WEST VIRGINIA CODE: §11-14C-13

§11-14C-13. Bond requirements.

(a) Along with an application for a license required by section eleven of this article, either a cash bond or a continuous surety bond in the amount or amounts specified in this section shall be filed. If a person has filed applications for licenses for more than one activity, the commissioner may combine the amount of the cash bond or continuous surety bond required for each licensed activity into one amount that shall be no less than the largest amount required for any of those activities for which the license applications are filed. If a continuous surety bond is filed, an annual notice of renewal shall be filed thereafter. If the continuous surety bond includes the requirements that the commissioner is to be notified of cancellation at least sixty days prior to the continuous surety bond being canceled, an annual notice of renewal is not required. The bond, whether a cash bond or a continuous surety bond, is conditioned upon compliance with the requirements of this article, payable to this state and in the form required by the commissioner. The amount of the bond is as follows:

(1) For a supplier license, the amount shall be a minimum of $100,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $2 million: When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(2) For a permissive supplier license, the amount shall be a minimum of $100,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $2 million. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(3) For a terminal operator license, the amount shall be a minimum of $100,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $2 million. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(4) For an importer license for a person, other than a supplier, that imports by transport vehicle or another means of transfer outside the bulk transfer/terminal system motor fuel removed from a terminal located in another state in which: (A) The state from which the motor fuel is imported does not require the seller of the motor fuel to collect a motor fuel excise tax on the removal either at that state's rate or the rate of the destination state; and (B) the seller of the motor fuel is not a permissive supplier, the amount shall be a minimum of $100,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $2 million. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the

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commissioner's notification within thirty days after receiving that notification;

(5) For an importer license for a person that imports by transport vehicle or another means outside the bulk transfer/terminal system motor fuel removed from a terminal located in another state in which: (A) The state from which the motor fuel is imported requires the seller of the motor fuel to collect a motor fuel excise tax on the removal either at that state's rate or the rate of the destination state; or (B) the seller of the motor fuel is a permissive supplier, the amount shall be a minimum of $2,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $300,000. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(6) For a license as both a distributor and an importer as described in subdivision (4) of this subsection, the amount shall be a minimum of $100,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $2 million. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(7) For a license as both a distributor and an importer as described in subdivision (5) of this subsection, the amount shall be a minimum of $2,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $300,000. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(8) For an exporter license, the amount shall be a minimum of $2,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $300,000. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(9) For a blender license, the amount shall be a minimum of $2,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $300,000. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(10) For a distributor license, the amount shall be a minimum of $2,000 or an amount equal to three months' tax liability, whichever is greater, but shall not exceed $300,000. When required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

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(11) For a motor fuel transporter license, there is no bond;

(12) For a producer/manufacturer license, there is no bond. If the taxpayer fails to file a return or remit tax due under this article, the commissioner may require a cash bond or a continuous surety bond in an amount to be determined by the commissioner. When required by the commissioner to file a cash bond or a continuous surety bond, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification;

(13) For an alternative-fuel bulk end user, a provider of alternative fuel and a retailer of alternative fuel, there is no bond. If the taxpayer fails to file a return or remit tax due under this article, the commissioner may require a cash bond or a continuous surety bond in an amount to be determined by the commissioner. When required by the commissioner to file a cash bond or a continuous surety bond, the licensee shall comply with the commissioner's notification within thirty days after receiving that notification; and

(14) An applicant for a licensed activity listed under subdivisions (1) through (10), inclusive, of this subsection may, in lieu of posting either the cash bond or continuous surety bond required by this subsection, provide proof of financial responsibility acceptable to the commissioner. The proof of financial responsibility must demonstrate the absence of circumstances indicating risk with the collection of taxes from the applicant. The following constitutes proof of financial responsibility:

(A) Proof of $5 million net worth constitutes evidence of financial responsibility in lieu of posting the required bond;

(B) Proof of $2,500,000 net worth constitutes financial responsibility in lieu of posting fifty percent of the required bond; and

(C) Proof of $1,250,000 net worth constitutes financial responsibility in lieu of posting twenty-five percent of the required bond. Net worth is calculated on a business, not individual basis.

(15) In lieu of providing either cash bond, a continuance surety bond or proof of financial responsibility acceptable to the commissioner, an applicant for a licensed activity listed under this subsection that has established with the State Tax Division a good filing record that is accurate, complete and timely for the preceding eighteen months shall be granted a waiver of the requirement to file either a cash bond or continuance surety bond. When a licensee that has been granted a waiver of the requirement to file a bond violates a provision of this article, the licensee shall file the applicable bond as stated in this subsection.

(16) A licensee who disagrees with the commissioner's decision requiring new or additional security may seek a hearing by filing a petition with the Office of Tax Appeals in accordance with the provisions of section nine, article ten-a of this chapter. The hearing shall be provided within thirty days after receipt by the Office of Tax Appeals of the petition.

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(b) The surety must be authorized under article nineteen, chapter thirty-three of this code to engage in business of transacting surety insurance within this state. The cash bond and the continuous surety bond are conditioned upon faithful compliance with the provisions of this article, including the filing of the returns and payment of all tax prescribed by this article. The cash bond and the continuous surety bond shall be approved by the commissioner as to sufficiency and form and shall indemnify the state against loss arising from the failure of the taxpayer to pay, for any cause whatever, the motor fuel excise tax levied by this article.

(c) Surety on a continuous surety bond furnished hereunder is relieved, released and discharged from all liability accruing on the bond after the expiration of sixty days from the date the surety shall have lodged, by certified mail, with the commissioner, a written request to be discharged. Discharge from the continuous surety bond does not relieve, release or discharge the surety from liability already accrued or which will accrue before the expiration of the sixty-day period. Whenever a surety seeks discharge as herein provided, it is the duty of the principal of the bond to supply the commissioner with another continuous surety bond or a cash bond prior to the expiration of the original bond. Failure to provide a new continuous surety bond or a cash bond shall result in the commissioner canceling each license and registration previously issued to the person.

(d) A taxpayer that has furnished a cash bond hereunder is relieved, released and discharged from all liability accruing on the cash bond after the expiration of sixty days from the date the taxpayer shall have lodged, by certified mail, with the commissioner, a written request to be discharged and the amount of the cash bond refunded. The commissioner may retain all or part of the cash bond until the commissioner performs an audit of the taxpayer's business or three years, whichever first occurs. Discharge from the cash bond shall not relieve, release or discharge the taxpayer from liability already accrued or which will accrue before the expiration of the sixty-day period. Whenever a taxpayer seeks discharge as herein provided, it is the duty of the taxpayer to provide the commissioner with another cash bond or a continuous surety bond prior to the expiration of the original cash bond. Failure to provide either a new cash bond or a continuous surety bond shall result in the commissioner canceling each license and registration previously issued to the taxpayer.

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