

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (d) The kind of grain received.

20 (e) The net weight of grain received.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 SUBCHAPTER V

9 MILK CONTRACTORS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (15) “Qualified producer agent” means a milk contractor who does all of the
12 following:

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

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

15 **126.41 Milk contractors; licensing.** (1) ANNUAL LICENSE. (a) No milk
16 contractor may do any of the following without a current annual license from the
17 department:

18 1. Receive producer milk in this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 **(3m) EFFECT OF PAYMENT OF SURCHARGE.** Payment under sub. (3) (b) 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) FEE STATEMENT.** The department shall provide, with each license application
21 form, a written statement of all license fees and surcharges required under sub. (3).

22 **(5) NO LICENSE WITHOUT FULL PAYMENT.** The department may not issue a license
23 under sub. (1) until the applicant pays all license fees and surcharges identified in
24 the department's statement under sub. (4). The department shall refund a fee or

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

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

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

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

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

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

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

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

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

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

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

12 (3) FEE CREDITS. If the balance in the fund contributed by milk contractors
13 exceeds \$4,000,000 on February 28 of any license year, the department shall credit
14 50% of the excess amount against fees charged under sub. (1) to contributing milk
15 contractors who file timely renewal applications for the next license year. The
16 department shall credit each contributing milk contractor on a prorated basis, in
17 proportion to the total fees that the milk contractor has paid under sub. (1) for the
18 4 preceding license years. Each month that a contributing contractor who qualifies
19 for a credit under this subsection pays fees under sub. (1), the department shall credit
20 to the contributing milk contractor one-twelfth of the total annual credit determined
21 under this subsection.

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

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

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

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

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

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

21 (3) **INSURANCE COVERAGE; MISREPRESENTATION.** No milk contractor may
22 misrepresent any of the following to the department or to any milk producer or
23 producer agent:

- 24 (a) That the milk contractor is insured.

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

3 **126.44 Milk contractors; financial statements. (1) REQUIRED ANNUAL**
4 **FINANCIAL STATEMENT.** (a) A milk contractor shall file an annual financial statement
5 with the department before the department first licenses the milk contractor under
6 s. 126.41 (1), unless the milk contractor reports no more than \$1,500,000 in annual
7 milk payroll obligations under s. 126.41 (6) (a).

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

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

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

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

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

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

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

1 **(3) QUARTERLY FINANCIAL STATEMENTS.** A milk contractor licensed under s.
2 126.41 (1) who is not a contributing milk contractor shall file quarterly financial
3 statements with the department for the first 3 quarters in each of the milk
4 contractor's fiscal years. The milk contractor shall file each quarterly financial
5 statement no later than 60 days after the end of the fiscal quarter to which the
6 financial statement pertains. With each quarterly financial statement, the milk
7 contractor shall include the milk contractor's sworn and notarized statement that
8 the financial statement is correct.

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

13 (b) If par. (a) does not apply, a milk contractor 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 **(6) ACCOUNTING PERIOD.** A milk contractor filing an annual financial statement
17 under sub. (1) or (2) shall file a financial statement that covers the milk contractor's
18 last completed fiscal year unless the milk contractor has been in business for less
19 than one year.

20 **(6m) INTERIM FINANCIAL STATEMENT.** The department may, at any time, require
21 a milk contractor licensed under s. 126.41 (1) to file an interim financial statement
22 with the department. With the interim financial statement, the milk contractor shall
23 provide the milk contractor's sworn and notarized statement that the financial
24 statement is correct. An interim financial statement need not be a reviewed financial
25 statement or an audited financial statement.

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

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

8 **(8) FINANCIAL STATEMENT CONTENTS.** (a) Except as provided in par. (b), a milk
9 contractor 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. If the milk contractor is a sole proprietor, the milk
13 contractor shall file his or her business and personal financial statements.

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

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

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

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

1 **(9) ASSETS EXCLUDED.** A milk contractor may not include any of the following
2 assets in the calculations under sub. (8) (c), unless the department specifically
3 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 milk contractor has established an equal offsetting reserve for uncollectible notes
12 and accounts receivable.

13 **(10) 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 **(11) 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 **126.45 Contributing milk contractors; disqualification. (1) REQUIRED**
20 **CONTRIBUTORS.** (a) Except as provided in sub. (3), a licensed milk contractor shall pay
21 fund assessments under s. 126.46 if the milk contractor does not file annual and
22 quarterly financial statements under s. 126.44.

23 (b) Except as provided in sub. (3), a licensed milk contractor shall pay fund
24 assessments under s. 126.46 if the milk contractor files an annual, quarterly, or
25 interim financial statement under s. 126.44 that shows a current ratio of less than

1 1.25 to 1.0, a debt to equity ratio of more than 2.0 to 1.0, or negative equity. The milk
2 contractor shall continue to pay fund assessments until the milk contractor files 2
3 consecutive annual financial statements under s. 126.44 that show a current ratio
4 of at least 1.25 to 1.0, positive equity, and a debt to equity ratio of not more than 2.0
5 to 1.0.

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

9 (3) DISQUALIFIED CONTRACTORS. (a) A milk contractor who is required to file
10 security under s. 126.47 (1) is disqualified from the fund until the department
11 releases that security under s. 126.47 (7) (a). This paragraph does not apply, during
12 the period beginning on May 1, 2002, and ending on April 30, 2007, to a qualified
13 producer agent who files security under s. 126.47 (3) (c).

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

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

- 18 1. Failure to pay fund assessments under s. 126.46 when due.
- 19 2. Failure to file a financial statement under s. 126.44 when due.
- 20 3. Failure to reimburse the department, within 60 days after the department
21 issues a reimbursement demand under s. 126.73 (1), for the full amount that the
22 department pays to claimants under s. 126.72 (1) because of that milk contractor's
23 default.
- 24 4. Failure to reimburse a bond surety, within 60 days after the bond surety
25 issues a reimbursement demand under s. 126.73 (2), for the full amount that the

1 surety pays to the department under s. 126.72 (2) or (3) for the benefit of claimants
2 affected by that milk contractor's default.

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

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

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

14 **126.46 Contributing milk contractors; fund assessments. (1) GENERAL.**
15 A contributing milk contractor shall pay an annual fund assessment for each license
16 year. The assessment equals \$20 or the sum of the following, whichever is greater,
17 unless the department by rule specifies a different assessment:

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

22 (b) The milk contractor's debt to equity ratio assessment. The debt to equity
23 ratio assessment for a license year equals the milk contractor's debt to equity ratio
24 assessment rate under sub. (4) multiplied by the annual milk payroll obligations

1 reported under s. 126.41 (6) (a) in the milk contractor's license application for that
2 license year.

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

5 (a) If the milk contractor has filed an annual financial statement under s.
6 126.44 and that financial statement shows a current ratio of at least 1.25 to 1.0, the
7 milk contractor's current ratio assessment rate equals the greater of zero or the
8 current ratio assessment factor in sub. (3) (a) multiplied by the following amount:

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

18 (b) If the milk contractor has filed an annual financial statement under s.
19 126.44 and that financial statement shows a current ratio of less than 1.25 to 1.0, but
20 greater than 1.05 to 1.0, the milk contractor's current ratio assessment rate equals
21 the current ratio assessment factor in sub. (3) (b) multiplied by the following amount:

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

1 5. Divide 0.55 by the current ratio.

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

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

5 8. Add 0.075 to the amount determined under subd. 7.

6 (c) If the milk contractor has filed an annual financial statement under s.
7 126.44 and that financial statement shows a current ratio of less than or equal to 1.05
8 to 1.0, the milk contractor's current ratio assessment rate equals the current ratio
9 assessment factor in sub. (3) (b) multiplied by 0.1201478.

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

13 (e) If the milk contractor has not filed an annual financial statement under s.
14 126.44 and the milk contractor procures producer milk in this state solely as a
15 producer agent, the milk contractor's current ratio assessment rate is 0.00025,
16 except that, for the milk contractor's 5th or higher consecutive full license year of
17 participation in the fund, the milk contractor's current ratio assessment rate is
18 0.000175.

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

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

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

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

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

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

10 (a) If the milk contractor has filed an annual financial statement under s.
11 126.44 and that financial statement shows positive equity and a debt to equity ratio
12 of not more than 2.0 to 1.0, the milk contractor's debt to equity ratio assessment rate
13 equals the greater of zero or the debt to equity ratio assessment factor in sub. (5) (a)
14 multiplied by the following amount:

- 15 1. Subtract 2 from the debt to equity ratio.
- 16 2. Divide the amount determined under subd. 1. by 3.
- 17 3. Raise the amount determined under subd. 2. to the 9th power.
- 18 4. Divide the debt to equity ratio by 3.25.
- 19 5. Raise the amount determined under subd. 4. to the 5th power.
- 20 6. Add the amount determined under subd. 3. to the amount determined under
21 subd. 5.
- 22 7. Add 0.025 to the amount determined under subd. 6.

23 (b) If the milk contractor files an annual financial statement under s. 126.44
24 and that financial statement shows a debt to equity ratio of greater than 2.0 to 1.0
25 but less than 3.1 to 1.0, the milk contractor's debt to equity ratio assessment rate

1 equals the debt to equity ratio assessment factor in sub. (5) (b) multiplied by the
2 following amount:

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

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

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

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

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

8 6. Add the amount determined under subd. 3. to the amount determined under
9 subd. 5.

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

11 (c) If the milk contractor has filed an annual financial statement under s.
12 126.44 and that financial statement shows negative equity or a debt to equity ratio
13 of at least 3.1 to 1.0, the milk contractor's debt to equity ratio assessment rate equals
14 the debt to equity ratio assessment factor in sub. (5) (b) multiplied by 0.8146917.

15 (d) Except as provided in par. (e), if the milk contractor has not filed an annual
16 financial statement under s. 126.44, the milk contractor's debt to equity ratio
17 assessment rate equals the debt to equity ratio assessment factor in sub. (5) (b)
18 multiplied by 0.11325375.

19 (e) If the milk contractor has not filed an annual financial statement under s.
20 126.44 and the milk contractor procures producer milk in this state solely as a
21 producer agent, the milk contractor's debt to equity ratio assessment rate is 0.00025,
22 except that, for the milk contractor's 5th or higher consecutive full license year of
23 participation in the fund, the milk contractor's debt to equity ratio assessment rate
24 is 0.000175.

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

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

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

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

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

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

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

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

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

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

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

23 (c) A contributing milk contractor who applies for an annual license after the
24 beginning of a license year shall pay the full annual fund assessment required under
25 this section. The milk contractor shall pay, with the first quarterly installment that

1 becomes due after the day on which the department issues the license, all of the
2 quarterly installments for that license year that were due before that day.

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

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

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

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

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

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

20 **126.47 Milk contractors; security. (1) SECURITY REQUIRED.** A milk
21 contractor shall file security with the department, and maintain that security until
22 the department releases it under sub. (7), if all of the following apply when the
23 department first licenses the milk contractor under s. 126.41 (1):

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

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

3 (2) SECURITY CONTINUED. A milk contractor who filed security under s. 100.06,
4 1999 stats., before May 1, 2002, shall maintain that security until the department
5 releases it under sub. (7).

6 (3) AMOUNT OF SECURITY. A milk contractor who is required to file or maintain
7 security under this section shall at all times maintain the following amount of
8 security:

9 (a) Except as provided in par. (b) or (c), security equal to at least 75% of the
10 amount last reported under s. 126.41 (6) (b) or (9).

11 (b) Except as provided in par. (c), for a milk contractor who procures milk in this
12 state solely as a qualified producer agent, security equal to at least the following
13 amounts:

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

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

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

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

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

24 (c) For a contributing milk contractor who procures milk in this state solely as
25 a qualified producer agent, for the period beginning on May 1, 2002, and ending on

1 April 30, 2007, security equal to at least 7.5% of the amount last reported under s.
2 126.41 (6) (b) or (9), but not more than \$500,000.

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

6 (a) Currency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (e) Security filed with the department under s. 100.06, 1999 stats., before May
14 1, 2002, except that on January 1, 2003, the department shall withdraw its approval
15 of any security that is not approvable under pars. (a) to (d).

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

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

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

23 1. The milk contractor's existing security falls below the amount required
24 under sub. (3) for any reason, including depreciation in the value of the security,

1 increased obligations to milk producers or producer agents, or the cancellation of any
2 security filed with the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

21 **126.48 Milk contractors; payments to producers.** (1) FIRST MONTHLY
22 PAYMENT. By the 4th day of each month, a milk contractor shall pay for producer milk
23 received during the first 15 days of the preceding month. The milk contractor shall
24 base the payment on an estimated price that is at least 80% of the class III price
25 published by the regional federal milk market administrator for the month

1 preceding the month in which the milk is received, or 80% of the contract price,
2 whichever is greater. This subsection does not apply to a qualified producer agent
3 who complies with sub. (4).

4 **(2) SECOND MONTHLY PAYMENT.** By the 19th day of each month, a milk contractor
5 shall pay the balance due for producer milk received during the preceding month.
6 This subsection does not apply to a qualified producer agent who complies with sub.
7 (4).

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

- 12 (a) Milk contractor identification.
- 13 (b) Milk producer or producer agent identification.
- 14 (c) Pay period.
- 15 (d) Volume of milk received.
- 16 (e) Grade of milk.
- 17 (f) Milk test results.
- 18 (g) Milk price and adjustments.
- 19 (h) Gross amount due.
- 20 (i) Average gross pay per hundredweight less hauling charges.
- 21 (j) Net amount due.
- 22 (k) Deductions and assignments.

23 **(4) QUALIFIED PRODUCER AGENTS.** (a) By the last day of each month, a qualified
24 producer agent shall pay for producer milk received during the first 10 days of that
25 month. The qualified producer agent shall base the payment on an estimated price

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

4 (b) By the 10th day of each month, a qualified producer agent shall pay for
5 producer milk received from the 11th day to the 20th day of the preceding month.
6 The qualified producer agent shall base the payment on an estimated price that is
7 at least 80% of the class III price published by the regional federal milk market
8 administrator for the month preceding the month in which the milk is received, or
9 80% of the contract price, whichever is greater.

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

12 **126.49 Milk contractors; records and reports.** (1) REQUIRED RECORDS. A
13 milk contractor shall keep accurate records and accounts of milk receipts, payments
14 for milk received, and amounts owed to milk producers. The department may, by
15 rule, specify records that a milk contractor must keep.

16 (2) REQUIRED REPORTS. The department may, by rule, require a milk contractor
17 to file with the department periodic reports of information needed for the
18 administration of this chapter.

19 (3) RECORDS RETENTION; INSPECTION. A milk contractor shall retain records
20 required under sub. (1) for at least 6 years after the records are created. A milk
21 contractor shall make the records available to the department for inspection and
22 copying upon request.

23 **126.50 Milk contractors; prohibited practices.** No milk contractor may
24 do any of the following:

1 (1) “Cash on delivery” means cash payment of the full agreed price for
2 processing vegetables at the time of delivery or, if the vegetables are graded, within
3 72 hours after the time of delivery.

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

5 (a) Currency.

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

7 (c) A wire transfer.

8 (d) Simultaneous barter.

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

13 (4) “Contributing vegetable contractor” means a vegetable contractor who is
14 licensed under s. 126.56 (1), who either has paid one or more quarterly installments
15 under s. 126.60 (6) or is required to contribute to the fund, but the first quarterly
16 installment under s. 126.60 (6) is not yet due, and who is not disqualified under s.
17 126.59 (2).

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

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

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

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

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

4 **(10m)** “License year” means the period beginning on February 1 and ending
5 on the following January 31.

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

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

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

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

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

22 (a) The vegetable contractor harvests the vegetables.

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

1 (c) The vegetable contractor notifies the vegetable producer of the vegetable
2 contractor's refusal to harvest or accept delivery of vegetables.

3 (14) "Vegetable contractor" means a person who does any of the following:

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

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

8 (15) "Vegetable procurement contract" means an oral or written agreement
9 under which a vegetable contractor does any of the following:

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

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

14 (16) "Vegetable producer" means a person who grows processing vegetables in
15 this state.

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

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

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

23 **126.56 Vegetable contractors; licensing.** (1) LICENSE REQUIRED. (a) Except
24 as provided in sub. (2), no person may operate as a vegetable contractor without a
25 current annual license from the department.

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.