

Title 2. Agriculture

Chapter II. State Plant Board, Department of Agriculture

Subchapter A. Generally

Part 28. Rules on Grain Dealers in Arkansas

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"(Promulgated and adopted under authority of The Arkansas Grain Dealer Act A.C.A. § 2-24-101 et seq.)"

Subpart 1. Generally

2 CAR § 28-101. General purpose and intent.

(a) The Arkansas Grain Dealers Act, Arkansas Code § 2-24-101 et seq., is established to regulate grain dealers in the State of Arkansas that are not:

(1) Licensed under:

(A) The Arkansas Public Grain Warehouse Law, Arkansas Code § 2-17-201 et seq.; or

(B) The United States Warehouse Act, 7 U.S.C. § 241 et seq.; and

(2) End users of grain.

(b)(1) The Director of the State Plant Board is appointed as the administrator of this law.

(2) The director shall:

(A) Administer the Arkansas Grain Dealers Act, Arkansas Code § 2-24-101 et seq.; and

(B) Be the ultimate authority in the administration of this chapter.

(c) The agency may employ all necessary employees, counsel, and consultants to carry out the provisions of this law and is vested with the power necessary to fully and effectively carry out the provisions and objectives of this chapter.

Authority. Arkansas Code § 2-24-114.

2 CAR § 28-102. Organization and designation of duties.

(a) The Arkansas Grain Dealers Act, Arkansas Code § 2-24-101 et seq., will be administered by the State Plant Board.

(b) The Director of the State Plant Board, or appointed representative, is hereby designated as having the authority to carry out the activities needed to administer the Arkansas Grain Dealers Act, Arkansas Code § 2-24-101 et seq.

(c) All proceedings and hearings will be conducted in accordance with the Arkansas Grain Dealers Act, Arkansas Code § 2-24-101 et seq., and the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

Authority. Arkansas Code § 2-24-114.

2 CAR § 28-103. Licensing and bonding.

(a)(1) Application Form GD-1 or GD-2 is to be used in securing a license under the Arkansas Grain Dealers Act, Arkansas Code § 2-24-101 et seq., whether for a new license or the renewal of a license.

(2) This form will be supplied, upon request by the applicant, by the State Plant Board.

(b)(1) For renewals the form will be sent to all licensees from the previous year prior to the renewal deadline.

(2) Renewal applications should be delivered to the board at least thirty (30) days before the current license expires.

(c)(1) The licensing period shall be from July 1 through June 30 of each year, with the exception of those licenses issued during the inception of the rules.

(2) Those licenses will be inclusive of the time between their issuance and June 30, 2016.

(d)(1) Each application for a license or license renewal shall be accompanied with a financial statement and signed report of a CPA or registered public accountant which must be a representation of:

- (A) An examined audit report;
- (B) A review report; or
- (C) A compilation report.

(2) Additional reports required are:

- (A) A balance sheet;
- (B) A schedule of notes payable;
- (C) A statement of cash flows; and
- (D) Other reports that may be stipulated by the board.

(3) All financial reports for year two (2) and beyond of licensing are to be submitted to the board within one hundred twenty (120) days of the company's fiscal year end.

(4) All financial statements must be in bound copy or in electronic PDF from the accountant.

(5) New companies, just being established and having less than one (1) complete fiscal year of operation, need only a trial balance and estimated purchases for their first year to apply for a license.

(6) All financial records will be handled as dictated by the Freedom of Information Act of 1967, § 25-19-101 et seq.

(c)(1) The bond form, letter of credit form, and a certificate of deposit form for the purpose of securing bonding for the grain dealer will be supplied in the application packet.

(2) Only one (1) type of bonding is required.

(3) Bonding requirements are as follows:

Purchases of Grain In dollars (Range)		Bonding in dollars
1	5,000,000	\$50,000
5,000,001	20,000,000	\$100,000
20,000,001	40,000,000	\$200,000
40,000,001	60,000,000	\$400,000
60,000,001	80,000,000	\$600,000
80,000,001	100,000,000	\$800,000
100,000,001	and over	\$1,000,000

Authority. Arkansas Code § 2-24-114.

Codification Notes. "CPA" means certified public accountant.

"PDF" means portable document format.

2 CAR § 28-104. Fees.

(a) As required by law, the application fee for a newly established business, a business with less than one (1) fiscal year of operation, is one hundred fifty dollars (\$150).

(b) The fee for an established business, a business with more than one (1) fiscal year of operation, is as follows:

Purchases of Grain In dollars (Range)		License Fee
1	5,000,000	\$250
5,000,001	20,000,000	\$300

20,000,001	40,000,000	\$400
40,000,001	60,000,000	\$500
60,000,001	80,000,000	\$600
80,000,001	100,000,000	\$700
100,000,001	and over	\$800

(c)(1) One (1) examination is to be made each year on each licensed dealer, the cost of which is included in the application fee.

(2)(A) Additional examinations may be made at any time and at the discretion of the Director of the State Plant Board.

(B) If during the additional examinations a material discrepancy is found, the licensed dealer will be required to reimburse the State Plant Board at the rate of forty dollars (\$40.00) per hour for the time required to make the additional examination or examinations.

Authority. Arkansas Code §§ 2-24-105, 2-24-108, 2-24-114.

2 CAR § 28-105. Penalties and violations.

(a)(1) **Violations.**

(A) Operating without a license, refusing to provide records during an audit, or knowingly violating the Arkansas Grain Dealers Act, § 2-24-101 et seq., is a Class D felony.

(B) A person who negligently violates this law is guilty of a Class A misdemeanor.

(2)(A) Upon conviction, both are punishable by a criminal fine up to one hundred dollars (\$100).

(B) Civil penalties may apply as well.

(3) The Director of the State Plant Board may issue a cease and desist order for any violation of this law.

(b) **Minor violations.**

(1) Upon the first offense, violations that are clerical and believed to be accidental in nature will be considered to be minor violations.

(2) Examples of such violations include, but are not limited to:

(A) The loss of:

(i) Voided scale tickets;

(ii) Settlements; or

(iii) Contracts; and

(B) Not conducting business as prescribed by the Arkansas Grain Dealers Act, § 2-24-101 et seq.

(c) **Penalty violations — Violations that fall under the civil penalty matrix.**

Violations include:

(1) Second violation of the minor violations;

(2) Failure to pay on the due date of the payment agreement;

(3) Knowingly falsifying records;

(4) Refusal to allow inspection of records; and

(5) Operating without a license.

Authority. Arkansas Code §§ 2-24-108, 2-24-114.

Cross Reference. Penalty Matrix, 2 CAR pt. 28 app. 1.

2 CAR § 28-106. Suspension of licenses.

(a)(1) A grain dealer's license may be temporarily suspended without a hearing if the Director of the State Plant Board determines that public health, safety, or welfare is at risk.

(2) Upon the temporary suspension the director shall, by certified mail, notify the dealer of:

(A) Said suspension; and

(B)(i) The time and date of the hearing concerning the suspension.

(ii) The hearing shall occur within ten (10) days of the suspension.

(b)(1) A grain dealer's license may be suspended without a hearing five (5) days after sending a notice by certified mail that surety has expired or if the grain dealer refuses to submit to an audit of their records.

(2) License shall not be suspended for more than sixty (60) days without a hearing.

Authority. Arkansas Code § 2-24-114.

2 CAR § 28-107. Slow-pay hotline.

(a) The slow-pay hotline number will be on every license that the State Plant Board issues to grain dealers.

(b) Also, grain dealers must have the slow-pay hotline number on all purchase agreements.

(c) The hotline number will be published and provided to all licensees upon establishment of the number.

Authority. Arkansas Code §§ 2-24-112, 2-24-114.

2 CAR § 28-108. Record keeping.

(a) Recordkeeping and retention requirements.

(1) Grain dealers will provide all records required by the Director of the State Plant Board upon request and are required to keep said records for a period of not less than five (5) fiscal years of the dealer.

(2) Required records will include:

(A) All:

- (i) Purchase contracts;
- (ii) Sales contracts;
- (iii) Scale tickets;
- (iv) Settlement sheets; and
- (v) Delivery tickets; and

(B) Any other document acquired in relation to the buying and selling of each lot of grain handled.

(b) **Purchase contracts.**

(1) A purchase contract is a written document which lists all conditions and requirements being agreed to in the transaction to transfer title of a grain lot from a seller to a buyer.

(2)(A) The document must show:

(i) The document preparation date;
(ii) All other items shown in subdivision (b)(3) of this section; and
(iii) Any other conditions relevant to the transaction agreed to by the seller and buyer.

(B) Contracts shall be between the buyer and the seller, and contract details are not constructed by these rules.

(3)(A) It shall be the responsibility of grain dealers to draw up an agreement in writing which shall contain a statement informing the seller all title to the grain is being relinquished to the buyer.

(B) All agreements must have a lien holder statement.

(C) All agreements must have the slow-pay hotline number, labeled as such, on the contract.

(D)(i) When applicable, all contracts must have a date for the payment to be made.

(ii) That payment date may be any date that is agreeable to the parties involved and is not to be determined by these rules, except that if no payment date is specified, then the payment date will be considered to be thirty (30) days after the contract preparation date.

(E) The director may require any additional information from a grain dealer that is deemed necessary to protect the interest of the seller of grain in these transactions.

(F) All contracts shall be prenumbered with no number duplication.

(G) The director or the appointed representative shall approve the kind of contract form to be used by grain dealers.

(H) Contracts include, but are not limited to:

- (i) Deferred pricing contracts;
- (ii) Deferred payment or booking contracts; and
- (iii) Basis contracts.

(I) Parties have thirty (30) days, after date of preparation, to get documents signed.

(J) If conditions dictate grain be moved prior to securing signatures on the contract, a statement to that effect must be included in the executed contract.

(4)(A) Scale tickets used to document measurement of grain quantities transferred from one (1) entity to another shall originate at a facility using scales that have been inspected and placed in service in accordance with Arkansas Bureau of Standards rules.

(B) These scale tickets must be numbered with a unique number that is identifiable and traceable to the facility issuing the ticket.

(c) Destination contracts.

(1) These are written documents prepared to transfer title of a quantity of grain from a grain dealer or current title holder to a subsequent buyer.

(2) All destination contracts must be kept on file.

(3) These destination contracts, upon delivery of contracted grain, must be supported by additional records that show which purchased grain lots, as indicated by referenced purchase contract numbers, were used to fill the particular sale covered by the destination contract.

(4) Additional records, such as records listing the transporter of the grain, quantity of grain carried in each load if multiple loads are used to move the total quantity of grain sold, are to be kept with the destination contracts.

(5) Details of grain transferred, i.e. scale tickets, purchase contract numbers, delivery details, settlement sheets (summaries), and other documents used in the

purchase, used to fill the total quantity of the destination contract are to be kept by the dealer.

(d) **Delivery tickets.**

(1) These documents are to confirm the transfer and receipt of grain from one (1) entity to another with sufficient description to allow positive identification of the grain lot being transferred.

(2)(A) Each grain dealer shall issue to all sellers of grain to the dealer a prenumbered officially approved delivery ticket which shall be issued in numerical order.

(B) All officially approved delivery tickets must contain:

- (i) The original; and
- (ii) No fewer than two (2) copies.

(3) Delivery tickets shall list, with copies attached, official scale tickets or an official load summary showing the receipt of the grain covered by the delivery ticket.

(4) A sample copy of the officially approved delivery ticket used by the grain dealer shall be kept on file with the director.

(5)(A) Each officially approved delivery ticket shall contain the following information:

- (i) The name and address of the grain dealer;
- (ii) Date grain was delivered; and
- (iii) The kind, quantity, grade or grade factors necessary (if applicable) to determine the bushels, pounds, or CWT of grain delivered.

(B) All officially approved delivery tickets must denote the contract number the delivered grain should be applied to.

(6) An officially approved delivery ticket must be issued on all grain purchased by the grain dealer.

(7) All officially approved delivery tickets that have been voided must be kept on file at the grain dealer's principal place of business.

(8) A copy of all approved delivery tickets issued must be kept on file in numerical order at the grain dealer's principal place of business.

(e) **Settlements.**

(1) Settlements are documents that fully explain the grain purchase transaction between the parties involved in the transaction.

(2)(A) All grain dealer purchases must be confirmed by preparation of a written settlement document.

(B) The documents will be completed in a numerical sequence as they are prepared.

(3) All settlements must have the name of the grain seller or sellers.

(4) All purchase settlements must have the date when payment was made and the check number or other means of payment is noted.

(5) All settlements must list the purchase contract number or numbers applicable to the settlement.

(6) All settlements must have a delivery sheet or load summary to attest all scale tickets for all grain being purchased by the settlement.

(f) Daily position record.

(1) A written record, prepared on a daily basis, to reflect the agreements made for grain purchases that day and agreements to be filled as of that date.

(2)(A) Dealers may use a form made available by the State Plant Board for this function.

(B) Use of this form will constitute compliance with this requirement.

Authority. Arkansas Code §§ 2-24-113, 2-24-114.

Codification Notes. "CWT" means hundredweight, a unit of weight or mass used in some commodities markets.

Cross Reference. Rules Regarding the Adoption of the National Institute of Standards and Technology (NIST) Handbooks, 2 CAR pt. 100.

2 CAR § 28-109. Financial requirements.

(a) All grain dealers purchasing less than one hundred million dollars (\$100,000,000) worth of grain are required to maintain a minimum net worth of twenty-five thousand dollars (\$25,000).

(b) A grain dealer who purchases more than one hundred million dollars (\$100,000,000) worth of grain will maintain a minimum net worth of fifty thousand dollars (\$50,000).

(c)(1) To be licensed, a grain dealer who does not meet the minimum financial requirements must post additional bond to cover the shortfall in the minimum net worth.

(2) This additional bond may be:

(A) An amendment to the original bond; or

(B) A new bond to cover the deficiency amount.

Authority. Arkansas Code § 2-24-114.

2 CAR § 28-110. Out-of-state grain dealers.

(a) If the grain dealer does not maintain an office in this state and does not have a statutory agent in this state, the application shall include a written appointment of a statutory agent upon whom process, notice, or demand may be served.

(b) The statutory agent shall be:

(1) An individual residing in this state; or

(2) A corporation whose principal place of business is located in the state.

(c) If the identity or address of the statutory agent changes, the grain dealer shall, within three (3) days, file with the State Plant Board a written appointment of the new statutory agent or written notice of the new address, as applicable.

Authority. Arkansas Code § 2-24-114.

2 CAR § 28-111. Business hours.

All grain dealers are required to be available for business transactions on days the commodity market is open and in a time frame that would allow sellers to utilize market pricing to facilitate transactions.

Authority. Arkansas Code § 2-24-114.

2 CAR § 28-112. Receivership.

(a) Following the suspension of a dealer's license, the State Plant Board may file a verified petition in a court of competent jurisdiction requesting the appointment of a receiver to take custody of the assets of the dealer and provide for the disposition of the assets under the supervision of the court.

(b) A petition for the appointment of a receiver shall be filed in the county in which the dealer, or the registered agent, is located.

(c) Upon receiving a petition for the appointment of a receiver, a court may issue any temporary orders necessary to preserve or protect the assets in receivership, the value of the assets in receivership, and the rights of the dealer's creditors until a plan of disposition is approved.

(d) The board may be appointed as a receiver.

Authority. Arkansas Code § 2-24-114.