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Requirements for Grain Dealers:

South Dakota



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Requirements for Grain Dealers: South Dakota

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S.D. Codified Laws Ch. 49-45

Current through File 15 of the 135th General Assembly (2023-2024).

49-45-1. Grain buyer's license required – Violation as misdemeanor – Injunction – Civil fine

Before transacting the business of a grain buyer in this state, a person shall obtain a grain buyer license from the commission.

A violation of this section is a Class 5 felony if the person holds himself or herself out to be a grain broker and a Class 1 misdemeanor in all other cases. Each purchase of grain without a license is a separate offense.

A grain buyer transacting business without a license may be enjoined upon complaint of the commission.

The commission may assess a civil fine against an unlicensed grain buyer in the amount of five thousand dollars for each purchase of grain, up to a maximum fine of fifty thousand dollars per licensing period, as set forth in § 49-45-3.

For purposes of this section, the term, purchase of grain, means a transaction evidenced by the issuance of a uniform scale ticket or receipt, as described in § 49-45-10.1.

49-45-1.1. Definitions

Terms used in this chapter mean:

- (1) "Business of a grain buyer," contracting to purchase grain or purchasing grain, regardless of:



- (a) Where the grain is to be delivered; or
 - (b) Where title to the grain transfers;
- (2) "Commission," the Public Utilities Commission;
- (3) "Contract," except as referenced in § 49-45-21, a written or oral agreement to purchase grain, regardless of the:
- (a) Timeline;
 - (b) Pricing structure; and
 - (c) Place of delivery;
- (4) "Grain," grain, grain sorghums, beans, pulse crops, and oil seeds but not:
- (a) Grain that has been cleaned, processed, and identified for an intended use of planting for reproduction;
 - (b) Grain that is received for consignment and which will be processed by the consignee for an intended use of planting for reproduction; or
 - (c) Grain purchased to feed livestock;
- (5) "Grain broker," a person who is involved in the negotiation of a grain transaction in this state and:
- (a) Is compensated for that involvement by at least one party to the transaction; and
 - (b) Does not take title to the grain that is subject to the transaction;
- (6) "Grain buyer," any person who:
- (a) Contracts to take title to grain;
 - (b) Purchases unprocessed grain for the purpose of reselling the grain; or
 - (c) Contracts to purchase at least three hundred thousand dollars' worth of unprocessed grain directly from producers in a license year, which begins on July first and ends on June thirtieth. Nothing in this chapter applies to the isolated resale of grain by a producer who does not hold himself or herself out as engaging in the business of reselling grain;
- (7) "Holds himself or herself out," the creation of an assumption or the use of any kind of title, sign, symbol, document, or term indicating or conveying the idea that the person whose name is so connected is competent, qualified, authorized, or entitled to engage in certain activities;
- (8) "Person," any natural person, firm, corporation, company, limited liability company, partnership, association, or joint stock company, or the lessee, trustee, or receiver appointed by any court for any one of the foregoing;



- (9) "Producer," a person engaged in the business of grain production;
- (10) "Unprocessed grain," grain that has not been materially altered, or otherwise combined with other grains or products to render the grain only a component part of a different product, provided the cleaning or screening of grain does not constitute processing; and
- (11) "Voluntary credit sale," a sale of grain or seeds pursuant to which the sale price is to be paid more than thirty days after the delivery or release of the grain for sale, including those contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts, and price-later contracts.

49-45-3. Expiration, revocation, and suspension of license--Appeal

Each license issued pursuant to § 49-45-1 expires on the next June thirtieth following the issuance of the license. The commission may at any time for cause shown revoke or suspend any grain buyer license. However, the grain buyer has the right of appeal from such decisions as provided by chapter 1-26 for the review of final decisions of the commission.

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.

49-45-7. Application for license--Contents--Issuance or denial--Multiple warehouses of licensee



An application for a grain buyer license shall be filed with the commission and shall be in a form prescribed by the commission. The application shall set forth the name of each owner or principal in the management of the business and shall contain financial information depicting the financial condition of the business at the time of application. If the applicant is a corporation, the application shall include the name of the president, secretary, and treasurer of the corporation. The application shall also include the location of the principal office or place of business and any additional place of business of the applicant. The application shall contain the affirmation statement set forth in § 22-29-9.1. The application shall be signed by the owner, managing partner, or chief executive officer of the applicant and shall be notarized.

Upon receipt of an application and sufficient bond as required by § 49-45-9, the commission may grant the license applied for or may, for good cause shown and after notice and an opportunity for hearing, deny the issuance of the license.

If a grain buyer has more than one grain buying facility in the same municipality, only one license is required for all the grain buying facilities.

49-45-7.1. Classes of grain buyer's license

An applicant may apply for a Class A grain buyer's license or a Class B grain buyer's license. No grain buyer with a Class B grain buyer's license may purchase grain in excess of five million dollars for the annual licensed year or enter into voluntary credit sale contracts. The commission shall require an applicant for a Class A grain buyer's license to submit a more detailed review of its financial condition than an applicant for a Class B grain buyer's license.

49-45-8. Fee for license application -- Waiver

The application for a grain buyer license shall be accompanied by a fee of two hundred seventy-five dollars for each municipality or location at which the grain buyer receives grain. If the grain buyer making application for a license also holds a license to operate a public grain warehouse or is, at the same time, making application to operate a public grain warehouse under chapter 49-43, the fee imposed by this section is waived.

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

Before any grain buyer license is issued by the commission, the applicant must file with the commission a bond conditioned to secure the faithful performance of the applicant's obligations as a grain buyer and the applicant's 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 must be based on a rolling average of the dollar amount of grain purchased by the applicant in this state during the last three license years. For a new



grain buyer, the first year's bond must be based on projected purchases. For a grain buyer with less than three years of experience as a grain buyer, the bond must be based on the average actual purchases made by the grain buyer in all of its previous years as a grain buyer or projected purchases, whichever amount is higher. 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

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

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.



49-45-10. Payment for grain by buyer.

A grain buyer must pay the purchase price to the owner or the owner's agent for grain upon delivery or demand of the owner or agent unless payment is to be made in accordance with the terms of a voluntary credit sale that complies with the requirements of this chapter and rules promulgated thereto. Full payment of any cash purchase must be made by the Class A grain buyer within thirty days of final delivery. A Class B grain buyer must pay for the grain included on a uniform scale ticket or comparable receipt, as defined in § 49-45-10.1, within thirty days of issuance.

49-45-10.1. Uniform scale tickets or receipts

Upon receiving grain, a grain buyer shall issue to the seller an original uniform scale ticket or comparable receipt for each load of grain received. Tickets or receipts shall be numbered consecutively and a copy of each ticket or receipt shall be retained for six years.

49-45-11. Voluntary credit sales

Each voluntary credit sale of grain entered into by a grain buyer shall be in writing and shall have a settlement date. If a grain buyer meets the requirements set forth in § 57A-2-201(3)(d)(iii) when entering into a voluntary credit sale contract with a seller, the in writing requirement is considered met. The commission may, by rules promulgated pursuant to chapter 1-26, prescribe the form and content of the writings. If a grain buyer's license is terminated or not renewed, the grain buyer shall pay for grain subject to a voluntary credit sale within ten days after the license expiration date.

49-45-13. Inspection of buyers' facilities--Examination of books--Subpoena power

The commission shall cause the business facilities of every grain buyer, whether licensed or unlicensed, to be inspected at such times as the commission considers necessary. The inspector shall report in writing to the commission the result of the examination. The inspector may at any time during business hours enter any structure, vehicle, or enclosure in which the books or accounts of any grain buyer are kept, and may examine all the books, accounts, and electronic records relating to the transactions of the grain buyer either within or without the state. The commission may, in all matters arising under this chapter, exercise the power of subpoena and examine witnesses in accordance with chapter 1-26.

49-45-13.1. Memorandum of adjustments--Civil fine for failure to comply

Upon completing an inspection, an inspector may issue a memorandum of adjustments. The commission may assess a civil fine in the amount of two hundred dollars for failure to comply with the memorandum of adjustments within thirty days. After thirty days, each day that the memorandum goes uncorrected may be considered a separate offense.



49-45-14. Reports by buyers--Public inspection not permitted--Violation as misdemeanor

Every grain buyer licensed in this state shall, at such times as the commission requires, furnish the commission on forms prepared by the commission, reports showing the facts and information required by the commission. The reports are not for public inspection, but the commission may, upon request, furnish the total of the figures shown on such reports if the figures requested are for not less than four grain buyers. The commission may also require that a grain buyer provide any other documents and information regarding the business of the grain buyer. None of the documents and information obtained through the licensing and inspection processes are subject to public inspection. A violation of this section is a Class 1 misdemeanor.

49-45-16. Grounds for suspension of grain buyer's license--Hearing--Revocation

The commission may immediately suspend the license of a grain buyer and the grain buyer shall surrender the license to the commission if:

- (1) The grain buyer refuses, neglects, or is unable, upon proper demand, to redeem any scale ticket issued by the grain buyer, through redelivery or cash payment;
- (2) The grain buyer refuses, neglects, or is unable to provide a bond in an amount required by the commission;
- (3) The commission has knowledge of any act of insolvency, including the filing of a petition in bankruptcy naming the grain buyer as debtor; or
- (4) The grain buyer refuses to submit to an inspection or cooperate with the lawful requests of a commission inspector, including requests for access to and copies of the books and records of the grain buyer

Within fifteen days the grain buyer may request a hearing pursuant to chapter 1-26 to determine if the license should be revoked. If no request is made within fifteen days, the commission shall revoke the license.

49-45-16.1. Receiver--Powers and duties

If the commission determines that it is necessary, the commission may apply to the circuit court in the county in which the grain buyer operates or operated for that court to appoint a receiver. The receiver shall have such powers and duties as the court may direct.

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.

49-45-18. Audit of scale tickets--Certification of quantity and class of grain

If the commission becomes aware of any act by any grain buyer as described in § 49-45-16, the commission may:

- (1) Undertake an immediate audit and verify the names and addresses of all outstanding scale ticket holders as revealed by the audit, and audit and certify the quantity and class or classes of grain therein;
- (2) Immediately notify the surety named in the grain buyer bond, if any, held by such grain buyer.

49-45-19. Grain buyer license – Revocation – Filing of claims

Upon the revocation of a grain buyer license, any claim against the grain buyer arising under this chapter must be made in writing and filed with the commission, within ninety days after receiving notice of the revocation.

Upon the revocation of a grain buyer license, the commission shall:

- (1) Once each week for two consecutive weeks, publish notice of the revocation in:
 - (a) A newspaper of general circulation in each county in which the grain buyer maintains a business location; and
 - (b) A newspaper of general circulation within the state; and
- (2) Send, by certified mail, to each scale ticket holder named in an audit prepared pursuant to § 49-45-18, a notice of revocation that includes:
 - (a) The name and address of the grain buyer;
 - (b) The effective date of the revocation;
 - (c) The name and address of the surety on the grain buyer bond; and
 - (d) A statement that any claims against the grain buyer must be made in writing and sent by ordinary mail to the commission, within ninety days after receiving notice of the revocation.

49-45-21. Commission authorized to contract for inspection of grain buyers' assessment and checkoff records



The commission may contract with the Wheat Commission pursuant to § 38-10-41, with the South Dakota Oilseeds Council pursuant to § 38-27-19, the Soybean Research and Promotion Council pursuant to § 38-29-14, the South Dakota Corn Utilization Council pursuant to § 38-32-24, and the South Dakota Pulse Crop Council pursuant to § 38-34-21. Under the terms of any such contract, the commission may inspect the records of licensed grain buyers to determine compliance with assessment and checkoff requirements imposed by chapters 38-10, 38-27, 38-29, and 38-32 and the provisions of chapter 38-34.

49-45-22. Class A license requirements--Violation as misdemeanor

A grain buyer with a Class A license shall keep all company owned grain in the grain buyer's possession insured at current market value of the grain against loss by fire, windstorm, and extended coverage risks. The grain buyer shall furnish the commission with proof of the insurance when the grain buyer applies for a license. A grain buyer with a Class A license shall submit a quarter-ending balance sheet to the commission for inspection within thirty days of the end of each quarter. The balance sheet reports shall be based on each grain buyer's fiscal year. A violation of this section is a Class 1 misdemeanor.

49-45-23. Records of grain purchased and contracts

A grain buyer shall keep all records of grain purchased and all contracts issued and canceled in a safe place. The records shall be kept current and open for inspection by the commission. Each record shall be retained for a period of six years.

49-45-24. Notice of destruction of or damage to facility

A grain buyer shall notify the commission, within twenty-four hours, if the facility of a facility-based grain buyer is destroyed or substantially damaged.

49-45-25. Grain buyer's noncompliant financial condition – Notice to commission – Penalty – Civil fine

If during the licensing period a grain buyer becomes aware that the grain buyer is not in compliance with each financial standard, as set forth in the commission's rules, the grain buyer shall immediately notify the commission of the grain buyer's financial condition. When notification occurs, the commission shall immediately conduct an examination to determine if any grounds for suspension pursuant to § 49-45-16 have occurred.

A willful violation of this section that results in a financial loss to a grain supplier is punishable as theft under chapter 22-30A.

A willful violation that does not result in a financial loss to a grain supplier is a Class 1 misdemeanor.

The commission may assess, against an out-of-compliance grain buyer, a civil fine in an amount not to exceed one thousand dollars for each day the grain buyer has been out of compliance, up to a maximum of twenty thousand dollars per licensing period, as set forth in § 49-45-3.



49-45-26. Provision of requested records – Penalty – Civil fine

A grain buyer, the owner, manager, or chief executive officer of a grain buyer, or any other person in a managerial position, whether licensed or unlicensed, who or that purchases grain in this state, shall, within five working days of an inspector's request, provide to the inspector, at a licensed location within this state or at the offices of the commission, all books, accounts, and electronic records relating to the transactions of the grain buyer, either within or outside the state.

A willful violation of this section is a Class 1 misdemeanor.

The commission may assess a civil fine in an amount not to exceed one thousand dollars for each day requested materials are withheld, up to a maximum of twenty thousand dollars per licensing period, as set forth in § 49-45-3.

49-45-27. Owner, manager, or chief executive officer responsible for violation is subject to criminal penalty

The owner, manager, or chief executive officer of a grain buyer, or any other person in a managerial position, who is responsible for any violation of this chapter by a grain buyer is subject to any criminal penalty that applies to a grain buyer under the provisions of this chapter.

49-45-28. Parent company furnishing financial statements responsible for financial obligations of licensed entity

If an applicant for a grain buyer license that is a subsidiary of a parent company submits the financial statements of the parent company, the parent company furnishing the financial statements is responsible for all the financial obligations incurred by the licensed entity related to the purchase and storage of grain, including any voluntary credit sale contract.

