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Requirements for Grain Dealers

State of South Dakota

Bonding

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Requirements for Grain Dealers

STATE OF SOUTH DAKOTA

Current with legislation from 2014 Regular Sess.

SDCL § 49-45-6

49-45-6. Supervision of grain buyers--Promulgation of rules

The commission shall supervise the business of grain buyers in this state and administer the laws relating thereto. The commission may promulgate rules, pursuant to chapter 1-26, concerning:

- (1) The form of a grain buyer's bond and application and the information required to be included for licensing;
- (2) Requirements for posting grain buyer's licenses;
- (3) Requirements and procedures for obtaining, placing, and returning grain buyer decals and replacement decals;
- (4) Notice requirements to sellers who enter into voluntary credit sale agreements;
- (5) Requirements for filing financial statements with the commission and the financial standards by which the statements are approved when considering whether to license a grain buyer;
- (6) Requirements for grain buyers to provide information to sellers regarding the statutes and rules relating to grain buyers;
- (7) Requirements and procedures for releasing bonds; and
- (8) Procedures and requirements for license suspension, revocation, transfer of ownership, or insolvency by a grain buyer.

SDCL § 49-45-9

49-45-9. Bond requirements--Violation as misdemeanor--Amount

Before any grain buyer license is issued by the commission, the applicant shall file with the commission a bond conditioned to secure the faithful performance of the applicant's obligations as a grain buyer and full and unreserved compliance with the laws of this state and the rules of the commission, relating to the purchase of grain by the grain buyer. The bond is for the specific purpose of protecting persons selling grain to the grain buyer. However, the bond may not benefit any person entering into a voluntary credit sale with a grain buyer. Any person who does business as a grain buyer without a bond is guilty of a Class 1 misdemeanor. Each day a person conducts the business of a grain buyer without a bond is a separate offense.

The amount of the bond for a Class A or Class B grain buyer's license shall be based on a rolling average of the dollar amount of grain purchased by the applicant in South Dakota during the last three calendar years. For a new grain buyer, the first year's bond shall be based on projected purchases. For a grain buyer with less than three years experience as a grain buyer, the bond shall be based on the average actual purchases made by the grain buyer in all of its previous years as a grain buyer. The bond applies to all grain purchases for all of the grain buyer's business locations.

The amount of the bond for a Class A grain buyer's license is:

Dollar Amount of Grain Purchased	Bond Requirement
Less than \$2,000,001	\$50,000
\$2,000,001--\$5,000,000	\$100,000
\$5,000,001--\$10,000,000	\$150,000
\$10,000,001--\$20,000,000	\$200,000
\$20,000,001--\$30,000,000	\$250,000
\$30,000,001--\$40,000,000	\$300,000
\$40,000,001--\$55,000,000	\$350,000
\$55,000,001--\$70,000,000	\$400,000
\$70,000,001--\$85,000,000	\$450,000
\$85,000,001--\$100,000,000	\$500,000

Bond requirements are increased twenty-five thousand dollars for each additional ten million dollars in purchases above one hundred million dollars.

The amount of the bond for a Class B grain buyer's license is:

Dollar Amount of Grain Purchased	Bond Requirement
Less than \$2,000,001	\$50,000
\$2,000,001-- \$5,000,000	\$100,000
\$5,000,001--\$10,000,000	\$150,000

The grain buyer may stipulate to a higher bond amount requested by the commission or may post additional security in another form.

SDCL § 49-45-9.1

49-45-9.1. Filing of financial documents in lieu of bond

If the commission determines, because a corporate surety company becomes insolvent or ceases to write grain buyer bonds in this state, that a bond in the sum required by § 49-45-9 cannot be executed, or if a grain buyer is in the process of chapter 11 reorganization and a bond cannot be obtained, the commission may authorize the filing of other financial documents in lieu of a corporate surety bond.

SDCL § 49-45-17

49-45-17. Recovery of damages for breach of obligation under bond--Notice to commission--Time for commission response

Any person injured by the breach of any obligation of a grain buyer, for the performance of which a bond has been given under any of the provisions of this chapter, may sue on the bond in the person's own name in any court of competent jurisdiction to recover any damages the person may have sustained by reason of the breach. However, a person may sue on the bond only if the person has notified the commission of the person's intent to sue on the bond and if the commission has stated in writing that it does not intend to institute any proceedings regarding the bond. The commission shall respond in writing within sixty days of notification stating whether the commission intends to institute any proceedings regarding the bond. If the commission fails to respond in writing within the sixty days, the person may proceed to sue on the bond in the person's own name.