

REGULATIONS ON GRAIN DEALERS IN ARKANSAS

**(Promulgated and adopted under authority of
The Arkansas Grain Dealer Act A.C.A. § 2-24-101 et seq.)**

SECTION I. GENERAL PURPOSE AND INTENT

The Arkansas Grain Dealers Act is established to regulate grain dealers in the state of Arkansas that are not licensed under the Arkansas Public Grain Warehouse Law, the United States Warehouse Act and are not end users of grain. The Director of the Arkansas State Plant Board is appointed as the administrator of this law. The director shall administer this chapter and shall be the ultimate authority in the administration of this chapter. The agency may employ all necessary employees, counsel, and consultants to carry out the provisions of this law and is vested with the power necessary to fully and effectively carry out the provisions and objectives of this chapter.

SECTION II. ORGANIZATION AND DESIGNATION OF DUTIES

The Arkansas Grain Dealers Act will be administered by the Arkansas State Plant Board. The Director or appointed representative is hereby designated as having the authority to carry out the activities needed to administer the Arkansas Grain Dealers Act. All proceedings and hearings will be conducted in accordance with A.C.A. § 2-24-101 et seq. and A.C.A. § 25-15-201 et seq.

SECTION III. LICENSING AND BONDING

Application Form, GD-1 or GD-2, is to be used in securing a license under this Act, whether for a new license or the renewal of a license. This form will be supplied, upon request by the applicant, by the Plant Board. For renewals the form will be sent to all licensees from the previous year prior to the renewal deadline. Renewal applications should be delivered to the Plant Board at least thirty (30) days before the current license expires. The licensing period shall be from July 1 through June 30 of each year, with the exception of those licenses issued during the inception of the regulations. Those licenses will be inclusive of the time between their issuance and June 30, 2016.

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. Additional reports required are a balance sheet, a schedule of notes payable, a statement of cash flows and other reports that may be stipulated by the Plant Board. All financial reports for year two and beyond of licensing are to be submitted to the Plant Board within

120 days of the company's fiscal year end. All financial statements must be in bound copy or in electronic pdf from the accountant. New companies, just being established and having less than one complete fiscal year of operation, need only a trial balance and estimated purchases for their first year to apply for a license. All financial records will be handled as dictated by A.C.A. 25-19-101 et seq. (Arkansas Freedom of Information Act.)

The Bond Form, Letter of Credit Form, and a Certificate of Deposit Form for the purpose of securing bonding for the grain dealer will be supplied in the application packet. Only one type of bonding is required.

Bonding requirements are as follows:

Purchases of Grain In dollars (Range)		Bonding in dollars
1	5,000,000	\$50,000.00
5,000,001	20,000,000	\$100,000.00
20,000,001	40,000,000	\$200,000.00
40,000,001	60,000,000	\$400,000.00
60,000,001	80,000,000	\$600,000.00
80,000,001	100,000,000	\$800,000.00
100,000,001	and over	\$1,000,000.00

SECTION IV. FEES

As required by law, the application fee for a newly established business (a business with less than one (1) fiscal year of operation) is \$150.00. The fee for an established business (a business with more than one (1) fiscal year of operation) is as follows:

Purchases of Grain In dollars (Range)		License Fee
1	5,000,000	\$250.00
5,000,001	20,000,000	\$300.00
20,000,001	40,000,000	\$400.00
40,000,001	60,000,000	\$500.00
60,000,001	80,000,000	\$600.00
80,000,001	100,000,000	\$700.00
100,000,001	and over	\$800.00

One examination is to be made each year on each licensed dealer, the cost of which is included in the application fee. Additional examinations may be made at any time and at the discretion of the Director. If during the additional examinations a material discrepancy is found, the licensed dealer will be required to reimburse the State Plant Board at the rate of \$40.00 per hour for the time required to make the additional examination(s).

SECTION V. PENALTIES AND VIOLATIONS

Violations

Operating without a license, refusing to provide records during an audit, or knowingly violating the grain dealers act is a Class D felony. A person who negligently violates this law is guilty of a Class A misdemeanor. Upon conviction both are punishable by a criminal fine up to \$100 dollars. Civil penalties may apply as well. The director may issue a cease and desist order for any violation of this law.

Minor Violations

Upon the first offense, violations that are clerical and believed to be accidental in nature will be considered to be minor violations. Examples of such violations include, but are not limited to, the loss of voided scale tickets, settlements or contracts and not conducting business as prescribed by the grain dealer act.

Penalty Violations: Violations that fall under the civil penalty matrix.

- A. Second violation of the minor violations.
- B. Failure to pay on the due date of the payment agreement.
- C. Knowingly falsifying records.
- D. Refusal to allow inspection of records.
- E. Operating without a license.

Penalty Matrix (See Appendix 1)

SECTION VI. SUSPENSION OF LICENSE

A. A grain dealer's license may be temporarily suspended without a hearing if the director determines that public health, safety, or welfare is at risk. Upon the temporary suspension the director shall by certified mail notify dealer of said suspension and notify the dealer of the time and date of the hearing concerning the suspension. The hearing shall occur within ten days of the suspension.

B. A grain dealer's license may be suspended without a hearing five days after sending a notice by certified mail that surety has expired or if the grain dealer refuses to submit to an audit of their records. License shall not be suspended for more than 60 days without a hearing.

SECTION VII. SLOW PAY HOTLINE

The slow-pay hotline number will be on every license that the State Plant Board issues to grain dealers. Also, grain dealers must have the slow-pay hotline number on all purchase agreements. The hotline number will be published and provided to all licensees upon establishment of the number.

SECTION VIII. RECORD KEEPING

Recordkeeping and Retention Requirements

Grain dealers will provide all records required by the director upon request and are required to keep said records for a period of not less than 5 fiscal years of the dealer. Required records will include all purchase contracts, all sales contracts, all scale tickets, all settlement sheets, all delivery tickets and any other document acquired in relation to the buying and selling of each lot of grain handled.

Purchase Contracts

- A. A purchase contract is a written document which lists all conditions and requirements being agreed to in the transaction to transfer title of a grain lot from a seller to a buyer. The document must show the document preparation date, all other items shown in paragraph B and any other conditions relevant to the transaction agreed to by the seller and buyer. Contracts shall be between the buyer and the seller and contract details are not constructed by these regulations.
- B. It shall be the responsibility of grain dealers to draw up an agreement in writing which shall contain a statement informing the seller all title to the grain is being relinquished to the buyer. All agreements must have a lien holder statement. All agreements must have the slow-pay hotline number, labeled as such, on the contract. When applicable all contracts must have a date for the payment to be made. That payment date may be any date that is agreeable to the parties involved and is not to be determined by these regulations, except that if no payment date is specified, then the payment date will be considered to be thirty (30) days after the contract preparation date. The Director may require any additional information from a grain dealer that is deemed necessary to protect the interest of the seller of grain in these transactions. All contracts shall be pre-numbered with no number duplication. The Director or the appointed representative shall approve the kind of contract form to be used by grain dealers. Contracts include, but are not limited to, deferred pricing contracts, deferred payment or booking contracts, and basis contracts. Parties have thirty (30) days, after date of preparation, to get documents signed. If conditions dictate grain be moved prior to securing signatures on the contract, a statement to that effect must be included in the executed contract.
- C. Scale tickets used to document measurement of grain quantities transferred from one entity to another shall originate at a facility using scales that have been inspected and placed in service in accordance with Arkansas Bureau of Standards regulations. These scale tickets must be numbered with a unique number that is identifiable and traceable to the facility issuing the ticket.

Destination Contracts—These are written documents prepared to transfer title of a quantity of grain from a Grain Dealer or current title holder to a subsequent buyer.

All destination contracts must be kept on file. These destination contracts, upon delivery of contracted grain, must be supported by additional records that show which purchased grain lots (as indicated by referenced purchase contract numbers) were used to fill the particular sale covered by the destination contract. Additional records such as records listing the transporter of the grain, quantity of grain carried in each load if multiple loads are used to move the total quantity of grain sold are to be kept with the destination contracts. Details of grain transferred, i.e. scale tickets, purchase contract numbers, delivery details, settlement sheets (summaries) and other documents used in the purchase, used to fill the total quantity of the destination contract are to be kept by the dealer.

Delivery Tickets – These documents are to confirm the transfer and receipt of grain from one entity to another with sufficient description to allow positive identification of the grain lot being transferred.

Each grain dealer shall issue to all sellers of grain to the dealer a pre-numbered officially approved delivery ticket which shall be issued in numerical order. All officially approved delivery tickets must contain the original and no fewer than two copies. Delivery tickets shall list, with copies attached, official scale tickets or an official load summary showing the receipt of the grain covered by the delivery ticket.

- A. A sample copy of the officially approved delivery ticket used by the grain dealer shall be kept on file with the Director.
- B. Each officially approved delivery ticket shall contain the following information:
 - 1. The name and address of the grain dealer.
 - 2. Date grain was delivered.
 - 3. The kind, quantity, grade or grade factors necessary (if applicable) to determine the bushels, pounds or CWT of grain delivered.
 - 4. All officially approved delivery tickets must denote the contract number the delivered grain should be applied to.
- C. An officially approved delivery ticket must be issued on all grain purchased by the grain dealer.
- D. All officially approved delivery tickets that have been voided must be kept on file at the grain dealer's principal place of business.
- E. A copy of all approved delivery tickets issued must be kept on file in numerical order at the grain dealer's principal place of business.

Settlements – Settlements are documents that fully explain the grain purchase transaction between the parties involved in the transaction.

All grain dealer purchases must be confirmed by preparation of a written settlement document. The documents will be completed in a numerical sequence as they are prepared. All settlements must have the name of the grain seller(s). All purchase settlements must have the date when payment was made and the check number or other means of payment is noted. All settlements must list the purchase contract number(s) applicable to the settlement. All settlements must have a delivery sheet or load summary to attest all scale tickets for all grain being purchased by the settlement.

Daily Position Record – A written record, prepared on a daily basis, to reflect the agreements made for grain purchases that day and agreements to be filled as of that date. Dealers may use a form made available by the Plant Board for this function. Use of this form will constitute compliance with this requirement.

SECTION IX. FINANCIAL REQUIREMENTS

All grain dealers purchasing less than \$100,000,000 worth of grain are required to maintain a minimum net worth of \$25,000. A grain dealer, who purchases more than \$100,000,000 worth of grain, will maintain a minimum net worth of \$50,000. To be licensed, a grain dealer who does not meet the minimum financial requirements must post additional bond to cover the short fall in the minimum net worth. This additional bond may be an amendment to the original bond or it may be a new bond to cover the deficiency amount.

SECTION X. OUT OF STATE GRAIN DEALERS

If the grain dealer does not maintain an office in this state and does not have a statutory agent in this state, the application shall include a written appointment of a statutory agent upon whom process, notice, or demand may be served. The statutory agent shall be an individual residing in this state or a corporation whose principal place of business is located in the state. If the identity or address of the statutory agent changes, the grain dealer shall, within 3 days, file with the Plant Board a written appointment of the new statutory agent or written notice of the new address, as applicable.

SECTION XI. BUSINESS HOURS

All grain dealers are required to be available for business transactions on days the commodity market is open and in a time frame that would allow sellers to utilize market pricing to facilitate transactions.

SECTION XII. RECEIVERSHIP

Following the suspension of a dealer's license, the State Plant Board may file a verified petition in a court of competent jurisdiction requesting the appointment of a receiver to take custody of the assets of the dealer and provide for the disposition of the assets under the supervision of the court.

A petition for the appointment of a receiver shall be filed in the county in which the dealer, or the registered agent, is located.

Upon receiving a petition for the appointment of a receiver, a court may issue any temporary orders necessary to preserve or protect the assets in receivership, the value of the assets in receivership, and the rights of the dealer's creditors until a plan of disposition is approved.

The board may be appointed as a receiver.

APPENDIX 1

ARKANSAS GRAIN DEALERS ACT CIVIL PENALTY MATRIX

VIOLATIONS	1 ST LEVEL OF ENFORCEMENT		2 ND LEVEL OF ENFORCEMENT		3 RD LEVEL OF ENFORCEMENT		4 TH LEVEL OF ENFORCEMENT	
	Action Options	Penalty	Action Options	Penalty	Action Options	Penalty	Action Options	Penalty
Recordkeeping mistakes that are clerical and believed to be accidental in nature. Ex: Lost scale tickets, incomplete contracts, settlement mistakes, DPR inaccurate, etc.	A	---	B&C	\$100 to \$600	B,C&D	\$600 to \$900	B,C&D	\$1,000
Failure to pay seller on Due Date.	A,B	\$100 to \$300	B,C,D&E	\$200 to \$600	B,C,D&E	\$600 To \$1,000	B,C,D&E	\$1,000
Knowingly falsifying records.	B,C&D	\$500	B,C,D&E	\$500 to \$800	B,C,D&E	\$800 to \$1,000	B,C,D&E	\$1,000
Refusal to allow inspection of records.	B,C&D	\$100 to \$300	B,C&D	\$400 to \$600	B,C,D&E	\$600 to \$900	B,C,D&E	\$1,000
Operating without a license	B	\$300 to \$500	B&E	\$500 to \$700	B&E	\$800 to \$1,000	B&E	\$1,000

- > Each violation moves grain dealer to the next level of enforcement
- > Each individual violation is removed 3 years from the date the violation was first proven.

- A. Warning Letter
- B. Hearing before the board
- C. License Suspension
- D. Revocation of license
- E. Referral to Prosecuting Attorney

ARKANSAS STATE PLANT BOARD

PUBLIC HEARING COMMENTS SUMMARY

DIVISION: _____ Feed & Fertilizer
 PUBLIC HEARING TOPIC: _____ Grain Dealer Regulations
 PUBLIC HEARING DATE: _____ 4-Sep-15

NO.	NAME		AFFILIATION	POSITION FOR/AGAINST	COMMENTS SUMMARY	AGENCY RESPONSE
	FIRST	LAST				
1	Kristen	Lowe	Lansing Trade Group	For	Registered Agent versus Statutory Agent	Change all references to agents to statutory agents.
2	Mary	Cameron	Bureau of Legislative Research		How did we set the fees for the Grain Dealers?	License fees are equal to the Grain Warehouse license fees and the Audit fees based on the current administrative costs.
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DIVISION DIRECTOR: Jamey Johnson Date 9/4/2015

FINANCIAL IMPACT STATEMENT

PLEASE ANSWER ALL QUESTIONS COMPLETELY

DEPARTMENT Arkansas State Plant Board
DIVISION Feed & Fertilizer
PERSON COMPLETING THIS STATEMENT Michael L. Churchwell
TELEPHONE NO. 501-225-1598 **FAX NO.** 501-219-1746 **EMAIL:** mike.churchwell@aspb.ar.gov

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

SHORT TITLE OF THIS RULE Arkansas Grain Dealers Act

- 1. Does this proposed, amended, or repealed rule have a financial impact? Yes No

- 2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule? Yes No

- 3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered? Yes No

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;

- (b) The reason for adoption of the more costly rule;

- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please explain.

4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

- (a) What is the cost to implement the federal rule or regulation?

Current Fiscal Year

Next Fiscal Year

General _____

General Revenue _____

Revenue _____
 Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Federal Funds _____
 Cash Funds _____
 Special Revenue _____
 Other (Identify) _____

Total _____

Total _____

(b) What is the additional cost of the state rule?

Current Fiscal Year

Next Fiscal Year

General Revenue _____
 Federal Funds _____
 Cash Funds 20,000
 Special Revenue 60,000
 Other (Identify) _____
 Total 80,000

General Revenue _____
 Federal Funds _____
 Cash Funds 20,000
 Special Revenue 60,000
 Other (Identify) _____
 Total 80,000

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

Current Fiscal Year

Next Fiscal Year

\$ 6,500

\$ 6,500

All Grain Dealers buying grain from grain sellers who are not under the State Grain Warehousing Law, the Federal Warehousing Law, or are not end users of grain Bonds and LOC's cost 1 to 2 percent. The average sized company at 1.5% bond and license will be 6,500 dollars.

6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

Current Fiscal Year

Next Fiscal Year

\$ 80,000

\$ 80,000

Studying other state laws, writing regulations this year and implementing the law next fiscal year.

7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more _____ of those entities combined?

Yes

No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously

with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
 - (a) justifies the agency's need for the proposed rule; and
 - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and
- (7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:
 - (a) the rule is achieving the statutory objectives;
 - (b) the benefits of the rule continue to justify its costs; and
 - (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.

FINAL RULE:

REGULATIONS ON GRAIN DEALERS IN ARKANSAS

Proposed Effective Date: December 1, 2015