

**Title 2—DEPARTMENT OF
AGRICULTURE
Division 30—Animal Health
Chapter 6—Livestock Markets**

PROPOSED AMENDMENT

2 CSR 30-6.030 Bonding (Surety) Requirements for Livestock Market/Sale Licensees

PURPOSE: This rule sets forth procedures for establishing proper surety coverage for licensees defined in Chapter 277, RSMo.

(1) Bonding Requirements. Every person subject to the provisions of Chapter 277, RSMo shall provide proof of a satisfactory bond in the amount specified by the United States Department of Agriculture (USDA) Packers and Stockyards Administration or the state veterinarian before receiving a license. In lieu of any bond, persons may substitute any instrument of financial security approved by the USDA Packers and Stockyards Administration.

(2) All surety bonds and certificates of deposit shall name the state veterinarian as trustee or beneficiary. Letters of credit shall name the state veterinarian and the issuing financial institution as co-trustees. For livestock markets or sales whose corporate headquarters are located in another state, it is not required that the state veterinarian act as beneficiary or trustee, although proof of adequate bonding must be submitted with the application for a license. These bonds shall be in favor of Missouri with the director as trustee for the benefit of all persons selling livestock to the livestock market/sale and their legal representatives, attorneys or assigns, and shall be dependent upon the following:

(A) The livestock market/sale as a buyer must pay to the seller the agreed upon purchase price of the livestock purchased from the seller;

(B) The livestock markets/sales must faithfully perform their duties as licensed livestock markets/sales and comply with Chapter 277, RSMo and its corresponding rules. This rule applies to purchases made from the effective date of the bond until official cancellation of the bond;

(C) A surety bond required by section 277.080, RSMo shall be effective on the date of issue, not affected by the expiration of the license, and shall continue in effect until cancelled. The continuous nature of a bond however, in no event shall allow the liability of a surety under a bond to accumulate for each successive license period during which the bond is in force, but limited in the aggregate to the amount stated on the bond, or as changed, from time-to-time, by appropriate endorsement or rider;

(D) The required bond shall be kept in force at all times while conducting business as a licensed livestock market or sale. **No livestock market/sale shall operate without a bond in force.** Failure to keep that bond in force is cause for revocation of the license and the **livestock** market/sale is subject to the penalties provided in this chapter. No **livestock** market/sale shall cancel an approved bond without the prior written approval of the state veterinarian and the state veterinarian's approval of a substitute bond;

(E) Upon written demand of the state veterinarian for payment, either the surety shall pay over to the state veterinarian the sum demanded up to the full face amount of the bond or shall deposit the sum demanded in an interest-bearing escrow account at the highest rate of interest available. When a surety pays the state veterinarian upon demand, the state veterinarian shall set a date for an informal conference to allow the parties to discuss the claim. If the surety pays as demanded and the parties or a court of law determines the surety is not liable, the state veterinarian shall return to the surety the sum paid to the state veterinarian plus all accumulated interest, or any *pro rata* part of the sum, plus interest, as applicable in the event of liability less than the sum demanded. If the surety chooses to deposit the demanded sum in an interest-bearing escrow account and upon the exhaustion of appeals, if any, the surety immediately shall pay to the state veterinarian for distribution to claimants the amount for which the surety is determined to be liable plus accumulated interest on that amount;

(F) Every bond filed shall contain a provision that the principal or surety company cannot cancel the bond except upon ninety (90) days' prior notice in writing, by certified mail, to the state veterinarian at the Jefferson City office. When a surety gives notice of cancellation, a copy of that notice shall be mailed to the principal by certified mail on the same day. The cancellation does not affect the liability accumulated or which may accumulate under that bond before the expiration of the ninety (90) days. The notice shall contain the termination date. If notice procedures are not followed, the bond shall remain in effect until properly cancelled;

(G) Whenever the state veterinarian receives notice from a surety that it intends to cancel the bond of a livestock market or sale, the state veterinarian shall automatically suspend the **livestock** market/sale license if a new bond is not submitted to the state veterinarian within [~~forty-five (45)~~]**thirty (30)** days of receipt of the notice of intent to cancel. If a new bond is not received within [~~eighty (80)~~]**thirty (30)** days of receipt of the notice of intent to cancel, the state veterinarian shall revoke the **livestock** market/sale license. The state veterinarian may cause an inspection of the livestock market/sale at the end of the [~~eighty (80)~~]-**thirty (30)** day period. That inspection may include an attempt to identify all possible livestock sellers and related claimants of the **livestock** market/sale by advertising for the same in local news media; and

(H) Verbal or written surety bond binders issued by a surety on behalf of a livestock market/sale for original or replacement bonds are recognized as legally effective in Missouri when those binders meet the following conditions:

1. The licensee or principal has paid, or has promised to pay, the surety a tentatively agreed upon premium or other consideration; and

2. A surety provides the state veterinarian, either in writing or verbally—

A. A bond number;

B. The amount of the bond;

C. The effective date of the bond; and

D. Assurance that the person providing the preceding information has authority to commit the surety. The state veterinarian may or may not accept this binder, depending on the particular circumstances involved and consistent with the orderly administration of this rule.

(3) Provisions and rules on bonds will also apply to certificates of deposit and irrevocable letters of credit, with the exception that a letter of credit may only be cancelled on its natural termination date.

(A) Any certificate of deposit submitted instead of a surety bond required under section 277.080, RSMo shall be filed with the state veterinarian as trustee for the benefit of all persons selling livestock to the livestock market/sale. The certificate of deposit shall be kept in the custody of the state veterinarian.

(B) A licensee may submit instead of a bond, an irrevocable letter of credit, payable to the state veterinarian or the issuing financial institution for the benefit of claimants and issued by a federally- or state-chartered bank. If the state veterinarian finds that the issuing bank is or may become insolvent, or for any other reason may be unable to honor the terms of the letter of credit, the state veterinarian may refuse to accept a letter of credit instead of the bond required by this rule if the state veterinarian finds that the issuing bank is or may become insolvent, or for any other reason may be unable to honor the terms of the letter of credit. The state veterinarian may require an issuing bank to submit evidence of its financial condition and the state veterinarian may seek the cooperation of the Division of Finance in checking the financial condition of an issuing bank. The state veterinarian shall promulgate all necessary rules regarding certificates of deposit and irrevocable letters of credit.

(C) On written demand of the state veterinarian for payment, the bank either shall pay over to the state veterinarian the sum demanded, up to the full face value of the irrevocable letter of credit, or shall deposit the sum demanded in an escrow account at the highest rate of interest available. Upon receipt of funds and the determination that the bank is not liable for claims against the irrevocable letter of credit, the state veterinarian shall return to the bank the sum paid to the state veterinarian and all accumulated interest earned, minus any penalties due or paid. If the liability is less than the sum demanded, the state veterinarian shall return the proper *pro rata* portion of the funds received and interest earned as applicable.

(4) Amount of bond or surety will vary based upon the following criteria:

(A) Each **livestock** market/sale licensed under Chapter 277, RSMo that does not meet USDA Packers and Stockyards Administration criteria either in volume or type of livestock sold must carry a minimum ten thousand dollar (\$10,000) surety bond or like security; and

(B) Those markets/sales which exceed two hundred thousand dollars (\$200,000) of business in the preceding year shall add to the ten thousand dollar (\$10,000) bond with an amount to equal two and one-half percent (2.5%) of the dollar volume over two hundred thousand dollars (\$200,000), rounded to the nearest ten thousand dollars (\$10,000).

AUTHORITY: section 277.160, RSMo Supp. 1998. Original rule filed June 15, 1990, effective Dec. 31, 1990. Amended: Filed Jan. 4, 1999, effective July 30, 1999.*

**Original authority: 277.160, RSMo 1989, amended 1993, 1995.*

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

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

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment by website: <https://agriculture.mo.gov/proposed-rules/> or by mail: Missouri Department of Agriculture, attn: Dr. Steve Strubberg, PO Box 630, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days of publication of this notice in the **Missouri Register**. No public hearing is scheduled.*