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## **Requirements for Grain Dealers**

### **State of Indiana**

*Licensing*

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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 26-3-7-4**

#### **26-3-7-4 License; application; exemptions; suspension or revocation; prohibited operation**

- (a) A person may not operate a warehouse or conduct business as a grain buyer or buyer-warehouse without first having obtained the appropriate license from the agency, nor may a person continue to operate a warehouse or conduct business as a grain buyer or buyer-warehouse after the person's license has been revoked or suspended, except as provided in section 18 of this chapter.
- (b) All facilities in Indiana that an applicant for a license uses to store or handle grain must qualify for and obtain a license and be licensed under this chapter before the applicant may operate a warehouse or conduct business as a grain buyer in Indiana. An applicant may not be licensed unless all of the applicant's facilities qualify for a license under this chapter. An applicant for a license must apply to the agency for a license that covers all facilities operated by the applicant for the storage or handling of grain in Indiana.
- (c) If a licensee acquires an additional grain storage or handling facility in Indiana, the licensee shall promptly submit to the agency an amended application for licensure. A licensee shall promptly notify the agency of a material change to the licensee's operations, such as expansion of the amount of storage being used in the licensee's existing facilities or change of ownership of a facility, and shall provide the director with additional information the director may require. A licensee shall obtain the approval of the director before making use of increased storage or handling capacity.
- (d) A licensee that acquires an additional grain storage or handling facility that is required to be licensed shall not use the facility for the storage or handling of grain until it qualifies for and is issued a license and is licensed as provided in this chapter. If a licensed grain storage or handling facility that a licensee operates in Indiana becomes ineligible for a license at any time for any reason, it shall not be used for the storage or handling of grain until the condition making it ineligible is removed.
- (e) A licensee shall maintain at least eighty percent (80%) of the unpaid balance of grain payables in unencumbered assets represented by the aggregate of the following:
- (1) Company owned grain.
  - (2) Cash on hand.
  - (3) Cash held on account in federally or state licensed financial institutions or lending institutions of the Federal Farm Credit Administration.
  - (4) Investments held in time accounts with federally or state licensed financial institutions.
  - (5) Direct obligations of the United States government.
  - (6) Balances in grain margin accounts determined by marking to market.
  - (7) Balances due or to become due to the licensee on deferred pricing contracts.
  - (8) Marketable securities, including mutual funds.
  - (9) Irrevocable letters of credit that are:

- (A) in favor of the agency;
  - (B) acceptable to the agency; and
  - (C) in addition to any letter of credit deposited with the director to satisfy the bonding requirement of this chapter.
- (10) Deferred pricing contract service charges due or to become due to the licensee.
  - (11) Other evidence of proceeds from or of grain that is acceptable to the agency.
  - (12) Other assets approved by the director.
- (f) A licensee must have the minimum positive net worth specified in section 16 of this chapter to hold any license or do business.

#### **IC 26-3-7-4.1**

##### **26-3-7-4.1 Renewal applications; items required for inclusion; contents**

- (a) The agency shall mail by first class mail a renewal application, which must include a listing of all the licensee's facilities, to each licensee before the end of the licensee's fiscal year. The renewal application form must be completed and returned to the agency not later than ninety (90) days after the end of the licensee's fiscal year. The licensee must forward, with the renewal application, the following:
- (1) Current reviewed level financial statement.
  - (2) Updated financial profile form supplied by the agency.
  - (3) Appropriate license fee.
- (b) A renewal application must contain the information as required under rules adopted by the agency. The licensee shall receive an annual renewal license application form appropriate to the license issued to the licensee. The annual renewal license application forms are for a:
- (1) grain bank;
  - (2) warehouse;
  - (3) grain buyer; or
  - (4) buyer-warehouse.

#### **IC 26-3-7-6**

##### **26-3-7-6 Types of licenses issued; application for license; fees; payment of fees; current liability ratio; review level financial statement; inspection**

- (a) The agency shall issue the following licenses:
- (1) A grain bank license may be issued to a person that:
    - (A) stores only grain bank grain;
    - (B) has a storage capacity of not more than fifty thousand (50,000) bushels of grain; and
    - (C) purchases less than fifty thousand (50,000) bushels of grain per year.
  - (2) A warehouse license may be issued to a person that:
    - (A) stores grain for hire; and
    - (B) purchases less than fifty thousand (50,000) bushels of grain per year.
  - (3) A grain buyer license may be issued to a person that:
    - (A) purchases annually at least fifty thousand (50,000) bushels of grain that are not for the sole purpose of feeding the person's own livestock or poultry;
    - (B) chooses to obtain a grain buyer's license; or

(C) offers deferred pricing, delayed payments, or contracts linked to the commodity futures or commodity options market in connection with grain purchases.

(4) A buyer-warehouse license may be issued to a person that operates both as a warehouse and as a grain buyer.

(b) An applicant shall file with the director a separate application for each license or amendment of a license at the times, on the forms, and containing the information that the director prescribes.

(c) An initial application for a license must be accompanied by a license fee as follows:

(1) For a grain bank or for a warehouse or buyer-warehouse with a storage capacity of less than two hundred fifty thousand (250,000) bushels, two hundred fifty dollars (\$250) for the first facility and fifty dollars (\$50) for each additional facility.

(2) For a warehouse or a buyer-warehouse with a storage capacity of at least two hundred fifty thousand (250,000) bushels but less than one million (1,000,000) bushels, five hundred dollars (\$500) for the first facility and fifty dollars (\$50) for each additional facility.

(3) For a warehouse or a buyer-warehouse with a storage capacity of at least one million (1,000,000) bushels but less than ten million (10,000,000) bushels, seven hundred fifty dollars (\$750) for the first facility and fifty dollars (\$50) for each additional facility.

(4) For a warehouse or buyer-warehouse with a storage capacity greater than ten million (10,000,000) bushels, one thousand dollars (\$1,000) for the first facility and fifty dollars (\$50) for each additional facility.

(5) For a grain buyer, including a grain buyer that is also licensed as a warehouse under the warehouse act, five hundred dollars (\$500) for the first facility and fifty dollars (\$50) for each additional facility.

The director may prorate the initial application fee for a license that is issued at least thirty (30) days after the anniversary date of the licensee's business.

(d) Before the anniversary date of the license, the licensee shall pay an annual fee in an amount equal to the amount required under subsection (c). The director may prorate the annual application fee for a license that is modified at least thirty (30) days after the anniversary date of the licensee's license.

(e) A licensee or an applicant for an initial license must have a minimum current asset to current liability ratio of one to one (1:1) or better.

(f) An applicant for an initial license shall submit with the person's application a review level financial statement or better financial statement that reflects the applicant's financial situation on a date not more than fifteen (15) months before the date on which the application is submitted. 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 may require.

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.

(g) An application for a license implies a consent to be inspected.

(h) Fees collected under this section shall be deposited in the grain buyers and warehouse licensing agency license fee fund established by section 6.3 of this chapter.

### **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 26-3-7-7**

#### **26-3-7-7 Issuance of license or permit; false statements; applicant's qualifications**

(a) The director may issue or amend a license after the director has:

- (1) received and approved the required information and documentation; and
- (2) determined that:
  - (A) the facility or facilities covered by the application are suitable for the proper storage or handling of the grain intended to be stored or handled in the facility or facilities; and
  - (B) the applicant has complied with this chapter and the rules adopted under this

chapter.

(b) A person may not represent that the person is licensed under this chapter, and may not use a name or description that conveys the impression that the person is licensed, in a receipt or otherwise, unless the person holds an unsuspended and unrevoked license to conduct the business indicated by the license.

(c) An applicant for a license under this chapter must show that the applicant:

- (1) has a good business reputation;
- (2) has not been involved in improper manipulation of books and records or other improper business practice;
- (3) has the qualifications and background essential for the conduct of the business to be licensed;
- (4) employs management and principal officers that have suitable business reputations, background, and qualifications to perform their duties;
- (5) has not been found guilty of a crime that would affect the licensee's ability to conduct business with integrity; and
- (6) does not employ an officer, director, partner, or manager that has been found guilty of a crime that would affect the licensee's ability to conduct business with integrity.

#### **IC 26-3-7-8**

#### **26-3-7-8 Temporary license**

Upon receipt of an application for a permanent license, the director may issue a temporary license to the applicant for a reasonable time, not to exceed ninety (90) days, as the director deems necessary or advisable to enable the applicant to comply with the further requirements for obtaining a license under this chapter. A temporary license entitles the temporary licensee to the same rights and subjects the temporary licensee to the same duties as if the temporary licensee had a permanent license.

#### **IC 26-3-7-8.5**

#### **26-3-7-8.5 Licensing requirements of successor owner**

If the ownership of a facility or business licensed under this chapter passes to a successor owner, the obligations under this chapter of the original licensee do not cease until the successor owner is properly licensed and has executed a successor's agreement with the agency.

#### **IC 26-3-7-17.1**

#### **26-3-7-17.1 Possible violations; powers of director; procedures**

(a) Whenever the director, as a result of an inspection or otherwise, has reasonable cause to believe that a person to which this chapter is or may be applicable:

- (1) is conducting business contrary to this chapter or in an unauthorized manner; or
- (2) has failed, neglected, or refused to observe or comply with any order, rule, or published policy statement of the agency;

then the director may undertake any one (1) of the actions prescribed by this section.

(b) Upon learning of the possibility that a licensee is acting as described in subsection (a), the director or the director's designated representative may seek an informal meeting with the licensee. At that meeting, which shall be held at a time and place agreed to by the licensee and the director, the director or the director's designated representative shall discuss the possible violations and may enter into a consent agreement with the licensee under which the licensee agrees to undertake, or to cease, the activities that were the subject of the meeting. The consent agreement may provide for a time frame within which the licensee must be in compliance.

(c) Upon learning of the possibility that a person is acting as described in subsection (a), the director, except as otherwise provided in this subsection, shall hold a hearing to determine whether a cease and desist order should issue against a licensee or an unlicensed person undertaking activities covered by this chapter. If the director determines that the violation or the prohibited practice is likely to cause immediate insolvency or irreparable harm to depositors, the director, without notice, may issue a temporary cease and desist order requiring the person to cease and desist from that violation or practice. The order shall become effective upon service on the person and shall remain effective and enforceable pending the completion of all administrative proceedings.

(d) Upon a determination, after a hearing held by the director or the director's designated representative, that a person is acting as described in subsection (a), the director may suspend, revoke, or deny a license. If the director suspends, revokes, or denies a license, the director shall publish notice of the suspension, revocation, or denial as provided in [section 17.5](#) of this chapter.

(e) If the director has reasonable cause to believe that a licensee is acting as described in subsection (a) and determines that immediate action without an opportunity for a hearing is necessary in order to safeguard depositors, the director may suspend a license temporarily without a hearing for a period not to exceed twenty (20) days. When a license is suspended without a hearing, the director or the director's designated representative shall grant an opportunity for a hearing as soon as possible.

#### **IC 26-3-7-17.5**

#### **26-3-7-17.5 Notice of suspension or revocation of license; notice of denial of application**

(a) Whenever the license of a licensee is suspended or revoked, the director may:

- (1) for each facility operated by the licensee, publish a public notice in a newspaper of general circulation that serves the county in which the facility is located; and
- (2) cause notice of the suspension or revocation to be posted at the facilities covered by the license.

(b) Whenever an application for licensure under this chapter is denied, the director may:

- (1) for each facility operated by the applicant, publish a public notice in a newspaper of general circulation that serves the county in which the facility is located; and
- (2) cause notice of the denial to be posted at the applicant's facilities.

(c) A notice posted under this section may not be removed without the written permission of the director.

(d) The director shall adopt rules under IC 4-22-2 to determine the content of the notices required by this section.

**IC 26-3-7-18**

**26-3-7-18 Revocation, expiration, or suspension of license; effect upon operation**

- (a) When a license is revoked, the licensee shall terminate in the manner prescribed by the director all arrangements covering the grain in the facility covered by the license, but shall be permitted, under the direction and supervision of the director or the director's designated representative, to deliver grain previously received.
- (b) During any suspension of a license, the licensee may, under the direction and supervision of the director or the director's designated representative, operate the facility, but shall not incur any additional obligations to producers.

**IC 26-3-7-29**

**26-3-7-29 Display of license or permit; schedule of charges; sign**

A licensee shall:

- (1) conspicuously display the licensee's license in the licensee's main office and at each facility included under the license;
- (2) conspicuously display in each operational office the approved schedule of charges for services; and
- (3) conspicuously display at each facility all charts and diagrams provided to the facility by the agency.

**IC 26-3-7-35**

**26-3-7-35 Grain buyer license required**

A person licensed under the warehouse act must also have a valid grain buyer license to do business in Indiana as a grain buyer.