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MEMORANDUM

TO: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture

FROM: Emily Caudill, Regulations Compiler

RE: Proposed Amendment or New Regulation – 302 KAR 033:010

DATE: June 14, 2023

A copy of the administrative regulation listed above is enclosed for your files. This regulation is **tentatively** scheduled for review by the Administrative Regulation Review Subcommittee at its **SEPTEMBER 2023** meeting. We will notify you of the date and time of this meeting once it has been scheduled.

Pursuant to KRS 13A.280, *if* comments are received during the public comment period, a Statement of Consideration or a one-month extension request for this regulation is due **by noon on September 15, 2023**. Please reference KRS 13A.270 and 13A.280 for other requirements relating to the public hearing and public comment period and Statements of Consideration.

If you have questions, please contact us at RegsCompiler@LRC.ky.gov or (502) 564-8100.

Enclosures

FILED WITH LRC
TIME: 3:55 pm
JUN 14 2023
Emily B Caudill
REGULATIONS COMPILER

1 GENERAL GOVERNMENT
2 Department of Agriculture
3 The Office for Consumer and Environmental Protection
4 (New Administrative Regulation)
5 302 KAR 33:010 Grain dealers and grain warehouse operators.
6 RELATES TO: KRS 251.355, KRS 251.375, KRS 251.380, KRS 251.470, and KRS 251.990.
7 STATUTORY AUTHORITY: KRS 251.020
8 NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation established
9 the rules for administration and enforcement of the provisions of KRS Chapter 251.
10 Section 1. Licenses.
11 (1) Each person acting as a grain dealer or grain warehouse operator who operates more than one
12 (1) facility shall have a separate license for each facility when each facility is operated as
13 separate business establishment.
14 (2) All licenses shall be posted in a location at each business establishment that is easily
15 viewable by customers and the public.
16 (3) All grain warehouse operators licensed under the United States Warehouse Act and operating
17 in Kentucky shall also be required to hold a valid Kentucky Grain Warehouse Operator's
18 license. Section 2. License Fee Schedule. License fees for grain dealers and grain warehouse
19 operators shall be based upon the number of bushels purchased by the dealer or warehouse
20 operator during the previous year.
21 (1) The license fee schedule for grain dealers shall be:

- 1 (a) From 0 – 5,999 bushels, your fee will be \$75.00
- 2 (b) From 6,000 – 99,999 bushels..... \$150.00
- 3 (c) From 100,000 – 1,999,999 bushels \$300.00
- 4 (d) From 2,000,000 – 5,999,999 bushels..... \$450.00
- 5 (e) From 6,000,000 – 9,999,999 bushels..... \$600.00
- 6 (f) From 10,000,000 bushels or more..... \$750.00

7 (2) The license fee schedule for grain warehouse operators shall be:

- 8 (a) Under 2,000,000 bushels, your fee will be \$300.00
- 9 (b) From 2,000,000 – 5,999,999 bushels..... \$450.00
- 10 (c) From 6,000,000 – 9,999,999 bushels \$600.00
- 11 (d) 10,000,000 bushels or more \$750.00

12 Section 3. Forward Pricing Contracts. (1) All forward pricing contracts used in Kentucky shall
 13 contain the following information which includes, at a minimum:

- 14 (a) Date of agreement;
- 15 (b) Agreement number;
- 16 (c) Description of the commodities under agreement;
- 17 (d) A statement that the seller freely sells and delivers to the buyer listed commodities on which
 18 the price is to be established at a later date and the seller pledges the commodities delivered
 19 pursuant to the agreement shall be free of any lien or encumbrance;
- 20 (e) A statement that the seller understands that ownership is being transferred to the buyer upon
 21 delivery, and that after delivery the seller becomes a creditor of the buyer for the fair market
 22 value of the delivered commodities until the price is established and settlement is completed, and

- 1 if the buyer defaults on the obligation for settlement the seller may be held as an unsecured
2 creditor of the buyer for the value of the commodities;
- 3 (f) A statement that upon demand of the seller, the buyer is obligated to pay the regular bid price
4 upon the date of demand for the delivered commodities being priced by the seller less any
5 service charge due to the buyer, and the buyer shall pay the same price as the buyer is bidding for
6 like commodities being delivered for sale on that date by other sellers;
- 7 (g) A statement that for services rendered in connection with the agreement the seller shall be
8 liable to the buyer for forward price charges printed on a scale ticket;
- 9 (h) A statement that each scale ticket marked for forward price becomes a part of the agreement
10 between the seller and the buyer; and
- 11 (i) The name, contact information and signature of the seller and buyer.

12 Section 4. Temporary Storage Structures.

- 13 (1) To ease demand on approved warehouse space for a single crop year, the department may
14 authorize other storage facilities as temporary storage structures by a Kentucky licensed grain
15 warehouse.
- 16 (2) Grain stored in temporary storage structures may be used to cover storage obligations,
17 forward pricing obligations, or otherwise be counted as an asset from the date of authorization
18 until the following March 31. Grain held in temporary storage beginning April 1 shall not count
19 as an asset during a KDA inspection.
- 20 (3) Authorization for temporary storage by the department may be granted if the following
21 conditions are met:
- 22 (a) Requests for temporary storage shall be in writing and shall receive prior approval of the
23 department before use.

1 (b) The identity of the grain placed in temporary storage shall be preserved by a unique or
2 identifying mark that appears on the receipt.

3 (c) The structure to be used for temporary storage shall meet the following requirements:

- 4 1. Have a solid floor;
- 5 2. Have rigid self-supporting walls;
- 6 3. Provide adequate aeration;
- 7 4. Have acceptable covering; and
- 8 5. Be fully insured against loss of grain.

9 (d) The warehouse operator shall meet all financial and bonding requirements.

10 (e) The warehouse operator shall maintain a separate record of all grain stored in a temporary
11 structure and show daily balance as part of the daily position record.

12 (f) The warehouse operator shall move the grain in temporary storage by sale or into their
13 department licensed warehouse by:

- 14 1. March 31 following initial warehouse licensing for fund covered grain; or
- 15 2. Other dates, as established by the department.

16 (g) Grain stored in temporary storage can be considered part of commingled inventory to cover
17 storage or forward pricing obligations.

18 Section 5. Emergency Storage.

19 (1) Authorization for emergency storage may be granted by the department if the following
20 conditions are met:

21 (a) The warehouse operator provides written justification that a need for emergency storage
22 exists for the current crop year in the local area including the exact location, kind of grain to be
23 stored, and the quantity of grain requested to be placed in emergency storage.

1 (b) The warehouse operator receives authorization from the Department before using emergency
2 storage space.

3 (c) The warehouse operator moves the grain in emergency storage by sale or into their
4 department licensed warehouse by:

5 (1.) March 31 following initial warehouse licensing for fund covered grain; or

6 (2.) other dates, as established by the department.

7 (d) Grain held in emergency storage shall not count as an asset for purposed of a KDA
8 inspection.

9 Section 6. Producer Payment Responsibility.

10 (1) For purposes of Kentucky grain insurance fund coverage eligibility, in any grain transaction
11 the entity that is responsible for payment to the producer shall be deemed to be a grain dealer,
12 without regard to intermediaries or transporters.

13 (2) For purposes of Kentucky grain insurance fund coverage eligibility, ownership of grain shall
14 be deemed to transfer the first time when that grain is delivered or weighed on a Department-
15 approved scale.

16 (3) A claim arising from a transaction that did not conform to the requirements of this Section 6
17 shall not be eligible for Kentucky grain insurance fund coverage.

18 Section 7. Violation Review and Appeal.

19 All appeals shall be conducted in accordance with KRS 13B.

20 Section 8. Incorporation by Reference.

21 (1) The following material is incorporated by reference:

22 (a) "Application for Grain Dealer/Warehouse License" (April, 2023)

- 1 (2) These materials may be inspected, copied, or obtained, subject to applicable copyright law, at
- 2 the Kentucky Department of Agriculture, Regulation and Inspection Division, 107 Corporate
- 3 Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Dr. Ryan Quarles
Commissioner of Agriculture

Date: _____

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on August 22, 2023 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

302 KAR 33:010

Contact Person: Clint Quarles

Phone: 502-782-0284

Email: clint.quarles@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This filing creates the rules and process for grain buying by dealers or warehouses in Kentucky.

(b) The necessity of this administrative regulation:

This filing is necessary to create a uniform set of rules and processes for grain purchases.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This filing creates a uniform set rules and processes for grain transactions. This is critical for uniformity and ease of use.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This filing assists with the statute by incorporating the federal NOP manual and the forms the KDA uses in the program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

This is a new filing.

(b) The necessity of the amendment to this administrative regulation:

This is a new filing.

(c) How the amendment conforms to the content of the authorizing statutes:

This is a new filing.

(d) How the amendment will assist in the effective administration of the statutes:

This is a new filing.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This regulation affects entities and persons seeking to purchase grain from producers. Approximately 85 Grain Dealers and 44 Grain Warehouses are currently regulated by the KDA.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

All persons seeking to purchase grain from producers need to comply with the minimum standards laid out in this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

The cost depends on the activity the regulated entity purchase amount as described in the

filing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question

(3):

Entities will be able to purchase grain from producers lawfully.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The KDA estimates \$304,000 total annually.

(b) On a continuing basis: The KDA estimates at least \$304,000 total annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

A combination of fees and the KDA general fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

Fee establishments are required to attempt to cover part of the program costs.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This filing directly establishes fees.

(9) TIERING: Is tiering applied? (Explain why or why not)

No, all entities are treated the same. The only fee difference is based on volume purchased.

FISCAL NOTE

302 KAR 33:010

Contact Person: Clint Quarles

Phone: 502-782-0284

Email: clint.quarles@ky.gov

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The KDA.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 251 in its entirety.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

The KDA expects to receive \$52,000 annually at current volumes purchased.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

The KDA expects to receive \$52,000 annually at current volumes purchased as a projection.

(c) How much will it cost to administer this program for the first year?

The cost to administer the Grain program is \$304,000

(d) How much will it cost to administer this program for subsequent years?

The cost to administer the Grain program for subsequent years is estimated to be at least \$304,000.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

Cost savings for regulated entities will remain at current levels.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

Cost savings for regulated entities will remain at current levels is a reasonable expectation.

(c) How much will it cost the regulated entities for the first year?

Costs will depend on the volume purchased in the prior year at application time.

(d) How much will it cost the regulated entities for subsequent years?

Costs will depend on the volume purchased in the prior year at application time.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. *"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]*

Fees will not exceed the major economic impact threshold.

Summary of Material Incorporated by Reference
302 KAR 33:010

(a) The "APPLICATION FOR GRAIN DEALER/WAREHOUSE LICENSE ", (2023) is a 2 page document containing documentation required to apply with the KDA.