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## **Requirements for Grain Dealers**

**State of Wisconsin**

*Auditing*

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## Requirements for Grain Dealers

### STATE OF WISCONSIN

*Current through 2013*

#### W.S.A. 126.13

#### 126.13. Grain dealers; financial statements

##### **(1) Required annual financial statement.**

(a) A grain dealer shall file an annual financial statement with the department, before the department first licenses the grain dealer under s. 126.11, if the grain dealer's license application shows any of the following:

1. That the amount of grain reported under s. 126.11(9)(d), less the total amount reported under s. 126.11(9)(e)2., if any, exceeds 200,000 bushels.
2. Any deferred payment contract obligations under s. 126.11(9)(c).

(b) A grain dealer licensed under s. 126.11 shall file an annual financial statement with the department during each license year if the grain dealer's license application for that year shows any of the following:

1. That the amount of grain reported under s. 126.11(9)(d), less the total amount reported under s. 126.11(9)(e)2., if any, exceeds 200,000 bushels and the grain dealer is not a contributing grain dealer who procures grain in this state solely as a producer agent.
2. Any deferred payment contract obligations under s. 126.11(9)(c).

(c) A grain dealer shall file an annual financial statement under par. (b) by the 15th day of the 4th month following the close of the grain dealer's fiscal year, except that the department may extend the filing deadline for up to 30 days if the grain dealer, or the accountant reviewing or auditing the financial statement, files a written extension request at least 10 days before the filing deadline.

(d) A grain dealer licensed under s. 126.11 may not incur any obligations under deferred payment contracts for grain procured in this state unless the contractor first notifies the department and files an annual financial statement with the department.

**(2) Voluntary annual financial statement.** A contributing grain dealer who is not required to file a financial statement under sub. (1) may file an annual financial statement with the department to qualify for a lower fund assessment under s. 126.15.

**(3) Reviewed or audited financial statement.** A grain dealer filing a financial statement under sub. (1) or (2) may file either a reviewed financial statement or an audited financial statement, except that if the volume of grain reported by the grain dealer under s. 126.11(9)(d), less the total volume reported by the grain dealer under s. 126.11(9)(e)2., if any, exceeds 2,500,000 bushels, the grain dealer shall file an audited financial statement.

**(4) Accounting period.** A grain dealer filing an annual financial statement under sub. (1) or (2) shall file a financial statement that covers the grain dealer's last completed fiscal year unless the grain dealer has been in business for less than one year.

**(4m) Interim financial statement.** The department may, at any time, require a grain dealer licensed under s. 126.11 to file an interim financial statement with the department. The grain dealer shall provide, with the interim financial statement, the grain dealer's sworn and notarized statement that the financial statement is correct. An interim financial statement need not be a reviewed financial statement or an audited financial statement.

**(5) Generally accepted accounting principles.**

(a) Except as provided in par. (b), a grain dealer filing an annual financial statement under this section shall file a financial statement that is prepared according to generally accepted accounting principles.

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

**(6) Financial statement contents.**

(a) Except as provided in par. (b), a grain dealer filing a financial statement under this section shall file a financial statement that consists of a balance sheet, income statement, equity statement, statement of cash flows, notes to those statements, and any other information required by the department. If the grain dealer is a sole proprietor, the grain dealer shall file his or her business and personal financial statements. A grain dealer shall disclose on the grain dealer's financial statement, separately and clearly, the grain dealer's unpaid obligations to grain producers and producer agents.

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

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

1. The grain dealer's current ratio, excluding any assets required to be excluded under sub. (7).
2. The grain dealer's debt to equity ratio, excluding any assets required to be excluded under sub. (7).

**(7) Assets excluded.** A grain dealer may not include any of the following assets in the calculations under sub. (6)(c) unless the department specifically approves their inclusion:

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

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

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

**(9) Entity covered.** A person filing a financial statement under this section may not file, in lieu of that person's financial statement, the financial statement of the person's parent organization, subsidiary, predecessor, or successor.

**(10) Department review.** The department may analyze a financial statement submitted under this section and may reject a financial statement that fails to comply with this section.

## W.S.A. 126.17

### 126.17. Grain dealers; records

**(1) Records and accounts; general.** A grain dealer shall keep records and accounts of all grain procured and all grain sold or marketed by the grain dealer. A grain dealer shall keep records that are complete, accurate, current, well-organized, and accessible, so that the grain dealer and the department can readily determine all of the following:

- (a) The kinds and amounts of grain procured, the procurement dates, the procurement terms, and the persons from whom the grain dealer procured the grain.
- (b) The kinds and amounts of grain sold or marketed, the sale or marketing dates, the sale or marketing terms, and the persons to whom the grain dealer sold or marketed the grain.
- (c) The kinds and amounts of grain, received from others, that the grain dealer has used for feed, seed, milling, manufacturing, processing, or other purposes.
- (d) The kinds and amounts of grain, received from others, that the grain dealer has on hand, including the kinds and amounts of grain owned by the grain dealer, and the kinds and amounts of grain held for others.
- (e) The nature and amount of the grain dealer's obligations to grain producers and producer agents, including obligations under deferred payment contracts. The grain dealer shall keep a daily record of obligations under priced contracts and a separate daily record of obligations under deferred price contracts that have not yet been priced.
- (f) The nature and amount of the grain dealer's obligations to depositors, as defined in s. 126.25(5), under agreements for the storage of grain, if any.
- (g) The grain dealer's accounts receivable from the sale or marketing of grain, including the names of the account debtors, the amount receivable from each account debtor, and the dates on which payment is due.

**(2) Records of grain procured.** A grain dealer shall keep records all of the following related to each shipment of grain procured by the grain dealer:

- (a) The kind and weight of grain procured.
- (b) The grade and quality of the grain if determined.
- (c) The date on which the grain dealer procured the grain.
- (d) The name and address of the person from whom the grain dealer procured the grain.
- (e) Whether the grain dealer purchased the grain, holds it under an agreement for storage, or is marketing the grain as a producer agent.
- (f) The terms of purchase, storage, or marketing.
- (g) If the grain dealer procured the grain under a deferred payment contract, the terms of that contract.

**(3) Records retention; inspection.**

- (a) A grain dealer shall keep copies of all records required under this section and s. 126.18(2) for at least 6 years after the records are created.
- (b) A grain dealer shall make records required under this section available to the department for inspection and copying upon request.

**W.S.A. 126.70**  
**126.70. Recovery proceedings**

**(1) Default claims.**

(a) A person who is one of the following may file a default claim with the department against a contractor who is licensed, or required to be licensed, under this chapter, unless the person has waived eligibility to file a claim as provided in pars. (b) and (c):

1. A grain producer or producer agent, as defined in s. 126.10(13), who claims that a grain dealer has failed to pay, when due, for producer grain that the grain dealer procured in this state.
2. A depositor who is either a grain producer or a producer agent, as defined in s. 126.10(13), and who claims that a grain warehouse keeper has failed to return stored grain or its equivalent upon demand.
3. A milk producer or producer agent, as defined in s. 126.40(13), who claims that a milk contractor has failed to pay, when due, for producer milk procured in this state.
4. A vegetable producer or producer agent, as defined in s. 126.55(12), who claims that a vegetable contractor has failed to make payment when due under a vegetable procurement contract.

(b) A producer or producer agent may permanently waive eligibility to file a default claim against a grain dealer, milk contractor, or vegetable contractor if, at the time of the waiver, any of the following applies:

1. The producer or producer agent has a greater than 50 percent ownership interest in the grain dealer, milk contractor, or vegetable contractor.
2. Persons who collectively have a greater than 50 percent ownership interest in the producer or producer agent also collectively have a greater than 50 percent ownership interest in the grain dealer, milk contractor, or vegetable contractor.

(c) A producer or producer agent shall file a waiver under par. (b) with the department in writing, on a form provided by the department. In the waiver, the producer or producer agent shall include documentation to show that the requirements in par. (b) are satisfied and that the individuals signing the waiver are authorized to do so on behalf of the producer or producer agent.

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

**(3) Initiating a recovery proceeding.**

(a) The department may initiate a recovery proceeding in response to one or more default claims under sub. (1). The department shall issue a written notice announcing the recovery proceeding. The department shall mail or deliver a copy of the notice to the contractor and each claimant in the proceeding.

(b) If the department has reason to believe that other persons may have default claims under sub. (1) against the same contractor, the department may invite those persons to file their claims in the recovery proceeding. The department may publish the invitation in any of the following ways:

1. By posting it at the contractor's place of business.
2. By publishing it as a class 3 notice under ch. 985.
3. By mailing or delivering it to prospective claimants known to the department.

4. By other means that the department considers appropriate.

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

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

**(4) Auditing and disallowing claims.** The department shall audit each claim included in a recovery proceeding. The department shall disallow a claim if the department finds any of the following:

(a) That the claim is false or not adequately documented.

(b) That the claimant filed the claim more than 30 days after the claimant first learned of the contractor's default, unless the department specifies a later claim-filing deadline under sub.

(3)(c).

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

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

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

(f) That the defaulting contractor paid the amount due by check, but the claimant failed to present the check for payment within 30 days of receipt.

(g) That the claim relates to a payment that first became due, under a deferred payment contract for grain, more than 120 days after the grain was delivered to the defaulting grain dealer.

(h) That the claim relates to a payment that first became due, under a deferred payment contract for processing vegetables, after January 31 of any year for processing vegetables tendered or delivered to a vegetable contractor on or before December 31 of the preceding year.

(i) That the claim relates to grain, milk, or vegetables that were never tendered to or received and accepted by the defaulting grain dealer, milk contractor, or vegetable contractor. This paragraph does not apply to unharvested acreage, as defined in s. 126.55(17).

(j) That the claimant has, under sub. (1)(b), permanently waived eligibility to file the claim.

(k) That any of the following circumstances exists and causes the claim to be an unfair or unreasonable claim against the fund, regardless of whether the claimant has, under sub. (1)(b), waived the claim:

1. The claimant had a greater than 50 percent ownership interest in the defaulting contractor at the time of the default or at relevant times before the default.

2. Persons who collectively had a greater than 50 percent ownership interest in the claimant also had a greater than 50 percent ownership interest in the defaulting contractor at the time of the default or at relevant times before the default.

3. The claimant, or any of the claimant's owners, officers, or managers, had substantial management control, at the time of the default or at relevant times before the default, over any of the defaulting contractor's operations involved in the default.

4. The claimant, or any of the claimant's owners, officers, or managers, conspired with the defaulting contractor, or any of the defaulting contractor's owners, officers, or managers, to create a default and a resulting claim against the fund.

5. Other circumstances that the department specifies by rule.

**(5) Allowed claim amounts.**

(a) The department shall determine the amount of an allowed claim based on the contract between the parties. If the contract terms are unclear, the department may determine the

allowed claim amount based on local market prices, applicable milk marketing order prices, customs in the trade, or other evidence that the department considers appropriate.

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

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

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

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

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

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

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

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

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

(g) Specify any further actions required of a claimant, including any further actions required to obtain payment under a trade credit insurance policy or other contingent financial backing under s. 126.06.

**(7) Final decision if no objections.** If no contractor or claimant files a timely written objection to the proposed decision under sub. (6), the department may issue the proposed decision as the department's final decision in the recovery proceeding, without further notice or hearing. The department shall mail or deliver a copy of the final decision to the contractor and each claimant.

**(8) Objections to proposed decision; notice, hearing, and final decision.**

(a) If a contractor or claimant files a timely written objection to the proposed decision under sub. (6), the department shall hold a public hearing on the objection. The department shall follow applicable contested case procedures under ch. 227. The department may hear all objections in a single proceeding. At the conclusion of the contested case proceeding, the department shall issue a final decision affirming or modifying the proposed decision under sub. (6).

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