

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 8 1. Subtract one from the current ratio.
- 9 2. Divide the amount determined under subd. 1. by 3.
- 10 3. Multiply the amount determined under subd. 2. by negative one.
- 11 4. Raise the amount determined under subd. 3. to the 3rd power.
- 12 5. Subtract 0.75 from the current ratio.
- 13 6. Divide 0.65 by the amount determined under subd. 5.
- 14 7. Raise the amount determined under subd. 6. to the 5th power.
- 15 8. Add the amount determined under subd. 4. to the amount determined under
16 subd. 7.
- 17 9. Add 2 to the amount determined under subd. 8.

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

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

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

2 5. Subtract 0.75 from the current ratio.

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

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

5 8. Add the amount determined under subd. 4. to the amount determined under
6 subd. 7.

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

8 (c) If the grain warehouse keeper has filed an annual financial statement under
9 s. 126.28 and that financial statement shows a current ratio of less than or equal to
10 1.0 to 1.0, the warehouse keeper's current ratio assessment rate equals the current
11 ratio assessment factor in sub. (3) (b) multiplied by 120.81376.

12 (d) If the grain warehouse keeper has not filed an annual financial statement
13 under s. 126.28, the warehouse keeper's current ratio assessment rate equals the
14 current ratio assessment factor in sub. (3) (b) multiplied by 5.71235.

15 **(3) CURRENT RATIO ASSESSMENT FACTOR.** (a) A grain warehouse keeper's current
16 ratio assessment factor under sub. (2) (a) is 0.00003 except that, for the grain
17 warehouse keeper's 5th or higher consecutive full license year as a contributing grain
18 warehouse keeper, the grain warehouse keeper's current ratio assessment factor is
19 zero.

20 (b) A grain warehouse keeper's current ratio assessment factor under sub. (2)
21 (b) to (d) is 0.000045 except that, for the grain warehouse keeper's 5th or higher
22 consecutive full license year as a contributing grain warehouse keeper, the grain
23 warehouse keeper's current ratio assessment factor is 0.000036.

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

4 (a) If the grain warehouse keeper has filed an annual financial statement
5 under s. 126.28 and that financial statement shows positive equity and a debt to
6 equity ratio of not more than 4.0 to 1.0, the grain warehouse keeper's debt to equity
7 ratio assessment rate equals the greater of zero or the debt to equity ratio assessment
8 factor in sub. (5) (a) multiplied by the following amount:

- 9 1. Subtract 4 from the debt to equity ratio.
- 10 2. Divide the amount determined under subd. 1. by 3.
- 11 3. Raise the amount determined under subd. 2. to the 3rd power.
- 12 4. Subtract 1.7 from the debt to equity ratio.
- 13 5. Divide the amount determined under subd. 4. by 1.75.
- 14 6. Raise the amount determined under subd. 5. to the 7th power.
- 15 7. Add the amount determined under subd. 3. to the amount determined under
16 subd. 6.
- 17 8. Add 2 to the amount determined under subd. 7.

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

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

1 4. Subtract 1.7 from the debt to equity ratio.

2 5. Divide the amount determined under subd. 4. by 1.75.

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

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

6 8. Add 2 to the amount determined under subd. 7.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (a) Currency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (d) The kind of grain received.

8 (e) The net weight of grain received.

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

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

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

17 1. A warehouse receipt.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **126.41 Milk contractors; licensing.** (1) ANNUAL LICENSE. (a) No milk
6 contractor may do any of the following without a current annual license from the
7 department:

8 1. Receive producer milk in this state.

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

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

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

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

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

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

1 (b) A statement of whether the applicant is an individual, corporation,
2 partnership, cooperative, limited liability company, trust, or other legal entity. If the
3 applicant is a corporation or cooperative, the applicant shall identify each officer of
4 the corporation or cooperative. If the applicant is a partnership, the applicant shall
5 identify each partner.

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

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

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

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

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

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

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

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

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

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

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

6 **(3m) EFFECT OF PAYMENT OF SURCHARGE.** Payment under sub. (3) (b) does not
7 relieve the applicant of any other civil or criminal liability that results from the
8 violation of sub. (1), but does not constitute evidence of any law violation.

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

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

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

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

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

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

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

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

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

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

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

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

1 **(3) FEE CREDITS.** If the balance in the fund contributed by milk contractors
2 exceeds \$4,000,000 on February 28 of any license year, the department shall credit
3 50% of the excess amount against fees charged under sub. (1) to contributing milk
4 contractors who file timely renewal applications for the next license year. The
5 department shall credit each contributing milk contractor on a prorated basis, in
6 proportion to the total fees that the milk contractor has paid under sub. (1) for the
7 4 preceding license years. Each month that a contributing contractor who qualifies
8 for a credit under this subsection pays fees under sub. (1), the department shall credit
9 to the contributing milk contractor one-twelfth of the total annual credit determined
10 under this subsection.

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

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

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

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

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

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

11 (3) INSURANCE COVERAGE; MISREPRESENTATION. No milk contractor may
12 misrepresent any of the following to the department or to any milk producer or
13 producer agent:

14 (a) That the milk contractor is insured.

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

17 **126.44 Milk contractors; financial statements.** (1) REQUIRED ANNUAL
18 FINANCIAL STATEMENT. (a) A milk contractor shall file an annual financial statement
19 with the department before the department first licenses the milk contractor under
20 s. 126.41 (1), unless the milk contractor reports no more than \$1,500,000 in annual
21 milk payroll obligations under s. 126.41 (6) (a).

22 (b) Except as provided in par. (c), a milk contractor licensed under s. 126.41 (1)
23 shall file an annual financial statement with the department during each license
24 year. The milk contractor shall file the annual financial statement by the 15th day
25 of the 4th month following the close of the milk contractor's fiscal year. The

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (8) FINANCIAL STATEMENT CONTENTS. (a) Except as provided in par. (b), a milk
22 contractor filing a financial statement under this section shall file a financial
23 statement that consists of a balance sheet, income statement, equity statement,
24 statement of cash flows, notes to those statements, and any other information

1 required by the department. If the milk contractor is a sole proprietor, the milk
2 contractor shall file his or her business and personal financial statements.

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (3) DISQUALIFIED CONTRACTORS. (a) A milk contractor who is required to file
23 security under s. 126.47 (1) is disqualified from the fund until the department
24 releases that security under s. 126.47 (7) (a). This paragraph does not apply, during

1 the period beginning on May 1, 2002, and ending on April 30, 2007, to a qualified
2 producer agent who files security under s. 126.47 (3) (c).

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

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

7 1. Failure to pay fund assessments under s. 126.46 when due.

8 2. Failure to file a financial statement under s. 126.44 when due.

9 3. Failure to reimburse the department, within 60 days after the department
10 issues a reimbursement demand under s. 126.73 (1), for the full amount that the
11 department pays to claimants under s. 126.72 (1) because of that milk contractor's
12 default.

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

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

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

24 (c) A disqualified milk contractor remains liable for any unpaid fund
25 installment under s. 126.46 that became due while the milk contractor was a

1 contributing milk contractor. A disqualified milk contractor is not liable for any fund
2 installment that becomes due after the milk contractor is disqualified under sub. (3).

3 **126.46 Contributing milk contractors; fund assessments. (1) GENERAL.**

4 A contributing milk contractor shall pay an annual fund assessment for each license
5 year. The assessment equals \$20 or the sum of the following, whichever is greater,
6 unless the department by rule specifies a different assessment:

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

11 (b) The milk contractor's debt to equity ratio assessment. The debt to equity
12 ratio assessment for a license year equals the milk contractor's debt to equity ratio
13 assessment rate under sub. (4) multiplied by the annual milk payroll obligations
14 reported under s. 126.41 (6) (a) in the milk contractor's license application for that
15 license year.

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

18 (a) If the milk contractor has filed an annual financial statement under s.
19 126.44 and that financial statement shows a current ratio of at least 1.25 to 1.0, the
20 milk contractor's current ratio assessment rate equals the greater of zero or the
21 current ratio assessment factor in sub. (3) (a) 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 (b) 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 1.25 to 1.0, but
- 8 greater than 1.05 to 1.0, the milk contractor's current ratio assessment rate equals
- 9 the current ratio assessment factor in sub. (3) (b) multiplied by the following amount:
- 10 1. Subtract 3 from the current ratio.
- 11 2. Divide the amount determined under subd. 1. by 6.
- 12 3. Multiply the amount determined under subd. 2. by negative one.
- 13 4. Raise the amount determined under subd. 3. to the 3rd power.
- 14 5. Divide 0.55 by the current ratio.
- 15 6. Raise the amount determined under subd. 5. to the 7th power.
- 16 7. Add the amount determined under subd. 4. to the amount determined under
- 17 subd. 6.
- 18 8. Add 0.075 to the amount determined under subd. 7.
- 19 (c) If the milk contractor has filed an annual financial statement under s.
- 20 126.44 and that financial statement shows a current ratio of less than or equal to 1.05
- 21 to 1.0, the milk contractor's current ratio assessment rate equals the current ratio
- 22 assessment factor in sub. (3) (b) multiplied by 0.1201478.
- 23 (d) Except as provided in par. (e), if the milk contractor has not filed an annual
- 24 financial statement under s. 126.44, the milk contractor's current ratio assessment
- 25 rate equals the current ratio assessment factor in sub. (3) (b) multiplied by 0.103005.

1 (e) If the milk contractor has not filed an annual financial statement under s.
2 126.44 and the milk contractor procures producer milk in this state solely as a
3 producer agent, the milk contractor's current ratio assessment rate is 0.00025,
4 except that, for the milk contractor's 5th or higher consecutive full license year of
5 participation in the fund, the milk contractor's current ratio assessment rate is
6 0.000175.

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

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

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

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

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

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

22 (a) If the milk contractor has filed an annual financial statement under s.
23 126.44 and that financial statement shows positive equity and a debt to equity ratio
24 of not more than 2.0 to 1.0, the milk contractor's debt to equity ratio assessment rate

1 equals the greater of zero or the debt to equity ratio assessment factor in sub. (5) (a)
2 multiplied by the 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 (b) If the milk contractor files an annual financial statement under s. 126.44
12 and that financial statement shows a debt to equity ratio of greater than 2.0 to 1.0
13 but less than 3.1 to 1.0, the milk contractor's debt to equity ratio assessment rate
14 equals the debt to equity ratio assessment factor in sub. (5) (b) multiplied by the
15 following amount:

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

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

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

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

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

21 6. Add the amount determined under subd. 3. to the amount determined under
22 subd. 5.

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

24 (c) If the milk contractor has filed an annual financial statement under s.
25 126.44 and that financial statement shows negative equity or a debt to equity ratio

1 of at least 3.1 to 1.0, the milk contractor's debt to equity ratio assessment rate equals
2 the debt to equity ratio assessment factor in sub. (5) (b) multiplied by 0.8146917.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **(2) SECURITY CONTINUED.** A milk contractor who filed security under s. 100.06,
16 1999 stats., before May 1, 2002, shall maintain that security until the department
17 releases it under sub. (7).

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

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

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

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

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

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

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

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

11 (c) For a contributing milk contractor who procures milk in this state solely as
12 a qualified producer agent, for the period beginning on May 1, 2002, and ending on
13 April 30, 2007, security equal to at least 7.5% of the amount last reported under s.
14 126.41 (6) (b) or (9), but not more than \$500,000.

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

18 (a) Currency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (e) Security filed with the department under s. 100.06, 1999 stats., before May
4 1, 2002, except that on January 1, 2003, the department shall withdraw its approval
5 of any security that is not approvable under pars. (a) to (d).

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

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

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

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

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

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

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

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

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

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

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

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

24 2. The milk contractor's annual financial statement under s. 126.44 shows
25 positive equity for at least 2 consecutive years and the milk contractor pays the

1 quarterly fund assessment that would have been required of the milk contractor if
2 the milk contractor had been a contributing milk contractor on the most recent
3 quarterly installment date under s. 126.46 (6).

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

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

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

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

12 **126.48 Milk contractors; payments to producers. (1) FIRST MONTHLY**
13 **PAYMENT.** By the 4th day of each month, a milk contractor shall pay for producer milk
14 received during the first 15 days of the preceding month. The milk contractor shall
15 base the payment on an estimated price that is at least 80% of the class III price
16 published by the regional federal milk market administrator for the month
17 preceding the month in which the milk is received, or 80% of the contract price,
18 whichever is greater. This subsection does not apply to a qualified producer agent
19 who complies with sub. (4).

20 (2) **SECOND MONTHLY PAYMENT.** By the 19th day of each month, a milk contractor
21 shall pay the balance due for producer milk received during the preceding month.
22 This subsection does not apply to a qualified producer agent who complies with sub.
23 (4).

24 (3) **PAYMENT EXPLANATION.** The department may, by rule, require a milk
25 contractor to provide a milk producer or producer agent with a written explanation

1 of each payment under this section. The department may specify the content of the
2 explanation, including information related to any of the following:

3 (a) Milk contractor identification.

4 (b) Milk producer or producer agent identification.

5 (c) Pay period.

6 (d) Volume of milk received.

7 (e) Grade of milk.

8 (f) Milk test results.

9 (g) Milk price and adjustments.

10 (h) Gross amount due.

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

12 (j) Net amount due.

13 (k) Deductions and assignments.

14 (4) QUALIFIED PRODUCER AGENTS. (a) By the last day of each month, a qualified
15 producer agent shall pay for producer milk received during the first 10 days of that
16 month. The qualified producer agent shall base the payment on an estimated price
17 that is at least 80% of the class III price published by the regional federal milk market
18 administrator for the month preceding the month in which the milk is received, or
19 80% of the contract price, whichever is greater.

20 (b) By the 10th day of each month, a qualified producer agent shall pay for
21 producer milk received from the 11th day to the 20th day of the preceding month.
22 The qualified producer agent shall base the payment on an estimated price that is
23 at least 80% of the class III price published by the regional federal milk market
24 administrator for the month preceding the month in which the milk is received, or
25 80% of the contract price, whichever is greater.

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

3 **126.49 Milk contractors; records and reports.** (1) REQUIRED RECORDS. A
4 milk contractor shall keep accurate records and accounts of milk receipts, payments
5 for milk received, and amounts owed to milk producers. The department may, by
6 rule, specify records that a milk contractor must keep.

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

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

14 **126.50 Milk contractors; prohibited practices.** No milk contractor may
15 do any of the following:

16 (1) Falsify any record or account, or conspire with any other person to falsify
17 a record or account.

18 (2) Make any false or misleading representation to the department.

19 (3) If the milk contractor is licensed under s. 126.41 (1), engage in any activity
20 that is inconsistent with representations made in the milk contractor's annual
21 license application.

22 (4) Make any false or misleading representation to a milk producer or producer
23 agent related to matters regulated under this chapter.

24 (5) Fail to file the full amount of security required under s. 126.47 (6) by the
25 date that the department specifies.

1 **126.51 Rules for qualified producer agents.** The department shall
2 promulgate rules specifying requirements for qualified producer agents, including
3 a requirement that a qualified producer agent have a written contract with each milk
4 producer from whom the qualified producer agent procures milk in this state and
5 that the contract disclose all of the following:

6 (1) That the producer agent does not take title to the milk producer's milk.

7 (2) That the producer agent holds all milk receipts in trust for milk producers.

8 (3) That the producer agent's obligations to milk producers are not secured or
9 indemnified under this chapter to the same degree as are the obligations of other
10 milk contractors.

11 SUBCHAPTER VI

12 VEGETABLE CONTRACTORS

13 **126.55 Definitions.** In this subchapter:

14 (1) "Cash on delivery" means cash payment of the full agreed price for
15 processing vegetables at the time of delivery or, if the vegetables are graded, within
16 72 hours after the time of delivery.

17 (2) "Cash payment" means payment in any of the following forms:

18 (a) Currency.

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

20 (c) A wire transfer.

21 (d) Simultaneous barter.

22 (3) "Contract obligation" means the net amount, whether paid or unpaid, that
23 a vegetable contractor owes a vegetable producer or producer agent under a
24 vegetable procurement contract. "Contract obligation" includes a net amount owed
25 for unharvested acreage.

1 (4) “Contributing vegetable contractor” means a vegetable contractor who is
2 licensed under s. 126.56 (1), who either has paid one or more quarterly installments
3 under s. 126.60 (6) or is required to contribute to the fund, but the first quarterly
4 installment under s. 126.60 (6) is not yet due, and who is not disqualified under s.
5 126.59 (2).

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

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

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

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

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

16 (10m) “License year” means the period beginning on February 1 and ending
17 on the following January 31.

18 (11) “Processing vegetables” means vegetables grown or sold for use in food
19 processing, regardless of whether those vegetables are actually harvested or
20 processed as food. “Processing vegetables” includes sweet corn grown or sold for use
21 in food processing, but does not include grain.

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