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Requirements for Grain Warehouses:

Montana



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Requirements for Grain Warehouses: Montana

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Current through 2019 regular 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.

80-4-412 through 80-4-414 reserved.**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; an
- (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 [the effective date of this act]. 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.

80-4-501 License Necessary To Operate Public Warehouse

(1) A person may not act as a warehouse operator without first having obtained an annual license from the department. This requirement and other requirements in parts 4 through 6 that regulate the activities of a warehouse operator do not apply to operators of warehouses that are federally licensed under the United States Warehouse Act. However, if a federally licensed warehouse operator engages in business as a commodity dealer, the provisions of parts 4 through 7 apply to the commodity dealer activity.

(2) If a warehouse operator operates two or more warehouses in the same city or immediately adjacent to the city or in the same immediate area, in conjunction with each other and with the same workforce, if one set of books and records is kept for all the warehouses, cash slips, scale weight tickets, and warehouse receipts, and if checks of one series are used for agricultural commodities stored in the warehouse, only one warehouse operator's license is required for the operation of all the warehouses.

80-4-502 Licenses to Warehouse Operator – Issuance – Renewal – Conditions Precedent

(1) The department is authorized to issue or renew, upon application, a license to any warehouse operator for the conduct of a warehouse or warehouses in accordance with parts 5 and 6 of this chapter, provided the following conditions are met:

(a) Each applicant shall file and maintain satisfactory evidence of an effective policy of insurance issued by an insurance company authorized to do business in this state, insuring all agricultural commodities that are stored in the warehouse, including agricultural commodities owned by the warehouse operator. The insurance must insure the commodities for the full market value at the time of loss of the commodities against loss by fire, internal explosion, lightning, or tornado.

(b) Each warehouse must be found suitable for the proper storage of the particular agricultural commodity stored in the warehouse.

(c) A license fee must be submitted to the department as prescribed by 80-4-503.

(d) A current drawing of the warehouse, showing storage facilities and capacity of the warehouse, must be submitted to the department.

(e) A sufficient and valid bond must be filed and maintained as required by 80-4-504 and 80-4-505.

(f) (i) Except as provided in subsection (1)(f)(ii), the applicant has submitted to the department a current financial statement prepared by a certified public accountant according to generally accepted accounting principles, showing that the applicant has and maintains positive working capital.

(ii) An applicant without positive working capital may provide the department with additional bonding, or an equivalent in the form of a certificate of deposit or irrevocable letter of credit, in the amount of \$2,000 for each \$1,000 of deficit. The bond or equivalent required in this subsection (1)(f)(ii) is in addition to the bond amount required in 80-4-505.

(g) The applicant must submit a sample warehouse receipt and subsequent revisions to the department for approval and filing.

(h) The applicant must have complied with the terms of this part and the rules prescribed thereunder.

(2) All documents required for renewal of a license must be received by the department prior to the expiration date of the warehouse license. An expired warehouse license may be reinstated by the department upon receipt of all required licensing documents and a penalty fee of \$50 if the documents are filed within 30 days from the date of expiration of the warehouse license. All license applications received after the 30-day penalty period must be considered original applications and an initial license fee must be assessed according to 80-4-503.

80-4-503 Fees of Department

(1) The department shall collect an annual warehouse operator license fee of \$232 for each warehouse owned or operated by the warehouse operator.

(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 department shall collect a fee of \$150 a day or fraction of a day for maintaining an employee of the department at a warehouse to supervise the correction of a deficiency.

(4) All license fees collected under subsection (1) and deficiency fees collected under subsection (3) must be deposited into the commodity dealer/public warehouse operators account.

80-4-504. Bond of applicant for license -- additional bond -- additional obligations.

(1) Each applicant for a warehouse operator's license shall file a bond or its equivalent, as established by department rule, with the department. The bond must be in the form and must contain the terms and conditions that the department may prescribe by rule to carry out the purpose of 80-4-505 and this section.

(2) The department may demand an additional bond if the nature or volume of the business conducted by the warehouse operator warrants an increase.

(3) The warehouse operator may give a single bond to cover all warehouses operated by the operator.

(4) Any changes in the capacity of a warehouse or installation of any new warehouse involving a change in the bond liability under 80-4-505 must be reported in writing to the director, and an appropriate bond must be filed prior to the operation of the warehouse or installation.

80-4-505. Amount of bond -- cancellation.

(1) The amount of the bond to be furnished for each warehouse must be fixed at a rate of 20 cents per hundredweight for the first 500,000 hundredweight of licensed capacity; 15 cents per hundredweight for the next 500,000 hundredweight of licensed capacity; and 10 cents per hundredweight for all licensed capacity over 1 million hundredweight. The amount of the bond

may not be less than \$20,000 or more than the maximum prescribed in 80-4-405. The licensed capacity is the maximum number of hundredweight of agricultural commodities that the warehouse can accommodate.

(2) If a warehouse operator is also operating as a commodity dealer, the warehouse operator shall also provide a bond as prescribed in 80-4-604.

(3) If a deficiency occurs in the equity required under 80-4-506, there must be added to the amount of bond determined in accordance with subsection (1) an amount equal to that deficiency.

(4) Each warehouse operator bond runs continuously with the license until canceled by the bonding company.

(5) A 60-day written notice must be given to the department by the bonding company before any bond is canceled; however, the cancellation does not terminate any liability of the surety incurred prior to the date of cancellation.

80-4-506. Equity requirements.

(1) Each licensee or applicant for a license shall maintain, above all exemptions and liabilities, total equity liable for the payment of any indebtedness arising from the conduct of the warehouse or warehouses of at least 40 cents per hundredweight of all agricultural commodities that the licensee's or applicant's warehouse or warehouses can accommodate.

(2) A person may not be licensed as a warehouse operator unless the person has and maintains allowable positive equity.

(3) Assets must be valued 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.

(4) In determining total equity, credit may be given for insurable property, such as buildings, machinery, equipment, and merchandise inventory, only to the extent that the property is protected by insurance against loss or damage by fire. The insurance must be 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.

(5) If a warehouse operator is licensed or applies for licenses to operate two or more warehouses, the maximum number of hundredweight that all warehouses will accommodate must be considered in determining whether the warehouse operator meets the equity requirements specified in this section.

80-4-521. Duties of warehouse operator -- content of records.

(1) Each warehouse operator shall maintain in a safe place current and complete records at all times with respect to all agricultural commodities stored, conditioned, handled, or shipped by the operator, including agricultural commodities owned by the operator. The records must include but are not limited to a daily position record, showing the total quantity of each kind and class of agricultural commodity received and loaded out and the amount remaining in storage at the close of each business day and the warehouse operator's total storage obligations for each kind and class of agricultural commodity at the close of each business day.

(2) Each warehouse operator purchasing any agricultural commodity from a depositor shall promptly make and keep for 5 years a correct record showing in detail the following information:

(a) the name and address of the depositor;

(b) the date purchased;

(c) the terms of the sale; and

(d) the quality and quantity purchased by the warehouse operator and, when applicable, the dockage, tare, grade, size, and net weight.

80-4-522. Schedule of charges -- posting.

(1) Before a license to conduct a warehouse is granted, the warehouse operator shall file with the director a copy of the schedule of charges for storage and other services. The schedule must be posted in a conspicuous place in the warehouse.

(2) All charges made by a warehouse operator for the handling and storage of agricultural commodities must be just and reasonable. However, the director may, upon the complaint of any person or upon the director's own motion, hold a public hearing and may declare any existing charges for handling or storage of any agricultural commodity to be unreasonable or unjust. After the hearing, the director shall determine and order what is a just and reasonable charge to be imposed or enforced in place of that found to be unreasonable or unjust.

(3) Failure to file and post scheduled charges for the current year will keep in full force the most recently posted and filed schedule rates.

(4) In all cases, the producers must receive the first 15 days of storage without charge.

80-4-523. Required receipt of agricultural commodities according to capacity.

A warehouse operator must receive for storage, conditioning, handling, or shipment without discrimination of any kind, so far as the capacity of the operator's warehouse will permit, all agricultural commodities tendered to the operator in the usual course of business in suitable condition for storage. However, a warehouse operator may not be compelled to accept and hold agricultural commodities for storage in quantities that block the operator's regular cash agricultural commodity business. A warehouse operator may not be required to accept agricultural commodities for storage in excess of working capacity. However, the operator's appointment of space may be modified by rule upon proof that the appointment operates to the disadvantage of either the public or the warehouse operator.

80-4-524. Discrimination in charge by warehouse operator prohibited.

A warehouse operator may not directly or indirectly, by a special charge, rebate, drawback, or other device, collect from any person a greater or lesser compensation for any service rendered in the storage, conditioning, handling, or shipment of agricultural commodities than the operator collects from any other person for a similar circumstance or condition. A warehouse operator may not make or give any advantage to any person, company, or corporation or subject any person, company, or corporation to any undue or unreasonable prejudice or disadvantage.

80-4-525. Scale weight tickets -- form -- issuance.

(1) Scale weight tickets must be bound in books of convenient size and must be numbered consecutively. The original scale weight ticket must be delivered to the person from whom the agricultural commodities are received. One carbon copy of each scale weight ticket must remain as a permanent record.

(2) A scale weight ticket must be issued for each load of agricultural commodity received by the warehouse operator.

(3) A scale weight ticket may not be issued or held in lieu of a warehouse receipt. However, an agricultural commodity under scale weight ticket is considered warehoused liability, and title remains with the depositor until:

(a) the agricultural commodity is sold under a purchase contract;

(b) the agricultural commodity is paid for under 80-4-608; or

(c) a warehouse receipt is issued.

(4) There must be plainly printed across the face of the scale weight ticket issued by the warehouse operator, in bold type, the words "THIS IS NOT A WAREHOUSE RECEIPT. IT MUST BE EXCHANGED FOR A WAREHOUSE RECEIPT IF GRAIN IS HELD IN STORAGE".

(5) All scale weight tickets must be signed by the warehouse operator or the warehouse operator's agent.

(6) All scale weight tickets must be converted into cash or warehouse receipts on demand.

80-4-526. Warehouse receipts -- written terms.

(1) Warehouse receipts under this part must contain in written terms:

(a) a statement that the warehouse is operated under a license issued by the department;

(b) a statement showing whether it is an original, duplicate, triplicate, or other copy;

(c) a statement showing the name of the warehouse;

(d) a statement showing the name of the city or town where the warehouse is located;

(e) the date the warehouse receipt is issued;

(f) the number of the warehouse receipt. All receipts must be numbered consecutively.

(g) a statement that the grain is "received in store" from the person named;

(h) a statement of gross weight, dockage, and net weight and the sample report used for grade and protein analysis;

(i) a statement of encumbrances, such as cash or other advances;

(j) a statement that, upon the return of the receipt properly endorsed by the person to whom the order was issued and the payment of the proper charges for storing and handling, delivery will be made in accordance with this part;

(k) a statement that the grain is properly insured for the benefit of the owner; and

- (l) the name of the manager or agent of the warehouse.
- (2) The face of the warehouse receipt may also provide for other statements, such as:
 - (a) the scale weight ticket numbers or the assembly sheet number;
 - (b) the grade; and
 - (c) the protein certificate used.
- (3) The back of the warehouse receipt may include printed statements, such as:
 - (a) delivery provisions;
 - (b) actual-delivery-of-grain provisions;
 - (c) bailment provisions provided for in Title 30, chapter 7, part 2, that do not conflict with this part;
 - (d) act-of-God provisions;
 - (e) nonnegotiable provisions; and
 - (f) endorsements and other statements pertinent to bookkeeping data whenever the statements do not conflict with any state or federal law pertaining to public warehousing or the grading or testing of grain.
- (4) A copy of the warehouse receipt issued by the warehouse operator must accompany each application for a warehouse operator's license.

80-4-527. Warehouse receipt -- issuance -- cancellation.

- (1) A warehouse receipt is a receipt issued by a licensed warehouse operator on a form containing all the information required by 80-4-526.
- (2) A warehouse receipt may not be issued except for an agricultural commodity actually delivered to a warehouse for storage.
- (3) All warehouse operators are required to issue a warehouse receipt for each lot of agricultural commodity received for storage or make payment for the agricultural commodity.
- (4) A warehouse receipt that does not in fact represent an agricultural commodity actually delivered into a warehouse for storage and the origin of which cannot be traced to the actual delivery of the grain represented:
 - (a) is not legal and is of no value;
 - (b) has no claim on the agricultural commodity stored in a warehouse; and
 - (c) has no claim on the warehouse operator's bond.
- (5) All agricultural commodities in a warehouse belong to the holder of outstanding warehouse receipts except those commodities that are in excess of the total of all outstanding storage obligations. An outstanding warehouse receipt is a warehouse receipt that has not been returned and paid in full on the basis of grade, quality, and quantity by the warehouse operator issuing it.

(6) If for convenience the holder of two or more warehouse receipts covering like agricultural commodities wishes to combine them, the new receipt must state the fact that it was issued in lieu of existing receipts. An assembly or recapitulation statement must be made whenever receipts are so combined, and the number or other identification of the statement must be referenced on the new combined receipt. The assembly sheet must be kept on file in the warehouse office. Each canceled receipt must have stamped across its face "Canceled by No. ___" (showing the number of the new combination receipt).

(7) A warehouse operator who is a grower may receive the warehouse operator's own grain and issue warehouse receipts for agricultural commodities, in the same manner and without discrimination, as though the warehouse and growing enterprises were of separate ownership. However, the warehouse operator shall report to the department all warehouse receipts issued to the warehouse operator as a grower.

(8) When warehouse receipts are prepared on duplicate or triplicate forms, the original copy is the warehouse receipt and must be given upon request to the person storing the agricultural commodity covered by the receipt. The other copies must have plainly printed across the face the words "duplicate", "triplicate", or "nonnegotiable".

(9) Each warehouse receipt issued must show the amount of cash or value of any merchandise the warehouse operator has advanced on the agricultural commodity represented by the receipt, but the notation may not be construed as fixing the date of sale of the grain.

(10) All warehouse receipts must be numbered consecutively as issued by each warehouse operator.

(11) Warehouse receipts must be issued when storage is charged but no later than 30 days after delivery unless agreed to in writing by both parties.

(12) Warehouse receipts must be canceled by drawing a diagonal line and writing "CANCELED" across the face of the original copy of the warehouse receipt. The cancellation date and method of settlement, such as check number or purchase contract number, must also be noted on the face of the original copy of the warehouse receipt. The warehouse receipt holder or the receipt holder's agent shall sign and date the reverse side of the original copy of the warehouse receipt at the time of settlement. If the agricultural commodity is redelivered to the receipt holder, that fact must be noted.

80-4-528. Penalty for unlawful issue of warehouse receipts.

A person violating any of the provisions of 80-4-527 or a designated employee knowingly permitting any agricultural commodity to be delivered contrary to the provisions of 80-4-527 is guilty of a misdemeanor and punishable as provided in 80-4-429.

80-4-529. Partial withdrawal of agricultural commodities -- adjustment or substitution of receipt -- duties of warehouse operator.

When partial withdrawal of a depositor's agricultural commodity is made by a depositor, the warehouse operator shall make an appropriate notation on the depositor's warehouse receipt or claim or shall cancel and replace it with a warehouse receipt showing the amount of the depositor's agricultural commodity remaining in the warehouse. The warehouse operator is liable for the redelivery of all agricultural commodities specified on all outstanding warehouse receipts.

80-4-530. Shipment of stored grain to terminal grain warehouse outside state.

(1) Warehouse receipts or signed agreements from the owners of grain, on a form approved by the department and in an amount equal to the number of bushels the warehouse operator has in a terminal grain warehouse outside the state, are required for all grain shipped out of state by a warehouse operator.

(2) Warehouse receipts covering grain in terminal grain warehouses outside the state must have the words "Owner waives redelivery at point of origin of grain represented by this receipt" printed or stamped on the back.

(3) Waivers or agreements to accept terminal warehouse receipts must be signed in triplicate by the owner of the grain or the owner's agent and by an authorized representative of the warehouse, with:

- (a) the original to be mailed to the department;
- (b) the duplicate copy to be retained by the warehouse operator; and
- (c) the triplicate copy to be given to the holder of the warehouse receipt.

(4) All grain must be held in bonded and approved terminal warehouses, fully insured for the benefit of the holder of Montana warehouse receipts.

(5) Grain held in terminal warehouses is not subject to any lien, mortgage, or encumbrance.

80-4-531. Duty to deliver stored agricultural commodities -- weights and inspections -- modifying agreements -- damages.

(1) The duty of the warehouse operator to deliver agricultural commodities stored is governed by this part. Upon the return of a properly endorsed warehouse receipt to the warehouse operator and upon payment or tender of all advances and legal charges, agricultural commodities of the grade and quantity named therein must be delivered to the holder of the warehouse receipt.

(2) The holder of the warehouse receipt is entitled to an official inspection, as specified by the federal grain inspection service in the regulations implementing the United States Grain Standards Act. Inspections other than official must be agreed to in writing by the warehouse operator and the holder of the warehouse receipt.

(3) (a) The holder of a warehouse receipt is entitled to class X or Y weights or better, as specified by the federal grain inspection service in the regulations implementing the United States Grain Standards Act.

(b) In the event an approved class X or Y weight is unavailable at the warehouse of origin, the following weights take precedence in this order:

- (i) destination official or certified class X or Y or better; or
- (ii) railroad track scale weights.

(4) The parties to a storage agreement are bound by an agreement made under this section and intended to supplement or modify the optional sections of the warehouse receipt if the agreement offer is made in writing and the receiving party fails to reject the offer in writing within

10 days of receipt of the written offer. In order to be valid, the agreement offer must state in boldface type that the receiving party has 10 days to reject the offer.

(5) A warehouse operator's duty to deliver any agricultural commodity is fulfilled if delivery is made pursuant to the contract with the depositor as rapidly as it can be done by ordinary diligence. When delivery is made within 48 hours from date of demand or as agreed upon in writing by all parties concerned, the delivery complies with the provisions of this section. An extension of the delivery period may be granted by the department upon written request.

(6) All redeliveries must be made at the warehouse or station where the agricultural commodity was received unless otherwise agreed.

(7) At the option of the depositor, the warehouse operator shall deliver the agricultural commodity at a terminal or, if mutually agreed, shall pay to the depositor the equivalent market value of the agricultural commodity on that date, less any freight and storage charges to the terminal and less other charges which may be allowed by the department.

(8) In addition to other penalties provided, a warehouse operator failing to deliver agricultural commodities within the time provided in this section is subject to suit by the person entitled to delivery of the agricultural commodities and may be ordered by a court of competent jurisdiction to pay actual damages or liquidated damages of 1/2 of 1% of the value for each day's delay.

80-4-532. Delivery of grain from different warehouse.

(1) Any warehouse operator owning or operating more than one warehouse in this state may deliver grain from one warehouse in settlement of warehouse receipts issued for grain stored in another warehouse when grain for storage has been presented at any warehouse in excess of its available storage capacity.

(2) Nothing in subsection (1) confers upon the warehouse operator a right to make delivery of grain of substantially lower value than that delivered for storage, though of the same technical grade, in settlement of warehouse receipts.

(3) The warehouse operator shall at all times keep on hand in bonded warehouses grain of sufficient quality and quantity to settle all outstanding warehouse receipts.

(4) Freight and other charges must be determined at the point of receipt.

80-4-533. Loss of receipts -- conditions of reissue.

While an original warehouse receipt is outstanding and uncanceled by the issuing warehouse operator, no other or further receipt may be issued for the agricultural commodity or any part of it covered thereby. However, if a warehouse receipt is lost or destroyed, a new receipt may be issued upon giving satisfactory security in compliance with rules adopted by the department. The new receipt must contain the same terms and conditions and must bear on its face the number and date of the receipt in lieu of which it is issued.

80-4-534. Cancellation of insurance -- suspension of license.

Upon cancellation of any policy of insurance required by 80-4-502 and 80-4-506, the insurance company involved shall give 30 days' advance notice to the department by certified mail, return receipt requested, of cancellation of the policy. If the policy is canceled, the department shall immediately suspend the license of such uninsured warehouse operator without a hearing,

pursuant to the Montana Administrative Procedure Act. The suspension may not be removed until satisfactory evidence of the existence of an effective policy of insurance complying with the requirements of 80-4-502 and 80-4-506 has been submitted to the department or until further order by the department or a court of competent jurisdiction.

80-4-536. Termination of storage contract -- sale of agricultural commodities for charges -- notice required.

(1) Storage of agricultural commodities may be terminated by the depositor at any time by the payment or tender of all legal charges and the surrender of the warehouse receipt, together with a demand for delivery of the agricultural commodities or a notice to the warehouse operator to sell the commodities.

(2) In the absence of a demand for delivery, order to sell, or mutual agreement for the renewal of the storage contract entered into prior to the expiration of the storage contract, the warehouse operator may, upon the expiration of the storage contract, sell so much of the stored agricultural commodities at the local market price at the close of business on that day as is sufficient to pay the accrued storage charges. The warehouse operator shall then issue new warehouse receipts for the balance of the agricultural commodity to the depositor upon the depositor's surrender of the original warehouse receipts. If the warehouse receipt is not returned, the warehouse operator may apply for an encumbrance to the grain settlement records for outstanding storage in lieu of reissuance of the warehouse receipt subject to the provisions of subsection (3). The warehouse operator shall notify all warehouse receipt holders who are subject to the provisions of subsection (3) of the provisions of this section 30 days prior to the end of the license year.

(3) All storage contracts on agricultural commodities evidenced by a warehouse receipt must be terminated within 3 license years. The termination date for those storage contracts must be calculated by considering the license year during which the contract was issued as the first license year, plus 2 additional license years, for a total of 3 license years.

80-4-537. Examination of stored agricultural commodities.

A department inspector may examine at any reasonable time during ordinary business hours any stored agricultural commodity and all parts of any warehouse if the warehouse or the agricultural commodities stored in the warehouse are not endangered by the inspections. Each warehouse operator or the operator's agent shall furnish safe and reasonable access to facilities for the examination.

80-4-538. Warehouse shortage -- remedies.

(1) For purposes of this section, whenever a warehouse operator stores agricultural commodities of different kinds, a receipt holder has a claim against all commodities in storage, regardless of their kind, under the warehouse operator's receipt.

(2) Whenever it appears, after an investigation, that a warehouse operator does not have in the warehouse operator's possession sufficient agricultural commodities to cover the outstanding warehouse receipts, scale weight tickets, or other evidence of storage liability issued or assumed by the warehouse operator or when a warehouse operator refuses to submit the warehouse operator's books, papers, or property to lawful inspection, the department may give notice to the warehouse operator to comply with the following requirements:

(a) to cover the shortage;

- (b) to give an additional bond as requested by the department; or
- (c) to submit to an inspection as the department considers necessary.

(3) If the warehouse operator fails to comply with the terms of the notice within 24 hours from the date of issuance of the notice or within a further time as the department may allow, the department may petition the district court of the first judicial district, Lewis and Clark County, or the district court in the county where the licensee's principal place of business is located, as shown by the license application, for an order:

(a) authorizing the department to seize and take possession of any or all agricultural commodities in the warehouse or warehouses owned, operated, or controlled by the warehouse operator and of all books, papers, and property of all kinds used in connection with the conduct or the operation of the warehouse business and any materials that pertain in any way to that business; and

(b) enjoining the warehouse operator from interfering with the department in the discharge of its duties as required by this part.

(4) Upon taking possession, the department shall give written notice of its action to the surety on the bond of the warehouse operator and may notify the holders of record, as shown by the warehouse operator's record, of all warehouse receipts or scale weight tickets issued for agricultural commodities to present their warehouse receipts or other evidence of deposits for inspection or to account for the receipts or evidence of deposits. The department may cause an audit to be made of the affairs of the warehouse, including but not limited to the agricultural commodities of which there is an apparent shortage, to determine the amount of shortage and, if possible, to compute the shortage as to each depositor as shown by the warehouse operator's records. The department shall notify the warehouse operator and the surety on the bond of the amount of the shortage and notify each affected depositor by sending notices to the depositor's last-known address as shown by the records of the warehouse operator.

(5) The department shall retain possession of the agricultural commodities in the warehouse or warehouses and the books, papers, and property of the warehouse operator until:

(a) the warehouse operator or the surety on the bond has satisfied the claims of all holders of warehouse receipts or other evidence of deposits;

(b) the surety on the bond has satisfied all claims pro rata, if the shortage exceeds the amount of the bond; or

(c) the department is ordered by the court to surrender possession.

(6) If during or after the audit provided for in this section or at any other time the department has evidence that the warehouse operator is insolvent or is unable to satisfy the claims of all holders of warehouse receipts or other evidence of deposits, the department may petition the first judicial district court for the appointment of the department to operate or liquidate the business of the warehouse.

(7) At any time within 10 days after the department takes possession of any agricultural commodities or the books, papers, or property of any warehouse, the warehouse operator may serve notice on the department to appear in the first judicial district court at a time to be fixed by

the court, and show cause why the agricultural commodities, books, papers, and other property should not be restored to the warehouse operator's possession.

(8) All necessary expenses incurred by the department in carrying out the provisions of this section may be recovered at the discretion of the department from the assets of the licensee, from the agricultural commodities held by the licensee under warehouse receipt, or in a separate civil action brought by the department in the first judicial district court.

(9) As a part of the expenses incurred, the department is authorized to include the cost of adequate liability insurance necessary to protect the department, its officers, and others engaged in carrying out this part.

(10) The department shall set by rule the time limits for:

- (a) notification of its action on the surety bond of a warehouse operator;
- (b) the holders of warehouse receipts or scale weight tickets to provide to the department evidence of deposit; and
- (c) satisfaction of the claims of all holders of warehouse receipts or other evidence of deposits.

80-4-539. Inspection by department.

(1) The department may investigate any warehouse operator who has applied for or who had previously been issued a license and may inspect the operator's warehouse for purposes of determining compliance with this part and rules of the department.

(2) The department may investigate any warehouse operator or inspect any warehouse that it has reasonable cause to believe is operating in violation of this part and rules of the department.

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.