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## Requirements for Grain Dealers:

*Montana*



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# A National Agricultural Law Center Research Publication

## Requirements for Grain Dealers: Montana

### Fast Find:

- 1) Licensing: [Mont. Code Ann. §§ 80-4-404; 406; 421; Mont. Code Ann. §§ 80-4-601 to 603; 605](#)
- 2) Bonding: [Mont. Code Ann. §§ 80-4-405; 425; Mont. Code Ann. §§ 80-4-604; 612; 614](#)
- 3) Auditing: [Mont. Code Ann. §§ 80-4-407 to 410; 606; 613](#)
- 4) Indemnity Fund:
- 5) Failure/Liquidation: [Mont. Code Ann. §§ 80-4-416; 419; Mont. Code Ann. § 80-4-612](#)
- 6) Prompt Payment: [Mont. Code Ann. § 80-4-422; Mont. Code Ann. §§ 80-4-607 to 608](#)
- 7) Penalties: [Mont. Code Ann. §§ 80-4-426 to 429; 612](#)
- 8) Lien: [Mont. Code Ann. § 80-4-420](#)

### Mont. Code Ann. Tit. 80, Ch. 4, Part 4;

### Mont. Code Ann. Tit. 80, Ch. 4, Part 6

*Current through chapters effective January 1, 2024 of the 2023 Session.*

#### **80-4-401. Short title**

Parts 4 through 7 of this chapter may be cited as the “Agricultural Warehouse, Commodity Dealer, and Grain Standards Act”.

#### **80-4-402. Definitions**

As used in parts 4 through 7 of this chapter, the following definitions apply:

- (1) “Agent” means a person who contracts for or solicits any agricultural commodities from a producer or warehouse operator or negotiates the consignment or purchase of any agricultural commodity on behalf of a commodity dealer.
- (2) “Agricultural commodity” means any grain, oil seed crops, seed, or other crops designated by rule of the department.
- (3) “Bailment” means the transfer, by written or verbal contract, of an agricultural commodity by an owner of a commodity to a producer for the purpose of obtaining the producer’s services in planting, growing, harvesting, or delivering back to the owner the agricultural commodity.



The term includes any one or all of the enumerated transactions, whether title passes or not.

(4) “Bond” means the bond required to be filed by part 5 or 6 of this chapter and includes any equivalent established by department rule, as provided in 80-4-504 and 80-4-604.

(5)

(a) “Commodity dealer” means a person who engages in a business involving or, as part of the business, participates in buying, brokering, exchanging, negotiating, or soliciting the sale, resale, exchange, bailment, or transfer of any agricultural commodity in the state of Montana, including online transactions of agricultural commodities grown in Montana.

(b) The term does not include:

(i) a person engaged solely in storing, shipping, or handling agricultural commodities for hire;

(ii) a person who buys agricultural commodities from a licensed commodity dealer;

(iii) a person who does not purchase more than \$30,000 worth of agricultural commodities from producers during a licensing year; however, once a person exceeds the \$30,000 exemption, the person shall obtain a license and is not eligible for the exemption for the succeeding year;

(iv) a person who is the producer of agricultural commodities that the person actually plants, nurtures, and harvests;

(v) a person whose trading in agricultural commodities is limited to trading in commodity futures on a recognized futures exchange; or

(vi) a person who buys agricultural commodities used exclusively for the feeding of livestock.

(6) “Delayed payment contract” means a written contract for the sale of an agricultural commodity when the purchase price is to be paid at a date after delivery of the agricultural commodity to the buyer and includes but is not limited to those contracts commonly referred to as deferred payment contracts, deferred pricing contracts, no-price-established contracts, or price-later contracts. A delayed payment contract does not include those contracts in which the parties intend payment to be made immediately upon determination of weights and grades.

(7) “Department” means the department of agriculture provided for in 2-15-3001.



(8) “Depositor” means a person who delivers an agricultural commodity to a commodity dealer for sale, who deposits an agricultural commodity in a warehouse for storage, processing, handling, or shipment, who is the owner or legal holder of an outstanding warehouse receipt, or who is lawfully entitled to possession of the agricultural commodity.

(9) “Director” means the director of the department of agriculture.

(10) “Equity” means the residual interest in the assets of a person that remains after deducting the liabilities of the person under generally accepted accounting principles.

(11) “FGIS” means the federal grain inspection service, a program administered by the federal grain inspection, packers, and stockyards administration (GIPSA).

(12) “Grain” means all grains for which standards have been established under the Grain Standards Act and all other agricultural commodities, such as mustard, oil seed crops, or other crops, that may be designated by rule of the department.

(13) “Grain standards” means the official standards of quality and condition of grain that establish the grades defined by the Grain Standards Act or those standards adopted by department rule.

(14) “Grain Standards Act” means the United States Grain Standards Act, 7 U.S.C. 71 through 87.

(15) “Inspector” means a person designated by the director to assist in the administration of parts 4 through 7 of this chapter. The term includes warehouse auditors or examiners.

(16) “Official agricultural commodity inspectors” means official personnel who perform or supervise the performance of official inspection services and certify the results of inspections, including the grade of agricultural commodities.

(17) “Official agricultural commodity samplers” or “samplers” means official personnel who perform or supervise the performance of official sampling services and certify the results of the sampling.

(18) “Official agricultural commodity weighers” means official personnel who perform or supervise the performance of class X or class Y weighing services and certify the results of the services, including the weight of the agricultural commodity.

(19) “Person” means an individual, firm, association, corporation, partnership, or any other form of business enterprise.

(20) “Producer” means the owner, tenant, or operator of land in this state who has an interest in and receives all or part of the proceeds from the sale of agricultural commodities produced on that land.

(21) “Public warehouse” or “warehouse” means an elevator, mill, warehouse, subterminal grain warehouse, public



warehouse, or other structure or facility in which, for compensation, agricultural commodities are received for storage, handling, processing, or shipment. The term includes facilities that commingle commodities belonging to different lots of agricultural commodities.

(22) “Purchase contract” means a delayed payment contract or other written contract for the purchase of agricultural commodities by a commodity dealer.

(23) “Purchase price” means the final price after premiums and discounts are assessed.

(24) “Receipt” means a warehouse receipt.

(25) “Scale weight ticket” means a load slip or other evidence of delivery, other than a receipt, given to a depositor by a warehouse operator licensed under the provisions of part 5 of this chapter upon initial delivery of the agricultural commodity to the warehouse.

(26) “Station” means a warehouse located more than 3 miles from the central office of the warehouse.

(27) “Subterminal warehouse” means a warehouse where an intermediate function is performed in which agricultural commodities are customarily received from dealers or producers and where the commodities are accumulated prior to shipment.

(28) “Terminal grain warehouse” means a warehouse authorized by a grain exchange to receive or disburse grain on consignment as presented by the rules and regulations of a grain exchange.

(29) “Warehouse operator” means a person operating or controlling a public warehouse.

(30) “Warehouse receipt” means every receipt, whether negotiable or nonnegotiable, issued under part 5 of this chapter by a warehouse operator, except scale weight tickets.

(31) “Working capital” means the excess of current assets over current liabilities under generally accepted accounting principles.

### **80-4-403. Rules--adoption**

The department shall adopt such rules as it determines necessary for the efficient execution of the provisions of parts 4 through 7 of this chapter.

### **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.

### **80-4-405. Maximum bond amount**



The maximum amount of any public warehouse operator bond may not exceed \$1 million and the maximum amount of a commodity dealer bond may not exceed \$1 million, except:

- (1) any bonds compensating for equity or working capital deficiencies prescribed in parts 5 and 6 of this chapter must be added to the maximum bond amount. If the public warehouse operator is also licensed as a commodity dealer, only one bond amount is required.
- (2) if required as part of a commodity warehouse operator's or commodity dealer's license modified by the department pursuant to 80-4-421.

#### **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.

#### **80-4-407. Reports to the department**

Each person licensed under parts 5 and 6 of this chapter shall report to the department at intervals set by rule of the department on forms prepared by it. The reports must show the total weight of each kind of agricultural commodity received and shipped, the amount of outstanding warehouse receipts on that date, and a statement of the amount of agricultural commodities on hand to cover the outstanding warehouse receipts. The department may also, by rule, require special reports at any time.

#### **80-4-408. Examination of books**

The department is authorized, through its officials, employees, or designated agents, to examine or copy all books, records, papers, and accounts of persons licensed under parts 5 and 6 of this chapter.

#### **80-4-409. Confidentiality of records**

All financial statements of warehouse operators and commodity dealers required under the provisions of parts 5 and 6 of this chapter must be kept confidential by the department and are not subject to disclosure except:

- (1) upon written permission of the licensee;
- (2) in actions or administrative proceedings commenced under the provisions of parts 4 through 7 of this chapter;
- (3) when required by subpoena or court order;



(4) when disclosed to law enforcement agencies in connection with the investigation or prosecution of criminal offenses; or

(5) when released to a bonding company approved by the department.

#### **80-4-410. Publication of reports**

The department may publish the results of any investigation made. It may publish the names and addresses of persons licensed under parts 5 and 6 of this chapter, and it may also publish a list of all licenses terminated under parts 5 and 6 of this chapter and the causes therefor.

#### **80-4-411. Employment of assistants**

The department is authorized to employ qualified persons not regularly in the service of the state for temporary assistance in carrying out the provisions of parts 4 through 7 of this chapter.

#### **80-4-415. Creation of commodity dealer/public warehouse operators account--deposit of funds**

(1) There is an account in the state special revenue fund. All revenue received under this chapter must be deposited in the account.

(2) Money received as revenue under this chapter that is not immediately required for the purposes of this chapter must be invested under the provisions of the unified investment program established in Title 17, chapter 6, part 2. All earned interest must be deposited in the account.

#### **80-4-416. Deposit of deficiency funds and liquidation funds**

Revenue based on actual expenses received from the liquidation of commodity dealers and public warehouse operators, as authorized in 80-4-538 and 80-4-612, and from deficiency fees, authorized in 80-4-503, must be deposited in the account established in 80-4-415 and is statutorily appropriated, as provided in 17-7-502, to the department for the purposes of this chapter. Funds deposited under this chapter must be used to pay actual expenses incurred in the liquidation of commodity dealers and public warehouse operators or for the correction of storage deficiencies. Actual expenses include but are not limited to legal fees, court costs, travel expenses, per diem, and communication.

#### **80-4-419. Bankruptcy as grounds for cancellation**

(1) If a commodity dealer files for bankruptcy, a contract or any part of a contract for delivery of a commodity may be canceled without penalty to the producer if the cancellation involves only the remaining unperformed portions of the contract. A cancellation under this section:

(a) is not a breach of contract;

(b) is allowed even if not explicitly provided for in the contract.



(2) In the event of a cancellation, a commodity dealer remains responsible for payment that is due to the producer for delivered portions of the contract.

#### **80-4-420. Producer's lien**

(1) Agricultural commodities contained on the premises of a public warehouse operator or commodity dealer, including agricultural commodities owned by the warehouse operator or commodity dealer, are subject to a first priority lien in favor of holders of outstanding warehouse receipts, purchase contracts, scale weight tickets, bailment contracts, or any other evidence of storage or sale.

(2) The lien must be preferred to a lien or security interest in favor of a creditor of the warehouse operator or commodity dealer regardless of the time when the creditor's lien or security interest attached to the agricultural commodities. Notice of the lien need not be filed in order to perfect the lien.

(3) The lien is discharged as to agricultural commodities sold by the warehouse operator or commodity dealer to a buyer in the ordinary course of business. The sale does not discharge the lien in favor of an individual holder of outstanding warehouse receipts, purchase contracts, scale weight tickets, bailment contracts, or other evidence of storage or sale on the remaining agricultural commodities on the premises.

#### **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.

### **80-4-422. Delayed payment or purchase contracts**

(1) A commodity dealer who purchases agricultural commodities by purchase contract shall maintain books, records, and other documents



as required by the department to establish compliance with the provisions of this section.

(2) In addition to other required information, a purchase contract must contain or provide for all of the following:

- (a) the seller's and purchaser's name and address;
- (b) the conditions of delivery;
- (c) the amount and kind of agricultural commodities delivered;
- (d) the price per unit or basis of value;
- (e) the date payment is to be made; and
- (f) a notice of financial risk involved in the delayed payment contract, in a form the department shall adopt pursuant to the rulemaking authority provided in 80-4-403.

(3) Title to all agricultural commodities sold by purchase contract is in the purchaser as of the time the agricultural commodities are delivered to and in physical control of the purchaser unless the contract provides otherwise. The contract must be signed by both parties and executed in duplicate. One copy must be retained by the commodity dealer, and one copy must be provided to the seller. Upon revocation, suspension, or termination of a commodity dealer's or warehouse operator's license, the department may advance the payment date for all delayed payment contracts to a date not later than 30 days following the effective date of the revocation, suspension, or termination. When not otherwise provided, the purchase price for all agricultural commodities must be determined as of the effective date of revocation, suspension, or termination in accordance with all other provisions of the contract. However, if the business of the commodity dealer is sold to another licensed commodity dealer, purchase contracts may be assigned to the purchasing commodity dealer.

(4) Any contract that does not satisfy the conditions imposed by this part is considered a sale other than a purchase contract and is subject to the provisions of 80-4-608.

#### **80-4-424. Director's authority--investigative hearing**

The director may upon the director's own motion, whenever the director has reason to believe a violation has occurred or upon verified complaint of any person in writing, investigate the actions of any person and, if the director finds probable cause, shall notify the person that the person shall appear for an investigative hearing before the director 20 days from receipt of written notice.

#### **80-4-425. Action on bond by persons injured--liability of surety--statute of limitations**

(1) All claims against a bond must be made by and through the department. A person injured by the breach of an



obligation for which a bond is given to the department may file a complaint with the department. The department shall then investigate the complaint and determine whether it is valid and whether there are any other outstanding obligations due. If the department finds that there are one or more valid obligations, the department shall make demand upon the warehouse operator or commodity dealer and the commodity dealer's surety for payment. If the payment is not made promptly, the department shall commence an action on the bond to enforce payment. If the department determines that a complaint is without merit, the department shall notify the complainant of that determination in writing. The complainant may then bring a contested case under Title 2, chapter 4, part 6, to the department for a determination of whether the department should pursue the claim against the bond.

(2) If two or more persons are injured by breach of the obligation for which the bond is given and the damages for violating the conditions of the bond exceed the specified amount of the bond, the recovery on the bond must be prorated by the surety among all of those injured.

(3) The liability of a surety under a bond extends to all obligations from commodity dealers' or public warehouse operators' transactions entered into during the year in which the bond was in effect, up to the maximum amount of the bond. Claims must be brought against the bond within 2 succeeding license years.

#### **80-4-426. Duty to prosecute**

(1) A county attorney who has appropriate jurisdiction and to whom any violation is reported shall cause appropriate proceedings to be instituted and prosecute without delay in a court of competent jurisdiction.

(2) In addition to or exclusive of the remedy in subsection (1), the department may seek a civil penalty for any violation of this part.

#### **80-4-427. Injunction**

If a person without a license is found to have engaged in any business for which a license is required under parts 5 and 6 of this chapter, the court shall enjoin that person from further business until the person has been licensed. It is not necessary that the department show that an individual has been injured by the actions complained of in order to issue the injunction. The procedure for injunctive relief is the same as any other action for an injunction under Title 27. The department may, in its discretion, file the action in the first judicial district court. The injunction provided by this section is an additional remedy to the criminal or civil penalties provided for in 80-4-428.

#### **80-4-428. Penalty for operating without license--misrepresentation**

(1) A person acting as a warehouse operator or a commodity dealer without a license or in any way representing by action or words that the person is a warehouse operator or a commodity dealer when not licensed violates the provisions of Title 80, chapter 4, parts 5 and 6, is guilty of



a felony, and is punishable by imprisonment for not more than 10 years or by a fine of not more than \$10,000, or both.

(2) A person who issues or aids in the issuance of a fraudulent receipt for any commodity is guilty of a felony and is punishable by imprisonment for not more than 10 years or by a fine of not more than \$10,000, or both.

(3) A person who knowingly submits false information to or who knowingly withholds information from the department when that information is required to be submitted is guilty of a felony.

(4)

(a) A person who violates any provision of this section is subject to an administrative civil penalty of not more than \$100,000 for each transaction in violation.

(b) The department shall establish by rule a penalty matrix that schedules the types of penalties, the amounts for initial and subsequent offenses, and other matters necessary for the administration of civil penalties under this subsection (4). The issuance of a civil penalty is subject to the contested case procedures of Title 2, chapter 4, part 6. The department shall adopt the rules within 3 months of July 1, 2019. The department may not enforce penalties provided for in this section until the rules are adopted.

(c) Funds received in the form of civil penalties must be deposited in the general fund.

#### **80-4-429. Penalty**

(1) Except as otherwise provided, a person who violates any provision of parts 4 through 7 of this chapter or rules promulgated under parts 4 through 7 or who impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the director or an authorized representative in the performance of a duty under parts 4 through 7 of this chapter is guilty of a misdemeanor.

(2) A person who refuses to permit inspection of licensed premises, books, accounts, records, or other documents required by parts 4 through 7 of this chapter or who uses a scale weight ticket or purchase contract that fails to satisfy the requirements of parts 4 through 7 of this chapter is guilty of a misdemeanor.

(3) A person acting as a commodity dealer or warehouse operator who knowingly sells warehouse-receipted agricultural commodities that the person is not authorized to sell or who fails to pay for purchased agricultural commodities is guilty of a felony.

(4) A person exempted from licensure as a commodity dealer under the provisions of 80-4-402(5)(b)(vi) who fails to pay in full all amounts due to a producer for the sale of agricultural commodities is guilty of a felony



and is also subject to any additional administrative penalty authorized by this chapter.

(5) A person is guilty of a felony if that person knowingly delivers to a commodity dealer or warehouse operator or upon the exercise of reasonable diligence should have known of the delivery to that person of an agricultural commodity that contains:

(a) a nitrogen fertilizer added to harvested grain;

(b) a poisonous, deleterious, or other substance not registered or approved by federal or state statutes, regulations, or rules; or

(c) a registered or approved substance that has not been used or applied according to label directions or other government standards.

(6)

(a) A person who violates any provision of this section is subject to an administrative civil penalty of not more than \$100,000 for each transaction in violation.

(b) The department shall establish by rule a penalty matrix that schedules the types of penalties, the amounts for initial and subsequent offenses, and other matters necessary for the administration of civil penalties under this subsection (6). The issuance of a civil penalty is subject to the contested case procedures of Title 2, chapter 4, part 6. The department shall adopt the rules within 3 months of July 1, 2019. The department may not enforce penalties provided for in this section until the rules are adopted.

(c) Funds received in the form of civil penalties must be deposited in the general fund.

#### **80-4-430. Director's enforcement action**

Title 80, chapter 4, parts 4 through 7, may not be construed to require the director or the director's authorized representative to report for prosecution or for the institution of civil action a violation if the director or the representative believes that the public interest will best be served by a suitable warning.

#### **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 certified public accountant according to generally accepted accounting principles, setting forth the applicant's cost of all commodities purchased in Montana, 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) A company may post a bond required by this part for a subsidiary company if the corporate bonds are rated as Aa3 or better by Moody's investors service, inc., or as AA- or better by Standard and Poor's financial services and are issued with the full credit of the parent corporation.

(7)

(a) A company or its subsidiary may request that the department waive the requirement to file a complete financial statement pursuant to subsection (3)(a)(vi) for a licensing year, the deficit bonding requirements in 80-4-405(1), or both, if the company:

(i) has been licensed for 1 year;

(ii) has corporate bonds rated as Baa3 or better by Moody's investors service, inc., as BBB- or better by Standard and Poor's financial services, or as investment grade by an equivalent rating system as determined by department rule; and

(iii) posts the maximum bond amount required by 80-4-405.



(b) The director shall grant or deny the request within 14 days.

(8)

(a) A company or its subsidiary may request that the department waive the requirement of subsection (4)(a) or (4)(b), or both, if the company:

(i) has been licensed for 1 year;

(ii) posts the maximum bond amount required by 80-4-405; and

(iii) includes a profit or loss statement from the company's or subsidiary's previous fiscal year that shows operational income equal to or in excess of the value of commodities intended to be purchased during the term of the commodity dealer license.

(b) The director shall grant or deny the request within 14 days.

(9) A company whose business structure includes one or more subsidiary locations may file the parent company's financial statement to meet the requirement of subsection (3)(a)(vi). Financial statements are not required for each subsidiary location.

(10) 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.

### **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.

### **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.

#### **80-4-604. Bonding requirement amounts--cancellation**

(1) An applicant for a license to operate as a commodity dealer shall, before a license may be issued, file with the department a surety bond or its equivalent, as established by department rule, payable to the state.

(2) Except as provided in 80-4-601(5)(b) and subsection (3) of this section:

(a) the bond for a commodity dealer may not exceed 2% of the value of the agricultural commodities purchased by the commodity dealer from the producer during the previous 12-month period;

(b) the bond for all new applicants is 2% of the estimated value of all agricultural commodities to be purchased during the coming 12-month period; and

(c) the minimum amount of bond required by any commodity dealer is \$20,000 and the maximum is prescribed in 80-4-405.

(3)

(a) A commodity dealer acting as a broker and contracting or otherwise conducting business with a commodity dealer licensed in Montana shall post the minimum amount of bond pursuant to subsection (2)(c).

(b) A commodity dealer acting as a broker and contracting or otherwise conducting business with a buyer not licensed as a commodity dealer in Montana shall:

(i) post the maximum amount of bond required by 80-4-405; and

(ii) be held jointly liable with the buyer for failure to comply with terms of a written contract or failure to pay for a



commodity purchase under an oral agreement pursuant to 80-4-612.

(4) A surety shall notify the commodity dealer and the department by certified mail at least 60 days prior to the cancellation of the bond. A commodity dealer's bond filed with the department is continuous until canceled by the surety upon 60 days' notice; however, cancellation does not terminate any liability of the surety incurred prior to the date of cancellation.

#### **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.

#### **80-4-606. Inspection of premises, books, and records**

(1) The department may at any reasonable time inspect the premises and records of any commodity dealer used in the conduct of the commodity dealer's business. A commodity dealer shall, upon request of the director, furnish to the department at any reasonable time and place all books, accounts, records, and papers relating to agricultural commodity transactions within the state, including those pertaining to the collecting, reporting, and paying of authorized assessments pursuant to Title 80, chapter 4 or 11.

(2) A commodity dealer shall retain and maintain the records provided for in subsection (1) for a period of 5 years from the date of the transaction.

(3) If there exists good cause to believe that a person is doing business as a commodity dealer without a license, the department may inspect the books, papers, and records of the person that pertain to agricultural commodity purchases.

#### **80-4-607. Insufficient checks--prohibition**

No person engaged in business as a commodity dealer may draw or deliver any check, draft, or order for payment of money upon any bank for the purchase of agricultural commodities when at the time of drawing or delivery the maker or drawer does not have sufficient funds or has failed to arrange for credit with the bank or depository for payment in full upon presentation of the check, draft, or order for payment of money. The word "credit" as used in this section means an arrangement or understanding with the bank or depository for payment of the check, draft, or order.

#### **80-4-608. Payment of purchase price--definitions**

(1) A person required to be licensed as a commodity dealer shall pay 90% of the purchase price to the owner or the owner's agent for agricultural commodities upon delivery and demand by the owner or agent and the remaining 10% not later than 30 days after delivery by the owner or agent unless otherwise agreed to in writing by the parties.



Title to agricultural commodities sold to a commodity dealer under this section transfers to the commodity dealer upon physical delivery of the commodity.

(2) As used in this section, the following definitions apply:

(a) “Delivery” means the transfer by the seller of title to and possession of agricultural commodities to the commodity dealer or to another person in accordance with the agreement between the seller and the commodity dealer.

(b) “Payment” means the actual payment or tender of payment of the agreed purchase price by the commodity dealer to the seller.

### **80-4-612. Commodity dealer defaults--remedies**

(1) If the department finds that a commodity dealer has failed to comply with the terms of a written contract or has failed to pay for a commodity purchase under an oral agreement in the manner and within the time provided in 80-4-608, the department may petition the district court of the first judicial district, Lewis and Clark County, for an order authorizing the department to seize and take possession of:

(a) any agricultural commodities in the facilities owned, operated, or controlled by the commodity dealer;

(b) all books, papers, and property used in connection with the operation of the commodity dealer business; and

(c) any material that pertains in any way to that business.

(2) If during or after an audit or at any other time the department has evidence that the commodity dealer is insolvent or is unable to satisfy the claims of all commodity dealer creditors covered by the bond, the department may petition the district court of the first judicial district, Lewis and Clark County, for the appointment of the department to operate or liquidate the business of the commodity dealer.

(3) All necessary expenses incurred by the department in carrying out the provisions of this part may be recovered at the discretion of the department from:

(a) the bond;

(b) the assets of the licensee;

(c) the agricultural commodities delivered for purchase but not yet paid for; or

(d) in a separate civil action brought by the department in the first judicial district court.

(4) The department is authorized to include as part of the recoverable expenses the cost of adequate liability insurance



necessary to protect the department, its officers, and others engaged in carrying out the provisions of this part.

#### **80-4-613. Records**

(1) A commodity dealer shall provide evidence of delivery, such as scale tickets, for all agricultural commodities purchased from a producer.

(2) A commodity dealer shall keep daily position records or their equivalent showing purchases, deliveries, or payments to producers.

#### **80-4-614. Claims on bond by injured person**

A person injured by the breach of an obligation for which the bond is given may file a claim with the department. Claims will be accepted only from producers and for agricultural commodities grown in Montana.

