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Requirements for Grain Warehouses:

Wyoming



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Requirements for Grain Warehouses: Wyoming

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11 WY. St. Ch. 11; 29 WY St. Ch. 8

Current through 2019 General Session.

11-11-101. Definitions.

(a) As used in this chapter:

- (i) "Director" means the director of the Wyoming department of agriculture;
- (ii) "Warehouseman" means any person except the grower who handles grain for commercial storage or solicits grain for the purpose of intrastate, interstate or foreign commerce;
- (iii) "Grain" means any variety of beans, wheat, corn, oats, barley, rye, grain sorghum, millet, oil seeds, sunflower, soybean, flax, or seeds of legumes and grasses;
- (iv) To "store" or "warehouse" means any method by which grain owned by another is held for the owner by one not the owner except for the transportation thereof;
- (v) "Stored grain" means grain held or placed in storage in an elevator, grain cleaning plant, grain warehouse or public warehouse of whatever kind by any person not the actual bona fide owner of the grain;
- (vi) "Scale ticket" means a load slip or other evidence of delivery, other than a warehouse receipt, given to the party making delivery by a warehouse licensed under the provisions of this act;
- (vii) "Warehouse" means an elevator, mill, storage bin or building, subterminal grain storage facility, public storage facility or other structure or facility in which grain is received for commercial storage or for the purpose of intrastate, interstate or foreign commerce;
- (viii) "Audit" means an examination of records or financial accounts to determine their accuracy;

(ix) "Depositor" means any person who is in possession of a commodity and entrusts or delivers the commodity to a warehouse for storage;

(x) "Inspection" means the physical review or examination of the grain warehouse or storage facility and may include an official audit;

(xi) "Loss" means the destruction of the commodity due to fire, theft or weather;

(xii) "Receipt" means a warehouse receipt issued under this act, including an electronic receipt;

(xiii) "Transportation" means the movement of grain from one (1) point to another;

(xiv) "Verified" means signed and sworn to be accurate before a person authorized to administer oaths.

11-11-102. Applicability.

W.S. 11-11-101 through 11-11-117 do not apply to any person licensed under the laws or regulations of the United States relating to storing and handling grain.

11-11-103. Warehousemen to procure licenses; fee; annual renewal.

Before engaging in business in Wyoming, a warehouseman or any person operating a warehouse shall procure a license from the department of agriculture. The fee under this section for the initial license and for each annual renewal thereof shall be one hundred twenty-five dollars (\$125.00). All licenses shall be issued for the fiscal year, or fraction thereof, ending June 30. No license shall be renewed unless the department finds from the audit required under W.S. 11-11-109 of the warehouse or warehouseman's records that the operations are conducted properly.

11-11-104. Application for license; form; contents; refusal to issue license; appeal; care of agricultural products.

(a) The department shall prescribe forms for application for a warehouseman's or warehouse license. The application shall contain information necessary to inform the department of the qualifications, facilities, experience and financial ability of the applicant to carry on the business of buying, selling, warehousing and storing grain. The department shall require the submission of any tax return, bank statement, financial statement or audit prepared by a public accountant or a certified public accountant and any additional information as required by rules and regulations in order to establish the financial responsibility of the applicant. If a license is refused by the department, appeal may be made to the director. All hearings for appeal shall be conducted in accordance with the Wyoming Administrative Procedure Act.

(b) Each warehouseman shall at all times, including during any period of suspension of his license, exercise such care in regard to stored and nonstorage agricultural commodities in his custody as required under the licensing agreement.

11-11-105. Surety bond required; amount; approval by department; conditions; exception.

(a) Each applicant for a warehouseman's or warehouse license shall post a cash bond, acceptable irrevocable letter of credit or execute and file with the department a good and sufficient surety bond in an amount determined by the department based on the maximum number of hundred weight the warehouseman can store in the warehouses for which the bond

is required, but not less than twenty thousand dollars (\$20,000.00). A surety bond shall be executed by a responsible surety company licensed to do business in this state and conditioned upon the faithful performance of the obligation of the warehouseman or person operating a warehouse under the laws of this state and of any additional obligations assumed by him under contract with those who deposit grain with him. All bonds shall be payable to the state for the benefit of any injured party, and shall be in the form and contain additional conditions as the department may prescribe. No person is required to file a bond who has already posted similar bond with the United States department of agriculture pursuant to the United States Warehouse Act of August 11, 1916, as amended.

(b) Cash bonds, irrevocable letters of credit and surety bonds shall not be released by the department until an audit has been completed and satisfied. The department shall publish a public notice for sixty (60) days prior to any bond being released.

(c) In the event a warehouseman does not renew his license in accordance with W.S. 11-11-103 or suspends normal business operations, the department shall post a public notice in a paper of local distribution for sixty (60) days prior to the closure of the warehouse.

11-11-106. Action on bond for breach of obligations; joinder of parties.

Any person injured by the warehouseman's or warehouse's breach of any obligation provided by law may sue on the bond in his own name in any court of competent jurisdiction to recover the damage sustained by the breach. Where more than one (1) person is injured, the action may be brought in the name of all injured persons by any one or all interested parties, or by the state of Wyoming in their behalf.

11-11-107. Investigation by department; complaint; service; hearing.

The department upon its own motion or upon verified complaint against any warehouseman shall investigate as the department deems necessary, and shall at all times have free and unimpeded access to all facilities or places in which grain is kept, stored, handled or transported. If the department, upon investigation, has reason to believe that any warehouseman is not acting as required by law, or upon the filing of a verified complaint against the warehouseman, the department shall have a complaint or copy of the verified complaint served upon the warehouseman by personal service, service upon a registered agent or by registered mail. If the warehouseman fails to make prompt adjustment or settlement of the charges set forth, to the satisfaction of the department, the department shall give notice of the time and place of a hearing thereon. The hearing shall be held in accordance with the Wyoming Administrative Procedure Act.

11-11-108. Warehouse receipts generally.

All warehouse receipts issued for stored grain shall be in a form prescribed by the department and shall be obtainable only by the warehouseman from the department at cost. Each warehouse receipt issued must show the amount of any cash or the value of any merchandise the warehouseman has advanced on the grain represented by the receipt, but such notation shall not be construed as fixing the date of sale of the grain.

11-11-109. Audit of records; inspection of warehouse.

(a) At least once each year and more often if necessary or if requested by an interested person the department shall inspect each licensed warehouse and shall audit the warehouse records.

The director after conferring with interested industry groups shall fix, assess and collect fees for the inspection of facilities storing farm products. The fees shall not exceed fifty percent (50%) of the cost of the inspection and shall be paid by the person requesting the inspection, if any.

(b) If a warehouseman is delinquent in renewing his license in accordance with W.S. 11-11-103, the department shall initiate an inspection and audit of the warehouse immediately.

11-11-110. Warehouseman's records; generally.

Every licensed warehouseman shall maintain complete records of all grain stored, all grain withdrawn from storage, all warehouse receipts issued and all receipts returned to and cancelled by him. The records shall be available for examination and audit by the department at any reasonable time.

11-11-111. Warehouseman's records; contents; inspection and audit by department; issuance of warehouse receipts.

(a) Every warehouseman shall keep a complete record of all grain handled by him including the following:

- (i) Name, address and phone number of the grower and of the owner;
- (ii) Date of issuance of receipt;
- (iii) Kind, quantity, quality and grade of grain received;
- (iv) Agreed purchase price, if purchased;
- (v) Agreed commission charged, if consigned;
- (vi) Date of sale of consigned grain, to whom sold and price for which sold;
- (vii) Date and details of settlement with vendor or consignor;
- (viii) Documentation stating the location of the stored commodity. If the commodity is stored in another warehouse, then proof of bonding by that facility shall be included in the records.

(b) The above records shall be open to the confidential inspection of the department or its authorized agents at all times. Upon request of the depositor, every warehouseman shall issue a receipt for all grain received for storage on a form furnished by the department.

11-11-112. Stored grain to be insured; insurance requirements; disaster loss to be reported.

(a) All grain stored shall be insured against loss for full value by an insurance company licensed to do business in this state. A copy of the insurance policy in effect shall be provided to the department at the time of the license application and the audit.

(b) Each warehouseman shall comply fully with the terms of insurance policies or contracts covering their warehouse and all products stored therein, and shall not commit any acts, nor permit others to commit any acts, that might impair or invalidate such insurance.

11-11-113. Grading of grain; notation on warehouse receipt.

All grain accepted for storage shall be graded by the warehouseman or designee according to standards of the United States department of agriculture, and the grade established shall be specified upon the warehouse receipt issued for the grain.

11-11-114. Stored grain to constitute bailment; amount in storage to equal issued storage certificates; exceptions; conversion; seizure.

(a) The storage of grain with a warehouse and the movement of grain by a warehouseman constitutes a bailment and not a sale. Upon return of the scale ticket bearing the name of the bailee or warehouse receipt properly endorsed and payment or tender of all advances and charges, the owner of the scale ticket or warehouse receipt is entitled to, and the warehouseman or person operating a warehouse shall deliver the identical grade and amount of grain placed in storage or transported. Every person operating a warehouse shall maintain at all times in storage, in the state of Wyoming, grain equal in amount and grade to all scale tickets and warehouse receipts issued, unless authorized in writing by holders of scale tickets or warehouse receipts or by the department to move to other storage, and failure to do so is a conversion thereof.

(b) Grain stored with a warehouse is not liable to seizure upon process of a court against the bailee except upon action by the owners of scale tickets or warehouse receipts to enforce the terms of the scale tickets or receipts. In the event of the failure or insolvency of the bailee, the grain shall be first applied as soon as ownership is established and within one hundred twenty (120) days exclusively to the redemption and satisfaction of outstanding scale tickets and warehouse receipts for grain stored or moved with the bailee and grain on hand in a particular warehouse of the bailee shall be first applied to the redemption and satisfaction of the scale tickets or receipts issued by that warehouseman or person operating a warehouse as the bailee.

(c) The department shall, by rule and regulation, require posting of current tariffs.

11-11-115. Disposition of collected funds.

There is created the grain warehouse inspection account. All funds collected by the department shall be deposited in the account created by this section. Interest earned by the account shall be retained in the account. The account is appropriated for use and expenditure by the department for the costs of administering the programs under this article. Itemized vouchers shall be submitted to the department for approval. Upon approval, a warrant for the payment of each voucher shall be issued by the state auditor for payment from the grain warehouse inspection account.

11-11-116. Revocation and cancellation of license.

Failure of any warehouseman or person operating a warehouse to comply with the provisions of this chapter will render the license of the warehouseman or person operating a warehouse subject to revocation and cancellation by the department.

11-11-117. Prohibited acts; penalties for violations.

(a) Any person who engages in or carries on any grain warehousing business without first having obtained a license, or who continues to engage in or carry on such business after his license has been suspended, revoked or expires is guilty of a misdemeanor and shall be fined

not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for each offense. Each day that such unlicensed business is carried on is a separate offense.

(b) Any warehouseman or person operating a warehouse who converts to his own use or that of another, any grain stored or accepted for storage of the value of one thousand dollars (\$1,000.00) or more, is guilty of a felony and shall be fined not less than five hundred dollars (\$500.00) for each day of violation and imprisoned for not to exceed fourteen (14) years. If the value of the grain converted is less than one thousand dollars (\$1,000.00), the warehouseman or person operating a warehouse is guilty of a misdemeanor and shall be fined not to exceed five hundred dollars (\$500.00) or imprisoned not to exceed six (6) months, or both.

11-11-118. Perjury.

Any affirmation under this chapter shall be given under penalty of perjury.

11-11-119. Cease and desist orders; warehousemen; notice; opportunity for hearing.

(a) After notice and opportunity for hearing, the department shall issue a final cease and desist order to a warehouseman if the warehouseman or any officer, director, employee or agent of the warehouse is violating any state statute or rule relating to warehouses or warehousemen.

(b) Before issuing a final cease and desist order, the department shall serve notice of intent to issue the order upon the warehouseman. The notice shall be in writing and shall contain the information required by W.S. 11-11-121(a). The proposed order shall direct the warehouseman to discontinue the violations of law, rule or regulation.

(c) The warehouseman may request a hearing on the proposed order before the director in accordance with W.S. 11-11-121(b). If the warehouseman does not request a hearing in writing within the prescribed time period, the proposed order shall become a final cease and desist order and the department shall serve the final order upon the warehouseman.

11-11-120. Temporary cease and desist order; warehousemen; service.

(a) If the department believes the actions of a warehouseman or of any officer, director, employee or agent of the warehouse pose an immediate threat to the safety and soundness of the warehouse or to the interests of the depositors or creditors of the warehouse, the department shall issue a temporary cease and desist order to the warehouseman or officer, director, employee or agent of the warehouse pending final action on the proposed cease and desist order issued pursuant to W.S. 11-11-119(a).

(b) The temporary order shall be in writing and shall be served upon the warehouseman. The temporary order shall take effect upon service and shall remain in effect until the director issues the final cease and desist order, the department dismisses the proposed cease and desist order or a court of competent jurisdiction dismisses the proposed cease and desist order after hearing.

(c) On or after the effective date of the temporary order, the attorney general, upon request from the department, may apply to the district court for the county in which the warehouse is located for enforcement of the temporary order. If the warehouseman operates warehouses in two (2) or more counties, the request may be made in any county where the warehouseman operates a warehouse. The application for enforcement shall be given precedence over other cases pending in court and shall in every way be expedited.

(d) The warehouseman, officer, director, employee or agent to whom a temporary cease and desist order is issued may apply to the district court for the county in which the warehouse is located for a stay of the temporary cease and desist order. The application for stay shall be given precedence over other civil cases pending in court and shall be expedited. The court shall grant the stay only if the warehouseman, officer, director, employee or agent shows he will be irreparably harmed unless the stay issues and there is substantial likelihood he will prevail on the merits.

11-11-121. Procedures for enforcement actions; service of notice; content of orders; contested case proceedings; appeal.

(a) All notices and orders required to be served by the department under this article shall be served by certified mail return receipt requested to the last known address of the warehouseman or may be served as provided by the Wyoming Rules of Civil Procedure. Notice of a proposed order issued by the department under this article shall include:

(i) A statement of the grounds for issuing the proposed order, including a citation to the statute or rule involved;

(ii) A statement of the facts in support of the allegations;

(iii) A statement informing the warehouseman subject to the proposed order of the right to a hearing on the order before the director, right of appeal of any subsequent order in accordance with the Wyoming Administrative Procedure Act and that failure to timely request a hearing will result in the order becoming final; and

(iv) A copy of the proposed order.

(b) A request for hearing on a proposed order issued by the department under this article shall be in writing and shall be submitted to the director no later than seven (7) days after receipt of the notice of intent from the department. The director shall hold the hearing no later than fifteen (15) days after receipt of the request for hearing, unless the warehouseman subject to the proposed order requests an extension of time for good cause shown.

(c) A hearing on a proposed order issued under this article shall be a contested case hearing conducted in accordance with the Wyoming Administrative Procedure Act. After the hearing, the director shall issue findings of fact and conclusions of law and a final decision either confirming or dismissing a proposed order. The director shall confirm a proposed order only if the director finds by a preponderance of the evidence that grounds exist under this article for issuing the order. Otherwise, the director shall dismiss the proposed order. If the director confirms a proposed order it shall become a final order.

(d) The department shall serve a final order under this article upon the warehouseman who is the subject of the order. The final order shall take effect upon service and shall remain in effect until the department or the court terminates the final order. The warehouseman who is the subject of the order may appeal the issuance of a final order in accordance with the Wyoming Administrative Procedure Act.

(e) On or after the effective date of a final order under this article, the attorney general, upon request from the department, may apply to the district court of the county in which the

warehouse is located for enforcement of the final order. The application for enforcement shall be given precedence over other cases pending in court and shall in every way be expedited.

29-8-101. Definitions.

(a) As used in this article:

(i) "Commodity dealer" means a person who engages in a business involving or, as part of the business, participates in buying, exchanging, negotiating or soliciting the sale, resale, exchange, production or transfer of any farm product in the state of Wyoming. The term does not include:

(A) A person engaged solely in storing, shipping or handling farm products for hire;

(B) A person who buys farm products from a licensed commodity dealer;

(C) A person who does not purchase more than thirty thousand dollars (\$30,000.00) worth of farm products from producers during a licensing year;

(D) A person who is the producer of farm products that the person actually plants, nurtures and harvests;

(E) A person whose trading in farm products is limited to trading in commodity futures on a recognized futures exchange; or

(F) A person who buys farm products used exclusively for the feeding of livestock and not for resale.

(ii) "Contractor" means a person who owns a farm product that is produced by a producer according to a contract;

(iii) "Farm products" means all crops, crop products, plants or portions thereof, whether or not they are cleaned, processed, treated, reconditioned, rolled, mixed or combined in any fashion. Farm products shall not mean livestock;

(iv) "Person" means an individual, trust, partnership, business trust, corporation or unincorporated association or any other legal or commercial entity;

(v) "Processor" means any person engaged in the business of processing or manufacturing any farm product and who takes possession or control of any farm product for the purpose of processing, cleaning, selling or storing it;

(vi) "Producer" means the owner, tenant or operator of land located in the state of Wyoming who has an interest in or receives all or part of the proceeds from the assignment, sale, transfer, exchange or production of farm products grown or produced on that land;

(vii) "Public warehouse" or "warehouse" means an elevator, mill, warehouse, subterminal grain warehouse, public warehouse or other structure or facility in which, for compensation, farm products are received for storage, handling, processing or shipment. The term includes facilities that commingle different lots of farm products;

(viii) "This act" means W.S. 29-8-101 through 29-8-109.

29-8-102. Producer's liens.

(a) W.S. 29-1-103 through 29-7-301 shall not apply to liens filed under this act.

(b) A producer has a lien on all farm products grown or produced by it and on all proceeds from the assignment, sale, transfer, exchange or other disposition thereof until the producer is paid in full all amounts due the producer for its assignment, sale, transfer, exchange, other disposition or production of the farm products.

29-8-103. Notice; filing of notice of claim; contents.

(a) A lien created under W.S. 29-8-102 attaches when the farm product is delivered from the producer to the processor, contractor, warehouse operator or commodity dealer.

(b) A person claiming a lien created by this act shall file a written notice of claim of lien with the office of the secretary of state not later than one hundred eighty (180) days after the lien attaches.

(c) The notice of claim of lien required under subsection (b) of this section shall be in the form of a financing statement acceptable for filing by the office of the secretary of state. The signature of the processor, contractor, warehouse operator or commodity dealer shall not be required. The written notice of claim filed under subsection (c) of this section shall contain:

(i) A true statement of the lienholder's claim;

(ii) A description of the farm product delivered sufficient for identification;

(iii) The lienholder's name, address and phone number, establishing them as a secured party; and

(iv) The name and address of the processor, contractor, warehouse operator or commodity dealer, establishing them as the debtor.

(d) The secretary of state shall keep a record of notices filed under this section under an index of agricultural liens.

(e) The secretary of state shall charge a fee not exceeding the cost of providing the service for filing of notices and requests for copies of such notices.

(f) When a lienholder files a notice of claim of lien as required by this section, the lienholder shall send a copy of the notice to the processor, contractor, warehouse operator or commodity dealer by registered or certified mail.

(g) When a lienholder files a notice of claim of lien as required by this section the lienholder shall send a copy of the notice to all holders of security interests in the farm product described in the notice of claim who duly perfected such security interests by filing notice thereof with the secretary of state. The notice shall be mailed to holders of perfected security interests within thirty (30) days after the date of filing the notice of claim.

(h) A lien which has attached under subsection (a) of this section is perfected upon the completion of the requirements of subsections (a) through (h) of this section. If a person entitled to a lien under this section does not properly file a notice of claim or properly notify all holders of security interests of the lien within the time required by this section, the person waives the right to the lien.

29-8-104. Extent of lien; priority.

(a) The lien shall be to the extent of:

(i) The agreed price, if any, pursuant to the terms of any contract or for the market value at the time of transfer of ownership if not agreed;

(ii) If the farm product has not been sold or processed by the processor, contractor, warehouse operator or commodity dealer the lien shall be on the farm product;

(iii) If the farm product is sold or processed by the processor, contractor, warehouse operator or commodity dealer the lien shall be on the cash proceeds from the sale. For purposes of this paragraph, cash proceeds held by the processor, contractor, warehouse operator or commodity dealer shall be deemed to be cash proceeds from the sale regardless of whether it is identifiable cash proceeds;

(iv) If the farm product is processed by the processor, contractor, warehouse operator or commodity dealer and there is no property of the type described in paragraph (ii) or (iii) of this subsection to which the lien can attach, then the lien shall extend to any property of the processor, contractor, warehouse operator or commodity dealer that may be subject to a security interest as provided by W.S. 34.1-9-109.

(b) A perfected lien under paragraph (a)(ii) or (iii) of this section shall be preferred to, and have priority over, a lien or security interest in favor of a creditor of the processor, contractor, warehouse operator or commodity dealer regardless of the time when the creditor's lien or security interest attached to the farm products or the proceeds thereof or therefrom. The priority of a perfected lien under paragraph (a)(iv) of this section shall be determined by the date on which the lien is filed as required by this act, and it shall not have priority over other perfected liens on the same property which have been perfected prior to the filing date.

29-8-105. Duration.

(a) A perfected lien created by this act remains in effect until either the lienholder receives the full amount due it for the farm products, including reasonable costs and attorneys' fees incurred in enforcing the lien, or for a period of two hundred ten (210) days from the date the lien becomes perfected as provided in this act.

(b) All actions to foreclose or enforce a lien under this chapter shall be commenced within two hundred forty (240) days after the filing of the lien statement. No lien shall continue to exist except by virtue of the provisions of this chapter for more than two hundred forty (240) days after the lien is filed unless an action to foreclose the lien is instituted.

(c) Whenever any debt which is a lien pursuant to this act is paid and satisfied, the lien claimant shall file notice of satisfaction of the claim of lien in the secretary of state's office.

(d) In addition to any actual damages, any creditor refusing or neglecting to enter satisfaction within thirty (30) days after payment as provided by subsection (c) of this section and after having received by certified or registered mail a request in writing for the entering of satisfaction is liable for damages of not less than one-tenth of one percent (.10%) of the original principal amount of the debt per day until such time as the lienholder enters satisfaction. The additional damages authorized by this section shall not exceed one hundred dollars (\$100.00) per day.

29-8-106. Waivers unenforceable.

Any provision of a contract which waives a producer's right or an obligation of a party established by this act is void and unenforceable. This section does not affect other provisions of the contract or related document, policy or agreement which can be given effect without the voided provision.

29-8-107. Choice of law.

Any condition, stipulation or provision requiring the application of the law of another state in lieu of this act is void and unenforceable.

29-8-108. Damages, fees, costs and injunctive relief.

(a) A producer who suffers damages because of a violation of this act may obtain appropriate legal and equitable relief, including damages, as a suit in common law pursuant to the Wyoming Rules of Civil Procedure.

(b) In any action by a producer to enforce a perfected lien created by this act, the court shall award the producer who is the prevailing party reasonable attorneys' fees and other litigation costs and expenses. The payment of any such award shall be secured in the same manner as a lien created and perfected under this act.

(c) In order to obtain injunctive relief, a producer is not required to post a bond, prove the absence of an adequate remedy at law, or show the existence of special circumstances, unless the court for good cause otherwise orders. The court may order any form of prohibitory or mandatory relief that is appropriate under principles of equity, including but not limited to, issuing a temporary or permanent restraining order.

29-8-109. Applicability of act.

(a) This act applies to contracts executed, entered into, renewed or substantively amended on or after July 1, 2001.