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Requirements for Grain Dealers

State of Missouri

Bonding

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Requirements for Warehouses

STATE OF MISSOURI

Current with legislation from the 2014 Reg.Sess.

V.A.M.S. 276.421

276.421. Financial statement to accompany application, how prepared--false statement, penalty--minimum net worth required--maintaining of current assets

<Text of section eff. until Jan. 1, 2017. See, also, section eff. Jan. 1, 2017.>

1. All applications shall be accompanied by a true and accurate financial statement of the applicant, prepared within six months of the date of application, setting forth all the assets, liabilities and net worth of the applicant. In the event that the applicant has been engaged in business as a grain dealer for at least one year, the financial statement shall set forth the aggregate dollar amount paid for grain purchased in Missouri and those states with whom Missouri has entered into contracts or agreements as authorized by section 276.566 during the last completed fiscal period of the applicant. In the event the applicant has been engaged in business for less than one year or has not previously engaged in business as a grain dealer, the financial statement shall set forth the estimated aggregate dollar amount to be paid for grain purchased in Missouri and those states with whom Missouri has entered into contracts or agreements as authorized by section 276.566 during the applicant's initial fiscal period. All applications shall also be accompanied by a true and accurate statement of income and expenses for the applicant's most recently completed fiscal year. The financial statements required by this chapter shall be prepared in conformity with generally accepted accounting principles; except that the director may promulgate rules allowing for the valuation of assets by competent appraisal.
2. The financial statement required by subsection 1 of this section shall be audited or reviewed by a certified public accountant. The financial statement may not be audited or reviewed by the applicant, or an employee of the applicant, if an individual, or, if the applicant is a corporation or partnership, by an officer, shareholder, partner, or a direct employee of the applicant.
3. The director may require any additional information or verification with respect to the financial resources of the applicant as he deems necessary for the effective administration of this chapter. The director may promulgate rules setting forth minimum standards of acceptance for the various types of financial statements filed in accordance with the provisions of this chapter. The director may promulgate rules requiring a statement of retained earnings, a statement of changes in financial position, and notes and disclosures to the financial statements for all licensed grain dealers or all grain dealers required to be licensed. The additional information or verification referred to herein may include, but is not limited to, requiring that the financial statement information be reviewed or audited in accordance with standards established by the American Institute of Certified Public Accountants.
4. All grain dealers shall provide the director with a copy of all financial statements and updates to financial statements utilized to secure the bonds required by sections 276.401 to 276.582.
5. All financial statements submitted to the director for the purposes of this chapter shall be accompanied by a certification by the applicant or the chief executive officer of the applicant, subject to the penalty provision set forth in subsection 4 of section 276.536, that to the best of his knowledge

and believe the financial statement accurately reflects the financial condition of the applicant for the fiscal period covered in the statement.

6. Any person who knowingly prepares or assists in the preparation of an inaccurate or false financial statement which is submitted to the director for the purposes of this chapter, or who during the course of providing bookkeeping services or in reviewing or auditing a financial statement which is submitted to the director for the purposes of this chapter, becomes aware of false information in the financial statement and does not disclose in notes accompanying the financial statements that such false information exists, or does not disassociate himself from the financial statements prior to submission, is guilty of a class C felony. Additionally, such persons are liable for any damages incurred by sellers of grain selling to a grain dealer who is licensed or allowed to maintain his license based upon inaccuracies or falsifications contained in the financial statement.

7. Any licensed grain dealer or applicant for a grain dealer's license shall maintain a minimum net worth equal to five percent of annual grain purchases as set forth in the financial statements required by this chapter. If the dealer or applicant is deficient in meeting this net worth requirement, he must post additional bond as required in section 276.436.

8.

(1) Any licensed grain dealer or applicant for a grain dealer's license shall have and maintain current assets at least equal to one hundred percent of current liabilities. The financial statement required by this chapter shall set forth positive working capital in the form of a current ratio of the total adjusted current assets to the total adjusted current liabilities of at least one to one.

(2) The director may allow applicants to offset negative working capital by increasing the grain dealer surety bond required by section 276.426 up to the total amount of negative working capital at the discretion of the director.

(3) Adjusted current assets shall be calculated by deducting from the stated current assets shown on the financial statement submitted by the applicant any current asset resulting from notes receivable from related persons, accounts receivable from related persons, stock subscriptions receivable, and any other related person receivables.

(4) A disallowed current asset shall be netted against any related liability and the net result, if an asset, shall be subtracted from the current assets.

V.A.M.S. 276.426

276.426. Surety bond required--conditions--lack of considered violation--cancellation procedure, effect--distribution of bond proceeds by director, procedure, appeal--surety failure to pay, penalty--binders effective, conditions, cancellation

1. Every person licensed as a grain dealer shall have filed with the director a surety bond executed and signed by the grain dealer as principal and issued by a responsible corporate surety licensed to execute surety bonds in the state of Missouri. It is a violation of sections 276.401 to 276.582 for any person to engage in the business of being a grain dealer without a sufficient surety bond on file with the department, on a form prescribed and furnished by the director.

2. Such bond shall be in favor of the state of Missouri, except as authorized by section 276.581, with the director as trustee for the benefit of all persons selling grain to the grain dealer, and their legal representatives, attorneys or assigns, and shall be conditioned upon the following:

(1) The dealer as a buyer paying to the seller the agreed-upon purchase price of the grain purchased from the seller where title to said grain transferred from the seller to the buyer within the state of Missouri;

(2) The grain dealer's faithful performance of his duties as a licensed grain dealer and his compliance with sections 276.401 to 276.582 and regulations promulgated hereunder. This section applies to purchases made from the effective date of the bond until the bond is cancelled, except as otherwise provided in sections 276.401 to 276.582;

(3) The bond required by this section shall cover the agreed-upon minimum price of any valid minimum price contract;

(4) The bond required by this section shall not cover payment for any promissory note accepted by the seller of grain. To be considered a promissory note, the note must contain the signature of both seller and buyer, date the note was executed, dollar amount of the note, payment terms and interest rate.

3. A surety bond required or allowed by sections 276.401 to 276.582 shall be effective on the date of issue, shall not be affected by the expiration of the license period, and shall continue in full force and effect until cancelled. The continuous nature of a bond, however, shall in no event be construed to allow the liability of the surety under a bond to accumulate for each successive license period during which the bond is in force, but shall be limited in the aggregate to the amount stated on the bond or as changed, from time to time, by appropriate endorsement or rider.

4. The required bond shall be kept in force at all times while the dealer is conducting business as a licensed grain dealer. Failure to keep such bond in force is cause for revocation of the license, and the dealer is subject to the penalties provided in this chapter. No dealer may cancel an approved bond without the prior written approval of the director and the director's approval of a substitute bond.

5. A grain dealer filing bonds required under sections 276.401 to 276.582, or regulations promulgated thereunder who is also licensed under chapter 411 shall utilize the same corporate surety for all bonds required to be licensed under chapter 411 and as a grain dealer.

6. Upon written demand of the director for payment, the surety shall either pay over to the director the sum demanded up to the full face amount of the bond, or shall deposit the sum demanded in an interest-bearing escrow account at the highest rate of interest available. When a surety pays the director upon demand, the director shall either interplead the sum in court or hold an administrative hearing for the determination of the liability of the surety, and the validity of claims against the bond, and upon the conclusion thereof, the director shall distribute the bond proceeds accordingly. The determination of the director shall be final, subject to the surety's or a claimant's right to appeal to the circuit court pursuant to the provisions of chapter 536. Refusal or failure of the surety to pay the sum demanded to the director within ten days of receipt of the director's demand letter or the refusal or failure to deposit the sum demanded in an interest-bearing escrow account at the highest rate of interest available, shall be grounds for withdrawal of the surety's license and authorization to conduct business in this state, and grounds for the court to penalize the surety, for refusal to pay or to deposit within the ten days of demand, in the amount of twenty-five percent of the full face amount of the bond, plus interest at the rate of nine percent, or at the rate that the director can establish he would have received had the money been paid or deposited by the surety, whichever rate of interest is higher. In the event that the surety pays as demanded and the director or court determines the surety is not liable, the director shall return to the surety the sum paid to the director plus all accumulated interest, or any pro rata part of the sum, plus interest, as applicable in the event of liability less than the sum demanded. In the event that the surety elects to deposit the demanded sum in an interest-bearing escrow account and the director holds an administrative hearing determining the liability of the surety and the validity of claims, and upon the exhaustion of appeals, if any, the surety immediately shall pay to the director for distribution to claimants the amount for which the surety has been determined to be liable plus accumulated interest on that amount.

7. Every bond filed shall contain a provision that it may not be cancelled by the principal or surety

company except upon ninety days' prior notice in writing, by certified mail, to the director at his Jefferson City office. In the case of a surety giving notice of cancellation, a copy of such notice shall be mailed, by certified mail, on the same day to the principal. The cancellation does not affect the liability accrued or which may accrue under such bond before the expiration of the ninety days. The notice shall contain the termination date. In the event such notice procedures are not followed, the bond shall remain in full force and effect until properly cancelled.

8. Whenever the director receives notice from a surety that it intends to cancel the bond of a dealer, the director shall automatically suspend the dealer's license if a new bond is not received by the director within thirty days of receipt of the notice of intent to cancel. If a new bond is not received within sixty days of receipt of the notice of intent to cancel, the director shall revoke the dealer's license. The director may cause an inspection of the grain dealer at the end of this sixty-day period. Such inspection may include an attempt to identify all possible grain sellers and related claimants of the dealer by advertising for same in local news media.

9. Verbal or written surety bond binders issued by a surety on behalf of a grain dealer for original or replacement bonds are hereby recognized as legally effective in the state of Missouri as if the bond were fully executed when such binders meet the following conditions:

- (1) The dealer or principal has paid, or has promised to pay, the surety an agreed upon or tentatively agreed upon premium or other consideration;
- (2) The surety provides the department, either in writing or verbally:
 - (a) A bond number;
 - (b) The amount of the bond;
 - (c) The effective date of the bond;
 - (d) Either verbal or written assurance that the person providing the preceding information has authority to commit the surety. Such binders may be cancelled only in the manner provided in subsection 8 of this section. The director may or may not accept such a binder depending on the particular circumstances involved and consistent with the orderly administration of this chapter.

V.A.M.S. 276.431

276.431. Provisions and rules relating to bonds to apply to certificates of deposit--irrevocable letters of credit may be accepted, conditions, demand by director, procedure--failure by bank to pay, when, penalty--funds returned to bank, when

1. Sections 276.401 to 276.581 and all regulations promulgated hereunder that apply to surety bonds shall also apply to certificates of deposit. Any certificate of deposit submitted in lieu of a surety bond required under sections 276.401 to 276.581 shall be filed with the director as trustee for the benefit of all persons selling grain to the grain dealer. The certificate of deposit will be kept in the custody of the director.

2. A grain dealer may, in lieu of the bond required under this chapter, submit an irrevocable letter of credit, payable to the director for the benefit of claimants, and issued by a federally or state chartered bank. The director may refuse to accept a letter of credit in lieu of the bond required by this chapter if the director finds that the issuing bank is or may become insolvent, or for any other reason may be unable to honor the terms of the letter of credit. The director may require an issuing bank to submit evidence of its financial condition, and the director may seek the cooperation of the division of finance in evaluating the financial condition of an issuing bank. The director shall promulgate all necessary regulations pertaining to certificates of deposit, and irrevocable letters of credit.

3. Upon written demand of the director for payment, the bank shall either pay over to the director the sum demanded, up to the full face amount of the irrevocable letter of credit, or shall deposit the sum demanded in an escrow account at the highest rate of interest available. When a bank pays the director upon demand, the director shall either interplead the sum in court or hold an administrative hearing for the determination of the liability of the bank and the validity of the claims against the irrevocable letter of credit, and upon the conclusion thereof, the director shall distribute the irrevocable letter of credit proceeds accordingly. The determination of the director shall be final, subject to the licensee's or claimant's right to appeal to the circuit court pursuant to the provisions of chapter 536. Refusal or failure of the issuing bank to pay the sum demanded to the director within three days of the bank's receipt of such written demand shall result in a penalty assessment of ten percent of the amount demanded, up to the full face amount of the irrevocable letter of credit, per week until the amount demanded and the penalty are paid. When funds have been received, and the director or court determines that the bank is not liable for claims against the irrevocable letter of credit, the director shall return to the bank the sum paid to the director and all accumulated interest earned, minus any penalties due or paid. In the event that the liability is less than the sum demanded, the director shall return the appropriate pro rata portion of the funds received, and interest earned as applicable.

V.A.M.S. 276.436

276.436. Amount of bond--director to establish by rule--formula--minimum and maximum--additional bond because of low net worth or other circumstances--failure to maintain, effect

1. The total amount of the surety bond required of a dealer licensed pursuant to sections 276.401 to 276.582 shall be established by the director by rule, but in no event shall such bond be less than fifty thousand dollars nor more than six hundred thousand dollars, except as authorized by other provisions of sections 276.401 to 276. 582.

2. The formula for determining the amount of bond shall be established by the director by rule and shall be computed at a rate of no less than the principal amount to the nearest one thousand dollars, equal to two percent of the aggregate dollar amount paid by the dealer for grain purchased in the state of Missouri and those states with whom Missouri has entered into contracts or agreements as authorized by section 276.566 during the dealer's last completed fiscal year, or, in the case of a dealer who has been engaged in business as a grain dealer for less than one year or who has not previously engaged in such business, two percent of the estimated aggregate dollar amount to be paid by the dealer for grain purchased in the state of Missouri and those states with whom Missouri has entered into contracts or agreements as authorized by section 276.566 during the applicant's initial fiscal year.

3. Any licensed grain dealer or applicant who has, at any time, a net worth less than the amount required by subsection 7 of section 276.421 shall be required to obtain a surety bond in the amount of one thousand dollars for each one thousand dollars or fraction thereof of the net worth deficiency. Failure to post such additional bond is grounds for refusal to license or the suspension or revocation of a license issued under sections 276.401 to 276.582. This additional bond can be in addition to or greater than or both in addition to and greater than the maximum bond as set by this section.

4. The director may, when the question arises as to a grain dealer's ability to pay for grain purchased, require a grain dealer to post an additional bond in a dollar amount deemed appropriate by the director. Such additional bond can be in addition to or greater than or both in addition to and greater than the maximum bond as set by this section. The director must furnish to the dealer, by certified mail, a written statement of the reasons for requesting additional bond and the reasons for questioning the dealer's ability to pay. Failure to post such additional bond is a ground for modification, suspension or revocation by the director of a license issued under sections 276.401 to 276.582. The determination of insufficiency of a bond and of the amount of the additional bond shall be based upon evidence presented to the director that a dealer:

- (1) Is or may be unable to meet his dollar or grain obligations as they become due;
- (2) Has acted or is acting in a way which might lead to the impairment of his capital;
- (3) As a result of his activity, inactivity, or purchasing and pricing practices and procedures, including, but not limited to, the dealer's deferred pricing or deferred payment practices and procedures, is or may be unable to honor his grain purchase obligations arising out of his dealer business. The amount of the additional bond required under this subsection shall not exceed the amount of the dealer's current loss position. Current loss position shall be the sum of the dealer's current liabilities less current assets or the amount by which he is currently unable to meet the grain purchase obligations arising out of his dealer business.

5. One bond, cumulative as to minimum requirements, may be given where a dealer has multiple licenses; except however, that in computing the amount of the single bond the grain dealer may add together the total purchases of grain of all locations to be covered thereby and use the aggregate total purchases for the fiscal year for the purpose of computing bond. However, this single cumulative bond must be at least equal to fifty thousand dollars per dealer license issued up to the six hundred thousand dollar maximum bond amount specified in subsection 1 of this section. When a grain dealer elects to provide a single bond for a number of licensed locations, the total assets of all the licensed locations shall be subject to liabilities of each individual licensed location.

6. Failure of a grain dealer to provide and file a bond and financial statement and to keep such bond in force shall be grounds for the suspension or revocation, by the director, of a license issued under sections 276.401 to 276.582.

7. A dealer shall be required to post additional surety bond when he surpasses the estimated aggregate dollar amount to be paid for grain purchased as set forth in subsection 2 of this section. Such additional bond shall be determined by the director so as to effectively protect sellers of grain dealing with such dealer.

V.A.M.S. 276.441

276.441. Dealer may request use of minimum bond, procedure

1. Any grain dealer who is of the opinion that his net worth is sufficient to guarantee payment for grain purchased by him may make a formal, written request to the director that he be relieved of the obligation of filing a bond in excess of the minimum bond of fifty thousand dollars. Such request shall be accompanied by a financial statement of the applicant, prepared within four months of the date of such request and accompanied by such additional information concerning the applicant and his finances as the director may require which may include the request for submission of a financial statement audited by a public accountant.

2. If such financial statement discloses a net worth equal to at least five times the amount of the bond otherwise required by sections 276.401 to 276.582, and the director is otherwise satisfied as to the

financial ability and resources of the applicant, the director may waive that portion of the required bond in excess of fifty thousand dollars for each license issued.

V.A.M.S. 276.476

276.476. Auditors may be appointed--highway patrol to cooperate

The director may appoint auditors familiar with the purchase, sale, and handling of grain and knowledgeable with respect to sections 276.401 to 276.581 and regulations promulgated hereunder to investigate, audit, and inspect persons as authorized by sections 276.401 to 276.581 and the regulations promulgated hereunder. It shall be the duty of employees of the Missouri highway patrol and weighing station employees to cooperate with the director in the enforcement of sections 276.401 to 276.581.

V.A.M.S. 276.481

276.481. Inspection of premises and records--dealers may be required to report--transporters to have proper records--director to investigate

1. The director or any auditor appointed pursuant to the provisions of section 276.476 may inspect the premises used by any person licensed under sections 276.401 to 276.581, or persons who the director has reasonable cause to believe should be licensed under sections 276.401 to 276.581, in the conduct of his business at any time. The books, accounts, records and papers of every grain dealer shall at all times during business hours be subject to inspection as prescribed by the director.
2. The director may perform such inspections as are necessary for the orderly administration of the provisions of sections 276.401 to 276.581 based upon reports and other information available to him.
3. Every person licensed under sections 276.401 to 276.581 and such person's employees, agents, officers, partners, directors, and shareholders shall cooperate and hold themselves available to assist in the inspection, including allowing full and reasonable use of the weighing, sampling, and grading equipment, if any.
4. Any dealer who is licensed in this state and who does not have a place of business within the state shall make available and furnish to the director or an auditor, upon request, all books, accounts, papers, and records of grain transactions within this state at any time and place that the director may designate.
5. Each grain dealer may also be required to make such reports as deemed necessary by the director to protect the seller of grain as set forth in sections 276.401 to 276.581 and the regulations promulgated hereunder.
6. The transporter of grain in transit shall have in his possession bills of lading or other documents covering such grain in transit. Such documents shall be available for inspection by the director or his agent upon request.
7. The director shall, upon the verified complaint in writing of any person setting forth facts which if proved would be in violation of the provisions of sections 276.401 to 276.581, or regulations promulgated hereunder or would constitute grounds for refusal, suspension, or revocation of a license under sections 276.401 to 276.581, investigate the actions of any person applying for, holding, or claiming to hold a license; provided that the director is not required to investigate any complaint which does not appear to have a reasonable basis.