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## **Requirements for Grain Dealers**

### **State of Maine**

*Licensing*

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## Requirements for Grain Dealers

### STATE OF MAINE

*Current with legislation from the 2013 2<sup>nd</sup> Regular Sess.*

#### **7 M.R.S.A. § 454** **§ 454. Licensing required**

A person may not act as agent, broker, dealer or processor unless duly licensed as provided in this subchapter. Before acting as a dealer, processor, broker or agent, a person shall file an application with the commissioner for a license to transact the business of a dealer, processor, broker or agent and the application must be accompanied by the license fee provided in this subchapter.

A person may not buy, solicit or negotiate the sale of any licensed commodity in this State as a representative of any agent, broker, dealer or processor unless that person has been authorized as a representative by a licensee in writing, and a copy of the authorization is filed with the commissioner, except when the person conducts business in the office of the licensee. A licensee shall notify the commissioner in writing immediately upon terminating the authorization for a person to act as that licensee's representative.

#### **7 M.R.S.A. § 455** **§ 455. Application for license**

**1. Application.** The applicant shall file an application on forms as prescribed and furnished by the commissioner. These forms shall include the full name of the person applying for the license and, if the applicant is a corporation, partnership, association, exchange or legal representative or officer, director, partner or member thereof, all names and positions are to be stated on the application. If the applicant is a foreign corporation, it shall certify that it is registered with the Secretary of State under Title 13-A, chapter 121 and further state the principal business address of the applicant in the State or elsewhere, the address of all places of business in the State and the name or names of the person or persons authorized to receive and accept service of lawful process upon the applicant within the State. All questions required to be answered in application for licenses shall be sworn to.

**2. Notice to interested persons.** Upon receipt of the applications, the commissioner shall cause written notice to be provided to any person who has filed, within the preceding year, a written request to receive the notice of applications. Any interested person shall have 10 days in which to file comments as to the applicant's qualifications or to request a hearing prior to the issuance of the license.

**3. Qualifications of applicant.** The applicant shall satisfy the commissioner of his character, financial responsibility and good faith in seeking to engage in the business. The commissioner may issue a license to the applicant if he is satisfied as to the applicant's qualifications. When the license is issued, the applicant may act in the capacity described in the license for a period of one year from the date of issuance.

**4. Bond.** In order to insure the licensee's financial responsibility and to protect producers of licensed

commodities, the commissioner shall require the licensee to file a bond in a form and amount satisfactory to the commissioner, but in any event not less than \$5,000 nor more than \$100,000, payable to the commissioner in his official capacity and conditioned on the full and prompt payment for all licensed commodities received or purchased from producers or other licensees during the effective period of the license.

**5. License fees.** Each license shall plainly state the name and business address or addresses of the licensee and shall be posted in a conspicuous place in each office where the business is transacted. The fee for each license is \$50. If the licensee desires to carry on business in more than one place within the State, he shall procure additional copies of the license, certified by the commissioner, for each place where business is to be conducted. The fee for each certification is \$10. All fees collected under this subchapter shall be paid forthwith to the Treasurer of State and credited to the Department of Agriculture, Conservation and Forestry for the administration of this subchapter and other expenses incident to the administration of the department, and shall be expended by the commissioner for the purposes for which the department is created. If any fees are not expended during the year in which they are collected, the unexpended balance shall not lapse, but shall be carried as a continuing account available for the purposes specified, until expended.

#### 7 M.R.S.A. § 457

#### § 457. Refusal, suspension, revocation of license

**1. Acts enumerated.** The commissioner or his duly authorized agent may refuse to grant a license, after notice and opportunity for a hearing is provided in a manner consistent with the Maine Administrative Procedure Act<sup>1</sup> as to adjudicatory proceedings, upon a finding that any of the following acts have occurred:

- A.** That fraudulent charges or returns have been made by the applicant or licensee for the handling, sale or storage of licensed commodities or for the rendering of any service in connection with the handling, sale or storage of licensed commodities;
- B.** That the applicant or licensee has failed or refused to render a true account of sales, or to make a settlement thereon, within the time and in the manner required by this subchapter or has failed to or refused to pay for licensed commodities purchased by the applicant or licensee within 30 days after acceptance of the licensed commodities;
- C.** That the applicant or licensee has knowingly made any false material statement as to the condition, quality or quantity of licensed commodities received, handled, sold, purchased or stored by him;
- D.** That the applicant or licensee has knowingly made any substantial misrepresentation as to the condition of the market for licensed commodities;
- E.** That the applicant or licensee has defrauded or attempted to defraud a producer;
- F.** That the applicant or licensee to whom any consignment is made has reconsigned the consignment to another dealer, processor, broker or agent and has received, collected or charged by such means more than one commission for making the sale for the consignor without previously obtaining the written consent of the consignor;
- G.** That the applicant or licensee knowingly made any false material statements in the procurement of a license under this subchapter;
- H.** That the applicant or licensee has not accounted promptly and properly to the producer with regard to any claim settled or collected by him for the producer;
- I.** That the applicant or licensee has failed or refused, upon demand, to permit the

commissioner or his agents to make the investigations, examinations or audits as provided in this subchapter or that the applicant or licensee has removed or sequestered any books, records or papers necessary to any such investigations, examinations or audits or has otherwise obstructed the same;

**J.** That the applicant or licensee has failed or refused to keep and maintain the records as required by this subchapter; or

**K.** That the applicant or licensee has committed any act or conduct with regard to the handling, sale or storage of licensed commodities, whether of the same or different character than specified in this subsection, which constitutes or demonstrates bad faith, incompetency, untrustworthiness or dishonest, fraudulent or improper dealings.

**2. District Court.** The District Court may, in a manner consistent with the Maine Administrative Procedure Act, suspend or revoke a license upon finding that the licensee has committed any of the Acts enumerated in subsection 1.

Any order revoking or suspending a license may, within the discretion of the District Court, be made conditional upon the settlement, adjustment or satisfaction of the consequence of the violation or violations as specified and the operation of such an order may be deferred for that purpose. Any order may contain provisions for its modification or dismissal upon presentation to the District Court of evidence that the matter of complaint has been settled, adjusted or withdrawn at any time before the order becomes final.

**3. Notification of insufficient payment or nonpayment.** Producers may notify the commissioner of insufficient payment or nonpayment for licensed commodities delivered to any agent, broker, dealer or processor in violation of subsection 1, paragraph B. In addition to any other remedies available under this subchapter:

**A.** The commissioner or his agent, upon notification by a producer of insufficient payment or nonpayment, shall immediately investigate the complaint and shall, in a manner consistent with the provisions of the Maine Administrative Procedure Act, hold a hearing. The person accused of nonpayment, the respondent, shall provide the commissioner with a copy of the contract, if any, and all other materials and information necessary to enable the commissioner to carry out this section. Upon finding that the respondent has violated the contract or other obligation, express or implied, the commissioner shall require the respondent to post a bond sufficient to cover the debt owed to the producer or producers. Failure to post the bond shall be considered a violation of this subchapter and each day failure continues shall be considered a separate violation;

**B.** The commissioner may require the licensee, accused of or found after a hearing to be in default of payment to a producer, to submit a payment schedule to the commissioner. In the event that the schedule of payment proposed is not satisfactory to the commissioner, he may establish the schedule of payment; and

**C.** The commissioner may file a complaint with the District Court to compel the posting of a bond required under paragraph A and to suspend the license of any licensee who fails to conform to the payment schedule established in this subsection until the producer is paid the total claim to which the producer is entitled. Upon the filing of a complaint by the commissioner in the District Court, the licensee shall post a bond sufficient to cover the total claim on the date on which the complaint is filed. The bond required in a court proceeding may be waived by the District Court in the event that the bond required in paragraph A is valid and sufficient to cover the total claimed. Nothing in this subsection may be construed to prohibit a producer from seeking redress for insufficient payment or nonpayment from licensees in any court or in accordance with any other state and federal procedure established to obtain redress.