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Requirements for Grain Dealers:

South Dakota



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- 1) Licensing: [S.D. Codified Laws §§ 49-45-1; 3; 6 to 8; 16; 19; 28](#)
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- 3) Auditing: [S.D. Codified Laws §§ 49-45-10.1; 13; 14; 18; 23; 26](#)
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- 8) Lien:

[S.D. Codified Laws Ch. 49-45](#)

Current through the 2020 Session Laws, Executive Order 20-23 and Supreme Court Rule 20-03.

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 1 misdemeanor. Each purchase of grain without a license is a separate offense.

Operation as a grain buyer without a license may be enjoined upon complaint of the commission. In addition, the commission may assess a civil fine against an unlicensed grain buyer in the amount of one thousand dollars for each purchase of grain up to a maximum fine of twenty thousand dollars.

49-45-1.1. Definitions

Terms used in this chapter mean:

(1) "Commission," the Public Utilities Commission;

(2) "Grain," grain, grain sorghums, beans, pulse crops, and oil seeds. The term does not include grain that has been cleaned, processed, and specifically identified for an intended use of planting for reproduction, grain received for consignment that will be processed by the consignee for an intended use of planting for reproduction, or grain purchased to feed livestock;

(3) "Grain buyer," any person who purchases grain for the purpose of reselling the unprocessed grain or who purchases three hundred thousand dollars worth or more of grain directly from producers in a calendar year. 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;

(4) "Person," any natural person, firm, corporation, company, limited liability company, partnership, association, joint stock company or the lessee, trustee, or receiver appointed by any court for any one of the foregoing;

(5) "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; and

(6) "Producer," a person engaged in the business of grain production.

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 period 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 shall file with the commission a bond conditioned to secure the faithful performance of the applicant’s obligations as a grain buyer and 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 shall be based on a rolling average of the dollar amount of grain purchased by the applicant in South Dakota during the last three calendar years. For a new grain buyer, the first year’s bond shall be based on projected purchases. For a grain buyer with less than three years experience as a grain buyer, the bond shall 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 shall 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 which complies with the requirements of this chapter and rules promulgated thereto. Full payment of any cash purchase shall be made by the grain buyer within thirty days of final delivery.

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. Revocation of grain buyer license--Time to file claims--Notice of revocation

Upon revocation, termination, or cancellation of a grain buyer license, any claim against the grain buyer arising under this chapter shall be made in writing with the commission within six months after receiving notice of revocation, termination, or cancellation. Upon revocation of a grain buyer license, the commission shall publish notice of the revocation once each week for two consecutive weeks in a newspaper of general circulation in each county in which the licensee maintains a business location and in a newspaper of general circulation within the state. The commission shall also send notice of the revocation by certified mail to each scale ticket holder named in the audit prepared pursuant to § 49-45-18. The notice shall state the name and address of the grain buyer, the effective date of revocation, and the name and address of the surety on the grain buyer bond. The notice shall also state that any claims against the grain buyer shall be made in writing and sent by ordinary mail to the commission within six months after receiving notice of 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. Notice to commission of grain buyer's noncompliant financial condition--
Violation as felony or misdemeanor--Civil fine**

If at any time 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 a Class 6 felony. A willful violation that does not result in a financial loss to a grain supplier is a Class 1 misdemeanor.

In addition, the commission may assess a civil fine against an out of compliance grain buyer 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.

**49-45-26. Time and place for providing requested records--Violation as misdemeanor--
Civil fine**

A grain buyer, whether licensed or unlicensed, who purchases grain within the state shall have the ability to provide all of the books, accounts, and electronic records relating to the transactions of the grain buyer, either within or without the state, upon request or within five working days of the request. Any requested materials shall be provided to the inspector at a licensed location within the state or at the offices of the commission. A willful violation of this section is a Class 1 misdemeanor.

In addition, 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.

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.