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## Requirements for Grain Warehouses:

*Oklahoma*



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A National Agricultural Law Center Research Publication

## Requirements for Grain Warehouses: Oklahoma

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### 2 OK ST Ch. 1, Art. 9A

*Current through Chapter 7 of the 2020 Legislative Session.*

**§2-9-21. Definitions.**

As used in the Public Warehouse and Commodity Indemnity Act:

1. "Charter" means a franchise issued to a person for the operation of a public warehouse;
2. "Commodities" means nonperishable grains or seeds;
3. "Depositor" means any person storing commodities with a state-chartered or federally licensed warehouse;
4. "Electronic document" means a document that is generated, sent, received, or stored by electronic data interchange, electronic mail, telegram, telex, or telecopy;
5. "Electronic receipt" means a receipt that is authorized by the State Board of Agriculture to be issued under this act in the form of an electronic document;
6. "Full market value" means the value required by law to be used by insurance underwriters in paying for losses of commodities insured for their actual cash value;
7. "Indemnity" means the Oklahoma Commodity Storage Indemnity Fund;
8. "Loss" means any monetary reduction in value to a producer of an extraordinary nature and which shall include, but not be limited to, bankruptcy, embezzlement, theft or fraud;
9. "Producer" means any person planting, raising, growing, or harvesting commodities;
10. "Public warehouse" means any place where commodities are received for storage, received for transfer to other public warehouses, or both;

11. "Storage" or "warehousing" means any method of holding commodities by a party other than the direct owner except for transportation;
12. "Warehouseman" means any person operating a public warehouse; and
13. "Warehouse receipt" means every receipt issued by a warehouseman for commodities pursuant to the Public Warehouse and Commodity Indemnity Act.

**§2-9-22. State-chartered warehousemen - Reinsurance fee – Net worth requirement - Bonds, certificates of deposit and irrevocable letters of credit - Bond cancellation.**

- A.
  1. It shall be unlawful and a misdemeanor for any person to operate a public warehouse unless such person shall have obtained and holds a charter therefor issued by the State Board of Agriculture or be licensed and bonded as required by the United States Warehouse Act.
  2. Each application for a charter issued by the Board shall be on a form prescribed by the Board. The Board shall charge and collect a one-time fee of One Hundred Dollars (\$100.00) for each charter. The Board shall deposit the fees in the State Department of Agriculture Revolving Fund.
  3. No charter shall be issued by the Board until the applicant therefor has filed with the Board a financial statement prepared by an independent certified public accountant and such other financial information as shall be required by the Board.
- B.
  1. The Board shall also charge and collect a fee of Ten Dollars (\$10.00) per One Thousand Dollars (\$1,000.00) of surety. The fee shall be deposited in the Commodity Storage Indemnity Fund and shall be specially designated and accounted for as a reinsurance fee. The Board shall use the reinsurance fee to provide protection to the Indemnity. If upon determination by the Board that the fee of Ten Dollars (\$10.00) is not sufficient to adequately provide protection of the Indemnity, the Board is authorized to assess an additional fee in such an amount so as to provide the necessary protection for the Indemnity provided such additional fee shall not exceed Twenty Dollars (\$20.00) per One Thousand Dollars (\$1,000.00) of surety. The additional assessment shall only be collected from those persons securing surety through this section.
  2. Surety required by this section shall be in the same amounts as shall be required for bonds or certificates of deposit as specified in subsection D of this section. Claims against the surety shall be paid by the Board from the Indemnity in the same manner as shall be required for bonds or certificates of deposit. A corporate surety bond or certificate of deposit, as specified in subsection D of this section, may be used to secure a charter in lieu of the reinsurance fee.
- C. The applicant, in order to qualify for a charter issued by the Board, as evidence of the applicant's financial status shall have a net worth equal to twenty-five cents (\$0.25) per bushel for the first four million (4,000,000) bushels of chartered capacity but not less than Fifty Thousand Dollars (\$50,000.00). All chartered capacity in excess of four million (4,000,000) bushels shall be computed at the rate of ten cents (\$0.10) per bushel for net worth purposes. In case of a net worth deficiency, the warehouseman shall furnish a surety bond or certificate of deposit in an amount equal to such deficiency. The bond or certificate of deposit shall be filed and made payable to the Board for the benefit of all persons storing commodities with the applicant as a state-chartered warehouseman. Insurable property owned by the warehouseman may only be included in the net worth of the warehouse, provided it is insured to at least eighty percent (80%) of its appraised value. The Board may require a certified property appraisal

provided by an appraiser approved by the Board. If the net worth of the applicant or charter holder is less than One Million Dollars (\$1,000,000.00), a financial statement shall be submitted annually. Financial statements shall be prepared and submitted by an independent certified public accountant, describing the current financial position of the applicant, and include such other information required by the Board. Corporate surety bonds shall be on a form prescribed by the Board, on condition that the applicant will fulfill all obligations as a warehouseman. The Board may require the applicant or charter holder to provide a profit and loss statement and an audited financial statement prepared by an independent certified public accountant.

D. The bond, certificates of deposit, or irrevocable letter of credit issued by a financial institution that is insured by the Federal Deposit Insurance Corporation (FDIC) or chartered by the farm credit system organized under the "Farm Credit Act of 1971" shall be payable to the Board for the benefit of all persons storing commodities with the applicant as a state-chartered warehouseman. The amount of bond or certificates of deposit to be furnished for each state-chartered warehouse shall be fixed at a rate of twenty-five cents (\$0.25) per bushel of chartered capacity, provided that the amount of the bond or certificates of deposit shall be not less than Fifty Thousand Dollars (\$50,000.00) nor more than Five Hundred Thousand Dollars (\$500,000.00). The chartered capacity shall be the maximum number of bushels of commodities that the warehouse may accommodate. Depositors, including producers, suffering a loss due to a violation of any of the terms of the Public Warehouse and Commodity Indemnity Act may recover such loss up to the amount of the bond or certificates of deposit, and claims therefor may be instituted with the Board by such person. Each state charter issued pursuant to the provisions of this section shall be for the life of the person. Such state charter may be suspended, revoked or denied by the Board, after notice by registered mail and an opportunity to be heard has been given, for a failure to maintain the financial status required or adequate insurance on all commodities received in store, or received for storage or for handling for restorage, or for a violation of any of the provisions of the Public Warehouse and Commodity Indemnity Act or of any rule of the Board adopted pursuant thereto. Upon evidence of just and good cause, such state charter may be temporarily suspended without a hearing, for a period of not to exceed thirty (30) days. Whenever a state charter is suspended or revoked, the Board shall immediately give notice thereof, by registered United States mail, to the holder of such charter, who may, within twenty (20) days after receipt of such notice, appeal to the district court of Oklahoma County. The district court, after a full hearing, shall make an order either sustaining the action of the Board or reinstating the charter.

E. Upon cancellation of the bond, all indemnifications held by the bonding company shall be released to the warehouseman following the second consecutive satisfactory inspection or examination by the Board.

**§2-9-23. Warehouse name - Issuance and validity of charter.**

A. Each application for a charter shall include the name used by the warehouse and the name shall be shown on the charter. No warehouse shall be operated by or under any name other than that shown on the charter.

B. No charter shall be issued or remain valid if the applicant or warehouseman has:

1. Failed to meet or maintain the financial or surety requirements;
2. Filed an incomplete or fraudulent application or report;

3. Inadequate facilities to properly store and maintain commodities;
4. Failed to properly store commodities or maintain the quality and quantity of commodities in storage;
5. Failed to pay required fees; or
6. Been convicted of a felony based on fraud, theft, embezzlement, misappropriation of funds, or any act of moral turpitude.

**§2-9-24. Suspension, revocation or surrender of charter, license or bond - Indemnity Fund lien - Venue - Notice - Renewal of charter - Seizure of commodities - Identification and date of loss - Claim of loss.**

A. 1. Upon the suspension, revocation, or voluntary surrender of the state charter, federal license, or bond of a warehouseman or public warehouse, a statutory lien shall be and hereby is imposed on all assets of the warehouseman or public warehouse in favor of the Oklahoma Commodity Storage Indemnity Fund on behalf of all depositors who are eligible to file a claim pursuant to subsection I of this section.

2. The lien and payment rights of all depositors are hereby assigned to the Indemnity for purposes of implementing this section.

3. To perfect the lien, the Oklahoma Department of Agriculture, Food, and Forestry, on behalf of the Indemnity, shall file a lien statement with the Oklahoma County Clerk.

4. The lien shall become effective and deemed fully perfected immediately upon filing of the lien statement.

a. The initial lien amount shall be based on a reasonable estimate of the amounts paid by the Department and the Indemnity and other costs and expenses described in this section.

b. The lien statement shall be filed only on or after the date of the suspension, revocation, or voluntary surrender of the state charter, federal license, or bond of the subject warehouseman or public warehouse but not later than sixty (60) days after the incurrence of the triggering event.

c. The lien statement shall disclose the name of the warehouseman or public warehouse, the address of the party's principal place of business, a description of any known and identifiable warehouseman or warehouse assets or a statement that none are known at such time, and the amount of the lien.

5. The amount of the lien shall be the aggregate of:

a. the amount of the incurred by the Department and the Indemnity for the conduct of salvage operations of the warehouseman or public warehouse,

b. all amounts paid by the Department and the Indemnity to depositors of the warehouseman or public warehouse from the Oklahoma Commodity Storage Indemnity Fund, including but not limited to the final cost of reimbursing the depositors and the Indemnity for the payment of claims made against the fund,

c. associated costs and expenses, if any, and

d. accrued interest at the rate of ten percent (10%) per annum.

6. The Department, on behalf of the Indemnity, shall file a corrected lien statement to revise the estimated amount of the lien not later than one hundred eighty (180) days following the incurrence date; however, the failure to file a corrected lien statement shall not affect the validity or the amount of the subject lien.

7. The District Court of Oklahoma County, upon petition by one or more producers, may undertake an action to correct the lien amount. The Department, on behalf of the Indemnity, shall have the burden of proving by a preponderance of the evidence that any estimated lien amount is an accurate estimate.

8. A lien statement filed under this section shall be a security interest perfected under the uniform commercial code in effect in Oklahoma and subject to the same priority as provided in Section 1-9-322 of Title 12A of the Oklahoma Statutes except that the subject lien statement shall have priority over any levies or liens for taxes regardless of the time when the subject lien statement or any such tax levies or lien arises.

9. The lien statement may be collected in any manner allowed by law including levy upon all property of the warehouseman or public warehouse in the same manner as the levy of an execution.

10. The Department, on behalf of the Indemnity, shall upon written demand of the warehouseman or public warehouse file a termination statement with the Oklahoma County Clerk, if the license of the warehouseman is not revoked, suspended, surrendered, terminated, or canceled after one hundred eighty (180) days from the date the lien statement is perfected.

a. upon filing of the termination statement, the lien becomes unperfected.

b. the Department, on behalf of the Indemnity, shall deliver a copy of the termination statement to the warehouseman or public warehouse.

B. The District Court of Oklahoma County shall be the sole venue for questions of jurisdiction or venue in all civil actions challenging the acts of the Department in the administration of the Public Warehouse and Commodity Indemnity Act.

C. The Department shall publish notice for two (2) consecutive weeks in a newspaper of general circulation in the area of the public warehouse when the warehouse charter is suspended or revoked.

D. When the charter of a warehouseman is renewed after suspension or revocation, the Department shall publish notice for two (2) consecutive weeks in a newspaper of general circulation in the area of the public warehouse that the warehouse is in compliance with the Public Warehouse and Commodity Indemnity Act.

E. Upon the suspension, revocation, or voluntary surrender of the charter, the Department may seize all commodities under the control of the warehouseman or public warehouse, including commodities stored or forwarded to other locations. The Department, upon suspension, revocation, or surrender of the charter, shall seize all commodity stocks of the warehouseman or public warehouse including any commodities stored or forwarded to other locations and sell the commodities. Funds generated by the sale of seized commodities shall be distributed in the following manner:

1. The Department shall receive an amount equal to the cost of salvage operations;
  2. All remaining funds shall be proportioned among all depositors storing commodities with the warehouseman. No person shall receive payment of funds greater than the fair market value of the commodity lost by the depositors on the date of seizure;
  3. Funds generated in excess of the payments required by the Public Warehouse and Commodity Indemnity Act shall be deposited in the Indemnity; and
  4. The persons responsible for violations of the Public Warehouse and Commodity Indemnity Act resulting in a charter suspension, revocation, or surrender, or commodity seizure shall not be eligible to claim or recover proceeds from the sale or interest accrued on the proceeds from the sale of seized commodities unless approved by the State Board of Agriculture.
- F. A person storing commodities with a warehouseman not holding a valid charter or federal license is not eligible to file a claim or recover damages under the Public Warehouse and Commodity Indemnity Act.
- G. 1. Upon suspension, revocation, or surrender of the warehouse charter, the Department shall identify any loss to the depositors and obtain proof. The Department shall immediately notify any bonding company providing a bond for a loss. As soon as practicable, the Department shall communicate the amount of the loss, proof, and the date of loss and seizure to the bonding company. The bonding company shall within thirty (30) calendar days remit to the Department the amount of the loss or the face amount of the bond, whichever is less.
2. Failure by the bonding company to surrender the funds shall result in a nonrefundable penalty assessment payable to the Department of one percent (1%) per month plus interest of one percent (1%) per month of the face amount of the bond commencing with the date of loss and continuing until the surety funds are surrendered. The Department shall account for all the surety received until all depositor claims against the charter holder are paid as provided in the Public Warehouse and Commodity Indemnity Act. When all claims have been paid, all unexpended bond surety funds including accrued interest, except penalties, shall be returned to the bonding company.
3. The provisions of this section shall not prohibit the Department from pursuing any other remedy provided by law.
- H. The Department shall establish a date of loss which shall be the same as the date of seizure for all claims of loss against a warehouseman. The Department shall publish the date of loss as set forth in subsection C of this section and shall notify by registered mail all depositors who may have a claim against a warehouseman of the date of loss and deadline for filing claims.
- I. To be eligible to file a claim of loss and receive payment as provided in the Public Warehouse and Commodity Indemnity Act, a person shall establish ownership or title to commodities stored or warehoused with the warehouseman or public warehouse against whom the loss is alleged. Evidence of ownership or title shall include uncanceled warehouse receipts or scale tickets. The Department shall determine the sufficiency of evidence of ownership or title.
- J. Depositors shall, within sixty (60) days of the order of the Department establishing the date of loss, file a written claim of loss with the Department. Depositors may submit a written request to the Board for a sixty-day extension of the filing period, if the depositors can show they were not

provided notification and reasonable time to file the claim. If the claim of loss is not filed within the allotted time, the depositor shall forfeit all rights to remuneration or payment.

**§2-9-25. Reports by warehouseman - Right of entry and audit - Commodity open storage records - Inspection fees.**

A. When requested by the State Board of Agriculture, any warehouseman, who stores or handles for storage commodities shall make a report to the Board concerning the condition, conduct, operation, and business of each public warehouse the warehouseman operates and the commodities stored at each location.

B. Any warehouseman who stores or handles for storage commodities shall permit any authorized agent to enter and audit each warehouse, its contents, examine all warehouse receipts and scale tickets, examine all deferred price and deferred payment contracts, examine all records involving the sale or purchase of commodities to or from other warehouses or persons, verify all records related to forwarded grain or grain in transit, and the storage and financial records. The public warehouseman shall render any assistance required by the Board in checking any condition or books in connection with each location or warehouse.

C. The authority granted the Board in this section shall include all warehouse receipts, scale tickets, deferred price and deferred payment contracts, forwarded grain or grain in transit, sales or purchases of commodities to or from other warehouses or persons, commodities and open storage records. The Board shall verify the accuracy of commodity open storage records when commodities are stored at other locations.

D. 1. The Board shall make at least one inspection or examination annually of each state chartered warehouse. The Board shall charge a fee, that when used in conjunction with available appropriated funds is sufficient to pay the cost of each examination or inspection. A warehouseman may request an additional inspection or examination at a fee commensurate with the actual cost. All inspection or examination fees collected shall be deposited in the State Department of Agriculture Revolving Fund.

2. The Board may enter cooperative agreements with the United States Department of Agriculture for warehouse inspections.

3. No provisions of this section shall apply to warehouses licensed under the U.S. Warehouse Act, Title 7, U.S.C., Section 241 et seq.

**§2-9-26. Insurance – Notice of loss.**

A. Each state-chartered warehouseman shall insure and keep insured, in the warehouseman's own name, all of the commodities in store, received for storage, or handled for storage for the full market value of the commodities, against loss or damage by fire, lightning, inherent explosion, windstorm, cyclone, or tornado.

B. In the event of any loss or damage to the commodities or the warehouse, the warehouseman shall immediately notify the State Board of Agriculture and at the expense of the warehouseman promptly take the steps necessary to collect any monies which may be due as indemnity for the loss or damage.

C. In the event the warehouseman insures against hazards not specified, the insurance shall inure to the benefit of the producers.

**§2-9-27. Scale tickets - Delivery upon demand.**

A. 1. Each warehouseman, upon weighing commodities, shall issue a scale ticket to the person from whom the commodities are received on a form approved by the State Board of Agriculture. No scale ticket shall be issued unless the Board has approved the form. The scale ticket shall contain, but not be limited to, preprinted consecutive numbers and lines for entering the weight, grade, kind, test, and moisture of the commodity, the name and address of the owner, and the signature or initials of the licensed weigher and grader. The grade and the factors used to establish the grade shall be documented on each scale ticket.

2. Each warehouseman is required to have a licensed weigher and grader at each location to supervise the weighing and grading of commodities received and sign the scale ticket.

3. The scale ticket shall be nonnegotiable, but may singly or with others be exchanged for a state or federal negotiable warehouse receipt. A scale ticket has protection under the surety provisions of the Public Warehouse and Commodity Indemnity Act equal to a warehouse receipt.

4. No warehouseman shall store a commodity except in a state-chartered or federally licensed and bonded warehouse.

B. The warehouseman, in the absence of some lawful excuse, shall immediately deliver the commodities stored upon a demand made either by the holder of a receipt for the commodities or by the depositor if the demand is accompanied by:

1. An offer to satisfy the warehouseman's lien;

2. An offer to surrender the receipt, if negotiable, with endorsements as necessary for the negotiation of the receipts; and

3. A readiness and willingness to sign an acknowledgment that the commodities have been delivered if a signature is requested by the warehouseman.

**§2-9-28. Warehouse receipts - Form - Furnishing by Board - Price.**

Negotiable public warehouse receipts shall be in a form prescribed and designed by the State Board of Agriculture. The Board shall furnish warehouse receipts to warehousemen at a price commensurate with the cost of preparation, printing and delivery.

**§2-9-28.1. Electronic receipts and documents - Security interest - Rule making.**

Notwithstanding any other provision of federal or state law:

1. Electronic receipts issued, and electronic documents transferred, under this subsection with respect to an agricultural product may be recorded in, and transferred under, a system maintained in one or more locations and approved by the State Board of Agriculture in accordance with rules issued under this act;

2. Any person designated as the holder of an electronic receipt or other electronic document under this act shall, for the purpose of perfecting the security interest of the person under federal or state law and for all other purposes, be considered to be in possession of the electronic receipt or other electronic document;

3. An electronic receipt issued, or other electronic document transferred, in accordance with this act shall not be denied legal effect, validity, or enforceability on the ground that the information is generated, sent, received, or stored by electronic or similar means;
4. A person shall not be required to issue in electronic form a receipt or document with respect to an agricultural product;
5. The Board shall promulgate rules that authorize the issuance, recording, and transfer of electronic receipts, and the transfer of other electronic documents, in accordance with this subsection; and
6. The Board shall promulgate rules governing one or more electronic systems under which electronic receipts may be issued and transferred and other electronic documents relating to the shipment, payment, and financing of the sale of agricultural products may be transferred.

**§2-9-31. Lost or destroyed receipt - Duplicate receipts - Settlement for stored commodities - Canceled original warehouse receipts.**

A. If a warehouse receipt is lost or destroyed and a duplicate receipt is desired, a duplicate shall be issued in the same manner as the original receipt upon affidavit of the owner of the original receipt that the receipt has been lost or destroyed. When the owner has furnished the warehouseman an acceptable bond in an amount equal to the value of the commodities represented by the lost or destroyed receipt at the time the bond is given, the bond shall indemnify the warehouseman against loss or damage by reason of the issuance of the duplicate receipt.

B. If a warehouse receipt is lost or destroyed and a settlement for the stored commodities is desired, the settlement shall be made upon affidavit of the owner of the original receipt that the receipt has been lost or destroyed. When the owner has furnished the warehouseman an acceptable bond in an amount equal to the value of the commodities represented by the lost or destroyed receipt at the time the bond is given, the bond shall indemnify the warehouseman against loss or damage sustained by reason of making the settlement of delivering the described commodities.

C. Bonds executed in accordance with this section shall be treated as canceled original warehouse receipts.

**§2-9-32. Scales and equipment.**

Each warehouseman shall maintain correct and accurate scales and equipment for weighing and keeping records of all commodities received.

**§2-9-33. Inspection, grading and storing of commodities.**

All commodities received by a warehouseman shall be inspected, graded, and stored by commodity. If the owner or consignee requests and the warehouseman consents, the owner's or consignee's commodities may be kept in a separate bin. The bin shall be marked "Special" with the name of the owner and with the quantity and grade of the commodities.

**§2-9-34. Unlawful acts - Commodity storage and receipts - Penalties - Prepositioning of commodity stocks.**

A. It shall be a felony for any warehouseman, employee, or manager of a public warehouse to knowingly:

1. Issue or receive a fraudulent warehouse receipt regarding, but not limited to, commodities that are not actually stored at the time of issuing the receipt, issuing any warehouse receipt or scale ticket that is in any respect fraudulent in its character, either as to its date or to the quantity, quality, or inspected grade of the commodities, or who shall remove any commodities from store, except to preserve the commodities from fire or other damage without the return and cancellation of all outstanding receipts that may have been issued to represent the commodities; or
2. Issue a delayed pricing contract, deferred payment contract, or any other records for sales of commodities in a fraudulent manner without the full knowledge and consent of the producer.

A violation of this section shall, upon conviction, be punishable by a fine of not more than Ten Thousand Dollars (\$10,000.00) or by imprisonment in the State Penitentiary for not more than ten (10) years or by both such fine and imprisonment.

B. The State Board of Agriculture, upon application from the warehouseman, may approve the repositioning of commodity stocks in state-chartered or federally licensed terminal warehouses in order to free storage space for new harvest commodities. The period for such action shall not exceed sixty (60) days prior to anticipated beginning of harvest for the commodity nor can they be out of position more than one hundred eighty (180) days. The Board may extend the time period an additional one hundred eighty (180) days as specified by rules promulgated by the Board.

**§2-9-35. Unlawful acts - Commodity storage and receipts - Penalties.**

Any warehouseman, manager, or other employee of a public warehouse, who issues or aids in issuing a warehouse receipt for any commodities, without knowing that the commodities have actually been placed in a public warehouse, who delivers any commodities from a public warehouse without the surrender and cancellation of the warehouse receipt, or who fails to mark the depositor's receipt "Cancelled" on the delivery of the commodities, shall, upon conviction, be guilty of a felony. The fine for a violation of this section shall not be more than Ten Thousand Dollars (\$10,000.00), or by imprisonment in the State Penitentiary for a term of not more than twenty (20) years, or by both such fine and imprisonment.

**§2-9-36. Public warehouse designations - Penalty.**

No public warehouse shall be designated as chartered or operated under the provisions of the Public Warehouse and Commodity Indemnity Act and no name or description conveying the impression that it is chartered or operated shall be used unless the public warehouse is chartered. Any person who misrepresents, forges, alters, counterfeits, simulates, or falsely represents the charter required by the Public Warehouse and Commodity Indemnity Act, or who issues, utters, or assists or attempts to issue or utter, a false or fraudulent receipt for any commodities, shall be, upon conviction, guilty of a felony. The fine for a violation of this section shall not be more than Ten Thousand Dollars (\$10,000.00), or by imprisonment in the State Penitentiary for a term of not more than twenty (20) years, or by both such fine and imprisonment.

**§2-9-37. Unlawful acts - Deposit of encumbered commodities without notice to warehouse - Procurement of receipts by false statement of material fact - Penalties.**

Any person who deposits or attempts to deposit in a public warehouse any commodities upon which a lien or mortgage exists, without notifying the manager of the public warehouse, and any

person who, in order to procure any warehouse receipt, knowingly makes any false statement of material fact shall, upon conviction, be guilty of a felony. The fine for a violation of this section shall not be more than Ten Thousand Dollars (\$10,000.00), or by imprisonment in the State Penitentiary for a period of not more than two (2) years, or by both such fine and imprisonment.

**§2-9-38. Rulemaking - Conformity with federal act.**

A. The State Board of Agriculture shall promulgate rules necessary to carry out the provisions of the Public Warehouse and Commodity Indemnity Act.

B. The rules shall conform as nearly as practicable to the requirements of the United States Warehouse Act, as amended, its successor and any regulations developed thereunder.

**§2-9-39. Exemption.**

The provisions of the Public Warehouse and Commodity Indemnity Act shall not apply to an individual producer-owner who does not receive from other producers commodities for storage, handling for storage, or both, but any qualified producer-owner may be issued a charter upon proper application.

**§2-9-42. Oklahoma Commodity Storage Indemnity Fund - Creation.**

There is hereby created within the State Department of Agriculture, the "Oklahoma Commodity Storage Indemnity Fund".

**§2-9-44. Assessment upon commodities - Examination of records.**

There is hereby assessed two (2) mills per bushel on all commodities delivered by producers to any public warehouse. The assessment shall be imposed on the warehouse at the time the commodity is received and shall be collected and remitted to the State Department of Agriculture by the warehouseman. Under the provisions of the Public Warehouse and Commodity Indemnity Act, no commodity shall be subject to a fee more than once. The State Board of Agriculture shall have authority to examine warehouse records to determine if the assessment has been properly remitted.

**§2-9-45. Administration - Cessation of assessments - Claims for losses - Reimbursement of General Revenue Fund - Civil action claims.**

A. The State Department of Agriculture shall administer the Oklahoma Commodity Storage Indemnity Fund. The Indemnity shall be established for the benefit of producers who have delivered commodities to a chartered or licensed public warehouse for storage. The Indemnity shall compensate producers for losses to their commodity while it is in the control of a chartered or licensed public warehouse, except losses covered by insurance as provided in Section 9-26 of this title. No producer shall be eligible for compensation or reimbursement as the result of a loss on any commodity when the title to the commodity has been transferred to the warehouseman.

B. When the Indemnity reaches Six Million Dollars (\$6,000,000.00), the two-mill assessment shall cease at the end of that harvest season as determined by the Board. If the balance of the Indemnity becomes less than Six Million Dollars (\$6,000,000.00), the two-mill assessment shall be reinstated on an annual basis as necessary to attain a balance of Six Million Dollars (\$6,000,000.00) in the Indemnity. The Department shall have authority to invest the assessments. All proceeds of the investment shall be placed in the Indemnity. Fifty Thousand

Dollars (\$50,000.00) from the interest income for each year on the total proceeds in the Indemnity shall be paid to the Department annually for the conducting of warehouse examinations necessary for the protection of the Indemnity. The balance of the accrued interest each year may not be utilized for any purposes not listed in this subarticle and shall remain a part of the Indemnity.

C. When a loss is incurred upon the commodity of a producer delivered to a warehouseman or after receipt of the notice pursuant to Section 9-24 of this title, the producer shall present his or her claim to the State Board of Agriculture. To verify the claim, the producer shall present a receipt or any additional evidence required by the Board. All producer claim payments shall be made by the Board from the Indemnity as soon as practicable and not later than one (1) year following the date of claim. The price per bushel of a commodity shall be established on the day of the loss or seizure and shall be for the full market value on that day less storage or other applicable charges. If there is an insufficient amount of cash in the Indemnity to cover all claims for a certain year, payments shall be made on a pro rata basis up to one hundred percent (100%) of the total loss of each producer. If payment is not received in the amount of one hundred percent (100%) of total loss for a certain year, then additional amounts shall be paid as funds become available in succeeding years until repayment of one hundred percent (100%) of total loss is attained. If, at any time, a producer receives payment totaling more than one hundred percent (100%) of total loss, the excess payment shall be returned to the Indemnity within thirty (30) days. Upon final payment of a claim to a producer from the Indemnity, the producer shall subrogate his or her interest to the Department in a cause of action against any and all parties, to the amount of the loss that the producer was reimbursed by the Indemnity.

D. The producer shall, within sixty (60) days of the order of the Board establishing the date of loss, present the claim to the Board. Producers may submit a written request to the Board for a sixty-day extension of the filing period, if the producers can show they were not provided notification and reasonable time to file their claim. If the claim of loss is not presented within the time and in the manner required, the claim shall be forever barred and the producer shall forfeit all rights to remuneration or payment as provided in the Public Warehouse and Commodity Indemnity Act.

E. If state funds are appropriated to the Indemnity, the Board shall establish the rules and procedures necessary to ensure that the State General Revenue Fund shall be reimbursed from the assessments in an amount equal to the total appropriation made to the Indemnity. The reimbursement shall be made in a timely manner, provided the intents and purposes of this section to compensate producers for their losses shall not be adversely affected.

F. The monies deposited in the Indemnity shall at no time become part of the general budget of any state board, commission, or agency except the Department.

G. The Commissioner of the State Department of Agriculture shall investigate all potential civil action claims against a failed warehouse, the warehouseman, and any officers, directors and managers for recovery of any losses paid by the Indemnity.

#### **§2-9-46. Reports - Penalties.**

A. The warehouseman shall render and have on file a report with the State Board of Agriculture by the last day of the month following any calendar quarter in which the warehouseman has accepted ten thousand (10,000) or more bushels of a commodity. If less than ten thousand

(10,000) bushels have been accepted in any calendar quarter, the assessment may be reported and remitted with the following quarter's return, except that all assessments collected shall be remitted at least once every six (6) months.

B. If any person subject to the assessment fails to make a report and remittance as required by law or rule, the Board shall determine the amount of the assessment according to its best judgment and information. The amount of assessment established by the Board shall be prima facie correct and the person failing to make the report shall have ten (10) calendar days after receipt of notice mailed by the Board to pay the assessment, together with a penalty of five percent (5%) on the amount of the assessment. The person failing to report may dispute the assessment established by the Board and request a hearing to determine the amount of the assessment and penalty to be imposed. All assessment and penalty payments required following a hearing shall be made within ten (10) calendar days after receipt of notice of the Board order.

**§2-9-47.1. Violations - Penalties.**

Except as provided by law, any person found to be in violation of any of the provisions of the Public Warehouse and Commodity Indemnity Act shall be guilty of a misdemeanor and shall be punished by a fine of not less than Five Hundred Dollars (\$500.00) for the first offense and not less than One Thousand Dollars (\$1,000.00) for each subsequent offense.