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Requirements for Grain Dealers

State of Montana

Licensing

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Requirements for Grain Dealers

STATE OF MONTANA

Current with legislation from the 2013 Regular Sess. and the 2012 general election

MCA 80-4-404

80-4-404. Terms of licenses--renewals

Each license issued or renewed under parts 5 and 6 of this chapter shall be issued for a period to be prescribed by rule of the department.

MCA 80-4-406

80-4-406. Appointment by nonresident licensee of agent to receive process

A nonresident applying for a license under this chapter shall file a written power of attorney, designating the secretary of state as the nonresident's agent upon whom service of process may be had if legal action is brought against the nonresident. A nonresident who has an appointed resident agent upon whom legal process may be served as provided by law is not required to designate the secretary of state as the nonresident's agent for service of process. The department must be furnished a copy of the designation of the resident agent, and the copy must be certified by the secretary of state.

MCA 80-4-421

80-4-421. License suspension and revocation--renewal

(1) The department may revoke, suspend, or modify a commodity warehouse operator's or commodity dealer's license when it has reasonable cause to believe that the licensee has committed any of the following acts, each of which is a violation of parts 4 through 7 of this chapter:

- (a) failure to maintain all initial licensing requirements, including insurance, bonding, equity, and working capital requirements. In determining compliance with equity and working capital requirements, the department may consider the licensee's status under any prior or current bankruptcy proceedings, as well as any outstanding civil settlements or judgments.
- (b) aiding or abetting another person in the violation of the licensure or any other provisions of parts 4 through 7 of this chapter;
- (c) conviction of any criminal offense defined under Title 45, after considering Title 37, chapter 1, part 2;
- (d) failure or refusal to allow inspection or maintain and provide records, reports, and other information required by the department;
- (e) failure or refusal to post storage and other charges as filed with the department;
- (f) failure or refusal to accept agricultural commodities for storage as required under 80-4-523;
- (g) failure to comply with the warehouse receipt and scale weight ticket requirements of 80-4-

525 and 80-4-527;

(h) failure of a warehouse operator to maintain and deliver upon request sufficient agricultural commodities to cover outstanding warehouse receipts as required under 80-4-531;

(i) discrimination in charges by a warehouse operator as provided in 80-4-524;

(j) failure to provide payment for any agricultural commodity;

(k) failure to satisfy a judgment entered as a result of a violation of this chapter;

(l) violation of or failure or refusal to comply with any other provision of parts 4 through 7 of this chapter or any rule adopted by the department pursuant to parts 4 through 7; or

(m) failure to assess, report, or pay an assessment authorized and required pursuant to Title 80, chapter 4 or 11.

(2) The department may refuse to issue or renew a license if the applicant or licensee:

(a) has a license as a warehouse operator or commodity dealer that was previously or is currently suspended or revoked. In determining the sufficiency of cause, the department shall consider the nature and length of the action and any subsequent licensure or other evidence of rehabilitation.

(b) does not satisfy the bonding, insurance, equity, or working capital requirements as specified in subsection (1)(a) or any other provisions required as a condition to licensing;

(c) has been convicted of a criminal offense and the denial or refusal is made after considering Title 37, chapter 1, part 2.

(3) The issuance of a license based on information provided by the applicant that the department subsequently determines incorrect is void, and any conduct under that license is a violation.

(4) All proceedings brought under subsections (1) and (2) must be conducted under the provisions of the Montana Administrative Procedure Act.

(5) The department is authorized to issue summary revocations, suspensions, or denials without hearing pursuant to the procedures established in 2-4-631.

MCA 80-4-601

80-4-601. Commodity dealer license requirements--financial responsibility

(1) A person may not engage in the business of a commodity dealer in this state without first having obtained a license issued by the department.

(2) An application for a license to engage in business as a commodity dealer must be filed with the department and must be on a form prescribed by the department.

(3)

(a) A license application must include the following:

(i) the name of the applicant;

(ii) the names of the officers and directors if the applicant is a corporation;

(iii) the names of the partners if the applicant is a partnership;

(iv) the location of the principal places of business;

(v) a sufficient and valid bond as specified in 80-4-604, plus the bond specified in subsection (5)(a)(i) or (5)(a)(ii) if applicable, or as specified in subsection (5)(a)(iii);

(vi) a complete financial statement prepared by a licensed accountant according to generally accepted accounting principles, setting forth the applicant's assets, liabilities, and equity; and

(vii) any other reasonable information the department finds necessary to carry out the provisions and purpose of this part.

- (b) In determining the value of assets for the purposes of commodity dealer licensing:
 - (i) the value of the assets must be shown at original cost less depreciation, except that upon written request filed with the department, the director may allow asset valuations in accordance with a competent appraisal; and
 - (ii) credit may be given for insurable property, such as buildings, machinery, equipment, and merchandise inventory, only to the extent that the insurable property is protected against loss or damage by fire by insurance in the form of lawful policies issued by one or more insurance companies authorized to do business and subject to service of process in suits brought in this state.
- (4) Except as provided in subsection (5), in order to receive and retain a commodity dealer's license, a commodity dealer shall have and maintain:
 - (a) equity of \$50,000;
 - (b) positive working capital; and
 - (c) the bond required under 80-4-604.
- (5)
 - (a) An applicant for a commodity dealer's license:
 - (i) that meets the condition specified in subsection (4)(c) and has maintained positive equity but does not meet the condition specified in subsection (4)(a) shall provide the department with additional bonding in the amount of \$2,000 for each \$1,000 or fraction of \$1,000 that the applicant's equity is less than \$50,000; and
 - (ii) that meets the condition specified in subsection (4)(c) but does not meet the condition specified in subsection (4)(b) shall provide the department with additional bonding in the amount of \$2,000 for each \$1,000 or fraction of \$1,000 that the applicant's current liabilities exceed the applicant's current assets; or
 - (iii) that cannot or chooses not to meet the requirements of subsections (4)(a), (4)(b), and (4)(c) may, at the applicant's discretion and with the consent of the department, provide the department with a bond in the amount of 110% of the value of commodities the applicant or dealer intends to purchase during the term of the license or 110% of the value of commodities the dealer purchased during the preceding 12 months, whichever is greater. The minimum bond is \$20,000.
 - (b) An applicant or commodity dealer that provides a bond under subsection (5)(a)(iii) is exempt from the bonding requirement in 80-4-604(2).
 - (c) If a commodity dealer posts a bond or equivalent under subsection (5)(a)(iii) and at any time has unpaid contracts that exceed 90% of the dealer's bond or equivalent, the dealer shall either pay off contracts of sufficient value or increase the bond amount so that the total value of the unpaid contracts is less than 90% of the bond or equivalent.
- (6) The department shall adopt rules relating to the form and time of filing of financial statements. The department may require additional information or verification regarding the financial resources of the applicant and the applicant's ability to pay producers for agricultural commodities purchased from them.

MCA 80-4-602
80-4-602. License fees

- (1) Except as provided in subsection (3), the department shall collect an annual fee of \$232 per facility for each commodity dealer license.

- (2) If, after evaluation of the commodity dealer/public warehouse operator program, the department determines that revenue from license fees is inadequate to accomplish the purposes of this chapter, the department may by rule increase the license fees, but the fee may not exceed \$500 for a facility.
- (3) The license fee for a commodity dealer who is licensed as a seed dealer under 80-5-130(4) is \$100 a year if the majority of the dealer's annual expenditures for agricultural commodities is for agricultural seed intended for resale as agricultural seed.
- (4) All fees collected under this section must be placed in the commodity dealer/public warehouse operators account.

MCA 80-4-603

80-4-603. License issuance--renewal--expiration

- (1) The department shall issue a license when the applicant has filed the application and complied with the terms and conditions of this part and the rules of the department.
- (2) A commodity dealer's license may be renewed annually by submitting all required licensing documents.
- (3) A commodity dealer's license that has expired may be reinstated by the department upon receipt of all licensing documents required and a penalty fee in the amount of \$50 if the document is filed within 30 days from the date of expiration of the commodity dealer's license. At no time during the 30-day period or thereafter may the person act as a commodity dealer. All license applications received after the 30-day penalty period must be considered original applications.
- (4) A commodity dealer's license is not transferable.
- (5) Any partnership with a partner or any corporation that has an officer, director, or majority stockholder owning at least 10% of issued stock who has had a license revoked under this part or the United States Warehouse Act is subject to the provisions of 80-4-421.

MCA 80-4-605

80-4-605. Posting of license

The commodity dealer's license must be posted in a conspicuous location at the dealer's place of business. A duplicate commodity dealer's license must be posted at each location at which records are maintained for transactions of the commodity dealer and also within each truck operated by the dealer in the state.