

251.365 Evidence of financial responsibility to be filed by applicant or licensee -- Security required.

- (1) The department shall not issue or renew a grain dealer or grain warehouse operator license under this chapter until the applicant or licensee has filed with the department satisfactory evidence of financial responsibility.
- (2) Evidence of financial responsibility shall:
 - (a) Consist of:
 1. A surety bond, executed by the applicant as principal, and issued by a corporate surety authorized to conduct business in this state;
 2. A certificate of deposit issued by a federally insured financial institution in this state;
 3. An irrevocable letter of credit issued by a federally insured financial institution in this state;
 4. Other security, as deemed acceptable by the department; or
 5. Any combination of subparagraphs 1. to 4. of this paragraph, so long as the aggregate value of the evidence meets the requirements of this section;
 - (b) Be made payable to the board;
 - (c) Be in an amount meeting the requirements of this section;
 - (d) In the case of a bond, be conditioned upon the faithful performance of:
 1. All obligations of a licensee under the terms of this chapter and any administrative regulations promulgated under it, from the effective date of the bond until the license is revoked, denied, or suspended or the bond is canceled, whichever comes first; and
 2. Any obligations the applicant or licensee may contract for with producers, depositors, or other persons placing grains in the applicant's or licensee's facilities, from the effective date of the bond and thereafter, regardless of whether or not the applicant's or licensee's facility remains the subject of a valid license;
 - (e) Be filed with and remain in possession of the department until it is released, canceled, or discharged as provided for by the terms of this chapter and any administrative regulations promulgated under it;
 - (f) Be kept in force at all times while the licensee is operating as a grain warehouse operator or grain dealer. Failure to keep the bond or other security in force shall be cause for revocation of the license, and shall subject the licensee to criminal penalties set forth in KRS 251.990; and
 - (g) Contain a provision stating that it may not be canceled by any party, except upon ninety (90) days' notice in writing to the department. A notice of cancellation shall not affect any liability accrued before the expiration of the notice period.
- (3) Separate proof of financial responsibility shall be required for each facility that is

licensed by the department.

- (4) For any security used as evidence under subsection (2) of this section that bears interest, the interest shall be made payable to the purchaser of the security.
- (5) No person may release, cancel, or discharge security filed with the department under subsection (1) of this section without prior approval of the department and its approval of a substitute bond or other security.
- (6) If the department questions a licensee's ability to pay producers and depositors for grain, or if the department determines that the licensee does not have a sufficient net worth to meet the licensee's financial obligations, the department shall require the licensee to file additional security with the department in an amount equal to the insufficiency. Failure to post the additional security shall constitute grounds for suspension or revocation of a license.
- (7) The amount of the security required by subsection (1) of this section shall be in a principal amount, to the nearest one thousand dollars (\$1,000), that is equal to ten percent (10%) of:
 - (a) For a licensed grain dealer, the aggregate dollar amount:
 1. That was paid by the dealer for grain purchased in the dealer's most recently completed fiscal year; or
 2. That the department estimates will be paid by the grain dealer for grain purchased in the grain dealer's current fiscal year, if records for the grain dealer's most recently completed fiscal year do not exist or are not available; and
 - (b) For a licensed grain warehouse operator, the aggregate dollar value of:
 1. The grain deposited in the grain warehouse operator's most recently completed fiscal year; or
 2. The grain the department estimates will be deposited in the operator's warehouse during the current fiscal year, if records for the warehouse operator's most recently completed fiscal year do not exist or are not available.
- (8) In no event shall the required security for a licensee be less than twenty-five thousand dollars (\$25,000) nor more than one million dollars (\$1,000,000).

Effective: August 1, 2019

History: Created 2019 Ky. Acts ch. 88, sec. 9, effective August 1, 2019.