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## **Requirements for Grain Dealers**

### **State of Washington**

*Bonding*

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## Requirements for Grain Dealers

### STATE OF WASHINGTON

*Current with legislation from 2014*

#### **West's RCWA 22.09.060**

#### **22.09.060. Bond or certificate of deposit and insurance prerequisite to license--Exemption**

Except as provided in RCW 22.09.405(2), no warehouse or grain dealer license may be issued to an applicant before a bond, certificate of deposit, or other security is given to the department as provided in RCW 22.09.090, or in RCW 22.09.095. No warehouse license may be issued to an applicant before a certificate of insurance as provided in RCW 22.09.110 has been filed with the department. Grain dealers may be exempted by rule from the bonding requirement if the grain dealer does not do more than one hundred thousand dollars in business annually and makes payments solely in coin or currency of the United States at the time of obtaining possession or control of grain. However, a cashier's check, certified check, or bankdraft may be considered as cash for purposes of this section.

#### **West's RCWA 22.09.090**

#### **22.09.090. Bond requisites--Certificate of deposit or other security--Additional security-- Suspension of license for failure to maintain**

- (1) An applicant for a warehouse or grain dealer license pursuant to the provisions of this chapter shall give a bond to the state of Washington executed by the applicant as the principal and by a corporate surety licensed to do business in this state as surety.
- (2) The bond required under this section for the issuance of a warehouse license shall be in the sum of not less than fifty thousand dollars nor more than seven hundred fifty thousand dollars. The department shall, after holding a public hearing, determine the amount that will be required for the warehouse bond which shall be computed at a rate of not less than fifteen cents nor more than thirty cents per bushel multiplied by the number of bushels of licensed commodity storage capacity of the warehouses of the applicant furnishing the bond. The applicant for a warehouse license may give a single bond meeting the requirements of this chapter, and all warehouses operated by the warehouse operator are deemed to be one warehouse for the purpose of the amount of the bond required under this subsection. Any change in the capacity of a warehouse or addition of any new warehouse involving a change in bond liability under this chapter shall be immediately reported to the department.
- (3) The bond required under this section for the issuance of a grain dealer license shall be in the sum of not less than fifty thousand dollars nor more than seven hundred fifty thousand dollars. The department shall, after holding a public hearing, determine the amount that will be required for the dealer bond which shall be computed at a rate not less than six percent nor more than twelve percent of the sales of agricultural commodities purchased by the dealer from producers during the dealer's last completed fiscal year or in the case of a grain dealer who has been engaged in business as a grain dealer less than one year, the estimated aggregate dollar amount to be paid by the dealer to producers for agricultural

commodities to be purchased by the dealer during the dealer's first fiscal year.

(4) An applicant making application for both a warehouse license and a grain dealer license may satisfy the bonding requirements set forth in subsections (2) and (3) of this section by giving to the state of Washington a single bond for the issuance of both licenses, which bond shall be in the sum of not less than fifty thousand dollars nor more than seven hundred fifty thousand dollars. The department shall, after holding a public hearing, determine the amount of the bond which shall be computed at a rate of not less than fifteen cents nor more than thirty cents per bushel multiplied by the number of bushels of licensed commodity storage capacity of the warehouses of the applicant furnishing the bond, or at the rate of not less than six percent nor more than twelve percent of the gross sales of agricultural commodities of the applicant whichever is greater.

(5) The bonds required under this chapter shall be approved by the department and shall be conditioned upon the faithful performance by the licensee of the duties imposed upon him or her by this chapter. If a person has applied for warehouse licenses to operate two or more warehouses in this state, the assets applicable to all warehouses, but not the deposits except in case of a station, are subject to the liabilities of each. The total and aggregate liability of the surety for all claims upon the bond is limited to the face amount of the bond.

(6) Any person required to submit a bond to the department under this chapter has the option to give the department a certificate of deposit or other security acceptable to the department payable to the director as trustee, in lieu of a bond or a portion thereof. The principal amount of the certificate or other security shall be the same as that required for a surety bond under this chapter or may be in an amount which, when added to the bond, will satisfy the licensee's requirements for a surety bond under this chapter, and the interest thereon shall be made payable to the purchaser of the certificate or other security. The certificate of deposit or other security shall remain on deposit until it is released, canceled, or discharged as provided for by rule of the department. The provisions of this chapter that apply to a bond required under this chapter apply to each certificate of deposit or other security given in lieu of such a bond.

(7) The department may, when it has reason to believe that a grain dealer does not have the ability to pay producers for grain purchased, or when it determines that the grain dealer does not have a sufficient net worth to outstanding financial obligations ratio, or when it believes there may be claims made against the bond in excess of the face amount of the bond, require a grain dealer to post an additional bond in a dollar amount deemed appropriate by the department or may require an additional certificate of deposit or other security. The additional bonding or other security may exceed the maximum amount of the bond otherwise required under this chapter. Failure to post the additional bond, certificate of deposit, or other security constitutes grounds for suspension or revocation of a license issued under this chapter.

(8) Notwithstanding any other provisions of this chapter, the license of a warehouse operator or grain dealer shall automatically be suspended in accordance with RCW 22.09.100 for failure at any time to have or to maintain a bond, certificate of deposit, or other security or combination thereof in the amount and type required by this chapter. The department shall remove the suspension or issue a license as the case may be, when the required bond, certificate of deposit, or other security has been obtained.

**West's RCWA 22.09.095**  
**22.09.095. Single bond by multiple applicants**

- (1) Two or more applicants for a warehouse or grain dealer license may provide a single bond to the state of Washington, executed by a corporate surety licensed to do business in this state and designating each of the applicants as a principal on said bond.
- (2) The department shall promulgate rules establishing the amount of the bond required under this section. In no event shall that amount be less than ten percent of the aggregate amount of each of the bonds that would be required of the applicants under RCW 22.09.090 or less than the amount that would be required under RCW 22.09.090 for the applicant having the highest bond requirement under that section.

**West's RCWA 22.09.100**  
**22.09.100. Bonds--Duration--Release of surety--Cancellation by surety**

- (1) Every bond filed with and approved by the department shall without the necessity of periodic renewal remain in force and effect until such time as the warehouse operator or grain dealer license of each principal on the bond is revoked or otherwise canceled.
- (2) The surety on a bond, as provided in this chapter, shall be released and discharged from all liability to the state, as to a principal whose license is revoked or canceled, which liability accrues after the expiration of thirty days from the effective date of the revocation or cancellation of the license. The surety on a bond under this chapter shall be released and discharged from all liability to the state accruing on the bond after the expiration of ninety days from the date upon which the surety lodges with the department a written request to be released and discharged. Nothing in this section shall operate to relieve, release, or discharge the surety from any liability which accrues before the expiration of the respective thirty or ninety-day period. In the event of a cancellation by the surety, the surety shall simultaneously send the notification of cancellation in writing to any other governmental agency requesting it. Upon receiving any such request, the department shall promptly notify the principal or principals who furnished the bond, and unless the principal or principals file a new bond on or before the expiration of the respective thirty or ninety-day period, the department shall forthwith cancel the license of the principal or principals whose bond has been canceled.

**West's RCWA 22.09.381**  
**22.09.381. Depositors' claims, processing by department**

In the event of a failure of a grain dealer or warehouse operator, the department may process the claims of depositors possessing written evidence of ownership disclosing a storage obligation or written evidence of a sale of commodities in the following manner:

- (1) The department shall give notice and provide a reasonable time to depositors possessing written evidence of ownership disclosing a storage obligation or written evidence of sale of commodities to file their claims with the department.
- (2) The department may investigate each claim and determine whether the claimant's commodities are under a storage obligation or whether a sale of the commodities has occurred. The department may, in writing, notify each claimant and the failed grain dealer or warehouse operator of the department's determination as to the status and amount of each claimant's claim. A claimant, failed warehouse

operator, or grain dealer may request a hearing on the department's determination within twenty days of receipt of written notification, and a hearing shall be held in accordance with chapter 34.05 RCW.

(3) The department may inspect and audit the failed warehouse operator to determine whether the warehouse operator has in his or her possession sufficient quantities of commodities to cover his or her storage obligations. In the event of a shortage, the department shall determine each depositor's pro rata share of available commodities and the deficiency shall be considered as a claim of the depositor. Each type of commodity shall be treated separately for the purpose of determining shortages.

(4) The department shall determine the amount, if any, due each claimant by the surety and make demand upon the bond in the manner set forth in this chapter.

#### **West's RCWA 22.09.570**

#### **22.09.570. Action on bond by director--Authorized--Grounds**

The director may bring action upon the bond of a warehouse operator or grain dealer against both principal against whom a claim has been made and the surety in any court of competent jurisdiction to recover the damages caused by any failure to comply with the provisions of this chapter or the rules adopted hereunder. Recovery for damages against a warehouse operator or grain dealer on a bond furnished under RCW 22.09.095 shall be limited to the bond amount that would be required for that warehouse operator or grain dealer under RCW 22.09.090.

#### **West's RCWA 22.09.580**

#### **22.09.580. Action on bond by director--Failure of depositor creditor to file claim upon request--Effect**

If a depositor creditor after notification fails, refuses, or neglects to file in the office of the director his or her verified claim against a warehouse operator or grain dealer bond as requested by the director within thirty days from the date of the request, the director shall thereupon be relieved of further duty or action under this chapter on behalf of the depositor creditor.

#### **West's RCWA 22.09.590**

#### **22.09.590. Action on bond by director--Records as to depositor creditors missing or information incomplete--Effect**

Where by reason of the absence of records or other circumstances making it impossible or unreasonable for the director to ascertain the names and addresses of all the depositor creditors, the director after exerting due diligence and making reasonable inquiry to secure that information from all reasonable and available sources, may make demand on a warehouse operator's or grain dealer's bond on the basis of information then in his or her possession, and thereafter shall not be liable or responsible for claims or the handling of claims that may subsequently appear or be discovered.

**West's RCWA 22.09.600**

**22.09.600. Action on bond by director--Powers of director**

Upon ascertaining all claims and statements in the manner set forth in this chapter, the director may then make demand upon the warehouse operator's or grain dealer's bond on behalf of those claimants whose claims and statements have been filed, and has the power to settle or compromise the claims with the surety company on the bond, and is empowered in such cases to execute and deliver a release and discharge of the bond involved.

**West's RCWA 22.09.610**

**22.09.610. Action on bond by director--When authorized--New bond, when required--Penalty for failure to file**

Upon the refusal of the surety company to pay the demand, the director may thereupon bring an action on the warehouse operator's or grain dealer's bond in behalf of the depositor creditors. Upon any action being commenced on the bond, the director may require the filing of a new bond, and immediately upon the recovery in any action on the bond, a new bond shall be filed. The failure to file the new bond or otherwise satisfy the security requirements of this chapter within ten days in either case constitutes grounds for the suspension or revocation of the license of any principal on the bond.

**West's RCWA 22.09.615**

**22.09.615. Action by depositor upon licensee's bond**

- (1) If no action is commenced under RCW 22.09.570 within thirty days after written demand to the department, any depositor injured by the failure of a licensee to comply with the condition of his or her bond has a right of action upon the licensee's bond for the recovery of his or her damages. The depositor shall give the department immediate written notice of the commencement of any such action.
- (2) Recovery under the bond shall be prorated when the claims exceed the liability under the bond.
- (3) Whenever the claimed shortage exceeds the amount of the bond, it is not necessary for any depositor suing on the bond to join other depositors in the suit, and the burden of establishing proration is on the surety as a matter of defense.