

CIRCULAR 4

**CHAPTER I - THE ARKANSAS PUBLIC GRAIN WAREHOUSE LAW
(ACT 83 OF 1979 AS AMENDED BY ACT 264 OF 1983)**

**CHAPTER II - GRAIN OWNERSHIP
(ACT 401 OF 1981)**

**CHAPTER III - DIRECTOR MAY PETITION COURT FOR
RECEIVERSHIP
(ACT 342 OF 1983)**

CHAPTER IV - RULES AND REGULATIONS ATTACHED

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INDEX
CHAPTER I

Public Grain Warehouse Law
Act 83 of 1979 as amended
by Act 264 of 1983

Section 1	-Title	5
Section 2	(a), (b), (c), (d), (e), (f) & (g) - Definitions	5
Section 3	(a) - Who the law applies to	5
	(b) - UCC govern warehouse receipt	5
Section 4	- Arkansas State Plant Board responsibility	5
Section 5	- Shall not operate without license. USWA	6
Section 6	(a) - Applications, fees, certified financial statement and scale ticket	6
	(b) - One or more Warehouses	6
	(c) - License not transferable	6
Section 7	- Renewal License Fee	6
Section 8	- Schedule of Charges	6
Section 9	(a) - Net Asset requirements. Rights to increase in case of deficit	7
	(b) - Determining asset requirements for more than one location	7
	(c) - Capital Stock	7
Section 10	(a) -Issuance of License	7
	(b) - Denial of License	7
Section 11	- Warehouse must post license	7
Section 12	- Notification of Renewal	8
Section 13	(a) - Suspend, cancel or revoke license	8
	(b) - Proceedings for suspension	8
	(c) - Returning license to Arkansas State Plant Board	8
Section 14	- Issuance of License	8
Section 15	(a) - (1) Filing Bond; (2) runs to; (3) for who; (4) may require increase when deemed necessary; (5) Liability of bond; (6) Cancellation of bond; (7) Bond conditions; (8) pay Attorneys	9
	(b) - May be self insurer in lieu of bond	9
Section 16	(a) - Amount of bond required	9
	(b) - Bond more than one warehouse	9
	(c) - Deficit in net assets-increase bond for whatever reason deemed necessary	9
	(d) - Commissioner may make exceptions	10
Section 17	- Must receive grain for storage or shipment:	
	(a) - Depositor and Warehouse	10
	(b) - Grade and Warehouse Receipt	10

Section 18	- Person responsible for warehouse receipt	10
Section 19 (a)	- Responsibility of grain quantity and quality	10
Section (b)	- Grain out of condition	10
Section 20 (a)	- Insurance requirements. Settlements on destroyed grain	10
(b)	- Fire, explosion, etc.	10
Section 21	- Grain Warehouse records	11
Section 22 (a)	- Plant Boards responsibility to examine:	
(1)	- Authority to examine at any time	11
(2)	- May charge for additional audits when shortages are found	11
(b)	- Certified Financial Statement renewals	11
(c)	- Authority to inspect all records	11
(d)	- Scales must be correct	11
(e)	- Public information	11
Section 23	- Plant Boards responsibility to close warehouse; Procedure for receiver	11
Section 24	- Discontinue operation of warehouse	12
Section 25	- Issuance of Receipts (1) non stored grain	12
Section 26 (a)	- Warehouse Receipt requirements-(1), (2), (3), (4)	12
(b)	- One year obligation under a warehouse receipt and re-issuance	12
(c)	- Place for endorsement	12
(d)	- Cannot insert language that limits liability or make a contract	12
Section 27	- Commissioner must prescribe	13
Section 28	- Warehouse Receipts must be numbered	13
Section 29	- Copies of warehouse receipts	13
Section 30	- No warehouse receipt can be issued until actual delivery	13
Section 31 (a)	- Responsibility to deliver grain. Holder can demand payment from surety. Rights of holder to notify commissioner and bring action against bond and warehouseman. Self Insurer - How it would pay	13
(b)	- Judgements rendered against surety	14
Section 32	- Deliver only part of grain	14
Section 33	- Cannot deliver grain under a warehouse receipts	14
Section 34	- Non-negotiable warehouse receipt - delivery	14
Section 35	- Warehouse may make a sale or pledge of warehouse receipt-solely or jointly	14
Section 36 (a)	- Transferring grain for storage	14
(b)	- Receipts to cover storage transfers	14
Section 37 (a)	- Class D Felony	15
(b)	- Class A Misdemeanor	15
Section 38	- Revenues collected	15
Section 39	- Repeal of Act 83 of 1935	15
Section 40	- Other repeals.	15
Section 41	- Validity	15
Section 42	- Implementation	15
Section 43	- Emergency Clause	15

CHAPTER II

**GRAIN OWNERSHIP
ACT 401 OF 1981**

Section 1 - (a), (b), (c) - Definitions 15
Section 2 - Title of grain 16
Section 3 - Act 185 of 1961 Amended 16
Section 4 - Owner may waive any rights 16
Section 5 - Shall apply to whom 16
Section 6 - All laws repealed 16
Section 7 - Emergency Clause 16

CHAPTER III

**Director May Petition Court for Receivership
Act 342 of 1983**

Section 1 - (a), (b), (c), (d) - Definition 17
Section 2 - Protect the depositors stored grain 17
Section 3 - Plan for disposition 17
Section 4 - Court must hear the Director's plan 17
Section 5 - Who receives copies of the notices 18
Section 6 - Public notice in local and statewide newspaper 18
Section 7 - Director may designate an employee to appear at proceedings 18
Section 8 - Exempt for Administrative Procedures Act 18
Section 9 - Bond proceeds to be paid to Director 18
Section 10 - Notice to holders of warehouse receipts and unpriced scale tickets 18
Section 11 - Employ a merchandiser to sell the stored grain 18
 (a) - Requirements 19
 (b) - Merchandiser must be experienced 19
 (c) - Exempt from Uniform Commercial Code 19
Section 12 - Plan for disposition of proceeds from sale of grain and bond 19
Section 13 - Continue the operation 19
Section 14 - Director entitled to reimbursement 19
Section 15 - Director's plan of sale of grain and proceeds from bond 19
Section 16 - Termination of Receivership 19
Section 17 - Laws repealed 19
Section 18 - Emergency Clause 20

CHAPTER IV

Rules and Regulations Attached 20- 24

CHAPTER I

**THE ARKANSAS PUBLIC GRAIN WAREHOUSE LAW
(Act 83 of 1979 as amended by Act 264 of 1983)**

SECTION 1. This Act shall be known as the “Arkansas Public Grain Warehouse Law.”

SECTION 2. When used in this Act:

- (a) “Person” includes individuals, corporations, partnerships and all associations of two (2) or more persons having a joint or common interest.
- (b) “Commissioner” shall mean the Public Grain Warehouse Commissioner who shall be the Director of the State Plant Board, or his designated representative.
- (c) “Grain” shall mean all grains for which standards have been established pursuant to the United States Grain Standards Act, (39 STAT. 482; 7 U.S.C. 71-37) as amended, and shall include rice, as defined by the standards of the United States Department of Agriculture.
- (d) “Stored grain” shall mean any grain received in any public grain warehouse, located in this state, if same is not purchased and beneficially owned by the public grain warehouseman.
- (e) “Public grain warehouse” shall mean any building, structure or other protected enclosure in this state used for the purpose of storing grain for a consideration.
- (f) “Public Grain Warehouseman” shall mean any person who operates a public grain warehouse as herein defined.
- (g) “ ‘Warehouse receipt’ means a licensed warehouse receipt issued under this Act and an unpriced scale ticket. Provided however, that including unpriced scale tickets within the definition of ‘warehouse receipt’ does not thereby make the unpriced scale tickets negotiable.”

SECTION 3. (a) The provisions of this Act shall apply to all public grain warehouses and to the operations of such public grain warehouses whether or not any of the grain therein is owned by the warehouseman, unless such public grain warehouse is licensed under the provisions of the United States Warehouse Act, (39 STAT. 486; 7 U.S.C. 241-273), as amended.

(b) The provisions and definitions of the Uniform Commercial Code relating to warehouse receipts to the extent not inconsistent with this Act shall govern warehouse receipts issued by public grain warehousemen, and the other provisions of the Uniform Commercial Code shall also be applicable to the provisions of this Act to the extent not inconsistent with this Act.

SECTION 4. The State Plant Board shall carry out and enforce the provisions of this Act and is hereby empowered to promulgate rules and regulations, to carry out necessary inspections, and to appoint and fix the duties of personnel and provide such equipment as may be necessary to enforce the provisions thereof.

SECTION 5. No person shall operate a public grain warehouse or issue a warehouse receipt without first having obtained a license pursuant to this Act unless such public grain warehouse is licensed under the provisions of the United States Warehouse Act, as amended. All public grain warehouses licensed under the United States Warehouse Act shall file with the State Plant Board a copy of their current license and a copy of all subsequent licenses or renewals so as to always have a copy of a current license on file with the State Plant Board.

SECTION 6. (a) Applications for licenses under this Act are to be made on forms prescribed by the Commissioner for each warehouse. Every application is to be accompanied by an application fee of One Hundred Fifty Dollars (\$150.00) and a certified financial statement in a form prescribed by the Commissioner and such further information as the Commissioner may by regulation require.

(b) If a warehouseman operates one or more warehouses in the same city or town in conjunction with each other; and where only one set of books is kept for such Warehouses; and scale tickets, warehouse receipts and checks of but one series are issued for grain received or stored therein, only one license and bond shall be required for the operation of all such warehouses. In such 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.

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 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 Act are not transferable. Any person acquiring a new or existing public grain warehouse must apply for a license to operate such warehouse, subject to other provisions of this Act.

SECTION 7. Section 7. 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).

SECTION 8. Prior to the issuance of a license under this Act, the public grain warehouseman shall file with the Commissioner a copy of his schedule of charges for storage and other services. If the public grain warehouseman desires to make any changes in the schedule of charges during the license period, he shall file with the Commissioner a statement in writing showing the change at least thirty (30) days prior to its effective date. 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.

SECTION 9. (a) Each public grain warehouseman shall have and maintain above all exemptions and liabilities, 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¢) multiplied by the maximum number of bushels of grain for which the public grain warehouse is licensed, provided that no person may be licensed as a public grain warehouseman unless he has available net assets of at least Ten Thousand Dollars (\$10,000.00); and provided further, that any deficiency in net assets required above the minimum of Ten Thousand Dollars (\$10,000.00) may, at the discretion of the Commissioner, be supplied by a commensurate increase in the amount of the public grain warehouseman's bond. 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 such assets and only to the extent that such assets are protected by insurance against loss or damage. Such insurance shall be in the form of lawful policies issued by one 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 such 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 such 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 purpose of this section only, capital stock as such shall not be considered a liability.

SECTION 10. (a) Upon satisfaction of the requirements of this Act and any applicable regulations by an applicant, the Commissioner shall issue a license to operate a public grain warehouse.

(b) If, after proper application, the Commissioner denies any person, partnership, association or Corporation a license to operate a public grain warehouse, the Commissioner shall transmit immediately to said applicant by certified mail an order so providing which shall state the reasons for said denial. In the event the applicant is dissatisfied at the decision of the Commissioner, the applicant may request a hearing with the Commissioner to appear and defend its compliance with all appropriate regulations and/or give evidence that all deficiencies have been corrected. A hearing shall be held within ninety (90) days of the requests. If, after said hearing, the Commissioner denies applicant a license the Commissioner shall transmit immediately to applicant by certified mail an order so providing which shall state the reasons for said denial. In the event the applicant is dissatisfied at 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 Circuit Court of Pulaski County within thirty (30) days after service upon applicant of the Commissioners final order, pursuant to Section 13 of Act 434 of 1967 (Ark. Stat. §5-713).

SECTION 11. Immediately upon receipt of his license or of any modification or extension thereof, the public grain warehouseman shall post same and thereafter keep it posted, until suspended or terminated, in a conspicuous place in the office of the public grain warehouse to which such license applies where receipts issued by such public grain warehouseman are delivered to depositors.

SECTION 12. If a public grain warehouseman desires to renew his license for an additional year, application for such renewal shall be made on a form prescribed the Commissioner. At least sixty (60) days prior to the expiration of each license, the Commissioner shall notify each public grain warehouseman of the date of such expiration and furnish such public grain warehouseman with the renewal form.

SECTION 13. (a) If a public grain warehouseman is convicted of any crime involving fraud or deceit or if the Commissioner determines that any public grain warehouseman has violated any of the provisions of this Act, or any of the rules and regulations adopted by the Commissioner pursuant to this Act, the Commissioner may suspend, cancel or revoke the license of such public grain warehouseman.

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

No suspension, cancellation or revocation of any license is lawful unless, prior to the institution of such proceedings, the Commissioner has given notice by mail to the licensee of facts or conduct warranting the intended action, and the licensee given an opportunity to show compliance with all lawful requirements for the retention of the license. 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. Whenever the Commissioner shall suspend, cancel or revoke any license he shall prepare an order so providing which shall state the reason or reasons for such suspension, cancellation or revocation. Said order shall be sent by certified mail by the Commissioner to the licensee at the address of the public grain warehouse licensed. Within thirty (30) days after service upon the licensee of said 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 Circuit Court of Pulaski County.

(c) In case a license issued to a public grain warehouseman expires or is suspended, revoked or canceled by the Commissioner or his designated representative, such license shall be immediately returned to the Commissioner and the public grain warehouseman shall forthwith comply with the provisions of Section 24 of this Act.

SECTION 14. Upon satisfactory proof of the loss or destruction of a license issued to a public grain warehouseman, a duplicate thereof, or a new license, may be issued under the same number.

SECTION 15. (a) Before any license is issued to any warehouseman, such warehouseman shall file with the 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. Such 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. No bond shall be accepted for the purposes of this Act until it has been approved by the Commissioner. The bond shall be conditioned upon such warehouseman delivering all stored grain or payment of the value thereof upon the surrender of the warehouse receipt. The Commissioner may require such increases in the amount of such bond, from time to time, as he may deem necessary for the protection of the storage receipt holders.

The aggregate liability of the surety to all depositors or storers of grain shall not exceed the sum of such bond. The bond may be canceled at any time by the surety by giving written notice to the Commissioner of its intention to cancel the bond and all liability thereunder shall terminate thirty (30) days after the receipt of such notice by the Commissioner except that such 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 the following sections of the Arkansas Statutes: Section 66-2606 (United States government obligations), §66-2609 (Municipal or county utilities), §66-2611 (Local industrial development bonds), §66-2613 (international bank), and §66-2614 (corporate bonds and debentures).

SECTION 16. (a) The amount of bond to be furnished for each public grain warehouse shall be fixed at a rate of Twenty Cents (20¢) per bushel for the first one million (1,000,000) bushels of licensed capacity; Fifteen Cents (15¢) per bushel for the next one million (1,000,000) bushels of licensed capacity; and Ten Cents (10¢) per bushel for all licensed capacity over two million (2,000,000) bushels; provided that in no case shall the amount of the bond be less than Twenty Thousand Dollars (\$20,000.00) except as prescribed in subsections (c) and (d) of this section. The licensed capacity shall be equal to the maximum number of bushels of grain that the public grain warehouse can accommodate for storage.

(b) 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 meeting the requirements of this Act to cover all such public grain warehouses within the state. In such 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 (1) of this section. The aggregate licensed capacity of all such warehouses shall be used in determining the amount of the bond.

(c) Any deficiency in the net assets required by Section 9 of this Act shall be supplied by an increase in the amount of the warehouseman's bond. In any other case in which the Commissioner finds that conditions exist which warrant requiring additional bond, there shall be added to the amount of bond such further amount as is determined to be reasonable by the Commissioner.

(d) The Commissioner may make exceptions to the bonding requirements of this section for good cause shown upon a finding that such requirements would substantially impair the warehouseman's ability to continue operations as a public grain warehouse and that such exception will not materially affect the protection of storage receipt holders under this Act. Such exceptions must be reviewed at least annually.

SECTION 17. 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 in the usual course of business; provided, however, a public grain warehouse owned and operated as a cooperative may decline to accept grain tendered by a nonmember if such cooperative reasonably believes that its available capacity will be required to serve the members of the cooperative.

- (a) 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.
- (b) 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.

SECTION 18. Each public grain warehouse shall employ, during all regular business hours, a grain inspector (who may be the public grain warehouseman himself if such public grain warehouseman is a natural person) who shall inspect and weigh all grain received by the warehouse and shall be responsible for the accuracy of weights noted on all warehouse receipts.

SECTION 19. (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) 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 such grain for storage or store such grain, provided, however, that if the public grain warehouse has separate bins or is equipped with proper conditioning apparatus, the public grain warehouseman may receive such grain for storage in such separate bins or may condition it and then store it in such a manner as will not lower the grade of other grain.

SECTION 20. (a) Every public grain warehouseman shall at all times keep the grain stored in the public grain warehouse insured by an insurance company authorized to do business in this state. 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 same. All such policies shall provide that no cancellation shall be effective unless thirty (30) days' prior notice is given the 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 such 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.

SECTION 21. Every public grain warehouseman shall keep in a place of safety complete, separate and correct records and accounts pertaining to the public grain warehouse including, but not limited to, records and accounts of all grain received therein and withdrawn therefrom, 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 canceled by it. Such records shall be retained by the public grain warehouseman for a period of five (5) years.

SECTION 22. (a) Every public grain warehouse shall be examined by, the Commissioner each year. The cost of such examination shall be included in the annual license fee. The Commissioner, at his discretion, may make additional examinations of any public grain warehouse at any time. If any material discrepancy is found as a result of additional examination, the cost of such 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, said financial statement having 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 discretion, inspect the public grain warehouse's business, facilities, equipment, inventories, property, books, records, accounts, papers and minutes of proceedings held at such 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 Division of Weights and Measures of the Department of Commerce.

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

SECTION 23. 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 such warehouse, and to take charge of all the property and effects thereof, and to notify, the surety. Upon taking charge of any such warehouse the Commissioner shall, as soon as practicable, ascertain by a thorough examination into its affairs, its actual financial condition, and whenever the Commissioner shall become satisfied that such 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, who shall immediately upon receipt of such notice institute proper proceedings in the proper court for the purpose of having a receiver appointed.

SECTION 24. Any person operating a public grain warehouse who desires to discontinue such operation at the expiration his license or whose license is suspended, revoked or canceled by the Commissioner or his designated representative shall notify the Commissioner and 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 or newspapers 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 license, of his intention to discontinue the public grain warehouse business, and the owners of the grain shall remove, or cause to be removed, their grain from such public grain warehouse before the expiration of the license.

SECTION 25. Receipts must be issued for all grain stored in a warehouse in accordance with regulations adopted under this Act. 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 warehouse. 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 such grain. 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.

SECTION 26. (a) Every receipt issued for grain stored in a public grain warehouse shall conform to the requirements of Section 85-7-202 of the Arkansas Statutes 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 thereon 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;
- (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 year from the date of the receipt.

(b) Every receipt, whether negotiable or nonnegotiable, issued for grain stored in a warehouse shall specify a period, not exceeding one year, for which the grain is accepted for storage under this Act. The warehouseman shall, in the absence of some lawful excuse, issue a new receipt for a further specified period not to exceed one year, provided that the following conditions are met: (1) Demand for issuance of a new receipt; (2) surrender of the old receipt by the lawful holder thereof at or before the expiration of the period specified therein; and (3) an offer to satisfy the warehouseman's lien.

(c) Every negotiable receipt issued shall, in addition to conforming with the requirements of paragraph (a) of this section, embody within its written or printed terms, a form of endorsement which may be used by the depositor, or his 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 by law.

SECTION 27. The 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. The Commissioner shall be authorized to have printed all warehouse receipts issued by public grain warehousemen. The cost of printing and distribution of warehouse receipts shall be charged to the grain warehouse.

SECTION 28. All warehouse receipts issued by a public grain warehouse shall be numbered consecutively, and 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.

SECTION 29. At least one (1) copy of all receipts shall be made and all copies shall have clearly and conspicuously printed or stamped thereon the words "Copy - Not Negotiable."

SECTION 30. 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 so 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.

SECTION 31. (a) 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 such receipt. Provided, that no lawful excuse for not delivering the grain exists. 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 bon. The surety has the responsibility to pay within fifteen (15) days following receipt by the surety of the notice of the demand for redemption. Any holder of a warehouse receipt issued by a public grain warehouseman who had made demand for redemption of such receipt, which demand was, without lawful excuse, not satisfied within ten (10) days, shall notify the Commissioner in writing and 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 such warehouse receipt, such market value to be determined as of the date of the demand, plus legal interest accrued from the date of the demand. In the event the public grain warehouseman is a self-insurer as provided in Section 15 of this Act, 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. 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. 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 such payment; provided, however, the license of the public grain warehouseman shall be suspended upon such payment until such time as the warehouseman posts a bond pursuant to this Act or posts with the Commissioner a sum equivalent to that paid by the Commissioner on behalf of such warehouseman.

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

SECTION 32. If a warehouseman delivers a part only of a lot of grain for which he has issued a negotiable receipt under this Act, he shall take up and cancel such receipt and issue a new, receipt in accordance with the regulations in this Act 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.

SECTION 33. Except as permitted by law or by the regulations in this Act, a warehouseman shall not deliver grain for which he has issued a negotiable receipt until the receipt has been returned to him and canceled, and shall not deliver grain for which he has issued a nonnegotiable receipt until such receipt has been returned to him or he has obtained from the person lawfully entitled to such delivery, or his authorized agent, a written order therefor. Before delivery is made of the last portion of a lot of grain covered by a nonnegotiable receipt, the receipt itself shall be surrendered.

SECTION 34. Each person to whom a nonnegotiable receipt is issued shall furnish the Warehouseman with a statement in writing indicating the person or persons having power to authorize delivery of grain covered by such receipt, together with the bona fide signature of such person or persons. No licensed warehouseman shall honor an order for the release of grain covered by a nonnegotiable receipt until he has first ascertained that the person issuing the order has authority to order such release, and that the signature of the releasing party is genuine.

SECTION 35. 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 other, and the recital of ownership in the receipt shall constitute notice of the right to sell or pledge the same and of the title of specific lien of the transferee or pledgee upon the warehouseman's grain represented by the receipts.

SECTION 36. (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 same, 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 Section 26 of this Act, the name and location of the public grain warehouse to which the grain will be shipped for storage.

SECTION 37. (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 Act, shall be guilty of a Class D felony.

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

SECTION 38. All revenues collected under the provisions of this Act by the State Plant Board shall be deposited into the general fund of the State treasury for credit to the State apportionment fund as general revenues.

SECTION 39. Act 83 of 1935, the same being Ark. Stat. §§77-1301-77-1338, is hereby repealed.

SECTION 40. All laws and parts of laws in conflict with this Act are hereby repealed to the extent of such conflict.

SECTION 41. The provisions of this Act are hereby declared to be separable. If any provisions of this Act shall be held invalid or inapplicable to any person, firm or circumstance, such invalidity or inapplicability shall not affect the validity or applicability of the remainder of the Act.

SECTION 42. Anticipatory action to implement the provisions of this Act may be taken prior to the effective date thereof.

SECTION 43. Emergency Clause. It is hereby found and determined by the General Assembly that there is an urgent need for regulation and licensing of grain warehouses in the State of Arkansas. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, welfare and safety shall be in full force and effect from and after July 1, 1979.

CHAPTER II

Grain Ownership (Act 401 of 1981)

"An Act to Provide that Ownership of Grain Shall Not Change by Reason of Delivery Thereof to Public Warehousemen and Title to Grain in the Possession of Public Grain Warehousemen Does Not Pass to Such Warehousemen Unless the Owner of the Grain Has by Written Document Signed by the Owner of the Grain Transferred Title to the Warehousemen; and for Other Purposes."

SECTION 1. Definitions. (a) "Grain" means rice, soybeans, wheat, corn, rice, oats, barley, flaxseed, sorghum, mixed grain, and other food grains, feed grains and oilseeds.

(b) "Public grain warehousemen" 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.

(c) "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 has an interest in the same, and includes persons, firms and corporations engaged in the growing and producing of grain whether it be as tenant, renter, landowner or otherwise.

SECTION 2. Title to grain. Ownership of grain shall not change by reason of an owner delivering grain to a public grain warehouseman, and no public grain warehouseman shall sell or encumber any grain within his possession unless the owner of the grain has by written document transferred title of the grain to the warehouseman. Notwithstanding any provision of the Uniform Commercial Code (Act 185 of

1961, as amended) 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 such sales and encumbrances are supported by a written document executed by the owner specifically conveying title to the grain to the public grain warehouseman.

SECTION 3. Section 7-205 of Act 185 of 1961, the same being Arkansas Statute 85-7-201, is hereby amended to read as follows:

“Section 7-205. Title Under Warehouse Receipt Defeated In Certain Cases. A buyer in the ordinary course of business of fungible goods, except the grains listed below, sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated. This section shall not apply to rice, soybeans, wheat, corn, rye, oats, barley, flaxseed, sorghum, mixed grain, nor other food grains or oilseeds.

SECTION 4. Any owner may, by written document signed by him or his agent, waive any and all rights conferred upon the owner by this Act.

SECTION 5. The provisions of this Act shall apply to all public grain warehousemen and to the operations of such public grain warehouses, unless such public grain warehouse is licensed under the provisions of the United States Warehouse Act, (39 STAT. 486; 7 U.S.C. 241-273), as amended.

SECTION 6. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 7. Emergency. It is hereby found and determined by the General Assembly that Arkansas grain producers are experiencing severe losses due to their stored grain in public warehouses being sold or encumbered by the public grain warehousemen without their authorization, and that this Act is immediately necessary to clarify the law and grant protection to Arkansas farmers. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, hearth and safety shall be in full force and effect from and after its passage and approval.

CHAPTER III

Director May Petition Court for Receivership Act 342 of 1983

“An Act to Authorize the Director of the State Plant Board to Petition the Proper Court for Appointment as the Receiver to Take Custody of Grain Stored in a Warehouse Licensed by the Director; and for Other Purposes.”

SECTION 1. (a) “Commissioner” means the Public Grain Warehouse Commissioner who shall be

the Director of the State Plant Board or his designated representative.

(b) "Warehouse" means a public grain warehouse licensed under Act 83 of 1979 (Ark. Stat. 77-1301 et seq.).

(c) "License" means a license issued under Act 83 of 1979 (Ark. Stat. 77-1301 et seq.).

(d) All other terms in this Act shall have the same meaning as the same terms used in Act 83 of 1979, the Arkansas Public Grain Warehouse Law (Ark. Stat. 77-1301 et seq.).

SECTION 2. The Commissioner in his discretion may, following summary suspension of a license under Section 13 of Act 83 of 1979 (Ark. Stat. 77-1313) or following a suspension or revocation of a License as otherwise provided in that Act, 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 Act and under the supervision of the court. The petition shall be filed in the county in which the warehouse is located. The proper court shall appoint the Commissioner as receiver. 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.

SECTION 3. A petition filed by the Commissioner under Section 2 shall be accompanied by the Commissioner's plan for disposition of stored grain. 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, or 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 may provide for any combination thereof, as the Commissioner in his discretion determines to be necessary to minimize losses.

SECTION 4. When a petition is filed by the Commissioner under Section 2 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. 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. 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.

SECTION 5. The Commissioner shall cause a copy of each of the documents served upon the licensee under Section 4 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. 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. Persons referred to in this section are not parties to the action unless admitted by the court upon application therefor.

SECTION 6. When appointed as a receiver under this Act, the 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.

SECTION 7. The 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 determine whether or not to petition for the appointment as receiver, shall approve the proposed plan for disposition of stored grain, shall approve the proposed plan for distribution of any cash proceeds, and shall approve the proposed final report.

SECTION 8. The actions of the 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 Act 434 of 1967, as amended, the Administrative Procedure Act.

SECTION 9. When the Commissioner is appointed as receiver under this Act the surety on the bond of the licensee shall be joined as a party defendant by the Commissioner. If required by the court, the surety shall pay the bond proceeds or so much thereof as the court finds necessary into the court, and when so paid the surety shall be absolutely discharged from any further liability under the bond to the extent of the payment.

SECTION 10. When appointed as receiver under this Act the 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. Failure to timely file a 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.

SECTION 11. When the court approves the sale of stored grain the Commissioner shall employ a merchandiser to effect the sale of those commodities. A person employed as a merchandiser must meet the following requirements:

(a) The person shall be experienced or knowledgeable in the operation of warehouses licensed under Act 83 of 1979 (Ark. Stat. 77-1301 et seq.), and if the person has ever held a license issued under Act 83 of 1979, the person shall never have had that license suspended or revoked.

(b) The person shall be experienced or knowledgeable in the marketing of agricultural products.

(c) 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. The merchandiser shall be entitled to reasonable compensation as determined by the Commissioner. A sale of grain shall be made in a commercially reasonable manner and under the supervision of the warehouse section of the Commissioner. The Commissioner shall have authority to sell the stored grain, and provisions of Uniform Commercial Code to the contrary notwithstanding, and any stored grain so sold shall be free of all liens and other encumbrances.

SECTION 12. 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 Commissioner in connection with the receivership, to depositors on a pro rata basis as their interests are determined. Distribution shall be without regard to any setoff, counter claim, or storage lien or charge.

SECTION 13. The 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.

SECTION 14. The Commissioner shall be entitled to reimbursement out of stored grain or proceeds held in receivership for all expenses incurred as court cost or in handling and disposing of stored grains, and for all other costs directly attributable to the receivership. The right of reimbursement of the Commissioner shall be prior to any claims against the stored grain or proceeds of sale thereof, and shall constitute a claim against the surety bond of the licensee.

SECTION 15. In event the approved plan of disposition requires the sale of stored grain, or the distribution of proceeds from the surety bond, or both, the Commissioner shall submit to the court a proposed plan of distribution of those proceeds. Upon such notice and hearing as may be required by the court, the court shall accept or modify the proposed plan. When the plan is approved by the court and executed by the Commissioner, the Commissioner shall be discharged and the receivership terminated.

SECTION 16. At the termination of the receivership the Commissioner shall file a final report containing the details of his actions, together with such additional information as the court may require.

SECTION 17. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 18. Emergency. It is hereby found and determined by the General Assembly that farmers would be better served if State law would authorize the Grain Warehouse Commissioner to petition the proper court to serve as receiver in instances where the warehouse becomes insolvent; and that this Act is immediately necessary to so provide. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval

CHAPTER IV

REGULATIONS 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 Regulations 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 Regulations 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. 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 anytime 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 regulations.

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.