

Title 2—DEPARTMENT OF AGRICULTURE
Division 60—Grain Inspection and Warehousing
Chapter 5—Missouri Grain Dealer’s Law

PROPOSED AMENDMENT

2 CSR 60-5.080 Letters of Credit.

The division is amending section (1), deleting section (5), and renumbering as needed.

PURPOSE: Amending this rule will remove the requirement that an irrevocable letter of credit, provided in lieu of a grain dealer bond, be issued by a bank chartered under the laws of Missouri. Also, the requirement that an irrevocable letter of credit provided in lieu of a grain dealer bond be negotiable only at a financial institution located within Missouri is removed. The International Chamber of Commerce publication which cites rules that issuing banks are to follow is updated to the current publication number.

(1) A letter of credit issued by a commercial bank chartered under the laws of Missouri, **or any other state**, or chartered pursuant to the National Banking Act, Title 12 U.S.C. may be submitted to the Missouri Department of Agriculture in lieu of a Missouri grain dealer bond as required by sections 276.401–276.582, RSMo[;], provided[,] that the commercial bank adopts and adheres to the rules enumerated in the International Chamber of Commerce publication [UCP-500] **UCP-600** pertaining to letters of credit and issues those letters in conformity with Article V of the Uniform Commercial Code, section 400.5-101, RSMo. The letter of credit must be in an amount equal to the otherwise required bond.

[(5) All letters of credit must be negotiable at a financial institution located within Missouri.]

[(6)](5) Letters of credit shall have a term of one (1) year which shall be automatically renewable for additional one- (1-) year terms. A letter of credit may be revoked by the licensee or issuer only at its expiration date by giving the Department of Agriculture at least ninety (90) days’ written notice, by certified mail, prior to renewal date. Notice is not deemed sufficiently given unless the director of agriculture receives the cancellation notice in writing, by certified mail, at least ninety (90) days prior to the renewal date of the letter of credit. Upon notice timely received, the licensee shall be required to arrange for substitution of a suitable bond or certificate of deposit (CD) at least sixty (60) days prior to the expiration of the letter of credit. If satisfactory evidence of these arrangements is not timely received, the director shall proceed in accordance with the provisions of section 276.426, RSMo.

[(7)](6) If a licensee desires to surrender its license and requests the release of a letter of credit, the licensee must return its grain dealer license and make written request by registered or certified mail with return receipt for the release of the letter of credit. Upon receipt of the written request and the submission of the grain dealer license, the director shall hold the letter of credit until the director is satisfied that no claims exist, which may include a minimum ninety- (90-)[-] day holding period, before notice of release is transmitted to the issuer.

[(8)](7) In the event that a licensee desires to substitute a bond for a letter of credit then in possession of the director of agriculture, the letter of credit shall remain in force for a period of ninety (90) days following the later of the effective date of the bond or the date the bond is received by the director. A

substitute bond shall be considered as received by the director when the bond is actually received or when a binding verbal commitment for a substitute bond has been accepted by the director. The director may retain the letter of credit beyond ninety (90) days for such time as may be required to fully ascertain the existence of any claims. After that, notice of release shall be transmitted to the issuer of the letter of credit.

[(9)](8) In the event that a licensee desires to substitute a CD for a letter of credit, the director shall transmit a release to the issuer of the credit letter upon receipt and authentication of the CD.

[(10)](9) In the event that a plurality of letters of credit from any number of issuers is presented in satisfaction of a licensee's bonding obligation, the director may satisfy claims under the Missouri Grain Dealer's Law by presentment of sight drafts or letter of demand against one (1) or more letters of credit, without regard to proration.

[(11)](10) A licensee shall be required to augment letters of credit in any situation where it would be required to increase its coverage under a bond; this augmentation shall be commensurate to the increased bond value required. In the event of a decreased bond requirement, a new letter of credit for the lesser amount may be substituted for a prior letter upon the renewal date of the letter of credit, or at such time as approved by the director.

[(12)](11) If the decrease in bond requirement is due to an increase in net worth, a minimum ninety-(90)-[-] day holding period may be required from the date the improved net worth is accepted by the director.

[(13)](12) Licensees or prospective licensees may present any combination of CDs, letters of credit, and bonds in satisfaction of its bonding requirement under this chapter; however, in making disbursements for claims, the director shall liquidate the CDs first, draw upon the letters of credit second, and make demand upon a bond(s) third.

[(14)](13) When the director has made written demand for payment of a letter of credit, the letter shall be considered paid if the issuing bank, within three (3) days of the bank's receipt of that demand, pays the sum demanded to the director, the sum demanded or if the issuing bank deposits, at a bank designated by the director, in an escrow account solely in the name of the director within three (3) days of the bank's receipt of that demand. Deposit of the sum demanded in the escrow account shall not constitute refusal or failure of the issuing bank to pay the sum demanded to the director and shall prevent a penalty assessment for refusal or failure to pay the sum demanded to the director. When the sum demanded is deposited in the escrow account, the funds shall remain in the escrow account until the liability of the bank has been determined in accordance with sections 276.401–276.582, RSMo. In the event that a penalty assessment is necessary in accordance with sections 276.401–276.582, RSMo, this penalty assessment shall begin on the fourth day following the date of the bank's receipt of written demand for payment by the director and shall be assessed at the rate of one-seventh (1/7) of a week for each day of delay.

AUTHORITY: sections 276.406 and 276.431, RSMo Supp. [1999] 2000. Emergency rule filed April 15, 1986, effective April 25, 1986, expired Aug. 23, 1986. Original rule filed May 2, 1986, effective Aug. 25, 1986. Amended: Filed March 16, 1988, effective June 27, 1988. Amended: Filed Oct. 25, 1999, effective June 30, 2000. Amended: Filed Dec. 29, 2015.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars (\$500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may submit a written statement in support of or in opposition to this proposed amendment. Written statements shall be sent to the attention of Joe Walker, Grain Regulatory Services, PO Box 630, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.