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Requirements for Grain Dealers

State of Mississippi

Bonding

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Requirements for Grain Dealers

STATE OF MISSISSIPPI

Current with legislation from the 2014 Regular and First and Second Extraordinary Sess.

Miss. Code Ann. § 75-45-305 **§ 75-45-305. Surety bond**

- (1) Every person licensed as a grain dealer shall have filed with the department a surety bond signed by the dealer as principal and by a responsible company authorized to execute surety bonds within the State of Mississippi. A grain dealer may file with the department, in lieu of a surety bond, a certificate of deposit or irrevocable letter of credit from any bank or banking corporation insured by the Federal Deposit Insurance Corporation, payable to the commissioner, as trustee. The principal amount of the certificate of deposit or the amount of the letter of credit shall be the same as that required for a surety bond under this article and the interest thereon shall be made payable to the purchaser thereof. Such bond shall be a principal amount (to the nearest One Thousand Dollars (\$1,000.00)) equal to ten percent (10%) of the aggregate dollar amount paid, by the dealer to producers for grain purchased from them 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 (1) year or who has not theretofore engaged in such business, ten percent (10%) of the estimated aggregate dollar amount to be paid by the dealer to producers for grain purchased from them during the next fiscal year. Such bond shall not be less than Twenty-five Thousand Dollars (\$25,000.00) nor more than One Hundred Thousand Dollars (\$100,000.00), except as otherwise authorized by this article. The commissioner shall determine the sufficiency of any letter of credit.
- (2) The commissioner may, when he questions a grain dealer's ability to pay producers for grain purchased, require a grain dealer to post an additional bond in a dollar amount deemed appropriate by the commissioner. Failure to post such additional bond or certificate of deposit or irrevocable letter of credit, constitutes grounds for suspension or revocation of a license issued under this article.
- (3) Any required bond or bonds shall be executed by the grain dealer as principal and by a corporate surety licensed to do business in this state as a surety. The bond shall be in favor of the commissioner for the benefit of all persons interested, their legal representatives, attorneys or assigns, conditioned upon the faithful compliance by the grain dealer with the provisions of this article and the rules and regulations of the State Department of Agriculture and Commerce applicable thereto. The aggregate liability of the surety shall not exceed the sum of such bond. The bond may be cancelled at any time by the surety by giving written notice to the commissioner of its intention to cancel the bond and all liability thereunder shall terminate sixty (60) days after the mailing of such notice except that such notice shall not affect any claims arising under the bond, whether presented or not, before the effective date of the cancellation notice.
- (4) Any grain dealer who is of the opinion that his net worth and assets are sufficient to guarantee

payment to producers for grain purchased by him may request the commissioner to be relieved of the obligation of filing a bond in excess of the minimum bond of Twenty-five Thousand Dollars (\$25,000.00). Such request shall be accompanied by a financial statement of the applicant made within six (6) months of the date of such request certified by a certified public accountant. If such financial statement discloses net assets and a net worth of an amount equal to at least three (3) times the amount of the bond required by this article and the commissioner is otherwise satisfied as to the financial ability and resources of the applicant, the commissioner may waive that portion of the required bond in excess of Twenty-five Thousand Dollars (\$25,000.00). However, in the case of a grain dealer whose net worth is not equal to three (3) times the amount of bond required, the commissioner may allow such grain dealer to waive in One Thousand Dollar (\$1,000.00) increments a portion of the bond required in excess of Twenty-five Thousand Dollars (\$ 25,000.00). The percentage factor to be applied to the bond required in excess of Twenty-five Thousand Dollars (\$25,000.00) shall be determined by dividing actual net worth by the net worth required to waive all bond in excess of Twenty-five Thousand Dollars (\$25,000.00). If the result of this computation provides a percentage factor of eighty percent (80%) or greater, then that same percentage of the bond in excess of Twenty-five Thousand Dollars (\$25,000.00) may be waived. The grain dealer shall then provide to the commissioner a surety bond in the amount of Twenty-five Thousand Dollars (\$25,000.00) plus any additional bond required in excess thereof.

(5) Any grain dealer who purchases grain from producers only in connection with or as an incident to some other business and whose total purchases of grain from producers during any fiscal year do not exceed an aggregate amount of One Hundred Thousand Dollars (\$100,000.00) may satisfy the bonding requirements of this article by filing with the commissioner a bond, or certificate of deposit or irrevocable letter of credit from any bank or banking corporation insured by the Federal Deposit Insurance Corporation, at the rate of One Thousand Dollars (\$1,000.00) for each Ten Thousand Dollars (\$10,000.00) or fraction thereof of the dollar amount to be purchased, with a minimum bond, certificate of deposit or irrevocable letter of credit of One Thousand Dollars (\$1,000.00) and a current financial statement.

(6) Failure of a grain dealer to file a bond, or certificate of deposit, or letter of credit, and to keep such bond, certificate of deposit or line of credit in force, or to maintain assets adequate to assure payment to producers for grain purchased from them shall be grounds for the suspension or revocation of a license issued under this article.

(7) When the commissioner has determined that a grain dealer has defaulted payment to producers for grain which he has purchased from them, the commissioner shall determine through appropriate legal procedures the producers and the amount of defaulted payment and as trustee of the bond shall immediately after such determination call for the dealer's surety bond or bonds, or other pledged financial assets, to be paid to him for distribution to those producers who should receive the benefits. Should the defaulted amount owed the producers be less than the principal amount of the bond or bonds or pledged financial assets, then the surety bank, or banking corporation shall be obligated to pay only the amount of the default.

Miss. Code Ann. § 75-45-311
§ 75-45-311. Failure of grain dealer to pay producer

If a grain dealer should fail or refuse to make payment to a producer for grain purchased when such payment is requested by the producer and the request is made within one hundred sixty (160) days of the date of sale or the date of delivery of such grain to the dealer, whichever is later, but in case of deferred pricing, delayed pricing, priced-later, or similar contractual arrangements, no more than two hundred seventy (270) days after the date of delivery, the producer may notify the commissioner in writing, by certified mail when possible, of such failure or refusal within the period of one hundred sixty (160) days or ten (10) days thereafter. The commissioner upon receiving such notice shall take whatever action is necessary. The producer furnishing such written notice within the prescribed length of time is entitled to the benefits of the grain dealer's bond. However, if a producer fails to furnish written notice to the commissioner within the prescribed time, then such producer is not entitled to any benefits under the grain dealer's bond. Grain dealer liability under priced-later contracts, open-priced contracts, deferred price contracts, or similar agreements shall accrue under the bond in effect at the date of default as determined by the commissioner.