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Requirements for Grain Dealers

State of Wisconsin

Bonding

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Requirements for Grain Dealers

STATE OF WISCONSIN

Current through 2013

W.S.A. 126.06

126.06. Contingent financial backing

(1) Department may acquire. Using moneys appropriated under s. 20.115(1)(v), the department may acquire contingent financial backing to secure payment under s. 126.72(2) of claims against contributing contractors, as defined in s. 126.68(1). The contingent financial backing may be in one or more of the following forms:

- (a) A surety bond.
- (b) A contract to provide a cash loan to the fund whenever the department requests a loan payable as provided in sub. (3).
- (c) Trade credit insurance.
- (d) Any other form that the department determines is appropriate.

(2) Amount.

(a) Except as provided in par. (b), the department may determine the amount of any contingent financial backing that it obtains under sub. (1), up to the amount that, in the department's judgment, is sufficient to meet reasonably foreseeable needs under s. 126.72(2). In making this determination, the department shall consider acquisition costs and repayment liabilities.

(b) The department may not acquire contingent financial backing in an amount that exceeds \$17,000,000, unless the department establishes a different maximum amount by rule.

(3) Repayment. The department shall pay principal and interest costs of any loan provided under sub. (1)(b) only from the appropriation from the agricultural producer security fund under s. 20.115(1)(wc).

W.S.A. 126.16

126.16. Grain dealers; security

(1) Security required.

(a) A grain dealer shall file security with the department, and maintain that security until the department releases it under sub. (8)(a), if all of the following apply when the department first licenses the grain dealer under s. 126.11:

1. The grain dealer reports more than \$500,000 in grain payments under s. 126.11(9)(a).
2. The grain dealer files an annual financial statement under s. 126.13(1)(a) and that financial statement shows negative equity.

(b) A grain dealer who reports any deferred payment contract obligations under s. 126.11(9)(c) or 126.13(1)(d), other than deferred payment contract obligations to a grain producer or producer agent who permanently waived eligibility to file a default claim under s. 126.70(1)(b) and (c), shall file security with the department, and maintain that security until the department

releases it under sub. (8)(b), unless the grain dealer has positive equity and the grain dealer's annual financial statement under s. 126.13 (1) shows a debt to equity ratio of not more than 4.0 to 1.0.

(c)

1. In this paragraph, "estimated default exposure" means the sum of the following:
 - a. Thirty-five percent of the grain dealer's average monthly payment for the 3 months, during the preceding 12 months, in which the grain dealer made the largest monthly payments for producer grain procured in this state.
 - b. The grain dealer's highest total, at any time during the preceding 12 months, of unpaid obligations for producer grain procured in this state under deferred payment contracts.
2. A grain dealer shall file security with the department, and maintain that security until the department releases it under sub. (8)(bm), if the grain dealer files an annual financial statement under s. 126.13(1) that shows negative equity, a current ratio of less than 1.25 to 1.0, or a debt to equity ratio of more than 4.0 to 1.0 and the grain dealer's estimated default exposure is greater than \$20,000,000.

(3) Amount of security.

(a) Except as provided in par.

(b), a grain dealer who is required to file or maintain security under this section shall at all times maintain security that is at least equal to the sum of the following:

1. Thirty-five percent of the grain dealer's average monthly payment for the 3 months, during the preceding 12 months, in which the grain dealer made the largest monthly payments for producer grain procured in this state, except that this amount is not required of a contributing grain dealer.
2. The grain dealer's highest total, at any time during the preceding 12 months, of unpaid obligations for producer grain procured in this state under deferred payment contracts.

(b) A grain dealer who is required to file or maintain security only under sub. (1)(c) shall at all times maintain security equal to the grain dealer's estimated default exposure, as defined in sub. (1)(c)1., less \$20,000,000.

(4) Form of security. The department shall review, and determine whether to approve, security filed or maintained under this section. The department may approve only the following types of security:

(a) Currency.

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

1. The surety bond is made payable to the department for the benefit of grain producers and producer agents.
2. The surety bond is issued by a person authorized to operate a surety business in this state.
3. The surety bond is issued as a continuous term bond that may be canceled only with the department's written agreement or upon 90 days' prior written notice served on the department in person or by certified mail.
4. The surety bond is issued in a form, and subject to any terms and conditions, that the department considers appropriate.

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

1. The certificate is issued or endorsed to the department for the benefit of grain producers and producer agents who deliver grain to the grain dealer.
2. The certificate may not be canceled or redeemed without the department's written

authorization.

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

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

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

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

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

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

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

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

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

(5) Department custody of security. The department shall hold, in its custody, all security filed and maintained under this section. The department shall hold the security for the benefit of grain producers and producer agents who deliver grain to a grain dealer.

(6) Monthly reports. A grain dealer who is required to file or maintain security under this section shall file monthly reports with the department. The grain dealer shall file a report on or before the 10th day of each month, in a form specified by the department. In a monthly report, a grain dealer shall provide information reasonably required by the department, including all of the following:

(a) The grain dealer's average monthly payment for the 3 months, during the preceding 12 months, in which the grain dealer made the largest monthly payments for producer grain procured in this state.

(b) The grain dealer's highest total unpaid obligations, at any time during the preceding 12 months, for producer grain procured in this state under deferred payment contracts. If the amount owed on deferred price contracts has not yet been determined, the grain dealer shall estimate the amount based on contract terms and prevailing market prices on the last day of the previous month.

(7) Additional security.

(a) The department may, at any time, demand additional security from a grain dealer if any of the following applies:

1. The grain dealer's existing security falls below the amount required under sub. (3) for any reason, including depreciation in the value of the security filed with the department, an increase in grain payments or grain prices, or the cancellation of any security filed with the department.

2. The grain dealer fails to provide required information that is relevant to a determination of security requirements.

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

(c) A grain dealer may request a hearing, under ch. 227, on a demand for security under par.

(b). A request for hearing does not automatically stay a security demand.

(d) If a grain dealer fails to comply with the department's demand for security under this

subsection, the grain dealer shall give written notice of that fact to all grain producers and producer agents from whom the grain dealer procures producer grain in this state. If the grain dealer fails to give accurate notice under this paragraph within 5 days after the deadline for filing security under par. (b) has passed, the department shall promptly notify those grain producers and producer agents by publishing a class 3 notice under ch. 985. The department may also give individual notice to those grain producers or producer agents of whom the department is aware.

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

1. Issue a summary order under s. 126.85(2) that prohibits the grain dealer from procuring producer grain or requires the grain dealer to pay cash on delivery for all producer grain.
2. Suspend or revoke the grain dealer's license.

(8) Releasing security.

(a) The department may release security filed under sub. (1)(a), except for any amount of security that the grain dealer is required to file because sub. (1)(b) or (c) applies to the grain dealer, if any of the following applies:

1. The grain dealer reports, for at least 2 consecutive years, no more than \$500,000 in annual grain payments under s. 126.11(9)(a) and the grain dealer pays the quarterly fund assessment that would have been required of the grain dealer if the grain dealer had been a contributing grain dealer on the most recent quarterly installment date under s. 126.15(7).
2. The grain dealer's annual financial statement under s. 126.13 shows positive equity for at least 2 consecutive years and the grain dealer pays the quarterly fund assessment that would have been required of the grain dealer if the grain dealer had been a contributing grain dealer on the most recent quarterly installment date under s. 126.15(7).

(b) The department may release security filed under sub. (1)(b), except for any amount of security that the grain dealer is required to file because sub. (1)(a) or (c) applies to the grain dealer, if any of the following applies:

1. The grain dealer has not had any deferred payment contract obligations since the beginning of the grain dealer's last completed fiscal year.
2. The grain dealer files 2 consecutive annual financial statements under s. 126.13 showing that the grain dealer meets the applicable equity requirement and debt to equity ratio under sub. (1)(b).

(bm) The department may release security filed under sub. (1)(c), except for any amount of security that the grain dealer is required to file because sub. (1)(a) or (b) applies to the grain dealer, if the grain dealer files 2 consecutive annual financial statements under s. 126.13 showing that the grain dealer no longer has negative equity, a current ratio of less than 1.25 to 1.0, or a debt to equity ratio of more than 4.0 to 1.0.

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

(e) The department may release security if the grain dealer files alternative security, of equivalent value, that the department approves.

(f) The department shall release security if the grain dealer is no longer in business and has paid all grain obligations in full.

W.S.A. 126.71
126.71. Paying default claims

(1) Claims against contributing contractor. Except as provided in sub. (2) or (3), the department shall pay from the appropriate sources under s. 126.72 the following default claim amounts:

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

1. Eighty percent of the first \$60,000 allowed.
2. Seventy-five percent of any amount allowed in excess of \$60,000.

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

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

1. Ninety percent of the first \$40,000 allowed.
2. Eighty-five percent of the next \$40,000 allowed.
3. Eighty percent of the next \$40,000 allowed.
4. Seventy-five percent of any amount allowed in excess of \$120,000.

(1m) When default occurs. For the purposes of this chapter, a default occurs on the date on which payment or delivery becomes overdue.

(2) Claims against contractor who has filed security. If the department allows default claims under s. 126.70 against a contractor who has security on file with the department, the department shall convert that security and use the proceeds as follows:

(a) If the contractor was not a contributing contractor when the default occurred, the department shall use the security proceeds to pay the full amount of the allowed claims, except that, if the security is not adequate to pay the full amount of the allowed claims, the department shall pay claimants on a prorated basis in proportion to their allowed claims.

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

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

(3) Payment restrictions.

(a) The department may not pay any portion of the following from any source identified in s. 126.72:

4. A default claim allowed against a contractor who was not a contributing contractor when the default occurred.
5. A default claim allowed against a vegetable contractor who is a processing potato

buyer, as defined in s. 126.55(10r), if the default claim is related to a default on an obligation that was outstanding when the processing potato buyer's participation in the fund became effective under s. 126.595(2).

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

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

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

W.S.A. 126.72

126.72. Claims against contributing contractor; payment sources

(1) Producer security fund. From the appropriation under s. 20. 115(1)(w), the department shall make payments authorized under s. 126.71(1), up to the deductible amount in sub. (3).

(2) Proceeds of contingent financial backing. The department, at the direction of the secretary of agriculture, trade and consumer protection, shall draw on the contingent financial backing acquired under s. 126.06 to make payments authorized under s. 126.71(1), to the extent that those payments exceed the deductible amount in sub. (3). If the contingent financial backing is in the form of a trade credit insurance policy that appears to cover the authorized payments, the department shall file a claim against the policy.

(3) Deductible amount. The deductible amount, for purposes of subs. (1) and (2), is 60% of the cash balance in the agricultural producer security fund on the last day of the month preceding the month in which the default occurs.

W.S.A. 126.73

126.73. Reimbursing payments

(1) Generally. Except as provided in sub. (2) or (3), the department may demand and collect, from a contractor any claim amounts that the department pays under s. 126.72(1) or under s. 126.72(2) with the proceeds of contingent financial backing under s. 126.06(1) because of the contractor's default.

(2) Bond payments. A bond surety may demand and collect, from a contractor, any claim amounts that the bond surety pays to the department under s. 126.72(2) because of the contractor's default. The bond surety shall provide the department with a copy of each demand under this subsection.

(3) Trade credit insurance payments. If the department files a claim against a trade credit insurance policy under s. 126.72(2) and obtains and uses proceeds from the insurance policy to make payments authorized under s. 126.72(2), the trade credit insurer may demand and collect the amount of those payments from the defaulting contractor.