Title 37
INSURANCE
Part IX. Agricultural Commodities

Chapter 1. Self-Insurance Fund

§101. Definitions

A. As used in this Part:

Applicant—any person, firm, corporation, or other legal entity seeking the issuance of a warehouse license, cotton merchant, or grain dealer license from the commission or a renewal thereof.

Claim—a written notice and/or proof of loss which is filed with the Agricultural Commodity Commission Self-Insurance Program.

Claimant—any person or entity who, in writing, alleges a loss covered under the Agricultural Commodity Commission Self-Insurance Program.

Fee—with respect to the self-insurance fund, means the charge imposed by the Louisiana Agricultural Commodities Commission for participation in the self-insurance program, as contemplated in R.S. 3:3410.1.C.

Insurance—with respect to the self-insurance fund, means the amount of annual coverage the self-insurance program will provide to each warehouse and grain dealer licensee participating in the program.

Licensee—any person holding or required to hold a license as warehouse or grain dealer issued by the commission.

Loss—a licensee's failure to perform one or more legal obligations directly related to licensee's business, which failure results in damages to one or more producers, one or more holders of warehouse receipts, or the Commodities Credit Corporation.

Self-Insurance Fund—that special fund created in the state treasury for the Agricultural Commodity Commission's fees or assessments collected by the commission for participation in the self-insurance fund.

B. All other definitions given in R.S. 3:3402 and in the regulations are applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.1.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 13:234 (April 1987), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1303 (October 1993), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:625 (April 1998).

§103. The Fund

A. There is hereby created, pursuant to the authority granted in R.S. 3:3410.1, a fund to be used for the purposes described in the following Subsection hereof, and said fund shall be known as the Agricultural Commodities Commission Self-Insurance Fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.1.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, LR 13:234 (April 1987), amended LR 19:1303 (October 1993).

§105. Purpose

A. The self-insurance fund is established to guarantee the faithful performance of all duties and obligations of licensed grain dealers, cotton merchants, and licensed warehouses to agricultural producers and holders of state warehouse receipts for agricultural commodities and previous holders of state warehouse receipts released in trust in order to have commodity shipped (open storage), included but not limited to Commodity Credit Corporation, banks and lien holders, provided however that this fund does not apply to federal warehouses with regard to the requirements for federal warehouse license and bond.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.1.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 13:234 (April 1987), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1303 (October 1993), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:625 (April 1998).

§107. Fees

A. Fees for participation in said fund may be determined and announced annually by the commission, and the commission, in doing so, shall consider the self-insurance fund's experience and current market conditions affecting the financial status of licenses.

B. Each applicant for a warehouse license and/or cotton merchant and/or a grain dealer license who participates in the self-insurance fund shall be assessed an annual fee for participation in the self-insurance program. Said fee must accompany the application for a license, and is not refundable unless the license application or renewal is denied and, in that event, the fee will be refunded on a pro rata basis with the commission retaining a proportionate amount for any period during which coverage was provided to the applicant.

C. An applicant who does not pay said fee on or before April 30 of the new license year shall pay an additional sum equal to 10 percent of the annual fee.

D. The amount of the annual fee shall be $500 for a grain dealer or cotton merchant licensee. The annual fee for a warehouse licensee shall be determined first by calculating the amount of bond required of a license under R.S. 3:34010.C and D. If the required bond is $25,000, then the fee shall be $135. If the required bond is over $25,000, then the fee shall be $135 plus $4 per each additional $1,000 of coverage required.

E. Whenever the licensed warehouse capacity increases, the amount of the fee shall be amended to conform with the current licensed capacity of the facility or facilities covered by the fee.

F. For licensees entering the self-insurance fund during the license year, the fee shall be based on a pro-rata basis for each month of coverage provided.

G. The commission may require applicants who are participating in the self-insurance fund for the first time to pay two times the normal fee assessment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.1.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 13:234 (April 1987), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1304 (October 1993), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:625 (April 1998).

§109. Insurance Coverage

A. Insurance coverage available to the user of a licensed operation shall be limited to the amount of the bond required by R.S. 3:3410 and/or R.S. 3:3411 and shall be accepted in lieu of said bond as follows.

1. Each licensed grain dealer or cotton merchant shall be insured in the total aggregate amount of $50,000 for all claims in each licensed year.

2. Each licensed warehouse shall be insured in an amount not less than $25,000 and not more than $500,000 in the total aggregate amount in each licensed year as follows:

a. $0.20 per bushel for the first million bushels of licensed capacity;

b. $0.15 per bushel for the second million bushels of licensed capacity;

c. $0.10 per bushel for all bushels over two million.

3. For purposes of §109, one CWT shall equal 2.22 bushels, and one barrel shall equal 3.6 bushels.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.1.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 13:234 (April 1987), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:626 (April 1998).

§111. Claim Provisions

A. The monies in the Agricultural Commodities Commission Self-Insurance Fund shall be used solely for the administration and operation of this program of self-insurance.

B. Any claimant who wishes to assert a claim must provide, under oath, written and notarized proof of a loss covered under this program within 30 days of the loss.

C. Said written claim shall include the following information:

1. name and address of claimant;

2. name of the licensee(s) against whom claimant is asserting a loss;

3. nature of the relationship and transaction between claimant and licensee(s);

4. the date of the loss which shall be defined as the date on which claimant knew, or should have known, that a loss had occurred;

5. the amount of the loss and how calculated;

6. a concise explanation of the circumstances that precipitated the loss;

7. copies of those documents relied upon by claimant as proof of said loss.

D. Failure to furnish such proof of loss within the required time shall not invalidate nor reduce the claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible.

E. Upon receipt of a proof of loss, the commission will receive the claim to determine whether it is covered under the program. The burden of proof to establish the loss shall be upon the claimant.

F. Where any loss is or may be covered by other insurance or bond, the other insurance is primary and the commission may require the claimant to exhaust his remedies as to the other insurer before considering the payment of the claim.

G. Once a proof of loss has been filed against a licensee(s), the commission may make a complete inspection of the licensee's physical facilities and the contents thereof, as well as an audit of all books and records of the licensee and/or claimant, subject to the confidentiality requirements of R.S. 3:3421.

H. Once proof of loss has been filed against a licensee(s), any other claimants alleging a loss caused by said licensee(s) will have a period of 60 days within which to post and thereby file a written claim. The said 60-day period will begin to run upon publication by the commission of the notice of claim in the official local journal for legal notices, or the print publication with the highest circulation in the area serviced by the licensee. The purpose of said notice is to determine whether there are multiple claims, and in the

event of multiple claims which exceed the amount of insurance, then the proceeds available for losses of said licensee(s) will be prorated.

I. The commission shall provide a notice, by published advertisement, in the official local journal for legal notices or the print publication with the highest circulation in the area serviced by the licensee of the failure of a warehouse and/or grain dealer licensee, and all claims pursuant thereto must be filed within 60 days of the published advertisement.

J. The commissioner may, at his option, represent the producers and the patrons of a licensee in their claim against a licensee.

K. When claims against different licenses are filed timely and approved by the commission and the aggregate amount claimed exceeds the amount in the fund, those claims filed first will be paid before other claims until the fund is exhausted. However, the commission may, for good cause shown, permit the payment of any claim or claims over a period of years as it shall determine.

L. The fiscal year for the self-insurance fund shall be from July 1 through June 30 of each year. However, any claims received by the commission on or before August 15 of any calendar year shall be deemed as a claim on the self-insurance fund of the previous fiscal year. Claims against a licensee which are posted or received by the commission within 60 days of the advertisement of the first claim shall be considered as received on the same date as the first claim.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.1 and R.S. 3:3405.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, LR 13:234 (April 1987), amended LR 19:1304 (October 1993).

§113. Appeal Procedure

A. Any decision of the commission to deny or grant a claim for payment from the fund may be appealed to the commission by the licensee or claimant by seeking an adjudicatory hearing to have said decision reconsidered by the commission in accordance with Chapter 13 of Title 49 of the Louisiana Revised Statutes, as well as all subsequent appeals therefrom, provided said appellant files with the commission a written notice of appeal within 30 days of the mailing of the decision of the commission to the affected party.

B. Said notice of appeal shall contain an expressed statement of each and every basis upon which said appeal is sought and the hearing to consider same shall be limited accordingly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.1 and R.S. 3:3405.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, LR 13:234 (April 1987).

§115. Subrogation

A. Whenever a claim is paid by the commission from the self-insurance fund, the claimant, by accepting said payment, subrogates his rights to the commission up to the full amount of payment, and the commission shall have the right to recover such payments from any responsible person or entity as it shall determine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.1 and R.S. 3:3405.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, LR 13:234 (April 1987).

§117. Limit of Self-Insurance Fund

A. The maximum amount necessary to sustain the self-insurance fund is $10,000,000. When the self-insurance fund has $10,000,000 available for payment of claims, no further fees or assessment will be collected until said fund is reduced by payment of claims or as otherwise provided for herein, provided that every participant in the fund shall have paid fees into the fund for a minimum of 15 years before any such suspension of fees are applicable to said participant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.1 and R.S. 3:3405.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, LR 13:234 (April 1987).

§121. Participation in the Self-Insurance Fund

A. Participation in the agricultural commodity commission self-insurance fund shall be voluntary; however, for good cause shown, the commission may require a licensee to provide other security, in accordance with R.S. 3:3410(A) and/or R.S. 3:3411(F), in lieu of or in addition to participation in the self-insurance fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.1 and R.S. 3:3405.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, LR 13:235 (April 1987).

§123. Prohibited Acts: Criminal Penalties

A. Any claimant who provides the commission with false information regarding an alleged loss may be denied payment of the claim on the basis alone.

B. Any warehouse, cotton merchant or grain dealer licensee who intentionally provides the commission with false information regarding a claim, or regarding any other matters pertaining to the self-insurance program, shall be subject, upon conviction, to penalties for perjury established under R.S. 14:123.

C. Any warehouse, cotton merchant, or grain dealer licensee who intentionally provides the commission with false information regarding a claim, or regarding any other matters pertaining to the self-insurance fund, shall be subject to a fine of up to $10,000, imprisonment for not more than 10 years, or both, for each occurrence proven at a hearing conducted in accordance with Chapter 13 of Title 49 of the Revised Statutes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.1.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 13:234 (April 1987), amended by

the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1305 (October 1993), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:626 (April 1998).

§125. Validity of Rules

A. If any part of this regulation is declared to be invalid for any reason by any court of competent jurisdiction, said declaration shall not affect the validity of any other part not so declared.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.1 and R.S. 3:3405.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, LR 13:236 (April 1987).

§127. Pending Litigation; Stay of Claims

A. Where the commission finds that litigation is pending which could determine whether payment of a claim is due or to whom payment of a claim is due, the claim in question may be stayed until the judgment in said litigation has become final and definitive. The commission shall give notice of the stay to any claimants whose claims have been stayed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405 and 3:3410.1.

HISTORICAL NOTE: Promulgated as LAC 7:XXVII. 14759 by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agriculture Commodities Commission, LR 17:955 (October 1991), repromulgated LR 19:1304 (October 1993).