

The National Agricultural
Law Center



University of Arkansas • Division of Agriculture

An Agricultural Law Research Project

Requirements for Grain Dealers

State of Kentucky

Auditing

www.NationalAgLawCenter.org



Requirements for Grain Dealers

STATE OF KENTUCKY

Current through the end of the 2014 legislation

KRS § 251.480

251.480 Forward pricing and storage contracts; licensee's records; receipts or scale tickets; content; bookkeeping system

- (1) The department shall develop minimum provisions for forward pricing and storage contracts to be used by grain storage establishments licensed under the provisions of this chapter. A copy of such contract shall be given by the grain storage establishment to each person selling to or storing grain in the grain storage establishment. The contract shall clearly indicate the terms of the agreement between the seller or storer and the grain storage establishment and shall explain the seller's or storer's rights.
- (2) Each licensee of a grain storage establishment shall keep in a safe place complete and correct records of the storage and withdrawal of all grain handled in each grain storage establishment which he is licensed to operate, and complete records of all original and duplicate receipts or scale tickets issued by him, returned to him and cancelled by him, which shall be available for inspection by the department.
- (3) Licensee must issue receipts or scale tickets that meet the following requirements:
 - (a) Name and address of licensee.
 - (b) Date.
 - (c) Serial number.
 - (d) Provision for indicating "inbound" or "outbound."
 - (e) Name of depositor (inbound) or consignee (outbound).
 - (f) Kind of grain and grade, or moisture content and test weight and foreign materials, if applicable.
 - (g) Gross, tare and net weight and provision for adjustment of quality factors.
 - (h) Price, if sold.
 - (i) Provision for indicating if the grain is sold, purchase contract, delay pricing, open storage, receipted storage, or grain bank, etc.
 - (j) Driver on or off scale.
 - (k) Initials of weigher.
 - (l) If paragraphs (a) to (k) have been complied with, a statement on the ticket "approved by the Kentucky Department of Agriculture."
- (4) Each grain storage establishment licensed under this chapter shall use a bookkeeping system acceptable to the department.

KRS § 251.490

251.490 Semiannual inspection; special provisions for licensees short of facilities

The department shall inspect the licensed elevator twice each year for the purpose of determining if grain is in storage or statements that show grain is accounted for, condition of storage facilities, and condition of grain in storage. A licensee that is short of facilities may store at another establishment provided that establishment is located in the State of Kentucky and is also licensed and the amount of grain stored is covered in the bond set forth in KRS 251.451. A licensee that is short of facilities and/or grain may cover shortage by giving additional bond on 100% value of grain or depositing value of grain in a special account made jointly to the Kentucky State Board of Agriculture and the licensee. This money can only be released to buy the grain from the producers or replace the grain for the producer. All interest drawn on this account is payable to the licensee after his obligations are met.

KRS § 251.500

251.500 Changes that make warehouse license invalid; duties of licensed warehousemen when change occurs; audit and examination authorized

A warehouse license shall become invalid upon the change of management, cessation of operations, change of partners in a partnership, change of corporate structure of a corporation, failure to remit license fees or fines, or sale. Every licensed warehouseman shall immediately notify the department as to any change and shall deliver his license to the office of the department together with a notarized statement setting forth the arrangements made with depositors for final disposition of the grain in storage and for fulfilling the obligations of the retiring warehouseman. In the case of a successor, the successor shall apply for a new license. If there is a change of management or cessation of operations, the department, when deemed appropriate, may cause an audit and examination to be made. In these cases, all records required in KRS 251.480 shall be available to the department until the department is satisfied that all obligations have been met.

KRS § 251.640

251.640 Assessment of grain producers; deduction of assessment; collection; restraining order or preliminary injunction against purchaser

(1) It is declared to be in the public interest and highly advantageous to the agricultural economy of the state that all producers of grain shall be assessed at a rate of .0025 times the gross value of all marketed grain and provide for the collection of the assessment for the purpose of financing or contributing to the financing of the Kentucky grain insurance fund, which is hereby created.

(2) Upon the establishment of the Kentucky Grain Insurance Corporation, the Commissioner shall notify by certified mail, all persons in this state engaged in the business of purchasing grain from producers, that on and after the date specified in the letter, the specified assessment shall be deducted from the producer's payment by the purchaser, or his agent or representative, from the purchase price of the grain. The deducted assessment shall, on or before the fifteenth day of the month following the end of the month in which the grains are sold to the purchaser, be remitted by the purchaser to the grain insurance fund. The books and records of all purchasers of grain, which shall clearly indicate the producer assessment, shall at all times be open for inspection by the Commissioner of Agriculture or his duly authorized agents during regular business hours. The Commissioner or his agents may take

steps as are reasonably necessary to verify the accuracy of books and records of purchasers of grain.

(3)

(a) Beginning with the first assessment levied on or after June 25, 2009, no assessments shall be collected by the department under paragraph (b) of this subsection unless the board has certified that the fund is less than three million dollars (\$3,000,000). For subsequent assessments, the provisions and amounts specified in paragraph (b) of this subsection apply.

(b) If and when the fund is more than ten million dollars (\$10,000,000), no fees shall be assessed by the department unless the amount in the fund drops below ten million dollars (\$10,000,000). If the fund is more than ten million dollars (\$10,000,000), no later than April 30 of each year, the board shall meet and certify the fund is in excess of ten million dollars (\$10,000,000). Upon this certification, no assessment shall be assessed or collected for that licensed year. If at any time after the board has certified the ten million dollars (\$10,000,000) amount, the board receives notification of the fund being less than eight million dollars (\$8,000,000), the board shall within thirty (30) days certify that the fund has less than eight million dollars (\$8,000,000), and the assessment shall be reinstated. Upon notification from the board, the department shall within thirty (30) days reinstate the assessment fee of .0025 times the gross value of the grain purchased.

(4) Any producer upon and against whom the assessment is levied and collected under the provisions of this section, if dissatisfied with the assessment, may demand of and receive from the treasurer of the grain insurance corporation a refund of assessment collected from the producer, if the demand for refund is made in writing within thirty (30) days from the date on which the assessment is collected from the producer. By voluntarily submitting to a refund, the producer forgoes any protection or compensation provided for by the grain insurance corporation.

(5) When in the judgment of the board or the duly certified association, a purchaser has engaged in or is about to engage in any acts or practices that constitute a violation of any of the provisions of KRS 251.410, 251.430, 251.440, 251.451, 251.490, or 251.600 to 251.740, the grain insurance corporation may make application to the Franklin Circuit Court for an order enjoining the acts or practices, and obtain a restraining order and preliminary injunction against the purchaser.

(6) The assessments by the department in accordance with this section are in addition to any other fees or assessments required by law.

KRS § 251.730

251.730 Evidence required to be produced when irregularities suspected

If irregularities are suspected, the department may issue subpoenas or subpoenas duces tecum to compel the attendance of witnesses or the production of books, documents and records anywhere in the state in any hearing, affecting the authority or privilege granted by a license or to verify the accuracy of any books or records subject to inspection under the provisions of KRS 251.410, 251.430, 251.440, 251.451, 251.490, and 251.600 to 251.740.

KRS § 363.410

363.410 Department's powers and duties with respect to grain moisture testing

The Kentucky Department of Agriculture shall make or cause to be made all inspections and shall have authority to establish tolerances and specifications for grain moisture measuring devices, similar to the

tolerances and specifications recommended or used by the grain branch of the United States Department of Agriculture, which shall have for their object the establishment of more accurate grain, small grain, corn and soybeans moisture measuring in the Commonwealth of Kentucky.

KRS § 363.420
363.420 Inspectors

The inspectors of the Kentucky Department of Agriculture shall have the power and it shall be their duty to inspect, make comparative tests of, and ascertain if correct, every grain moisture measuring device used or employed in this state by any proprietor, agent or lessee or employee in proving or ascertaining the moisture of agricultural commodities offered for sale, sold, purchased or in the process of being purchased. Such inspector shall use as a standard for making such comparative test a grain moisture measuring device meeting the tolerances and specifications established pursuant to the provisions of KRS 363.410.

KRS § 363.430
363.430 Sealing or marking testing devices

Whenever the inspector for the Kentucky Department of Agriculture compares grain moisture tests of the device being tested with the standard grain moisture measuring device and finds that they correspond or causes them to correspond with the standard he shall seal or mark such grain moisture measuring testing device with appropriate seals or marks. Any such grain moisture measuring testing device which upon such inspection shall be found to be defective and which defect cannot be immediately corrected shall be sealed or marked with an appropriate seal indicating such device to be defective and the owner or user of such device shall be notified of such defective condition on an appropriate inspection form on the date of such inspection.

KRS § 363.440
363.440 Dealer's duties and liabilities

Any person, firm, or corporation engaged in the business of grain buying, custom grain storage and/or grain banking, resale of grain, and grain used for feed manufacturing and who purchases or makes sales based on moisture content must show moisture contents of these commodities as determined on an approved moisture measuring testing device. In the case of grain storage and/or grain banking, moisture content must be determined both when the grain is put in storage and when it is taken out and the same discount schedule used when grain is put into storage must be used when grain is taken out. When small grain, corn and soybeans is bought and the seller is discounted according to the moisture content, this moisture content must be determined by a moisture measuring device approved by the Department of Agriculture. Any person who, by himself or by his agent or as agent of another person, uses in determining moisture content any grain moisture measuring device which has not been tested and approved for use by the Kentucky Department of Agriculture shall be guilty of a misdemeanor; except that the use of a newly purchased grain moisture measuring device prior to regular inspection and approval shall not be considered a misdemeanor if the user of such device has given notice to the Kentucky Department of Agriculture of the purchase and intended use of such new device. Such notice

shall be given by either certified or registered mail not later than ten (10) days prior to the date of such intended use. In an emergency situation, a person may substitute an untested moisture measuring device in place of an approved device for a period of not more than twenty-four (24) hours before notifying the department of its emergency use and making arrangements for its inspection.