

**Final Rule**

LSA Document #15-331(F)

**DIGEST**

Amends [824 IAC 2-4-1](#) to eliminate certain selections for the type of license to be applied for. Amends [824 IAC 2-4-3](#) to reflect a statutory fee increase required for each additional facility. Amends [824 IAC 2-4-4](#) to eliminate a cash bond option upon filing for a license. Amends [824 IAC 2-4-5](#) to correct grammar. Amends [824 IAC 2-4-7](#) to eliminate superfluous language. Amends [824 IAC 2-4-14](#) to allow for electronic mail as an option for mailing renewal applications. Amends [824 IAC 2-5-1](#) to clarify that auditors are employees not appointees and to remove obsolete language. Amends [824 IAC 2-6-1](#) to clarify that auditors are employees not appointees. Amends [824 IAC 2-9-2](#) to correct grammar. Amends [824 IAC 2-14-5](#) to rearrange certain language. Amends [824 IAC 2-15-1](#) to remove repetitive language. Amends [824 IAC 2-16-1](#) to reflect a statutory change. Repeals [824 IAC 2-1-3](#), [824 IAC 2-1-6](#), and [824 IAC 2-1-7](#). Effective 30 days after filing with the Publisher.

[824 IAC 2-1-3](#); [824 IAC 2-1-6](#); [824 IAC 2-1-7](#); [824 IAC 2-4-1](#); [824 IAC 2-4-3](#); [824 IAC 2-4-4](#); [824 IAC 2-4-5](#); [824 IAC 2-4-7](#); [824 IAC 2-4-14](#); [824 IAC 2-5-1](#); [824 IAC 2-6-1](#); [824 IAC 2-9-2](#); [824 IAC 2-14-5](#); [824 IAC 2-15-1](#); [824 IAC 2-16-1](#)

SECTION 1. [824 IAC 2-4-1](#) IS AMENDED TO READ AS FOLLOWS:

**[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 facilities.
- (4) Name and address of owner.
- (5) Telephone and fax numbers.
- (6) Form of business organization.
- (7) Statement of willingness to be inspected.
- (8) Computation areas for:
  - (A) licensing fee;
  - (B) net worth; and
  - (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](#); filed Jan 19, 2001, 3:04 p.m.: 24 IR 1653; readopted filed Nov 16, 2007, 2:00 p.m.: [20071212-IR-824070667RFA](#); readopted filed Nov 27, 2013, 1:30 p.m.: [20131225-IR-824130492RFA](#); filed Nov 16, 2016, 3:34 p.m.: [20161214-IR-824150331FRA](#))*

---

SECTION 2. [824 IAC 2-4-3](#) IS AMENDED TO READ AS FOLLOWS:

**[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 two hundred fifty~~ dollar (~~\$50~~) (**\$250**) 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](#); filed Jan 19, 2001, 3:04 p.m.: 24 IR 1653; readopted filed Nov 16, 2007, 2:00 p.m.: [20071212-IR-824070667RFA](#); readopted filed Nov 27, 2013, 1:30 p.m.: [20131225-IR-824130492RFA](#); filed Nov 16, 2016, 3:34 p.m.: [20161214-IR-824150331FRA](#))*

SECTION 3. [824 IAC 2-4-4](#) IS AMENDED TO READ AS FOLLOWS:

**[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; **or**
- ~~(3) cash deposit; or~~
- (4) **(3)** 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 ~~cancelled~~. **cancelled**. 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~~ **meet** the following **requirements**:

- (1) Be issued by a financial institution insured by Federal Deposit Insurance Corporation.
- (2) Be payable to the director of the 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 ~~(6)~~ **(b)(6)** and (b)(8) through ~~(11)~~ **(b)(11)** also apply.

(d) A licensee or applicant submitting a cash bond required under the Act shall ~~do the following~~:  
~~(4)~~ 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 FDIC (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](#); filed Jan 19, 2001, 3:04 p.m.: 24 IR 1653; readopted filed Nov 16, 2007, 2:00 p.m.: [20071212-IR-824070667RFA](#); readopted filed Nov 27, 2013, 1:30 p.m.: [20131225-IR-824130492RFA](#); filed Nov 16, 2016, 3:34 p.m.: [20161214-IR-824150331FRA](#))*

SECTION 4. [824 IAC 2-4-5](#) IS AMENDED TO READ AS FOLLOWS:

#### **[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 an ~~addition~~ **additional** 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; filed Jan 19, 2001, 3:04 p.m.: 24 IR 1654; readopted filed Nov 16, 2007, 2:00 p.m.: [20071212-IR-824070667RFA](#); readopted filed Nov 27, 2013, 1:30 p.m.: [20131225-IR-824130492RFA](#); filed Nov 16, 2016, 3:34 p.m.: [20161214-IR-824150331FRA](#))*

SECTION 5. [824 IAC 2-4-7](#) IS AMENDED TO READ AS FOLLOWS:

### **[824 IAC 2-4-7](#) Financial statement**

**Authority:** [IC 26-3-7-3](#)

**Affected:** [IC 25-2.1-1](#); [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, 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~~. [IC 25-2.1-1](#).
- (2) Copies of both state and federal tax returns containing both personal and business income of the ~~individual(s)~~ **individual** or ~~partner(s)~~ **partner**. 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 a **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 that required this waiver still exist. If the conditions causing the waiver no longer exist, the agency will notify the licensee of the change and require a reviewed financial **statement** for the next licensing year.

(d) A financial profile form shall be sent to licensees **by the agency** 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)~~ **(C)** Corporation.
  - ~~(E)~~ **(D)** Cooperative.
  - ~~(F)~~ **(E)** Other.
- (3) Principal business activities, **including the following:**
  - (A) Grain bank.
  - (B) Warehouse.
  - (C) Grain buyer.
  - (D) Buyer-warehouse.
- (4) Owner's name and address and other ownership information as required by the director.
- (5) Applicant's verification.
- (6) Signature.

(Indiana Grain Buyers and Warehouse Licensing Agency; [824 IAC 2-4-7](#); filed Jan 19, 2001, 3:04 p.m.: 24 IR 1655; readopted filed Nov 16, 2007, 2:00 p.m.: [20071212-IR-824070667RFA](#); readopted filed Nov 27, 2013, 1:30 p.m.: [20131225-IR-824130492RFA](#); filed Nov 16, 2016, 3:34 p.m.: [20161214-IR-824150331FRA](#))

SECTION 6. [824 IAC 2-4-14](#) IS AMENDED TO READ AS FOLLOWS:

**[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 U.S. first class mail **or e-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) Current reviewed level financial statement.
- (2) Updated financial profile form supplied by the agency.
- (3) 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](#); filed Jan 19, 2001, 3:04 p.m.: 24 IR 1658; readopted filed Nov 16, 2007, 2:00 p.m.: [20071212-IR-824070667RFA](#); readopted filed Nov 27, 2013, 1:30 p.m.: [20131225-IR-824130492RFA](#); filed Nov 16, 2016, 3:34 p.m.: [20161214-IR-824150331FRA](#))

SECTION 7. [824 IAC 2-5-1](#) IS AMENDED TO READ AS FOLLOWS:

**[824 IAC 2-5-1](#) Requirements for auditors**

**Authority:** [IC 26-3-7-3](#)

**Affected:** [IC 26-3-7-1](#)

Sec. 1. (a) The director may ~~appoint~~ **employ** 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 obligations to producers are accounted for correctly, stored grain is in licensed facilities, and requirements of the Act are being met.

(b) Prior to assuming duties, each auditor shall take an oath that he or she will faithfully and strictly discharge the duties of the office of auditor, enforce and uphold the Act and these rules, and to 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](#); filed Jan 19, 2001, 3:04 p.m.: 24 IR 1658; readopted filed Nov 16, 2007, 2:00 p.m.: [20071212-IR-824070667RFA](#); readopted filed Nov 27, 2013, 1:30 p.m.: [20131225-IR-824130492RFA](#); filed Nov 16, 2016, 3:34 p.m.: [20161214-IR-824150331FRA](#))

SECTION 8. [824 IAC 2-6-1](#) IS AMENDED TO READ AS FOLLOWS:

**[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 licenced [*sic, 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, **his the director's** designated representative, or any auditor ~~appointed pursuant to the Act.~~ **employed by the agency.**

(b) Audits may be performed without prior notice to the licensee and may be performed 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 book 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 ~~which~~ **that** relate to the licensee.
- (7) Any other practice, review, or analysis deemed to be necessary or appropriate by the director, ~~his~~ **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:

- (1) violations;
- (2) recommendations;
- (3) requirements;
- (4) a statement that all financial records and related information were made available to the agency's auditor; and
- (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](#); filed Jan 19, 2001, 3:04 p.m.: 24 IR 1658; readopted filed Nov 16, 2007, 2:00 p.m.: [20071212-IR-824070667RFA](#); readopted filed Nov 27, 2013, 1:30 p.m.: [20131225-IR-824130492RFA](#); filed Nov 16, 2016, 3:34 p.m.: [20161214-IR-824150331FRA](#))*

SECTION 9. [824 IAC 2-9-2](#) IS AMENDED TO READ AS FOLLOWS:

**[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 (A) 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~~ **minimum** following information:

- (1) Licensee's name and address to ~~whom~~ **which** the grain was delivered.
- (2) Date the grain was delivered.
- (3) Name of the owner or owners of the grain.
- (4) Gross, tare, and net amount of grain delivered.
- (5) Grade factors that affect the price.
- (6) Disposition of the grain.
- (7) Kind of grain delivered.
- (8) Any other pertinent information.

*(Indiana Grain Buyers and Warehouse Licensing Agency; 824 IAC 2-9-2; filed Jan 19, 2001, 3:04 p.m.: 24 IR 1660; readopted filed Nov 16, 2007, 2:00 p.m.: 20071212-IR-824070667RFA; readopted filed Nov 27, 2013, 1:30 p.m.: 20131225-IR-824130492RFA; filed Nov 16, 2016, 3:34 p.m.: 20161214-IR-824150331FRA)*

SECTION 10. [824 IAC 2-14-5](#) IS AMENDED TO READ AS FOLLOWS:

**[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 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~~ **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 as pursuant to section 8 of this rule.
- (2) Certain receipts issued pursuant to the Uniform Grain and Rice Storage Agreements (**UGRSA**).
- (3) New warehouse receipts issued due to partial delivery on the original receipt and the original receipt has been ~~cancelled~~. **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 (herein referred to as UGRSA~~, the licensee shall attempt to determine whether the receipt being issued is or will be a Commodity Credit Corporation (~~herein referred to as~~ (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 Commodity Credit Corporation on all CCC receipts.

(e) A UGRSA licensee shall not sell or treat as sold any grain which 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 ~~insure~~ **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 ~~he~~ **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 his **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 ~~him~~ **the warehouseman** 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 ~~section~~ **subsection (g)** above.

*(Indiana Grain Buyers and Warehouse Licensing Agency; [824 IAC 2-14-5](#); filed Jan 19, 2001, 3:04 p.m.: 24 IR 1665; readopted filed Nov 16, 2007, 2:00 p.m.: [20071212-IR-824070667RFA](#); readopted filed Nov 27, 2013, 1:30 p.m.: [20131225-IR-824130492RFA](#); filed Nov 16, 2016, 3:34 p.m.: [20161214-IR-824150331FRA](#))*

SECTION 11. [824 IAC 2-15-1](#) IS AMENDED TO READ AS FOLLOWS:

**[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 there is a shortage or a licensee fails to comply with the provisions of [IC 26-3-7-31](#), or the director fears the depositors may suffer irreparable harm or a further loss of grain, or 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 his 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 ~~which~~ **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~~ **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 ~~which, that,~~ in the director's ~~judgement,~~ **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) Name and address location of the licensee.
  - (B) A statement that the firm is no longer licensed.



- (C) Date, time, and place of the violation and claim hearings.
- (D) 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 which that have arisen or could arise from the operation of that licensee's warehouse or grain buying activities.

~~(d) All necessary expenses incurr 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:
    - ~~(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 be 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 which 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 the provisions of this rule may be recovered from the licensee in separate civil action brought by the director in the said 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:

- (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, ~~his~~ **the director's** designated representative, auditors, receiver, and others engaged in carrying out the provisions of 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 ~~his~~ **the director's** designated representative. The notice shall at least contain the following:

- (1) Fact of termination or license expiration of license.
- (2) ~~Provide~~ **Provision** for time frame of deliveries, which shall take place no later than fifteen (15) days from the termination or expiration date of the license.
- (3) Balance due to the depositor.
- (4) Agency's name, address, **and** telephone and fax numbers.

(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](#); filed Jan 19, 2001, 3:04 p.m.: 24 IR 1667; readopted filed Nov 16, 2007, 2:00 p.m.: [20071212-IR-824070667RFA](#); readopted filed Nov 27, 2013, 1:30 p.m.: [20131225-IR-824130492RFA](#); filed Nov 16, 2016, 3:34 p.m.: [20161214-IR-824150331FRA](#))*

SECTION 12. [824 IAC 2-16-1](#) IS AMENDED TO READ AS FOLLOWS:

**[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](#)

Sec. 1. (a) Whenever a license is suspended or revoked, the director ~~may~~, **shall**, 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) 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 and fax numbers.

(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) 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, **and** telephone and fax numbers.

*(Indiana Grain Buyers and Warehouse Licensing Agency; [824 IAC 2-16-1](#); filed Jan 19, 2001, 3:04 p.m.: 24 IR 1669; readopted filed Nov 16, 2007, 2:00 p.m.: [20071212-IR-824070667RFA](#); readopted filed Nov 27, 2013, 1:30 p.m.: [20131225-IR-824130492RFA](#); filed Nov 16, 2016, 3:34 p.m.: [20161214-IR-824150331FRA](#))*

SECTION 13. THE FOLLOWING ARE REPEALED: [824 IAC 2-1-3](#); [824 IAC 2-1-6](#); [824 IAC 2-1-7](#).

LSA Document #15-331(F)

Notice of Intent: [20150930-IR-824150331NIA](#)

One Year Requirement ([IC 4-22-2-25](#)): [20160608-IR-824150331ARA](#)

Proposed Rule: [20160608-IR-824150331PRA](#)

Hearing Held: October 3, 2016

Approved by Attorney General: November 7, 2016

Approved by Governor: November 14, 2016

Filed with Publisher: November 16, 2016, 3:34 p.m.

Documents Incorporated by Reference: None Received by Publisher

Small Business Regulatory Coordinator: David Bausman, Director, Policy and Regulatory Affairs, Indiana State Department of Agriculture, One North Capitol Avenue, Suite 600, Indianapolis, IN 46204, (317) 233-3873, [dbausman@isda.in.gov](mailto:dbausman@isda.in.gov)

Posted: 12/14/2016 by Legislative Services Agency

An [html](#) version of this document.