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Requirements for Grain Dealers:

Delaware



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Fast Find:

- 1) Licensing: [Del. Code Ann. tit. 3, §§ 2502 to 2504; 2506; 2510](#)
- 2) Bonding: [Del. Code Ann. tit. 3, §§ 2504 to 2505](#)
- 3) Auditing: [Del. Code Ann. tit. 3, §§ 2508 to 2509](#)
- 4) Indemnity Fund:
- 5) Failure/Liquidation:
- 6) Prompt Payment:
- 7) Penalties: [Del. Code Ann. tit. 3, §§ 2510 to 2511](#)
- 8) Lien:

Del. Code Ann. Tit. 3, Part 2, Ch. 25

Current through ch. 254 of the 152nd General Assembly (2023-2024).

§ 2501. Definitions

As used in this chapter:

- (1) “Person” means any individual, firm, partnership, corporation, company, association, society, joint-stock company or syndicate, their lessees, trustees or receivers.
- (2) “Dealer” means any person who solicits or receives any agricultural products from the producer or other supplier on consignment as a commission merchant, or who purchases agricultural products for resale at wholesale as a dealer, or who negotiates the purchase or sale of any agricultural product as a broker. The term “dealer” shall exclude the Southern Delaware Truck Growers Association Incorporated or similar organizations, and persons who operate as cash buyers.
- (3) “Delaware broker” means any person whose principal place of business is in the State that has been engaged in the business of negotiating sales and purchases of any perishable agricultural products in the State for at least 5 years and has net assets in the State with value equal to or exceeding the bonding requirements of this chapter.
- (4) “Cash buyer” means a dealer who pays for agricultural products in United States currency, certified checks, cashier’s checks or drafts issued by a bank at the time the product is removed from a producer’s and/or auction market’s premises.
- (5) “Producer” means any person in this State who produces agricultural products.



(6) “Agricultural products” means fruits and vegetables, and for the purpose of this chapter shall be construed to include, but not by way of limitation, apples, cabbage, cantaloupes, cucumbers, melons, potatoes, sweet corn and tomatoes.

(7) “Department” means the Delaware Department of Agriculture.

(8) “Secretary” means the Secretary of the Delaware Department of Agriculture.

§ 2502. License required of dealer

It shall be unlawful for any dealer in agricultural products to operate and conduct a business without first having obtained a license as provided in this chapter. The Department shall publish annually a list of licensed dealers under this chapter.

§ 2503. Dealers licensed annually

Every dealer in agricultural products proposing to transact business with producers and/or auction markets in this State shall file a written application for a license or for the renewal of a license with the Department. The application shall be on a form furnished by the Department and shall contain the following information along with such other information as the Department shall require: (1) The name and address of the applicant and that of its local agents, if any, and the location of its principal place of business; (2) the kinds of agricultural products the applicant proposes to handle; (3) the type of produce business proposed to be conducted. All licenses shall expire on March 31 of each year.

§ 2504. License fee; bond required; exceptions to bond requirement

All applications shall be accompanied by a license fee of \$25 and a good and sufficient bond in the minimum sum of \$25,000. In any event, the bond shall be equal to or greater than the maximum amount of gross business done in this State the previous calendar year, but in no event shall the amount of bond required exceed \$50,000. After a hearing on any complaint against a licensee, a maximum bond of \$100,000 may be required at the discretion of the Secretary. In lieu of the bond, applicants may deposit with the Secretary, United States government securities, irrevocable letters of credit, or appropriate certificate of deposit, satisfactory to the Secretary, to which every producer and/or auction market with whom the licensee does business has recourse on a claim filed in writing with the Department of Agriculture. In lieu of bond Delaware brokers may submit evidence satisfactory to the Secretary that they have net assets in the State with value equal to or exceeding the bonding requirements of this section.

§ 2505. Execution of bond; bond form; action upon bond

The bond referred to in this chapter shall be executed by the applicant and by a surety company authorized and qualified to do business in this State as surety in favor of the Secretary in the Secretary's official capacity for the benefit of all producers with whom the applicant shall transact business, for the period that the license is in force. Such bond shall be upon a form prescribed or approved by the Department and shall be conditioned to secure the faithful accounting for payment to producers, agents or representatives, of all agricultural products purchased, handled or



sold by the dealer. Any producer claiming to be injured by the nonpayment, fraud, deceit or negligence of any dealer may bring action therefor upon the bond against the principal or the surety, or both, by the filing of a verified complaint. Such verified complaint shall be upon a form prescribed or approved by the Secretary.

§ 2506. Renewal of license

Upon proof of payment of the renewal premium continuing the bond required by this chapter in full force and effect, or proof that the applicant meets 1 of the exceptions to the bond requirement set forth in § 2504 hereof, and upon the payment of a fee of \$25 on or before the expiration date of any license issued under this chapter, the applicant shall be entitled to a renewal of license for another year.

§ 2507. Fees collected

All sums received by the Department for license fees and renewals shall be paid into the State Treasury to the credit of the General Fund.

§ 2508. Dealer to keep records

Every dealer who has received any agricultural product from a producer shall make and keep a correct record and retain the same for 2 years, showing in detail the following with reference to the handling or sale of such agricultural products, along with such other information as the Department by regulation may require:

- (1) The name and address of the producer;
- (2) The date received;
- (3) The condition, grade (if officially graded) and quantity on receipt;
- (4) The date of resale or transfer of the products to another;
- (5) The price at which purchased and sold.

§ 2509. Secretary's authority to investigate; proceedings on complaints

(a) Upon the verified written complaint of any producer or interested person or upon the Secretary's own motion, the Secretary or assistant whom the Secretary may designate may investigate the books and records of any dealer in agricultural products pertaining to such complaint at any time during business hours and shall have free access to the place at which the business is operated.

(b) When a verified written complaint is filed with the Secretary, the Secretary or assistant whom the Secretary may designate may conduct a hearing thereon and shall furnish the holder of the license a copy of the complaint and a notice of the time and place of hearing, which notice shall be served personally or by registered mail directed to the license holder's place of business or last known address with postage fully paid at least 20 days prior to the time fixed for the hearing. In the hearing of any complaint, the Secretary or assistant whom the Secretary may designate may sign and issue subpoenas, administer oaths, examine witnesses, take depositions,



receive evidence and require by subpoena the attendance and testimony of witnesses and the production of records, documents and memoranda as may be material for the determination of the matter alleged in the complaint.

(c) The Secretary or assistant whom the Secretary may designate shall report his or her findings and make his or her order upon the matters complained of and furnish a copy of same to the complainant and respondent and/or surety within 10 days of the conclusion of the hearing.

(d) The respondent and/or surety shall have 15 days in which to make effective and satisfy the Secretary's order. If the respondent and/or surety does not comply with the Secretary's order in 15 days, the Secretary shall bring an action at law to recover from the surety on said bond, or any other security provided by the dealer under § 2504 hereof, the amount necessary to satisfy such claims or such part thereof as shall equal the amount of the bond or security, which action may be instituted by the Secretary in his or her official capacity as such on behalf of said claimants, but without naming them as parties. The moneys obtained by action against the surety on the bond, or from the sale of any other security, shall be used for the satisfaction of such claims, and the Secretary shall make distribution thereof to the claimants in accordance with the amounts determined to be due thereon, and if less than the total amount of said claims shall be so obtained, distribution shall be made ratably to the creditors according to said amounts.

(e) If a creditor has reduced a claim to judgment, the judgment shall be presumptive of the amount due the creditor.

(f) Nothing in this chapter shall be construed to limit the remedies that are otherwise available to a person at law or equity.

§ 2510. Refusal or revocation of license; hearing

(a) The Department may refuse to grant a license or may revoke any license already granted, as the case may be, when it is satisfied of the existence of any of the following causes:

(1) The dealer has suffered a money judgment to be entered against the dealer upon which execution has been returned unsatisfied;

(2) The dealer has failed promptly and properly to account and to pay for agricultural products;

(3) The dealer has made a false or misleading statement as to market conditions or the service rendered, if any, with the intent to defraud;

(4) The dealer has perpetrated a fraud or engaged in deceit in procuring the license;

(5) The dealer has engaged in any fraudulent or deceitful practices in dealings with producers.



(b) Before any license is refused or revoked, the Department or its authorized agents shall give the applicant or licensee at least 20 days' notice of the time and place of hearing on refusal or revocation of a license. At the time and place of hearing, the Department or its authorized agents shall receive evidence, administer oaths, examine witnesses and hear testimony and shall file an order either dismissing the proceeding or refusing or revoking the license.

§ 2511. Penalty

(a) The Secretary shall have the power to issue an order to any person violating any provision of this chapter to cease and desist from such violation; provided, that any cease and desist order issued pursuant to this section shall expire (1) after 90 days of its issuance, or (2) upon withdrawal of said order by the Secretary, or (3) when the order is suspended by an injunction, whichever should first occur.

(b) Whoever violates this chapter, or an order of the Secretary, shall be punishable as follows:

- (1) For the 1st offense, be fined not less than \$500 nor more than \$1,000, or be confined in jail for a period not exceeding 6 months, or both;
- (2) Upon conviction of a 2nd offense shall be fined not less than \$2,000 nor more than \$5,000, or be confined in jail for a period not exceeding 1 year, or both, in the discretion of the court.

