

Document: Proposed Rule

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TITLE 824 INDIANA GRAIN BUYERS AND WAREHOUSE LICENSING AGENCY

Proposed Rule

LSA Document #00-161

DIGEST

Adds 824 IAC 2 to establish current standards for grain buyers and grain warehousemen. Repeals 824 IAC 1-2. Effective 30 days after filing with the secretary of state.

824 IAC 1-2

824 IAC 2

SECTION 1. 824 IAC 2 IS ADDED TO READ AS FOLLOWS:

ARTICLE 2. GRAIN BUYERS AND WAREHOUSE LICENSING AND BONDING

Rule 1. Definitions

824 IAC 2-1-1 Applicability

Authority: IC 26-3-7-3

Affected: IC 26-3-7-2

Sec. 1. The definitions in this rule and IC 26-3-7-2 apply throughout this article. (*Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-1-1*)

824 IAC 2-1-2 “Act” defined

Authority: IC 26-3-7-3

Affected: IC 26-3-7

Sec. 2. “Act” means the Indiana grain buyers and warehouse licensing and bonding law, IC 26-3-7, as amended. (*Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-1-2*)

824 IAC 2-1-3 “Director” defined

Authority: IC 26-3-7-3

Affected: IC 26-3-7-2

Sec. 3. “Director” means the director of the agency, who, through the Indiana grain buyers and warehouse licensing agency, is the administrator of, and the ultimate authority under the Act. (*Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-1-3*)

824 IAC 2-1-4 “Licensee” defined

Authority: IC 26-3-7-3

Affected: IC 26-3-7-2

Sec. 4. “Licensee” means any person, as defined in IC 26-3-7-2(18), who is licensed or required to be licensed under IC 26-3-7. (*Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-1-4*)

824 IAC 2-1-5 “Nonstorage grain” defined

Authority: IC 26-3-7-3

Affected: IC 26-3-7-2

Sec. 5. “Nonstorage grain” means grain received temporarily into a warehouse for cleaning, conditioning, extruding, or other custom work, against which no receipts are issued; no storage charges are assessed and the grain or its byproduct is to be returned to the person who delivered it. The term grain does not refer to grain bank grain. (Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-1-5)

824 IAC 2-1-6 “Official grain standards of the United States” defined

Authority: IC 26-3-7-3

Affected: IC 26-3-7-2

Sec. 6. “Official grain standards of the United States” means the standards of dockage, quality, or condition for grain, fixed and established by the Secretary of Agriculture under the United States Grain Standards Act, 7 United States Code, Title 7, Chapter 3. (Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-1-6)

824 IAC 2-1-7 “Warehouse” defined

Authority: IC 26-3-7-3

Affected: IC 26-3-7-2

Sec. 7. (a) “Warehouse” means any building or other protected enclosure in one (1) general location licensed or required to be licensed under the Act in which grain is or may be:

- (1) stored for hire;**
- (2) used for grain bank storage; or**
- (3) used to store company owned grain;**

and the building or other protected enclosure is operated under one (1) ownership and run from a single office.

(b) For purposes of determining whether a building or other protected enclosure constitutes a single warehouse, the director may consider the following:

- (1) The presence of a full weighing facility at geographically diverse warehouse facilities.**
- (2) The traditional method of record keeping with respect to the separate facilities.**
- (3) The hours, number of personnel, and activities of the separate facilities.**
- (4) Any other factor deemed to be relevant.**

In the absence of contradictory information, any warehouses owned and operated by the same person that are located within close proximity of each other shall be presumed to constitute a single warehouse. (Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-1-7)

Rule 2. Administration

824 IAC 2-2-1 Responsibility for compliance

Authority: IC 26-3-7-3

Affected: IC 26-3-7-3

Sec. 1. (a) The director finds and determines that this article is necessary and appropriate for the implementation and effectuation of the provisions and intent of the Act.

(b) The director determines that the records, reports, notices, and forms prescribed by this article are necessary to the orderly and efficient operation and administration of the Act.

(c) Every licensee shall use the records, reports, notices, and forms prescribed by the director. If no specific form is prescribed, every licensee shall use records, reports, notices, and forms that contain the information required by this article or the Act. (Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-2-1)

824 IAC 2-2-2 Notices to director; when required

Authority: IC 26-3-7-3

Affected: IC 26-3-7-3

Sec. 2. (a) In addition to, and not in lieu of, all other notices required by the Act and this article, a licensee shall, within ten (10) days, give written notice to the director upon the occurrence of any of the following:

(1) Loss or damage to:

- (A) stored grain; or**
- (B) licensed facilities.**

(2) The death or legal incapacity of an individual or any member of a partnership operating a licensed facility.

(3) Change of ownership of a licensee, including a change in the members of a partnership, firm, or association.

(4) Change in shareholders or the relative amount of stock held by shareholders where the licensee is a corporation with twenty (20) or fewer shareholders.

(5) Change in name of a licensee.

(6) Any major structural change to a bin or facility licensed.

(7) The destruction or removal of facilities.

(8) The termination of a lease on a licensed facility.

(9) The leasing of a facility; submit a copy of lease signed by all parties.

(10) Change of business address of the licensee.

(11) Upon the filing or upon notice to the licensee of the filing of any legal action, which could have a material impact upon the licensee, including, without limitation, the filing of a petition in bankruptcy by or against the licensee, and the filing of a legal action seeking the appointment of a receiver for the licensee.

(b) A notice required by this article shall recite the facts and circumstances surrounding the reason that notice is given; it shall be in writing and delivered by first class United States mail or in person to the office of the director. (*Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-2-2*)

Rule 3. Hearings

824 IAC 2-3-1 Confidential information

Authority: IC 26-3-7-3

Affected: IC 26-3-7-16.5

Sec. 1. (a) When the director determines that any matter involving trade secrets, business secrets, or other confidential or proprietary information is or may be the subject of a hearing held under the Act, the director may exclude the public from the hearing and admit only the respondent and other interested parties who are essential to the matter under discussion.

(b) A respondent or any interested party, not later than five (5) business days prior to the scheduled hearing, may submit a written statement to the director noting areas to be considered in the hearing that could involve trade secrets, business secrets, or other confidential information. The statement shall explain why such matters should not be the subject of a public hearing. After receipt of the statement, the director shall determine what information, if any, should be excluded from the public hearing. (*Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-3-1*)

824 IAC 2-3-2 Expedited hearings

Authority: IC 26-3-7-3

Affected: IC 26-3-7-3

Sec. 2. Upon the agreement of the director and known interested parties, a meeting may be held without formal notice at a time and place agreed by the involved parties. (*Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-3-2*)

Rule 4. Requirements for Licensing

824 IAC 2-4-1 Application form

Authority: IC 26-3-7-3

Affected: IC 26-3-7-6

Sec. 1. (a) All persons applying for a license under the Act shall submit an application form. The initial application form shall provide for the following selections:

(1) Initial application.

(2) Amendment.

(b) The application form shall have the following selections for the type of license the application is made:

- (1) Grain bank.**
- (2) Warehouse.**
- (3) Grain buyer.**
- (4) Buyer-warehouse.**

(c) The application form shall contain general business information, including, but not limited to, the following:

- (1) Name of the business.**
- (2) Address of the business and facilities located in Indiana.**
- (3) Capacities of the facilities.**
- (4) Name and address of the owner.**
- (5) Telephone number and fax number.**
- (6) Form of business organization.**
- (7) Statement of willingness to be inspected.**
- (8) Computation areas for the following:**
 - (A) Licensing fee.**
 - (B) Net worth.**
 - (C) Bond.**
- (9) Affirmation by the person signing the application that, to the best of the applicant's knowledge, the information in the application is true and accurate.**
- (10) Area for signature of applicant.**
- (11) Any other information necessary to carry out the license requirements of the Act.**

(Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-4-1)

824 IAC 2-4-2 Transferability

Authority: IC 26-3-7-3

Affected: IC 26-3-7-8.5

Sec. 2. Licenses issued under the Act are not transferable or assignable to any person, including successors in interest to the licensee. *(Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-4-2)*

824 IAC 2-4-3 Fees

Authority: IC 26-3-7-3

Affected: IC 26-3-7-6

Sec. 3. (a) Initial licenses include one (1) storage facility and shall be prorated for the initial application fee. The fifty dollar (\$50) fee required for each additional facility shall not be prorated.

(b) If a licensee changes to a different license type during the term of the current valid license, the fee already paid shall be applied to the new license fee.

(c) If a licensee changes the structure of the business, for example, from a proprietorship to a corporation, any fee already paid may be applied to the new business entity. *(Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-4-3)*

824 IAC 2-4-4 Bond; irrevocable letter of credit; cash deposit

Authority: IC 26-3-7-3

Affected: IC 26-3-7

Sec. 4. (a) Each licensee shall file:

- (1) a current and effective surety bond running to the director and executed by the applicant as principal;**
- (2) an irrevocable letter of credit;**
- (3) a cash deposit; or**
- (4) any combination of the items listed in this subsection.**

(b) A bond filed under the Act shall have the following requirements:

- (1) The bond must be submitted on the form provided by the agency.**
- (2) The surety shall be licensed to do business in Indiana.**
- (3) If a licensee files a single bond covering all facilities operated by the licensee, the entire amount of the bond shall be held on behalf of any depositor of any facility operated by the licensee.**
- (4) The total and aggregate liability of the surety on any bond required by the Act shall be limited to the amount specified in the bond.**
- (5) The surety bond shall be effective on the date of issue. The bond shall not be affected by the expiration of the annual license period and shall continue in full force and effect until canceled. The continuous nature of the bond shall not be construed as allowing the liability of the bond to accumulate for each successive licensing period. The bond shall be limited to the amount stated or changed by appropriate endorsement or rider.**
- (6) The bonds are for grain obligations due to producers from the licensee on the effective date of the bond, including proceeds from the sale of grain belonging to producers.**
- (7) Bonds shall include a statement appointing and authorizing an individual to execute the bond and act as the corporate surety's attorney-in-fact.**
- (8) After computing the amount of bond required according to the Act, the figure may be rounded up to the nearest one hundred dollars (\$100).**
- (9) When increases in capacities or the bushels purchased result in an increase to the bond amount, a bond rider for the appropriate amount must be filed. Licensees must submit a bond rider for increases over five hundred dollars (\$500). Increases that are less than five hundred dollars (\$500) may not be required.**
- (10) If a licensee changes to a different surety company, the successor bond is deemed to be a continuation of the same coverage through a different company.**
- (11) If a failed licensee submitted more than one (1) form of bond or security, and the claims do not exceed the total amount of all the securities, the proven claimants shall be paid by using the cash bond first. The irrevocable letter of credit or surety bond having the oldest date shall be called next. The security having the most recent date shall be used last.**
- (12) The bond coverage shall cease when a license is terminated by the agency. Coverage shall remain in effect during a temporary license suspension.**

(c) An irrevocable letter of credit filed under the Act shall contain the following:

- (1) Be issued by a financial institution insured by Federal Deposit Insurance Corporation.**
- (2) Be payable to the director of the Indiana grain buyers and warehouse licensing agency.**
- (3) Give a ninety (90) day notice prior to cancellation.**
- (4) Continue the coverage for eighteen (18) months after the termination of the license.**
- (5) Be issued for a minimum of one (1) year.**
- (6) Be renewable.**
- (7) Demand for payment shall be the finding of fact and final order issued under administrative law by the director.**
- (8) Subsection (b)(3) through (b)(6) and (b)(8) through (b)(11) also apply.**

(d) A licensee or applicant submitting a cash bond required under the Act shall complete the cash bond form supplied by the agency. Agency personnel shall complete the "receipt for cash deposit" section on the form and return a copy to the licensee or applicant.

(e) The following shall apply to the agency for all cash bonds received under the Act:

- (1) Funds shall be deposited in one (1) of the following:**
 - (A) A financial institution insured by Federal Deposit Insurance Corporation.**
 - (B) A financial institution approved by the director.**
- (2) The funds shall be held in:**
 - (A) a savings account;**
 - (B) a certificate of deposit;**
 - (C) a combination of clauses (A) and (B); or**
 - (D) any other type of account approved by the director.**
- (3) Separate records of interest earnings shall be kept by the agency.**
- (4) Interest earnings may be forwarded to the licensee unless:**
 - (A) the licensee requests the interest accrue to the initial amount deposited; or**
 - (B) interest could be used to cover a deficiency in the requirements.**

(5) Two (2) signatures of agency personnel shall be required on all of the following:

- (A) Savings accounts.**
- (B) Checking accounts.**
- (C) Certificates of deposits.**

(Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-4-4)

824 IAC 2-4-5 Amended licenses

Authority: IC 26-3-7-3

Affected: IC 26-3-7-4

Sec. 5. (a) A licensee shall complete a license application form when any of the following occur:

- (1) Adding a facility.**
- (2) Change of business name.**
- (3) Change in owners.**
- (4) Change in type of license.**

The form shall be provided by the agency and shall contain the same information as the initial application, but it shall have a place for the applicant to indicate it is an amendment.

(b) After receipt of the amended application, a determination shall be made as to whether, under the Act, any of the following should occur:

- (1) An increase or decrease in the bond.**
- (2) An increase or decrease in the insurance.**
- (3) An additional license fee.**
- (4) A new license issued and the previous license recalled.**

(c) If an additional facility is added to the license, the appropriate facility fee shall apply.

(d) If there is only a change in the name of the business or the organization type and the stockholders or owners remain the same, there shall be no additional charge until the next renewal period. *(Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-4-5)*

824 IAC 2-4-6 Insurance

Authority: IC 26-3-7-3

Affected: IC 26-3-7-12

Sec. 6. (a) Licensees shall insure, at full market value, the following:

- (1) All stored grain owned by depositors that is stored in licensed space.**
- (2) All company-owned grain that is grain that has been:**
 - (A) paid for; and**
 - (B) delivered for sale but the depositor has not been paid.**

(b) If there is a dispute regarding either:

- (1) the date of loss; or**
- (2) the market value of the grain;**

the parties to the dispute shall submit the issue to the director or the director's designated representative who shall hold an informal hearing to resolve the dispute. The decision of the director or the director's designated representative shall be final and binding upon all parties.

(c) Losses of producer obligations shall be paid before losses of company-owned grain. *(Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-4-6)*

824 IAC 2-4-7 Financial statement

Authority: IC 26-3-7-3

Affected: IC 25-2-1; IC 26-3-7-6

Sec. 7. (a) When, in the director's sole discretion, the director determines that it would create a financial or other hardship for a licensee or applicant to submit the required reviewed level financial statement, the agency may consider the following:

- (1) Organization type (corporation, partnership, individual, or limited liability company).**
- (2) Current and potential risk exposure to the producers.**
- (3) Other information that may be made available to the director.**

(b) Upon waiver of a the reviewed financial statement, the director may require any or all of the following:

- (1) A financial compilation prepared by an independent accountant certified under IC 25-2-1.**
- (2) Copies of both state and federal tax returns containing both personal and business income of the individuals or partners. In the case of a partnership, all partners shall submit copies of both state and federal tax returns. These tax returns shall be received not more than ninety (90) days following the tax year end.**
- (3) Listings of all payables and receivables of the business.**
- (4) A business plan prepared by the owners for the next one (1) to five (5) years.**
- (5) The business enters into an agreement with the agency to use risk management practices to reduce the risk of losses in the futures and or options market.**

(c) The waiver of the reviewed financial statement shall be reviewed by the director annually to see if the conditions required in this waiver still exist. If the conditions causing the waiver no longer exist, the Indiana grain buyers and warehouse licensing agency will notify the licensee of the change and require a reviewed financial for the next licensing year.

(d) A financial profile form shall be sent to licensees with annual renewal notices requesting the following:

- (1) Name, address, and telephone number.**
- (2) Form of business organization, including the following:**
 - (A) Proprietorship.**
 - (B) Partnership.**
 - (C) S corporation.**
 - (D) Corporation.**
 - (E) Cooperative.**
 - (F) Other.**
- (3) Principal business activities, including the following:**
 - (A) Grain bank.**
 - (B) Warehouse.**
 - (C) Grain buyer.**
 - (D) Buyer-warehouse.**
- (4) The owner's name and address and other ownership information as required by the director.**
- (5) The applicant's verification.**
- (6) Signature.**

(Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-4-7)

824 IAC 2-4-8 Net worth and market appraisals

Authority: IC 26-3-7-3

Affected: IC 26-3-7-16

Sec. 8. (a) In determining a licensee's net worth, the following shall apply:

- (1) Capital equity of the licensee, including capital stock, shall not be considered a liability.**
- (2) Assets of a licensee shall be subject to associated liabilities connected with any licensed facilities operated by the licensee.**
- (3) Assets shall be valued at cost less depreciation, if depreciable, provided that no insurable asset shall be valued at an amount greater than the amount of insurance that is carried on it.**

(b) When there are loans to related parties or owners in a licensee's financial statement, the agency may require additional financial statements from the related parties or owners but the financial statements of the related parties or owners are not required to be reviewed.

(c) In calculating the licensee's net worth, the director may utilize the fair market value or market appraisal of the licensee's assets as determined and certified by a competent and disinterested appraiser.

(d) Complete current narrative market value appraisals of land, building, and equipment will be acceptable if prepared by one (1) of the following:

- (1) An independent appraiser certified by a recognized appraisal society or professional appraisal organization.
- (2) A local professional realtor, for land values only, if the appraisal contains:
 - (A) a minimum of two (2) quotes of recent sales of similar properties; and
 - (B) a statement of the appraiser's qualifications.

(e) Acceptance of appraised values shall be subject to the following:

- (1) Values claimed for depreciable fixed assets will not be allowed in excess of insured values.
- (2) The licensee must maintain a current asset to current liability ratio of one (1) to one (1) or better.
- (3) Current acquisition of assets by the licensee through arms-length transactions between disinterested parties will not be eligible for consideration at appraised values.
- (4) Licensee's accountant will be required to review the appraisal report and furnish the book value of the appraised assets as of the current fiscal year-end financial statement date.
- (5) If needed to meet the net worth requirement, a market appraisal may be used for five (5) consecutive years before an updated current appraisal is required.

(f) The amount of the market appraisal that can be allowed to meet the net worth requirement shall be seventy percent (70%) of the appraised value less the book value. (*Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-4-8*)

824 IAC 2-4-9 Suitability of facilities

Authority: IC 26-3-7-3

Affected: IC 26-3-7-7

Sec. 9. (a) The determination as to whether a facility is suitable for the proper storage, shipping, and handling of grain may be based on:

- (1) an inspection by agency personnel; or
- (2) representation, on the initial application, by an applicant based on the type of construction, location, and layout.

(b) In determining the suitability of a facility, the following requirements must be met:

- (1) The storage facilities must be weather-tight to protect the grain from the elements at all times.
- (2) The facilities and the operational practices regarding the licensed facilities shall maintain and preserve the quantity and quality of the grain.
- (3) The facilities must be structurally sound and provide proper and adequate storage for the stored grains.
- (4) Facilities shall prevent mixing of nonfungible grain or grain that is to be stored separately.
- (5) Reasonable efforts shall be made to prevent the pilferage of grain.
- (6) There shall be adequate equipment, operational practices, and layout to preserve the quality of the grain by:
 - (A) reserving space for turning the grain;
 - (B) aeration; or
 - (C) other methods as approved by the director.
- (7) There shall be adequate grading, weighing, and sampling equipment at the facility.
- (8) There shall be reasonable efforts to prevent the infestation of the grain by vermin and to prevent the adulteration of the grain.
- (9) Safe and adequate means of entering and exiting the storage units shall be provided and maintained by the licensee.
 - (A) Storage units that have an entrance over twenty (20) feet above ground level shall be quipped with a safe and adequate ladder or lift that meets Indiana occupational safety and health administration standards.
 - (B) Safe catwalks or walkways shall be provided. Lifts and ladders shall be kept clean and free of grain and other matter that might endanger the safety of persons.
 - (i) In the event an employee of the agency determines conditions at a facility are unsafe, the employee is not required to allow any inventory that may be in the unsafe bin and may count the bin as empty in the audit of the licensee.
 - (ii) The licensee shall inform the agency of plans to replace or repair any unsafe structures within thirty (30) days after the date of the agency employee's written departure report and shall have the structure in a safe condition within ninety (90) days from the date of the notice of an unsafe condition.
- (10) The licensee shall have control of the facilities.
- (11) A lease must be forwarded to the agency before farm bins or any bins can be added to licensed capacity.

(c) If the director determines that the application is insufficient or that the facility is not suitable for storage, a notice shall be mailed to the applicant stating the reason the license was not issued. A license may be issued when the deficiency causing the license not to be issued is corrected. (*Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-4-9*)

824 IAC 2-4-10 Posting of licenses, diagrams, and charts

Authority: IC 26-3-7-3

Affected: IC 26-3-7-4

Sec. 10. (a) When it is determined that all requirements have been met, a license shall be issued by the agency and shall bear the signature of the director.

(b) Licensed firms shall post all licenses issued to them in a public and conspicuous place at each facility along with charts and diagrams supplied by the agency. Each time a change of capacity occurs, the agency shall supply new charts and diagrams and the licensee shall post the most current charts and diagrams where they can be seen by the public. If changes in the business name, address, location, or any other changes causing new licenses to be issued, the most current license shall be posted and the previous license shall be returned to the agency. (*Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-4-10*)

824 IAC 2-4-11 Temporary and emergency storage

Authority: IC 26-3-7-3

Affected: IC 26-3-7-7; IC 26-3-7-10

Sec. 11. (a) Temporary and emergency storage options are available when a shortage of storage space occurs due to a bumper crop or other situation. These alternatives are available to firms with a current grain bank, warehouse, or buyer-warehouse license. Temporary and emergency space shall be considered an increase in licensed capacity and shall be subject to the following:

- (1) Net worth.
- (2) Bond.
- (3) Insurance.
- (4) Separate daily position record for the grain placed in the temporary or emergency space.
- (5) Preapproval must be obtained from the agency before utilizing any temporary or emergency space. A licensee may write or fax, to the agency, a request for temporary or emergency space.
- (6) The licensee shall have control of the temporary or emergency facilities and shall maintain the quality and quantity of the grain.

(b) In addition to subsection (a), temporary storage structures shall meet the following requirements:

- (1) Asphalt or concrete floor.
- (2) Rigid self-supporting sidewalls.
- (3) Aeration.
- (4) Acceptable waterproof covering.
- (5) Have access to the grain for the purpose of sampling.
- (6) Be removed by May 1 of the year following the harvest. Extensions may be granted if the licensee demonstrates that there is good cause for an extension.

(c) In addition to subsection (a), a licensee approved for emergency storage or ground piles shall comply with the following:

- (1) Emergency storage shall contain only grain that the licensee has paid the producer in full. No stored grain belonging to others shall be kept in emergency storage.
- (2) Remove the grain by January 31 of the year following harvest. An extension may be granted if the licensee demonstrates that there is good cause for an extension.

(*Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-4-11*)

824 IAC 2-4-12 Grain buyer licensee with United States Warehouse Act license

Authority: IC 26-3-7-3

Affected: IC 26-3-7-6; IC 26-3-7-10

Sec. 12. (a) A person storing grain and issuing warehouse receipts under the United States Warehouse Act shall be required to obtain an Indiana grain buyer license if they are purchasing grain from producers.

(b) The bond submitted for the federal warehouse license shall suffice for the bonding requirement under the Act if all the following has occurred:

- (1)** The agency's name is added as beneficiary after United States Department of Agriculture.
- (2)** The amount of the bond meets the bonding requirements of the agency.

(c) If the federal bond amount is inadequate, a bond rider running to the director only shall be submitted to the agency. *(Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-4-12)*

824 IAC 2-4-13 Inspection of scales

Authority: IC 26-3-7-3

Affected: IC 26-3-7-5

Sec. 13. (a) Any scale used by any licensee in conjunction with a license issued under the Act shall be subject to annual inspection and testing by weights and measures' inspectors appointed by the director of the division of weight and measures, Indiana state department of health or a private scale firm knowledgeable in testing scales.

(b) All scales shall be subject to the applicable requirements of the code of specifications, tolerances, and regulations for scales as adopted by the Indiana state department of health. In the event, after proper inspection and testing, a scale fails to meet the applicable requirements, the scale inspector may condemn the scale and prevent its further use until it has been brought into conformity with this article. When a scale has been condemned, the scale inspector and the licensee shall immediately notify the director. *(Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-4-13)*

824 IAC 2-4-14 Annual license renewal applications

Authority: IC 26-3-7-3

Affected: IC 26-3-7-6

Sec. 14. (a) The agency shall mail by United States first class mail a renewal application, which shall include a listing of all the licensee's facilities, to each licensee prior to the expiration date of the licensee's current license. The renewal application form shall be completed and returned to the agency no later than ninety (90) days after the licensee's fiscal year end. The licensee shall forward, with the renewal application, the following:

- (1)** A current reviewed level financial statement.
- (2)** An updated financial profile form supplied by the agency.
- (3)** The appropriate license fee.

(b) The renewal application shall contain the information in section 1 of this rule. The licensee shall receive an annual renewal license application form appropriate to the license currently issued to the licensee. The annual renewal license application forms are as follows:

- (1)** Grain bank.
- (2)** Warehouse.
- (3)** Grain buyer.
- (4)** Buyer-warehouse.

(Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-4-14)

Rule 5. Auditors

824 IAC 2-5-1 Auditors

Authority: IC 26-3-7-3

Affected: IC 26-3-3; IC 26-3-7-1

Sec. 1. (a) The director may appoint auditors familiar with the storage, conditioning, shipping, and handling of agricultural commodities and who are knowledgeable with the Act and rules to investigate, audit, and inspect the persons and facilities licensed under the Act, or persons who should be licensed under the Act, for the purpose of determining that:

- (1) obligations to producers are accounted for correctly;
- (2) stored grain is in licensed facilities; and
- (3) requirements of the Act are being met.

(b) Prior to assuming duties, each auditor shall take an oath that he or she will:

- (1) faithfully and strictly discharge the duties of the office of auditor;
- (2) enforce and uphold the Act and these rules; and
- (3) keep all information confidential.

(c) Auditors shall report, in writing or electronically, the results of each audit and any other reports that the director may require.

(d) Each auditor shall be provided an identification card to validate to licensees his or her position with the agency. The identification card shall contain a picture of the auditor. *(Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-5-1)*

Rule 6. Audits

824 IAC 2-6-1 Audit procedure

Authority: IC 26-3-7-3

Affected: IC 26-3-7-6; IC 26-3-7-28

Sec. 1. (a) Audits and inspections of companies and facilities licensed under the Act may be made at any time during the licensee's regular business hours. The audits shall be performed by the director, the director's designated representative, or any auditor appointed under the Act.

(b) Audits may be performed:

- (1) without prior notice to the licensee; and
- (2) as frequently or infrequently as deemed to be appropriate based upon reports and other available data.

(c) Every licensee and the licensee's employees, agents, officers, partners, directors, and shareholders shall cooperate and make themselves available to assist in the audit, including allowing full and reasonable use of the licensee's sampling and grading equipment. Failure or refusal to cooperate or assist in an audit shall be a basis for the suspension of a license issued under the Act. Agency auditors shall not request intellectual property information from licensees handling seed grain.

(d) Audits may include, but are not limited to, any or all of the following:

- (1) A physical examination of all storage facilities of a licensee.
- (2) A review of the licensee's books and records.
- (3) Examination of all the different grains held by the licensee whether stored or nonstorage grain.
- (4) Financial records.
- (5) Information relevant to the maintenance or operation of a facility.
- (6) Records or accounts kept or held by any state or federally licensed financial institution that relate to the licensee.
- (7) Any other practice, review, or analysis deemed to be necessary or appropriate by the director, the director's designated representative, or any auditor.

(e) Upon completion of an audit, the licensee shall be given a departure report prepared by the agency's auditor outlining the auditor's findings. The departure report shall contain the following:

- (1) Violations.
- (2) Recommendations.
- (3) Requirements.
- (4) A statement that all financial records and related information were made available to the agency's auditor.
- (5) Signatures of the licensee or authorized employee of the licensee and the agency's auditor.

(Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-6-1)

Rule 7. Records

824 IAC 2-7-1 Operational records to be maintained

Authority: IC 26-3-7-3

Affected: IC 26-3-7-3; IC 26-3-7-28

Sec. 1. (a) A licensee shall maintain current and complete records with respect to all agricultural commodities delivered to, withdrawn from, and received, stored, or processed by the licensee. Each contract, instrument, document, or record that is to be prenumbered shall be sequentially prenumbered and shall be used in numerical order.

(b) Every licensee shall use and maintain the following:

(1) A perpetual inventory record or daily position report that is updated daily and shows the following:

(A) The total quantity of each kind and grade of grain received.

(B) The total quantity of each kind and grade of grain loaded out.

(C) The quantity of each kind and grade of grain remaining by the amount and kind of grain:

(i) in storage but owned by producers; and

(ii) owned by the licensee.

(2) A rail or truck ledger.

(3) Prenumbered warehouse receipts.

(4) Prenumbered scale tickets.

(5) Prenumbered contracts pertaining to the purchase, sale, or storage of grain.

(6) A current copy of the periodic insurance report submitted to the insurer.

(7) If none of the issued warehouse receipts and scale tickets recite the name and complete address of the owner or owners of delivered grain, then a grain list of the names and addresses of the owner or owners of delivered grain shall be maintained by the licensee.

(8) Prenumbered checks.

(9) Prenumbered settlement sheets.

(c) Records shall be kept current as of the close of each business day, provided that if no transaction takes place during a business day, a record showing the actual status as to quantity and storage obligations as of the close of the next preceding business day which recordable transactions occurred. (*Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-7-1*)

824 IAC 2-7-2 Financial records to be maintained

Authority: IC 26-3-7-3

Affected: IC 26-3-7-28

Sec. 2. (a) In addition to the records required in section 1 of this rule, the licensee shall keep and maintain adequate financial records as will clearly reflect the licensee's current financial position. These records shall include a general ledger or its equivalent that provides a summarization of information reflected in detail in subsidiary records, which may include the following:

(1) A general journal in which periodic adjusting entries are recorded.

(2) A cash receipts journal.

(3) A cash disbursements journal.

(4) Periodic detailed aging of accounts receivable.

(5) Periodic listing of accounts payable.

(6) Other relevant supporting documents.

(b) The licensee shall keep a current and accurate checkbook balance. (*Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-7-2*)

824 IAC 2-7-3 Settlement sheet contents

Authority: IC 26-3-7-3

Affected: IC 26-3-7-28

Sec. 3. (a) Settlement sheets shall be used and must be prenumbered and used sequentially. They shall contain the following information:

(1) Date.

- (2) The producer's name and address.
- (3) Bushels or pounds of grain delivered.
- (4) Type of grain.
- (5) Price.
- (6) Deductions.
- (7) Net due.
- (8) Check number.
- (9) The licensee's name, address, and telephone number.
- (10) Any other information necessary.

(b) The licensee shall keep settlement sheets in a numeric file. However, if a licensee files paid settlements alphabetically, a numerical list must be maintained for a cross-reference or a copy of the settlement sheet may be made for a numeric file. (*Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-7-3*)

Rule 8. Grain Bank and Stored Grain

824 IAC 2-8-1 Grain bank requirements

Authority: IC 26-3-7-3

Affected: IC 26-3-7-6; IC 26-3-7-15

Sec. 1. (a) Grain bank records shall include the following and are acceptable in lieu of grain bank contracts:

- (1) Name and address of the depositor.
- (2) Type, quality, and grade of the grain deposited.
- (3) Current and accurate accounting of deposits and withdrawals of grain and the balance due to or from the licensee.
- (4) Any other pertinent information.

(b) Grain bank grain shall be treated and considered as stored grain and ownership shall be with the depositor.

(c) Total grain bank obligations to depositors must be covered with inventory in licensed facilities.

- (1) Overdrafts, occurring when a customer withdraws more grain than that customer deposited, will be a reduction of company-owned unobligated grain.
- (2) A licensee shall not allow a customer to withdraw more grain than the customer deposited into the grain bank if there is not company-owned unobligated grain for the customer to use.

(d) Licensees providing grain bank services shall post the charges to be assessed against depositors, including storage or conditioning charges, in a conspicuous place. (*Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-8-1*)

824 IAC 2-8-2 Stored grain

Authority: IC 26-3-7-3

Affected: IC 26-3-7-19

Sec. 2. (a) Title to grain delivered to a licensee for storage shall remain with the depositor.

(b) The licensee shall keep current and accurate records of all grain deposited for storage. Such grain records shall contain the following:

- (1) Names of the depositors.
- (2) Address of the depositors.
- (3) Type, quality, and grade of grain deposited.
- (4) Current and accurate accounting of increases and decreases to the balance on hand.
- (5) Dates of transactions.
- (6) Any other pertinent information important to the licensee or requested by the director.

(c) Licensees shall post, in a conspicuous place, the charges to be assessed for stored grain. (*Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-8-2*)

Rule 9. Scale Tickets

824 IAC 2-9-1 Requirements for issuing scale tickets

Authority: IC 26-3-7-3

Affected: IC 26-3-7-26

Sec. 1. (a) When grain is delivered to a licensee, the licensee shall issue a scale ticket to the depositor.

(b) Each licensee shall have preprinted scale tickets that:

- (1)** have an original and not less than one (1) copy; and
- (2)** shall be consecutively prenumbered.

(c) If scale tickets are computer generated, sufficient safeguards must be in place to prevent the duplication or skipping of ticket numbers.

(d) The licensee shall issue or use scale tickets in numeric order.

(e) A copy or record of all scale tickets shall be maintained in numerical sequence as part of the licensee's records. *(Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-9-1)*

824 IAC 2-9-2 Scale ticket contents

Authority: IC 26-3-7-3

Affected: IC 26-3-7-26

Sec. 2. (a) In addition to the requirements in IC 26-3-7-26, each scale ticket shall be sequentially numbered and issued in numeric order containing the following:

- (1)** Notation as to whether the movement was IN, OUT, or WEIGH ONLY.
- (2)** Driver status, on or off the truck for gross and tare weighing.
- (3)** If the grain delivered is to have its identity preserved, the licensee shall do the following:
 - (A)** Note on the scale ticket that it is to be identity-preserved.
 - (B)** Note the location of the identity-preserved grain.

(b) Grain buyer licensees who handle seed grain shall issue scale tickets that are sequentially numbered, issued in numeric order, and with the minimum following information:

- (1)** The licensee's name and address to whom the grain was delivered.
- (2)** The date the grain was delivered.
- (3)** The name of the owner or owners of the grain.
- (4)** The gross, tare, and net amount of grain delivered.
- (5)** The grade factors that affect the price.
- (6)** The disposition of the grain.
- (7)** The kind of grain delivered.
- (8)** Any other pertinent information.

(Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-9-2)

Rule 10. Deposited and Stored Grain; Treatment and Care

824 IAC 2-10-1 Stored grain

Authority: IC 26-3-7-3

Affected: IC 26-3-7-15; IC 26-3-7-19

Sec. 1. All grain received by a licensee, where the sales price is not fixed or disposition is not noted or documented in the licensee's records, shall be considered stored grain and the title shall remain with the depositor. This includes grain delivered and the scale tickets evidencing the delivery does not indicate whether the grain was to be for sale, storage, or contract. *(Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-10-1)*

824 IAC 2-10-2 Nonstorage grain

Authority: IC 26-3-7-3

Affected: IC 26-3-7-6

Sec. 2. Grain delivered for cleaning, conditioning, extrusion, or other custom work and the grain or its byproduct:

- (1) is to be returned to the person who delivered the grain;
- (2) is considered nonstorage; and
- (3) does not fall under the Act.

(Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-10-2)

824 IAC 2-10-3 Forwarding grain

Authority: IC 26-3-7-3

Affected: IC 26-3-7-15; IC 26-3-7-19

Sec. 3. (a) When a licensee has received grain for storage from a depositor and the grain is to be forwarded as stored grain to another licensed warehouse, the initial warehouseman shall do the following:

- (1) Issue a scale ticket for the grain to the depositor, which shall state that the grain is being forwarded for storage and its destination.
- (2) Agree with the depositor via a written contract or agreement that the depositor waives redelivery of the grain at the facility where the grain was originally deposited.
- (3) Ask for and receive, from the licensee operating the warehouse where the grain is being forwarded, a receipt for the grain. Upon receiving grain for storage from a licensee who is forwarding grain deposited with the licensee, the licensee operating the warehouse to which the grain is being forwarded shall do the following:
 - (A) Issue a receipt to the initial licensee containing, in addition to the requirements in, 824 IAC 2-14, the following:
 - (i) The name of the initial licensee immediately followed by the statement, "as agent for his depositor(s)".
 - (ii) Place on its face, the following statement in bold and capital letters "NON-NEGOTIABLE".
 - (B) Keep the forwarded grain in his licensed storage facilities and shall not forward or dispose of or transfer the grain as long as the receipt is outstanding.

(b) A receipt issued to the initial licensee under this section shall be held by the initial licensee as evidence of inventory and not negotiated, pledged, transferred, assigned, disposed of, or otherwise encumbered. All rights shall accrue to the original depositor. *(Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-10-3)*

824 IAC 2-10-4 Delivery of grain

Authority: IC 26-3-7-3

Affected: IC 26-3-7-19

Sec. 4. (a) Every licensee shall receive grain for storage, handling, or shipment as long as:

- (1) the licensed storage capacity and facilities permit the additional deposit;
- (2) the kind or type of grain is usually stored by the licensee;
- (3) the grain is in suitable condition for storage, handling, or shipment; and
- (4) the grain is delivered in the usual course of business.

(b) A licensee may reserve adequate space to cover the following:

- (1) Working needs.
- (2) Prior contractual commitments.

(c) If the condition of grain offered to the licensee for sale or storage, other than grain that is identity-preserved, is such that it might affect the condition of grain in the facility, the licensee is not required to receive such grain.

(d) A licensee is not required to accept grain if the identity of the grain is to be preserved.

(e) A licensee shall issue a scale ticket upon delivery of the grain.

(f) Grain shall be placed or stored only in licensed bins and facilities. *(Indiana Grain Buyers and Warehouse Licensing Agency;*

824 IAC 2-10-4)

824 IAC 2-10-5 Identity-preserved grain

Authority: IC 26-3-7-3

Affected: IC 26-3-7-26

Sec. 5. (a) If a licensee accepts grain and the identity of the grain is to be preserved, the scale ticket shall state on its face the following:

- (1) That the grain is stored with its identity preserved.**
- (2) The location of the identity-preserved grain.**

(b) All other scale ticket requirements as stated in IC 26-3-7-26 and 824 IAC 2-9-1 shall also apply.

(c) Licensees shall keep a separate daily position record for identity-preserved grain. *(Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-10-5)*

824 IAC 2-10-6 Out-of-condition grain

Authority: IC 26-3-7-3

Affected: IC 26-3-7-15

Sec. 6. (a) If a licensee considers that any portion of the grain located in the licensee's licensed facilities is out-of-condition or is becoming out-of-condition, the licensee shall immediately begin reconditioning procedures.

(b) If the licensee determines that further deterioration of the grain cannot be prevented by reconditioning or after treatments have failed, the licensee shall immediately notify the director. The notice shall include the following:

- (1) The location in which the out-of-condition grain is stored.**
- (2) The quantity and kind of the out-of-condition grain.**
- (3) The grade, if determined, of the grain at the time the notice is given.**
- (4) The reason, if known, for the condition.**

(Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-10-6)

Rule 11. Grain Returned to Depositor

824 IAC 2-11-1 Delivery back to the depositor

Authority: IC 26-3-7-3

Affected: IC 26-3-7-2

Sec. 1. (a) When a grain depositor requests the return of grain, the grain must be delivered in the quantity and grade as designated on the warehouse receipt or ticket. Upon delivery of the grain represented by a warehouse receipt, the depositor must surrender the warehouse receipt and pay storage and any other charges due.

(b) Return of the grain shall be made within the time agreed to by the depositor and the licensee in a written contract. In the absence of a written contract, the licensee shall make delivery as rapidly as can be done by due or ordinary diligence. If more than one (1) depositor seeks return of a grain, the licensee shall deliver the grain in the order in which demand for delivery was made, and shall make delivery as rapidly as can be done by due and ordinary diligence. For purposes of this section, due and ordinary diligence in making delivery shall be presumed to mean that there shall be immediate delivery and in no event shall delivery be made later than fifteen (15) days after demand, absent any unusual circumstances preventing delivery within that time. *(Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-11-1)*

Rule 12. Preferential Treatment

824 IAC 2-12-1 Special or preferential treatment prohibited

Authority: IC 26-3-7-3

Affected: IC 26-3-7-29

Sec. 1. (a) Except as provided in 824 IAC 2-10-4, a licensee shall not directly or indirectly:

- (1) make or give any undue or unreasonable preference or advantage to any person;
- (2) subject a particular person to any undue or unreasonable prejudice or disadvantage; or
- (3) collect or receive, by any special charge, rebate, or other maneuver from any person, a greater or lesser compensation for services rendered in the handling, storage, or shipment of any grain than the licensee demands, collects, or receives from any other person for doing a like and concurrent service in the handling, storage, or shipment of grain under similar circumstances or conditions.

(b) In determining whether undue or unreasonable preference or preparation is being given, the practices of the licensee shall be considered in view of the licensee's historical storage and charging practices.

(c) Nothing contained in subsection (a) shall allow or require a licensee to change, alter, or impair a written contractual obligation with an existing or potential depositor, entered into by the licensee in good faith and not for the purpose of circumvention of the Act or this article. (*Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-12-1*)

Rule 13. Purchase of Grain; Contracts

824 IAC 2-13-1 Contracts requirements

Authority: IC 26-3-7-3

Affected: IC 26-3-7-2

Sec. 1. (a) Grain buyer and buyer-warehouse licensees shall maintain complete and accurate records regarding the grain they purchased from depositors using contracts stating the terms of the purchase. Contracts shall be numbered consecutively either at the time of printing or through the control of a computer-generated system. Contracts shall be used in consecutive order. Voided contracts shall be retained for the agency's audit. Contracts shall be executed in duplicate with one (1) copy delivered to the seller and one (1) copy retained by the buyer licensee in a numeric file.

(b) Contracts, whether written, printed, or electronic, for the purchase of grain from depositors shall contain, at a minimum, the following:

- (1) The buyer's name, address, and telephone number.
- (2) The seller's name and address.
- (3) The conditions of delivery.
- (4) The amount and type of grain delivered. Only one (1) type of grain per contract.
- (5) The grade of grain.
- (6) The method of pricing.
- (7) The dates of delivery of the grain to be covered by the contract.
- (8) The date payment is to be made.
- (9) The duration of the contract.
- (10) Be consecutively numbered receipts.
- (11) Charges for which the seller is liable.
- (12) A rollover shall be documented with the initials of both parties and dated by both parties.
- (13) The notice required in IC 26-3-7-3 (a) (12) shall appear immediately above the place on the contract where the seller signs.
- (14) The date and signatures of both the seller and licensee.
- (15) Other provisions that may be prescribed by the director.

(c) If the business of the licensee is sold to another licensee, contracts may be assigned to the purchaser of the business after the new owner is licensed. (*Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-13-1*)

824 IAC 2-13-2 Price later contracts

Authority: IC 26-3-7-3

Affected: IC 26-3-7-2

Sec. 2. (a) Only grain buyer and buyer-warehouse licensees are entitled to purchase grain from producers under price later contracts, also known as deferred pricing or DP contracts.

(b) In addition to the minimum contract requirements in section 1 of this rule, price later contracts shall also include a statement printed in bold letters, “NOT STORAGE–TITLE TO THE GRAIN PASSES TO BUYER UPON DELIVERY.”.

(c) A buyer-warehouse licensee shall not issue a collateral warehouse receipt on grain purchased by a price later contract until the full purchase price has been paid to the producer by that licensee. (*Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-13-2*)

Rule 14. Warehouse Receipts

824 IAC 2-14-1 General information

Authority: IC 26-3-7-3

Affected: IC 26-3-2; IC 26-3-4; IC 26-3-7

Sec. 1. (a) Paper and electronic Indiana warehouse receipts shall be issued by firms licensed as a warehouse or a buyer-warehouse. No licensed grain buyer can issue warehouse receipts unless the buyer is also licensed as a warehouseman under the United States Warehouse Act.

(b) The licensee and the provider shall maintain records and make reports that the director may require for electronic warehouse receipts.

(c) All negotiable warehouse receipts issued by a licensee, which evidence title to grain shall be issued, held, and canceled in accordance with this rule. Negotiation of receipts shall be by endorsement or by a separate, written agreement securely attached to the receipt.

(d) Before issuing a warehouse receipt, a licensee shall file with the agency, on a form supplied by the agency, a sample of the signatures of any person or persons the licensee has authorized to issue warehouse receipts. It shall be the licensee's obligation to notify the agency of any changes or updates that need to be made to the form.

(e) The director shall prescribe the form of warehouse receipts, which shall be printed and completed in quadruplicate. Warehousemen shall obtain warehouse receipts by submitting their order, in lots of fifty (50) forms, to the agency accompanied by a check or money order for the cost of printing and handling payable to a printer qualified with the director.

(f) Grain for which a warehouse receipt is issued may be commingled with different lots of fungible grain as established by the official grain standards of the United States. If the depositor and the licensee agree that identical grain is to be delivered, stored, and specially preserved and not commingled with any other commodity, then the words “Identity Preserved” shall be noted on the warehouse receipt.

(g) Upon the revocation or expiration of a license, the licensee has the right to terminate storage, shipping, and handling arrangements and collect outstanding charges regarding any grain for which a warehouse receipt has been issued.

(h) Receipts shall be issued in numeric sequence by each facility issuing warehouse receipts. Warehouse and buyer-warehouse licensees who issue warehouse receipts shall maintain the following:

(1) A warehouse receipt register listing issued receipts by consecutive number.

(2) A file containing the duplicate copy of all issued receipts.

(*Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-14-1*)

824 IAC 2-14-2 Warehouse receipts; printing

Authority: IC 26-3-7-3

Affected: IC 26-3-2; IC 26-3-4; IC 26-3-7

Sec. 2. (a) The agency shall authorize persons to print warehouse receipts if they are printed in accordance with the Act and this rule. Each printer wishing to qualify with the director shall:

(1) have a bond on file with the director;

(2) accept orders only from the agency;

(3) print receipts only for licensees;

- (4) agree by written contract with the director to faithfully follow the procedures and observe all safeguards required by the director;
- (5) keep accurate and permanent records; and
- (6) provide the director with an affidavit, on a form acceptable to the director, showing:
 - (A) all orders for receipts with the name of the licensee placing the order;
 - (B) the number of receipts printed;
 - (C) the consecutive numbers; and
 - (D) the date each order was sent.

(b) All warehouse receipts shall be numbered consecutively either at the time of printing or through the control of a computer-generated system. Each paper receipt shall contain the following parts:

- (1) The original printed on green safety paper.
- (2) The first copy printed on white paper.
- (3) The second copy printed on yellow paper.
- (4) The third copy printed on pink paper.

(Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-14-2)

824 IAC 2-14-3 Warehouse receipt contents

Authority: IC 26-3-7-3

Affected: IC 26-3-2; IC 26-3-4; IC 26-3-7

Sec. 3. (a) Warehouse receipts shall be numbered consecutively either at the time of printing or through the control of a computer-generated system. Every warehouse receipt issued for grain shall contain, at a minimum, the following terms:

- (1) The name and address of the issuing licensee.
- (2) The name of the owner or owners of the grain.
- (3) The date the receipt is issued.
- (4) The consecutive number of the warehouse receipt.
- (5) The gross and net weights.
- (6) The amount or rate of storage, handling, transportation, and processing charges and, if such charges are unpaid, a statement that the licensee claims a lien on the commodity for the amount of such charges.
- (7) Commodity Credit Corporation (CCC) code number and whether the warehouse receipt will or will not be used as collateral for a CCC loan.
- (8) The word "NEGOTIABLE" clearly and conspicuously printed or stamped on the original warehouse receipt and "NON-NEGOTIABLE" clearly and conspicuously printed or stamped on the copies of the warehouse receipt.
- (9) Other supplemental information necessary for purposes of the Uniform Grain and Rice Storage Agreement with United States Department of Agriculture.
- (10) Area for other pertinent and useful information.

(b) If the warehouse receipt does not recite the address of the owner or owners, the licensee or issuer shall maintain a current and complete list of the names and complete addresses of the owners of the grain to whom a warehouse receipt was issued. *(Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-14-3)*

824 IAC 2-14-4 Authority for a licensee to issue warehouse receipts to itself

Authority: IC 26-3-7-3

Affected: IC 26-3-2; IC 26-3-4; IC 26-3-7

Sec. 4. (a) A warehouse receipt that is to be used for collateral purposes by a warehouse licensee must be first issued by the licensee to itself. The warehouse licensee then shall properly endorse the collateral receipt on the reverse to the secured party. Subject to the provisions of this rule, a licensee may issue and hold a warehouse receipt for grain provided all the following apply:

- (1) The grain is owned by the licensee.
- (2) The licensee has paid, in full, for the grain.
- (3) The grain is located in licensed facilities.

(b) The warehouse licensee's obligation, represented by an outstanding warehouse receipt endorsed for collateral purposes,

shall not be canceled until the licensee has possession of the outstanding receipt and it has been properly canceled. The licensee may cancel the outstanding obligation represented by a warehouse receipt in lieu of having possession of the actual receipt, provided that the secured party has presented the licensee with a written confirmation of their release of the warehouse receipt. The confirmation may be by letter or facsimile transmission and it shall, at a minimum, contain the following:

- (1) Date of release.
- (2) Receipt number or numbers.
- (3) Authorized signature of the secured party warehouse receipt holder.

(Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-14-4)

824 IAC 2-14-5 Issuance of warehouse receipts to depositors and Commodity Credit Corporation

Authority: IC 26-3-7-3

Affected: IC 26-3-2; IC 26-3-4; IC 26-3-7

Sec. 5. (a) A licensee shall issue a warehouse receipt to a depositor, upon the depositor's request, when grain has been deposited at the licensee's licensed warehouse and the grain has been weighed, inspected, and graded. No warehouse receipt shall be sought or issued with respect to grain that is subject to any lien or other encumbrance. All information contained in a receipt shall be printed or legibly written in ink, and all spaces shall be filled with appropriate information or lined out. Receipts shall be signed on by employees designated by the licensee on the agency's authorization to sign a warehouse receipts form. The use of facsimile signature stamps is prohibited on warehouse receipts. Even though grain bank grain is stored grain, no warehouse receipt shall be issued for grain bank.

(b) When there is an outstanding and uncanceled warehouse receipt, another warehouse receipt shall not be issued for the grain covered thereby, except for the following:

- (1) Replacement receipt for lost or destroyed receipts pursuant to section 8 of this rule.
- (2) Certain receipts issued pursuant to the Uniform Grain and Rice Storage Agreements.
- (3) New warehouse receipts issued due to partial delivery on the original receipt and the original receipt has been canceled.

(c) If a trust receipt is issued upon a warehouse receipt, this fact shall be noted on the original warehouse receipt, along with the name and address of the person to whom such trust receipt is issued. This notice shall be typed or printed in ink upon the receipt when the trust receipt is issued.

(d) When a warehouse receipt is issued by a licensee who is bound by a Uniform Grain and Rice Storage Agreement (UGRSA), the licensee shall attempt to determine whether the receipt being issued is or will be a Commodity Credit Corporation (CCC) receipt. The UGRSA licensee shall maintain a current list of all CCC receipts, and shall make a notation indicating its status as a CCC receipt issued for use as collateral for loans from the CCC on all CCC receipts.

(e) A UGRSA licensee shall not sell or treat as sold any grain that is represented by a CCC receipt, but shall hold and continue to store such grain until the CCC receipt is endorsed over and surrendered to the UGRSA licensee by the depositor or CCC.

(f) A UGRSA licensee shall take reasonable steps to ensure that CCC receipts shall be surrendered to the licensee. No UGRSA licensee shall sell any grain represented by outstanding warehouse receipts unless and until the licensee is assured that such receipts are not a CCC receipt.

(g) When issuing a paper warehouse receipt, the licensee shall distribute the parts of the receipts as follows:

- (1) The top or original receipt, printed on green safety paper, shall be delivered to the person depositing the grain.
- (2) The first copy of the receipt printed on white paper shall be delivered to the depositor as a copy for the depositor's records.
- (3) The second copy of the receipt, printed on yellow paper, shall be the warehouseman's copy of the receipt and shall be retained by the warehouseman's until the original receipt is returned for cancellation.
- (4) The third copy of the receipt, printed on pink paper, shall be the warehouseman's second copy and shall be retained in numerical order.

(h) When electronic warehouse receipts are issued, the information required may be the same as a paper warehouse receipt;

however, it will not be necessary to distribute the parts outlined in subsection (g). (*Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-14-5*)

824 IAC 2-14-6 Partial delivery

Authority: IC 26-3-7-3

Affected: IC 26-3-2; IC 26-3-4; IC 26-3-7

Sec. 6. If only a portion of the grain represented by a warehouse receipt is delivered, the original receipt must be returned to the issuing licensee at or before the time of the delivery and must be canceled as provided in this rule. After the partial delivery and at the time of cancellation, a new receipt shall be issued covering the balance or undelivered portion of the grain. The new receipt shall state that it represents grain that was previously evidenced by the original receipt and giving the number of the original warehouse receipt. (*Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-14-6*)

824 IAC 2-14-7 Cancellation of warehouse receipts

Authority: IC 26-3-7-3

Affected: IC 26-3-2; IC 26-3-4; IC 26-3-7

Sec. 7. (a) When all grain, the storage of which is evidenced by a warehouse receipt, is delivered from storage, the warehouse receipt shall be plainly marked across its face with the word "CANCELED" and shall have written on it the date of cancellation, the name of the person canceling the warehouse receipt.

(b) A warehouse licensee shall keep all canceled warehouse receipts for at least six (6) years from the cancellation date.

(c) No receipt shall be canceled until and unless one (1) of the following has occurred:

- (1)** The grain has been removed from storage, by sale or otherwise.
- (2)** A new receipt has been issued contemporaneously for all or a part of the grain.
- (3)** A combination of such occurrences have taken place with respect to all of the grain.

(d) Upon cancellation of a receipt, the original shall be retained in the licensee's files attached to its duplicate and after cancellation neither the original nor the duplicate shall be removed from the files. (*Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-14-7*)

824 IAC 2-14-8 Lost warehouse receipts

Authority: IC 26-3-7-3

Affected: IC 26-3-2; IC 26-3-4; IC 26-3-7

Sec. 8. In the case of a lost or destroyed warehouse receipt, the new warehouse receipt shall bear the same date and information as the original and shall be plainly marked on its face "duplicate in lieu of lost or destroyed warehouse receipt number.....", and the warehouse licensee shall fill in the blank with the appropriate warehouse number. To protect the warehouse licensee from any liability or expense that it or any person, injured by the delivery, may incur by reason of the original warehouse receipt remaining outstanding, and before issuing the duplicate warehouse receipt, the warehouse licensee may seek from the depositor of grain evidenced by the lost warehouse receipt one (1) or both of the following:

(1) An affidavit stating, under oath, that the applicant for the substitute warehouse receipt is entitled to the original warehouse receipt and its number and setting forth the circumstances that resulted in the loss or destruction of the original warehouse receipt.

(2) A bond in an amount double the value of the grain represented by the original warehouse. The original affidavit and bond shall be retained by the warehouse licensee for at least six (6) years after the duplicate receipt is canceled.

(*Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-14-8*)

824 IAC 2-14-9 Voided warehouse receipt procedure

Authority: IC 26-3-7-3

Affected: IC 26-3-2; IC 26-3-4; IC 26-3-7

Sec. 9. Warehouse receipts voided by the warehouse licensee for any reason shall be so marked, signed, and dated, and all copies of the voided receipts shall be held in the same manner and for the same period as are canceled receipts. (*Indiana Grain*

Buyers and Warehouse Licensing Agency; 824 IAC 2-14-9)

824 IAC 2-14-10 Surrender of warehouse receipts when license is revoked, suspended, or expired

Authority: IC 26-3-7-3

Affected: IC 26-3-2; IC 26-3-4; IC 26-3-7

Sec. 10. (a) When a license is revoked or has expired, the following shall occur:

- (1) All unused warehouse receipts shall be immediately surrendered to the director or the designated representative.**
- (2) All receipts that have been issued that are still outstanding shall immediately be recalled and, upon delivery of the grain, the receipts shall be marked canceled, signed, and dated by the licensee who shall notify the director that such receipts have been recalled and canceled.**

(b) When a license has been suspended, the director may order all:

- (1) unused receipts surrendered to the agency; and**
- (2) receipts that have been issued and still outstanding be recalled and upon delivery of the grain, the receipts shall be marked canceled, signed, and dated by the licensee who shall notify the director that the receipts have been recalled and canceled.**

(Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-14-10)

824 IAC 2-14-11 Expiration date on warehouse receipts; sale of grain

Authority: IC 26-3-7-3

Affected: IC 26-3-7

Sec. 11. (a) When the expiration blank on a warehouse receipt has been filled in with a date (month, day, and year) and the depositor or owner fails to reclaim, re-store, accept redelivery, sell it, or otherwise dispose of or provide for the grain, the grain may be sold by the licensee at the current market price and the warehouse receipt deemed to be canceled. The sale proceeds, less outstanding charges due to the licensee for the storage and handling of the grain and the costs of the sale, if any, shall be held in an escrow account to be established by the licensee in accordance with this section for the account of the depositor or owner.

(b) Every licensee who sells grain due to a depositor's or owner's failure to otherwise provide for the grain upon the expiration of rights to it under a receipt, shall keep and maintain a trust or escrow account to be named as such and in which the licensee shall deposit the net sales proceeds received from the sale of the grain. All moneys shall be held by the licensee for the account of the depositor and shall be held and invested in accounts with federally or state licensed financial institutions. The licensee shall have no obligation to seek the highest rate of interest, dividend, or other income from the escrowed account. Any income actually paid to the escrowed account shall be added to the escrow and become the property of the depositor or owner of the grain.

(c) The licensee shall keep detailed books and records of the moneys held subject to the licensee's escrow or trust account with the following information:

- (1) The name of each depositor or owner.**
- (2) The amount of moneys held on account of each depositor.**
- (3) The manner in which the moneys are being held and invested.**

(d) The licensee shall not use any escrow or trust accounts for any other use, including the licensee's personal or business funds.

(e) The licensee shall pay over the net sales proceeds held on account of a depositor or owner together with interest, dividend, or other income actually paid only upon the presentment of the receipt issued with respect to the grain sold. The receipt shall then be canceled and retained as provided in this rule. *(Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-14-11)*

Rule 15. Grain Shortages; Failures; Closeout

824 IAC 2-15-1 Procedure for failures or grain shortages

Authority: IC 26-3-7-3

Affected: IC 26-3-7-31

Sec. 1. (a) If:

- (1) there is a shortage;
- (2) a licensee fails to comply with IC 26-3-7-31;
- (3) the director fears the depositors may suffer irreparable harm or a further loss of grain; or
- (4) the director has evidence that the licensee is insolvent or is unable to satisfy the claims of depositors or producers who have sold grain to the licensee;

the director may petition the circuit court of the Indiana county where the licensee's principal Indiana place of business is located for an order authorizing the director by or through the director's designated representative, auditors, or other agents or employees to seize and take possession of all or a portion of any and all grain located in the licensed facilities and of all pertinent records and property. No petition shall be sought if the licensee agrees to allow the agency to take possession of the licensee's failing business for the purpose of settling the outstanding amounts to the grain depositors.

(b) Upon taking possession, the director shall do the following:

- (1) Give written notice of the action to the surety on the bond or in the event of a letter of credit, the bank that issued the letter of credit.
- (2) Notify the depositors who are owed grain and or proceeds from the sale of grain.
- (3) Conduct an audit or other investigation, with respect to the grain and proceeds from the sale of grain in which there is an apparent shortage, to determine the amount of the shortage and compute the amount due to each depositor as shown by the licensee's records, if practicable.
- (4) Notify the licensee and surety or bank of the approximate amount of the shortages.
- (5) Notify each affected grain depositor by sending notice to the depositor's last known address as shown by the licensee's records of the balance due the depositor from the licensee's records.
- (6) Take title to all grain stored in the licensed facilities in trust for all valid claimants and:
 - (A) make redelivery of the grain on a pro rata basis to all valid owners of grain bank grain or stored grain; or
 - (B) sell the grain using a broker hired by the director through a bidding procedure, auction, or any other means that, in the director's judgment, would be best for the grain depositors who either owned the grain or have sold grain and have not received payment:
 - (i) award a contract to highest bidder, with the director reserving the right to reject any or all bids submitted pursuant to an offering and reoffer the grain for sale until the director is satisfied that an adequate price has been tendered; and
 - (ii) deposit money from the sale of grain in an interest-bearing trust account for the benefit of the valid claimants.
- (7) Supervise the load out and delivery of grain. All liquidation expenses shall be paid from the proceeds of the sale of the grain remaining in the licensee's bins.
- (8) Publish notice to potential claimants in newspapers published in the area served by the licensee. The notice shall contain the following:
 - (A) The name and address of the licensee.
 - (B) A statement that the firm is no longer licensed.
 - (C) The date, time, and place of the violation and claim hearings.
 - (D) The purpose of the hearings.
 - (E) Any other pertinent information.
- (9) Review the records to determine the validity of the claims for storage customers or for unpaid transactions of the sale of grain to the licensee.
- (10) Hold a claims hearing for potential claimants to provide evidence of their claims.
- (11) Issue a final order with notice to all claimants of record, the surety or letter of credit issuer, and the licensee.
- (12) If required, request all or part of the bond or letter of credit be paid to the director.
- (13) After the appropriate time has passed for administrative review, and the agency has not received any petitions for review, the agency shall distribute to valid claimants in the following order the:
 - (A) Proceeds from the sale of grain and any earned interest.
 - (B) If the proceeds from the sale of grain do not pay the claimants in full, then the security on deposit shall be used in the following order:
 - (i) The cash deposit.
 - (ii) Letter of credit.
 - (iii) Surety bond.

- (14) No claims of the licensee shall be honored until the claims of all other valid claimants have been paid in full.
- (15) When the license is revoked or the licensee fails, only claims for delivered grain shall be considered. Forward contracts shall not be considered a valid claim for compensation under the bond.
- (16) Once a person has failed as a licensee, that person is not eligible for another license to store or buy grain from producers in Indiana.
- (17) Interest earned shall be considered as proceeds and shall not be distributed as interest.

(c) The director shall retain possession obtained under this rule until the claims of all depositors have been satisfied by the proceeds of the sale of grain in the licensee's bins or the proceeds of a bond or until such time as the director is ordered by the court to surrender possession. The director may petition the court to be relieved of and discharged from the operation of the licensee's licensed facilities and may seek to be discharged and released from the liabilities and claims that have arisen or could arise from the operation of that licensee's warehouse or grain buying activities.

(d) All necessary expenses incurred by the agency or any receiver appointed under this rule or the Act in carrying out this rule may be recovered from the licensee in separate civil action brought by the director in the circuit court or recovered at the same time and as a part of the seizure or receivership action filed under this rule. Part of the expenses may include the following:

- (1) The actual costs for each day or part thereof for each agency employee, designated representative, auditor, receiver, and others involved in the seizing and handling of the grain, records, or property at the licensee's facilities.
- (2) The cost of adequate liability insurance necessary to protect the director, the director's designated representative, auditors, receiver, and others engaged in carrying out this rule.

(e) In terminating arrangements for the storing of grain, the warehouse or buyer-warehouse licensee shall prepare and send to all depositors a notice in a form approved by the director or the director's designated representative. The notice shall at least contain the following:

- (1) Fact of termination or license expiration of the license.
- (2) Provide for a time frame of deliveries that shall take place no later than fifteen (15) days from the termination or expiration date of the license.
- (3) The balance due to the depositor.
- (4) The agency's name, address, telephone number, and fax number.

(f) In the event that the depositors are not paid in full for their claims, the director shall forward to the Indiana grain indemnity fund board of directors a list of those depositors who are still owed money and the balance of their claim still due them along with a copy of the final order. (*Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-15-1*)

Rule 16. License Suspensions; Revocations; Denials

824 IAC 2-16-1 Contents of agency notices when a license is suspended, revoked, or denied

Authority: IC 26-3-7-3

Affected: IC 26-3-7-17.5

Sec. 1. (a) Whenever a license is suspended or revoked, the director may, for each facility operated by the licensee, publish a notice in a newspaper of general circulation that serves the county in which the facility is located and post the notice at the facilities. The notice shall contain the following:

- (1) The name and address of the licensee.
- (2) A statement that the business is no longer licensed under the Act to store or purchase grain from producers.
- (3) A statement that anyone who is owed grain or money from the business should contact the Indiana grain buyers and warehouse licensing agency.
- (4) The agency's name, address, telephone number, and fax number.

(b) Whenever an application for licensure under the Act is denied, the director may post a notice on the applicant's facilities and may publish a public notice in a newspaper of general circulation that serves the county in which the facility is located. The notice shall contain the following:

- (1) The name and address of the applicant.
- (2) A statement that the application for a license to store or buy grain from producers was denied.

(3) A statement that persons with questions should contact the agency.

(4) The agency's name, address, telephone number, and fax number.

(Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-16-1)

Rule 17. Administrative Hearings

824 IAC 2-17-1 Hearing proceedings

Authority: IC 26-3-7-3

Affected: IC 4-21.5; IC 26-3-7-16.5; IC 26-3-7-17.1

Sec. 1. All hearings required, provided for or allowed under the Act or this article, shall be carried out in accordance with IC 4-21.5, the Administrative Orders and Procedures. *(Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-17-1)*

SECTION 2. 824 IAC 1-2 IS REPEALED.

Notice of Public Hearing

Under IC 4-22-2-24, notice is hereby given that on November 3, 2000 at 1:00 p.m., at the ISTA Center, 150 West Market Street, Suite 416, Indianapolis, Indiana the Indiana Grain Buyers and Warehouse Licensing Agency will hold a public hearing on proposed new rules to establish current standards for grain buyers and grain warehousemen in Indiana. Copies of these rules are now on file at the Indiana Grain Buyers and Warehouse Licensing Agency, ISTA Center, 150 West Market Street, Suite 414 and Legislative Services Agency, One North Capitol, Suite 325, Indianapolis, Indiana and are open for public inspection.

Robert Benson
Director
Indiana Grain Buyers and Warehouse Licensing Agency