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## **Requirements for Grain Dealers**

**State of Michigan**

*Auditing*

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## Requirements for Grain Dealers

### STATE OF MICHIGAN

*Current with legislation from the 2014 Reg.Sess..*

#### **M.C.L.A. 285.63**

#### **285.63. License; requirement; conduct governed by act; grounds for refusal of license; bond; offenses and penalties; inspection of books and records; injunctive relief**

- (1) A person shall not act or offer to act as a grain dealer in this state without a license from the department issued under this act.
- (2) A grain dealer shall not process or store farm produce, issue a warehouse receipt, charge or collect a fee for storage of farm produce, issue a price later agreement, or issue an acknowledgment of receipt for delivery of farm produce except in compliance with this act.
- (3) Subject to subsection (4), the department may refuse to issue or renew a license to a grain dealer unless the grain dealer meets at least 1 of the following at the time the grain dealer submits the application:
  - (a) Has allowable net assets of more than \$1,000,000.00.
  - (b) Has allowable net assets of \$50,000.00 or more and handled 500,000 or fewer bushels of farm produce in the grain dealer's most recent fiscal year.
  - (c) Has allowable net assets of \$50,000.00 or more, and the allowable net assets equal or exceed the product of 10 cents multiplied by the number of bushels of farm produce handled by the grain dealer in the grain dealer's most recent completed fiscal year.
- (4) If a grain dealer fails to meet any of the allowable net asset requirements under subsection (3), the department may issue or renew the license if the grain dealer provides the department with a negotiable bond issued by a surety authorized to conduct business in this state, or proof of establishment of a restricted account in a financial institution that conducts business in this state, acceptable to the department and of which the department is the sole beneficiary, that is in an amount equal to the amount by which the grain dealer's allowable net assets failed to meet the allowable net asset requirement applicable under subsection (3).
- (5) A person who acts or offers to act as a grain dealer without a license is guilty of a misdemeanor. Each day that the person acts or offers to act as a grain dealer without a license is a separate misdemeanor.
- (6) If the director has probable cause to believe that a person is acting or offering to act as a grain dealer without a license, the director may review the books and records relating to the operations of the person.
- (7) Upon application of the department, a court in this state shall issue a temporary or permanent injunction enjoining a person from acting as a grain dealer without a license, issuing a warehouse receipt or price later agreement without a license, or interfering with an employee of the department or a receiver appointed under this act that is performing his or her duties under this act.

**M.C.L.A. 285.67**

**285.67. Application for license; grant or denial of license; application fee, licensing fee, and financial statement; inspection and auditing of records**

(1) A grain dealer shall file an application for a new license or for renewal or amendment of a license with the department. The department may determine the time when an application is filed and the form of the application. A complete application shall include all of the following:

- (a) The name and ownership interest of each owner, stockholder, member, or partner of the grain dealer who owns at least 5% of the shares, other than publicly traded shares, or other ownership interests of the grain dealer, or for a grain dealer described in section 9(3),1 at least 5% of the shares, other than publicly traded shares, or other ownership interests of the parent corporation.
- (b) The location and storage capacity of each facility of the grain dealer.
- (c) Proof of insurance for all farm produce stored at each facility of the grain dealer.
- (d) A statement that none of the events described in section 102 have occurred within the 5 years preceding the date of the license application, or if any of those events have occurred, a description of those events.
- (e) A statement of the total bushels of farm produce handled by the grain dealer during the grain dealer's most recent completed fiscal year.
- (f) If the grain dealer's most recent completed fiscal year was for a period of less than 12 months or the grain dealer materially changed its farm produce handling practices in that fiscal year, a projection of the total bushels of farm produce the grain dealer expects to handle in the current fiscal year.
- (g) Copies of all warehouse receipt forms, price later agreement forms, and acknowledgment forms used by the grain dealer.
- (h) Copies of all of the grain dealer's facility lease agreements and bin charts.
- (i) If the grain dealer does not maintain an office in this state and does not have a resident agent in this state, the application shall include a written appointment of a statutory agent upon whom process, notice, or demand may be served. The statutory agent shall be an individual residing in this state or a corporation whose principal place of business is located in this state. If the identity or address of the statutory agent changes while the application is pending or after a license is issued, the grain dealer shall within 3 days file with the department a written appointment of the new statutory agent or written notice of the new address, as applicable.
- (j) The license fee described in section 8.
- (k) The financial statement described in section 9.3

(2) If an application described in subsection (1) is considered incomplete by the department, the department shall notify the applicant in writing or electronically within 30 days after receipt of the incomplete application, describing the deficiency and requesting the additional information. The 30-day time period described in subsection (6) is tolled upon notification by the department of a deficiency until the date the requested information is received by the department. The determination of the completeness of an application does not operate as an approval of the application for the license and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license. The tolling of the 30-day time period under this subsection does not allow the department to otherwise delay the processing of the application, and that application, upon completion, shall be placed in sequence with other complete applications received at that same time.

(3) For a license renewal, a licensee shall submit the complete application to the department at least 30 days before the expiration of the current license term.

- (4) If an application is withdrawn before a license or renewal is approved, the department shall retain \$50.00 for processing and return the remainder of the license fee to the grain dealer.
- (5) By submitting an application, a grain dealer consents to inspection and auditing of its farm produce and financial records and its operations by the department. The grain dealer shall make the records available to the department in this state if the department makes a request to inspect or audit the records.
- (6) The department shall issue or deny an initial or renewal license within 30 days after the department receives a complete application from an applicant.
- (7) If the department fails to issue or deny a license within the time required by this section, the department shall return the license fee and shall reduce the license fee for the applicant's next renewal application, if any, by 15%. The department shall not discriminate against an applicant in the processing of the application based upon the fact that the license fee was refunded or discounted under this subsection.
- (8) Beginning October 1, 2005, the director of the department shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with agricultural issues. The director shall include all of the following information in the report concerning the preceding fiscal year:
  - (a) The number of initial and renewal applications the department received and completed within the 30-day time period described in subsection (6).
  - (b) The number of applications denied.
  - (c) The number of applicants not issued a license within the 30-day time period and the amount of money returned to licensees and registrants under subsection (7).

#### **M.C.L.A. 285.73**

#### **285.73. Audit or inspection of books or records of dealer; disclosure of information provided by dealer**

- (1) The director may require that a grain dealer make its books and records available for audit or inspection.
- (2) Except as provided in subsection (3), financial information and daily position report information submitted to the department by an applicant or licensee for purposes of this act are confidential and are not subject to the disclosure requirements of the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, except that disclosure of financial information or daily position report information may be made in any of the following circumstances:
  - (a) With the written consent of the applicant or licensee.
  - (b) Pursuant to a court proceeding.
  - (c) The disclosure is made to an agent or employee of the department.
  - (d) The disclosure is made to an agent or employee of a state or the federal government authorized by law to see or review the information.
- (3) The department may disclose information described in subsection (2) in the form of an information summary or profile, or as part of a statistical study that includes data on more than 1 grain dealer that does not identify the grain dealer to whom any specific information applies.

**M.C.L.A. 285.75**

**285.75. Maintenance of daily position report; cover of deficiency in warehouse receipt position or price later agreement; violations**

(1) A grain dealer shall keep a complete and accurate daily position report. The grain dealer shall submit the daily position report for the last business day of the preceding fiscal month to the department during the first 10 business days of the grain dealer's fiscal month.

(2) A daily position report shall include all of the following information about the grain dealer's operations, as of the last business day of the preceding fiscal month, on a form approved by the director:

(a) The quantity of each type of farm produce in inventory.

(b) The quantity of farm produce covered by outstanding warehouse receipts, open storage, and price later agreements, including price later agreements and warehouse receipts for farm produce in other grain dealers' facilities.

(c) The quantity of farm produce covered by collateral warehouse receipts.

(d) The total dollar amounts of loans against grain inventory.

(e) A description and quantity of any other farm produce obligations resulting in the grain dealer's balance position of farm produce.

(f) If a deficiency concerning price later agreements exists, the quantity of offsetting purchase commitments.

(3) If the department determines that there is a deficiency in any warehouse receipt position, the department shall notify the grain dealer and require that the grain dealer cover the shortage or furnish bond or security in an amount and on terms required by the department. If the grain dealer fails to comply, the department may seize grain assets for the benefit of claimants.

(4) If a net deficiency concerning price later agreements exists, based upon daily bid prices, the grain dealer shall cover the deficiency by placing in an escrow account cash, cash equivalents, or marketable securities equal to 80% of the deficiency and offsetting purchase commitments equal to at least 20% of the deficiency. The grain dealer shall file a copy of the escrow agreement with the department. The escrow agreement shall require that the escrow institution submit a monthly statement for the escrow account to the department.

(5) A violation of this section by a grain dealer may result in a fine or suspension or revocation of the grain dealer's license under section 22 1. If the violation is the intentional filing of a false daily position report, in addition to license revocation, the grain dealer is subject to the penalty described in section 23 2 for each violation.

**M.C.L.A. 285.76**

**285.76. Maintenance of records and accounts by dealer; examination of records and accounts; false or misleading books or records**

(1) A licensee shall keep a complete and accurate set of records and accounts of all transactions pertaining to the operation of each facility, including, but not limited to, records and accounts of all farm produce received in or withdrawn from a facility, of all unissued warehouse receipts and acknowledgment forms in the grain dealer's possession, and of all issued warehouse receipts and acknowledgment forms, copies of all contracts, and any warehouse receipts and acknowledgment forms returned to and settled by the licensee. A grain dealer shall retain a paper copy or a copy stored in electronic or other form of a warehouse receipt, acknowledgment form, or other document

evidencing ownership of any farm produce or liability as a grain dealer for at least the period that the document is outstanding, and if the document has been canceled, for a period of not less than 3 years from the date of cancellation. A grain dealer shall retain any other records and the accounts for at least 7 years.

(2) A licensee shall keep its records and accounts concerning its farm produce handling business separate and distinct from the records and accounts of any other business conducted by the licensee.

(3) The department may examine the records and accounts pertaining to the grain dealer's farm produce handling business at any time during normal business hours.

(4) A grain dealer shall not intentionally maintain false or misleading books and records. A grain dealer who violates this subsection is subject to the penalty described in section 23.

### **M.C.L.A. 285.82**

#### **285.82. Administration and enforcement of act; administrative rules; grounds and procedure for revocation or suspension of license of dealer; proceedings upon revocation or suspension of license; seizure and protection of assets**

(1) The director shall administer and enforce this act. In addition to any other powers conferred by this act, the director may do any of the following:

(a) Audit and investigate the receiving, storing, processing, buying, selling, and handling of farm produce and any complaints concerning the receiving, storing, processing, buying, selling, and handling of farm produce.

(b) Require a grain dealer to terminate receiving, storing, processing, buying, selling, or other farm produce handling upon revocation, suspension, or summary suspension of his or her license.

(c) Administer oaths and issue subpoenas to compel the attendance and testimony of witnesses and the production of records in connection with any investigation or hearing under this act.

(d) Prescribe and approve all forms, within the limitations set forth in this act, including the forms of warehouse receipts, acknowledgment forms, and applications for licenses.

(e) Employ investigatory personnel, including, but not limited to, a certified public accountant or an individual with accounting background and specialized investigative training and experience.

(2) The department may promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to implement and administer this act.

(3) The director may revoke or suspend the license of a grain dealer or deny a license to a grain dealer if the director finds that the licensee has done any of the following:

(a) Engaged in fraudulent or deceptive practices.

(b) Violated or attempted to violate this act or rules promulgated under this act.

(c) Failed to maintain insurance coverage required by this act.

(d) Failed to maintain accurate and complete records as required by this act.

(e) Failed to pay a fee required by this act.

(f) Refused to allow any authorized representative of the department to examine the applicant's or licensee's accounting records, accounts, farm produce inventories, or facilities during regular business hours.

(g) Failed to possess sufficient farm produce to cover the outstanding warehouse receipts or acknowledgment forms issued or assumed by the applicant or licensee.

(h) Issued a warehouse receipt in violation of this act or any rules adopted under this act.

- (i) Failed to maintain the net allowable assets required by this act.
  - (j) Failed to submit a financial statement in compliance with this act.
  - (k) Failed to secure his or her obligations for price later agreements.
- (4) In a proceeding to suspend or revoke a license pursuant to subsection (3), the director shall comply with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. The director may order a summary suspension of a license pursuant to section 92(2) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.292.
- (5) The director shall post a notice on the property of a grain dealer whose license has been restricted, suspended, or revoked that states the limitations or restrictions imposed on the grain dealer. The notice shall not be removed from the property without written authorization from the director.
- (6) If a grain dealer's license is suspended or revoked, the grain dealer may terminate storage, processing, shipping, or handling arrangements and collect outstanding charges.
- (7) If a grain dealer's license is suspended or revoked, the director shall notify all known warehouse receipt holders and unpaid depositors of the grain dealer.
- (8) If the director revokes a license under this section or a license expires, the grain dealer shall terminate all arrangements for farm produce handling in any facility of the grain dealer covered by the license in the manner prescribed by the director. Under the direction or supervision of the director, the grain dealer may liquidate farm produce previously received by the grain dealer.
- (9) If the director suspends a grain dealer's license under this act, the grain dealer may under direction or supervision of the director operate the grain dealer's facilities, but shall not receive any farm produce for handling during the term of the suspension.
- (10) During a license suspension or revocation proceeding, on behalf of this state and for the protection of holders of warehouse receipts or open storage or price later agreements of the licensee, the director may seize and protect the assets of the licensee by any legal, civil, or criminal proceedings necessary. If the grain dealer's license is revoked, the director may liquidate the grain dealer's warehouse receipts, open storage and price later agreements, and other assets. The director shall distribute the proceeds, first to the holders of warehouse receipts and open storage agreements, then to the secured holders of price later agreements, and then to all remaining holders of price later agreements. The director shall return any remaining proceeds to the grain dealer.