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Requirements for Grain Dealers

State of South Carolina

Indemnity Fund

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Requirements for Grain Dealers

STATE OF SOUTH CAROLINA

Current with legislation from 2013 Reg. Sess.

Code 1976 § 46-40-40

§ 46-40-40. State Treasurer to administer fund; presentation of claims against Southern Soya Corporation; time for filing; verification; relation to other funds; subrogation.

(A) The State Treasurer shall administer the investment of the fund. The department shall administer the collection of assessments and investigate losses for which payment is requested. After verifying a grain dealer's losses, the department shall request that payment for verified losses be made by the State Treasurer to the grain dealer incurring a loss and maintain records of payments made. The fund must be established for the benefit of grain dealers who have delivered grain to the debtor and compensate them for losses relative to grain delivered to the debtor. All income or interest derived from this fund must be reinvested in the fund.

(B) A grain dealer who has not previously filed a claim in this matter within ninety days after the effective date of this chapter shall present his claim for the losses incurred for grain which has been delivered to the debtor, which must be under oath, to the department on a form supplied by the department. All claims must be filed within ninety days after the effective date of this chapter or they are barred from recovery under this fund. To verify his claim, the grain dealer shall present any evidence of loss including, but not limited to, scale tickets. The price for each bushel of grain must be established on the day of the loss and must be for the fair market value on that day at the location of loss. The price for each bushel may not be higher than the contract price, if a price has been established. All grain dealers filing claims under this section are bound by the value determined by the department.

(C) If a claim has previously been denied or if a claim is pending with the department and is not subject to payment from the South Carolina Grain Producers Guaranty Fund or the Warehouse Receipts Guaranty Fund, these claims must be considered for payment from this fund.

(D) The department within thirty days from verification of loss shall request payment of one hundred percent of the approved claim.

(E) Upon approval of his claim by the department, the grain dealer shall subrogate his interest, if any, to the department in a cause of action against the debtor. All monies received from subrogation of these claims must be reinvested in the fund.

Code 1976 § 46-40-50

§ 46-40-50. Loan from Insurance Reserve Fund authorized; repayment; disposition of federal funds or other funds not received from assessments.

(A) The Insurance Reserve Fund of the State Budget and Control Board is authorized to lend an amount up to four million two hundred thousand dollars on a one-time basis to the department for the

use of the Grain Dealers Guaranty Fund herein established to pay claims approved by the department if the fund, through its assessments, has insufficient monies to pay the claims. The loan is to be repaid from monies from the guaranty fund within five years of the date of the loan in five annual installments with interest at the rate provided in Section 34-31-20(A). In the event the department fails to make any loan payment to the Insurance Reserve Fund within the prescribed time, the payment must be paid from the state general fund. The participants in the loan shall execute a document approved by the State Treasurer severally guaranteeing the loan. The Insurance Reserve Fund shall prepare a written loan agreement which must be executed by the department prior to entering into the loan authorized by this section.

(B) Any federal funds or other funds not derived from grain assessments received by the department to reimburse claims or losses under this chapter must be paid into the fund and used for loan payments or loan principal reduction to the extent any monies are due under subsection (A) to the Insurance Reserve Fund or the state general fund. Each grain dealer severally guaranteeing this loan shall have his pro rata share of the debt obligation reduced accordingly based on the amount of the federal or other payment. If no monies are due to the Insurance Reserve Fund or to the state general fund under subsection (A), such funds shall be used for claim payments.

Code 1976 § 46-40-60

§ 46-40-60. Schedule for remitting assessments; reports; determination of amount due upon failure to remit; hearings; penalties.

(A) The grain dealer shall remit assessments and file with the department a report of such assessments on grain received by him by the fifteenth day of each calendar month following any calendar month in which the grain dealer has received quantities of grain subject to assessments totaling fifty dollars or more. If such grain dealers have received quantities of grain subject to assessments totaling less than fifty dollars in any calendar month, the assessments may be reported and remitted with the following month's return. All assessments must be remitted at least once every three months.

(B) In case any person subject to this section fails to make a report and remittance when required, the department shall determine the amount of the assessment according to its best judgment and information and such amount shall be prima facie correct, and the person who failed to make the report, within ten days after notice of the amount of the assessment is mailed to him, shall pay the assessment, together with a penalty of ten percent, or dispute such assessment and request a hearing to determine its amount and the penalty to be imposed. No payment shall be made until the department enters its order determining the amount of the payment but the payment must be made within ten days' notice of the order. On failure to remit payment within ten days of the receipt of the order, the department may suspend the dealer's license pursuant to Section 46-41-130.

Code 1976 § 46-40-70

§ 46-40-70. Participation in fund.

All grain dealers shall participate in the fund.

Code 1976 § 46-40-80
§ 46-40-80. Single payment restriction.

No grain dealer is entitled to be paid more than once from any state guaranty fund for any losses incurred as a result of the bankruptcy of this debtor.

Code 1976 § 46-40-90
§ 46-40-90. Continuation of fund; limitations on assessments; payment of claims; time limit for filing claims; verification of loss.

(A) From the effective date of this chapter until the time the department determines that all approved claims against the debtor as defined in Section 46-40-20(4) have been paid and that all monies received from the Insurance Reserve Fund or state general fund under Section 46-40-50 have been repaid in full with interest as required, all monies in the fund must be used only to pay claims against this debtor. At this time, the fund shall continue in the manner provided in this section, for the benefit of grain dealers who suffer losses against other debtors as a result of bankruptcy, embezzlement, or fraud with the monies in the fund at this time to be retained therein for this purpose. However, when all monies received from the Insurance Reserve Fund or state general fund under Section 46-40-50 have been repaid, the rate of assessment shall drop from two cents each bushel to one cent each bushel.

(B) The assessments provided for in this chapter after the fund becomes available for the payment of claims against other debtors shall continue until the fund reaches three million dollars. If the three million dollar balance is attained prior to the end of harvest season, the assessments shall continue until the end of that season. However, a grain dealer who has not paid assessments into the fund, or forfeited collateral, in an amount at least equal to loss payments he has received, shall continue to pay assessments until the assessments equal the loss payments he received. The assessments shall be reinstated as necessary to maintain a balance of three million dollars in the fund.

(C) Claims shall be paid in the order in which they are verified and approved by the department. If there is an insufficient amount of money in the fund to cover all claims, in the manner provided in this section, payments must be made on a pro rata basis up to one hundred percent of the total loss of each grain dealer. If payment is not received in the amount of one hundred percent of total loss, then additional amounts must be paid as funds become available until payment of one hundred percent of total loss is attained. However, a grain dealer may only receive payments for losses in an amount that does not exceed the total of the assessments he has paid into the fund and the value of collateral used to secure repayment of the loss payment. If, however, additional monies are deposited into the fund from grants or any other source, each grain dealer shall have his amount of outstanding debt reduced pro rata using these additional funds. If at any time a grain dealer receives payment for more than one hundred percent of total loss, such excess shall immediately be returned to the fund.

(D) For purposes of paying claims, grain dealers must file their claims with the department within ninety days after their date of loss and the term "debtor" under this section means any grain dealer who has filed a petition for bankruptcy or who has committed embezzlement or fraud. Date of loss means the date the debtor filed a petition for bankruptcy or the date the department determined an embezzlement or fraud occurred, and the term "loss" does not include any monetary losses for grain delivered to the debtor more than one year before the date of loss. The department in pursuing claims subrogated by grain dealers who have received payments from the fund may hire independent attorneys to pursue these subrogated claims to be paid from any recovery or from monies in the fund. For losses resulting from an embezzlement or fraud, unless the grain dealer who occasioned the loss

has been convicted of embezzlement or fraud pursuant to judicial proceedings, the department, in conjunction with the State Auditor's Office, shall conduct a financial audit of the grain dealer to verify the loss before it may request payment from the fund. The fund must bear all expenses incurred in conducting the audit. Otherwise, except as modified by the provisions of this section, the payment of assessments, claims, and the administration of the fund shall be as provided in this chapter and the provisions of this chapter shall apply to such transactions mutatis mutandis.

Code 1976 § 46-40-100
§ 46-40-100. Administrative costs.

The department may retain and expend one hundred thousand dollars of the interest from the Grain Handlers Guaranty Fund to cover the costs associated with administering the program.

Code 1976 § 46-41-220
§ 46-41-220. Assessment on grain.

An assessment of one cent a bushel must be imposed on all soybeans and one-half cent a bushel on all other grain delivered by producers to grain dealers licensed under this chapter other than grain for which a producer has received payment in currency or cashier's check on delivery, or received a state warehouse receipt issued in the producer's name or that of his designee. The grain dealer shall collect the assessment from the producer at the time of settlement with the producer. The assessment must be reported and remitted to the department by the grain dealer as of the month in which the grain was delivered to the grain dealer, except as provided by Section 46-41-240. The department shall remit the assessment to the State Treasurer to be credited to the fund.

Code 1976 § 46-41-230
§ 46-41-230. State Treasurer to administer fund; purpose; amount of fund; claims.

The State Treasurer shall administer the investment of the fund. The department shall administer the collection of assessments and investigate losses for which payment is requested. Unless the grain dealer who allegedly occasioned the loss has filed for bankruptcy or is audited pursuant to other judicial proceedings, the department, in conjunction with the State Auditor's Office, shall conduct a financial audit of the grain dealer to verify the loss before it may request payment from the fund. The fund must bear all expenses incurred in conducting the audit. After verification, the department shall request that payment for verified losses be made by the State Treasurer to the person incurring a loss. The fund must be established for the benefit of producers who have delivered grain to grain dealers licensed under this chapter and compensate producers for losses relative to grain delivered to a grain dealer licensed under this chapter, except losses covered by the grain dealer's surety bond. When the fund reaches four million dollars the assessment ceases. If the four million dollars is attained prior to the end of a harvest season, the assessment continues until the end of that season. The assessment must be reinstated as necessary to maintain a balance of four million dollars in the fund. The first one hundred thousand dollars collected in assessment must be paid into the general fund of the State. Any of these funds not appropriated for the employment of additional auditors for the Warehouse and Dealers and Handlers Division of the Department of Agriculture must be returned to the fund. All

income, interest, or otherwise, derived from this fund must be reinvested in the fund.

When a loss is incurred for grain which has been delivered to a grain dealer licensed under this chapter, the producer shall within ninety days present his claim, which must be under oath, to the department on a form supplied by the department. To verify his claim, the producer shall present any evidence of loss the department considers necessary. The price for each bushel of grain must be established on the day of the loss and must be for the fair market value on that day at the location of loss. The price for each bushel may not be higher than the contract price, if a price has been established. All persons filing claims under this section are bound by the value determined by the department.

The department within thirty days from verification of loss shall request payment of one hundred percent of the approved claim. At no time may the fund be reduced to less than one hundred thousand dollars.

If there is an insufficient amount of money in the fund to cover all claims, payments must be made on a pro rata basis up to one hundred percent of the total loss of each producer. If payment is not received in the amount of one hundred percent of total loss then additional amounts must be paid as funds become available until payment of one hundred percent of total loss is attained. Claims against the fund must be paid in the order in which they have been verified and approved.

Upon approval of his claim by the department, the producer shall subrogate his interest, if any, to the department in a cause of action against any and all parties. An independent law firm may be hired and paid by the fund for the purpose of collecting losses subrogated to the department. Payments start when the fund exceeds one hundred thousand dollars.

Code 1976 § 46-41-250

§ 46-41-250. Election not to participate in fund; application for exemption.

Notwithstanding any other provision of this chapter, any producer may elect not to participate in the fund for any calendar year by applying for an exemption with the South Carolina Department of Agriculture as provided in this section.

The election consists of a written, notarized application upon a form designed and provided by the Department of Agriculture. The application must be filed with the Department before April 1 of the year for which the exemption is desired.

Upon filing of the application, the Department must issue the applicant an exemption certificate specifying the producer, commodity exempted, and period of exemption. Such certificate, when presented to the grain dealer upon delivery of the grain, entitles the specified producer to an exemption from the dealer's and handler's assessment on the specified commodity.

When an exemption is granted under this section the grain dealer must retain a copy of the exemption certificate for a period of not less than two years. Any producer who elects not to participate in the fund is not eligible to be reimbursed for any loss for the commodity exempted for that calendar year.