

# **Bonding Requirements**

During to the 77<sup>th</sup> Legislative Session, grain warehouse bonding requirements was modified. The following provides bonding requirements and information about the recent changes:

## **Bond Requirements**

1. The bonding requirements for a grain warehouse are now a flat rate of 6 cents per bushel of rated storage capacity.
2. The minimum bond amount is now \$20,000, regardless if the warehouse operator has a single or a combination license.
3. There is no longer a maximum bond amount for a grain warehouse license.
4. There may only be one bonding instrument per license. If a warehouse operator decides to combine facilities under one license, only one bond is required for the combination. You may no longer cover separately licensed facilities under one bond.
5. If an increase in capacity is required during the license year, more than one bonding instrument may be used. However, the licensee must consolidate all bonding instruments at or before license renewal.
6. A net worth deficiency bond may be required if the actual net worth of a warehouse operator equals less than 25 cents per bushel of rated storage capacity. The warehouse operator shall file a deficiency bond in an amount equal to the difference between the actual net worth and the amount determined by multiplying 25 cents times each bushel of rated storage capacity of the warehouse.

**Note: A deficiency bond is in addition to the bond required for a license.**

## **Continuous Bond**

Beginning with the May 31, 2002 renewal bonds and other bonding instruments will be continuously in effect, until cancelled, provided the new bond forms are used (see enclosed forms). Having a continuous bond will eliminate the need to provide an updated bond at each renewal, unless there has been an increase change in the rated capacity.

## **Other bonding instruments**

In lieu of a bond, a warehouse operator may deposit one of the following in order to satisfy bond requirements:

- Certificate of Deposit from a federally insured bond or savings and loan institution authorized to do business in Texas and assigned to the State of Texas.
- Cash.
- An irrevocable letter of credit, payable to the State of Texas.

**Note: These alternative bond instruments cannot be recovered by the warehouse operator until 2 years after the facility ceases operations, except as indicated in following sections related to cancellation.**

## **Cancellation of a Bond**

A bond approved by the Texas Department of Agriculture (department) cannot be cancelled by the warehouse operator unless the department gives written approval of a substitute bond. The Surety may cancel a bond by sending notice of intent to cancel by registered or certified mail to the department. Cancellation of a bond may not be effective before the 91<sup>st</sup> day following the day on which the surety mails notice of intent to cancel. The department will promptly notify the warehouse operator involved. Liability under the bond ceases to accrue on the effective date of cancellation. The department or a depositor may collect under the bond for any claim that arose during the period during which the bond was in effect, provided that the claim is filed within the applicable limitations period established under Section 14. 065 of the law.

**Note: A public grain warehouse license is automatically suspended if the warehouse operator fails to file a new bond before the cancellation of a bond is effective.**

## **Cancellation of a Certificate of Deposit or Cash**

A warehouse operator may not repossess a certificate of deposit or cash deposited with the department in lieu of a bond unless:

1. the department gives written approval of a substitute bond or letter of credit; and
2. at least two years have passed after the expiration of the last licensing period during which the certificate of deposit or cash was deposited with the department in lieu of a bond.

A warehouse operator may, on written request to the department, recover a certificate of deposit or cash from the department *before the 2 year period (indicated above) if the following requirements are met:*

- The department performs a closeout inspection and 30 days have past from the day of the inspection;
- The department determines on the best available evidence that no outstanding obligations exist at the time of the closeout inspection and at the 30 day period mentioned above; and
- The warehouse operator submits with the written request a bond in an amount equal to six cents per bushel for 50 percent of the total storage capacity of the facility or combination covered by the cash or certificate of deposit the warehouse operator is attempting to recover. The bond has to cover any failure of obligation that may have occurred during all licensing periods covered by either cash or the certificate of deposit that the warehouse operator is attempting to recover.

**Note: A claim against the bond must be filed with the department or in a court of a competent jurisdiction no later than the second anniversary of the date of the closeout inspection.**

## **Cancellation of Letter of Credit**

A warehouse operator may not cancel a letter of credit approved by the department in lieu of a bond unless the department provides written approval of a substitute bond or letter of credit. The issuer of the letter of credit may cancel a letter of credit by sending notice of intent to cancel by registered or certified mail to the department. Cancellation of a letter of credit may not take effect before the 91<sup>st</sup> day after the date the issuer mails notice of intent to cancel. On receipt of notice of cancellation of a letter of credit, the department shall promptly notify the warehouse operator involved. Liability under the letter of credit ceases to accrue on the effective date of cancellation. The department or a depositor may collect under the letter of credit for any claim that arose during the period during which the letter of credit was in effect, provided the claim is filed within the applicable limitations period established under Section 14.065 of the law.

The issuer of a letter of credit shall send a copy of the notice required by this section to any government agency requesting the copy.

**Note: A public grain warehouse license is automatically suspended if the warehouse operator fails to file and maintain a new bond or letter of credit before the cancellation of a letter of credit is effective.**