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## Requirements for Grain Warehouses:

*Wisconsin*



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## Requirements for Grain Warehouses: Wisconsin

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*Current through Act 186 of the 2019-2020 Legislative Session.*

**126.01 General definitions. In this chapter:**

(1) "Affiliate" means any of the following persons:

(a) An owner, major stockholder, partner, officer, director, member, employee, or agent of a contractor.

(b) A person owned, controlled, or operated by a person under par. (a).

(2) "Asset" means anything of value owned by a person.

(3) "Audited financial statement" means a financial statement on which an independent certified public accountant licensed or certified under ch. 442 has done all of the following:

(a) Stated that the financial statement presents fairly, in all material respects, the financial position of a contractor as of a specific date or for a specific period, according to one of the following:

1. Generally accepted accounting principles.

2. The historical cost basis method of accounting, if the financial statement is a sole proprietor's personal financial statement and the financial statement is prepared on a historical cost basis.

(b) Conducted an audit according to generally accepted auditing standards.

(4) "Balance sheet" means a statement of assets, liabilities, and equity on a specific date.

(5) "Contractor," unless otherwise qualified, means any of the following:

- (a) A grain dealer, as defined in s. 126.10 (9).
- (b) A grain warehouse keeper, as defined in s. 126.25 (9).
- (c) A milk contractor, as defined in s. 126.40 (8).
- (d) A vegetable contractor, as defined in s. 126.55 (14).
- (6) "Current assets" means cash and other assets, including trade or investment items, that may be readily converted into cash in the ordinary course of business within one year after the date as of which the value of those assets is determined.
- (7) "Current liabilities" means those liabilities that are due within one year after the date as of which the value of those liabilities is determined.
- (8) "Department" means the department of agriculture, trade and consumer protection.
- (9) "Equity" means the value of assets less the value of liabilities.
- (10) "Equity statement" means a report of the change in equity from the beginning to the end of the accounting period covered by the report.
- (11) "Fund" means the agricultural producer security fund established under s. 25.463.
- (12) "Generally accepted accounting principles" means the accounting standards adopted by the Financial Accounting Standards Board, except that for a business entity organized and operating outside the United States "generally accepted accounting principles" includes generally accepted foreign accounting standards that are substantially equivalent to standards adopted by the Financial Accounting Standards Board.
- (13) "Grain" means corn, wheat, soybeans, oats, barley, rye, buckwheat, sorghum, flax seed, milo, sunflower seed, and mixed grain, as defined in 7 CFR 810.801, except that "grain" does not include any of the following:
  - (a) Sweet corn or other canning crops for processing.
  - (b) Seed corn, wheat, soybeans, oats, barley, rye, buckwheat, sorghum, flax seed, milo, sunflower seed, or mixed grain used or intended for use solely for planting purposes.
  - (c) Corn, wheat, soybeans, oats, barley, rye, buckwheat, sorghum, flax seed, milo, sunflower seed, or mixed grain that has been rolled, cracked, roasted, or otherwise processed.
- (14) "Income statement" means a report of the financial results of business operations for a specific period.
- (15) "Individual" means a natural person.
- (16) "Interim financial statement" means a statement of financial condition prepared for a period shorter than a fiscal year.
- (17) "Milk" has the meaning given in s. 97.01 (10) (a).
- (18) "Person," notwithstanding s. 990.01 (26), means an individual, a corporation, a cooperative, an unincorporated cooperative association, a partnership, a limited liability

company, a trust, a state agency, as defined in s. 20.001 (1), a local governmental unit, as defined in s. 66.0131 (1) (a), or other legal entity.

(19) "Producer," unless otherwise qualified, means a grain producer, as defined in s. 126.10 (10), milk producer, as defined in s. 126.40 (10), or vegetable producer, as defined in s. 126.55 (16).

(20) "Reviewed financial statement" means a contractor's financial statement, other than an audited financial statement, that is reviewed by an independent certified public accountant licensed or certified under ch. 442.

(21) "Security" means security filed or maintained under s. 126.16, 126.31, 126.47, or 126.61.

(22) "Sole proprietor" means a contractor who is an individual.

(23) "Statement of cash flows" means a report of cash receipts and cash disbursements from operating, investing, and financing activities, including an explanation of changes in cash and cash equivalents for the accounting period covered by the report.

(24) "Vegetable" means any vegetable that is grown or sold for use in food processing, whether or not the vegetable is actually processed as food. "Vegetable" includes green beans, kidney beans, lima beans, romano beans, wax beans, beets, cabbage, carrots, celery, cucumbers, onions, peas, potatoes, spinach, squash, and sweet corn, but does not include grain.

#### **126.05 Agricultural producer security fund.**

(1) The fund is a public trust and shall be administered to secure payments to producers. Moneys deposited into the fund may be used only for the purposes of this chapter.

(2) The department shall deposit into the fund all fees, surcharges, assessments, reimbursements, and proceeds of contingent financial backing that the department collects under this chapter. The department shall keep a record by contractor and industry, of all deposits into the fund. The department shall keep a record by industry of all payments from the fund.

#### **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).

**126.25 Definitions. In this subchapter:**

(1) "Capacity" means the maximum amount of grain, measured in bushels, that can be stored in a grain warehouse. The capacity of a grain warehouse is determined by dividing the cubic volume of all bins, expressed in cubic feet, by 1.244 cubic feet per bushel, and applying a pack factor that the department specifies by rule.

(2) "Contributing grain warehouse keeper" means a grain warehouse keeper who is licensed under s. 126.26, who either has paid one or more quarterly installments under s. 126.30 (6) or is required to contribute to the fund, but the first quarterly installment under s. 126.30 (6) is not yet due, and who is not disqualified under s. 126.29 (2).

(3) "Current ratio" means the ratio of the value of current assets to the value of current liabilities, calculated according to s. 126.28 (6) (c) 1.

(4) "Debt to equity ratio" means the ratio of the value of liabilities to equity, calculated according to s. 126.28 (6) (c) 2.

(5) "Depositor" means any of the following:

(a) A person who delivers grain to a grain warehouse keeper for storage, conditioning, shipping, or handling, without transferring ownership to the warehouse keeper.

(b) A person who owns or legally holds a warehouse receipt or other document that is issued by a grain warehouse keeper and that entitles the person to receive stored grain.

(6) "Disqualified grain warehouse keeper" means a grain warehouse keeper who is disqualified from the fund under s. 126.29 (2).

(8) "Grain warehouse" means a facility in this state that is used to receive, store, or condition grain for others or that is used in the shipment of grain for others, except that "grain warehouse" does not include a transport vehicle.

(9) "Grain warehouse keeper" means a person who operates one or more grain warehouses in this state to receive, store, condition, or ship grain for others, except that "grain warehouse keeper" does not include a person licensed under the United States Warehouse Act, 7 USC 241 to 271.

(9m) "License year" means the period beginning on September 1 and ending on the following August 31.

(11) "Warehouse receipt" means a receipt for grain, issued by a grain warehouse keeper, that is also a document of title under s. 401.201 (2) (i).

**126.26 Grain warehouse keepers; licensing.**

(1) License required.

(a) No grain warehouse keeper may hold at any time more than 50,000 bushels of grain for others without a current annual license from the department. A grain warehouse keeper who has grain warehouses with a combined capacity of more than 50,000 bushels shall obtain a license unless the grain warehouse keeper proves to the department that the grain warehouse keeper holds no more than 50,000 bushels of grain for others at any time.

(b) A license under par. (a) expires on the August 31 following its issuance. No person may transfer or assign a license issued under par. (a).

(2) License application. A person shall apply for a grain warehouse keeper license in writing, on a form provided by the department. The applicant shall provide all of the following:

(a) The applicant's legal name and any trade name under which the applicant proposes to operate as a grain warehouse keeper.

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

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

(d) The street address and capacity of every grain warehouse that the applicant operates or proposes to operate in this state and the name of a responsible individual who may be contacted at each warehouse.

(e) The combined capacity of all grain warehouses identified under par. (d).

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

(g) Proof that the applicant is insured as required under s. 126.27, unless the applicant has previously filed proof that remains current. The proof may consist of a certification provided by an insurance company licensed to do business in this state.

(h) A financial statement if required under s. 126.28 (1) and not yet filed.

(i) Other relevant information required by the department.

(3) License fees and surcharges. A person applying for a grain warehouse keeper license shall pay the following fees and surcharges in the amounts that the department specifies by rule:

(a) A nonrefundable basic license fee, which may be based on the number of grain warehouses that the applicant operates.

(b) A grain warehouse inspection fee, which may be based on the number and sizes of the grain warehouses that the applicant operates.

(c) A supplementary inspection fee for each grain warehouse that the applicant operates in excess of one grain warehouse.

(d) A license surcharge if the department determines that, within 365 days before submitting the license application, the applicant operated as a grain warehouse keeper without a license in violation of sub. (1). The applicant shall also pay any license fees, license surcharges, and fund assessments that are still due for the license year in which the applicant violated sub. (1).

(e) A license surcharge if during the preceding 12 months the applicant failed to file an annual financial statement required under s. 126.28 (1) (b) by the applicable deadline.

(f) A license surcharge if a renewal applicant fails to renew a license by the license expiration date of August 31.

(3m) Effect of payment of surcharge. Payment of a license surcharge under sub. (3) (d) does not relieve the applicant of any other civil or criminal liability that results from the violation of sub. (1), but does not constitute evidence of any law violation.

(4) License for part of year; fees. A person who applies for an annual grain warehouse keeper license after the beginning of a license year shall pay the full annual fee amounts required under sub. (3).

(5) Fee credit. Beginning on January 1, 2023, if the combined fund balance contributed by grain warehouse keepers and grain dealers, as defined in s. 126.10 (9), exceeds \$2,300,000 on May 31 of any license year, the department shall credit 12.5 percent of the excess amount against grain warehouse inspection fees charged under sub. (3) (b) to contributing grain warehouse keepers who file timely license renewal applications for the next license year. The department shall credit each contributing grain warehouse keeper on a prorated basis, in proportion to the total inspection fees that the warehouse keeper has paid under sub. (3) (b) for the 4 preceding license years.

(6) Fee statement. The department shall provide, with each license application form, a written statement of all license fees and surcharges required under sub. (3) or the formula for determining them. The department shall specify any fee credit for which the applicant may qualify under sub. (5).

(7) No license without full payment. The department may not grant a license under sub. (1) until the applicant pays all license fees and surcharges identified in the department's statement under sub. (6). The department shall refund a fee or surcharge paid under protest if upon review the department determines that the fee or surcharge is not applicable.

(8) Action granting or denying application. The department shall grant or deny a license application under sub. (2) within 30 days after the department receives a complete application. If the department denies a license application, the department shall give the applicant a written notice stating the reasons for the denial.

(9) License displayed. A grain warehouse keeper who is required to hold a license under sub. (1) shall prominently display a copy of that license at each grain warehouse.

(10) Notification. A licensed warehouse keeper shall notify the department, in writing, before the warehouse keeper adds a grain warehouse or changes the location or capacity of any grain warehouse. In the notice, the grain warehouse keeper shall specify any change in the combined capacity of grain warehouses operated by the grain warehouse keeper resulting from the proposed addition or change.

**126.27 Grain warehouse keepers; insurance.**

(1) Fire and extended coverage insurance. A grain warehouse keeper licensed under s. 126.26 (1) shall maintain fire and extended coverage insurance, issued by an insurance company authorized to do business in this state, that covers all grain in the custody of the grain warehouse keeper, whether owned by the grain warehouse keeper or held for others, at the full local market value of the grain.

(2) Insurance cancellation; replacement.

(a) No person may cancel an insurance policy required under sub. (1) unless that person serves a written notice of the intended cancellation on the department at least 30 days before the cancellation takes effect.

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

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

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

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

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

(5) Insurance coverage; misrepresentation. No grain warehouse keeper may misrepresent any of the following to the department or a depositor:

(a) That the grain warehouse keeper is insured.

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

**126.28 Grain warehouse keepers; financial statements.**

(1) Required annual financial statement.

(a) A grain warehouse keeper shall file an annual financial statement with the department before the department first licenses the warehouse keeper under s. 126.26 (1), if the warehouse keeper operates grain warehouses with a combined capacity of more than 300,000 bushels.

(b) A grain warehouse keeper licensed under s. 126.26 (1) shall file an annual financial statement with the department during each license year if the grain warehouse keeper operates



warehouses with a combined capacity of more than 300,000 bushels. The grain warehouse keeper shall file the annual financial statement by the 15th day of the 4th month following the close of the grain warehouse keeper's fiscal year, except that the department may extend the annual filing deadline for up to 30 days if the grain warehouse keeper, or the accountant reviewing or auditing the financial statement, files a written extension request at least 10 days before the filing deadline.

(2) Voluntary annual financial statement. A contributing grain warehouse keeper who is not required to file an annual financial statement under sub. (1) may file an annual financial statement with the department in order to qualify for a lower fund assessment under s. 126.30.

(3) Reviewed or audited financial statement. A grain warehouse keeper 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 grain warehouse keeper operates grain warehouses with a combined capacity of more than 1,500,000 bushels, the grain warehouse keeper shall file an audited financial statement.

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

(4m) Interim financial statement. The department may, at any time, require a grain warehouse keeper licensed under s. 126.26 (1) to file an interim financial statement with the department. 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 warehouse keeper 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 warehouse keeper is a sole proprietor and the grain warehouse keeper's financial statement is not audited, the grain warehouse keeper 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 warehouse keeper 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. A grain warehouse keeper who is a sole proprietor shall file his or her business and personal financial statements.

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

(c) A grain warehouse keeper 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 warehouse keeper's current ratio, excluding any assets required to be excluded under sub. (7).

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

(7) Assets excluded. A grain warehouse keeper may not include any of the following assets in calculating the ratios 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 warehouse keeper has established an equal 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.

**126.29 Contributing grain warehouse keepers; disqualification.**

(1) Contribution required. A grain warehouse keeper licensed under s. 126.26 (1) shall pay fund assessments under s. 126.30 unless the grain warehouse keeper is disqualified under sub. (2).

(2) Disqualified warehouse keeper.

(a) A grain warehouse keeper who is required to file security under s. 126.31 (1) (a) is disqualified from the fund until the department releases that security under s. 126.31 (8) (a).

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

(3) Payments by disqualified grain warehouse keeper.

(a) The department may not return, to a disqualified grain warehouse keeper, any fund assessments that the warehouse keeper paid as a contributing grain warehouse keeper.

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

**126.30 Grain warehouse keepers; fund assessments.**

(1) General. A contributing grain warehouse keeper shall pay an annual fund assessment for each license year. Except as provided in sub. (5m), the assessment equals \$20 or the sum of the following, whichever is greater, unless the department by rule specifies a different assessment:

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

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

(2) Current ratio assessment rate. A grain warehouse keeper's current ratio assessment rate is calculated, at the beginning of the license year, as follows:

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

1. Subtract one from the current ratio.
2. Divide the amount determined under subd. 1. by 3.
3. Multiply the amount determined under subd. 2. by negative one.
4. Raise the amount determined under subd. 3. to the 3rd power.
5. Subtract 0.75 from the current ratio.
6. Divide 0.65 by the amount determined under subd. 5.
7. Raise the amount determined under subd. 6. to the 5th power.
8. Add the amount determined under subd. 4. to the amount determined under subd. 7.
9. Add 2 to the amount determined under subd. 8.

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

1. Subtract one from the current ratio.
2. Divide the amount determined under subd. 1. by 3.
3. Multiply the amount determined under subd. 2. by negative one.
4. Raise the amount determined under subd. 3. to the 3rd power.

5. Subtract 0.75 from the current ratio.
6. Divide 0.65 by the amount determined under subd. 5.
7. Raise the amount determined under subd. 6. to the 5th power.
8. Add the amount determined under subd. 4. to the amount determined under subd. 7.
9. Add 2 to the amount determined under subd. 8.

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

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

(3) Current ratio assessment factor.

(a) A grain warehouse keeper's current ratio assessment factor under sub. (2) (a) is 0.00003 except that, for the grain warehouse keeper's 5th or higher consecutive full license year as a contributing grain warehouse keeper, the grain warehouse keeper's current ratio assessment factor is zero.

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

(4) Debt to equity ratio assessment rate. A grain warehouse keeper's debt to equity ratio assessment rate is calculated, at the beginning of the license year, as follows:

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

1. Subtract 4 from the debt to equity ratio.
2. Divide the amount determined under subd. 1. by 3.
3. Raise the amount determined under subd. 2. to the 3rd power.
4. Subtract 1.7 from the debt to equity ratio.
5. Divide the amount determined under subd. 4. by 1.75.
6. Raise the amount determined under subd. 5. to the 7th power.
7. Add the amount determined under subd. 3. to the amount determined under subd. 6.
8. Add 2 to the amount determined under subd. 7.

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

1. Subtract 4 from the debt to equity ratio.
2. Divide the amount determined under subd. 1. by 3.
3. Raise the amount determined under subd. 2. to the 3rd power.
4. Subtract 1.7 from the debt to equity ratio.
5. Divide the amount determined under subd. 4. by 1.75.
6. Raise the amount determined under subd. 5. to the 7th power.
7. Add the amount determined under subd. 3. to the amount determined under subd. 6.
8. Add 2 to the amount determined under subd. 7.

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

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

(5) Debt to equity ratio assessment factor.

(a) A grain warehouse keeper's debt to equity ratio assessment factor under sub. (4) (a) is 0.0000125, except that it is zero for the grain warehouse keeper's 5th or higher consecutive full license year as a contributing grain warehouse keeper.

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

(5m) Reduced assessment for certain grain warehouse keepers filing security. If a grain warehouse keeper files security under s. 126.31 (1) (b), the grain warehouse keeper's assessment is the amount determined under sub. (1) reduced by an amount determined as follows:

(a) Divide the amount of security that the grain warehouse keeper is required to file as determined under s. 126.31 (3) (b) by the amount of the grain warehouse keeper's estimated default exposure, as defined in s. 126.31 (1) (b) 1.

(b) Multiply the amount of the assessment determined under sub. (1) by the amount determined under par. (a).

(6) Quarterly installments.

(a) A contributing grain warehouse keeper shall pay the grain warehouse keeper's annual fund assessment in equal quarterly installments that are due as follows:

1. The first installment is due on October 1 of the license year.
2. The 2nd installment is due on January 1 of the license year.
3. The 3rd installment is due on April 1 of the license year.
4. The 4th installment is due on July 1 of the license year.

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

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

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

(7) Notice of annual assessment and quarterly installments. When the department issues an annual license to a contributing grain warehouse keeper, the department shall notify the grain warehouse keeper of all of the following:

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

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

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

### **126.31 Grain warehouse keepers; security.**

(1) Security required.

(a) A grain warehouse keeper shall file security with the department, and maintain that security until the department releases it under sub. (8), if all of the following apply when the department first licenses the grain warehouse keeper under s. 126.26 (1):

1. The grain warehouse keeper operates grain warehouses with a combined capacity of more than 300,000 bushels.

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

(b)

1. In this paragraph, "estimated default exposure" means 20 percent of the current local market value of grain that the grain warehouse keeper holds in this state for others.

2. A grain warehouse keeper shall file security with the department, and maintain that security until the department releases it under sub. (8) (am), if the grain warehouse keeper files an annual financial statement under s. 126.28 (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 warehouse keeper's estimated default exposure is greater than \$20,000,000.

(3) Amount of security.

(a) Except as provided in par. (b), a grain warehouse keeper who is required to file or maintain security under this section shall at all times maintain security equal to at least 20 percent of the current local market value of grain that the grain warehouse keeper holds in this state for others.

(b) A grain warehouse keeper who is required to file or maintain security only under sub. (1) (b) shall at all times maintain security equal to the grain warehouse keeper's estimated default exposure, as defined in sub. (1) (b) 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 depositors.
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 depositors.
2. The certificate may not be canceled or redeemed without the department's written permission.
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 depositors.
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 depositors.
- (6) Additional security.
- (a) The department may, at any time during a license year, demand additional security from a grain warehouse keeper if any of the following applies:
1. The grain warehouse keeper's existing security falls below the amount required under sub. (3) for any reason, including depreciation in the value of the security, increased obligations to depositors, or the cancellation of any security filed with the department.
  2. The grain warehouse keeper 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 additional 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 warehouse keeper 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 warehouse keeper fails to comply with the department's demand for security under this subsection, the grain warehouse keeper shall give written notice of that fact to all depositors. If the grain warehouse keeper 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 depositors by publishing a class 3 notice under ch. 985. The department may also give individual notice to depositors of whom the department is aware.
- (e) If a grain warehouse keeper fails to comply with the department's demand for security under this subsection, the department may do any of the following:
1. Issue an appropriate summary order under s. 126.85 (2).
  2. Suspend or revoke the grain warehouse keeper's license.
- (7) Monthly reports. A grain warehouse keeper who is required to file or maintain security under this section shall file monthly reports with the department. The grain warehouse keeper shall file the report by the 10th day of each month, in a form specified by the department. In a monthly report, the grain warehouse keeper shall provide information reasonably required by the department, including the amount of each type of grain stored in each grain warehouse on the last day of the preceding month.



(8) Releasing security.

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

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

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

(am) The department may release security filed under sub. (1) (b), except for any amount of security that the grain warehouse keeper is required to file because sub. (1) (a) applies to the grain warehouse keeper, if the grain warehouse keeper files 2 consecutive annual financial statements under s. 126.28 showing that the grain warehouse keeper 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.

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

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

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

**126.32 Grain warehouse keepers; records.**

(1) Records and accounts; general. A grain warehouse keeper shall maintain current, complete, and accurate records and accounts of all grain received into and withdrawn from each grain warehouse, including records required under subs. (2) and (3).

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

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

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

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

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

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

(a) The depositor's name and address.

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

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

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

(4) Adjusting records.

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

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

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

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

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

(5) Records retention; availability.

(a) A grain warehouse keeper shall retain all records required under this section and s. 126.33 (3) for at least 6 years from the date of their creation.

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

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

(6) Reviewing records.

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

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

### **126.33 Receipts for grain.**

(1) Requirement. Immediately after a grain warehouse keeper receives grain from a depositor, the grain warehouse keeper shall give the depositor a warehouse receipt or other storage receipt that includes all of the following:

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

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

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

(d) The kind of grain received.

(e) The net weight of grain received.

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

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

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

1. A warehouse receipt.

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

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

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

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

### **126.34 Grain warehouse keepers; business practices.**

(1) Grain weight, grade, and quality. A grain warehouse keeper shall do all of the following when determining the weight, grade, or quality of grain:

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

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

(2) Care of grain; facilities. A grain warehouse keeper shall safeguard grain held for others and shall protect that grain from loss or abnormal deterioration. A grain warehouse keeper shall maintain adequate facilities and equipment for that purpose.

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

(4) Returning grain to depositors.

(a) Except as provided in par. (b), a grain warehouse keeper shall deliver to a depositor, upon demand, the same grade and amount of grain as was deposited.

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

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

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

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

(5) Prohibited practices. No grain warehouse keeper, or officer, employee, or agent of a grain warehouse keeper, may do any of the following:

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

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

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

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

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

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

(g) Assault, threaten, intimidate, or otherwise interfere with an officer, employee, or agent of the department in the performance of his or her duties.

**126.68 Definitions. In this subchapter:**

(1) "Contributing contractor" means any of the following:

(a) A contributing grain dealer, as defined in s. 126.10 (3).

- (b) A contributing grain warehouse keeper, as defined in s. 126.25 (2).
- (c) A contributing milk contractor, as defined in s. 126.40 (1).
- (d) A contributing vegetable contractor, as defined in s. 126.55 (4).
- (2) "Depositor" has the meaning given in s. 126.25 (5).
- (3) "Grain dealer" has the meaning given in s. 126.10 (9).
- (4) "Grain producer" has the meaning given in s. 126.10 (10).
- (5) "Grain warehouse keeper" has the meaning given in s. 126.25 (9).
- (6) "Milk contractor" has the meaning given in s. 126.40 (8).
- (7) "Milk producer" has the meaning given in s. 126.40 (10).
- (8) "Producer grain" has the meaning given in s. 126.10 (14).
- (9) "Producer milk" has the meaning given s. 126.40 (14).
- (10) "Vegetable contractor" has the meaning given in s. 126.55 (14).
- (11) "Vegetable procurement contract" has the meaning given in s. 126.55 (15).
- (12) "Vegetable producer" has the meaning given in s. 126.55 (16).

**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.

(gm) That the claim relates to a payment that first became due, under a deferred payment contract for milk, after the payment due date under s. 126.485 (4) (b).

(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.

(L) That the claimant was eligible, at any time before filing a default claim under sub. (2), to file a claim against the defaulting contractor in a federal bankruptcy proceeding under 11 USC 101 et seq. initiated by a party other than the claimant, or a proceeding under ch. 128 initiated by a party other than the claimant, or both, and did not file a claim against the defaulting contractor in each proceeding in which the claimant was eligible to file a claim.

(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).

### **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 percent 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.

#### **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 percent 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.

**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.

(4) Subrogation. The department is subrogated to the rights of a claimant who obtains a payment under s. 126.72 (1) or (2) in an amount equal to the payment, against the defaulting contractor and against any party that would otherwise be liable to the claimant for the amount of the default.

**126.78 Definitions. In this subchapter:**

(1) "Contributing contractor" has the meaning given in s. 126.68 (1).

(2) "Depositor" has the meaning given in s. 126.25 (5).

(3) "Grain dealer" has the meaning given in s. 126.10 (9).

(4) "Grain warehouse keeper" has the meaning given in s. 126.25 (9).

(5) "Milk contractor" has the meaning given in s. 126.40 (8).

(6) "Producer agent" means a person who is a producer agent, as defined in s. 126.10 (13), 126.40 (13), or 126.55 (12).

(7) "Vegetable contractor" has the meaning given in s. 126.55 (14).

(8) "Vegetable producer" has the meaning given in s. 126.55 (16)..

**126.80 Department authority; general.**

The department shall administer this chapter.

**126.81 Rule-making.**

(1) The department may promulgate rules to do any of the following:

(a) Interpret and implement this chapter.

(b) Modify the license fees and surcharges under s. 126.41 (3).

- (c) Specify additional circumstances for denying claims under s. 126.70 (4) (k).
  - (d) Require a contractor to notify producers and producer agents of the contractor's license, security, or fund contribution status under this chapter.
- (2m) The department shall promulgate rules to do all of the following:
- (a) Specify license fees and surcharges under ss. 126.11 (4), 126.26 (3), and 126.56 (4).
  - (b) Specify fund assessments under s. 126.46 (1).

#### **126.82 Investigations.**

The department may conduct investigations that it considers necessary for the administration of this chapter, including investigations to determine any of the following:

- (1) Whether a contractor complies with this chapter.
- (2) Whether a contractor is able to honor contract obligations when due.
- (3) Whether a contractor has failed to honor contract obligations when due.
- (4) Whether a grain warehouse keeper has sufficient grain on hand to meet the grain warehouse keeper's obligations to depositors.
- (5) The nature and amount of a contractor's storage obligations or other contract obligations.

#### **126.83 Information.**

The department may require a contractor to provide information that is relevant to the administration and enforcement of this chapter.

#### **126.84 Records; confidentiality.**

(1) Public records exemption. The following records obtained by the department under this chapter are not open to public inspection under s. 19.35:

- (a) Contractor financial statements.
  - (b) A contractor's purchase, storage, or procurement records.
- (2) Use of records in court or administrative proceedings. Notwithstanding sub. (1), the department may introduce any information obtained under this chapter in a court proceeding or administrative contested case, subject to any protective order that the court or administrative tribunal determines to be appropriate.

#### **126.85 Remedial orders.**

(1) General. The department may, by special order, require a contractor to remedy a violation of this chapter, a rule promulgated under this chapter, or a condition imposed under s. 126.86 (1). The department may order the contractor to take specific remedial actions, including actions to remedy deficiencies or to prevent losses to persons protected under this chapter. In an order under this subsection, the department may disqualify the contractor from the fund pending compliance with the order. Except as provided in sub. (2), the department shall give the contractor notice and an opportunity for hearing before the department issues an order.

(2) Summary order. The department may issue an order under sub. (1) without prior notice or hearing if the department finds that the order is necessary to prevent a clear and imminent threat of harm to persons protected under this chapter. Conditions indicating a clear and imminent threat of harm include the following:

(a) A contractor fails to pay producers according to this chapter or according to the contractor's contracts with producers.

(b) A contractor fails to file replacement insurance within the time required under this chapter.

(c) A contractor fails to file security according to this chapter, or in response to the department's demand under this chapter.

(d) A contractor fails to pay a fund assessment when due.

(e) A vegetable contractor fails to pay vegetable producers by January 31 for vegetables delivered by December 31 of the previous year, except as authorized in a deferred payment contract.

(f) A grain warehouse keeper fails to return grain to depositors upon demand, as required under s. 126.34 (4).

(g) A grain warehouse keeper fails to maintain adequate grain inventory as required under s. 126.34 (3), and at least one of the following applies:

1. The amount of the deficiency exceeds 10,000 bushels or 10 percent of the grain warehouse keeper's obligations to depositors, whichever amount is less.

2. The grain warehouse keeper fails to correct the deficiency within 15 days after receiving the department's written notice that a deficiency exists.

(h) A contractor fails to file a financial statement with the department by the time or in the form required under this chapter.

(i) A contractor fails to pay an amount owed under s. 126.73 within 60 days after the contractor receives a written demand for payment from the department or other person to whom payment is due under s. 126.73.

(3) Hearing on summary order.

(a) A contractor named in a summary order under sub. (2) may, within 10 days after receiving the order, request a hearing on the order. The department shall hold an informal hearing as soon as possible after receiving a hearing request, but not later than 10 days after receiving the hearing request, unless the contractor waives the informal hearing or agrees to hold it at a later date. If the matter is not resolved at the informal hearing, the department shall hold a contested case hearing under ch. 227 as soon as reasonably possible.

(b) A hearing request under par. (a) does not automatically stay a summary order. The department may stay a summary order pending hearing.

#### **126.86 License actions.**

(1) General. The department may for cause deny, suspend, revoke, or impose conditions on a contractor's license, as provided in s. 93.06 (7) and (8). Cause may include any of the following:

- (a) The contractor fails to comply with this chapter or a rule promulgated under this chapter.
- (b) The contractor fails to comply with an order that the department issues under this chapter.
- (c) The contractor fails to provide relevant information that the department requests under this chapter or falsifies information provided to the department.
- (d) The contractor fails to file a financial statement, security, fees, or assessments required under this chapter, or fails to meet other requirements for licensing.
- (e) The contractor fails to honor contract obligations to persons who are authorized to file default claims under s. 126.70 (1).
- (f) The contractor fails to pay an amount owed under s. 126.73 within 60 days after the contractor receives a written demand for payment from the department or other person to whom payment is due under s. 126.73.

(2) Hearing on license action; general. Except as provided in sub. (3), the department shall give a contractor notice and an opportunity for hearing before the department suspends, revokes, or imposes conditions on a license held by the contractor.

(3) Summary action.

(a) The department may, without prior notice or hearing, summarily suspend, revoke, or impose conditions on a license held by a contractor if the department finds that any of the conditions identified in s. 126.85 (2) exist or otherwise finds that summary action is necessary to prevent a clear and imminent threat of harm to persons protected under this chapter.

(b) A contractor who is the subject of a summary action under par. (a) may, within 10 days after receiving notice of that action, request a hearing on the action. The department shall hold an informal hearing as soon as possible after receiving a hearing request, but not later than 10 days after receiving the hearing request, unless the contractor waives the informal hearing or agrees to hold it at a later date. If the matter is not resolved at the informal hearing, the department shall hold a contested case hearing under ch. 227 as soon as reasonably possible.

(c) A request for hearing under par. (b) does not automatically stay a summary action under par. (a). The department may stay a summary action pending hearing.

### **126.87 Court actions.**

(1) Injunction. The department may petition the circuit court for an ex parte temporary restraining order, a temporary injunction, or a permanent injunction to prevent, restrain, or enjoin any person from violating this chapter, any rule promulgated under this chapter, or any order issued under this chapter. The department may seek this remedy in addition to any other penalty or remedy provided under this chapter.

(2) Penalties.

(a) A person who violates this chapter, a rule promulgated under this chapter, or an order issued under this chapter is subject to a forfeiture of not less than \$250 nor more than \$5,000 for each violation.

(b) A person who intentionally violates this chapter, a rule promulgated under this chapter, or an order issued under this chapter may be fined not more than \$10,000 or imprisoned for not more than one year in the county jail or both.

(4) Private remedy.

(a) A person whose claim is allowed under s. 126.70 may bring an action against the contractor to recover the amount of the allowed claim, less any recovery amount that the department pays to the claimant under s. 126.71. In any court action under this subsection, the claimant may recover costs including all reasonable attorney fees, notwithstanding s. 814.04 (1). This subsection does not limit any other legal cause of action that the claimant may have against the contractor.

(b) A claim allowed under s. 126.70 has the same priority in an insolvency proceeding or creditor's action as a claim for wages, except as otherwise provided by federal law.

(5) Collections. The department may bring an action in court to recover any unpaid amount that a contractor owes the department under this chapter, including any unpaid fund assessment or reimbursement.

#### **126.88 Modifying fund assessments.**

(1) The department may by rule modify the fund assessments provided under s. 126.15, 126.30, or 126.60. The department shall modify fund assessments under ss. 126.15, 126.30, 126.46, and 126.60 as necessary to do all of the following:

(a) Maintain an overall fund balance of at least \$5,000,000, but not more than \$22,000,000.

(b) Maintain a combined fund balance attributable to grain dealers and grain warehouse keepers of at least \$1,200,000, but not more than \$7,000,000.

(d) Maintain a fund balance attributable to milk contractors of at least \$3,000,000, but not more than \$12,000,000.

(e) Maintain a fund balance attributable to vegetable contractors of at least \$800,000, but not more than \$3,000,000.

(2)

(a) If the fund balance for a portion of the fund under sub. (1) (b) to (e) falls below the minimum amount required for that portion of the fund, the department shall by rule modify the assessment rates for the type of contractor that contributes to that portion of the fund so that the assessment rates are adequate to reach and maintain the minimum balance within a reasonable time.

(b) The department may use the procedure under s. 227.24 to promulgate a rule modifying an assessment under par. (a). In a rule promulgated under this paragraph, the department may not provide that the modification of an assessment takes effect before the beginning of the next license year. Notwithstanding s. 227.24 (1) (c) and (2), a rule promulgated under this paragraph may remain in effect for not more than 24 months. Notwithstanding s. 227.24 (1) (a) and (3), the department is not required to determine that promulgating a rule under this paragraph as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this paragraph.

**126.89 Calculations.**

If a number used in or resulting from a calculation made to determine the amount of an assessment under s. 126.15, 126.30, 126.46, or 126.60, other than a number that appears in one of those sections, extends more than 6 decimal places to the right of the decimal point, a person making the calculation shall round the number to the nearest whole digit in the 6th decimal place to the right of the decimal point. The amount of an assessment may be rounded to the nearest whole dollar.

**126.90 Agricultural producer security council.**

The agricultural producer security council shall advise the department on the administration and enforcement of this chapter. The council shall meet as often as the department considers necessary, but at least once annually. The department shall inform the council of fund balances and payments. The department shall consult with the council before acquiring any contingent financial backing under s. 126.06 and before modifying any license fee, license surcharge, or fund assessment under this chapter.