

CIRCULAR 4

**THE ARKANSAS PUBLIC
GRAIN WAREHOUSE LAW
AND RULES**

Title 2 Agriculture
Subtitle 2. Agronomy
Chapter 17 Warehousing of Grain

A.C.A. Tit. 2, Subtit. 2, Ch. 17 Notes (2015)

Subchapter 1 -- General Provisions

Subchapter 2 -- Public Warehouses -- Generally Notes

2-17-201. Title.

This subchapter shall be known as the "Arkansas Public Grain Warehouse Law".

HISTORY: Acts 1979, No. 83, § 1; A.S.A. 1947, § 77-1301.

2-17-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Person" means individuals, corporations, partnerships, and all associations of two (2) or more persons having a joint or common interest;

(2) "Commissioner" means the Public Grain Warehouse Commissioner, who shall be the Director of the State Plant Board or his or her designated representative;

(3) "Grain" means all grains for which standards have been established pursuant to the United States Grain Standards Act, as amended, and shall include rice, as defined by the standards of the United States Department of Agriculture;

(4) "Stored grain" means any grain received in any public grain warehouse, located in this state, if it is not purchased and beneficially owned by the public grain warehouseman;

(5) "Public grain warehouse" means any building, structure, or other protected enclosure in this state used for the purpose of storing grain for a consideration;

(6) "Public grain warehouseman" means any person who operates a public grain warehouse as defined in this section; and

(7) (A) "Warehouse receipt" means a licensed warehouse receipt issued under this subchapter and an unpriced scale ticket.

(B) Including unpriced scale tickets within the definition of "warehouse receipt" does

not make the unpriced scale tickets negotiable.

HISTORY: Acts 1979, No. 83, § 2; 1983, No. 264, § 1; A.S.A. 1947, § 77-1302.

2-17-203. Applicability.

(a) The provisions of this subchapter shall apply to all public grain warehouses and to the operations of public grain warehouses whether or not any of the grain therein is owned by the warehouseman, unless the public grain warehouse is licensed under the provisions of the United States Warehouse Act, as amended.

(b) The provisions and definitions of the Uniform Commercial Code, § 4-1-101 et seq., relating to warehouse receipts, to the extent not inconsistent with this subchapter, shall govern warehouse receipts issued by public grain warehousemen, and the other provisions of the Uniform Commercial Code, § 4-1-101 et seq. shall also be applicable to the provisions of this subchapter to the extent not inconsistent with this subchapter.

HISTORY: Acts 1979, No. 83, § 3; A.S.A. 1947, § 77-1303.

2-17-204. Penalties.

(a) Any person who issues a warehouse receipt for grain without holding a valid public grain warehouse license or who commits any willful violation of any provision of this subchapter shall be guilty of a Class D felony.

(b) Any unintentional or negligent violation of this subchapter shall be a Class A misdemeanor.

HISTORY: Acts 1979, No. 83, § 37; A.S.A. 1947, § 77-1337.

2-17-205. Duty to enforce.

The State Plant Board shall carry out and enforce the provisions of this subchapter and is empowered to:

- (1) Promulgate rules and regulations;
- (2) Carry out necessary inspections;
- (3) Appoint and fix the duties of personnel; and
- (4) Provide such equipment as may be necessary to enforce the provisions hereof.

HISTORY: Acts 1979, No. 83, § 4; A.S.A. 1947, § 77-1304.

2-17-206. State license.

(a) No person shall operate a public grain warehouse or issue a warehouse receipt without first having obtained a license pursuant to this subchapter, unless the public grain warehouse is licensed under the provisions of the United States Warehouse Act, as amended.

(b) All public grain warehouses licensed under the United States Warehouse Act, as amended, shall file with the State Plant Board copies of their current licenses and copies of all subsequent licenses or renewals so as to always have copies of current licenses on file with the board.

HISTORY: Acts 1979, No. 83, § 5; A.S.A. 1947, § 77-1305.

2-17-207. License applications.

(a) (1) Applications for licenses under this subchapter are to be made on forms prescribed by the Public Grain Warehouse Commissioner for each warehouse.

(2) Every application is to be accompanied by an application fee of one hundred fifty dollars (\$ 150) and a certified financial statement in a form prescribed by the commissioner and any further information the commissioner may by regulation require.

(b) (1) If a warehouseman operates one (1) or more warehouses in the same city or town in conjunction with each other, if only one (1) set of books is kept for all the warehouses and scale tickets, and if warehouse receipts and checks of but one (1) series are issued for grain received or stored therein, then only one (1) license and bond shall be required for the operation of all the warehouses. In these cases, the license fee prescribed in this section shall be computed on the basis of the aggregate capacity of all warehouses operated by the licensee.

(2) The use for the storage of grain by a licensed warehouseman of a facility which is in the same city or town as licensed facilities and is neither licensed nor exempted, or for other violation of the provisions of this section, shall be cause for suspension or revocation of any license issued to the warehouseman for the storage of grain.

(c) Licenses issued under this subchapter are not transferable. Any person acquiring a new or existing public grain warehouse must apply for a license to operate the warehouse, subject to other provisions of this subchapter.

HISTORY: Acts 1979, No. 83, § 6; A.S.A. 1947, § 77-1306.

2-17-208. Filing schedule of charges.

(a) (1) Prior to the issuance of a license under this subchapter, the public grain warehouseman shall file a copy of his or her schedule of charges for storage and other services with the Public Grain Warehouse Commissioner.

(2) If the public grain warehouseman desires to make any changes in the schedule of charges during the license period, he or she shall file with the commissioner a statement in writing showing the change at least thirty (30) days prior to its effective date.

(b) Each public grain warehouseman shall keep conspicuously posted the schedule of charges for storage and other services as so filed and shall strictly adhere to these charges.

HISTORY: Acts 1979, No. 83, § 8; A.S.A. 1947, § 77-1308.

2-17-209. Bond requirements.

(a) (1) (A) (i) Before any license is issued to any warehouseman, the warehouseman shall file with the Public Grain Warehouse Commissioner a surety bond executed by the public grain warehouseman as principal and by a corporate surety licensed to do business in this state as surety.

(ii) The bond shall run to the State of Arkansas and be for the benefit of all depositors or storers of grain, their legal representatives, attorneys, or assigns.

(B) (i) No bond shall be accepted for the purposes of this subchapter until it has been approved by the commissioner.

(ii) The bond shall be conditioned upon the warehouseman delivering all stored grain or payment of the value thereof upon the surrender of the warehouse receipt.

(iii) The commissioner may require the increases in the amount of the bond, from time to time, as he or she may deem necessary for the protection of the storage receipt holders.

(2) (A) The aggregate liability of the surety to all depositors or storers of grain shall not exceed the sum of the bond.

(B) The bond may be cancelled at any time by the surety by giving written notice to the commissioner of its intention to cancel the bond. All liability thereunder shall terminate thirty (30) days after the receipt of the notice by the commissioner, except that the notice shall not affect any claims arising under the bond, whether presented or not, before the effective date of the cancellation notice.

(b) In lieu of the bond required in subsection (a) of this section, an applicant for a license may be a self-insurer by posting with the commissioner cash or any combination of securities, the market value of which is readily ascertainable and, if negotiable, by delivery or assignment, of the kinds described in § 23-63-806, United States government obligations, § 23-63-809, municipal or county utilities, § 23-63-813, international banks, and § 23-63-814, corporate bonds and debentures.

HISTORY: Acts 1979, No. 83, § 15; A.S.A. 1947, § 77-1315.

2-17-210. Amount of bond.

(a) (1) The amount of bond to be furnished for each public grain warehouse shall be fixed at a rate of:

(A) Twenty cents (20[cents]) per bushel for the first one million (1,000,000) bushels of licensed capacity;

(B) Fifteen cents (15[cents]) per bushel for the next one million (1,000,000) bushels of licensed capacity; and

(C) Ten cents (10[cents]) per bushel for all licensed capacity over two million (2,000,000) bushels.

(2) In no case shall the amount of the bond be less than twenty thousand dollars (\$ 20,000), except as prescribed in subsections (c) and (d) of this section.

(3) The licensed capacity shall be equal to the maximum number of bushels of grain that the public grain warehouse can accommodate for storage.

(b) (1) (A) A public grain warehouseman who is licensed or is applying for licenses to operate two (2) or more public grain warehouses may furnish a single bond. This bond shall meet the requirements of this subchapter to cover all public grain warehouses within the state.

(B) In these cases, all public grain warehouses to be covered by the bond shall be deemed to be one (1) warehouse for purposes of determining the amount of bond required under subsection (a) of this section.

(2) The aggregate licensed capacity of all the warehouses shall be used in determining the amount of the bond.

(c) (1) Any deficiency in the net assets required by § 2-17-217 shall be supplied by an increase in the amount of the warehouseman's bond.

(2) In any other case in which the Public Grain Warehouse Commissioner finds that conditions exist which warrant requiring additional bond, there shall be added to the amount of the bond such further amount as determined to be reasonable by the commissioner.

(d) (1) The commissioner may make exceptions to the bonding requirements of this section for good cause shown upon a finding that the requirements would substantially impair the warehouseman's ability to continue operations as a public grain warehouse and that the exception will not materially affect the protection of storage receipt holders under this subchapter.

(2) The exceptions must be reviewed at least annually.

HISTORY: Acts 1979, No. 83, § 16; A.S.A. 1947, § 77-1316.

2-17-211. Issuance or denial of license.

(a) Upon satisfaction of the requirements of this subchapter and any applicable regulations by an applicant, the Public Grain Warehouse Commissioner shall issue a license to operate a public grain warehouse.

(b) (1) If after proper application the commissioner denies any person a license to operate a public grain warehouse, the commissioner shall transmit immediately to the applicant, by certified mail, an order so providing, which shall state the reasons for the denial.

(2) (A) In the event the applicant is dissatisfied with the decision of the commissioner, the applicant may request a hearing with the commissioner to appear and defend its compliance with all appropriate regulations or give evidence that all deficiencies have been corrected.

(B) (i) A hearing shall be held within ninety (90) days of the request.

(ii) If after the hearing the commissioner denies the applicant a license, the commissioner shall transmit immediately to the applicant by certified mail an order so providing which shall state the reasons for the denial.

(C) In the event the applicant is dissatisfied with the decision of the commissioner after the hearing, the applicant may institute proceedings for judicial review in the circuit court of the county where the public grain warehouse is located or in the Pulaski County Circuit Court within thirty (30) days after service upon the applicant of the commissioner's final order, pursuant to § 25-15-212.

HISTORY: Acts 1979, No. 83, § 10; A.S.A. 1947, § 77-1310.

2-17-212. Posting of license.

Immediately upon receipt of his or her license or of any modification or extension thereof, the public grain warehouseman shall post it and thereafter keep it posted, until suspended or terminated, in a conspicuous place in the office of the public grain warehouse to which the license applies where receipts issued by the public grain warehouseman are delivered to depositors.

HISTORY: Acts 1979, No. 83, § 11; A.S.A. 1947, § 77-1311.

2-17-213. Annual license fee.

Subsequent to the issuance of an initial license under this subchapter, every applicant shall pay an annual license fee based upon the capacity of the warehouse. The fee shall be determined by the Public Grain Warehouse Commissioner but shall be no less than two hundred fifty dollars (\$ 250) nor more than eight hundred dollars (\$ 800).

HISTORY: Acts 1979, No. 83, § 7; A.S.A. 1947, § 77-1307; Acts 1993, No. 783, § 3.

2-17-214. Renewal of license.

(a) If a public grain warehouseman desires to renew his or her license for an additional year, application for the renewal shall be made on a form prescribed by the Public Grain Warehouse Commissioner.

(b) At least sixty (60) days prior to the expiration of each license, the commissioner shall notify each public grain warehouseman of the date of the expiration and furnish the public grain warehouseman with the renewal form.

HISTORY: Acts 1979, No. 83, § 12; A.S.A. 1947, § 77-1312.

2-17-215. Suspension, cancellation, or revocation of licenses.

(a) If a public grain warehouseman is convicted of any crime involving fraud or deceit or if the Public Grain Warehouse Commissioner determines that any public grain warehouseman has violated any of the provisions of this subchapter or any of the rules and regulations adopted by the commissioner pursuant to this subchapter, the commissioner may suspend, cancel, or revoke the license of the public grain warehouseman.

(b) (1) All proceedings for the suspension, cancellation, or revocation of licenses shall be before the commissioner. The proceedings shall be in accordance with rules and regulations which shall be adopted by the commissioner.

(2) (A) No suspension, cancellation, or revocation of any license is lawful unless, prior to the institution of the proceedings, the commissioner has given notice by mail to the licensee of facts or conduct warranting the intended action and the licensee has been given an opportunity to show compliance with all lawful requirements for the retention of the license.

(B) If the commissioner finds that public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action, which proceedings shall be promptly instituted and determined.

(C) (i) Whenever the commissioner shall suspend, cancel, or revoke any license, he or she shall prepare an order so providing which shall state the reason or reasons for the suspension, cancellation, or revocation.

(ii) The order shall be sent by certified mail by the commissioner to the licensee at the address of the public grain warehouse licensed.

(iii) Within thirty (30) days after service upon the licensee of the order, the licensee, if dissatisfied with the order of the commissioner, may institute proceedings for judicial review in the circuit court of the county where the public grain warehouse is located or in the Pulaski County Circuit Court.

(c) In case a license issued to a public grain warehouseman expires or is suspended, revoked, or cancelled by the commissioner or his or her designated representative, the license shall be immediately returned to the commissioner, and the public grain warehouseman shall forthwith comply with the provisions of § 2-17-237.

HISTORY: Acts 1979, No. 83, § 13; A.S.A. 1947, § 77-1313.

2-17-216. Replacement of license.

Upon satisfactory proof of the loss or destruction of a license issued to a public grain warehouseman, a duplicate or a new license may be issued under the same number.

HISTORY: Acts 1979, No. 83, § 14; A.S.A. 1947, § 77-1314.

2-17-217. Net assets required.

(a) (1) Above all exemptions and liabilities, each public grain warehouseman shall have and maintain total net assets available for the payment of any indebtedness arising from the conduct of the public grain warehouse in an amount equal to at least ten cents (10[cents]) multiplied by the maximum number of bushels of grain for which the public grain warehouse is licensed.

(2) (A) No person may be licensed as a public grain warehouseman unless he or she has available net assets of at least ten thousand dollars (\$ 10,000).

(B) Any deficiency in net assets required above the minimum of ten thousand dollars (\$ 10,000) may, at the discretion of the Public Grain Warehouse Commissioner, be supplied by a commensurate increase in the amount of the public grain warehouseman's bond.

(C) (i) In determining total available net assets, credit may be given for insurable assets such as buildings, machinery, equipment, and merchandise inventory only to the extent of the current market value of the assets and only to the extent that the assets are protected by insurance against loss or damage.

(ii) The insurance shall be in the form of lawful policies issued by one (1) or more insurance companies authorized to do business and subject to service of process in suits brought in this state, and which provide that no cancellation shall be effective unless thirty (30) days' advance notice of the cancellation is given to the commissioner.

(b) If a public grain warehouseman is licensed or is applying for license to operate two (2) or more public grain warehouses, the maximum total number of bushels which all the facilities will accommodate when stored in the manner customary to the warehouses, as determined by the commissioner, shall be considered in determining whether the public grain warehouseman meets the available net assets requirement of subsection (a) of this section.

(c) For the purposes of this section only, capital stock as such shall not be considered a liability.

HISTORY: Acts 1979, No. 83, § 9; A.S.A. 1947, § 77-1309.

2-17-218. Insurance required.

(a) (1) (A) At all times, every public grain warehouseman shall keep the grain stored in the public grain warehouse insured by an insurance company authorized to do business in this state.

(B) The grain is to be insured for its full market value against loss by fire, inherent explosion, lightning, and windstorm, and failure to do so shall make the public grain warehouseman liable for the grain.

(2) All policies shall provide that no cancellation shall be effective unless thirty (30) days' prior notice is given the Public Grain Warehouse Commissioner.

(b) If fire, inherent explosion, lightning, or windstorm shall destroy or damage all or part of the grain stored in any public grain warehouse, the public grain warehouseman shall, upon demand by the holder of any warehouse receipt for the grain and upon being presented with the warehouse receipt, make settlement for the fair market value at the time of the loss after deducting the warehouse charges.

HISTORY: Acts 1979, No. 83, § 20; A.S.A. 1947, § 77-1320.

2-17-219. Receipt of tendered grain.

(a) (1) Every public grain warehouseman shall receive for storage or shipment, so far as the available capacity for storage of the public grain warehouse shall permit, all grain tendered to him or her in the usual course of business.

(2) However, a public grain warehouse owned and operated as a cooperative may decline to accept grain tendered by a nonmember if the cooperative reasonably believes that its available capacity will be required to serve the members of the cooperative.

(b) (1) The depositor and the public grain warehouseman may agree upon a sample taken from the lot of grain to be offered for storage as being a true and representative sample.

(2) The depositor and the public grain warehouseman may agree upon the grade of the grain offered for storage, and a warehouse receipt may be issued on the agreed grade.

HISTORY: Acts 1979, No. 83, § 17; A.S.A. 1947, § 77-1317.

2-17-220. Receipts and records.

(a) (1) Receipts must be issued for all grain stored in a warehouse in accordance with regulations adopted under this subchapter.

(2) Receipts need not be issued against nonstorage grain, but each warehouseman shall keep accurate records of the weights, kinds, and grades, if graded, of all lots of nonstorage grain received into and delivered from his or her warehouse.

(b) Whenever the purpose for which any lot of nonstorage grain was received into a warehouse is changed so that its approximate delivery period from the warehouse becomes indeterminate, receipts shall be issued to cover the grain.

(c) Records required under this section with respect to nonstorage grain shall be retained, as a part of the records of the warehouse, for a period of one (1) year after December 31 of the year in which the lot of nonstorage grain is delivered from the warehouse.

HISTORY: Acts 1979, No. 83, § 25; 1983, No. 264, § 2; A.S.A. 1947, § 77-1325.

2-17-221. Contents of receipts.

(a) Every receipt issued for grain stored in a public grain warehouse shall conform to the requirements of § 4-7-202 and in addition shall embody within its written or printed terms:

(1) A statement that the holder of the receipt or the depositor of the grain shall demand the delivery of the grain on or before a date not later than one (1) year from the date specified by the public grain warehouseman;

(2) The net weight, number of bushels, and the percentage of dockage;

(3) The words "NOT NEGOTIABLE", or "NEGOTIABLE", according to the nature of the receipt, clearly and conspicuously printed or stamped thereon; and

(4) That the holder of the receipt or the depositor of the grain shall demand the delivery of the grain not later than the expiration of one (1) year from the date of the receipt.

(b) (1) Every receipt, whether negotiable or nonnegotiable, issued for grain stored in a warehouse shall specify a period, not exceeding one (1) year, for which the grain is accepted for storage under this subchapter.

(2) The warehouseman shall, in the absence of some lawful excuse, issue a new receipt for a further specified period not to exceed one (1) year, provided that the following conditions are met:

(A) Demand for issuance of a new receipt;

(B) Surrender of the old receipt by the lawful holder at or before the expiration of the period specified therein; and

(C) An offer to satisfy the warehouseman's lien.

(c) Every negotiable receipt issued shall, in addition to conforming with the requirements of subsection (a) of this section, embody within its written or printed terms a form of endorsement which may be used by the depositor or his or her authorized agent for showing the ownership of, and liens, mortgages, or other encumbrances on, the grain covered by the receipt.

(d) A public grain warehouseman shall not insert any language in any warehouse receipt or make any contract with respect to any warehouse receipt which purports to limit the liabilities or responsibilities imposed on him or her by law.

HISTORY: Acts 1979, No. 83, § 26; A.S.A. 1947, § 77-1326.

2-17-222. Preparation of forms for warehouse receipts.

(a) The Public Grain Warehouse Commissioner shall prescribe the form of all warehouse receipts, and no other character or form of warehouse receipt shall be issued except those so authorized.

(b) The commissioner shall be authorized to have printed all warehouse receipts issued by public grain warehousemen.

(c) The cost of printing and distribution of warehouse receipts shall be charged to the grain warehouse.

HISTORY: Acts 1979, No. 83, § 27; A.S.A. 1947, § 77-1327.

2-17-223. Numbering of receipts.

All warehouse receipts issued by a public grain warehouse shall be numbered consecutively. No two (2) receipts bearing the same number shall be issued from the same warehouse during any one (1) year, except in the case of a lost or destroyed receipt.

HISTORY: Acts 1979, No. 83, § 28; A.S.A. 1947, § 77-1328.

2-17-224. Copy of receipts.

At least one (1) copy of all receipts shall be made. All copies shall have clearly and conspicuously printed or stamped on them the words "COPY -- NOT NEGOTIABLE".

HISTORY: Acts 1979, No. 83, § 29; A.S.A. 1947, § 77-1329.

2-17-225. Accuracy of receipts.

No warehouse receipt shall be issued except upon actual delivery of grain into storage in the warehouse from which it purports to be issued, nor shall any receipt be issued for a greater quantity of grain than was contained in the lot or parcel received for storage, nor shall more than one (1) receipt be issued for the same lot of grain, except in cases where a receipt for a part of a lot is desired, and then the aggregate receipts for a particular lot shall cover that lot and no more.

HISTORY: Acts 1979, No. 83, § 30; A.S.A. 1947, § 77-1330.

2-17-226. Duty of warehouseman to deliver grain.

(a) (1) It shall be the duty of the public grain warehouseman to deliver grain to the holder of a warehouse receipt within ten (10) days of the demand for the redemption of the receipt if no lawful excuse for not delivering the grain exists.

(2) (A) In the event the public grain warehouseman fails to deliver grain to the holder of a warehouse receipt within ten (10) days of the demand, the holder of the warehouse receipt may make demand of the surety for payment under the bond.

(B) (i) The surety has the responsibility to pay within fifteen (15) days following receipt by the surety of the notice of the demand for redemption.

(ii) Any holder of a warehouse receipt issued by a public grain warehouseman who had made demand for redemption of the receipt, which demand was, without lawful excuse, not satisfied within ten (10) days, shall notify the Public Grain Warehouse Commissioner in writing. The holder of the receipt shall have the right to bring action against the public grain warehouseman and the surety on the public grain warehouseman's bond for payment of the market value of the grain represented by the warehouse receipt. The market value shall be determined as of the date of the demand, plus legal interest accrued from the date of the demand.

(3) (A) In the event the public grain warehouseman is a self-insurer as provided in § 2-17-209, the holder of a warehouse receipt shall have the right to bring action against the public grain warehouseman to the extent of the amount posted in lieu of the bond.

(B) (i) The commissioner shall pay to the holder of the warehouse receipt, to the extent of the bond posted, any judgment obtained by the holder of a warehouse receipt against a self-insurer.

(ii) The commissioner may also pay to the holder of a warehouse receipt the amount of the market value of the grain if the public grain warehouseman agrees to the payment.

(4) The license of the public grain warehouseman shall be suspended upon the payment until such time as the warehouseman posts a bond pursuant to this subchapter or posts with the commissioner a sum equivalent to that paid by the commissioner on behalf of the warehouseman.

(b) (1) In all actions in which judgment is rendered against any surety company under the provisions of this section, if it appears from evidence that the surety company has willfully and without just cause refused to pay the loss upon demand, the court, in rendering judgment, shall allow the plaintiff the amount of the plaintiff's expenses, including court costs and attorney's fees, to be recovered and collected as part of the costs.

(2) The amount of any payment of costs and attorney's fees under this subsection will not reduce the surety's liability on its bond.

HISTORY: Acts 1979, No. 83, § 31; A.S.A. 1947, § 77-1331.

2-17-227. Partial delivery.

If a warehouseman delivers only a part of a lot of grain for which he or she has issued a negotiable receipt under this subchapter, he or she shall take up and cancel the receipt and issue a new receipt in accordance with the regulations in this subchapter for the undelivered portion of the grain. The new receipt shall show the date of issuance and also indicate the number and date of the receipt first issued.

HISTORY: Acts 1979, No. 83, § 32; A.S.A. 1947, § 77-1332.

2-17-228. Return of receipt.

(a) Except as permitted by law or by the regulations in this subchapter, a warehouseman shall not deliver grain for which he or she has issued a negotiable receipt until the receipt has been returned to him or her and cancelled. He or she shall not deliver grain for which he or she has issued a nonnegotiable receipt until the receipt has been returned to him or her or until he or she has obtained a written order for the receipt from the person lawfully entitled to the delivery or his or her authorized agent.

(b) Before delivery is made of the last portion of a lot of grain covered by a nonnegotiable receipt, the receipt itself shall be surrendered.

HISTORY: Acts 1979, No. 83, § 33; A.S.A. 1947, § 77-1333.

2-17-229. Verification of signature.

(a) Each person to whom a nonnegotiable receipt is issued shall furnish the warehouseman with a statement in writing, indicating the person having power to authorize delivery of grain covered by the receipt, together with the bona fide signature of the person.

(b) No licensed warehouseman shall honor an order for the release of grain covered by a nonnegotiable receipt until he or she has first ascertained that the person issuing the order has authority to order the release and that the signature of the releasing party is genuine.

HISTORY: Acts 1979, No. 83, § 34; A.S.A. 1947, § 77-1334.

2-17-230. Sale or pledge of receipts.

A public grain warehouseman may make a valid sale or pledge of any warehouse receipts issued for grain of which the warehouseman is the owner, either solely or jointly in common with others. The recital of ownership in the receipt shall constitute notice of the right to sell or pledge the grains and of the title of specific lien of the transferee or pledgee upon the warehouseman's grain represented by the receipts.

HISTORY: Acts 1979, No. 83, § 35; A.S.A. 1947, § 77-1335.

2-17-231. Accepting grain for shipment.

(a) If grain is offered for storage in any licensed public grain warehouse and the public grain warehouseman does not have storage space to handle the grain, the public grain warehouseman, with the written consent of the owner, may accept grain for shipment to another public grain warehouse where storage is available.

(b) The receipt to cover grain to be transported to and stored in another public grain warehouse shall embody within its written or printed terms, in addition to the requirements of § 2-17-221, the name and location of the public grain warehouse to which the grain will be shipped for storage.

HISTORY: Acts 1979, No. 83, § 36; A.S.A. 1947, § 77-1336.

2-17-232. Grain inspector.

During all regular business hours, each public grain warehouse shall employ a grain inspector, who may be the public grain warehouseman himself or herself if the public grain warehouseman is a natural person. He or she shall inspect and weigh all grain received by the warehouse and shall be responsible for the accuracy of weights noted on all warehouse receipts.

HISTORY: Acts 1979, No. 83, § 18; A.S.A. 1947, § 77-1318.

2-17-233. Duty to maintain quality of grain.

(a) It shall be the public grain warehouseman's duty and obligation to condition and maintain the quantity and quality of all grain as receipted.

(b) (1) If the condition of any grain offered for storage is such that it probably will adversely affect the condition of grain in the public grain warehouse, the public grain warehouseman shall not receive the grain for storage or store the grain.

(2) If the public grain warehouse has separate bins or is equipped with proper conditioning apparatus, the public grain warehouseman may receive the grain for storage in separate bins or may condition it and then store it in a manner which will not lower the grade of other grain.

HISTORY: Acts 1979, No. 83, § 19; A.S.A. 1947, § 77-1319.

2-17-234. Records to be maintained.

(a) Every public grain warehouseman shall keep, in a place of safety, complete, separate, and correct records and accounts pertaining to the public grain warehouse. These shall include, but not be limited to, records and accounts of all grain received and withdrawn, all unissued receipts and tickets in its possession, copies of all receipts and tickets issued by it, and the receipts and tickets returned to and cancelled by it.

(b) The records shall be retained by the public grain warehouseman for a period of five (5) years.

HISTORY: Acts 1979, No. 83, § 21; A.S.A. 1947, § 77-1321.

2-17-235. Examinations and inspections.

(a) (1) (A) Every public grain warehouse shall be examined by the Public Grain Warehouse Commissioner, each year.

(B) The cost of the examination shall be included in the annual license fee.

(2) (A) The Public Grain Warehouse Commissioner, at his or her discretion, may make additional examinations of any public grain warehouse at any time.

(B) If any material discrepancy is found as a result of additional examination, the cost of the examination is to be paid by the public grain warehouseman.

(b) Upon application for license renewal, every public grain warehouse shall submit a copy of its financial statement to the commissioner. The financial statement shall have been prepared by a certified public accountant and sworn to by the certified public accountant and the public grain warehouseman.

(c) The commissioner may, at his or her discretion, inspect the public grain warehouse's business, facilities, equipment, inventories, property, books, records, accounts, papers, minutes of proceedings held at the public grain warehouse, and any other records which the commissioner deems relevant to the operation of the public grain warehouse.

(d) All scales used for the weighing of property in public grain warehouses shall be subject to tests during regular business hours by the Arkansas Bureau of Standards of the State Plant Board.

(e) All records, reports, and findings of the commissioner required or issued pursuant to this subchapter may be released to any interested person and shall be made available to public inspection.

HISTORY: Acts 1979, No. 83, § 22; A.S.A. 1947, § 77-1322.

2-17-236. Insolvent warehouses.

(a) If it shall be discovered that any public grain warehouse is insolvent or that its continuance in business will seriously jeopardize the interest of its creditors or grain depositors, it shall be the duty of the commissioner to close the warehouse, to take charge of all the property and effects thereof, and to notify the surety.

(b) Upon taking charge of any warehouse, the Public Grain Warehouse Commissioner shall, as soon as practicable, ascertain by a thorough examination into its affairs its actual financial condition. Whenever the commissioner shall become satisfied that the corporation cannot resume business or liquidate its indebtedness to the satisfaction of its creditors, the commissioner shall report the fact of its insolvency to the Attorney General. Immediately upon receipt of the notice, the Attorney General shall institute proper proceedings in the proper court for the purpose of having a receiver appointed.

HISTORY: Acts 1979, No. 83, § 23; A.S.A. 1947, § 77-1323.

2-17-237. Discontinuance of business.

(a) Any person operating a public grain warehouse who desires to discontinue the operation at the expiration of his or her license or whose license is suspended, revoked, or cancelled by the Public Grain Warehouse Commissioner or his or her designated representative shall notify the commissioner, all holders of warehouse receipts, and all parties storing grain in the public grain warehouse, if known, or if not known, by advertising in the newspaper of largest general circulation in the community in which the public grain warehouse is located weekly for four (4) consecutive weeks, at least thirty (30) days prior to the date of expiration of his or her license, of his or her intention to discontinue the public grain warehouse business.

(b) The owners of the grain shall remove or cause to be removed their grain from the public grain warehouse before the expiration of the license.

HISTORY: Acts 1979, No. 83, § 24; A.S.A. 1947, § 77-1324.

2-17-238. Disposition of revenues.

All revenues collected under the provisions of this subchapter by the State Plant Board shall be deposited into the Plant Board Fund to be used for the maintenance, operation, support, and improvement of the board.

HISTORY: Acts 1979, No. 83, § 38; A.S.A. 1947, § 77-1338; Acts 1993, No. 783, § 4.

Subchapter 3 -- Public Warehouses -- Title to Grain Notes

2-17-301. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Grain" means rice, soybeans, wheat, corn, rye, oats, barley, flaxseed, sorghum, mixed grain, and other food grains, feed grains, and oil seeds;

(2) "Public grain warehouseman" means any person, firm, or corporation who operates any building, structure, or other protected enclosure used for the purpose of storing grain for a consideration; and

(3) "Owner" means the farmer who grows and produces grain and includes the owner of the land from which the grain is produced to the extent that he or she has an interest in the grain, and includes persons, firms, and corporations engaged in the growing and producing of grain whether it be as tenant, renter, landowner, or otherwise.

HISTORY: Acts 1981, No. 401, § 1; A.S.A. 1947, § 77-1339.

2-17-302. Applicability.

The provisions of this subchapter shall apply to all public grain warehousemen and to the operations of public grain warehouses, unless the public grain warehouse is licensed under the provisions of the United States Warehouse Act, as amended.

HISTORY: Acts 1981, No. 401, § 5; A.S.A. 1947, § 77-1342.

2-17-303. Title to grain.

(a) Ownership of grain shall not change by reason of an owner's delivering grain to a public grain warehouseman. No public grain warehouseman shall sell or encumber any grain in his or her possession unless the owner of the grain has by written document transferred title of the grain to the warehouseman.

(b) Notwithstanding any provision of the Uniform Commercial Code, as amended, § 4-1-101 et seq., to the contrary or any other law to the contrary, all sales and encumbrances of grain by public grain warehousemen are void and convey no title unless the sales and encumbrances are supported by written documents executed by the owners specifically conveying title to the grain to the public warehousemen.

HISTORY: Acts 1981, No. 401, § 2; A.S.A. 1947, § 77-1340.

2-17-304. Waiver of rights.

Any owner may, by written document signed by him or her or his or her agent, waive any and all rights conferred upon the owner by this subchapter.

HISTORY: Acts 1981, No. 401, § 4; A.S.A. 1947, § 77-1341.

Subchapter 4 -- Public Warehouses -- Receivership Notes 2-17-401. Definitions.

(a) As used in this subchapter, unless the context otherwise requires:

(1) "Commissioner" means the Public Grain Warehouse Commissioner, who shall be the Director of the State Plant Board or his or her designated representative;

(2) "Warehouse" means a public grain warehouse licensed under § 2-17-201 et seq.;

(3) "License" means a license issued under § 2-17-201 et seq.

(b) All other terms in this subchapter shall have the same meaning as the same terms used in the Arkansas Public Grain Warehouse Law, § 2-17-201 et seq.

HISTORY: Acts 1983, No. 342, § 1; A.S.A. 1947, § 77-1343.

2-17-402. Filing of petition.

(a) (1) Following summary suspension of a license under § 2-17-215 or following a suspension or revocation of a license as otherwise provided in § 2-17-201 et seq., the Public Grain Warehouse Commissioner in his or her discretion may file a verified petition in the proper court requesting that the commissioner be appointed as a receiver to take custody of grain stored in the licensee's warehouse and to provide for the disposition of those assets in the manner provided in this subchapter and under the supervision of the court.

(2) The petition shall be filed in the county in which the warehouse is located.

(3) The proper court shall appoint the commissioner as receiver.

(b) Upon the filing of the petition, the court shall issue ex parte such temporary orders as may be necessary to preserve or protect the assets in receivership, or the value thereof, and the rights of depositors, until a plan of disposition is approved.

HISTORY: Acts 1983, No. 342, § 2; A.S.A. 1947, § 77-1344.

2-17-403. Plan for disposition of grain.

(a) A petition filed by the Public Grain Warehouse Commissioner under § 2-17-402 shall be accompanied by the commissioner's plan for disposition of stored grain.

(b) (1) The plan may provide for the pro rata delivery of part or all of the stored grain to depositors holding warehouse receipts or unpriced scale tickets;

(2) The plan may provide for the sale under the supervision of the commissioner of part or all of the stored grain for the benefit of those depositors; or

(3) The plan may provide for any combination thereof, as the commissioner in his or her discretion determines to be necessary to minimize losses.

HISTORY: Acts 1983, No. 342, § 3; A.S.A. 1947, § 77-1345.

2-17-404. Date for hearing.

(a) When a petition is filed by the Public Grain Warehouse Commissioner under § 2-17-402, the clerk of court shall set a date for hearing on the commissioner's proposed plan of disposition at a time not less than ten (10) nor more than fifteen (15) days after the date the petition is filed.

(b) (1) Copies of the petition, the notice of hearing, and the commissioner's plan of disposition shall be served upon the licensee and upon the surety company issuing the licensee's bond in the manner required for service of an original notice.

(2) A delay in effecting service upon the licensee or surety shall not be cause for denying the appointment of a receiver and shall not be grounds for invalidating any action or proceeding in connection therewith.

HISTORY: Acts 1983, No. 342, § 4; A.S.A. 1947, § 77-1346.

2-17-405. Notice and parties.

(a) The Public Grain Warehouse Commissioner shall cause a copy of each of the documents served upon the licensee under § 2-17-404 to be mailed by ordinary mail to every person holding a warehouse receipt or unpriced scale ticket issued by the licensee, as determined by the records of the licensee or the records of the commissioner.

(b) The failure of any person referred to in this section to receive the required notification shall not invalidate the proceedings on the petition for the appointment of a receiver or any portion thereof.

(c) Persons referred to in this section are not parties to the action unless admitted by the court upon application therefor.

HISTORY: Acts 1983, No. 342, § 5; A.S.A. 1947, § 77-1347.

2-17-406. Publication of appointment.

When appointed as a receiver under this subchapter, the Public Grain Warehouse Commissioner shall cause notification of the appointment to be published once each week for two (2) consecutive weeks in a newspaper of general circulation in each of the counties in which the licensee maintains a business location and in a newspaper of general circulation in this state.

HISTORY: Acts 1983, No. 342, § 6; A.S.A. 1947, § 77-1348.

2-17-407. Designation of employee to appear.

The Public Grain Warehouse Commissioner may designate an employee of the commissioner to appear on behalf of the commissioner in any proceedings before the court with respect to the receivership and to exercise the functions of the commissioner as receiver, except that the commissioner shall:

- (1)** Determine whether or not to petition for the appointment as receiver;
- (2)** Approve the proposed plan for disposition of stored grain;
- (3)** Approve the proposed plan for distribution of any cash proceeds; and
- (4)** Approve the proposed final report.

HISTORY: Acts 1983, No. 342, § 7; A.S.A. 1947, § 77-1349.

2-17-408. Arkansas Administrative Procedure Act.

The actions of the Public Grain Warehouse Commissioner in connection with petitioning for appointment as a receiver and all actions pursuant to such appointment shall not be subject to the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

HISTORY: Acts 1983, No. 342, § 8; A.S.A. 1947, § 77-1350.

2-17-409. Joining of surety.

(a) When the Public Grain Warehouse Commissioner is appointed as receiver under this subchapter, the surety on the bond of the licensee shall be joined as a party defendant by the commissioner.

(b) (1) If required by the court, the surety shall pay the bond proceeds, or so much thereof as the court finds necessary, into the court.

(2) When so paid, the surety shall be absolutely discharged from any further liability under the bond to the extent of the payment.

HISTORY: Acts 1983, No. 342, § 9; A.S.A. 1947, § 77-1351.

2-17-410. Time for filing claims.

(a) When appointed as receiver under this subchapter, the Public Grain Warehouse Commissioner is authorized to give notice in the manner specified by the court to persons holding warehouse receipts or unpriced scale tickets issued by the licensee to file their claims within sixty (60) days after the date of appointment.

(b) Failure to file a timely claim shall defeat the claim with respect to the surety bond and any grain or proceeds from the sale of grain, except to the extent of any excess remaining after all timely claims are paid in full.

HISTORY: Acts 1983, No. 342, § 10; A.S.A. 1947, § 77-1352.

2-17-411. Merchandiser to effect sale.

(a) When the court approves the sale of stored grain, the Public Grain Warehouse Commissioner shall employ a merchandiser to effect the sale of those commodities.

(b) A person employed as a merchandiser must meet the following requirements:

(1) The person shall be experienced or knowledgeable in the operation of warehouses licensed under § 2-17-201 et seq., and if the person has ever held a license issued under § 2-17-201 et seq., the person shall never have had that license suspended or revoked;

(2) The person shall be experienced or knowledgeable in the marketing of agricultural products; and

(3) The person shall not be the holder of a warehouse receipt or scale ticket issued by the licensee and shall not have a claim against the licensee, whether as a secured or unsecured creditor, and otherwise shall not have any pecuniary interest in the licensee or the licensee's business.

(c) (1) The merchandiser shall be entitled to reasonable compensation as determined by

the commissioner.

(2) A sale of grain shall be made in a commercially reasonable manner and under the supervision of the warehouse section of the commissioner.

(3) The commissioner shall have authority to sell the stored grain, notwithstanding provisions of the Uniform Commercial Code, § 4-1-101 et seq., and any stored grain so sold shall be free of all liens and other encumbrances.

HISTORY: Acts 1983, No. 342, § 11; A.S.A. 1947, § 77-1353.

2-17-412. Distribution of grain or proceeds.

(a) The plan of disposition, as approved by the court, shall provide for the distribution of the stored grain or the proceeds from the sale of stored grain or the proceeds from any surety bond, or any combination thereof, less expenses incurred by the Public Grain Warehouse Commissioner in connection with the receivership, to depositors on a pro rata basis as their interests are determined.

(b) Distribution shall be without regard to any setoff, counterclaim, or storage lien or charge.

HISTORY: Acts 1983, No. 342, § 12; A.S.A. 1947, § 77-1354.

2-17-413. Temporary continuation of business.

The Public Grain Warehouse Commissioner may, with the approval of the court, continue the operation of all, or any part of, the business of the licensee on a temporary basis and take any other course of action or procedure which will serve the interests of the depositors.

HISTORY: Acts 1983, No. 342, § 13; A.S.A. 1947, § 77-1355.

2-17-414. Reimbursement of expenses.

(a) The Public Grain Warehouse Commissioner shall be entitled to reimbursement out of stored grain or proceeds held in receivership for all expenses incurred as court costs or in handling and disposing of stored grains and for all other costs directly attributable to the receivership.

(b) The right of reimbursement of the commissioner shall be prior to any claims against the stored grain or proceeds of sale and shall constitute a claim against the surety bond of the licensee.

HISTORY: Acts 1983, No. 342, § 14; A.S.A. 1947, § 77-1356.

2-17-415. Distribution plan.

(a) (1) In the event the approved plan of disposition requires the sale of stored grain or the distribution of proceeds from the surety bond, or both, the Public Grain Warehouse Commissioner shall submit to the court a proposed plan of distribution of those proceeds.

(2) Upon such notice and hearing as may be required by the court, the court shall accept or modify the proposed plan.

(b) When the plan is approved by the court and executed by the commissioner, the commissioner shall be discharged and the receivership terminated.

HISTORY: Acts 1983, No. 342, § 15; A.S.A. 1947, § 77-1357.

2-17-416. Final report.

At the termination of the receivership, the Public Grain Warehouse Commissioner shall file a final report containing the details of his or her actions, together with such additional information as the court may require.

HISTORY: Acts 1983, No. 342, § 16; A.S.A. 1947, § 77-1358.

RULES ON PUBLIC GRAIN WAREHOUSES IN ARKANSAS

(Promulgated and adopted under authority of
Act 83 of 1979 - The Arkansas Public Grain Warehouse Law)

Section I. General Purpose and Intent

The Arkansas Public Grain Warehouse Law charges the State and Board with the responsibility of licensing, auditing and bonding those grain warehouses storing grain for a consideration belonging to others and which are not licensed with the federal government under the United States Warehouse Act. The principal objective and intent of this program is to provide any grain owner who wants to store his grain commercially some measure of protection from unlawful or fraudulent Warehousing practices.

Section II. Organization and Designation of Duties

The Arkansas Public Grain Warehouse Program will be administered as a Section within the Division of Marketing of the State Plant Board. The Director of the Division of Marketing and the Head of the Grain Warehouse Section are hereby designated as having the authority and duties as assigned the Commissioner in Act 83 of 1979, but these will be carried out under the general supervision of the Commissioner. All proceedings and hearings will be conducted in accordance with Act 83 of 1979 and Act 434 of 1967 as amended (The Administrative Procedures Act.)

Section III. Licensing, and Bonding

Included in these Rules as Attachment I is the Application Form to be used in securing a license under this Act, whether for a new license or the renewal of a license. The licensing period shall be from July 1. through June 30 of each year.

Each application for a license or license renewal shall be accompanied with a financial statement and signed report of a CPA or registered public accountant which must be a representation of an examined audit report, a review report or a compilation report.

Included in these Rules as Attachment II is the Bond Form that is to be used as part of the requirements of becoming a licensed grain warehouse.

Section IV. Fees

As required by law the fee for a new application is \$150.00. Subsequent to the issuance of an initial license under this Act, every applicant shall pay annual license fee based upon the capacity of the warehouse, such fee to be determined by the Commissioner, but not less than two hundred fifty dollars (\$250.00) or not more than eight hundred dollars (\$800.00).

The fee for the renewal of a license is based on the following schedule:

CAPACITY IN BUSHELS Range		LICENSE RENEWAL FEES (based on capacity)
1	250,000	\$250.00
250,001	500,000	\$300.00
500,001	750,000	\$400.00
750,001	1,000,000	\$500.00
1,000,001	1,200,000	\$600.00
1,200,001	1,500,000	\$700.00
1,500,001	and over	\$800.00

One examination is to be made each year on each licensed grain warehouse the cost of which is included in the application fee. Additional examinations may be made at any time and at the discretion of the Commissioner. If during the additional examinations a material discrepancy is found the licensed warehouseman will be required to reimburse the State Plant Board's Public Grain Warehouse Section at the rate of \$10.00 per man hour for the time required to make additional examination.

Section V. Warehouse Receipts

- A. All warehouse receipts whether negotiable or non-negotiable issued by a state licensed public grain warehouse shall be purchased from the Public Grain Warehouse Section of the State Plant Board. When issued the distribution of the copies shall be as follows:
 - 1. Original copy to depositor of grain (white).
 - 2. Second copy to warehouseman (blue).
 - 3. Third copy to the State Plant Board (green).
 - 4. Fourth copy to depositor of grain (yellow).

Each state licensed public grain warehouse shall mail to the Plant Board by the 5th of each month, the third copy (green) of all negotiable and non-negotiable warehouse receipts issued the previous month.

- B. Warehouse receipts must be issued on all stored grain delivered to a public grain warehouse when requested by the person that holds title to the grain.
- C. Warehouse receipts must be issued on all stored grain and non-stored - grain if the grain has not been purchased through actual payment or contract within 180 days from date of delivery. This shall include grain that is transferred to other public grain warehouses for storage.

Section VI. Stored Grain

- A. Stored grain - shall mean any grain received into a public grain warehouse which has not been purchased or on which the term for a bona fide sale has not been fixed.
- B. Non-stored grain - shall mean grain received into a public grain warehouse for transferring, conditioning, assembling for shipment, or lots of grain moving through a public grain warehouse for current merchandising or milling use against which no receipts are issued and no consideration for storage is assessed.
- C. Depositor - is a person making or who has made delivery, of grain to a public grain warehouse licensed under this Act for storage, marketing, handling, shipping, or who holds a warehouse receipt, contract or other document of such delivery.
- D. Bona fide sale - shall mean grain that has been purchased through actual payment or grain purchase contracts which were executed in accordance with Section VII of these rules.

Section VII. Grain Contracts

It shall be the responsibility of those public grain warehouses dealing in deferred pricing or deferred payment contracts to draw up an agreement in writing which shall contain a statement informing the seller, that the seller is relinquishing all rights to the grain. The Commissioner may require any additional information from a warehouseman that is deemed necessary to protect the interest of the seller of grain in these transactions, All contracts shall be pre-numbered with no duplication of numbers, The Commissioner or his representative shall prescribe or approve the kind of form that will be used by those public grain warehouses offering deferred pricing or payment contracts.

Section VIII. Officially Approved Scale Ticket Transactions

Each public grain warehouseman shall, issue to all persons delivering grain to a public grain warehouse a pre-numbered officially approved scale ticket which shall be issued in numerical order. All officially approved scale tickets must contain an original and no less than two copies.

- A. A sample copy of the officially approved scale tickets used by the warehouseman shall be kept on file with the Commissioner.
- B. Each officially approved scale ticket shall contain the following information:
 - 1. The name and address of the public grain warehouse where grain is received.
 - 2. Date grain received.

3. The kind, quantity, grade or grade factors necessary to determine the bushels, pounds or CWT of grain received.
 4. All officially approved scale tickets must be marked to denote one of the following transactions when received into a public grain warehouse:
 - a. For sale,
 - b. For storage.
 - c. For conditioning.
 - d. On purchase contracts, (Purchase contracts must be signed by seller of grain upon completion of harvest or prior to harvest)
- C. An officially approved scale ticket must be issued on all grain moved-out of a public grain warehouse that crosses the scales. If grain is moved by rail or barge then officially approved scale tickets must be drawn-up estimating the amount of grain shipped, also a record must be maintained verifying official destination weight.
- D. A copy of the officially approved scale tickets used for the purpose of custom grain weighing and other purposes must be kept on file.
- E. All officially approved scale tickets that have been voided must be kept on file at the public grain warehouse.
- F. A copy of all officially approved scale tickets issued must be kept on file in numerical order.

Section IX. Daily Position Record

Each warehouseman shall maintain a daily position record which will indicate all grain transaction on a daily basis. This form shall be approved by the Commissioner or his designated representative.