

## Chapter Ag 8

### DAIRY PLANT SECURITY

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**Prefatory note:** This chapter is adopted by the department under authority of ss. 93.07 (1) and 227.11 (2) (a), Stats., to interpret s. 100.06, Stats. Violations of this chapter are subject to the penalties prescribed in s. 100.26 (5), Stats.

- Ag 8.01 Definitions.** (1) "Asset" is anything of value owned.
- (2) "Liability" is an obligation to pay money or other assets or to render a service to another person, either now or in the future.
- (3) "Net worth" is the excess of total assets over total liabilities. It represents the ownership interest of one or more persons who have invested in the enterprise.
- (4) "Current assets" are cash and assets, including trade or investment items, which may be readily converted into cash in the ordinary course of business within one year, except as provided under s. Ag 8.05 (1), (2) (c), (d) and (e), (4) and (5).
- (5) "Fixed assets" are those assets representing investments of a more permanent nature, such as land, buildings, machinery and equipment.
- (6) "Other assets" are noncurrent assets other than fixed assets.
- (7) "Current liabilities" are those liabilities which are due and payable within a one-year period.
- (8) "Fixed or long-term liabilities" are those debts which, under the terms of their creation, are not due or payable within a period of one year.
- (9) "Contingent liabilities" are liabilities which will have to be paid only under certain conditions.
- (10) "Balance sheet" is a statement of the assets, liabilities, and net worth at a specific date.
- (11) "Income statement" is a report of the financial results of business operations for a specified period.
- (12) "Net worth statement" is a report of the change of net worth from the beginning to the end of an accounting period.
- (13) "Financial statement" is a balance sheet and includes income and net worth statements.
- (14) "Certified financial statement" means a financial statement prepared by an independent certified public accountant or a public accountant holding a certificate of authority under ch. 442, Stats., and certified by the accountant as fairly and accurately representing business opera-

tions and financial condition of the dairy plant business for which the statement is rendered.

(15) "Accountant's statement" means a financial statement signed and prepared by an independent accountant, other than an accountant licensed under ch. 442, Stats., and verified by the dairy plant operator employing the accountant as a truthful and accurate representation of the business operations and financial condition of the dairy plant business for which the statement is rendered.

(16) "Verified financial statement" is a financial statement prepared by the applicant or holder of a dairy plant license, or under his direction or supervision, and sworn to by him.

(17) "Interim statement" is a financial statement prepared as of a date other than the end of the fiscal year.

(18) "Dairy plant" means a dairy plant as defined in s. 97.20 (1) (a), Stats.

(19) "Producer" means any person who produces and sells milk or cream, directly or through a marketing agent under a written agency contract, to a dairy plant from one or more cows or goats under the person's ownership or control.

(20) "Maximum due and accrued producer liability" is the largest gross amount of money due and owing to producers at any one time during the license year by a dairy plant operator for milk or cream purchased by him and for which payment has not been made.

History: Cr. Register, June, 1967, No. 138, eff. 7-1-67; r. (6), renun. (7) to (15) to be (6) to (14), cr. (15), Register, August, 1968, No. 152, eff. 9-1-68; am. (14), (15), (18) and (19), Register, July, 1986, No. 367, eff. 8-1-86.

**Ag 8.02 Financial statements; time for filing.** (1) Financial statements, prepared as of the close of the dairy plant's most recent fiscal year, shall be filed with the department annually by every dairy plant operator purchasing milk or cream directly from producers on or before the 15th day of the 4th month following the close of such fiscal year. Interim statements may be required at any time during the license year as deemed necessary by the department.

(2) Applicants for an original license shall submit a balance sheet and such other financial information as the department may require as of the beginning of the proposed operations for which a license is requested. No milk or cream may be purchased from producers and no permit to operate a dairy plant will be granted until the applicant has filed acceptable security or satisfied the department that the filing of security is not required under standards and criteria prescribed by this chapter.

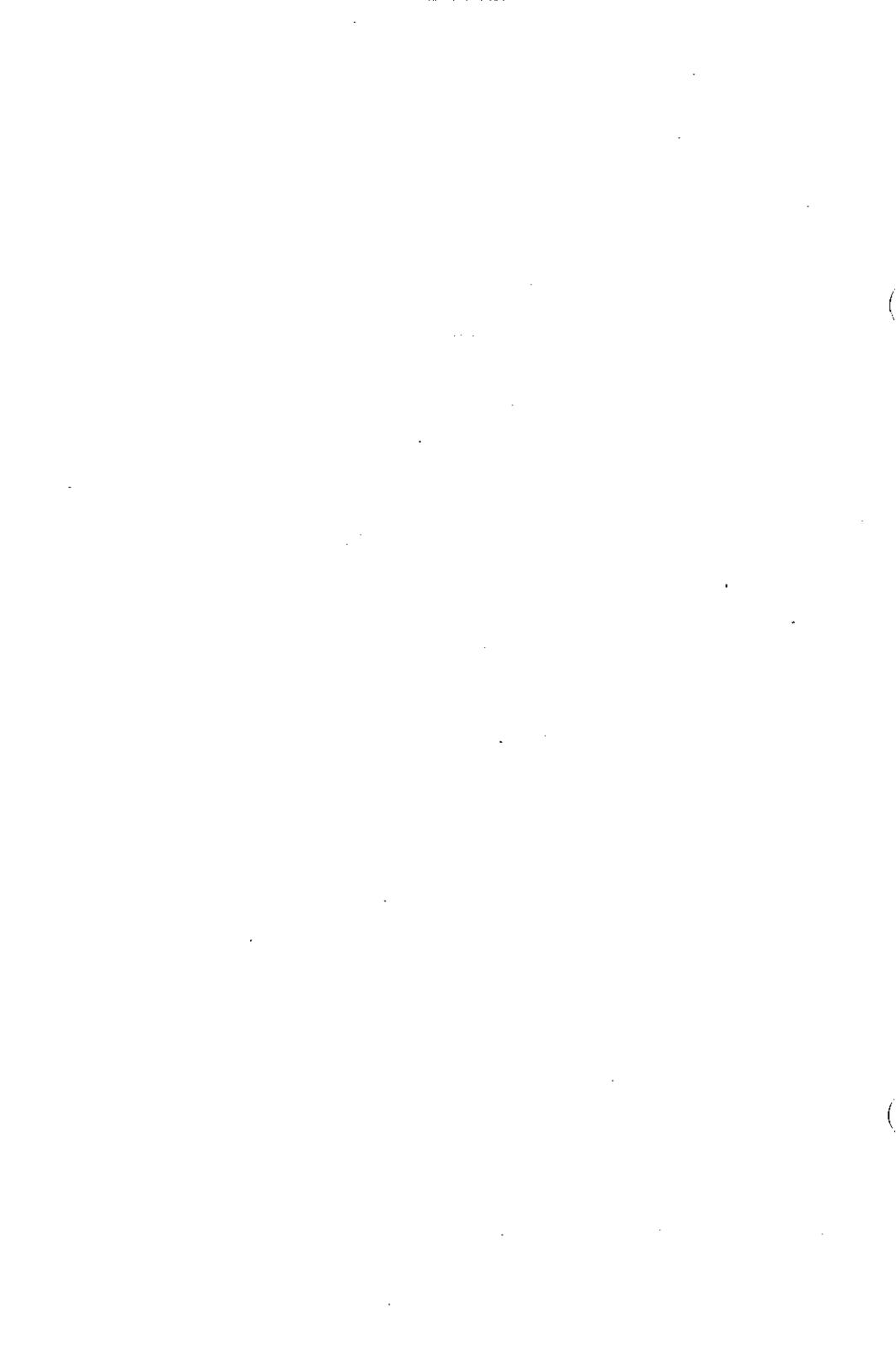
(3) Annual financial statements shall be certified financial statements and shall be audited by a certified public accountant or a public accountant holding a certificate of authority in this state; except that licensees operating under a dairy plant trusteeship or having satisfied security requirements by filing and maintaining acceptable security with the department equal to at least 75% of maximum due and accrued producer liability may, at their option, file either a certified or verified financial statement, or an accountant's statement. Except as otherwise provided,

an accountant's statement may be filed in lieu of a certified financial statement until January 1, 1971.

(4) The furnishing of financial information or statements and the filing of security as required in these rules shall be a condition to the issuance or continuation of a dairy plant license. The deposit of full security may be demanded on 10 days' notice if the required information or

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statements are not filed in an acceptable form when due. Any failure to file such information or statements in an acceptable form when due, or to file security as demanded, shall further be cause for the summary revocation or denial of a dairy plant license under s. 93.06 (7), Stats., subject to the right of a hearing and judicial review. Enforcement of a revocation order or order denying an application will not be stayed during the pendency of any department hearing unless the licensee or the applicant is able to justify his failure to submit the required financial information or to file security as demanded on good and sufficient grounds.

**History:** Cr. Register, June, 1967, No. 138, eff. 1-1-68; am. (1) and (3), Register, August, 1968, No. 152, eff. 9-1-68.

**Ag 8.03 Form and accuracy of statements.** (1) Verified financial statements and accountant's statements shall be submitted on forms furnished by the department. Certified financial statements may be submitted either on department forms or in the form of a separate statement prepared by the accountant in accordance with generally accepted accounting principles and which is adequate for the detailing of account information as prescribed by these rules.

(2) Certified financial statements shall be based on an audit of the books and records of the dairy plant concerned in accordance with generally accepted auditing standards and procedures. The scope of the audit shall include a reconciliation of bank balances, and verification of a representative portion of all notes and accounts receivable and payable, and the verification of a sufficient number of inventory items to assure the accuracy of inventory figures.

(3) Certified financial statements shall include the accountant's report outlining the nature and scope of the audit examination and expressing the opinion he has formed with respect to the financial statement. Any material exceptions shall be clearly set forth in footnotes to the statements, including a disclosure of any facts or circumstances known to him, or which in the exercise of reasonable diligence and skill should be known to him, affecting the financial condition or liquidity of the plant and its ability to make payments to producers, when due, for milk or cream purchased by it.

(4) All financial statements, whether in the form of certified or verified financial statements, or an accountant's statement, shall fully and accurately reflect the results of business operations and the true financial condition of the dairy plant for which the statement is rendered. They shall be prepared in accordance with generally accepted accounting principles and practices and include all supplementary financial information as required by Ag 8.05. Dairy plants with a sound financial and operating history and a current ratio of 2:00 to 1:00 based on an audit by a licensed accountant, may be authorized by the department to file a copy of their annual financial report to stockholders or any other audited financial statement acceptable to the department in lieu of a statement meeting specific requirements of Ag 8.05.

(5) The department may refuse to accept statements which are inaccurate or incomplete, or not prepared in accordance with standards prescribed in this chapter. If any question should arise as to the accuracy or completeness of a verified financial statement, or an accountant's statement, or of accounting judgment used in the preparation of such statements, the department may require that the statement be audited and

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certified by a licensed public accountant. The filing of unacceptable statements may subject the licensee to an immediate demand for security as provided in Ag 8.02 (4).

**History:** Cr. Register, June, 1967, No. 138, eff. 1-1-68; am. (1) and (4) and cr. (5), Register, August, 1968, No. 152, eff. 9-1-68.

**Ag 8.04 Fiscal years; producer payout dates.** (1) Dairy plants operating on a fiscal rather than a calendar year basis, shall file annual financial statements with the department in accordance with the fiscal year adopted by the plant.

(2) Dates of payment to producers may not be changed or any other changes or adjustments made in the dairy plant's books, records or accounts where the purpose or effect of such changes or adjustments is to enhance balance sheet ratios as of the statement date, or to deceive or mislead the department as to the true financial and operating condition of the dairy plant.

**History:** Cr. Register, June, 1967, No. 138, eff. 1-1-68; am. (1), Register, August, 1968, No. 152, eff. 9-1-68.

**Ag 8.05 Preparation and analysis of financial statements.** (1) CLASSIFICATION OF ASSET ACCOUNTS. Assets not recognized as current assets under this chapter, shall be specifically identified in any classification of asset accounts on the balance sheet or accompanying schedules. Such assets, as well as any other asset of doubtful value, shall be excluded by the department in computing balance sheet ratios and net worth.

(2) NOTES AND ACCOUNTS RECEIVABLE. (a) Notes or accounts receivable trade, shall be shown separately from other receivables not arising in the ordinary course of trade. Any note or account representing in amount 15% or more of all notes or accounts receivable, respectively, shall be described in footnotes or separate schedules attached to the statement showing the name of the person from whom payment is due and the amount due.

(b) The following notes and accounts receivable shall be specifically identified and explained in supporting schedules;

1. Notes and accounts receivable from officers, directors, partners, employes, stockholders or members of their families, other than trade accounts subject to usual trade terms, and

2. Notes and accounts receivable from parent organizations, subsidiaries or affiliates, including trade accounts.

(c) Nontrade notes and accounts receivable from officers, directors, employes, partners, stockholders or members of their families, as described in par. (b), shall not be considered as a current asset.

(d) Notes and accounts receivable from parent organizations, subsidiaries or affiliates shall not be considered as a current asset unless in the opinion of the department the current asset position of such person or organization justified such treatment.

(e) An aging summary of all notes and accounts receivable shall be submitted with the financial statement.

(f) If receivables or any portion thereof have been assigned or are subject to a lien, that fact must appear opposite the particular receivable or in a footnote to the financial statement.

(g) Reasonable reserves shall be maintained against doubtful or uncollectible items and shall be set forth in the financial statement.

(3) Inventories of dairy products manufactured and held for sale shall be identified separately from other classes of inventory, such as materials and supplies or merchandise purchased for resale. Inventories not in marketable or saleable condition and materials and supplies not expected to be consumed in the ordinary course of business, within one year, shall not be included as a current asset. The basis used in determining inventory values shall be described in the financial statement or footnotes thereto.

(4) **OTHER CURRENT ASSETS.** The nature or character of other current assets shall be specifically identified. Temporary investments shall be described in separate schedules where necessary, identifying the specific security, number of shares held, and market value. If pledged, mortgaged or subject to lien, this fact shall further be indicated in the schedule or in footnotes. Stocks or equity certificates in cooperatives may not be considered as a current asset unless it can be shown they are marketable or may otherwise be redeemed in one year or less.

(5) **FIXED ASSETS.** Fixed assets shall be identified in accordance with each major class of property included. All fixed assets shall be reported at cost less depreciation. A summary of such fixed assets and related reserves for depreciation transactions shall be submitted with the financial statement.

(6) **OTHER ASSETS.** Items excluded from consideration as a current asset under these rules may be recognized as an asset under the heading of other assets. Other assets shall be specifically identified, using separate schedules, where necessary, to describe the nature of the asset and its current value. Assets of a purely personal or private nature exempt from execution or attachment may not be included as a business asset by sole proprietors or partnerships. Intangible assets, organization expense, or assets of doubtful value may be excluded by the department in computing net worth or balance sheet ratios.

(7) **VALUATION OF ACCOUNTS.** All assets reported in financial statements, including merchandise held for sale, shall be valued in the financial statement in accordance with generally accepted accounting principles.

(8) **CURRENT LIABILITIES.** (a) Current liabilities shall be shown separately from fixed or long-term liabilities and shall include the current portion of all funded or long-term obligations as well as any other items of a current nature. Current liabilities including all notes and accounts payable, deferred income, and accrued expenses, shall be set forth in sufficient detail either in the statement or supporting schedules attached hereto, so that the specific nature of the liability and the amount owed can be readily determined. Where assets have been mortgaged or pledged, that fact shall be fully stated in the statement or in footnotes.

(b) Milk payable accounts shall be shown separately from other trade accounts and shall be detailed in accordance with amounts due 1. producers, 2. haulers, and 3. others under milk check assignments.

(c) Trade accounts representing in amount 15% or more of all trade accounts payable, shall be detailed in separate schedules as necessary to show the name of such trade creditors and the amounts owed to each. Amounts owed parent organizations, subsidiaries or affiliates shall be specifically identified, regardless of amount.

(d) The current portion of all notes and mortgages payable shall be specifically identified in the statement or supporting schedules. Notes and mortgages payable to officers, directors, employes, or stockholders, or members of their families, as well as to parent, subsidiary or affiliated organizations, shall be separately stated.

(9) **FIXED OR LONG-TERM LIABILITIES.** All notes mortgages or other funded obligations not due or payable within one year shall be fully described in the financial statement or in accompanying notes or schedules to include the nature of the obligation, the amount owed, and the terms of payment.

(10) **GENERAL NOTES TO FINANCIAL STATEMENTS.** The following information, if material, shall be included in the financial statement or footnotes thereto:

(a) The amount of assets mortgaged, pledged or otherwise subject to a lien. Obligations secured thereby should be briefly identified.

(b) Defaults in payment of any obligations.

(c) A brief statement as to contingent liabilities.

(d) A statement of judgments, suits, liens or claims pending against the dairy plant operator.

(e) A statement as to whether the licensee has acted as surety, bondsman or accommodation party on notes or obligations of another.

(f) A description of any changes in the application of accounting principles and practices employed in the statement which would affect comparability of such statement with those of prior periods.

(g) A statement as to whether the books and records of the plant are inadequate or incomplete for purposes of providing a dependable financial statement.

(h) Disclosure of any deceptive manipulation of accounts, including temporary funding of current liabilities to effect "window dressing".

(i) Any other facts or circumstances known to the accountant which may have a bearing on the reliability of the financial statement or the financial liquidity of the dairy plant and its ability to pay producers.

**History:** Cr. Register, June, 1967, No. 138, eff. 1-1-68; am. (2) (a) and (e) and (3), r. (5), renum. (6) to (11) to be (5) to (10), am. (8) (c) as renum. Register, August, 1968, No. 152, eff. 9-1-68.

**Ag 8.06 Standards of liquidity; security requirements.** (1) The following minimum standards of financial liquidity shall be applied in determining reasonable ability to pay producers for milk or cream purchased when due:

Register, July 1, 1981, No. 307

(a) A ratio of current assets to current liabilities (current ratio) of 1:20 to 1:00 or a ratio of cash, current receivables and marketable securities to current liabilities (quick ratio) of 1:00 to 1:00.

(b) Total assets in excess of total liabilities.

(2) (a) Applicants meeting standards specified in sub. (1) (a) and (b) shall be licensed on basis of financial statement alone without meeting other security requirements. Plants which fail to meet such standards shall be subject to security requirements equal to 75% of maximum due and accrued producer liability. Where any reasonable doubt exists as to whether a dairy plant meets these standards on basis of financial information submitted, security shall be required.

(b) As an exception to sub. (1) (a), and until January 1, 1971, dairy plants may qualify for a license on basis of a ratio of current assets to current liabilities (current ratio) of 1:10 to 1:00 from July 1, 1968 to December 31, 1969 and 1:15 to 1:00 from January 1, 1970 to December 31, 1970. On and after January 1, 1971, all plants shall be subject to the requirements of sub. (1) (a).

(3) Only the following forms of security or guarantees will be considered acceptable to the department:

(a) A dairy plant trusteeship under ch. Ag 7, Wis. Adm. Code.

(b) Commercial surety bond payable to the department in event of a default issued by a bonding company licensed to do business in this state.

(c) Cash or negotiable securities.

(d) Stocks, bonds or other marketable securities at current market values.

(e) Pledges of or a security interest in other property readily convertible into cash, including sales inventory and accounts receivable, subject to such rights of possession or control over the security as the department considers necessary.

(f) Personal surety bonds or other third party guarantees supported by a pledge of, or a security interest in, other property as described in pars. (c), (d) and (e).

(g) Any combination of pars. (b), (c), (d), (e) and (f).

(4) Dairy plants with a current ratio of at least 1:00 to 1:00 which can demonstrate to the satisfaction of the department their incapacity to file security in the full amount of 75% of maximum due and accrued producer liability as required, may petition the department for authority to fulfill security requirements by the filing of monthly income statements and balance sheets and the making of monthly deposits of acceptable forms of security in amounts not less than 1% of their gross monthly producer payroll or not less than ½% of their gross monthly sales. Authority may be granted if in the opinion of the department the plant is reasonably unable to meet full security requirements in any other manner, there is reasonable expectancy the plant will be able to make deposits on a regular monthly basis until full security requirements are met, or until the next higher level of financial liquidity, as established by these rules, is achieved, and the producers will not be subjected to unreason-

able risks of financial loss during the intervening period of time. Security once deposited may not be released except in compliance with sub. (5).

(5) Security filed in compliance with these rules may not be released because of changes or improvements in financial position or for any other reason unless the licensee has achieved and maintained through 2 successive license years minimum levels of financial liquidity as required by these rules, and has through sound financial planning and management demonstrated reasonable ability to meet producer payments when due. Exceptions may be made where maximum due and accrued producer liability has been decreased and there is little likelihood that such liability will be restored to prior levels. This shall not prevent the department from releasing security accepted on a temporary basis under sub. (6).

(6) The filing of security may be demanded at any time during the term for which the license was granted if the licensee falls below minimum standards of financial liquidity prescribed herein or if existing security falls below the 75% level because of any depreciation in the value of security deposited or because of an increase in maximum due and accrued producer liability. Whenever it is determined that security or an increase in security is required, notice shall be given to licensee advising him of the reasons why security is required, the amount required, and the time in which it is to be filed. Except as provided in Ag 8.02 (4), security shall be filed within 30 days after receipt of the notice, unless otherwise extended. No extension may be granted in excess of 60 days. If an extension is granted, the department may demand and accept security, other than that specified in sub. (3), on a temporary basis pending the completion of permanent security arrangements.

(7) Except as to plants licensed on basis of a trusteeship, the department may require that the claims of any officer, agent, partner or stockholder, or members of their families, against the dairy plant business shall be subordinated to the prior interest or claims of producers.

**History:** Cr. Register, June, 1967, No. 138, eff. 7-1-67; am. (1) (a) and (b), renum. (2) to be (2) (a), cr. (2) (b), r. and recr. (4), Register, August, 1968, No. 152, eff. 9-1-68; r. and recr. (3) (e) and am. (f), Register, June, 1969, No. 162, eff. 7-1-69.

**Ag 8.07 Semi-annual statements to producers.** (1) To assure compliance with s. 100.06 (3) (a), Stats., statements to producers, required at least once every 6 months, shall be delivered or mailed to producers on or before the date the first payment for milk or cream is due after the beginning of the first and seventh months of the year for which the license was issued. Such statements shall be issued in the form of a separate statement and shall clearly inform producers of the financial basis on which the dairy plant license was issued, without the addition of any other written or printed matter, except as necessary to identify the dairy plant or inform producers that the statement is required by law.

(2) Statements to producers shall contain the following information:

(a) If licensed on basis of a trusteeship, 1. the name of the trustee, 2. date trustee agreement was filed with the department, and 3. the fact that under a trusteeship all receipts for sale of milk or dairy products are collected by the trustee and deposited in a special bank account by him, that the trustee makes payment to producers from this bank account,

and that no funds are released to the dairy plant operator from this account until producers have been paid.

(b) If licensed on financial statements only,

1. The fact that a financial statement prepared by an accountant has been filed with the department,

2. The name of the accountant,

3. The fiscal period covered by the financial statement, and

4. The fact that financial statement showed the licensee qualified for a license without the filing of security.

(c) If licensed on basis of security,

1. The fact that the plant was licensed on basis of security filed with the department,

2. The type and amount of security filed, describing each different type of security in sufficient detail so that the producers will clearly understand the precise nature of the security filed, including the exact amount of each different type of security as well as the total amount of security filed, and

3. The percentage ratio of total security filed to maximum due and accrued producer liability.

(d) If licensed on basis of security and the security is being created on basis of monthly deposits, as provided under s. Ag 8.06 (4), the following information shall be included in addition to that required under par. (c):

1. Date on which security deposits were initiated, and

2. The percentage of the gross monthly producer payroll or gross monthly sales, as applicable, on which monthly deposits are computed.

(3) A copy of the statement furnished producers during the previous license year shall be filed with each license renewal application. If the department finds that the statement does not comply with this section, it may prescribe the exact form and wording of the statement to be used. When prescribed by the department, no other form shall be used.

History: Cr. Register, June, 1967, No. 138, eff. 1-1-68; am. (2) (b), cr. (2) (d), Register, August, 1968, No. 152, eff. 9-1-68.

**Ag. 8.08 Interest rate; producer claims.** (1) **DETERMINATION OF INTEREST RATE.** The department shall determine the interest rate to be paid to producers injured by a dairy plant default as the rate awarded by Wisconsin courts for interest on verdicts, established in s. 814.04 (4), Stats., unless the interest rate is determined in accordance with sub. (2).

(2) **AGREEMENT ON INTEREST RATE.** The department shall apply the interest rate previously agreed upon by a producer and a dairy plant if a producer or a dairy plant provides proof that either:

(a) A producer and a dairy plant have executed a written contract specifying the interest rate, or

(b) A producer has delivered a written confirmation of purchase to a dairy plant specifying the interest rate and the dairy plant failed to make

a written objection within 10 days of receipt of the written confirmation of purchase.

(3) **WAIVER OF INTEREST.** A producer may waive payment of interest only if all of the following requirements are satisfied:

(a) The waiver is in writing,

(b) The waiver contains a written acknowledgement that the producer is aware of his or her right to payment of interest under s. 100.06 (4), Stats.,

(c) The waiver is signed and dated by the producer,

(d) The waiver is submitted to the department by the producer or the dairy plant at, or any time after, the time the producer submits his or her claim.

(4) **COMPUTATION AND PAYMENT OF INTEREST.** The department shall compute the amount of interest due a producer by applying the interest rate determined under either sub. (1) or (2), commencing from the first day of a breach in payment by a dairy plant until full payment of a producer's allowed claim is made. If an allowed claim is not paid in full within the time period specified in the department's final order allowing producer claims, interest shall continue to accrue on the balance of the unpaid claim. Interest payments may be made concurrently with payment of an allowed claim, or within a reasonable period of time subsequent to payment of an allowed claim.

History: Cr. Register, January, 1990, No. 409, eff. 2-1-90.