



The National Agricultural Law Center

The nation's leading source for agricultural & food law research & information

NationalAgLawCenter.org | nataglaw@uark.edu

Requirements for Grain Warehouses:

Kentucky



This material is based upon work supported by the National Agricultural Library,
Agricultural Research Service, U.S. Department of Agriculture

A National Agricultural Law Center Research Publication

Requirements for Grain Warehouses: Kentucky

Fast find:

- 1) Licensing: [§§ 251.470](#)
- 2) Bonding:
- 3) Auditing: [§§ 251.500; .640; .730; § 363.410 to .440](#)
- 4) Indemnity Fund: [§§ 251.640 to .660](#)
- 5) Failure/Liquidation:
- 6) Prompt Payment:
- 7) Penalties: [§§ 251.990; § 363.991](#)
- 8) Lien:

KY. Rev. Stat. Ann. Tit. XXI, Ch. 251; XXIX, Ch. 359; XXIX, Ch. 263

Current through Ch. 128 of the 2020 Regular Session.

251.010. Definitions for chapter.

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

- (1) “Board” means the State Board of Agriculture;
- (2) “Claimant” means a person who:
 - (a) Possesses scale tickets, settlement sheets, ledger cards, or other written evidence of ownership of fund-covered grain stored or possessed by a licensee;
 - (b) Possesses warehouse receipts relating to fund-covered grain owned, stored, or possessed by a licensee; or
 - (c) Possesses written evidence of a sale of fund-covered grain to a licensee but did not receive full payment for the grain sold;
- (3) “Cooperative agreement” means an agreement made by the board with a state or federal agency for the purpose of carrying out the provisions of this chapter;
- (4) “Department” means the Kentucky Department of Agriculture;
- (5) “Depositor” means any person who deposits grain in a grain warehouse for storage, handling, shipment, or is the owner or legal holder of an outstanding warehouse receipt, or who is lawfully entitled to possession of the grain;

- (6) "Facility" means a single location with one (1) or more structures used for the storage or handling of grain;
- (7) "Failure" means the occurrence of one (1) or more of the following events:
- (a) A licensee's inability to pay for storage obligations in accordance with requirements set forth in statute, administrative regulation, or contract;
 - (b) A public declaration of insolvency;
 - (c) A revocation of a grain dealer license or grain warehouse operator license and an outstanding obligation or indebtedness by the licensee;
 - (d) A failure to pay a producer in the ordinary course of business and a bona fide dispute does not exist between the licensee and the producer;
 - (e) A failure to deliver a grain to a depositor in the ordinary course of business and a bona fide dispute does not exist between the licensee and the depositor;
 - (f) A failure to make timely application for license renewal; or
 - (g) A denial of license renewal application;
- (8) "Forward pricing contract" means an agreement for sale which provides that:
- (a) Title passes at the time of delivery; and
 - (b) The price will be determined at a later date;
- (9) "Fund" means the Kentucky grain insurance fund established by KRS 251.640;
- (10) "Fund-covered grain" means grain as used in KRS 251.385;
- (11) "Grain" means corn, wheat, soybeans, rye, barley, oats, grain sorghums, or popcorn;
- (12) "Grain dealer" means any person engaged in the business of buying grain from producers for resale, milling, or processing. A producer of grain buying grain for the producer's own use as seed or feed shall not be considered to be engaging in the business of buying grain for resale, milling, or processing;
- (13) "Grain warehouse operator" means a person who owns, controls, operates, or manages any public grain warehouse in which grain is stored for compensation;
- (14) "Gross value" means the value of grain after deductions for quality discounts, including but not limited to discounts for excessive moisture or foreign matter, but before deductions for storage or marketing charges;
- (15) "Person" means any individual, partnership, firm, corporation, limited liability company, or other corporate entity created under the laws of the Commonwealth or any other jurisdiction;
- (16) "Producer" means the owner, tenant, or operator of land who has an economic or financial interest in grain or receives all or any part of the proceeds from the sale of grain;
- (17) "Seed" means grain that is set aside to be used for the purpose of producing new plants;

(18) "Warehouse" means any building, structure, or other protected enclosure, permanent or temporary, used or useable for the storage or conditioning of grain. Buildings used in connection with or operation of the grain warehouse shall be deemed part of the warehouse; and

(19) "Warehouse receipt" means a document of title issued by a person engaged in the business of storing grains for compensation.

251.020. Powers and functions of state board — Administrative regulations — Cooperative agreements with state and federal agencies, universities, and other entities — Application to Circuit Court for orders to enjoin — Power to bring or defend civil actions — Discipline of current or former licensees.

The board shall have the following powers, and all powers incidental or necessary to same, in carrying out the duties set forth in KRS 251.340, in addition to the powers enumerated elsewhere within this chapter and in other chapters to:

(1) Promulgate administrative regulations, in conjunction with the department, necessary for the proper administration and enforcement of the provisions of this chapter, and for the accomplishment of the purposes intended by this chapter;

(2) Enter into cooperative agreements with state agencies, federal agencies, universities, and other entities;

(3) Make application to the Franklin Circuit Court, or a Circuit Court in the county where the licensed grain facility is located, for an order enjoining actions on the part of any person that would constitute a violation of any section of this chapter or any administrative regulation promulgated under the authority of this chapter;

(4) Bring or defend civil actions that relate to the provisions of this chapter, the department's actions, or the board's actions under the authority of this chapter. Legal expenses incurred shall be approved for payment by the board; and

(5) Take disciplinary action against any current or former licensee.

251.340. Purpose of chapter.

(1) The purpose of this chapter is to promote the welfare of the Commonwealth and its people, and to provide economic stability for its agricultural and agribusiness industries, by:

(a) Establishing a system of licensure for persons engaging in the business of grain dealing;

(b) Establishing a system of licensure for persons engaging in the business of grain warehouse operating; and

(c) Establishing a grain insurance fund of which the purpose is to:

1. Protect producers of fund-covered grains against risk of loss in the event of a licensed grain dealer's or grain warehouse operator's financial failure; and

2. Compensate eligible claimants of fund-covered grains for losses due to the failure of a licensed grain dealer or grain warehouse operator.

(2) The board, in conjunction with the department, shall be responsible for adopting and overseeing the policies, procedures, and programs to effectuate the purposes identified in this section.

251.345. Licensee to issue scale ticket upon receipt of grain — Documents issued for received grain to be produced upon department's request.

(1) Upon receiving grain, a licensee shall issue a scale ticket to the depositor.

(2) Upon request from a representative of the department, a licensee shall produce for inspection and copying the scale tickets and any other documents that were issued for received grain.

251.350. Scale ticket issued by licensed grain dealer or licensed grain warehouse operator, information required — Department-approved scales for weighing grain.

(1) Every scale ticket issued by a licensed grain dealer or a licensed grain warehouse operator shall include the following information in writing:

(a) A statement indicating whether the delivery was inbound or outbound;

(b) The name of the depositor for inbound delivery or consignee for outbound delivery;

(c) The date of delivery;

(d) The name and street address of the location where the grain was delivered;

(e) The quantity of the grain that was delivered, in bushels or pounds;

(f) The kind and grade of grain delivered, unless its identity is preserved by placing it in a special bin or a special pile which has a unique or identifying mark that appears on the receipt;

(g) A statement whether the grain is being sold at a specified price or being delivered pursuant to a forward pricing contract whose terms were pre-approved by a representative of the department; and

(h) The scale ticket's serial number.

(2) Grain received by a licensee shall be weighed on department-approved scales.

251.355. Grain dealer license and grain warehouse operator license — Department's authority to issue and administer licenses — Administrative regulations — Fees — Suspension or revocation of licenses.

(1) No person shall be or act as a grain dealer in the Commonwealth without holding a valid grain dealer license issued by the department.

(2) No person shall engage in the business of buying grain from producers for resale, milling, or processing in the Commonwealth without holding a valid grain dealer license issued by the department; provided, however, that no license shall be required in order to buy grain from sellers who are not producers of grain.

(3) No person shall be or act as a grain warehouse operator in the Commonwealth without holding a valid grain warehouse operator license issued by the department.

(4) No person shall own, control, operate, or manage any public warehouse in which grain is stored for compensation in the Commonwealth without holding a valid grain warehouse operator license issued by the department.

(5) Any person who possesses unpaid-grain for more than thirty (30) days shall be deemed to be acting as a grain warehouse operator and shall be subject to the licensing and financial requirements for grain warehouse operators under the provisions of this chapter.

(6) Licenses issued by the department shall be valid for a period of time not to exceed one (1) year and shall expire on June 30 each year.

(7) A separate license shall be required for each facility in the Commonwealth.

(8) The board, in conjunction with the department, shall promulgate administrative regulations setting forth a schedule of fees for licensed grain warehouse operators. Any changes to the schedule of fees shall be approved by a majority vote of the board. The schedule of fees shall be reviewed by the board at least one (1) time every four (4) years. The annual increase in board-approved license fees shall be limited to five percent (5%) and shall not exceed twenty percent (20%) over any four (4) year period.

(9) The board, in conjunction with the department, shall promulgate administrative regulations setting forth a schedule of fees for licensed grain dealers. Any changes to the schedule of fees shall be approved by a majority vote of the board. The schedule of fees shall be reviewed by the board at least one (1) time every four (4) years. The annual increase in board-approved license fees shall be limited to five percent (5%) and shall not exceed twenty percent (20%) over any four (4) year period.

(10) The department shall have the authority to suspend or revoke a license if the board or department determines the licensee has violated a provision of this chapter or any administrative regulation promulgated under this chapter.

251.360. Grain dealer or grain warehouse operator license fees — Use of fees — Prohibited use of fees.

(1) Receipts collected from grain dealer or grain warehouse operator licensing fees shall be used by the department to offset the cost of:

(a) The salary and benefits for employees in the department's Division of Regulation and Inspection; and

(b) The vehicles, mileage, training, legal fees, accounting fees, and other expenses incurred by the department or the board in connection with the provisions authorized by this chapter.

(2) Receipts collected from grain dealer or grain warehouse operator licensing fees shall not be deposited in, or used to pay expenses incurred in connection with, the administration of the Kentucky grain insurance fund.

251.365. Evidence of financial responsibility to be filed by applicant or licensee — Security required.

(1) The department shall not issue or renew a grain dealer or grain warehouse operator license under this chapter until the applicant or licensee has filed with the department satisfactory evidence of financial responsibility.

(2) Evidence of financial responsibility shall:

(a) Consist of:

1. A surety bond, executed by the applicant as principal, and issued by a corporate surety authorized to conduct business in this state;
2. A certificate of deposit issued by a federally insured financial institution in this state;
3. An irrevocable letter of credit issued by a federally insured financial institution in this state;
4. Other security, as deemed acceptable by the department; or
5. Any combination of subparagraphs 1. to 4. of this paragraph, so long as the aggregate value of the evidence meets the requirements of this section;

(b) Be made payable to the board;

(c) Be in an amount meeting the requirements of this section;

(d) In the case of a bond, be conditioned upon the faithful performance of:

1. All obligations of a licensee under the terms of this chapter and any administrative regulations promulgated under it, from the effective date of the bond until the license is revoked, denied, or suspended or the bond is canceled, whichever comes first; and
2. Any obligations the applicant or licensee may contract for with producers, depositors, or other persons placing grains in the applicant's or licensee's facilities, from the effective date of the bond and thereafter, regardless of whether or not the applicant's or licensee's facility remains the subject of a valid license;

(e) Be filed with and remain in possession of the department until it is released, canceled, or discharged as provided for by the terms of this chapter and any administrative regulations promulgated under it;

(f) Be kept in force at all times while the licensee is operating as a grain warehouse operator or grain dealer. Failure to keep the bond or other security in force shall be cause for revocation of the license, and shall subject the licensee to criminal penalties set forth in KRS 251.990; and

(g) Contain a provision stating that it may not be canceled by any party, except upon ninety (90) days' notice in writing to the department. A notice of cancellation shall not affect any liability accrued before the expiration of the notice period.

(3) Separate proof of financial responsibility shall be required for each facility that is licensed by the department.

(4) For any security used as evidence under subsection (2) of this section that bears interest, the interest shall be made payable to the purchaser of the security.

(5) No person may release, cancel, or discharge security filed with the department under subsection (1) of this section without prior approval of the department and its approval of a substitute bond or other security.

(6) If the department questions a licensee's ability to pay producers and depositors for grain, or if the department determines that the licensee does not have a sufficient net worth to meet the licensee's financial obligations, the department shall require the licensee to file additional security with the department in an amount equal to the insufficiency. Failure to post the additional security shall constitute grounds for suspension or revocation of a license.

(7) The amount of the security required by subsection (1) of this section shall be in a principal amount, to the nearest one thousand dollars (\$1,000), that is equal to ten percent (10%) of:

(a) For a licensed grain dealer, the aggregate dollar amount:

1. That was paid by the dealer for grain purchased in the dealer's most recently completed fiscal year; or

2. That the department estimates will be paid by the grain dealer for grain purchased in the grain dealer's current fiscal year, if records for the grain dealer's most recently completed fiscal year do not exist or are not available; and

(b) For a licensed grain warehouse operator, the aggregate dollar value of:

1. The grain deposited in the grain warehouse operator's most recently completed fiscal year; or

2. The grain the department estimates will be deposited in the operator's warehouse during the current fiscal year, if records for the warehouse operator's most recently completed fiscal year do not exist or are not available.

(8) In no event shall the required security for a licensee be less than twenty-five thousand dollars (\$25,000) nor more than one million dollars (\$1,000,000).

251.370. Licensees using paper documents or electronic documents — Business records required — Retention schedule — Accounting functions — Financial statements — Administrative regulations. [Effective until July 15, 2020]

(1) A licensee using paper scale tickets, settlement sheets, or purchase contracts shall comply with the following requirements:

(a) Documents shall be pre-numbered sequentially; and

(b) Settlement sheet information shall be cross-referenced with scale tickets.

(2) A licensee using electronic scale tickets, settlement sheets, purchase contracts, or other documents shall conform to the formats and procedures required by the department.

(3) A licensee shall provide, and make available to the department or the board, a complete and accurate set of business records, including:

(a) Records of all transactions, including records and accounts of all grains received and withdrawn or delivered;

(b) Records, filed in numerical order, of all scale tickets, warehouse receipts, and settlement sheets that have been issued, voiced, or lost; and

(c) Copies of contracts for the sale or storage of grain.

(4) A licensee shall retain its business records for a minimum of four (4) years.

(5) A licensed grain warehouse operator shall retain copies, either digitally or on paper, of warehouse receipts or other documents evidencing ownership of any grain, or any liability of the grain warehouse operator, so long as such documents evidence a valid ownership interest or debt. A licensee shall retain copies of such documents for a period of not less than four (4) years from the date when the ownership interest or debt was extinguished.

(6) A licensee's accounting functions shall be performed in conformity with generally accepted accounting principles.

(7) A licensee's business records shall accurately identify any liens or encumbrances on grain that is held or owned by the licensee.

(8) A licensee shall provide to the department at least once annually, and upon request, an audited financial statement that is certified by the licensee, its owner, or other officer to be an accurate reflection of the licensee's financial condition, except when exempted by KRS 251.440(5).

(9) The board, in conjunction with the department, shall have authority to promulgate administrative regulations setting forth additional recordkeeping requirements for licensees.

251.370. Licensees using paper documents or electronic documents — Business records required — Retention schedule — Accounting functions — Financial statements — Administrative regulations. [Effective July 15, 2020]

(1) A licensee using paper scale tickets, settlement sheets, or purchase contracts shall comply with the following requirements:

(a) Documents shall be pre-numbered sequentially; and

(b) Settlement sheet information shall be cross-referenced with scale tickets.

(2) A licensee using electronic scale tickets, settlement sheets, purchase contracts, or other documents shall conform to the formats and procedures required by the department.

(3) A licensee shall provide, and make available to the department or the board, a complete and accurate set of business records, including:

(a) Records of all transactions, including records and accounts of all grains received and withdrawn or delivered;

(b) Records, filed in numerical order, of all scale tickets, warehouse receipts, and settlement sheets that have been issued, voiced, or lost; and

(c) Copies of contracts for the sale or storage of grain.

(4) A licensee shall retain its business records for a minimum of four (4) years.

(5) A licensed grain warehouse operator shall retain copies, either digitally or on paper, of warehouse receipts or other documents evidencing ownership of any grain, or any liability of the grain warehouse operator, so long as such documents evidence a valid ownership interest or debt. A licensee shall retain copies of such documents for a period of not less than four (4) years from the date when the ownership interest or debt was extinguished.

(6) A licensee's accounting functions shall be performed in conformity with generally accepted accounting principles.

(7) A licensee's business records shall accurately identify any liens or encumbrances on grain that is held or owned by the licensee.

(8) Upon request by the board, a licensee or applicant for a license shall provide to the department either:

(a) A review engagement report issued by an independent certified public accountant stating whether, based on the review, he or she is aware of any material modifications that should be made to the financial statements in order for them to be in accordance with the applicable reporting framework; or

(b) An audit and written report issued by an independent certified public accountant expressing an opinion whether the financial statements are presented fairly, in all material aspects, in accordance with the applicable financial reporting framework.

(9) The board, in conjunction with the department, shall have authority to promulgate administrative regulations setting forth additional recordkeeping requirements for licensees.

251.375. Forward pricing contracts — Requirements governing — Administrative regulations.

(1) No licensee shall enter into forward pricing contracts without first attaining approval from the department to enter into these contracts. A licensee entering into forward pricing contracts shall keep any records and ledgers the department deems necessary to document the licensee's obligations.

(2) A licensee that has entered into a forward pricing contract shall make a copy available for inspection by the department or the board upon request.

(3) Forward pricing contracts shall be in writing.

(4) The board, in conjunction with the department, shall promulgate administrative regulations setting forth the minimum information that shall be included in any forward pricing contract entered into by a licensee.

(5) By the tenth day of each month, any licensee that has entered into a forward pricing contract shall submit to the department a report accurately reflecting its position on the last day of the previous month.

(6) A licensee which has entered into one (1) or more forward pricing contracts shall maintain at least eighty percent (80%) of the value of the licensee's unpaid obligations for all grain purchased under forward pricing contracts, using one (1) or more of the following:

(a) Grain maintained in storage in the licensee's warehouse or other storage facilities;

(b) Rights to grain as evidenced by a warehouse receipt or scale ticket for storage of the grain under an agreement with another warehouse approved by a representative of the department;
or

(c) Proceeds from the sale of grain as evidenced by one (1) or more of the following:

1. Funds held in a separate account, designated for the benefit of unpaid sellers of grain that was delivered under forward pricing contracts, in a state or federally licensed financial institution or a lending agency of the Farm Credit Administration;
2. Short-term investments held in time accounts, designated for the benefit of unpaid sellers of grain that was delivered under forward pricing contracts, in a state or federally licensed financial institution or a lending agency of the Farm Credit Administration; or
3. Other evidence of unencumbered security or assets acceptable to the department, including but not limited to an irrevocable letter of credit or surety bond.

(7) If the department or the board determines that a licensee does not have sufficient net worth to satisfy the indebtedness, the department shall prohibit the transfer or disbursement of any grain, property, or assets except for the satisfaction of unpaid obligations for grain that was delivered under forward pricing contracts. Disbursements of payments to sellers shall be made on a pro rata basis of the value of the remaining grain.

251.380. Periodic inspections of licensed grain warehouses and licensed grain dealers — Correction of deficiencies.

(1) The department shall inspect each licensed grain warehouse at least two (2) times each year. The department's inspection shall include:

- (a) A determination whether the grain in storage is properly accounted for;
- (b) An assessment of the storage facilities for fitness; and
- (c) An assessment of the condition of the grain in storage.

(2) The department shall permit a licensee to store grain at another facility that is licensed and located in the Commonwealth of Kentucky, if the requirements for a surety bond or other evidence of financial responsibility set forth in KRS 251.365 are satisfied.

(3) A licensee that is short of grain may cover the shortage by:

- (a) Acquiring additional bond on one hundred percent (100%) of the value of the grain; or
- (b) Depositing the shortage value of the grain into a special account that is payable jointly to the licensee and the department.

(4) The department may allow a licensee that is short of grain to substitute one (1) type of grain for another type of grain on a dollar-for-dollar basis.

(5) The department shall inspect each licensed grain dealer at least one (1) time each year. The department's inspection shall include:

- (a) An inspection of the licensee's scale tickets, settlements, and canceled checks; and
- (b) Verification that payments are made by the dealer within thirty (30) days of the completion of delivery.

(6) A licensee that is short of grain shall correct any deficiencies identified by the department within the deadline mandated by the department.

251.385. Fund-covered grains, defined — Approval of fund-covered grain status by board required.

(1) The following grains shall be fund-covered grains:

(a) Corn, wheat, soybeans, grain sorghums, rye, barley, oats, or popcorn; and

(b) Other grains that may be approved for “fund-covered grain status” by a majority vote of the board.

(2) The board shall not approve for “fund-covered grain status” any grain that is not publicly traded on at least one (1) exchange in the United States or Canada.

251.390. Kentucky grain insurance fund — Eligibility for coverage — Notice of intent not to be covered by fund, effect of.

(1) Except as provided in subsections (2) and (3) of this section, any claimant who delivers fund-covered grain to a licensed grain dealer or licensed grain warehouse operator shall be eligible for coverage by the fund without regard to whether the claimant resides in Kentucky or another state.

(2) Any person who submits to the department, not later than January 31, a written notice of intent not to be covered by the fund, shall:

(a) Be entitled to receive from the board a refund of any assessments collected from that person pursuant to KRS 251.640 during the course of that calendar year; and

(b) Remain ineligible for coverage and compensation by the fund for any grain that may be delivered by or on behalf of that person to any licensee during the course of that calendar year.

(3) By submitting a timely written notice of intent not to be covered by the fund as provided under subsection (2) of this section, a person foregoes any protection or eligibility for compensation from the fund for grain that may be delivered during the course of that calendar year. The written notice shall:

(a) Be effective with respect to eligibility for coverage only to the fund-covered grain delivered in that calendar year; and

(b) Not have any effect with respect to eligibility for coverage for fund-covered grain delivered in previous calendar years or in subsequent calendar years.

(4) Any person who does not submit to the department, on or before January 31, a written notification of intent not to be covered by the fund shall:

(a) Not be entitled to receive a refund of any assessments that may be collected from that person pursuant to KRS 251.640 during the course of that calendar year; and

(b) Remain eligible for coverage by the fund for any fund-covered grain delivered by or on behalf of that person to any licensee during the course of that calendar year.

(5) Any person who submits a written notice of intent not to be covered by the fund shall be deemed also to have given notice of intent not to be covered to the extent of his, her, or its ownership interest in any other entities in which he, she, or it holds such an interest.

251.395. Lien on grain stored with grain warehouse operator — Relation to other liens or security interests — Filing of notice not required to perfect — Discharge of lien.

(1) When a depositor stores grain with a grain warehouse operator and has written evidence of ownership disclosing a storage obligation, the producer or other depositor has a first priority lien on the grain, the proceeds from the grain, or on grain owned by the grain warehouse operator. The lien terminates when the storage liability of the grain warehouse operator to the depositor terminates.

(2) The lien created under this section shall be preferred to any lien or security interest of any creditor to the grain warehouse operator, regardless of whether the creditor's lien or security interest was attached to the grain or proceeds before or after the date on which the producer or other depositor's lien was attached.

(3) A depositor who claims a lien under this section need not file any notice of the lien in order to perfect the lien.

(4) The lien created under this section is discharged, except as to the proceeds therefrom and except as to grain owned by the grain warehouse operator, upon sale of the grain by the warehouse operator to a buyer in the ordinary course of business.

251.400. Powers and duties of board upon failure involving licensed grain dealer or licensed grain warehouse operator — When claimant deemed to have assigned all rights, title, and interest to the board.

(1) When the board determines there has been a failure involving a licensed grain dealer or licensed grain warehouse operator, the board shall have the authority to:

(a) Take receivership of any grain on the licensee's premises to ensure that it is not destroyed, lost, stolen, or otherwise disposed of;

(b) Sell the grain and place the proceeds in escrow for the benefit of the owners, or for the benefits of claimants, when the identities of those persons have been identified;

(c) Establish a priority lien on any grain or other assets that remain in the licensee's possession, custody, or control;

(d) Secure and take possession of any grains or other commodities in the possession, custody, or control of the failed grain dealer or grain warehouse operator for the purpose of using it to cover outstanding storage obligations. If there is insufficient grain to cover outstanding shortage obligations, the board shall determine each depositor's pro rata share of the value of the remaining grain. Any remaining deficiency shall be considered a claim of the producer or depositor against the fund, if applicable. Each grade of grain shall be treated separately for the purpose of covering outstanding storage obligations and calculating claims against the fund;

(e) Commence action upon the surety bond, certificate of deposit, letter of credit, or temporary surety as required by KRS 251.365. The board may commence action against both the licensee and the surety or other financial institution in the Franklin Circuit Court or a Circuit Court in the county where the grain is located;

(f) Deposit into the fund any remaining assets of the failed grain dealer or grain warehouse operator for the purpose of using those assets to pay claimants;

(g) Establish a period of time, not less than thirty (30) days and not greater than one (1) year, for potential claimants to file their claims with supporting documentation;

(h) Make a public announcement of the procedure and deadline for potential claimants to file their claims;

(i) Examine timely filed claims and make such investigation as may be necessary for the board to determine whether a claim is a valid claim;

(j) Determine which of the claims that were submitted in advance of the deadline are valid claims;

(k) Assign to each valid claim an initial value computed as a percentage of the value of the grain on the date when it was delivered by the claimant to the licensee, relying on the value established for that grain by the Chicago Board of Trade on the date of delivery. If there is no price information from the Chicago Board of Trade for that grain on that date, then the board shall rely on price information from another exchange in the United States or Canada. If there is no price information from any exchange in the United States or Canada for that grain on that date, the board shall determine an alternative method for determining a value for that grain on that date;

(l) Compute claim values by applying these percentages to each valid claim's initial value:

1. One hundred percent (100%), for valid claims that are evidenced by a grain warehouse receipt issued by a federally licensed warehouse; or

2. A minimum of ninety percent (90%), for all other valid claims; and

(m) Notify each claimant in writing of the board's determination as to:

1. The validity of the claim;

2. The value of the grain claimed by the claimant;

3. The amount and percent of value that will be reimbursed by the fund; and

4. The claimant's right to request a hearing on his or her claim within thirty (30) days of the claimant's receipt of the written notification.

(2) The board shall not approve for payment from the fund any claims with respect to grains that are not fund-covered grains.

(3) The board shall not compute a claim's value in reliance on the price or other terms of agreement between a claimant and a licensee.

(4) If a producer or other depositor fails to file a claim within the time announced by the board, then the board and the fund shall not be liable to that depositor.

(5) If the board fails to commence action against the surety bond, certificate of deposit, letter of credit, or temporary surety that KRS 251.365 required the licensee to obtain within thirty (30) days of a depositor making a written demand that the board commence action, then the depositor shall have a right of action against the licensee to recover damages suffered by reason of the licensee's failure. The depositor shall give the board immediate written notice of the commencement of such action.

(6) The board shall deny payment from the fund to a claimant when the board determines that the claimant:

(a) Elected to opt out of coverage, as permitted by KRS 251.390; or

(b) Engaged in conduct or practices which substantially contributed to the claimant's financial loss.

(7) A claimant who accepts payment from the fund shall be deemed to have assigned to the board all of the claimant's rights, title, and interest in the grain and in any judgment with respect to the grain. The board shall have the authority to initiate or maintain any civil action it deems necessary to compel a licensee or a former licensee to repay to the fund any sums disbursed therefrom in relation to a claim.

251.405. Rights of persons injured by violation of any provisions of this chapter.

Any person injured by the violation of any provision in this chapter may bring an action against the person or corporation that committed the violation to recover damages sustained due to the violation without regard to whether or not the person or corporation committing the violation has been subjected to other civil or criminal penalties.

251.460 Information confidential

All applications for license and documents accompanying license application shall be kept confidential and for use in licensing purposes only.

251.470 Posting of license

The license issued by the department shall be posted in the licensee's place of business in this state.

251.500 Changes that make license issued under this chapter invalid; duties of licensee when change occurs; audit and examination authorized; changes that invalidate licenses issued under this chapter

(1) A license issued under the authority of this chapter shall become invalid upon:

(a) The change of management;

(b) Cessation of operations;

(c) Change of partners in a partnership;

(d) Change of corporate structure of a corporation;

(e) Failure to remit license fees or fines; or

(f) A sale.

(2) A licensee shall immediately notify the department as to any change and shall deliver his license to the department together with a notarized statement setting forth the arrangements made with depositors for final disposition of grain in storage and for fulfilling any current obligations.

(3) If there is to be a successor, the successor shall apply for a new license.

(4) If there is a change of management or cessation of operations, the department may cause an audit and examination to be made. In these cases, all records required in this chapter shall be available to the department until the department is satisfied that all obligations have been met.

251.640 Assessment of producers of fund-covered grains; deduction of assessment; assessments dependent upon balance in fund

(1) It is declared to be in the public interest and highly advantageous to the agricultural economy of the Commonwealth that producers of fund-covered grains delivered to licensed grain dealers and licensed grain warehouse operators shall be assessed at a rate of .0025 times the gross value of the fund-covered grain. The board or the department shall provide for the collection of the assessment, under the provisions of this section, for the purpose of financing the Kentucky grain insurance fund, which is hereby created. Assessments shall be levied only on fund-covered grains.

(2) Except as provided in subsection (3) of this section, beginning on or after August 1, 2019, all persons in this state who are licensed grain dealers or licensed grain warehouse operators shall deduct the levied assessment from each producer's payment for fund-covered grain. The total assessment collected by each licensee 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 to the grain insurance fund. The books and records shall clearly indicate the producer assessment and shall be open for inspection by the board or the department. The board or the department may take steps as are reasonably necessary to verify the accuracy of books and records of purchasers of grain.

(3) (a) Beginning on August 1, 2019, no assessment shall be collected if the board has certified that the fund is greater than three million dollars (\$3,000,000). If the board receives notification the fund is less than three million dollars (\$3,000,000), then the board shall within sixty (60) days reinstate the assessment fee of .0025 times the gross value of the fund-covered grain purchased. Assessments shall continue until the board certifies the fund is in excess of ten million dollars (\$10,000,000).

(b) No later than April 30 of each year, the board shall meet and certify the amount in the fund. If the board certifies the fund's current balance is more than ten million dollars (\$10,000,000), then no assessment shall be levied. If, at any time after the board has certified that the balance in the fund is more than ten million dollars (\$10,000,000), the board receives notification that the fund balance is less than six million dollars (\$6,000,000), then the board shall reinstate the assessment within sixty (60) days. Upon notification from the board, the department shall notify each licensee and shall begin collecting the assessment within sixty (60) days.

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

251.650 Use of funds; Kentucky grain insurance fund; investment of funds; authorization for funds to be invested through the Finance and Administration Cabinet's Office of Financial Management; board to report to Interim Joint Committee on Appropriations and Revenue and to Interim Joint Committee on Agriculture in each odd-numbered year

(1) The total value of assessments shall be deposited and held by the board in trust in the Kentucky grain insurance fund to pay valid claims under the provisions of this section and KRS

251.400. These funds shall be invested and reinvested in United States Treasury obligations at the direction of the board, and the interest from these investments shall be deposited to the credit of the fund and shall be available for the same purposes as all other money deposited in the fund. The money in the fund shall not be available for any purpose other than the payment of claims in accordance with KRS 251.400, refunds, legal fees, management fees, investment fees, and administration fees that are approved by the board. No money in this fund shall be used for any regulatory or licensing provision in this chapter.

(2) Notwithstanding the provisions of subsection (1) of this section, the board may authorize the investment of funds for the Kentucky grain insurance fund through the Finance and Administration Cabinet's Office of Financial Management in any guaranteed security or other guaranteed investment recommended by the office if the board determines the recommendation would maximize the interest or income to the fund.

(3) By October 1 of each odd-numbered year, the board shall report to the Interim Joint Committee on Appropriations and Revenue and the Interim Joint Committee on Agriculture:

(a) The current balance of the fund;

(b) The amount of assessments, interest earned, and any other money deposited into the fund; and

(c) The expenditures incurred due to claims, refunds, management fees, investment fees, legal fees, and administrative fees.

(4) Each report shall reflect the deposits into and the expenditures incurred for the most recent biennium.

251.660 Insufficiency of funds to pay approved claims

In the event the amount in the Kentucky grain insurance fund is insufficient to pay approved claims, the unpaid claims shall be deemed a necessary government expense. Upon notification from the board of the amount of unpaid claims, the secretary of the Finance and Administration Cabinet and the State Treasurer shall make the necessary transfers from any unbudgeted balance of the general fund to pay the unpaid claims. The general fund shall be reimbursed from the assessment in accordance with KRS 251.640, with interest at the rate paid on ninety (90) day United States Treasury bills, for any amounts transferred and paid to claimants under this section. The board shall reimburse the general fund prior to any money from the assessment being deposited into the Kentucky grain insurance fund.

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 Commonwealth 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 this chapter.

251.740 Appeal

Any person aggrieved by a decision or ruling of the board may obtain review thereof by filing a written petition in the Circuit Court of jurisdiction as provided in KRS 13B.140.

251.990 Penalties for chapter

(1) Except as provided otherwise in this section, any person who violates a provision of this chapter shall be guilty of a violation for the first offense and fined not more than five hundred dollars (\$500). He or she shall be guilty of a Class A misdemeanor and shall be fined not more than one thousand dollars (\$1,000) or imprisoned for up to six (6) months, or both, for each subsequent offense. Each day of operation in violation of the provisions of this chapter shall constitute a separate offense.

(2) Any person who operates as a grain warehouse operator or a grain dealer without a license shall be fined not more than ten thousand dollars (\$10,000) for each violation, not to exceed a total of five hundred thousand dollars (\$500,000), or imprisoned for at least one (1) but not more than five (5) years, or both.

(3) Any person who intentionally refuses or fails to pay moneys collected for assessment of grain under the Kentucky grain insurance fund as set forth in KRS 251.640 shall be subject to a fine of not more than five hundred dollars (\$500), or imprisoned for not more than six (6) months, or both.

(4) Any person who fails to comply with the requirement in KRS 251.375 to maintain at all times grain in storage, rights in grain, proceeds from the sale of grain, or a combination of the grain, rights, and proceeds equal to eighty percent (80%) of the value of a licensed grain storage establishment's unpaid obligations to producers for grain delivered under a forward pricing contract shall be fined not more than ten thousand dollars (\$10,000) for each violation, not to exceed a total of five hundred thousand dollars (\$500,000), or imprisoned for at least one (1) year but not more than five (5) years, or both.

(5) Any person who knowingly makes any false statement, representation, or certification, or who knowingly fails to make any statement, representation, or certification in any record, report, or other document shall be fined not more than one thousand dollars (\$1,000) for each violation, not to exceed a total of five hundred thousand dollars (\$500,000), or imprisoned for at least one (1) year but not more than five (5) years, or both.

(6) Any person who transfers or disburses grain, property, or assets in violation of a provision of this chapter shall be fined not more than ten thousand dollars (\$10,000) for each violation, not to exceed a total of five hundred thousand dollars (\$500,000), or be imprisoned for at least one (1) year but not more than five (5) years, or both.

(7) Except as permitted by law, any person who willfully and knowingly resists, prevents, impedes, or interferes with a representative of the board or the department in performance of the duties assigned by a provision of this chapter, shall upon conviction be fined not more than five thousand dollars (\$5,000) for each violation, or imprisoned for not more than one (1) year, or both.

(8) If a business entity violates any provision of this chapter, or if it fails or refuses to comply with any lawful order issued by a representative of the board or the department, then any director, officer, or agent of the business entity who willfully and knowingly authorized, ordered, or carried out the violation, failed, or refused to comply with the lawful order shall be subject to the same penalties, fines, and imprisonment as may be imposed upon a person in accordance with this section.

(9) Any person who fails to renew a license within the time frame required by KRS 251.355 shall be fined one hundred fifty dollars (\$150).

(10) All fines or penalties collected from violators of the provisions of this chapter shall be used to carry out the provisions of this chapter.

359.200. Definitions for KRS 359.210 to 359.250.

As used in KRS 359.210 to 359.250, unless the context clearly requires otherwise:

(1) "Self-service storage facility" means any real property used for renting or leasing individual storage spaces in which the occupants themselves customarily store and remove their own personal property on a "self-service" basis;

(2) "Rental agreement" means any written agreement that establishes or modifies the terms, conditions, or rules concerning the use and occupancy of a self-service storage facility or self-contained storage unit;

(3) "Leased space" means the individual storage space at a self-service storage facility or in a self-contained storage unit which is rented to an occupant pursuant to a rental agreement;

(4) "Occupant" means a person, a sublessee, successor, or assign, entitled to the use of a leased space at a self-service storage facility or in a self-contained storage unit under a rental agreement;

(5) "Operator" means the owner, operator, lessor, or sublessor of a self-service storage facility or a self-contained storage unit, or an agent or any other person authorized to manage the facility or storage unit, but does not mean a warehouseman, unless the operator issues a warehouse receipt, bill of lading, or other document of title for the personal property stored;

(6) "Personal property" means movable property located within leased space at a self-service storage facility or in a self-contained storage unit and includes but is not limited to goods, wares, merchandise, motor vehicles, watercraft, and household items and furnishings;

(7) "Default" means the failure to perform on time any obligation or duty set forth in the rental agreement;

(8) "Last known address" means that postal address or electronic mail address provided by the occupant in the latest rental agreement or the postal address or electronic mail address provided by the occupant in a subsequent written notice of a change of address;

(9) "Self-contained storage unit" means any unit, including but not limited to a trailer, box, or other shipping container, which is leased by an occupant primarily for use as a storage space, whether the unit is located at a self-service storage facility or at another location designated by the occupant;

(10) "Verified electronic mail" means an electronic message or an executable program or computer file that is transmitted between two (2) or more computers or electronic terminals that the sender has verified by any reasonable means as being a working electronic mail address. The term includes electronic messages that are transmitted within or between computer networks; and

(11) "Verified mail" means any method of mailing that is offered by the United States Postal Service or private delivery service that provides evidence of mailing.

359.210. Prohibition on using leased spaces for residential purposes.

(1) An operator shall not knowingly permit a leased space at a self-service storage facility or in a self-contained storage unit to be used for residential purposes.

(2) An occupant shall not use a leased space at a self-service storage facility or in a self-contained storage unit for residential purposes.

359.215. Late fees and other reasonable expense incurred in rent collection or lien enforcement.

(1) A reasonable late fee may be imposed and collected by an owner for each service period that an occupant does not pay rent when due under a rental agreement, provided that the due date for the rental payment is not earlier than the day before the first day of the service period to which the rental payment applies. No late payment fee shall be assessed unless the rental fee remains unpaid for at least five (5) days after the date specified within the rental agreement for the payment of the rental fee.

(2) No late fee may be collected pursuant to this section unless the amount of the fee and the conditions for imposing the fee are stated in the rental agreement or in an addendum to that agreement.

(3) For the purposes of this section, a late fee of twenty dollars (\$20) or twenty percent (20%) of the rental fee for each month an occupant does not pay rent, whichever is greater, is deemed reasonable and does not constitute a penalty.

(4) Any reasonable expense incurred as a result of rent collection or lien enforcement by an owner may be charged to the occupant in addition to the late fees permitted by this section.

359.220. Lien on stored property held by operator of facility — Notice provisions in rental agreement.

(1) The operator of a self-service storage facility or self-contained storage unit shall have a lien on all personal property stored within each leased space for rent, labor, or other charges, and for expenses reasonably incurred in its sale, as provided in KRS 359.200 to 359.250.

(2) The rental agreement shall contain a statement, in bold type, advising the occupant:

(a) Of the existence of the lien; and

(b) That property stored in the leased space may be sold to satisfy the lien if the occupant is in default.

359.230. Enforcement of lien against occupant in default — Requirements prior to conduct of sale — Redemption by occupant — Application of proceeds — Rights of purchaser — Limitation on liability of operator — Stored personal property value limit — Alternative to sale of motor vehicle subject of default of more than sixty days.

(1)

(a) If the occupant is in default for a period of more than forty-five (45) days, the operator may enforce a lien by selling the property stored in the leased space at a public or private sale, for cash.

(b) Proceeds shall then be applied to satisfy the lien, with any surplus disbursed as provided in subsection (5) of this section.

(2) Before conducting a sale under subsection (1) of this section, the operator shall:

(a) Notify the occupant of the default by regular or verified electronic mail at the occupant's last known address;

(b) Send a second notice of default by verified mail or verified electronic mail to the occupant at the occupant's last known address which includes:

1. A statement that the contents of the occupant's leased space are subject to the operator's lien;

2. A statement of the operator's claim, indicating the charges due on the date of the notice, the amount of any additional charges which shall become due before the date of sale, and the date those additional charges shall become due;

3. A demand for payment of the charges due within a specified time, not less than fourteen (14) days after the date of the notice;

4. A statement that unless the claim is paid within the time stated, the contents of the occupant's leased space shall be sold at a specified time and place; and

5. The name, street address, and telephone number of the operator, or his or her designated agent, whom the occupant may contact to respond to the notice; and

(c) At least three (3) days before the sale, advertise the time, place, and terms of the sale in a newspaper of general circulation in the jurisdiction where the sale is to be held.

(3) At any time before a sale under this section, the occupant may pay the amount necessary to satisfy the lien and redeem the occupant's personal property.

(4) The sale under this section shall be held at the self-service storage facility, the location of the self-contained storage unit where the personal property is stored, or a publicly accessible Web site.

(5) If a sale is held under this section, the operator shall:

(a) Satisfy the lien from the proceeds of the sale;

(b) Hold the balance, if any, for delivery to any other recorded lienholders who present claims within sixty (60) days. Notwithstanding Article 9 of KRS Chapter 355, claims shall be satisfied on a first come first served basis; and

(c) Deliver, upon expiration of sixty (60) days, the balance of any remaining proceeds to the occupant.

(6) A purchaser in good faith of any personal property sold under KRS 359.200 to 359.250 takes the property free and clear of any rights of:

(a) Persons against whom the lien was valid; and

(b) Other lienholders.

(7) If the operator complies with the provisions of KRS 359.200 to 359.250, the operator's liability:

(a) To the occupant shall be limited to the net proceeds received from the sale of the personal property;

(b) To other lienholders shall be limited to the net proceeds received from the sale of any personal property covered by that other lien; and

(c) To the occupant or valid lienholders shall be relieved upon full distribution of proceeds in accordance with the provisions of KRS 359.200 to 359.250.

(8) If an occupant is in default, the operator may deny the occupant access to the leased space.

(9)

(a) Unless otherwise specifically provided, all notices required by KRS 359.200 to 359.250 shall be sent by verified mail or verified electronic mail.

(b)

1. Notices sent to the operator shall be sent to the operator's principal office, as listed on the rental agreement.

2. Notices to the occupant shall be sent to the occupant at the occupant's last known address.

(c) Notices shall be deemed delivered when deposited with the United States Postal Service, properly addressed as provided in paragraph (b) of this subsection, with postage paid, or sent by verified electronic mail.

(10) Provided, however, unless the rental agreement specifically provides otherwise and until a lien sale under KRS 359.200 to 359.250, the exclusive care, custody, and control of all personal property stored in the leased space shall remain vested in the occupant.

(11) If the rental agreement specifies a limit on the value of the personal property that may be stored in the occupant's leased space, the limit shall be deemed to be the maximum value of the stored personal property.

(12) If the occupant is in default for more than sixty (60) days and the personal property stored in the leased space is a motor vehicle as defined in KRS 376.268, the operator may, in lieu of a sale authorized in this chapter, have the vehicle or watercraft towed or removed from the self-service storage facility, and the towing company shall execute the notice provisions as specified in KRS 376.275.

359.240. Pre-existing rental agreements unaffected.

All rental agreements, entered into before July 15, 1988, which have not been extended or renewed after July 15, 1988, shall remain valid and may be enforced or terminated in accordance with their terms or as permitted by any other statute or law of this state.

359.250. Short title.

KRS 359.200 to 359.250 shall be known as the "Kentucky Self-Service Storage Act of 1988."

363.330. Registration requirement for commercial weighing and measuring device repairmen and service agencies — Administrative hearing — Administrative regulations.

(1) As used in this section, unless the context requires otherwise:

(a) "Commercial weighing and measuring device" means any weight or measure or weighing or measuring device commercially used or employed in establishing the size, quantity, extent, area, or measurement of quantities, things, produce, or articles for distribution or consumption, purchased, offered, or submitted for sale, hire, or award, or in computing any basis of weight or measure, and also includes any accessory attached to or used in connection with a commercial weighing or measuring device when the accessory is so designed or installed that its operation affects, or may affect, the accuracy of the device;

(b) "Director" means the director of the Division of Regulation and Inspection;

(c) "Registered serviceman" means any individual who for hire, award, commission, or any other payment of any kind, installs, services, repairs, or reconditions a commercial weighing or measuring device, and who registers with the director; and

(d) "Registered service agency" means any agency, firm, company, or corporation which for hire, award, commission, or any other payment of any kind, installs, services, repairs, or reconditions a commercial weighing or measuring device, and which registers with the director. Under agency registration, identification of individual servicemen shall be required.

(2) The director shall require the registration of an individual or agency and shall require the individual or agency to provide acceptable evidence that he or it is fully qualified to install, service, repair, or recondition a commercial weighing or measuring device; has a thorough working knowledge of all appropriate weights and measures laws, orders, and administrative regulations; and has possession of, or available for use, weights and measures standards and testing equipment appropriate in design and adequate in amount. An employee of government shall not be eligible for registration.

(3) The director may enter into an informal reciprocal agreement with any other state that has similar registration policies. Under a reciprocal agreement, registered servicemen and registered service agencies of the states party to the reciprocal agreement shall be granted full reciprocal authority, including reciprocal recognition of certification of standards and testing equipment, in all states party to the agreement.

(4) There shall be an annual fee of twenty dollars (\$20) per registered serviceman and fifty dollars (\$50) per registered service agency to be applied toward the costs of administering the plan. The fee shall be paid to the director at the time application for registration is made, and annually, during the month of January, thereafter.

(5) An individual or agency shall apply for registration to service weighing devices or measuring devices on an application form supplied by the director. The form, duly signed and witnessed, shall include certification by the applicant that the individual or agency is fully qualified to install, service, repair, or recondition whatever devices for the service of which competence is being registered; has in possession, or available for use, all necessary testing equipment and

standards; and has full knowledge of all appropriate weights and measures laws, orders, and administrative regulations. An applicant also shall submit appropriate evidence or references as to qualifications. The director may require competency testing of service individuals as the director deems necessary.

(6) Upon receipt and acceptance of a properly executed application form, and with proof of competency, the director shall issue to the applicant a "certificate of registration," including an assigned registration number, which shall remain effective until either returned by the applicant or withdrawn by the director.

(7) Only a bearer of a certificate of registration shall have the authority to remove an official rejection tag or mark placed on a weighing or measuring device by the authority of the director; place in service, until an official examination can be made, a weighing or measuring device that has been officially rejected; or place in service, until an official examination can be made, a new or used weighing or measuring device.

(8) The director shall furnish each registered serviceman and registered service agency with a supply of report forms to be known as "Placed in Service Reports." This form shall be executed in triplicate, shall include the assigned registration number, and shall be signed by a registered serviceman or by a serviceman representing a registered agency for each rejected device restored to service and for each newly installed device placed in service. Within twenty-four (24) hours after a device is restored to service, or placed in service, the original of the properly executed "Placed in Service Report," together with any official rejection tag removed from the device, shall be mailed to the director at Frankfort, Kentucky. The duplicate copy of the report shall be handed to the owner or operator of the device, and the triplicate copy of the report shall be retained by the registered serviceman or agency.

(9) A registered serviceman and a registered service agency shall submit, at least biennially to the director, for his examination and certification, any standards and testing equipment that are used, or are to be used, in the performance of the service and testing functions with respect to weighing and measuring devices for which competence is registered. A registered serviceman or agency shall not use in servicing commercial weighing or measuring devices any standards of testing equipment that have not been certified by the director.

(10) The director may, for good cause, after careful investigation and consideration, and after the registrant has been afforded the opportunity for an administrative hearing conducted in accordance with KRS Chapter 13B, suspend or revoke a "certificate of registration."

(11) The director shall publish from time to time as he deems appropriate, and may supply upon request, lists of registered servicemen and registered service agencies.

(12) The director may promulgate administrative regulations to carry out the provisions of this section.

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.

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.

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.

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.

363.510. Definitions for KRS 363.510 to 363.850.

When used in KRS 363.510 to 363.850:

- (1) "Department" means the Kentucky Department of Agriculture;
- (2) "Commissioner" means the Commissioner of Agriculture;
- (3) "Division" means the Division of Regulation and Inspection;
- (4)
 - (a) "Weights and measures" means all weights and measures of every kind, instruments and devices for weighing and measuring, and any appliances and accessories associated with any of the instruments and devices.
 - (b) The term shall include instruments and devices used to measure internal moisture or density levels in unprocessed bulk tobacco if that moisture or density determination is used as a condition of sale or as part of a contractual sales agreement.
 - (c) The term shall not include meters for the measurement of electricity, gas (natural or manufactured), or water when they are operated in a public utility system. Electricity, gas, and water meters are specifically excluded from the purview of KRS 363.510 to 363.850, and none of the provisions of KRS 363.510 to 363.850 shall apply to those meters or to any appliances or accessories associated with those meters;
- (5) "Sell" and "sale" mean barter and exchange;
- (6) "Director" means the state director of the Division of Regulation and Inspection;
- (7) "Inspector" means a state inspector of weights and measures;
- (8) "Intrastate commerce" means all commerce or trade that is begun, carried on, and completed wholly within the limits of the State of Kentucky, and the phrase "introduced into intrastate commerce" defines the time and place at which the first sale and delivery of a commodity is made within the state, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser;
- (9) "Commodity in package form" means a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive of any auxiliary shipping container enclosing packages that individually conform to the requirements of KRS 363.510 to 363.850. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per unit of weight or of measure, shall be considered a commodity in package form;
- (10) "Consumer package" or "package of consumer commodity" means a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions;
- (11) "Nonconsumer package" or "package of nonconsumer commodity" means any commodity in package form other than a consumer package, and particularly a package designed solely for industrial or institutional use or for wholesale distribution only;
- (12)

(a) "Barrel," when used in connection with fermented liquor, means a unit of thirty-one (31) gallons.

(b) "Ton" means a unit of two thousand (2,000) pounds avoirdupois weight.

(c) "Cord," when used in connection with wood intended for fuel purposes, means the amount of wood that is contained in a space of one hundred twenty-eight (128) cubic feet when the wood is ranked and well stowed; and

(13) "Weight," as used in connection with any commodity, means net weight. If any commodity is sold on the basis of weight, the net weight of the commodity shall be used, and all contracts concerning commodities shall use net weight as their basis of weight.

363.520. Recognition of customary and metric systems of weights and measures.

The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one (1) or both of these systems shall be used for all commercial purposes in the State of Kentucky. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents as published by the National Institute of Standards and Technology are recognized and shall govern weighing and measuring equipment and transactions in the state.

363.530. Fractional units of weight and measure.

Fractional parts of any unit of weight or measure shall mean like fractional parts of the value of the unit as prescribed or defined in KRS 363.520 and subsection (13) of KRS 363.510, and all contracts concerning the sale of commodities and services shall be construed in accordance with this requirement.

363.540. State standards of weights and measures.

The state shall have weights and measures that conform with the standards of the United States and that have been approved as being satisfactory for use by the National Institute of Standards and Technology. These weights and measures shall be the state standards of weight and measure. The state standards shall be kept in a safe and suitable place in the laboratory of the State Division of Regulation and Inspection, and shall not be removed from the laboratory except for repairs or for calibration and approval.

363.550. Field standards.

In addition to the state standards provided for in KRS 363.540, there shall be supplied by the state such "field standards" and such equipment as may be found necessary to carry out the provisions of KRS 363.510 to 363.850. The field standards shall be verified upon their initial receipt and, thereafter, as often as deemed necessary by the director by comparison with the state standards.

363.555. Administrative regulations — Unprocessed bulk tobacco.

The Commissioner may promulgate administrative regulations relating to servicing or inspecting instruments and devices used to measure internal moisture or density levels in unprocessed bulk tobacco as described in KRS 363.510.

363.560. Administration of law.

The power and duty to administer and enforce KRS 363.510 to 363.850 is vested in the Department of Agriculture, and shall be exercised under the supervision of the Office for Consumer and Environmental Protection through the Division of Regulation and Inspection. The division shall be headed by a director appointed by the Commissioner of Agriculture and shall have personnel as determined and appointed by the Commissioner.

363.570. Director's bond.

A bond, with sureties, to be approved by the Secretary of State, and conditioned upon the faithful performance of his duties and the safekeeping of any standards or equipment entrusted to his care, shall forthwith, upon his appointment, be given by the director in the penal sum of \$5,000.

363.580. Director's duties.

The director shall have the custody of the state standards of weight and measure and of the other standards and equipment provided for by KRS 363.510 to 363.850, and shall keep accurate records of the same. The director shall enforce the provisions of KRS 363.510 to 363.850. He shall have and keep a general supervision over the weights and measures offered for sale, sold, or in use in the state. He shall annually, in the month of July, make to the commissioner a report on all of the activities of his office.

363.590. Regulations of director — Specifications for commercial devices.

(1) The director shall issue from time to time reasonable regulations for the enforcement of KRS 363.510 to 363.850, which regulations shall have the force and effect of law. These regulations may include:

- (a) Standards of net weight, measure, or count, and reasonable standards of fill for any commodity in package form;
- (b) Rules governing the technical and reporting procedures to be followed and the report and record forms and marks of approval and rejection to be used by inspectors of weights and measures in the discharge of their official duties;
- (c) Exemptions from the sealing or marking requirements of KRS 363.650 with respect to weights and measures of the character or size that the sealing or marking would be inappropriate, impracticable, or damaging to the apparatus in question;
- (d) Rules governing the registration of servicemen and service agencies; and
- (e) Rules governing the examination procedure for price verification.

(2) These regulations shall include specifications, tolerances, and other technical requirements for weights and measures of the character of those specified in KRS 363.610, designed to eliminate from use without prejudice to apparatus that conforms as closely as practicable to the official standards, those:

- (a) That are not accurate;
- (b) That are of such construction that they are faulty (that is, that are not reasonably permanent in their adjustment or will not repeat their indications correctly); or

(c) That facilitate the perpetration of fraud.

(3) The specifications, tolerances, and other technical requirements for commercial weighing and measuring devices, together with amendments to those requirements, as recommended by the National Institute of Standards and Technology and published in the most recent editions of the National Institute of Standards and Technology handbooks and supplements to the handbooks, or in any publication revising or superseding the handbooks or supplements to the handbooks, shall be the specifications, tolerances, and other technical requirements for commercial weighing and measuring devices of the State of Kentucky, unless modified, amended, or rejected by a regulation issued by the director. For the purposes of KRS 363.510 to 363.850, apparatus shall be deemed to be "correct" when it conforms to all applicable requirements promulgated as specified in this section. Other apparatus shall be deemed to be "incorrect."

363.600. Periodic testing of standards.

The director shall from time to time test all weights and measures used in checking the receipt or disbursement of supplies in every institution for the maintenance of which moneys are appropriated by the legislature, reporting his findings, in writing, to the supervisory board and the executive officer of the institution concerned.

363.610. Testing devices for sale and in use.

When not otherwise provided by law, the director shall have the power to inspect and test, to ascertain if they are correct, all weights and measures kept, offered, or exposed for sale. It shall be the duty of the director, within a twelve-month period, or less frequently if in accordance with a schedule issued by him, and as much oftener as he may deem necessary, to inspect and test to ascertain if they are correct, all weights and measures commercially used:

(1) In determining the weight, measurement, or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure, or of count, or

(2) In computing the basic charge or payment for services rendered on the basis of weight, measure, or of count.

Provided, that with respect to single-service devices (that is, devices designed to be used commercially only once and to be then discarded) and with respect to devices uniformly mass-produced, as by means of a mold or die, and not susceptible of individual adjustment, tests may be made on representative samples of such devices; and the lots of which such samples are representative shall be held to be correct or incorrect upon the basis of the results of the inspections and tests on such samples.

363.620. Director's investigations.

The director shall investigate complaints made to him concerning violations of the provisions of KRS 363.510 to 363.850, and shall, upon his own initiative, conduct such investigations as he deems appropriate and advisable to develop information on prevailing procedures in commercial quantity determination and on possible violations of the provisions of KRS 363.510 to 363.850 and to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

363.630. Spot checks of commodities offered for sale.

The director shall, from time to time, weigh or measure and inspect packages or amounts of commodities kept, offered, or exposed for sale, sold, or in the process of delivery, to determine whether the same contain the amounts represented and whether they be kept, offered, or exposed for sale or sold in accordance with law. When such packages or amounts of commodities are found not to contain the amounts represented, or are found to be kept, offered, or exposed for sale in violation of law, the director may order them off sale and may so mark or tag them as to show them to be illegal. In carrying out the provisions of this section, the director may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of the result obtained on a sample selected from and representative of such lot. No person shall:

- (1) Sell, or keep, offer, or expose for sale, in intrastate commerce, any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section unless and until such package or amount of commodity has been brought into full compliance with all legal requirements, or
- (2) Dispose of any package or amount of commodity that has been ordered off sale or marked or tagged as provided in this section and that has not been brought into compliance with legal requirements, in any manner, except with the specific approval of the director.

363.640. Stop-use, stop-removal and removal orders.

The director shall have the power to issue stop-use orders, stop-removal orders, and removal orders with respect to weights and measures being, or susceptible of being, commercially used, and to issue stop-removal orders and removal orders with respect to packages or amounts of commodities kept, offered, or exposed for sale, sold, or in process of delivery, whenever in the course of his enforcement of the provisions of KRS 363.510 to 363.850 he deems it necessary or expedient to issue such orders, and no person shall use, remove from the premises specified, or fail to remove from the premises specified, any weight, measure, or package or amount of commodity contrary to the terms of a stop-use order, stop-removal order, or removal order issued under the authority of this section.

363.650. Approval or rejection of tested weights and measures.

The director shall approve for use, and seal or mark with appropriate devices, such weights and measures as he finds upon inspection and test to be correct as defined in KRS 363.590, and shall reject and mark or tag as "rejected" such weights and measures as he finds, upon inspection or test, to be incorrect as defined in KRS 363.590, but which in his best judgment are susceptible of satisfactory repair: provided, that such sealing or marking shall not be required with respect to such weights and measures as may be exempted therefrom by a regulation of the director issued under the authority of KRS 363.590. The director shall condemn, and may seize and destroy, weights and measures found to be incorrect that, in his best judgment, are not susceptible of satisfactory repair. Weights and measures that have been rejected may be confiscated and may be destroyed by the director if not correct as required by KRS 363.700, or if used or disposed of contrary to the requirements of KRS 363.700.

363.660. Police powers of director.

With respect to the enforcement of KRS 363.510 to 363.850 and any other law dealing with weights and measures that he is or may be empowered to enforce, the director is hereby vested

with special police powers, and is authorized to arrest, without formal warrant, any violator of the said law, and to seize for use as evidence, without formal warrant, incorrect or unsealed weights and measures or amounts or packages of commodity found to be used, retained, offered, or exposed for sale or sold in violation of law. In the performance of his official duties, the director is authorized to enter and go into or upon, without formal warrant, any structure or premises, and to stop any person whatsoever and to require him to proceed, with or without any vehicle of which he may be in charge, to some place which the director may specify.

363.670. Director's powers extend to deputy, inspectors.

The powers and duties given to and imposed upon the director by KRS 363.600 to 363.660 and KRS 363.810 are hereby given to and imposed upon the deputy director and inspectors also when acting under the instructions and at the direction of the director.

363.700. Provisions as to rejected weights and measures.

Weights and measures that have been rejected under the authority of the director or of a sealer shall remain subject to the control of the rejecting authority until such time as suitable repair or disposition thereof has been made as required by this section. The owners of such rejected weights and measures shall cause the same to be made correct within thirty (30) days or such shorter period as may be authorized by the rejecting authority; or, in lieu of this, may dispose of the same, but only in such manner as is specifically authorized by the rejecting authority. Weights and measures that have been rejected shall not again be used commercially until they have been officially reexamined and found to be correct, or until specific written permission for such use is issued by the rejecting authority, or until the rejection tag has been removed and the rejected device repaired and placed in service by a person duly registered to perform such acts under a regulation issued by the director for the registration of weights and measures servicemen and service agencies.

363.710. Provisions for weights and measures for liquid, solid form.

(1) Commodities in liquid form shall be sold only by liquid measure or by weight, and, except as otherwise provided in KRS 363.510 to 363.850, commodities not in liquid form shall be sold only by weight, by measure of length or area, or by count: provided, that liquid commodities may be sold by weight, and commodities not in liquid form may be sold by count only if such methods give accurate information as to the quantity of commodity sold; and provided further, that the provisions of this section shall not apply:

- (a) To commodities when sold for immediate consumption on the premises where sold,
- (b) To vegetables when sold by head or bunch,
- (c) To commodities in containers standardized by a law of this state or by federal law,
- (d) To commodities in package form when there exists a general consumer usage to express the quantity in some other manner,
- (e) To concrete aggregates, concrete mixtures, and loose solid materials such as earth, soil, gravel, crushed stone, and the like, when sold by cubic measure, or
- (f) To unprocessed vegetable and animal fertilizer when sold by cubic measure.

(2) The director may issue such reasonable regulations as are necessary to assure that amounts of commodity sold are determined in accordance with good commercial practice and are so determined and represented as to be accurate and informative to all parties at interest.

363.720. Provisions as to packaged commodities.

Except as otherwise provided in KRS 363.510 to 363.850, any commodity in package form introduced or delivered for introduction into or received in intrastate commerce, kept for the purpose of sale, or offered or exposed for sale in intrastate commerce, shall bear on the outside of the package such definite, plain, and conspicuous declarations of:

- (1) The identity of the commodity in the package unless the same can easily be identified through the wrapper or container,
- (2) The net quantity of the contents in terms of weight, measure, or count, and
- (3) In the case of any package kept, offered, or exposed for sale, or sold in any place other than on the premises where packed, the name and place of business of the manufacturer, packer, or distributor, as may be prescribed by regulation issued by the director.

Provided, that in connection with the declaration required under subsection (2) of this section, neither the qualifying term “when packed” or any words of similar import, nor any term qualifying a unit of weight, measure, or count (for example, “jumbo,” “giant,” “full,” and the like) that tends to exaggerate the amount of commodity in a package shall be used; and provided further, that under subsection (2) of this section the director shall, by regulation, establish reasonable variations to be allowed, which may include variations below the declared weight or measure caused by ordinary and customary exposure, only after the commodity is introduced into intrastate commerce, to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure, exemptions as to small packages, and exemptions as to commodities put up in variable weights or sizes for sale intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the consumer.

363.730. Package in random lot to show price per unit.

In addition to the declarations required by KRS 363.720, any commodity in package form, the package being one (1) of a lot containing random weights, measures, or counts of the same commodity and bearing the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure, or count.

363.740. Commodity package to be full.

No commodity in package form shall be so wrapped, nor shall it be in a container so made, formed, or filled as to mislead the purchaser as to the quantity of the contents of the package, and the contents of a container shall not fall below such reasonable standard of fill as may have been prescribed for the commodity in question by the director.

363.750. Advertisement containing price also to contain quantity.

Whenever a commodity in package form is advertised in any manner and the retail price of the package is stated in the advertisement, there shall be closely and conspicuously associated with such statement of price a declaration of the basic quantity of contents of the package as is

required by law or regulation to appear on the package: provided, that, where the law or regulation requires a dual declaration of net quantity to appear on the package, only the declaration that sets forth the quantity in terms of the smaller unit of weight or measure (the declaration that is required to appear first and without parentheses on the package) need appear in the advertisement; and provided further, that there shall not be included as part of the declaration required under this section such qualifying terms as “when packed,” “minimum,” “not less than,” or any other terms of similar import, nor any term qualifying a unit of weight, measure, or count (for example, “jumbo,” “giant,” “full,” and the like) that tends to exaggerate the amount of commodity in the package.

363.760. Misrepresentation of price prohibited — Handling of fractions of cent.

Whenever any commodity or service is sold, or is offered, exposed, or advertised for sale, by weight, measure, or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser. Whenever an advertised, posted, or labeled price per unit of weight, measure, or count includes a fraction of a cent, all elements of the fraction shall be prominently displayed and the numeral or numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least one-half ($\frac{1}{2}$) the height and width of the numerals representing the whole cents.

363.770. Meat, poultry, seafood to be sold by weight only.

Except for immediate consumption on the premises where sold, or as one (1) of several elements comprising a ready-to-eat meat sold as a unit for consumption elsewhere than on the premises where sold, all meat, meat products, poultry (whole or parts), and all seafood except shellfish, offered or exposed for sale or sold as food shall be offered or exposed for sale and sold by weight. When meat, poultry, or seafood is combined with or associated with some other food element or elements to form either a distinctive food product or a food combination, such food product or combination shall be offered or exposed for sale and sold by weight, and the quantity representation may be the total weight of the product or combination, and a quantity representation need not be made for each of the several elements of the product or combination: provided, that, for ready-to-cook, whole carcass, stuffed poultry, ready-to-cook stuffed poultry roasts, rolls, bars, and logs, and ready-to-cook stuffed poultry products designated by terms of similar import, the label must show the total net weight of the poultry product and, in proximity thereto, a statement specifying the minimum weight of poultry in the product.

363.780. Rules for delivery of bulk commodity sold by weight.

When a vehicle delivers to an individual purchaser a commodity in bulk, and the commodity is sold in terms of weight units, the delivery shall be accompanied by a duplicate delivery ticket with the following information clearly stated, in ink or by means of other indelible marking equipment and, in clarity, equal to type or printing:

- (1) The name and address of the vendor,
- (2) The name and address of the purchaser, and
- (3) The net weight of the delivery expressed in pounds, and, if the net weight is derived from determinations of gross and tare weights, such gross and tare weights also shall be stated in terms of pounds.

One of these tickets shall be retained by the vendor, and the other shall be delivered to the purchaser at the time of delivery of the commodity, or shall be surrendered, on demand, to the director, or the deputy director or the inspector, or the sealer or deputy sealer, who, if he desires to retain it as evidence shall issue a weight slip in lieu thereof for delivery to the purchaser; provided, that if the purchaser, himself, carries away his purchase, the vendor shall be required only to give to the purchaser at the time of sale a delivery ticket stating the number of pounds of commodity delivered to him.

363.790. Rules for sale of fuel oil.

All furnace and stove oil shall be sold by liquid measure or by net weight in accordance with the provisions of KRS 363.710. In the case of each delivery of such liquid fuel not in package form and in an amount greater than ten (10) gallons in the case of sale by liquid measure or 100 pounds in the case of sale by weight, there shall be rendered to the purchaser, either at the time of delivery or within a period mutually agreed upon in writing or otherwise between the vendor and the purchaser, a delivery ticket or a written statement on which, in ink or by means of other indelible marking equipment and, in clarity, equal to type or printing, there shall be clearly stated:

- (1) The name and address of the vendor,
- (2) The name and address of the purchaser,
- (3) The identity of the type of fuel comprising the delivery,
- (4) The unit price (that is, the price per gallon or per pound, as the case may be) of the fuel delivered,
- (5) In the case of sale by liquid measure, the liquid volume of the delivery, together with any meter readings from which such liquid volume has been computed, expressed in terms of the gallon and its binary or decimal subdivisions, and
- (6) In the case of sale by weight, the net weight of the delivery, together with any weighing scale readings from which such net weight has been computed, expressed in terms of tons or pounds avoirdupois.

363.800. Sale of berries, small fruits.

Berries and small fruits shall be offered and exposed for sale and sold by weight, or by measure in open containers having capacities of one-half ($\frac{1}{2}$) dry pint, one (1) dry pint, or one (1) dry quart; provided, that the marking provisions of KRS 363.720 shall not apply to such containers.

363.810. Injunctions.

The director is authorized to apply to any court of competent jurisdiction for, and such court upon hearing and for cause shown may grant, a temporary or permanent injunction restraining any person from violating any provision of KRS 363.510 to 363.850.

363.820. Presumption as to weight or measure found in or about sale area.

For the purposes of KRS 363.510 to 363.850, proof of the existence of a weight or measure or a weighing or measuring device in or about any building, enclosure, stand, or vehicle in which or from which it is shown that buying or selling is commonly carried on, shall, in the absence of conclusive evidence to the contrary, be presumptive proof of the regular use of such weight or

measure or weighing or measuring device for commercial purposes and of such use by the person in charge of such building, enclosure, stand, or vehicle.

363.830. Existence of other law does not prevent prosecution under KRS 363.510 to 363.850.

Prosecutions for violation of any provision of KRS 363.510 to 363.850 are declared to be valid and proper, notwithstanding the existence of any other valid general or specific law of this state dealing with matters that may be the same as or similar to those covered by KRS 363.510 to 363.850.

363.840. State food and drug law not affected.

Nothing contained in KRS 363.510 to 363.850 shall be construed as amending, repealing, or superseding any provision of KRS 217.005 to 217.215 (the Kentucky Food, Drug and Cosmetic Act) or the regulations adopted thereunder by the secretary for health and family services.

363.850. Citation.

KRS 363.510 to 363.850 may be cited as the "Weights and Measures Act of Kentucky."

363.900 Definitions for KRS 363.900 to 363.908

As used in KRS 363.900 to 363.908, unless the context clearly requires otherwise:

- (1) "ASTM standard" means the latest standards and specifications as set forth by the American Society for Testing and Materials in accordance with the most recent version of ASTM specifications for automotive gasoline, or ASTM specifications for diesel fuel oils;
- (2) "Commissioner" means the Commissioner of Agriculture or a departmental employee designated by the Commissioner to act on his behalf for the purposes of KRS 363.900 to 363.908;
- (3) "Department" means the Kentucky Department of Agriculture;
- (4) "Diesel fuel" means refined oil commonly used in internal combustion engines and defined as diesel fuel under the ASTM standard classification of diesel fuel oils;
- (5) "Division" means the Division of Regulation and Inspection in the Kentucky Department of Agriculture;
- (6) "Gasoline" means gasoline as defined in KRS 138.210;
- (7) "Motor fuel" means any product used for the generation of power in an internal combustion or turbine engine and includes gasoline, diesel fuel, or gasoline-alcohol blend fuels; and
- (8) "Retail facility" means a facility that sells motor fuels to the general public.

363.902 Motor fuels inspection and testing program; applicability of American Society for Testing and Materials standards; administrative regulations

- (1) The Commissioner or his authorized agent shall implement and administer an inspection and testing program for motor fuels to ensure compliance with KRS 363.900 to 363.908.

(2) For the purposes of administering and giving effect to the provisions of KRS 363.900 to 363.908, the standards set forth in the annual book of ASTM standards, supplements, and revisions shall be applied.

(3) In administering KRS 363.900 to 363.908, the department shall conform to any provisions of federal law or regulations which impose requirements in conflict with the ASTM standard.

(4) The department may promulgate administrative regulations to implement and enforce KRS 363.900 to 363.908.

363.9051 Legislative findings

The General Assembly finds that the fuel additive methyl tertiary butyl ether, known as MTBE, as a result of leaks in underground storage tanks, has contaminated groundwater in California and other states to such an extent that it has been banned in those states. The legislature further finds that, because Kentuckians rely on groundwater to a great extent both for drinking water and for industrial and agricultural purposes, the continued use of MTBE poses an unacceptable threat to public health.

363.9053 Use of methyl tertiary butyl ether as fuel additive

(1) Beginning on January 1, 2006, the use of methyl tertiary butyl ether, known as MTBE, as a fuel additive shall be illegal in the Commonwealth of Kentucky. Importation, sale, or storage of fuel containing MTBE shall be unlawful after that date.

(2) Beginning on January 1, 2004, the General Assembly strongly encourages that all reformulated gasoline sold or offered for sale in the Commonwealth utilize domestically produced ethanol in place of MTBE or other gasoline additives.

(3) In order to allow for an orderly transition, trace amounts of MTBE, not to exceed one-half of one percent (0.5%) by volume, will be allowed in gasoline.

363.9055 Use of biodiesel fuel blends encouraged

(1) As used in this section, "biodiesel fuel" means a biodegradable, combustible liquid fuel derived from renewable fats and vegetable oils that meets ASTM specification PS 121-99 and is suitable for blending with petroleum-based diesel fuel for use in diesel engines.

(2) The General Assembly strongly encourages that, beginning on January 1, 2006, all diesel fuel sold or offered for sale in the Commonwealth and reformulated to achieve federally mandated sulfur reduction requirements use biodiesel in a blend not less than two percent (2%) by volume to meet those requirements.

363.906 Annual fee; account in State Treasury for fees; nonlapsing of unexpended money

The department shall levy and collect annual fees in the amount of fifty dollars (\$50) per facility from the owner or operator of a retail facility for the purpose of funding the administration of the motor fuels quality program. The fees shall be deposited into an interest-bearing account in the State Treasury. Money unexpended at the close of a fiscal year shall not lapse but shall be carried forward to the next fiscal year for future use. The annual fees shall be paid to the department by January 31.

363.908 Civil penalty for violation of KRS 363.900 to 363.906 and administrative regulations; actions to recover civil penalties and for injunctive relief

(1) Any person who violates any provisions of KRS 363.900 to 363.906 or any administrative regulation promulgated pursuant to KRS 363.900 to 363.906 may be required to pay a civil penalty of not more than five thousand dollars (\$5,000).

(2) It shall be the duty of the department or, upon the request of the Commissioner, the Attorney General to bring an action for the recovery of the penalties provided for in this section and to bring an action for an injunction against any person violating or threatening to violate any provision of KRS 363.900 to 363.908 or violating or threatening to violate any administrative regulation or order of the department promulgated pursuant to KRS 363.900 to 363.908. In that action, any previous fine or finding of the department shall be prima facie evidence of the facts found therein.

363.991 Penalties

(1) Any person who violates the provisions of KRS 363.420, 363.430 and 363.440 shall be fined not less than fifty dollars (\$50) nor more than two hundred dollars (\$200) for the first offense; he or she shall be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000), and/or be confined in the county jail for not less than sixty (60) days nor more than one hundred twenty (120) days, for each subsequent offense.

(2) Any person who shall hinder or obstruct in any way the director, the deputy director, or any one (1) of the inspectors, or a sealer or deputy sealer, in the performance of his official duties shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by imprisonment for not more than three (3) months, or by both such fine and imprisonment.

(3) Any person who shall impersonate in any way the director, the deputy director, or any one (1) of the inspectors, or a sealer or deputy sealer, by the use of his seal or a counterfeit of his seal, or in any other manner, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or by imprisonment for not more than one (1) year, or by both such fine and imprisonment.

(4) Any person who, by himself or by his servant or agent, or as the servant or agent of another person, performs any one (1) of the acts enumerated in paragraphs (a) through (i) of this subsection shall, for each offense, be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or imprisoned for not less than three (3) months nor more than twelve (12) months, or both.

(a) Use or have in possession for the purpose of using for any commercial purpose specified in KRS 363.610, sell, offer, or expose for sale or hire, or have in possession for the purpose of selling or hiring, an incorrect weight or measure or any device or instrument used to or calculated to falsify any weight or measure.

(b) Use, or have in possession for the purpose of current use for any commercial purpose specified in KRS 363.610, a weight or measure that does not bear a seal or mark such as is specified in KRS 363.650, unless such weight or measure has been exempted from testing by the provisions of KRS 363.610 or by a regulation of the director issued under the authority of

KRS 363.590, or unless the device has been placed in service as provided by a regulation of the director issued under the authority of KRS 363.590.

(c) Dispose of any rejected or condemned weight or measure in a manner contrary to law or regulation.

(d) Remove from any weight or measure, contrary to law or regulation, any tag, seal, or mark placed thereon by the appropriate authority.

(e) Sell, or offer or expose for sale, less than the quantity he or she represents of any commodity, thing, or service.

(f) Take more than the quantity he or she represents of any commodity, thing, or service, when, as buyer, agent, or receiver, he or she furnishes the weight or measure by means of which the amount of the commodity, thing, or service is determined.

(g) Keep for the purpose of sale, advertise, or offer or expose for sale, or sell any commodity, thing, or service in a condition or manner contrary to law or regulation.

(h) Use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from some position which may reasonably be assumed by a customer.

(i) Violate any provision of KRS 363.510 to 363.850 or of the regulations promulgated under the provisions of KRS 363.510 to 363.850 for which a specific penalty has not been prescribed.

(5) Any person who fails to pay a fine or penalty assessed by the department, or fails to remediate a violation identified by the department, in compliance with a deadline for payment or remediation set forth by the department, shall be subject to a stop operation order or a stop sale order from the department with respect to the equipment, device, or motor fuel grade that is the subject of the fine, penalty, or remediation.