

1 not a storage contract. The grain dealer (buyer) becomes the owner of any grain that
2 the producer (seller) delivers to the grain dealer under this contract. The producer
3 relinquishes ownership and control of the grain, and becomes an unsecured creditor
4 pending payment.”

5 (5) DEFERRED PAYMENT CONTRACT ASSESSMENT. From the amount that a grain
6 dealer pays to a grain producer or producer agent under a deferred payment contract,
7 the grain dealer shall deduct a deferred payment contract assessment. The
8 assessment shall equal the total amount owed under the contract before the
9 assessment is deducted, multiplied by the deferred payment assessment rate that
10 applies under s. 126.15 (6) when the contract is made. The grain dealer shall disclose
11 the assessment amount or, if the contract is a deferred price contract, the method by
12 which the assessment amount will be determined, in the written contract under sub.
13 (1).

14 **126.20 Grain dealers; business practices. (1) GRAIN WEIGHT, GRADE, AND**
15 **QUALITY.** A grain dealer shall do all of the following when determining the weight,
16 grade, or quality of grain:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **126.21 Grain producer obligations. (1) DELIVERY PER CONTRACT.** No grain
21 producer or producer agent who contracts to sell and deliver grain to a grain dealer
22 at an agreed price may wrongfully refuse to deliver that grain according to the
23 contract.

24 (2) DISCLOSURE OF LIENS AND SECURITY INTERESTS. A grain dealer procuring grain
25 from a grain producer or producer agent may require the grain producer or producer

1 agent to disclose any liens or security interests that apply to the grain. The grain
2 dealer may require the disclosure in writing. The grain dealer may require the grain
3 producer or producer agent to specify the nature and amount of each lien or security
4 interest and the identity of the person holding that lien or security interest. No grain
5 producer may falsify or fraudulently withhold information required under this
6 subsection in order to sell grain.

7 SUBCHAPTER IV

8 GRAIN WAREHOUSE KEEPERS

9 **126.25 Definitions.** In this subchapter:

10 (1) “Capacity” means the maximum amount of grain, measured in bushels,
11 that can be stored in a grain warehouse. The capacity of a grain warehouse is
12 determined by dividing the cubic volume of all bins, expressed in cubic feet, by 1.244
13 cubic feet per bushel, and applying a pack factor that the department specifies by
14 rule.

15 (2) “Contributing grain warehouse keeper” means a grain warehouse keeper
16 who is licensed under s. 126.26, who either has paid one or more quarterly
17 installments under s. 126.30 (6) or is required to contribute to the fund, but the first
18 quarterly installment under s. 126.30 (6) is not yet due, and who is not disqualified
19 under s. 126.29 (2).

20 (3) “Current ratio” means the ratio of the value of current assets to the value
21 of current liabilities, calculated according to s. 126.28 (6) (c) 1.

22 (4) “Debt to equity ratio” means the ratio of the value of liabilities to equity,
23 calculated according to s. 126.28 (6) (c) 2.

24 (5) “Depositor” means any of the following:

1 (a) A person who delivers grain to a grain warehouse keeper for storage,
2 conditioning, shipping, or handling, without transferring ownership to the
3 warehouse keeper.

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

7 (6) “Disqualified grain warehouse keeper” means a grain warehouse keeper
8 who is disqualified from the fund under s. 126.29 (2).

9 (8) “Grain warehouse” means a facility in this state that is used to receive,
10 store, or condition grain for others or that is used in the shipment of grain for others,
11 except that “grain warehouse” does not include a transport vehicle.

12 (9) “Grain warehouse keeper” means a person who operates one or more grain
13 warehouses in this state to receive, store, condition, or ship grain for others, except
14 that “grain warehouse keeper” does not include a person licensed under the United
15 States Warehouse Act, 7 USC 241 to 271.

16 (9m) “License year” means the period beginning on September 1 and ending
17 on the following August 31.

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

20 **126.26 Grain warehouse keepers; licensing.** (1) LICENSE REQUIRED. (a)
21 No grain warehouse keeper may hold at any time more than 50,000 bushels of grain
22 for others without a current annual license from the department. A grain warehouse
23 keeper who has grain warehouses with a combined capacity of more than 50,000
24 bushels shall obtain a license unless the grain warehouse keeper proves to the

1 department that the grain warehouse keeper holds no more than 50,000 bushels of
2 grain for others at any time.

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

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

8 (a) The applicant's legal name and any trade name under which the applicant
9 proposes to operate as a grain warehouse keeper.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 **(3m) EFFECT OF PAYMENT OF SURCHARGE.** Payment under sub. (3) (d) does not
18 relieve the applicant of any other civil or criminal liability that results from the
19 violation of sub. (1), but does not constitute evidence of any law violation.

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

23 **(5) FEE CREDIT.** If the fund balance contributed by grain warehouse keepers
24 exceeds \$300,000 on June 30 of any license year, the department shall credit 12.5%
25 of the excess amount against fees charged under sub. (3) (b) to contributing grain

1 warehouse keepers who file timely license renewal applications for the next license
2 year. The department shall credit each contributing grain warehouse keeper on a
3 prorated basis, in proportion to the total fees that the warehouse keeper has paid
4 under sub. (3) (b) for the 4 preceding license years.

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

9 (7) NO LICENSE WITHOUT FULL PAYMENT. The department may not grant a license
10 under sub. (1) until the applicant pays all license fees and surcharges identified in
11 the department's statement under sub. (6). The department shall refund a fee or
12 surcharge paid under protest if upon review the department determines that the fee
13 or surcharge is not applicable.

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

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

22 (10) NOTIFICATION. A licensed warehouse keeper shall notify the department,
23 in writing, before the warehouse keeper adds a grain warehouse or changes the
24 location or capacity of any grain warehouse. In the notice, the grain warehouse
25 keeper shall specify any change in the combined capacity of grain warehouses

1 operated by the grain warehouse keeper resulting from the proposed addition or
2 change.

3 **126.27 Grain warehouse keepers; insurance. (1) FIRE AND EXTENDED**
4 **COVERAGE INSURANCE.** A grain warehouse keeper licensed under s. 126.26 (1) shall
5 maintain fire and extended coverage insurance, issued by an insurance company
6 authorized to do business in this state, that covers all grain in the custody of the grain
7 warehouse keeper, whether owned by the grain warehouse keeper or held for others,
8 at the full local market value of the grain.

9 **(2) INSURANCE CANCELLATION; REPLACEMENT.** (a) No person may cancel an
10 insurance policy required under sub. (1) unless that person serves a written notice
11 of the intended cancellation on the department at least 30 days before the
12 cancellation takes effect.

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

20 **(3) INSURANCE DEDUCTIBLES.** An insurance policy does not comply with sub. (1)
21 if it contains any deductible clause that limits the insurer's obligation to pay to each
22 depositor the full value of the depositor's covered losses under the policy. The grain
23 warehouse keeper may agree to indemnify the insurer for a portion of each depositor
24 claim that the insurer pays under the policy if the agreement does not limit the

1 insurer's obligation to pay each depositor the full amount of the depositor's covered
2 losses.

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

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

8 (b) Whether the grain warehouse keeper has liability insurance covering the
9 grain warehouse keeper's grain operations, and the material terms of that liability
10 insurance policy.

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

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

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

16 **126.28 Grain warehouse keepers; financial statements.** (1) **REQUIRED**
17 **ANNUAL FINANCIAL STATEMENT.** (a) A grain warehouse keeper shall file an annual
18 financial statement with the department before the department first licenses the
19 warehouse keeper under s. 126.26 (1), if the warehouse keeper operates grain
20 warehouses with a combined capacity of more than 300,000 bushels.

21 (b) A grain warehouse keeper licensed under s. 126.26 (1) shall file an annual
22 financial statement with the department during each license year if the grain
23 warehouse keeper operates warehouses with a combined capacity of more than
24 300,000 bushels. The grain warehouse keeper shall file the annual financial
25 statement by the 15th day of the 4th month following the close of the grain warehouse

1 keeper's fiscal year, except that the department may extend the annual filing
2 deadline for up to 30 days if the grain warehouse keeper, or the accountant reviewing
3 or auditing the financial statement, files a written extension request at least 10 days
4 before the filing deadline.

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

9 (3) REVIEWED OR AUDITED FINANCIAL STATEMENT. (a) A grain warehouse keeper
10 filing an annual financial statement under sub. (1) or (2) shall file an audited
11 financial statement if the warehouse keeper operates grain warehouses with a
12 combined capacity of more than 500,000 bushels.

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

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

20 (4m) INTERIM FINANCIAL STATEMENT. The department may, at any time, require
21 a grain warehouse keeper licensed under s. 126.26 (1) to file an interim financial
22 statement with the department. The grain warehouse keeper shall provide, with the
23 interim financial statement, the warehouse keeper's sworn and notarized statement
24 that the financial statement is correct. An interim financial statement need not be
25 a reviewed financial statement or an audited financial statement.

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

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

8 **(6) FINANCIAL STATEMENT CONTENTS.** (a) Except as provided in par. (b), a grain
9 warehouse keeper filing a financial statement under this section shall file a financial
10 statement that consists of a balance sheet, income statement, equity statement,
11 statement of cash flows, notes to those statements, and any other information
12 required by the department. A grain warehouse keeper who is a sole proprietor shall
13 file his or her business and personal financial statements.

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

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

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

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

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

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

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

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

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

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

19 **126.29 Contributing grain warehouse keepers; disqualification. (1)**
20 CONTRIBUTION REQUIRED. A grain warehouse keeper licensed under s. 126.26 (1) shall
21 pay fund assessments under s. 126.30 unless the grain warehouse keeper is
22 disqualified under sub. (2).

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

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

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

6 (b) A disqualified grain warehouse keeper remains liable for any unpaid fund
7 installment under s. 126.30 that became due while the grain warehouse keeper was
8 a contributing grain warehouse keeper. A disqualified grain warehouse keeper is not
9 liable for any fund installment that becomes due after the grain warehouse keeper
10 is disqualified under sub. (2).

11 **126.30 Grain warehouse keepers; fund assessments. (1) GENERAL.** A
12 contributing grain warehouse keeper shall pay an annual fund assessment for each
13 license year. The assessment equals \$20 or the sum of the following, whichever is
14 greater, unless the department by rule specifies a different assessment:

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

20 (b) The warehouse keeper's debt to equity ratio assessment. The debt to equity
21 ratio assessment for each license year is the amount, expressed as dollars, equal to
22 the grain warehouse keeper's debt to equity ratio assessment rate under sub. (4)
23 multiplied by the number of bushels that the warehouse keeper reports under s.
24 126.26 (2) (e) or (10).

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

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

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

- 23 1. Subtract one from the current ratio.
- 24 2. Divide the amount determined under subd. 1. by 3.
- 25 3. Multiply the amount determined under subd. 2. by negative one.

- 1 4. Raise the amount determined under subd. 3. to the 3rd power.
 - 2 5. Subtract 0.75 from the current ratio.
 - 3 6. Divide 0.65 by the amount determined under subd. 5.
 - 4 7. Raise the amount determined under subd. 6. to the 5th power.
 - 5 8. Add the amount determined under subd. 4. to the amount determined under
 - 6 subd. 7.
 - 7 9. Add 2 to the amount determined under subd. 8.
- 8 (c) If the grain warehouse keeper has filed an annual financial statement under
- 9 s. 126.28 and that financial statement shows a current ratio of less than or equal to
- 10 1.0 to 1.0, the warehouse keeper's current ratio assessment rate equals the current
- 11 ratio assessment factor in sub. (3) (b) multiplied by 120.81376.
- 12 (d) If the grain warehouse keeper has not filed an annual financial statement
- 13 under s. 126.28, the warehouse keeper's current ratio assessment rate equals the
- 14 current ratio assessment factor in sub. (3) (b) multiplied by 5.71235.
- 15 **(3) CURRENT RATIO ASSESSMENT FACTOR.** (a) A grain warehouse keeper's current
- 16 ratio assessment factor under sub. (2) (a) is 0.00003 except that, for the grain
- 17 warehouse keeper's 5th or higher consecutive full license year as a contributing grain
- 18 warehouse keeper, the grain warehouse keeper's current ratio assessment factor is
- 19 zero.
- 20 (b) A grain warehouse keeper's current ratio assessment factor under sub. (2)
- 21 (b) to (d) is 0.000045 except that, for the grain warehouse keeper's 5th or higher
- 22 consecutive full license year as a contributing grain warehouse keeper, the grain
- 23 warehouse keeper's current ratio assessment factor is 0.000036.

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

4 (a) If the grain warehouse keeper has filed an annual financial statement
5 under s. 126.28 and that financial statement shows positive equity and a debt to
6 equity ratio of not more than 4.0 to 1.0, the grain warehouse keeper's debt to equity
7 ratio assessment rate equals the greater of zero or the debt to equity ratio assessment
8 factor in sub. (5) (a) 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 3.
- 11 3. Raise the amount determined under subd. 2. to the 3rd power.
- 12 4. Subtract 1.7 from the debt to equity ratio.
- 13 5. Divide the amount determined under subd. 4. by 1.75.
- 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 2 to the amount determined under subd. 7.

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

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

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

7 (c) If the grain warehouse keeper has filed an annual financial statement under
8 s. 126.28 and that financial statement shows negative equity or a debt to equity ratio
9 of at least 5.0 to 1.0, the grain warehouse keeper's debt to equity ratio assessment
10 rate equals the debt to equity ratio assessment factor in sub. (5) (b) multiplied by
11 86.8244.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (a) Currency.

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

21 1. The surety bond is made payable to the department for the benefit of
22 depositors.

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

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

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

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

8 1. The certificate is issued or endorsed to the department for the benefit of
9 depositors.

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

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

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

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

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

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

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

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

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

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

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

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

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

10 1. The grain warehouse keeper's existing security falls below the amount
11 required under sub. (3) for any reason, including depreciation in the value of the
12 security, increased obligations to depositors, or the cancellation of any security filed
13 with the department.

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

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

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

24 (d) If a grain warehouse keeper fails to comply with the department's demand
25 for security under this subsection, the grain warehouse keeper shall give written

1 notice of that fact to all depositors. If the grain warehouse keeper fails to give
2 accurate notice under this paragraph within 5 days after the deadline for filing
3 security under par. (b) has passed, the department shall promptly notify depositors
4 by publishing a class 3 notice under ch. 985. The department may also give
5 individual notice to depositors of whom the department is aware.

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

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

10 (7) MONTHLY REPORTS. A grain warehouse keeper who is required to file or
11 maintain security under this section shall file monthly reports with the department.
12 The grain warehouse keeper shall file the report by the 10th day of each month, in
13 a form specified by the department. In a monthly report, the grain warehouse keeper
14 shall provide information reasonably required by the department, including the
15 amount of each type of grain stored in each grain warehouse on the last day of the
16 preceding month.

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

- 19 1. The grain warehouse keeper reports grain warehouse capacity under s.
20 126.26 (2) (e) of less than 300,000 bushels for at least 2 consecutive license years and
21 the grain warehouse keeper pays the quarterly fund assessment that would have
22 been required of the grain warehouse keeper if the grain warehouse keeper had been
23 a contributing grain warehouse keeper on the most recent quarterly installment date
24 under s. 126.30 (6).

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

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

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

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

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

15 **126.32 Grain warehouse keepers; records. (1) RECORDS AND ACCOUNTS;**
16 **GENERAL.** A grain warehouse keeper shall maintain current, complete, and accurate
17 records and accounts of all grain received into and withdrawn from each grain
18 warehouse, including records required under subs. (2) and (3).

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

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

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

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

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

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

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

8 (b) The kinds and amounts of grain that the grain warehouse keeper received
9 from the depositor, the receipt dates, and the terms under which the grain warehouse
10 keeper received the grain.

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

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

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

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

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

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

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

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

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

6 2. Records that the grain warehouse keeper was required to keep under ch. 127,
7 1999 stats., and department rules, before January 1, 2002.

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

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

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

18 (b) The department shall review a grain warehouse keeper's records at least
19 once every 2 years if the grain warehouse keeper files an annual financial statement
20 under s. 126.28 and that annual financial statement shows a current ratio of at least
21 2.0 to 1.0, positive equity, and a debt to equity ratio of not more than 2.0 to 1.0.

22 **126.33 Receipts for grain. (1) REQUIREMENT.** Immediately after a grain
23 warehouse keeper receives grain from a depositor, the grain warehouse keeper shall
24 give the depositor a warehouse receipt or other storage receipt that includes all of the
25 following:

1 (a) The name and permanent address of the grain warehouse keeper, the
2 location of the grain warehouse, and a statement indicating whether the grain
3 warehouse keeper is a corporation.

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

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

7 (d) The kind of grain received.

8 (e) The net weight of grain received.

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

10 (g) The word “negotiable” or “nonnegotiable,” conspicuously, if the document is
11 issued as a warehouse receipt. If a grain warehouse keeper transfers
12 depositor-owned grain to another warehouse keeper, the receiving grain warehouse
13 keeper shall issue a receipt that conspicuously bears the word “nonnegotiable.”

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

17 1. A warehouse receipt.

18 2. A receipt for grain owned by the federal commodity credit corporation.

19 3. A receipt for grain pledged as collateral for a loan from the federal
20 department of agriculture.

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

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

6 **126.34 Grain warehouse keepers; business practices. (1) GRAIN WEIGHT,**
7 **GRADE, AND QUALITY.** A grain warehouse keeper shall do all of the following when
8 determining the weight, grade, or quality of grain:

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

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

12 **(2) CARE OF GRAIN; FACILITIES.** A grain warehouse keeper shall safeguard grain
13 held for others and shall protect that grain from loss or abnormal deterioration. A
14 grain warehouse keeper shall maintain adequate facilities and equipment for that
15 purpose.

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

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

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

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

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

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

7 **(5) PROHIBITED PRACTICES.** No grain warehouse keeper may do any of the
8 following:

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

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

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

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

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

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

21 SUBCHAPTER V

22 MILK CONTRACTORS

23 **126.40 Definitions.** In this subchapter:

24 **(1) "Contributing milk contractor"** means a milk contractor who is licensed
25 under s. 126.41 (1), who either has paid one or more quarterly installments under

1 s. 126.46 or is required to contribute to the fund, but the first quarterly installment
2 under s. 126.46 (6) is not yet due, and who is not disqualified from the fund under
3 s. 126.45 (3).

4 (2) “Current ratio” means the ratio of the value of current assets to the value
5 of current liabilities, calculated according to s. 126.44 (8) (c) 1.

6 (3) “Dairy farm” has the meaning given in s. 97.22 (1) (a).

7 (4) “Dairy plant” has the meaning given in s. 97.20 (1) (a).

8 (5) “Dairy plant operator” means a person who holds or is required to hold a
9 dairy plant license under s. 97.20.

10 (6) “Debt to equity ratio” means the ratio of the value of liabilities to equity,
11 calculated according to s. 126.44 (8) (c) 2.

12 (7) “Disqualified milk contractor” means a milk contractor who is disqualified
13 from the fund under s. 126.45 (3).

14 (7m) “License year” means the period beginning on May 1 and ending on the
15 following April 30.

16 (8) “Milk contractor” means a person who buys producer milk or who markets
17 producer milk as a producer agent. “Milk contractor” does not include any of the
18 following:

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

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

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

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

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

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

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

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

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

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

13 **(13)** “Producer agent” means a person who acts on behalf of a milk producer
14 to market or accept payment for producer milk without taking title to that milk,
15 including a person who uses a producer trust fund to market or accept payment for
16 producer milk. “Producer agent” does not include any of the following:

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

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

22 **(14)** “Producer milk” means milk that is owned by or held in trust for one or
23 more milk producers. “Producer milk” includes milk that a producer agent markets
24 for a producer, without taking title to the milk.

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

4 1. Receive producer milk in this state.

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

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

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

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

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

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

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 will
6 operate under the license and the name of a responsible person who may be contacted
7 at each location that is staffed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 **126.42 Milk contractors; monthly license fee.** (1) MONTHLY LICENSE FEE
12 PAYMENT. Except as provided under sub. (5) or (6), a milk contractor licensed under
13 s. 126.41 (1) shall pay to the department, by the 25th day of each month, a monthly
14 license fee of 0.15 cent for each 100 pounds of producer milk that the milk contractor
15 procured in this state during the preceding month. The milk contractor shall submit,
16 with the fee payment, a report stating the number of pounds of producer milk that
17 the milk contractor procured in this state during the preceding month.

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

22 (3) FEE CREDITS. If the balance in the fund contributed by milk contractors
23 exceeds \$4,000,000 on February 28 of any license year, the department shall credit
24 50% of the excess amount against fees charged under sub. (1) to contributing milk
25 contractors who file timely renewal applications for the next license year. The

1 department shall credit each contributing milk contractor on a prorated basis, in
2 proportion to the total fees that the milk contractor has paid under sub. (1) for the
3 4 preceding license years. Each month that a contributing contractor who qualifies
4 for a credit under this subsection pays fees under sub. (1), the department shall credit
5 to the contributing milk contractor one-twelfth of the total annual credit determined
6 under this subsection.

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

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

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

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

21 **126.43 Milk contractors; insurance.** (1) FIRE AND EXTENDED COVERAGE
22 INSURANCE. A milk contractor licensed under s. 126.41 (1) shall maintain fire and
23 extended coverage insurance that covers, at their full value, all milk and milk
24 products in the possession, custody, or control of the milk contractor. If the milk
25 contractor is required to be licensed under s. 126.41 (1) (a), the milk contractor shall

1 maintain insurance issued by an insurance company authorized to do business in
2 this state.

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

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

9 (a) That the milk contractor is insured.

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

12 **126.44 Milk contractors; financial statements.** (1) REQUIRED ANNUAL
13 FINANCIAL STATEMENT. (a) A milk contractor shall file an annual financial statement
14 with the department before the department first licenses the milk contractor under
15 s. 126.41 (1), unless the milk contractor reports no more than \$1,500,000 in annual
16 milk payroll obligations under s. 126.41 (6) (a).

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

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

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

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

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

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

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

10 **(3) QUARTERLY FINANCIAL STATEMENTS.** A milk contractor licensed under s.
11 126.41 (1) who is not a contributing milk contractor shall file quarterly financial
12 statements with the department for the first 3 quarters in each of the milk
13 contractor's fiscal years. The milk contractor shall file each quarterly financial
14 statement no later than 60 days after the end of the fiscal quarter to which the
15 financial statement pertains. With each quarterly financial statement, the milk
16 contractor shall include the milk contractor's sworn and notarized statement that
17 the financial statement is correct.

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

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

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

5 **(6m) INTERIM FINANCIAL STATEMENT.** The department may, at any time, require
6 a milk contractor licensed under s. 126.41 (1) to file an interim financial statement
7 with the department. With the interim financial statement, the milk contractor shall
8 provide the milk contractor's sworn and notarized statement that the financial
9 statement is correct. An interim financial statement need not be a reviewed financial
10 statement or an audited financial statement.

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

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

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

24 (b) If a milk contractor has been in business for less than one year, the milk
25 contractor may file an annual financial statement under sub. (1) or (2) consisting of

1 a balance sheet and notes. A milk contractor may file a quarterly financial statement
2 under sub. (3) consisting of a balance sheet and income statement.

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

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

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

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

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

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

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

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

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

4 **126.45 Contributing milk contractors; disqualification.** (1) REQUIRED
5 CONTRIBUTORS. (a) Except as provided in sub. (3), a licensed milk contractor shall pay
6 fund assessments under s. 126.46 if the milk contractor does not file annual and
7 quarterly financial statements under s. 126.44.

8 (b) Except as provided in sub. (3), a licensed milk contractor shall pay fund
9 assessments under s. 126.46 if the milk contractor files an annual, quarterly, or
10 interim financial statement under s. 126.44 that shows a current ratio of less than
11 1.25 to 1.0, a debt to equity ratio of more than 2.0 to 1.0, or negative equity. The milk
12 contractor shall continue to pay fund assessments until the milk contractor files 2
13 consecutive annual financial statements under s. 126.44 that show a current ratio
14 of at least 1.25 to 1.0, positive equity, and a debt to equity ratio of not more than 2.0
15 to 1.0.

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

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

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

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

- 1 1. Failure to pay fund assessments under s. 126.46 when due.
- 2 2. Failure to file a financial statement under s. 126.44 when due.
- 3 3. Failure to reimburse the department, within 60 days after the department
- 4 issues a reimbursement demand under s. 126.73 (1), for the full amount that the
- 5 department pays to claimants under s. 126.72 (1) because of that milk contractor's
- 6 default.
- 7 4. Failure to reimburse a bond surety, within 60 days after the bond surety
- 8 issues a reimbursement demand under s. 126.73 (2), for the full amount that the
- 9 surety pays to the department under s. 126.72 (2) or (3) for the benefit of claimants
- 10 affected by that milk contractor's default.

11 (4) EFFECT OF DISQUALIFICATION. (a) A milk contractor disqualified under sub.

12 (3) (c) may not engage in any activities for which a license is required under s. 126.41

13 (1) (a) if the milk contractor files an annual, quarterly, or interim financial statement

14 under s. 126.44 that shows a current ratio of less than 1.25 to 1.0, a debt to equity

15 ratio of more than 2.0 to 1.0, or negative equity.

16 (b) The department may not return, to a disqualified milk contractor, any fund

17 assessments that the milk contractor paid as a contributing milk contractor.

18 (c) A disqualified milk contractor remains liable for any unpaid fund

19 installment under s. 126.46 that became due while the milk contractor was a

20 contributing milk contractor. A disqualified milk contractor is not liable for any fund

21 installment that becomes due after the milk contractor is disqualified under sub. (3).

22 **126.46 Contributing milk contractors; fund assessments.** (1) GENERAL.

23 A contributing milk contractor shall pay an annual fund assessment for each license

24 year. The assessment equals \$20 or the sum of the following, whichever is greater,

25 unless the department by rule specifies a different assessment:

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

5 (b) The milk contractor's debt to equity ratio assessment. The debt to equity
6 ratio assessment for a license year equals the milk contractor's debt to equity ratio
7 assessment rate under sub. (4) multiplied by the annual milk payroll obligations
8 reported under s. 126.41 (6) (a) in the milk contractor's license application for that
9 license year.

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

12 (a) If the milk contractor has filed an annual financial statement under s.
13 126.44 and that financial statement shows a current ratio of at least 1.25 to 1.0, the
14 milk contractor's current ratio assessment rate equals the greater of zero or the
15 current ratio assessment factor in sub. (3) (a) multiplied by the following amount:

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

1 (b) If the milk contractor has filed an annual financial statement under s.
2 126.44 and that financial statement shows a current ratio of less than 1.25 to 1.0, but
3 greater than 1.05 to 1.0, the milk contractor's current ratio assessment rate equals
4 the current ratio assessment factor in sub. (3) (b) multiplied by the following amount:

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

14 (c) If the milk contractor has filed an annual financial statement under s.
15 126.44 and that financial statement shows a current ratio of less than or equal to 1.05
16 to 1.0, the milk contractor's current ratio assessment rate equals the current ratio
17 assessment factor in sub. (3) (b) multiplied by 0.1201478.

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

21 (e) If the milk contractor has not filed an annual financial statement under s.
22 126.44 and the milk contractor procures producer milk in this state solely as a
23 producer agent, the milk contractor's current ratio assessment rate is 0.00025,
24 except that, for the milk contractor's 5th or higher consecutive full license year of

1 participation in the fund, the milk contractor's current ratio assessment rate is
2 0.000175.

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

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

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

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

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

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

18 (a) If the milk contractor has filed an annual financial statement under s.
19 126.44 and that financial statement shows positive equity and a debt to equity ratio
20 of not more than 2.0 to 1.0, the milk contractor's debt to equity ratio assessment rate
21 equals the greater of zero or the debt to equity ratio assessment factor in sub. (5) (a)
22 multiplied by the following amount:

23 1. Subtract 2 from the debt to equity ratio.

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

25 3. Raise the amount determined under subd. 2. to the 9th power.

1 4. Divide the debt to equity ratio by 3.25.

2 5. Raise the amount determined under subd. 4. to the 5th power.

3 6. Add the amount determined under subd. 3. to the amount determined under
4 subd. 5.

5 7. Add 0.025 to the amount determined under subd. 6.

6 (b) If the milk contractor files an annual financial statement under s. 126.44
7 and that financial statement shows a debt to equity ratio of greater than 2.0 to 1.0
8 but less than 3.1 to 1.0, the milk contractor's debt to equity ratio assessment rate
9 equals the debt to equity ratio assessment factor in sub. (5) (b) multiplied by the
10 following amount:

11 1. Subtract 2 from the debt to equity ratio.

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

13 3. Raise the amount determined under subd. 2. to the 9th power.

14 4. Divide the debt to equity ratio by 3.25.

15 5. Raise the amount determined under subd. 4. to the 5th power.

16 6. Add the amount determined under subd. 3. to the amount determined under
17 subd. 5.

18 7. Add 0.025 to the amount determined under subd. 6.

19 (c) If the milk contractor has filed an annual financial statement under s.
20 126.44 and that financial statement shows negative equity or a debt to equity ratio
21 of at least 3.1 to 1.0, the milk contractor's debt to equity ratio assessment rate equals
22 the debt to equity ratio assessment factor in sub. (5) (b) multiplied by 0.8146917.

23 (d) Except as provided in par. (e), if the milk contractor has not filed an annual
24 financial statement under s. 126.44, the milk contractor's debt to equity ratio

1 assessment rate equals the debt to equity ratio assessment factor in sub. (5) (b)
2 multiplied by 0.11325375.

3 (e) If the milk contractor has not filed an annual financial statement under s.
4 126.44 and the milk contractor procures producer milk in this state solely as a
5 producer agent, the milk contractor's debt to equity ratio assessment rate is 0.00025,
6 except that, for the milk contractor's 5th or higher consecutive full license year of
7 participation in the fund, the milk contractor's debt to equity ratio assessment rate
8 is 0.000175.

9 (5) DEBT TO EQUITY RATIO ASSESSMENT FACTOR. (a) A milk contractor's debt to
10 equity ratio assessment factor under sub. (4) (a) is 0.0015, except as follows:

11 1. For the milk contractor's 3rd consecutive full license year as a contributing
12 milk contractor, the milk contractor's current ratio assessment factor is 0.001.

13 2. For the milk contractor's 4th consecutive full license year as a contributing
14 milk contractor, the milk contractor's current ratio assessment factor is 0.0005.

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

18 (b) A milk contractor's debt to equity ratio assessment factor under sub. (4) (b)
19 to (d) is 0.00225, except that, for the milk contractor's 5th or higher consecutive full
20 license year as a contributing milk contractor, the milk contractor's debt to equity
21 ratio assessment factor is 0.001.

22 (6) QUARTERLY INSTALLMENTS. (a) A contributing milk contractor shall pay the
23 milk contractor's annual fund assessment in equal quarterly installments that are
24 due as follows:

25 1. The first installment is due on June 1 of the license year.

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

2 3. The 3rd installment is due on December 1 of the license year.

3 4. The 4th installment is due on March 1 of the license year.

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

6 (c) A contributing milk contractor who applies for an annual license after the
7 beginning of a license year shall pay the full annual fund assessment required under
8 this section. The milk contractor shall pay, with the first quarterly installment that
9 becomes due after the day on which the department issues the license, all of the
10 quarterly installments for that license year that were due before that day.

11 (d) If s. 126.45 (1) (b) requires a licensed milk contractor to become a
12 contributing milk contractor during the license year, the milk contractor shall pay
13 only those quarterly installments that become due after the requirement takes
14 effect.

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

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

22 (a) The amount of the milk contractor's annual fund assessment under this
23 section.

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

1 (c) The penalty that applies under sub. (6) (e) if the milk contractor fails to pay
2 any quarterly installment when due.

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

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

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

11 **(2) SECURITY CONTINUED.** A milk contractor who filed security under s. 100.06,
12 1999 stats., before May 1, 2002, shall maintain that security until the department
13 releases it under sub. (7).

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

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

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

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

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

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

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

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

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

10 (a) Currency.

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

12 1. The surety bond is made payable to the department for the benefit of milk
13 producers and producer agents.

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

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

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

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

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

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

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

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

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

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

9 1. The letter of credit is payable to the department for the benefit of milk
10 producers or producer agents.

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

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

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

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

18 (e) Security filed with the department under s. 100.06, 1999 stats., before May
19 1, 2002, except that on January 1, 2003, the department shall withdraw its approval
20 of any security that is not approvable under pars. (a) to (d).

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

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

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

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

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

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

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

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

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

- 3 1. Issue a summary order under s. 126.85 (2).
- 4 2. Suspend or revoke the milk contractor's license.

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

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

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

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

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

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

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

1 **126.48 Milk contractors; payments to producers. (1) FIRST MONTHLY**
2 PAYMENT. By the 4th day of each month, a milk contractor shall pay for producer milk
3 received during the first 15 days of the preceding month. The milk contractor shall
4 base the payment on an estimated price that is at least 80% of the class III price
5 published by the regional federal milk market administrator for the month
6 preceding the month in which the milk is received, or 80% of the contract price,
7 whichever is greater.

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

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

14 (a) Milk contractor identification.

15 (b) Milk producer or producer agent identification.

16 (c) Pay period.

17 (d) Volume of milk received.

18 (e) Grade of milk.

19 (f) Milk test results.

20 (g) Milk price and adjustments.

21 (h) Gross amount due.

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

23 (j) Net amount due.

24 (k) Deductions and assignments.