



# OKLAHOMA Agriculture, Food and Forestry

## TITLE 35. STATE DEPARTMENT OF AGRICULTURE CHAPTER 10. AGRICULTURE PRODUCTS SUBCHAPTER 7. PUBLIC WAREHOUSES

### TABLE OF CONTENTS

|        |                   |  |
|--------|-------------------|--|
| Page 2 | <b>35:10-7-1</b>  | <b>Receipts, records, and scale tickets</b>                      |
| Page 2 | <b>35:10-7-2</b>  | <b>Examination fees</b>  |
| Page 2 | <b>35:10-7-3</b>  | <b>Bonds</b>   |
| Page 3 | <b>35:10-7-4</b>  | <b>Approval of temporary space</b>                               |
| Page 4 | <b>35:10-7-5</b>  | <b>Approval of emergency space</b>                               |
| Page 5 | <b>35:10-7-6</b>  | <b>Commodity sales contracts</b>                                 |
| Page 5 | <b>35:10-7-7</b>  | <b>Examination of warehouse</b>                                  |
| Page 6 | <b>35:10-7-8</b>  | <b>Warehouse safety</b>  |
| Page 6 | <b>35:10-7-9</b>  | <b>Certificate of deposit requirements</b>                       |
| Page 7 | <b>35:10-7-10</b> | <b>Charter effective date</b>                                    |
| Page 8 | <b>35:10-7-11</b> | <b>Surety application</b>  |
| Page 8 | <b>35:10-7-12</b> | <b>Financial statement</b>                                       |
| Page 8 | <b>35:10-7-13</b> | <b>Prepositioning of commodities</b>                             |
| Page 8 | <b>35:10-7-14</b> | <b>Warehouse suitability and physical condition</b>              |
| Page 9 | <b>35:10-7-15</b> | <b>Weigher and grader permits</b>                                |
| Page 9 | <b>35:10-7-16</b> | <b>Grade standards</b>   |
| Page 9 | <b>35:10-7-17</b> | <b>Indemnity assessment on out-of-state deposits in Oklahoma</b> |
| Page 9 | <b>35:10-7-18</b> | <b>Responsibility of depositor</b>                               |
| Page 9 | <b>35:10-7-19</b> | <b>Responsibility of the warehouseman</b>                        |

**TITLE 35. STATE DEPARTMENT OF AGRICULTURE  
CHAPTER 10. AGRICULTURE PRODUCTS  
SUBCHAPTER 7. PUBLIC WAREHOUSES**

**35:10-7-1. Receipts, records, and scale tickets**

- (a) If a warehouseman delivers part of a lot of a commodity covered by one receipt, the original receipt shall be cancelled, and issue a new receipt covering the undelivered portion of the commodity when requested by the holder of the warehouse receipt.
- (b) Warehouse receipts are serially numbered and the warehouseman shall account for all receipts.
- (c) Upon termination or suspension of the public warehouse charter, all unused receipts shall be returned to the Board.
- (d) Upon the delivery of a commodity, the original or negotiable warehouse receipt shall be surrendered to the warehouseman, marked "cancelled" in ink with the date of the cancellation and disposition of the commodity upon the face of the receipt, and filed in numerical sequence.
- (e) Each warehouse shall provide proper protection for all printed forms and receipts provided by the Board and keep them available for audit at any regular office hours by the Board.
- (f) Daily position record; a complete and accurate daily position record, on a form approved by the Board shall be maintained by the warehouseman, and updated each day there is a commodity transaction that affects the daily position record.
- (g) Warehouse receipts and scale tickets shall be issued and maintained in series and numerical order.

**35:10-7-2. Examination fees**

- (a) The fee for each warehouse examination shall be figured progressively for each 10,000 bushels or portion thereof of chartered storage capacity with a minimum examination fee of \$100.00. The fee shall be:
  - (1) Minimum base or 1st 200,000 bu.: \$100.00
  - (2) From 200,001 bu. - 250,000 bu.: \$5.00 per 10,000 bu.
  - (3) From 250,001 bu. - 500,000 bu.: \$4.75 per 10,000 bu.
  - (4) From 500,001 bu. - 750,000 bu.: \$4.50 per 10,000 bu.
  - (5) From 750,001 bu. - 1,000,000 bu.: \$4.00 per 10,000 bu.
  - (6) From 1,000,001 bu. - 2,000,000 bu.: \$3.50 per 10,000 bu.
  - (7) From 2,000,001 bu.- 10,000,000 bu.: \$3.00 per 10,000 bu.
  - (8) From 10,000,001 bu. -: \$1.00 per 10,000 bu.
- (b) The audit fee shall be due and payable at the completion of each warehouse audit. If a statement covering the cost of the audit is mailed to the warehouseman, they must remit payment within thirty (30) calendar days in the form of a check, money order, or cashier's check made payable to the Oklahoma Department of Agriculture.

**35:10-7-3. Bonds**

- (a) Each warehouseman shall furnish the Board with notice of cancellation, termination, or any change of insurance or bond on commodities stored in the warehouse.

(b) A surety shall provide notice by certified mail to the Department of Agriculture and the principle at least ninety (90) days before a bond is cancelled.

(c) In no event shall the liability of the surety on any bond required accumulate for more than one year during which the bond is in force.

### **35:10-7-4. Approval of temporary space**

(a) Temporary space is space which does not meet standard requirements for conventional space and may be approved for use if the following minimum requirements are met.

(1) The temporary space shall be operated in conjunction with a conventional chartered elevator and the capacity to be approved shall be compatible with the warehouseman's operational and financial capabilities. Approval shall be on a "case by case" basis. Warehousemen shall advise the Board of their intent, with an application indicating location, construction, quantity to be stored, and estimated time of use.

(2) Application for approval shall be made only after completion of the structure.

(3) An asphalt or concrete floor shall be provided adequate to preserve the quality and quantity of commodities.

(4) Rigid sidewalls shall be used.

(5) Shall have necessary equipment such as a leg, conveyers, portable augers, or vaculators for handling, receiving, and loading out of the commodities. All storage units shall have either empty storage space to turn and condition the commodities or be equipped with proper ventilation such as air ducts and ventilation fans to keep the commodities from going out of condition.

(6) Acceptable covering shall be provided which shall preclude exposure of the commodities to normal rainfall.

(7) The space shall be immobile.

(8) Warehouseman agrees and signs a statement that all commodities shall be removed from the temporary structure by the following May 1, subject to the extension procedure specified in paragraph (b) below. The Board may accelerate these dates.

(9) Shall meet all inspection, examination, security, net worth, surety, and insurance requirements.

(10) The warehouseman shall maintain a separate record of total commodities stored in temporary space in addition to accounting for the commodities in the daily position record.

(b) A warehouseman may continue to store commodities in temporary facilities beyond May 1, provided:

(1) Application to continue use of temporary space shall be made in writing by the warehouseman by April 1 or thirty (30) days before the expiration of any extension.

(2) The time granted on any extension shall not exceed six (6) months.

(3) Prior to any extension, a re-examination shall be conducted of the temporary space and the cost charged to the warehouseman at the following rates: Ten Dollars (\$10.00) for each 10,000 bushels of the temporary storage capacity, with a minimum charge of One Hundred Dollars (\$100.00) and a maximum charge of One Thousand Dollars (\$1,000.00)

(4) If ready access for inspection purposes is not available to the temporary structure, the warehouseman at the examiner's discretion shall remove the covering or any part of it as

required by the examiner to determine quality, condition, and quantity of the commodities in storage.

(5) If the warehouseman and the examiner are not in agreement as to the quality of the commodities, the examiner with the assistance of the warehouseman shall take samples of the mass agreeable to both and submit at the warehouseman's expense to the nearest GIPSA or GIPSA-designated or delegated office for grading.

(6) Based on a visual examination of the temporary structure and observation of the commodities for quantity and quality, the examiner shall report to the Board their findings recommending continued approval or detailing problems that shall be considered before an extension is granted. Adverse conditions shall be reported by telephone to the Board within 24 hours.

(7) The examiner shall issue written notice to the warehouseman for any temporary storage facility which no longer meets requirements. Failure of the warehouseman to place the facility in a suitable condition within a reasonable length of time shall result in the facility being eliminated from coverage from the warehouse approval.

(8) A new statement shall be signed by the warehouseman agreeing to empty the temporary storage unit(s) by the time indicated in (2) of this subsection, subject to extension procedures specified.

### **35:10-7-5. Approval of emergency space**

Emergency space is defined as space not meeting the standards requirements for "conventional" or "temporary" space, but may be approved when meeting minimum requirements listed below.

(1) Shall be operated in conjunction with an existing charter and warehouseman shall make application for approval to charter.

(2) Space shall be approved prior to utilization.

(3) Shall meet inspection, security, net worth, bonding, and insurance requirements.

(4) Space shall be under control of warehouseman.

(5) Warehouseman shall agree in writing to empty emergency storage space by March 1 of the year following issuance with no provision for extension. The Board may accelerate this date.

(6) Emergency space shall not exceed an amount equal to the existing chartered storage capacity or net worth requirements.

(7) Mobile units may be approved on a case-by-case basis. If approved, the units shall remain in place where located at the time of approval.

(8) Ground piles shall have a base with proper drainage and secured to preclude intrusion of large animals, pets, or persons.

(9) Warehouseman shall have adequate handling, shipping, and conditioning equipment.

(10) Warehouseman shall maintain a separate record of total commodities stored in emergency storage space in addition to accounting for the commodities in the daily position record.

(11) Warehouseman shall sign a memorandum of understanding as to use of emergency space.

### **35:10-7-6. Commodity sales contracts**

(a) Commodities which have been received at a chartered warehouse for which the actual sale price is not fixed with proper documentation or payment made, or a sales contract made, shall be construed to be commodities held for storage.

(b) All sales contracts for the purchase of commodities by the warehouseman shall be consecutively numbered and include the warehouse charter number. The contract shall define the exact terms of the contract, including but not limited to, who is the legal owner of the commodities.

(c) All delayed pricing or deferred payment contracts shall comply with 35:10-7-6 (b) and shall:

(1) Provide that title to the commodities passes from the seller to the buyer upon signing of the deferred pricing contract;

(2) Provide that no storage is charged by the buyer under the terms of the contract; however, maintenance and service fees may be charged under the terms of the contract mutually agreed upon by buyer and seller; and

(3) Contain language in bold, capital print that is at least in a ten (10) point type or font size, and initialed by the producer that commodities sold under the delayed pricing or deferred payment contracts are not covered by the Commodity Storage Indemnity Fund.

(4) Delayed pricing or deferred payment contracts shall be considered a voluntary extension of credit and shall not be covered by the surety bond of the chartered facility or the Commodity Storage Indemnity Fund.

### **35:10-7-7. Examination of warehouse**

(a) If it is necessary to establish proof of law or rule violation, a special investigation of the chartered warehouse shall be conducted by the Board. The Board may contact the warehouseman, the warehouseman's employees, or any other interested party to gain information for the investigation.

(b) If a subsequent examination determines that a warehouseman is in a short position, or has operated in a short position for longer than 72 hours since their last examination, a follow up examination shall be ordered and the warehouseman shall be charged for the cost of this examination. If during this follow up examination it is determined that the warehouseman remains in a short position or has operated in a short position after a designated date, a three (3) month examination schedule shall be initiated and shall continue until the warehouseman has two (2) correct consecutive examinations.

(c) Any shortage position of either quantity or quality is a violation of the Public Warehouse and Commodity Indemnity Act and shall be subject to the penalties.

(d) If a warehouseman fails to keep adequate commodity records, such as a daily position record, open storage list, or warehouse receipt register, etc., or in the event the commodity records are significantly incorrect, a second examination shall be ordered and the warehouseman shall be assessed a fee for the examination as per the schedule in 35:10-7-2.

(e) If a warehouseman has a shortage of stored on hand commodities, the warehouseman shall correct the position of the facility within 72 hours by a valid warehouse receipt or a written receipt verifying the cash purchase of grain. Failure to correct unreasonable shortages by the end of the 72 hour period shall allow the Board to initiate the suspension

or revocation of the warehouseman's charter in accordance with the Administrative Procedures Act.

(f) If a warehouseman allows the quality of stored on hand commodities to be diminished, the warehouseman shall correct the position of the facility within 72 hours by replacing any damaged or out of condition grain with grain equal in quality to that which was originally delivered by the producer or securing a bond, certificate of deposit, or irrevocable letter of credit in an amount equal to or greater than the difference between the dollar value of the grain delivered and the dollar value of the reduced quality grain. Failure to correct an unreasonable quality change of commodities by a warehouseman shall allow the Board to initiate a suspension or revocation of the charter in accordance with the Administrative Procedures Act.

### **35:10-7-8. Warehouse safety**

Each warehouseman shall provide that which is in their control, buildings, equipment, surroundings and working conditions that are not unsanitary, hazardous, or dangerous to the health and safety of the examiner. If adverse conditions exist, the examiner may refuse to complete the examination.

### **35:10-7-9. Certificate of deposit requirements**

(a) A certificate of deposit issued by a bank or savings and loan association that is a member of good standing with the Federal Deposit Insurance Corporation (FDIC) or Federal Savings and Loan Insurance Corporation (FSLIC) respectively, may be submitted to the Board in lieu of the Oklahoma public warehouse surety or deficiency bond required by the Public Warehouse and Commodity Indemnity Act. The certificate of deposit shall be in an amount equal to the required surety. Certificates of deposit shall not be accepted from any institution in excess of FDIC or FSLIC insurance coverage.

(b) A certificate of deposit shall have a term of no longer than one (1) year and shall be automatically renewable.

(c) A certificate of deposit submitted in lieu of a Oklahoma public warehouse surety shall be held in trust by the Board who shall act as trustee for the benefit of all persons storing commodities with the warehouseman as set forth in the Oklahoma Public Warehouse and Commodity Indemnity Act.

(d) All certificates of deposit shall be made payable to the Board as follows: "Pay to the order of the Oklahoma Board of Agriculture". The Board may make the necessary inquiries to determine that the certificate is negotiable.

(e) A certificate of deposit purchased by a principle, shareholder, officer, employee, or any other individual for or on behalf of a charter shall disclose on its face the name of the charter in whose favor the certificate of deposit is deposited. The balance of any proceeds remaining after liquidation and disbursement shall be paid to the purchaser.

(f) In the event that a plurality of certificates of deposit from any number of sources are deposited in satisfaction of a charter's surety obligation, the Board may satisfy claims arising under the Oklahoma Public Warehouse and Commodity Indemnity Act by liquidating any one (1) or more of the certificates of deposit without regard to proration.

(g) In the event that a charter desires to substitute a surety of bond for a certificate of deposit then on deposit with the Board, the certificate of deposit shall be retained by the Board for a period of not less than ninety (90) days following receipt of the surety or

bond, or for any time required to fully ascertain the existence of any claims. If the maturity date is interposed during this transition period, the Board, at the option of the charter and upon its timely request shall cause the certificate of deposit to be liquidated and the proceeds deposited in a passbook savings account for the duration of the transition period, when the funds shall be forwarded to the purchaser or assignor of the certificate of deposit.

(h) A charter shall be required to augment certificates of deposit in any situation where it would be required to increase its coverage under a surety. This augmentation shall be commensurate to the increased surety value required.

(i) All certificates of deposit liquidated by the Board shall be redeemed by collection proceedings through a local bank or savings and loan association selected by the Board.

(j) A certificate of deposit may only be liquidated for disbursement upon the same reasons that surety proceeds may be demanded for disbursement and shall apply to all claims whenever arising.

(k) All interest earned on the certificate of deposit shall be assigned by the Board to be accredited or paid directly to the purchaser of the certificate of deposit, except in the event of liquidation for the purpose of paying claims, in which event interest shall attributed to the claims.

(l) If a charter holder desires to surrender its charter and request the return of a certificate of deposit to the purchaser, the charter holder shall return the charter and make written request by registered or certified mail, with return receipt, for return of the certificate of deposit. Upon receipt of the written request and submission of the public warehouse charter, the Board shall hold the certificate of deposit for a period of ninety (90) days or for a longer period if the Board is of the opinion that claims against the charter may exist and then forward the certificate of deposit to the purchaser.

(m) If a public warehouse charter is revoked, the certificate of deposit shall be held by the Board for a period of not less than one hundred twenty (120) days or until the Board is satisfied that no claims against that charter exist.

(n) If an unsecured or unbonded public warehouseman desires to remain chartered and requests the return of a certificate of deposit that is on file with the Board, the warehouseman shall file with the Board a replacement certificate of deposit, bond, or state surety in the amount required by the Board in accordance with the Oklahoma Public Warehouse and Commodity Indemnity Act. The replacement surety shall be received, become effective, and be in full force and effect before the date that the warehouseman's existing certificate of deposit is to be returned.

(o) Substitution shall be made only at the maturity of the certificate of deposit in possession of the Board.

### **35:10-7-10. Charter effective date**

Effective July 1, 1997 all state commodity warehouses will only be chartered and all licenses will become null and void. All state licensed warehouses will automatically be issued a charter. A one-time charge of one hundred dollars (\$100.00) for each charter will be due on that date or shall accompany the application for a new charter.

**35:10-7-11. Surety application; minimum submission date**

Any warehouseman electing to purchase coverage under the state surety required in Section 9-22(B) of the Oklahoma Public Warehouse and Commodity Indemnity Act, shall submit the surety application a minimum of 30 days prior to receiving an Oklahoma Public Warehouse Charter.

**35:10-7-12. Financial statement**

(a) The applicant for an original public warehouse charter and all holders of Oklahoma public warehouse charters shall submit the following documents prepared by an independent Certified Public Accountant: a current financial statement annually within ninety (90) days following year end close of business and a report of audit or review. The financial statement shall be submitted on a form supplied by the Board and include a balance sheet showing the current and deferred assets and liabilities of the applicant or the charter holder, a statement of income, a statement of retained earnings, a statement of changes in financial position, and notes sufficient to explain the details contained in the financial statement. If the warehouseman is using depreciated property at fair market value, the warehouseman shall submit a certified appraisal and proof of insurance.

(b) The financial statement accompanying an applicant's original application shall show a statement closing date that is within six (6) months of the date of application.

(c) If a warehouseman's financial statement indicates a current assets to current liability ratio of less than one point one (1.1) to one (1), the Board shall require two (2) examinations to be conducted annually.

**35:10-7-13. Prepositioning of commodities and storage considerations**

(a) Any warehouseman prior to prepositioning of any commodity, shall make written request, giving reason for prepositioning, estimated time to be out of position, and warehouse receiving the commodity to be moved. Prepositioned commodities shall be handled by the examiners in the same manner as forwarded commodities. Warehousemen shall not issue warehouse receipts in excess of their chartered capacity.

(b) Grain deposited in a chartered warehouse for processing and which is commonly referred to as "grain bank" grain, shall be considered to be the same as storage grain and subject to the same rules as storage grain.

(c) Commodities stored in unchartered storage for any reason other than as specified in the Public Warehouse and Commodity Indemnity Act, shall not be considered as commodities in store.

**35:10-7-14. Warehouse suitability; physical conditions**

(a) In determining the suitability of warehouses for the storing, shipping, and conditioning of agricultural commodities, the Board shall consider:

(1) The physical condition of the warehouse and its ability to withstand weather conditions which may cause deterioration of the agricultural commodities stored.

(2) That warehouse has sufficient aeration to control temperature and moisture of the commodity stored.

(3) That warehouse has permanent flooring capable of supporting the commodity.

(4) Whether the warehouse has handling equipment sufficient to transfer commodities in and out of the warehouse and to maintain quality of the commodities while in storage.

(5) Whether warehouse has scales of sufficient capacity to efficiently and accurately weigh commodities.

(b) If the Board finds that a warehouse is unsuitable or becomes unsuitable for the storing of commodities, it shall notify the warehouseman of the requirements necessary to make the warehouse suitable.

#### **35:10-7-15. Weighers and graders permit**

(a) An applicant, in order to qualify for a weighers and graders permit issued by the Board, as evidence of their competence, shall pass a test composed of a written and practical application. The test shall be administered following each approved grain grading school, by a representative of the Board. First-time permit applicants shall complete all practical applications at the school.

(b) A weighers and graders permit shall remain in force as long as the permit holder is employed by a state chartered warehouse and completes a grain grading class approved by the Board at least one (1) time each five (5) years. If the permit holder fails to complete an approved class, the permit shall automatically terminate.

(c) A temporary permit may be granted for a period of one year upon written request to the Department by the applicant and upon completion of training by the Department.

#### **35:10-7-16. Grade standards**

The term grade as used in the Public Warehouse and Commodity Indemnity Act is interpreted to refer to the standards adopted for commodities defined in the United States Grain Standards Act and applicable rules.

#### **35:10-7-17. Collection of indemnity assessment**

Terminal warehousemen (State or Federal) who store commodities for out of state producers shall collect and remit to the Board the indemnity assessment on these commodities.

#### **35:10-7-18. Responsibility of the depositor**

Any depositor who knowingly or negligently offers for deposit or for sale commodities which have been contaminated by chemicals which affect the marketability of the commodity or have been determined to be a threat to the health or safety of the public or who shall knowingly or negligently conceal any condition or substance that affects the marketability of a commodity, shall be in violation of the Oklahoma Public Warehouse and Commodity Indemnity Act and may be punished and/or fined as provided by applicable law and rules.

#### **35:10-7-19. Responsibility of the warehouseman**

(a) Any warehouseman who knowingly or negligently stores grain in a manner which causes commodities to be spoiled or degraded or disposes of spoiled or degraded commodities improperly shall be in violation of the Oklahoma Public Warehouse and Commodity Indemnity Act and may be fined as provided by applicable law and rules.

(b) This section shall apply to all warehousemen who hold a federal or state charter.