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Requirements for Grain Dealers

State of Indiana

Auditing

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Requirements for Grain Dealers

STATE OF INDIANA

Current with legislation from the 2014 Second Regular Sess and Second Regular Technical Sess

IC 26-3-7-6.1

26-3-7-6.1 Filing of financial statements and supporting documents; issuance of fines

(a) Not more than ninety (90) days after the end of a licensee's fiscal year, the licensee shall file with the agency a current review level financial statement or better financial statement that reflects the licensee's financial situation for the previous fiscal year. A financial statement submitted under this section must:

- (1) be prepared by an independent accountant certified under IC 25-2.1;
- (2) comply with generally accepted accounting principles; and
- (3) contain:
 - (A) an income statement;
 - (B) a balance sheet;
 - (C) a statement of cash flow;
 - (D) a statement of retained earnings;
 - (E) the preparer's notes; and
 - (F) other information the agency requires.

The director may adopt rules under IC 4-22-2 to allow the agency to accept other substantial supporting documents instead of those listed to determine the financial solvency of the applicant if the director determines that providing the listed documents creates a financial or other hardship on the applicant or licensee.

(b) If the licensee has failed to timely file the financial statement as required in subsection (a), the agency may assess a fine as follows:

- (1) Twenty percent (20%) of the licensee's renewal fee for a financial statement that is at least one (1) and less than sixteen (16) days late.
- (2) Forty percent (40%) of the licensee's renewal fee for a financial statement that is more than fifteen (15) and less than thirty-one (31) days late.
- (3) Sixty percent (60%) of the licensee's renewal fee for a financial statement that is more than thirty (30) and less than forty-six (46) days late.
- (4) Eighty percent (80%) of the licensee's renewal fee for a financial statement that is more than forty-five (45) and less than sixty-one (61) days late.
- (5) One hundred percent (100%) of the licensee's renewal fee for a financial statement that is more than sixty (60) days late.

IC 26-3-7-16.5

26-3-7-16.5 Determination of shortages; payment of claims; hearings and procedures

- (a) Upon learning of the possibility that a shortage exists, either as a result of an inspection or a report or complaint from a depositor, the agency, based on an on-premise inspection, shall make a preliminary determination as to whether a shortage exists. If a shortage is not discovered, the agency shall treat the audit as it would any other audit.
- (b) If it is determined that a shortage may exist, the director or the director's designated representative shall hold a hearing as soon as possible to confirm the existence of a shortage as indicated by the licensee's books and records and the grain on hand. Only the licensee, the surety company named on the licensee's bond, the issuer of the irrevocable letter of credit, and any grain depositor who has made a claim or complaint to the agency in conjunction with the shortage shall be considered as interested parties for the purposes of that hearing, and each shall be given notice of the hearing. At the hearing, the director or the director's designated representative shall determine whether there appears to be a reasonable probability that a shortage exists. If it is determined that a reasonable probability exists and that the bond or letter of credit proceeds or the cash deposit should be distributed, a preliminary determination shall be entered to the effect that the licensee has failed to meet its obligations under this chapter or the rules adopted under this chapter. At the hearing, the director or the director's designated representative may order that all proceeds from grain sales are to be held in the form in which they are received and to be kept separate from all other funds held by the licensee. The order may also provide for informal conferences between agency representatives and persons who have or who appear to have grain deposited with the licensee. The surety company shall be permitted to participate in those conferences.
- (c) In the event that the director determines that the bond or letter of credit proceeds or cash deposit is to be distributed, the agency shall hold a hearing on claims. Notice shall be given to the surety company named on the licensee's bond, the issuer of the irrevocable letter of credit, and to all persons shown by the licensee's books and records to have interests in grain deposited with the licensee. If the agency has actual knowledge of any other depositor or person claiming rights in the grain deposited with the licensee, the bond, the irrevocable letter of credit, or the cash deposit, notice shall also be provided to that person. In addition, public notice shall be provided in newspapers of general circulation that serve the counties in which licensed facilities are located, and notices shall be posted on the licensed premises. At the hearing on claims, the director may accept as evidence of claims the report of agency representatives who in informal conferences with depositors have concluded that a claim is directly and precisely supported by the licensee's books and records. When there is disagreement between the claims of a depositor and the licensee's books and records, the director or the director's designated representative shall hear oral claims and receive written evidence of claims in order to determine the validity of the claim.
- (d) Any depositor who does not present a claim at the hearing may bring the claim to the agency within fifteen (15) days after the conclusion of the hearing.
- (e) Following the hearing on claims, the director shall make a determination as to the total proven storage obligation of the claimants and the loss sustained by each depositor who has proven a claim. Depositors found to have proven their claims shall be proven claimants. In arriving at that loss, in accordance with section 19 of this chapter, the director shall apply all grain on hand or its identifiable proceeds to meet the licensee's obligations to grain depositors of grain of that type. Initial determinations of loss shall be made on the amount of grain on hand, or identifiable proceeds, and shall reduce the amount to which a depositor may have a proven claim. With respect to the remaining unfulfilled obligations, the director shall, for the sole purpose of establishing each depositor's claim

under this chapter, establish a date upon which the loss is discovered, shall price the grain as of that date, shall treat all outstanding grain storage obligations not covered by grain on hand or identifiable proceeds as being sold as of that date, and shall determine the extent of each depositor's loss as being the actual loss sustained as of that date. Grain of a specific type on the premises of a licensee must first be applied to meet the licensee's storage obligations with respect to that type of grain. If there is insufficient grain of a specific type on hand to meet all storage obligations with respect to that type of grain, the grain that is present shall be prorated in accordance with the procedures described in this section and section 16.8 of this chapter.

(f) Upon the failure of the agency to begin an audit, which would serve as the basis for a preliminary administrative determination, within forty-five (45) days of the agency's receipt of a written claim by a depositor, a depositor shall have a right of action upon the bond, letter of credit, or cash deposit. A depositor bringing a civil action need not join other depositors. If the agency has undertaken an audit within the forty-five (45) day period, the exclusive remedy for recovery against the bond, letter of credit, or cash deposit shall be through the recovery procedure prescribed by this section.

(g) When the proven claims exceed the amount of the bond, letter of credit, or cash deposit, recoveries of proven claimants shall be prorated in the same manner as priorities are prorated under section 16.8 of this chapter.

(h) The proceedings and hearings under this section may be undertaken without regard to, in combination with, or in addition to those undertaken in accordance with section 17.1 of this chapter.

(i) The findings of the director shall be final, conclusive, and binding on all parties.

(j) The director may adopt rules under IC 4-22-2 to determine how the agency may distribute the interest that may accrue from funds held by the agency for the payment of claims.

(k) A claim of a licensee for stored grain may not be honored until the proven claims of all other claimants arising from the purchase, storage, and handling of the grain have been paid in full.

IC 26-3-7-28

26-3-7-28 Records and accounts; retention

A licensee shall keep in a place of safety complete and correct records and accounts pertaining to the licensee's grain business. The licensee shall retain records and accounts for not less than six (6) years from the date of the final settlement of the transaction.

IC 26-3-7-33

26-3-7-33 Examination of warehouse; fee; expenses

In addition to all other inspections and investigations authorized by this chapter, the director or the director's designated representative may, upon request of any person having an interest in grain in a licensed warehouse, cause the warehouse to be examined. The director or the director's representative may check the outstanding receipts and tickets against the grain on hand and advise each depositor of any shortage with respect to any grain in which the person has an interest. If the cost of the examination is more than twenty-five dollars (\$25.00), the person requesting the examination shall pay the additional cost to the director unless a shortage is found to exist.