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Requirements for Grain Dealers

State of Kentucky

Indemnity Fund

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Requirements for Grain Dealers

STATE OF KENTUCKY

Current through the end of the 2014 legislation

KRS § 251.640

251.640 Assessment of grain producers; deduction of assessment; collection; restraining order or preliminary injunction against purchaser

(1) It is declared to be in the public interest and highly advantageous to the agricultural economy of the state that all producers of grain shall be assessed at a rate of .0025 times the gross value of all marketed grain and provide for the collection of the assessment for the purpose of financing or contributing to the financing of the Kentucky grain insurance fund, which is hereby created.

(2) Upon the establishment of the Kentucky Grain Insurance Corporation, the Commissioner shall notify by certified mail, all persons in this state engaged in the business of purchasing grain from producers, that on and after the date specified in the letter, the specified assessment shall be deducted from the producer's payment by the purchaser, or his agent or representative, from the purchase price of the grain. The deducted assessment shall, on or before the fifteenth day of the month following the end of the month in which the grains are sold to the purchaser, be remitted by the purchaser to the grain insurance fund. The books and records of all purchasers of grain, which shall clearly indicate the producer assessment, shall at all times be open for inspection by the Commissioner of Agriculture or his duly authorized agents during regular business hours. The Commissioner or his agents may take steps as are reasonably necessary to verify the accuracy of books and records of purchasers of grain.

(3)

(a) Beginning with the first assessment levied on or after June 25, 2009, no assessments shall be collected by the department under paragraph (b) of this subsection unless the board has certified that the fund is less than three million dollars (\$3,000,000). For subsequent assessments, the provisions and amounts specified in paragraph (b) of this subsection apply.

(b) If and when the fund is more than ten million dollars (\$10,000,000), no fees shall be assessed by the department unless the amount in the fund drops below ten million dollars (\$10,000,000). If the fund is more than ten million dollars (\$10,000,000), no later than April 30 of each year, the board shall meet and certify the fund is in excess of ten million dollars (\$10,000,000). Upon this certification, no assessment shall be assessed or collected for that licensed year. If at any time after the board has certified the ten million dollars (\$10,000,000) amount, the board receives notification of the fund being less than eight million dollars (\$8,000,000), the board shall within thirty (30) days certify that the fund has less than eight million dollars (\$8,000,000), and the assessment shall be reinstated. Upon notification from the board, the department shall within thirty (30) days reinstate the assessment fee of .0025 times the gross value of the grain purchased.

(4) Any producer upon and against whom the assessment is levied and collected under the provisions of this section, if dissatisfied with the assessment, may demand of and receive from the treasurer of the grain insurance corporation a refund of assessment collected from the producer, if the demand for

refund is made in writing within thirty (30) days from the date on which the assessment is collected from the producer. By voluntarily submitting to a refund, the producer forgoes any protection or compensation provided for by the grain insurance corporation.

(5) When in the judgment of the board or the duly certified association, a purchaser has engaged in or is about to engage in any acts or practices that constitute a violation of any of the provisions of KRS 251.410, 251.430, 251.440, 251.451, 251.490, or 251.600 to 251.740, the grain insurance corporation may make application to the Franklin Circuit Court for an order enjoining the acts or practices, and obtain a restraining order and preliminary injunction against the purchaser.

(6) The assessments by the department in accordance with this section are in addition to any other fees or assessments required by law.

KRS § 251.642

251.642 Procedure for reentry of producer into grain insurance program after withdrawal of assessments

(1) Producers who have requested and received a refund of an assessment in accordance with KRS 251.640(4) may reenter the grain insurance program by:

(a) Petitioning the Kentucky Grain Insurance Board for approval of reentry into the program; and

(b) Immediately upon mailing the petition for reentry to the offices of the Kentucky Department of Agriculture, placing an amount equal to all previous assessment refunds to that producer in an escrow account in a local bank, the previous assessments and the terms and conditions of the escrow account to be determined by the Kentucky Department of Agriculture.

(2) The board shall review the producer's petition for reentry and if approved the producer shall repay into the grain insurance fund all previous assessment refunds as determined by the Kentucky Department of Agriculture. Producers reentering the grain insurance program in accordance with this section will be protected by the program from the time all previous assessment refunds were placed in escrow.

(3) Once the fund reaches ten million dollars (\$10,000,000) and all assessments to the Kentucky grain insurance fund have ceased in accordance with KRS 251.640, all producers who have not requested and received a refund shall be participants in the program.

(4) No producer will be granted protection of the grain insurance program who has not been a participant in the program prior to meeting the criteria of a claimant.

KRS § 251.650

251.650 Use of funds; grain indemnity trust fund; investment of funds; authorization to use earnings on Kentucky grain insurance fund for management, investment, and legal fees and board members' per diem and expenses

(1) All assessments by the department in accordance with KRS 251.640 shall be held by the corporation in trust in the Kentucky grain insurance fund for carrying out the purposes of KRS 251.410, 251.430, 251.440, 251.451, 251.490, and 251.600 to 251.740. These funds shall be invested and reinvested in United States Treasury obligations at the discretion of the corporation, and the interest from these investments shall be deposited to the credit of the fund and shall be available for the same purposes as all other money deposited in the fund. The money in the fund shall not be available

for any purpose other than the payment of claims in accordance with KRS 251.410, 251.430, 251.440, 251.451, 251.490, and 251.600 to 251.740, and shall not be transferred to any fund other than the grain indemnity trust fund, which is hereby created. This limiting and nontransferability provision shall not be severable from the whole of KRS 251.410, 251.430, 251.440, 251.451, 251.490, and 251.600 to 251.740; and if the provision is held invalid, repealed, or substantially amended, KRS 251.410, 251.430, 251.440, 251.451, 251.490, and 251.600 to 251.740 shall immediately become invalid, and to this end, the provision is declared to be nonseverable.

(2) Notwithstanding the provisions of subsection (1) of this section, the board may authorize the investment of funds for the Kentucky grain insurance fund through the Kentucky Commission for Investments in any guaranteed security or other guaranteed investment recommended by the commission if the board determines the recommendation would maximize the interest or income to the fund.

(3) Notwithstanding the provisions of subsection (1) of this section, the board is authorized to pay from the interest or income produced by the investing of the Kentucky grain insurance fund:

(a) The ordinary management and investment fees assessed in accordance with statute or administrative regulation: and

(b) A per diem of fifty dollars (\$50) to board members for each board meeting they attend, and reimbursement for other reasonable and necessary expenses incurred while engaged in carrying out the official duties of the board.

(4) Notwithstanding the provisions of subsection (1) of this section, the board may authorize the payment of legal fees, in actions brought against the Kentucky grain insurance fund, exclusively from the interest or income earned from the investment of the Kentucky grain insurance fund. All legal expenses incurred must be approved for payment by the board.

KRS § 251.660

251.660 Insufficiency of funds to pay approved claims

In the event that amounts in the Kentucky grain insurance fund are insufficient to pay the approved claims, funds to satisfy the unpaid claims shall be made available to the corporation as provided by this section. KRS 251.410, 251.430, 251.440, 251.451, 251.490, and 251.600 to 251.740 shall constitute an irrevocable and continuing appropriation for, and direction to, the secretary of the Finance and Administration Cabinet and the State Treasurer to make the necessary transfers and disbursements from the revenues and funds of the state for that purpose. The state shall be reimbursed, with interest at the rate paid on ninety (90) day United States Treasury bills, for any amounts paid under this section upon replenishment of the fund from assessments made in accordance with KRS 251.640.

KRS § 251.670

251.670 Payment of compensation

(1) Within ninety (90) days of the board's approval of a valid claim, the board shall, in accordance with the provisions of this section, compensate from the grain indemnity trust fund any claimant who has incurred a financial loss due to a failure of a grain dealer or warehouseman.

(2) Any claimant who has incurred a financial loss due to a failure of a licensed grain dealer shall be entitled to be compensated for eighty percent (80%) of a valid claim, to a maximum of two hundred thousand dollars (\$200,000), with moneys from the Kentucky grain insurance fund, provided that the

claim is brought within one (1) year from the time the claimant receives actual notice of the grain dealer's failure. To the maximum extent that funds are or may be made available for the purpose of paying a claim, the remaining balance of the claim shall be paid by the board from the assets and other security of the failed grain dealer, provided that any claimant who has incurred a financial loss due to the failure of a grain dealer and who has surrendered a warehouse receipt for payment shall be compensated for one hundred percent (100%) of a valid claim.

(3) Any claimant who has incurred a financial loss due to a failure of a licensed grain warehouseman shall be entitled to be compensated for eighty-five percent (85%) of a valid claim with moneys from the Kentucky grain insurance fund, provided that the claim is brought within one (1) year from the time the claimant receives actual notice of the warehouseman's failure. To the maximum extent that funds are or may be made available for the purpose of paying a claim, the remaining balance of the claim shall be paid by the board from the assets and other security of the failed grain warehouse, provided that any claimant who has incurred a financial loss due to the failure of a grain warehouse and who has surrendered a warehouse receipt for payment shall be compensated for one hundred percent (100%) of a valid claim.

KRS § 251.675

251.675 Conditions requiring denial of compensation from Kentucky Grain Insurance Fund

The board shall deny the payment of compensation under KRS 251.670 to any claimant who has incurred a financial loss due to the failure of a licensed grain dealer or warehouse, when the board determines:

- (1) The claimant has executed a waiver of compensation as part of a forward pricing (delayed pricing) contract which has been filed with the department as required by KRS 251.485. However, the exclusion from coverage shall be limited to the grain or proceeds from grain described in the forward pricing (delayed pricing) contract waiver.
- (2) The claimant as payee has failed to present for payment a negotiable instrument, issued as payment for grain, within ninety (90) days from the date the negotiable instrument is tendered to the claimant in satisfaction of obligations for grain purchased by the licensed grain establishment.
- (3) The claimant has engaged in conduct or practices which differ from generally accepted marketing practices within the grain industry to an extent that the claimant's actions have substantially contributed to his financial loss.

KRS § 251.680

251.680 Duty of board when dealer or warehouseman defaults or fails

The board, when it has determined that a grain dealer or grain warehouseman has defaulted payment or failed, shall have the following duties under this section:

- (1) Determine valid claims and the amount of such claims to be paid to claimants for financial losses which were incurred due to the failure of a grain dealer or grain warehouseman;
- (2) Request the transfer of moneys from the Kentucky grain insurance fund to the grain indemnity trust fund when necessary for the purpose of compensating claimants in accordance with the provisions of KRS 251.670;
- (3) Deposit into the grain indemnity trust fund any remaining assets of a failed grain dealer or grain warehouseman for the purposes of repayment of the Kentucky grain insurance fund moneys used to

pay claimants. Any repayment into the Kentucky grain insurance fund shall not exceed the principal amount paid to claimants plus interest at the rate paid on ninety (90) day United States Treasury bills; and

(4) In the event that the amount in the Kentucky grain insurance fund is insufficient to pay all valid claims in accordance with KRS 251.670, to grant priority of payment of all the claims in the order they were approved as valid by the board.