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Requirements for Grain Dealers

State of Minnesota

Bonding

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Requirements for Grain Dealers

STATE OF MINNESOTA

Current with legislation from the 2014 Regular Sess.

M.S.A. § 223.17

223.17. Licenses; bonding; claims; disbursements

Subdivision 1. Licenses. An application for a grain buyer's license must be filed with the commissioner and the license issued before any grain may be purchased.

The applicant for a grain buyer's license shall identify all grain buying locations owned or controlled by the grain buyer and all vehicles owned or controlled by the grain buyer used to transport purchased grain. Every applicant for a grain buyer's license shall have a permanent established place of business at each licensed location. An “established place of business” means a permanent enclosed building, including a house or a farm, either owned by the applicant or leased by the applicant for a period of at least one year, and where the books, records, and files necessary to conduct the business are kept and maintained.

Subd. 1a. Repealed by Laws 1986, c. 322, § 4, eff. March 15, 1986.

Subd. 2. License renewal. A license must be renewed annually. Beginning July 1, 1984, the commissioner may stagger the renewal dates of licenses issued under this chapter, subject to the policy expressed in section 116J.69, subdivision 2, clause (4). If a person receives more than one license from the commissioner, the licenses shall be issued at the same time, but only after all conditions for each license are met. Multiple licenses should be combined into one license if possible.

Subd. 3. Grain buyers and storage account; fees. The commissioner shall set the fees for inspections under sections 223.15 to 223.22 at levels necessary to pay the expenses of administering and enforcing sections 223.15 to 223.22.

The fee for any license issued or renewed after June 30, 2005, shall be set according to the following schedule:

- (a) \$140 plus \$110 for each additional location for grain buyers whose gross annual purchases are less than \$100,000;
- (b) \$275 plus \$110 for each additional location for grain buyers whose gross annual purchases are at least \$100,000, but not more than \$750,000;
- (c) \$415 plus \$220 for each additional location for grain buyers whose gross annual purchases are more than \$750,000 but not more than \$1,500,000;
- (d) \$550 plus \$220 for each additional location for grain buyers whose gross annual purchases are more than \$1,500,000 but not more than \$3,000,000; and
- (e) \$700 plus \$220 for each additional location for grain buyers whose gross annual purchases are more than \$3,000,000.

A penalty amount not to exceed ten percent of the fees due may be imposed by the commissioner for each month for which the fees are delinquent.

There is created the grain buyers and storage account in the agricultural fund. Money collected pursuant to sections 223.15 to 223.19 shall be paid into the state treasury and credited to the grain

buyers and storage account and is appropriated to the commissioner for the administration and enforcement of sections 223.15 to 223.22.

Subd. 4. Bond.

(a) Before a grain buyer's license is issued, the applicant for the license must file with the commissioner a bond in a penal sum prescribed by the commissioner but not less than the following amounts:

- (1) \$10,000 for grain buyers whose gross annual purchases are \$100,000 or less;
- (2) \$20,000 for grain buyers whose gross annual purchases are more than \$100,000 but not more than \$750,000;
- (3) \$30,000 for grain buyers whose gross annual purchases are more than \$750,000 but not more than \$1,500,000;
- (4) \$40,000 for grain buyers whose gross annual purchases are more than \$1,500,000 but not more than \$3,000,000;
- (5) \$50,000 for grain buyers whose gross annual purchases are more than \$3,000,000 but not more than \$6,000,000;
- (6) \$70,000 for grain buyers whose gross annual purchases are more than \$6,000,000 but not more than \$12,000,000;
- (7) \$125,000 for grain buyers whose gross annual purchases are more than \$12,000,000 but not more than \$24,000,000; and
- (8) \$150,000 for grain buyers whose gross annual purchases exceed \$24,000,000.

(b) A grain buyer who has filed a bond with the commissioner prior to July 1, 2004, is not required to increase the amount of the bond to comply with this section until July 1, 2005. The commissioner may postpone an increase in the amount of the bond until July 1, 2006, if a licensee demonstrates that the increase will impose undue financial hardship on the licensee, and that producers will not be harmed as a result of the postponement. The commissioner may impose other restrictions on a licensee whose bond increase has been postponed. The amount of the bond shall be based on the most recent gross annual grain purchase report of the grain buyer.

(c) A first-time applicant for a grain buyer's license shall file a \$50,000 bond with the commissioner. This bond shall remain in effect for the first year of the license. Thereafter, the licensee shall comply with the applicable bonding requirements contained in paragraph (a), clauses (1) to (8).

(d) In lieu of the bond required by this subdivision the applicant may deposit with the commissioner of management and budget cash, a certified check, a cashier's check, a postal, bank, or express money order, assignable bonds or notes of the United States, or an assignment of a bank savings account or investment certificate or an irrevocable bank letter of credit as defined in section 336.5-102, in the same amount as would be required for a bond.

(e) Bonds must be continuous until canceled. To cancel a bond, a surety must provide 90 days' written notice of the bond's termination date to the licensee and the commissioner.

Subd. 5. Cash sales; manner of payment. For a cash sale of a shipment of grain which is part of a multiple shipment sale, the grain buyer shall tender payment to the seller in cash or by check not later than ten days after the sale of that shipment, except that when the entire sale is completed, payment shall be tendered not later than the close of business on the next day, or within 48 hours, whichever is later. For other cash sales the grain buyer, before the close of business on the next business day after the sale, shall tender payment to the seller in cash or by check, or shall wire or mail funds to the seller's account in the amount of at least 80 percent of the value of the grain at the time of delivery. The grain buyer shall complete final settlement as rapidly as possible through ordinary diligence.

Subd. 5a. Grain purchases from unlicensed producers. No grain buyer may refuse to purchase grain from a producer solely because the producer is not bonded or is not licensed by the commissioner; provided, that any producer who buys grain from other producers shall be licensed and bonded as required by this chapter.

Subd. 6. Financial statements.

(a) The commissioner may require an annual financial statement from a licensee which has been prepared in accordance with generally accepted accounting principles and which meets the following requirements:

(1) The financial statement shall include, but not be limited to the following:

- (i) a balance sheet;
- (ii) a statement of income (profit and loss);
- (iii) a statement of retained earnings;
- (iv) a statement of changes in financial position; and
- (v) a statement of the dollar amount of grain purchased in the previous fiscal year of the grain buyer.

(2) The financial statement shall be accompanied by a compilation report of the financial statement that is prepared by a grain commission firm or a management firm approved by the commissioner or by an independent public accountant, in accordance with standards established by the American Institute of Certified Public Accountants. Grain buyers purchasing less than 150,000 bushels of grain per calendar year may submit a financial statement prepared by a public accountant who is not an employee or a relative within the third degree of kindred according to civil law.

(3) The financial statement shall be accompanied by a certification by the chief executive officer or the chief executive officer's designee of the licensee, under penalty of perjury, that the financial statement accurately reflects the financial condition of the licensee for the period specified in the statement.

(b) Only one financial statement must be filed for a chain of warehouses owned or operated as a single business entity, unless otherwise required by the commissioner. Any grain buyer having a net worth in excess of \$500,000,000 need not file the financial statement required by this subdivision but must provide the commissioner with a certified net worth statement. All financial statements filed with the commissioner are private or nonpublic data as provided in section 13.02.

Subd. 6a. Suspension, revocation, or refusal to issue license.

(a) If a license applicant or a licensee fails to furnish financial statements the commissioner may refuse to issue or renew the license or may suspend the license.

(b) The commissioner may refuse to issue or renew a license or may suspend a license upon determining, based upon the financial statement filed under this section or other financial information obtained by the commissioner, that the applicant or licensee is not financially able to properly perform the services and operate the business for which the license is issued.

(c) When a license is suspended the licensee shall surrender the license to the commissioner. An applicant or licensee may request an administrative hearing subject to chapter 14 within 15 days after the commissioner suspends a license or refuses to issue or renew a license under clause (b) to determine whether the license should be issued, renewed, or revoked. If no request is made within 15 days after suspension, the commissioner shall revoke the license.

Subd. 7. Action on a bond. A producer claiming to be damaged by a breach of a contract for the purchase of grain by a licensed grain buyer may file a written claim with the commissioner. The claim must state the facts constituting the claim. The claim must be filed with the commissioner within 180

days of the breach of the contract. If a claim is valid, the commissioner may immediately suspend the license, in which case the licensee shall surrender the license to the commissioner. Within 15 days the licensee may request an administrative hearing subject to chapter 14 to determine whether the license should be revoked. If no request is made within 15 days, the commissioner shall revoke the license.

Subd. 7a. Bond requirements; claims. For entities licensed under this chapter and chapter 232, the bond requirements and claims against the bond are governed under section 232.22, subdivision 6a.

Subd. 8. Bond disbursement.

(a) The bond required under subdivision 4 shall provide for payment of loss caused by the grain buyer's failure to pay, upon the owner's demand, the purchase price of grain sold to the grain buyer in the manner provided by subdivision 5, including loss caused by failure to pay within the time required. The bond shall be conditioned upon the grain buyer being duly licensed as provided herein.

(b) The commissioner shall promptly determine the validity of all claims filed and notify the claimants of the determination. An aggrieved party may appeal the commissioner's determination by requesting, within 15 days, that the commissioner initiate a contested case proceeding. In the absence of such a request, or following the issuance of a final order in a contested case, the surety company shall issue payment promptly to those claimants entitled to payment. The commissioner may apply to the district court for an order appointing a trustee or receiver to manage and supervise the operations of the grain buyer in default. The commissioner may participate in any resulting court proceeding as an interested party.

(c) If a grain buyer has become liable to more than one producer by reason of breaches of the conditions of the bond and the amount of the bond is insufficient to pay the entire liability to all producers entitled to the protection of the bond, the proceeds of the bond shall be apportioned among the bona fide claimants.

(d) The bond shall not be cumulative from one licensing period to the next. The maximum liability of the bond shall be its face value for the licensing period.

Subd. 9. Defaults; violations. It is a violation under this chapter if the commissioner finds, after an investigation is conducted, that a complaint is valid or that a licensee is in violation of the provisions of this chapter.