

GENERAL GOVERNMENT
Department of Agriculture
The Office for Consumer and Environmental Protection
(New Administrative Regulation)

302 KAR 33:010. Grain dealers and grain warehouse operators.

RELATES TO: KRS 251.355, 251.375, 251.380, 251.470, 251.990

STATUTORY AUTHORITY: KRS 251.020

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation established the rules for administration and enforcement of the provisions of KRS Chapter 251.

Section 1. Licenses.

- (1) Each person acting as a grain dealer or grain warehouse operator who operates more than one (1) facility shall have a separate license for each facility when each facility is operated as separate business establishment.
- (2) All licenses shall be posted in a location at each business establishment that is easily viewable by customers and the public.
- (3) All grain warehouse operators licensed under the United States Warehouse Act and operating in Kentucky shall also be required to hold a valid Kentucky Grain Warehouse Operator's license.

Section 2. License Fee Schedule. License fees for grain dealers and grain warehouse operators shall be based upon the number of bushels purchased by the dealer or warehouse operator during the previous year.

- (1) The license fee schedule for grain dealers shall be:
 - (a) From 0 - 5,999 bushels, your fee will be: seventy-five (75) dollars.
 - (b) From 6,000 - 99,999 bushels: \$150.
 - (c) From 100,000 - 1,999,999 bushels: \$300.
 - (d) From 2,000,000 - 5,999,999 bushels: \$450.
 - (e) From 6,000,000 - 9,999,999 bushels: \$600.
 - (f) From 10,000,000 bushels or more: \$750.
- (2) The license fee schedule for grain warehouse operators shall be:
 - (a) Under 2,000,000 bushels, your fee will be: \$300.
 - (b) From 2,000,000 - 5,999,999 bushels: \$450.
 - (c) From 6,000,000 - 9,999,999 bushels: \$600.
 - (d) 10,000,000 bushels or more: \$750.

Section 3. Forward Pricing Contracts. All forward pricing contracts used in Kentucky shall contain the following information which includes, at a minimum:

- (1) Date of agreement;
- (2) Agreement number;
- (3) Description of the commodities under agreement;
- (4) A statement that the seller freely sells and delivers to the buyer listed commodities on which the price is to be established at a later date and the seller pledges the commodities delivered pursuant to the agreement shall be free of any lien or encumbrance;
- (5) A statement that the seller understands that ownership is being transferred to the buyer upon delivery, and that after delivery the seller becomes a creditor of the buyer for the fair market value of the delivered commodities until the price is established and settlement is completed, and if the buyer defaults on the obligation for settlement the seller may be held as an unsecured creditor of the buyer for the value of the commodities;

- (6) A statement that upon demand of the seller, the buyer is obligated to pay the regular bid price upon the date of demand for the delivered commodities being priced by the seller less any service charge due to the buyer, and the buyer shall pay the same price as the buyer is bidding for like commodities being delivered for sale on that date by other sellers;
- (7) A statement that for services rendered in connection with the agreement the seller shall be liable to the buyer for forward price charges printed on a scale ticket;
- (8) A statement that each scale ticket marked for forward price becomes a part of the agreement between the seller and the buyer; and
- (9) The name, contact information and signature of the seller and buyer.

Section 4. Temporary Storage Structures.

- (1) To ease demand on approved warehouse space for a single crop year, the department may authorize other storage facilities as temporary storage structures by a Kentucky licensed grain warehouse.
- (2) Grain stored in temporary storage structures may be used to cover storage obligations, forward pricing obligations, or otherwise be counted as an asset from the date of authorization until the following March 31. Grain held in temporary storage beginning April 1 shall not count as an asset during a KDA inspection.
- (3) Authorization for temporary storage by the department may be granted if the following conditions are met:
 - (a) Requests for temporary storage shall be in writing and shall receive prior approval of the department before use.
 - (b) The identity of the grain placed in temporary storage shall be preserved by a unique or identifying mark that appears on the receipt.
 - (c) The structure to be used for temporary storage shall meet the following requirements:
 - 1. Have a solid floor;
 - 2. Have rigid self-supporting walls;
 - 3. Provide adequate aeration;
 - 4. Have acceptable covering; and
 - 5. Be fully insured against loss of grain.
 - (d) The warehouse operator shall meet all financial and bonding requirements.
 - (e) The warehouse operator shall maintain a separate record of all grain stored in a temporary structure and show daily balance as part of the daily position record.
 - (f) The warehouse operator shall move the grain in temporary storage by sale or into their department licensed warehouse by:
 - 1. March 31 following initial warehouse licensing for fund covered grain; or
 - 2. Other dates, as established by the department.
 - (g) Grain stored in temporary storage can be considered part of commingled inventory to cover storage or forward pricing obligations.

Section 5. Emergency Storage. Authorization for emergency storage may be granted by the department if the following conditions are met:

- (1) The warehouse operator provides written justification that a need for emergency storage exists for the current crop year in the local area including the exact location, kind of grain to be stored, and the quantity of grain requested to be placed in emergency storage.
- (2) The warehouse operator receives authorization from the Department before using emergency storage space.
- (3) The warehouse operator moves the grain in emergency storage by sale or into their department licensed warehouse by:
 - (a) March 31 following initial warehouse licensing for fund covered grain; or

- (b) other dates, as established by the department.
- (4) Grain held in emergency storage shall not count as an asset for purposed of a KDA inspection.

Section 6. Producer Payment Responsibility.

- (1) For purposes of Kentucky grain insurance fund coverage eligibility, in any grain transaction the entity that is responsible for payment to the producer shall be deemed to be a grain dealer, without regard to intermediaries or transporters.
- (2) For purposes of Kentucky grain insurance fund coverage eligibility, ownership of grain shall be deemed to transfer the first time when that grain is delivered or weighed on a Department-approved scale.
- (3) A claim arising from a transaction that did not conform to the requirements of this Section 6 shall not be eligible for Kentucky grain insurance fund coverage.

Section 7. Violation Review and Appeal. All appeals shall be conducted in accordance with KRS 13B.

Section 8. Incorporation by Reference.

- (1) "Application for Grain Dealer/Warehouse License", April 2023, is incorporated by reference
- (2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Agriculture, Regulation and Inspection Division, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

RYAN QUARLES, Commissioner

APPROVED BY AGENCY: June 14, 2023

FILED WITH LRC: June 14, 2023 at 3:55 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2023 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, email clint.quarles@ky.gov.