dealer's promise to pay the total amount due for grain, less any
4 discounts that may apply, within 7 calendar days after the date of receipt of the grain.
5 This requirement does not apply if any of the following applies:

6 1. The grain dealer pays cash on delivery.

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

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

10 **(1m) EFFECT OF FAILURE TO IDENTIFY RECEIPT.** A receipt not clearly identified
11 under sub. (1) (h) is considered a purchase receipt except that, if the grain dealer also
12 operates as a grain warehouse keeper, as defined in s. 126.25 (9), under the same
13 name, a receipt not clearly identified is considered a storage receipt.

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

16 **126.19 Grain dealers; deferred payment contracts. (1) CONTRACT IN**
17 **WRITING.** A grain dealer may not procure grain from any grain producer or producer
18 agent under a deferred payment contract before the contract is reduced to writing
19 and signed by the parties. The grain dealer shall provide a copy of the signed contract
20 to the other party.

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

23 (a) A unique contract identification number.

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

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

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

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

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

14 (f) Other information required under this section.

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

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

21 **(4) REQUIRED NOTICE.** A grain dealer may not enter into a deferred payment
22 contract unless the deferred payment contract clearly discloses that it is not a storage
23 contract. Whenever a grain dealer buys grain from a grain producer under a deferred
24 payment contract, the grain dealer shall include the following statement in
25 capitalized, boldface print immediately above the contract signature line: "This is