

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1           **(6) FEE CREDITS.** (a) If the balance in the fund contributed by vegetable  
2 contractors exceeds \$1,000,000 on November 30 of any license year, the department  
3 shall credit 50% of the excess amount against fees charged under sub. (4) (b) to  
4 contributing vegetable contractors who file timely license renewal applications for  
5 the next license year. The department shall credit each contributing vegetable  
6 contractor on a prorated basis, in proportion to the total fees that the vegetable  
7 contractor has paid under sub. (4) (b) for the 4 preceding license years.

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

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

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

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

24           (a) The total amount of contract obligations that the applicant incurred during  
25 the applicant's last completed fiscal year. If the applicant has not yet operated as a

1 vegetable contractor, the applicant shall estimate the amount of contract obligations  
2 that the applicant will incur during the applicant's first complete fiscal year.

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

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

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

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

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

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

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

23 **(10) ACTION GRANTING OR DENYING APPLICATION.** (a) The department shall grant  
24 or deny a license application under sub. (3) within 30 days after the department  
25 receives a complete application. If the department denies a license application, the

1 department shall give the applicant a written notice stating the reasons for the  
2 denial.

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

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

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

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

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

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

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

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

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

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

11           (a) That the vegetable contractor is insured.

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

14           **126.58 Vegetable contractors; financial statements. (1) REQUIRED**  
15 **ANNUAL FINANCIAL STATEMENT.** (a) Except as provided in par. (c), a vegetable  
16 contractor shall file an annual financial statement with the department, before the  
17 department first licenses the vegetable contractor under s. 126.56 (1), if the  
18 vegetable contractor reports more than \$500,000 in contract obligations under s.  
19 126.56 (9) (a).

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

1 department may extend the filing deadline for up to 30 days if the vegetable  
2 contractor, or the accountant reviewing or auditing the financial statement, files a  
3 written extension request at least 10 days before the filing deadline.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1           **126.59 Contributing vegetable contractors; disqualification. (1)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13           **126.60 Contributing vegetable contractors; fund assessments. (1)**

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

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

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

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

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

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

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

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

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

3 1. Subtract 4 from the current ratio.

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

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

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

7 5. Subtract 0.65 from the current ratio.

8 6. Divide 0.60 by the amount determined under subd. 5.

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

10 8. Add the amount determined under subd. 4. to the amount determined under  
11 subd. 7.

12 9. Add 0.25 to the amount determined under subd. 8.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4           (a) Currency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

- 17 (a) That the claim is false or not adequately documented.
- 18 (b) That the claimant filed the claim more than 30 days after the claimant first  
19 learned of the contractor's default, unless the department specifies a later  
20 claim-filing deadline under sub. (3) (c).

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

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

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

2 (1).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Except as provided in par. (d) or (e),*

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

3 1. <sup>Eighty</sup> ~~Ninety~~ percent of the first <sup>6</sup> ~~\$20~~,000 allowed.

4 2. ~~Eighty-five percent of the next \$20,000 allowed,~~

5 3. ~~Eighty percent of the next \$20,000 allowed.~~

6 2, 4. Seventy-five percent of any amount allowed in excess of \$60,000.

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

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

12 1. Ninety percent of the first \$40,000 allowed.

13 2. Eighty-five percent of the next \$40,000 allowed.

14 3. Eighty percent of the next \$40,000 allowed.

15 4. Seventy-five percent of any amount allowed in excess of \$120,000.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

22           (a) Contractor financial statements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **126.87 Court actions. (1) INJUNCTION.** The department may petition the  
9 circuit court for an ex parte temporary restraining order, a temporary injunction, or  
10 a permanent injunction to prevent, restrain, or enjoin any person from violating this  
11 chapter, any rule promulgated under this chapter, or any order issued under this  
12 chapter. The department may seek this remedy in addition to any other penalty or  
13 remedy provided under this chapter.

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

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

20 (4) PRIVATE REMEDY. (a) A person whose claim is allowed under s. 126.70 may  
21 bring an action against the contractor to recover the amount of the allowed claim, less  
22 any recovery amount that the department pays to the claimant under s. 126.71. In  
23 any court action under this subsection, the claimant may recover costs including all  
24 reasonable attorney fees, notwithstanding s. 814.04 (1). This subsection does not

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

3 (b) A claim allowed under s. 126.70 has the same priority in an insolvency  
4 proceeding or creditor's action as a claim for wages, except as otherwise provided by  
5 federal law.

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

9 **126.88 Modifying fund assessments.** The department may by rule modify  
10 the fund assessments provided under s. 126.15, 126.30, 126.46, or 126.60. The  
11 department shall modify fund assessments as necessary to do all of the following:

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

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

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

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

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

22 **126.89 Calculations.** If a number used in or resulting from a calculation made  
23 to determine the amount of an assessment under s. 126.15, 126.30, 126.46, or 126.60,  
24 other than a number that appears in one of those sections, extends more than 6  
25 decimal places to the right of the decimal point, a person making the calculation shall

1 round the number to the nearest whole digit in the 6th decimal place to the right of  
2 the decimal point. The amount of an assessment may be rounded to the nearest  
3 whole dollar.

4 **126.90 Agricultural producer security council.** The agricultural producer  
5 security council shall advise the department on the administration and enforcement  
6 of this chapter. The council shall meet as often as the department considers  
7 necessary, but at least once annually. The department shall inform the council of  
8 fund balances and payments, and shall consult with the council before modifying any  
9 license fee, license surcharge, or fund assessment under this chapter.

10 **SECTION 2814.** Chapter 127 of the statutes is repealed.”.

11 **17.** Page 959, line 14: after that line insert:

12 “**SECTION 2856b.** 165.25 (4) (ar) of the statutes, as affected by 2001 Wisconsin  
13 Act ... (this act), is amended to read:

14 165.25 (4) (ar) The department of justice shall furnish all legal services  
15 required by the department of agriculture, trade and consumer protection relating  
16 to the enforcement of ss. 100.171, 100.173, 100.174, 100.175, 100.177, 100.18,  
17 100.182, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42, 100.50  
18 and 100.51 and chs. 126, 136, 344, 704, 707, and 779, together with any other services  
19 as are necessarily connected to the legal services.”.

20 **18.** Page 1003, line 6: after that line insert:

21 “**SECTION 3023.** 221.0320 (2) (a) (intro.) of the statutes is amended to read:

22 221.0320 (2) (a) (intro.) A liability secured by warehouse receipts issued by  
23 warehouse keepers licensed and bonded in this state under ss. 99.02 and 99.03 or

1 under the federal bonded warehouse act or holding a ~~registration certificate license~~  
2 under ~~ch. 127 s. 126.26~~, if all of the following requirements are met:”

3 **19.** Page 1133, line 9: after that line insert:

4 “SECTION 3456. 348.27 (10) of the statutes is amended to read:

5 348.27 (10) TRANSPORTATION OF GRAIN OR COAL OR IRON. The department may  
6 issue annual or consecutive month permits for the transportation of loads of grain,  
7 as defined in s. ~~127.01 (18)~~ 126.01 (13), coal, iron ore concentrates or alloyed iron on  
8 a vehicle or a combination of 2 or more vehicles that exceeds statutory weight or  
9 length limitations and for the return of the empty vehicle or combination of vehicles  
10 over any class of highway for a distance not to exceed 5 miles from the Wisconsin state  
11 line. If the roads desired to be used by the applicant involve streets or highways other  
12 than those within the state trunk highway system, the application shall be  
13 accompanied by a written statement of route approval by the officer in charge of  
14 maintenance of the other highway. This subsection does not apply to highways  
15 designated as part of the national system of interstate and defense highways.”

16 **20.** Page 1299, line 6: after that line insert:

17 “(1) AGRICULTURAL PRODUCER SECURITY COUNCIL. Notwithstanding the length of  
18 terms specified for the members of the agricultural producer security council under  
19 section 15.137 (1) (a) of the statutes, as created by this act, the initial members shall  
20 be appointed for terms expiring on July 1, 2005.

21 (2) AGRICULTURAL PRODUCER SECURITY TRANSITION.

22 (a) *Vegetable contractors*. Notwithstanding SECTION 9404 (1) of this act, chapter  
23 126 of the statutes, as created by this act, does not apply with respect to vegetable  
24 contractors until February 1, 2002, except as follows:

✓  
Insert  
145-20

1           1. All registration fees and surcharges paid under section 100.03 (3), 1999  
2 stats., after December 31, 2001, shall be deposited in the agricultural producer  
3 security fund.

4           2. A vegetable contractor applying for a license for the license year that begins  
5 on February 1, 2002, shall submit an application that complies with section 126.56  
6 of the statutes, as created by this act.

7           (b) *Milk contractors.* Notwithstanding SECTION 9404 (1) of this act, chapter 126  
8 of the statutes, as created by this act, does not apply with respect to milk contractors  
9 until May 1, 2002, except as follows:

10           1. All milk producer security fees paid under section 100.06 (9), 1999 stats.,  
11 after December 31, 2001, shall be deposited in the agricultural producer security  
12 fund.

13           2. A milk contractor applying for a license for the license year that begins on  
14 May 1, 2002, shall submit an application that complies with section 126.41 of the  
15 statutes, as created by this act.

16           (c) *Grain dealers and warehouse keepers.* Notwithstanding SECTION 9404 (1)  
17 of this act, chapter 126 of the statutes, as created by this act, does not apply with  
18 respect to grain dealers and grain warehouse keepers until September 1, 2002,  
19 except as follows:

20           1. All license fees and surcharges paid under chapter 127, 1999 stats., after  
21 December 31, 2001, shall be deposited in the agricultural producer security fund.

22           2. A grain dealer applying for a license for the license year that begins on  
23 September 1, 2002, shall submit an application that complies with section 126.11 of  
24 the statutes, as created by this act.

1           3. A grain warehouse keeper applying for a license for the license year that  
2 begins on September 1, 2002, shall submit an application that complies with section  
3 126.26 of the statutes, as created by this act.”

4           **21.** Page 1300, line 12: after that line insert:

5           “(4z) AGRICULTURAL PRODUCER SECURITY POSITIONS.

6           (a) The authorized FTE positions for the department of agriculture, trade and  
7 consumer protection are increased on January 1, 2002, by 12.12 SEG positions, to be  
8 funded from the appropriation under section 20.115 (1) (q) of the statutes, as created  
9 by this act, for agricultural producer security.

10          (b) The authorized FTE positions for the department of agriculture, trade and  
11 consumer protection are increased on January 1, 2002, by 0.5 PR position, to be  
12 funded from the appropriation under section 20.115 (1) (h) of the statutes, for  
13 agricultural producer security.”

14          **22.** Page 1381, line 19: after that line insert:

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

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

24          **23.** Page 1417, line 5: after that line insert:



Insert 74-24

(B)

(15) "Qualified producer agent" means a milk contractor who does all of the following:

(a) Procures milk in this state solely as a producer agent.

(b) Complies with the rules promulgated under s. 126.51.

Text: Treat

Inset 84-~~11~~21

No. 84

This paragraph does not apply, during the period beginning on May 1, 2002, and ending on April 30, 2007, to a qualified producer agent who files security under s. 126.47(3)(c).

Insert 93-6

(c) For a contributing milk contractor who procures milk in this state solely as a qualified producer agent, for the period beginning on May 1, 2002, and ending on April 30, 2007, security equal to at least 7.5% of the amount last reported under s. 126.41 (6)(b) or (g), but not more than \$500,000.

text: treat

Inserts 97-7 & 97-9 (use twice)

This subsection does not apply to a qualified producer agent who <sup>complies with</sup> ~~pays producers as provided~~ in sub. (4).

Insert 97-24 ✓

text insert

(4) Qualified producer agents. (a) By the last day of each month, a qualified producer agent shall pay for producer milk received during the first 10 days of that month. ~~Insert language indicated on page 97~~ ~~blue-marked~~

→ Add Ins. 97-24KM

(b) By the 10th day of each month, a qualified producer agent shall pay for producer milk received from the 11th day to 20th day of the preceding month. ~~Insert language from p. 97 again~~ ~~blue-marked~~

→ Add Ins. 97-24KM

(c) By the 20th day of each month, a qualified producer agent shall pay the balance due for producer milk received during the preceding month.

Insert 98-23

# ③ 126.51 Rules for qualified producer agents. The department shall promulgate rules specifying requirements for qualified producer agents, including a requirement that a qualified producer agent have a written contract with each milk producer from whom the qualified producer agent procures milk in this state, and that the contract disclose all of the following:

<sup>B</sup>  
(1) That the producer agent does not take title to the <sup>milk</sup> producer's milk.

<sup>B</sup>  
(2) That the producer agent holds all milk receipts in trust for milk producers.

<sup>B</sup>  
(3) That the producer agent's obligations to milk producers are not secured or indemnified under this chapter to the same degree <sup>are the obligations of</sup> as other milk contractors.

Text. Treat

Insert 133-15

(d) For each default claim allowed under s. 126.70 For a default that occurs after April 30, 2002, and before May 1, 2004, by a qualified producer agent who, <sup>c, at the time of the default,</sup> was a contributing contractor and maintained security under s. 126.47(3)(c), 15% of the amount allowed.

(e) For each default claim allowed under s. 126.70 For a default that occurs after April 30, 2004, and before May 1, 2007, by a qualified producer agent who, at the time of the default, was a contributing contractor and maintained security under s. 126.47(3)(c), 20% of the amount allowed.

Text: treat

nonstat  
subsection

Insert 145-20

(IV) <sup>(3)</sup> Qualified producer agent rules. Using the procedure under section 227.24 of the statutes, the department of agriculture, trade and consumer protection may promulgate the rule required under section 126.51 of the statutes, as created by this act, for the period before the effective date of the permanent rule, but not to exceed the period authorized under section 227.24(1)(c) and (2) of the statutes.

Notwithstanding section 227.24(1)(a), (2)(b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection ~~as~~ <sup>as</sup> an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

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

LRBb1461/2ins  
RCT:kmg:kmg

**INSERT 97-24KM** ✓

The qualified producer agent shall base the payment on an estimated price that is at least 80% of the class III price published by the regional federal milk market administrator for the month preceding the month in which the milk is received, or 80% of the contract price, whichever is greater.

## Tradewell, Becky

---

**From:** Jefferson, Mark  
**Sent:** Thursday, June 28, 2001 1:07 PM  
**To:** Tradewell, Becky  
**Subject:** FW: as per request of Becky Tradewell, she would only like this sent to the caucus

The following request for a change was made, and I think it makes sense. Other than that, this looks fine. Please let me know if you have a problem with this.

Thanks for all you help.  
Mark J.

on Page 135, Line 6 and Line 10: replace the word "by" with "against"

-----Original Message-----

**From:** Jefferson, Mark  
**Sent:** Wednesday, June 27, 2001 4:30 PM  
**To:** Rodriguez, Charlene  
**Subject:** FW: as per request of Becky Tradewell, she would only like this sent to the caucus

-----Original Message-----

**From:** Greenslet, Patty  
**Sent:** Wednesday, June 27, 2001 4:29 PM  
**To:** Jefferson, Mark  
**Cc:** Hanaman, Cathlene  
**Subject:** as per request of Becky Tradewell, she would only like this sent to the caucus

<< File: 01b1461/2 >>

*Patty Greenslet*

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