

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

RULE REVIEW CHECKLIST

File No. 1461 — Docket No. W. 0009. 0986

DATE RECEIVED 3/21/88 — ADOPTED W/O HEARING X

REVIEW DATE 3/30/88 cover — EMERGENCY RULE _____

DUE DATE 4/4/88 — REVISOR APPROVED _____

APPROVED 3-31-88 mjc — REVISOR DISAPPROVED _____

DISAPPROVED _____ — FIELD W/SEC.STATE _____

WITHDRAWN _____ — RETURNED TO AGENCY _____

✓ Rule as adopted (4 copies)

none Notice to Solicit Outside Information/Opinion

_____ Date published in State Register

_____ Comments

N/A Petition for Adoption of a Rule

N/A Board's Authorizing Resolution

✓ Proposed rule

_____ Revisor's Certificate

✓ Notice of Intent to Adopt Rule

16A.128, 223.19, 232.22 subd 3+4, 232.24, subd 1 & 236.08 Statutory Authority

yes Small Business Statement

_____ Expenditure of public money statement

yes Signature

✓ Statement of Need and Reasonableness

✓ Small Business Statement

✓ Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule

1-27-88 Date 30/25 days before adoption

✓ Publication in State Register

2-1-88 Date 30/25 days before adoption

N/A Resolution Adopting

✓ Findings of Fact, Conclusions & Order Adopting

3-8-88 Date

none Written requests, submissions or comments

✓ Declaration of attorney

Paul Strandberg Name of SAAG representing agency

N/A Notice of Submission to Attorney General

N/A Affidavit of Mailing Notice to Attorney General

SF-00006-05 (4/86)

DEPARTMENT : ATTORN GENERAL

STATE OF MINNESOTA

Office Memorandum

DATE : April 11, 1988

TO : PAUL STRANDBERG
Special Assistant
Attorney General - Agriculture

FROM : MARTHA J. CASSERLY
Special Assistant
Attorney General

PHONE : 296-6839

SUBJECT : In the Matter of the Adopted Permanent Rules Relating to Buying and Storing Grain

The above-referenced rule has been approved as to its legality by the Attorney General on March 31, 1988.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must establish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

MJC:sc

Enclosures

cc: Maryanne Hruby
Duane Harves

Department of Agriculture

Adopted Permanent Rules Relating to Buying and Storing Grain

Rules as Adopted

DEPARTMENT OF AGRICULTURE

BUYING AND STORING OF GRAIN

1562.0100 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of this chapter, the terms defined in this part have the meanings given them.

Subp. 2. **Bond.** "Bond" means an obligation acceptable to and running to the state, as obligee, for the purpose of:

A. indemnifying producers of grain against the breach of a cash sale contract by a grain buyer licensed under Minnesota Statutes, chapter 223;

B. indemnifying depositors of grain against the breach of a grain storage contract by a public grain warehouse operator licensed under Minnesota Statutes, chapter 232; or

C. indemnifying depositors of grain against the breach of a grain bank storage contract by a public or private grain warehouse operator licensed under Minnesota Statutes, chapter 236.

Subp. 3. **Cash sale.** "Cash sale" means:

A. a sale for which payment is tendered to the seller not later than the close of business on the next business day after the sale, either by cash or by check, or by mailing or wiring funds to the seller's account in the amount of at least 80 percent of the value of the grain at delivery; or

B. a sale of a shipment of grain which is part of a multiple shipment sale, for which a scale ticket clearly marked "cash" has been received by the seller before completion of the entire sale, and for which payment is tendered in cash or by check not later than ten days after the sale of that shipment, except that when the entire sale is completed, payment is tendered in cash or by check not later than the close of

business on the next business day, or within 48 hours, whichever is later.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of agriculture or the commissioner's designee.

Subp. 5. **Department.** "Department" means the Minnesota Department of Agriculture.

Subp. 6. **Depositor.** "Depositor" means a person who is the owner or legal holder of an outstanding grain warehouse receipt, grain bank receipt, or open scale ticket marked for storage on which a receipt is to be issued, representing any grain stored in a public grain warehouse or grain bank.

Subp. 7. **Grain.** "Grain" means any cereal grain, coarse grain, or oilseed in unprocessed form for which a standard has been established by the United States Secretary of Agriculture or the Minnesota Board of Grain Standards, or any other agricultural crop which the commissioner may designate by rule.

Subp. 8. **Grain bank.** "Grain bank" means a feed-processing plant that receives and stores grain, the equivalent of which, except as is otherwise permitted by Minnesota Statutes, section 236.04, it processes and returns to the grain's owner in amounts, at intervals, and with added ingredients that are mutually agreeable to the grain's owner and the person operating the plant.

Subp. 9. **Grain bank bond.** "Grain bank bond" means an obligation acceptable to and running to the state, as obligee, for the purpose of indemnifying depositors of grain against the breach of a grain bank storage contract by a person with a grain bank license.

Subp. 10. **Grain bank receipt.** "Grain bank receipt" means a nonnegotiable receipt issued to the owner of the grain, or the owner's agent, for grain which is being stored for the purpose of being processed into feed.

Subp. 11. **Grain buyer.** "Grain buyer" means a person who purchases grain from a producer with the exception of a person who purchases seed grain for crop production or who purchases grain as feed for the person's own livestock.

Subp. 12. **Grain buyer's bond.** "Grain buyer's bond" means an obligation acceptable to and running to the state, as obligee, for the purpose of indemnifying producers of grain against the breach of a cash sale contract by a licensed grain buyer.

Subp. 13. **Grain purchase receipt.** "Grain purchase receipt" means a memorandum issued by a grain buyer to a seller at the time grain is delivered from the seller to the grain buyer, and which shows the weight or quantity and kind of grain.

Subp. 14. **Grain storage bond.** "Grain storage bond" means an obligation acceptable to and running to the state, as obligee, for the purpose of indemnifying depositors of grain against the breach of a grain storage contract by a person licensed to store grain.

Subp. 15. **Grain warehouse.** "Grain warehouse" means an elevator, flour, cereal or feed mill, malthouse or warehouse in which grain belonging to a person other than the warehouse operator is received for purchase or storage.

Subp. 16. **Grain warehouse receipt.** "Grain warehouse receipt" means a formal record issued to a depositor by a grain warehouse operator under Minnesota Statutes, section 232.23.

Subp. 17. **Independent grain buyer.** "Independent grain buyer" means a person who buys grain from producers and does not operate a grain warehouse.

Subp. 18. **Person.** "Person" means a corporation, company, joint stock company or association, partnership, firm, or individual and includes their agents, trustees, assignees, or duly appointed receivers.

Subp. 19. **Private grain warehouse operator.** "Private grain warehouse operator" means a person operating a grain warehouse for the sole purpose of purchasing, handling, processing, and shipping grain or its byproducts who is not licensed by the commissioner to accept grain belonging to others for storage. "Private grain warehouse operator" includes any person licensed under the United States Warehouse Act.

Subp. 20. **Producer.** "Producer" means a person who grows

grain on land that the person owns or leases.

Subp. 21. **Public grain warehouse operator.** "Public grain warehouse operator" means a person operating a grain warehouse in which grain belonging to persons other than the grain warehouse operator is accepted for storage or purchase or who offers grain storage or warehouse facilities to the public for hire.

Subp. 22. **Public terminal warehouse.** "Public terminal warehouse" has the meaning given in Minnesota Statutes, section 233.01.

Subp. 23. **Scale ticket.** "Scale ticket" means a memorandum issued by a grain elevator or warehouse operator to a depositor at the time grain is delivered showing the weight and kind of grain.

Subp. 24. **Vehicle.** "Vehicle" means a device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon stationary rails or tracks.

Subp. 25. **Voluntary extension of credit contract.** "Voluntary extension of credit contract" means a contract for the purchase of a specific amount of grain from a producer in which title to the grain passes to the grain buyer upon delivery but the price is to be determined or payment for the grain is to be made at a date later than the date of delivery of the grain to the grain buyer. Voluntary extension of credit contracts include deferred or delayed payment contracts, unpriced sales, no-price-established contracts, average pricing contracts, and all other contractual arrangements with the exception of cash sales and grain storage agreements evidenced by a grain warehouse receipt or scale ticket marked "storage."

Subp. 26. **Warehouse.** "Warehouse" means all or a portion of a building, structure, or other protected enclosure in which grain is or may be stored.

1562.0200 LICENSING.

Before purchasing or storing grain in Minnesota a person

must file with the commissioner an application for a license on forms provided by the commissioner. No person may buy grain from producers in Minnesota without first obtaining a grain buyer's license or store grain for others in Minnesota without first obtaining a grain storage license.

Applications may be submitted any time during the year. Each license must be renewed every year on July 1. All licenses expire at midnight each June 30. Only one person may obtain a license to buy or store grain at any one grain warehouse.

A separate license is required for each home rule charter or statutory city or town in which a grain buyer or public grain warehouse operator buys or stores grain.

1562.0300 LICENSE EXCEPTIONS.

The following persons are not required to obtain a license to buy grain in Minnesota:

A. a person who does not buy grain from producers;

B. a producer selling the producer's own grain;

C. a person who buys seed grain for crop production; and

D. a person who purchases grain as feed for the person's own livestock or poultry.

1562.0400 TYPES OF LICENSES.

Subpart 1. **Grain buyer.** A license to buy grain is a license issued to an independent grain buyer, private grain warehouse operator, or public grain warehouse operator who buys grain from producers.

Subp. 2. **Grain storage.** A license to store grain is a license issued to a public grain warehouse operator who accepts grain for storage or who offers grain storage facilities to the public for hire.

Subp. 3. **Grain bank.** A grain bank license is a license issued to a private or public grain warehouse operator who processes grain into feed and who has a license to buy grain.

1562.0500 GRAIN STORAGE LICENSE REQUIREMENTS.

Subpart 1. **Place of business.** A public grain warehouse operator must have a permanent established place of business at each licensed location where the books, records, and files necessary to conduct the business are kept and maintained, and where the license and tariff are posted in a conspicuous place.

Subp. 2. **Warehouse equipment.** Each licensed location must include a warehouse that is equipped for the weighing, drying, grading, storing, handling, processing, and shipping of grain.

Subp. 3. **Multiple warehouse license.** Grain warehouses located within the same home rule charter or statutory city or town and operated by the same person may be included under the same license.

Subp. 4. **Inspection; approval.** A grain warehouse must be inspected and approved by the commissioner before a license is issued and grain is stored.

Subp. 5. **Cleanliness.** A grain warehouse must be kept reasonably clean of dust, rubbish, and materials that might increase the fire hazard or interfere with the handling of grain.

Subp. 6. **Grain quality.** Grain must be maintained in good quality condition at all times and be kept free of rodents, insects, birds, and contaminants harmful to the quality of the grain.

Subp. 7. **Records and accounts.** A person licensed to store grain shall maintain a daily position record of each kind of grain stored in the warehouse including warehouse-owned cash grain, grain priced but not paid, and grain bought but not priced.

1562.0600 LICENSING OF LEASED FACILITIES.

A person shall obtain a grain buyer's license or storage license for each grain warehouse leased, except that all grain warehouses located within the same home rule charter or statutory city or town and leased and operated by the same person may be covered by a single license. A person may not lease storage space that is licensed and operated by another person licensed to buy or store grain.

A warehouse must be under the control of the licensed warehouse operator leasing the warehouse.

All grain or commodities stored in a leased warehouse must be covered under the licensee's storage bond and must be included under the licensee's insurance policy, as required by Minnesota Statutes, section 232.23, subdivision 16.

1562.0700 BOND.

Subpart 1. **Requirement.** Before a license to buy or store grain is issued, the applicant for the license must file with the commissioner a bond in an amount prescribed by this part. The bond provides coverage at all licensed locations.

Subp. 2. **Grain buyer's bond.** The grain buyer's bond amount is based on the latest total annual dollar amount of grain purchased by the grain buyer in Minnesota as follows:

GRAIN BUYER'S BOND	TOTAL ANNUAL GRAIN PURCHASES
$10,000	$100,000 or less
$20,000	$100,001 to $750,000
$30,000	$750,001 to $1,500,000
$40,000	$1,500,001 to $3,000,000
$50,000	more than $3,000,000

Subp. 3. **Grain buyer's bond; first-time applicant.** A first-time applicant for a grain buyer's license shall file a $20,000 grain buyer's bond with the commissioner. This bond must remain in effect for the first year of the license. A first-time applicant includes a person previously licensed to buy grain who has not renewed the license for one or more years.

Subp. 4. **Grain storage bond.** The amount of bond required for grain storage is based on 50 percent of the local market value of grain stored by a public grain warehouse operator in Minnesota. The minimum grain storage bond is $20,000. The maximum grain storage bond is $500,000, excluding any grain bank liability. The storage bond amount may be increased during the license year. However, the storage bond may not be reduced during the license year.

Subp. 5. **Grain bank bond.** The grain bank bond is based on 50 percent of the local market value of grain stored in grain banks in Minnesota. A person licensed to store grain may

include the additional liability for grain bank grain in the determination of the amount of the storage bond in lieu of obtaining a separate grain bank bond. The minimum grain bank bond is $1,500. The maximum grain bank bond is $150,000. The grain bank bond amount may be increased during the license year. The grain bank bond may not be reduced during the license year.

1562.0800 FEES.

Subpart 1. **License to buy grain.** The fee for a license to buy grain is based on the latest total annual dollar amount of grain purchased in Minnesota as follows:

A. For annual grain purchases under $1,500,000, the license fee is $100 plus $50 for each additional home rule charter or statutory city or town in which the grain buyer is to be licensed to buy grain.

B. For annual grain purchases of $1,500,000 to $3,000,000, the license fee is $200 plus $50 for each additional home rule charter or statutory city or town in which the grain buyer is to be licensed to buy grain.

C. For annual grain purchases over $3,000,000, the license fee is $300 plus $50 for each additional home rule charter or statutory city or town in which the grain buyer is to be licensed to buy grain.

Subp. 2. **License to store grain.** The fees for a license to store grain are as follows:

A. For a license to store grain, the license fee is $40 for each home rule charter or statutory city or town in which a public grain warehouse is operated.

B. A person with a license to store grain in a public grain warehouse is subject to an examination fee for each licensed location, based on the following schedule for one examination:

BUSHEL CAPACITY	EXAMINATION FEE
Less than 150,001 bushels	$ 275
150,001 to 250,000 bushels	385
250,001 to 500,000 bushels	495

500,001 to 750,000 bushels	605
750,001 to 1,000,000 bushels	715
1,000,001 to 1,200,000 bushels	825
1,200,001 to 1,500,000 bushels	935
1,500,001 to 2,000,000 bushels	1,045
More than 2,000,000 bushels	1,155

The fee for the second examination is $22 per hour per examiner for warehouse operators who choose to have it performed by the commissioner.

Subp. 3. **Grain bank license.** The license fee is $30 for each home rule charter or statutory city or town in which a private or public grain warehouse is operated and which will be used to operate a grain bank.

1562.0900 STATEMENT OF GRAIN IN STORAGE.

Subpart 1. **Monthly grain storage reports.** A person with a grain bank license or a license to store grain must, by the tenth day of each month, file with the commissioner on forms provided by the commissioner a monthly storage report showing the net monetary liability, based on the local market price, of all grain outstanding on grain bank receipts, grain warehouse receipts, and scale tickets marked "store" as of the close of business on the last day of the preceding month.

Subp. 2. **Determination of grain bank and grain storage bond amount.** The monthly grain storage reports referred to in subpart 1, shall be used for the purpose of determining the dollar amount of the grain bank bond and the grain storage bond, and for determining whether these bond amounts should be increased during the license year.

Subp. 3. **Penalty.** If a person wilfully neglects or refuses to file the reports required in subpart 1 for two consecutive months, the commissioner may immediately suspend the person's license and the licensee must surrender the license to the commissioner. Within 15 days the licensee may request an administrative hearing subject to Minnesota Statutes, chapter 14 to determine if the license should be revoked. If no request is made within 15 days, the commissioner shall revoke the license.

Subp. 4. **Exceptions.** A person with the maximum grain bank bond or grain storage bond is not required to submit a monthly

grain storage report. A person who has the maximum grain bank bond or storage bond and who requests a reduction in the bond amount must submit 12 consecutive monthly grain storage reports, to verify the request for a reduced bond amount. Persons having their bond amount reduced under this procedure must continue to submit monthly storage reports to the department. A reduction in the bond amount under this provision shall commence with the next licensing period.

1562.1000 VOLUNTARY EXTENSION OF CREDIT CONTRACT.

Subpart 1. **Form.** A voluntary extension of credit contract must include a statement of the legal and financial responsibilities of the grain buyer and seller and the following statement in not less than ten point, all capital type, framed in a box with space provided for the seller's signature:

"THIS CONTRACT CONSTITUTES A VOLUNTARY EXTENSION OF CREDIT. THIS CONTRACT IS NOT COVERED BY ANY GRAIN BUYER'S BOND."

BUYER_____ SELLER_____

(Type or print name) (Type or print name)

BY_____ BY_____

(Buyer's signature) (Seller's signature)

If a written contract is provided at the time the grain is delivered to the grain buyer, the seller shall sign the contract in the space provided directly beneath the statement. If the seller does not sign the contract at the time of delivery, then the buyer shall send the contract to the seller by certified mail, return receipt requested, to be signed. All contracts must be put in writing.

Subp. 2. **Requirements.** Voluntary extension of credit contracts must be consecutively prenumbered.

Subp. 3. **Not a storage agreement.** A contract sale of grain is not a storage agreement. The title to grain delivered on a voluntary extension of credit contract transfers to the grain buyer upon delivery, and no storage charges may be charged with respect to that grain. A voluntary extension of credit

contract sale of grain is not covered by either the grain storage bond or the grain buyer's bond.

1562.1100 WAREHOUSE EXAMINATIONS.

Subpart 1. Required examinations. A person with a license to store grain is subject to two grain inventory examinations per year, for the purpose of determining whether there is enough grain at the warehouse to satisfy all grain storage obligations.

Subp. 2. First warehouse examination. The commissioner shall perform at least one of the required warehouse examinations during the license year.

Subp. 3. Second warehouse examination. The second examination may be performed by an independent third party qualified to do a physical grain measure-up, or weigh-up, if the independent third party agrees to perform the second warehouse examination, within 30 days of the date of the licensee's fiscal year end. In the absence of such an agreement the commissioner shall perform the second examination. The results of the grain inventory examination must include an accounting of all outstanding warehouse receipts, grain bank receipts, and other evidence of grain storage obligations.

Subp. 4. Warehouses with a Commodity Credit Corporation storage agreement. At the request of Commodity Credit Corporation, the commissioner shall perform warehouse examinations at warehouses with a uniform grain storage agreement. The results of these examinations must be forwarded to Commodity Credit Corporation.

Subp. 5. Required information; form. A grain inventory examination must include the following information:

GRAIN INVENTORY EXAMINATION

Name of Elevator

Date

I. Physical Measurement of Grain Inventory

	KIND OF GRAIN
Grain Inventory as of	# bushels
plus or minus Receipts	"
plus or minus Sales -- Shipments	"
Adjusted Inventory as of .....*	# bushels

II. Grain Inventory per Books as of .....*

	Storage Liability	# bushels
	Grain Bank Liability	"
	Other	"
	Warehouse Owned	"
	Total Grain Inventory per Books	# bushels
III.	Other Grain Detail	
	Obligations on Grain Delivered to the Elevator	
	Deferred Payment Contracts	# bushels
	Delayed Price Contracts	"
	Other	"
	Total	# bushels
IV.	Grain Inventory Measured by	
	This Report Prepared by	

*These dates should be the same.

1562.1200 GRAIN PURCHASE RECEIPT.

An independent grain buyer, upon purchasing grain, shall issue a grain purchase receipt. A duplicate copy of each grain purchase receipt must remain in the possession of the independent grain buyer as a permanent record. The original grain purchase receipt must be delivered to the seller upon receipt of each load of grain.

The grain purchase receipt must state specifically whether the grain was sold on contract or for cash and the price at which the grain was sold. For contract purchases, if the price is not determined at the time of delivery, then the grain purchase receipt must be marked "price later."

All grain purchase receipts must be consecutively prenumbered and must contain the following information:

A. the name and address of the grain buyer;

B. the name of the seller;

C. the location and date of the transaction;

D. the weight or volume and kind of grain; and

E. the signature of the grain buyer.

For the sale of grain designated "contract" on the grain purchase receipt, the grain buyer must put the terms of the contract in writing as required by Minnesota Statutes, section 223.177, subdivision 3. The term "contract" signifies any form of sale except a cash sale. A contract sale of grain is not covered by the grain buyer's bond.

1562.1300 SCALE TICKET.

A grain warehouse operator, upon receiving grain, shall issue a scale ticket for each load of grain received. A duplicate copy of each scale ticket must remain in the possession of the grain warehouse operator as a permanent record. The original scale ticket must be delivered to the seller or depositor upon receipt of each load of grain.

The scale ticket must state specifically whether the grain was sold on contract or for cash and the price at which the grain was sold. If the grain was not sold, then the scale ticket must state whether the grain was received for storage. The term "contract" signifies any form of sale except a cash sale.

All scale tickets must be consecutively prenumbered and must contain the following information:

A. the name and address of the grain warehouse operator;

B. the name of the seller or depositor;

C. the location and date of the transaction;

D. the weight, volume, and kind of grain; and

E. the signature of the grain warehouse operator.

1562.1400 DETERMINATION OF GRADE.

If the grade of grain is established at the time of delivery to a warehouse, it must be recorded on the original and duplicate copy of the scale ticket. If the grade is not established at the time of delivery, the grade and factors that relate to the grade must be recorded on the duplicate copy of the scale ticket retained by the grain warehouse operator. The depositor or seller must be notified of the grade within 48 hours after the grade has been determined.

1562.1500 WAREHOUSE RECEIPT.

If grain is received for storage, the grain warehouse operator shall issue a grain warehouse receipt to the depositor within five working days of the date of deposit.

Storage contracts on grain being stored end on the expiration date of the storage license if not ended earlier by the depositor. In the absence of a demand for delivery, order to sell, or notice by the grain warehouse operator, it is presumed that the parties intended to renew the storage contract for the next licensing year.

1562.1600 CHARGES; RATES.

Subpart 1. Filing of rates for storing and handling grain. A person licensed to store grain shall file with the commissioner a tariff or schedule of all charges relating to the storage of grain including charges for receiving, storing, redelivery, and handling on forms provided by the commissioner.

Subp. 2. Posting of charges. Every warehouse operator shall post conspicuously in the warehouse, at each licensed location, a statement of all charges relating to the storage of grain.

Subp. 3. Charges to depositor. No charge different from that filed with the commissioner and posted may be made to any depositor for the same service.

All depositors must be notified of any changes in the tariff or schedule of charges prior to their implementation. A conspicuous posting of the revised tariff in the warehouse, plainly visible to all customers, qualifies as notification to depositors.

1562.1700 CLAIMS AGAINST A BOND.

Subpart 1. Filing a claim. Claims against a bond may be filed by the persons indicated in this subpart.

A. A producer claiming to be damaged by the breach of an agreement to purchase grain according to the terms of a cash sale must file a claim with the commissioner within 180 days of the date of breach.

B. A depositor claiming to be damaged by the breach of an agreement to store grain, including an agreement to sell grain which was originally delivered for storage, must file a claim with the commissioner within 180 days of the date of

breach.

Subp. 2. **Form of claim.** All claims must be in writing, must state the facts upon which the claim is based, must include any supporting evidence, and must be signed by the claimant. The supporting evidence may consist of, but is not limited to, a purchase agreement, a scale ticket, a grain purchase receipt, a check indicating insufficient funds, a warehouse receipt, or an assembly sheet.

Subp. 3. **Where to file.** All claims must be filed at the following address: Minnesota Department of Agriculture, Grain Inspection Division, Warehouse Section, 316 Grain Exchange Building, Minneapolis, MN 55415.

Subp. 4. **Bond limitations.** The bonds are not cumulative from one year to the next. A claim against the bond may only be made against the bond in effect at the time the agreement is breached. A bond is not liable for claims filed after 180 days from the date of breach of the bond.

Subp. 5. **Public notice of a claim.** Upon determining that a producer or depositor has filed a valid claim, the commissioner shall publish notice of the claim in the official county newspaper of the county in which the licensee's place of business is located.

The notice must state that a claim against the bond of a licensee has been filed with the commissioner, the name and address of the licensee, that any additional claims should be filed with the commissioner, the bond disbursement date, and where the claims should be filed.

The public notice of the claim must appear for three consecutive days in newspapers with a daily circulation and for two consecutive publications in newspapers published less than daily.

Subp. 6. **Bond disbursement date.** The bond disbursement date is 90 days from the date the commissioner publishes a public notice of a claim. At the end of this time period, the commissioner will initiate bond payments on all valid claims received by the department.

1562.1800 BOND COVERAGE.

Subpart 1. **Grain buyers bond.** The grain buyers bond provides for payment of loss to producers caused by a licensed grain buyer's failure to pay, upon the owner's demand, for grain purchased in Minnesota according to the terms of a cash sale.

Subp. 2. **Grain storage bond.** The grain storage bond provides for payment of loss caused by the failure of a person licensed to store grain in Minnesota to deliver stored grain to the depositor's order, or for nonpayment of grain when the depositor orders that the grain be sold in lieu of taking redelivery of the grain in storage.

Subp. 3. **Grain bank bond.** The grain bank bond provides for payment of loss caused by the failure of a person with a grain bank license in Minnesota to deliver grain bank-receipted grain to the depositor's order, or for nonpayment of grain when the depositor orders that the grain bank-receipted grain be sold in lieu of taking redelivery of the grain in the grain bank.

1562.1900 LOST, STOLEN, OR DESTROYED WAREHOUSE RECEIPTS.

While a warehouse receipt is outstanding, no other warehouse receipt may be issued for any part of the grain represented by the original warehouse receipt except that, in case of a lost, stolen, or destroyed warehouse receipt, the depositor is entitled to a new warehouse receipt, plainly designated to be a duplicate or substitute for the one missing or destroyed indicating the dates of issuance of the original and the replacement warehouse receipts. Before issuing a duplicate warehouse receipt the warehouse operator shall require the depositor to make and file an affidavit stating that the depositor is lawfully entitled to possession of the original receipt and that the depositor has not negotiated or assigned it, the circumstances in which it was lost or destroyed, and that, if lost, a diligent effort has been made to find it. The warehouse operator may require the depositor to post a bond in an amount not more than double the value at the time the bond is given of the grain represented by the missing or destroyed

warehouse receipt. The bond must be conditioned to indemnify the warehouse operator against any loss which might be sustained because of the issuance of a duplicate receipt, must be in a form approved by the commissioner, and must be executed by a corporate surety licensed to operate in Minnesota. A valid duplicate or substitute warehouse receipt has all the rights of the document in lieu of which it was issued.

1562.2000 SHORTAGES OF GRAIN.

Whenever it appears that a warehouse operator does not have on hand grain of sufficient quality and quantity to cover the outstanding warehouse receipt obligations, notice must be given by the commissioner to the warehouse operator requiring that the shortage be corrected immediately. If the warehouse operator fails to comply with that order and the commissioner determines that the interests of depositors may be threatened, then the commissioner shall seal the warehouse to prevent any further removal of grain until the shortage is corrected.

If it appears that the warehouse operator is in default to warehouse receipt holders and unable to correct the default within a reasonable time the commissioner shall make arrangements to protect the warehouse receipt holders by either redelivering the grain, on a pro rata basis, to each warehouse receipt holder of record or liquidating the grain inventory, depositing the proceeds in an interest-bearing trust account, and distributing the proceeds, on a pro rata basis, to each warehouse receipt holder of record. The proceeds must remain in the trust account until the bond disbursement date, if applicable. Valid claims by warehouse receipt holders in excess of the amount in the trust account will be applied against the storage bond. The warehouse operator, the operator's surety, and each warehouse receipt holder of record must be notified of the shortage and the proposed action to be taken by the commissioner to protect warehouse receipt holders. Notice must be mailed to each warehouse receipt holder's last known address as evidenced by the records of the warehouse operator.

If any interested party files a written objection to the department's proposed action within ten days of receipt of the commissioner's notice, the commissioner shall apply to the district court for the appointment of a trustee or receiver to manage and supervise the operations of the grain warehouse operator in default.

An audit or other investigation of the affairs of the warehouse operator must be made by the commissioner for the purpose of determining the amount of the shortage and computing the loss sustained by each depositor.

1562.2100 MOVEMENT OF ENCUMBERED GRAIN.

Grain encumbered by a warehouse receipt may be moved to another public grain warehouse with the depositor's request, pursuant to Minnesota Statutes, section 232.23, subdivision 13. The original warehouse receipt must be canceled and the receiving public grain warehouse operator must issue a currently-dated warehouse receipt for the grain being moved and stored. All storage charges must be paid through the date of cancellation of the original warehouse receipt.

1562.2200 TERMINATION OF LICENSE; CHANGE OF OWNERSHIP.

When a license is terminated by reason of sale, discontinuance of business, failure to renew a license, or for any other reason, the grain buyer or warehouse operator must discontinue buying grain from producers or storing grain, and redeliver or purchase all grain belonging to others in the warehouse. If a licensee sells or leases a grain warehouse to another person, proper indemnity must be provided to all depositors. Agreement in writing by the warehouse operator's successor to assume liability for all warehouse receipts outstanding at the time of take-over and reissuance of warehouse receipts by the successor constitutes sufficient indemnity. The commissioner must be notified of a change in ownership so that a new license and bond may be issued.

REPEALER. Minnesota Rules, parts 1560.5400; 1560.5500;

1560.5600; 1560.5700; 1560.5800; 1560.5900; 1560.6000; 1560.6100; 1560.6200; 1560.6300; 1560.6400; 1560.6500; 1560.6600; 1560.6700; 1560.6800; 1560.6900; 1560.7000; 1560.7100; 1560.7200; 1560.7300; 1560.7400; 1560.7500; and 1560.7600 are repealed.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

APR 8 1988

Joan Anderson Growe
Secretary of State 10:15 p.m.

APPROVED AS TO FORM AND LEGALITY
March 31 1988
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY MJ Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

Department of Agriculture

Proposed Permanent Rules Relating to Buying and Storing Grain

Rules as Proposed (all new material)

DEPARTMENT OF AGRICULTURE

BUYING AND STORING OF GRAIN

1562.0100 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of this chapter, the terms defined in this part have the meanings given them.

Subp. 2. **Bond.** "Bond" means an obligation acceptable to and running to the state, as obligee, for the purpose of:

A. indemnifying producers of grain against the breach of a cash sale contract by a grain buyer licensed under Minnesota Statutes, chapter 223;

B. indemnifying depositors of grain against the breach of a grain storage contract by a public grain warehouse operator licensed under Minnesota Statutes, chapter 232; or

C. indemnifying depositors of grain against the breach of a grain bank storage contract by a public or private grain warehouse operator licensed under Minnesota Statutes, chapter 236.

Subp. 3. **Cash sale.** "Cash sale" means:

A. a sale for which payment is tendered to the seller not later than the close of business on the next business day after the sale, either by cash or by check, or by mailing or wiring funds to the seller's account in the amount of at least 80 percent of the value of the grain at delivery; or

B. a sale of a shipment of grain which is part of a multiple shipment sale, for which a scale ticket clearly marked "cash" has been received by the seller before completion of the entire sale, and for which payment is tendered in cash or by check not later than ten days after the sale of that shipment, except that when the entire sale is completed, payment is tendered in cash or by check not later than the close of

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business on the next business day, or within 48 hours, whichever is later.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of agriculture or the commissioner's designee.

Subp. 5. **Department.** "Department" means the Minnesota Department of Agriculture.

Subp. 6. **Depositor.** "Depositor" means a person who is the owner or legal holder of an outstanding grain warehouse receipt, grain bank receipt, or open scale ticket marked for storage on which a receipt is to be issued, representing any grain stored in a public grain warehouse or grain bank.

Subp. 7. **Grain.** "Grain" means any cereal grain, coarse grain, or oilseed in unprocessed form for which a standard has been established by the United States Secretary of Agriculture or the Minnesota Board of Grain Standards, or any other agricultural crop which the commissioner may designate by rule.

Subp. 8. **Grain bank.** "Grain bank" means a feed-processing plant that receives and stores grain, the equivalent of which, except as is otherwise permitted by Minnesota Statutes, section 236.04, it processes and returns to the grain's owner in amounts, at intervals, and with added ingredients that are mutually agreeable to the grain's owner and the person operating the plant.

Subp. 9. **Grain bank bond.** "Grain bank bond" means an obligation acceptable to and running to the state, as obligee, for the purpose of indemnifying depositors of grain against the breach of a grain bank storage contract by a person with a grain bank license.

Subp. 10. **Grain bank receipt.** "Grain bank receipt" means a nonnegotiable receipt issued to the owner of the grain, or the owner's agent, for grain which is being stored for the purpose of being processed into feed.

Subp. 11. **Grain buyer.** "Grain buyer" means a person who purchases grain from a producer with the exception of a person who purchases seed grain for crop production or who purchases grain as feed for the person's own livestock.

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Subp. 12. **Grain buyer's bond.** "Grain buyer's bond" means an obligation acceptable to and running to the state, as obligee, for the purpose of indemnifying producers of grain against the breach of a cash sale contract by a licensed grain buyer.

Subp. 13. **Grain purchase receipt.** "Grain purchase receipt" means a memorandum issued by a grain buyer to a seller at the time grain is delivered from the seller to the grain buyer, and which shows the weight or quantity and kind of grain.

Subp. 14. **Grain storage bond.** "Grain storage bond" means an obligation acceptable to and running to the state, as obligee, for the purpose of indemnifying depositors of grain against the breach of a grain storage contract by a person licensed to store grain.

Subp. 15. **Grain warehouse.** "Grain warehouse" means an elevator, flour, cereal or feed mill, malthouse or warehouse in which grain belonging to a person other than the warehouse operator is received for purchase or storage.

Subp. 16. **Grain warehouse receipt.** "Grain warehouse receipt" means a formal record issued to a depositor by a grain warehouse operator under Minnesota Statutes, section 232.23.

Subp. 17. **Independent grain buyer.** "Independent grain buyer" means a person who buys grain from producers and does not operate a grain warehouse.

Subp. 18. **Person.** "Person" means a corporation, company, joint stock company or association, partnership, firm, or individual and includes their agents, trustees, assignees, or duly appointed receivers.

Subp. 19. **Private grain warehouse operator.** "Private grain warehouse operator" means a person operating a grain warehouse for the sole purpose of purchasing, handling, processing, and shipping grain or its byproducts who is not licensed by the commissioner to accept grain belonging to others for storage. "Private grain warehouse operator" includes any person licensed under the United States Warehouse Act.

Subp. 20. **Producer.** "Producer" means a person who grows

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grain on land that the person owns or leases.

Subp. 21. **Public grain warehouse operator.** "Public grain warehouse operator" means a person operating a grain warehouse in which grain belonging to persons other than the grain warehouse operator is accepted for storage or purchase or who offers grain storage or warehouse facilities to the public for hire.

Subp. 22. **Public terminal warehouse.** "Public terminal warehouse" has the meaning given in Minnesota Statutes, section 233.01.

Subp. 23. **Scale ticket.** "Scale ticket" means a memorandum issued by a grain elevator or warehouse operator to a depositor at the time grain is delivered showing the weight and kind of grain.

Subp. 24. **Vehicle.** "Vehicle" means a device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon stationary rails or tracks.

Subp. 25. **Voluntary extension of credit contract.** "Voluntary extension of credit contract" means a contract for the purchase of a specific amount of grain from a producer in which title to the grain passes to the grain buyer upon delivery but the price is to be determined or payment for the grain is to be made at a date later than the date of delivery of the grain to the grain buyer. Voluntary extension of credit contracts include deferred or delayed payment contracts, unpriced sales, no-price-established contracts, average pricing contracts, and all other contractual arrangements with the exception of cash sales and grain storage agreements evidenced by a grain warehouse receipt or scale ticket marked "storage."

Subp. 26. **Warehouse.** "Warehouse" means all or a portion of a building, structure, or other protected enclosure in which grain is or may be stored.

1562.0200 LICENSING.

Before purchasing or storing grain in Minnesota a person

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must file with the commissioner an application for a license on forms provided by the commissioner. No person may buy grain from producers in Minnesota without first obtaining a grain buyer's license or store grain for others in Minnesota without first obtaining a grain storage license.

Applications may be submitted any time during the year. Each license must be renewed every year on July 1. All licenses expire at midnight each June 30. Only one person may obtain a license to buy or store grain at any one grain warehouse.

A separate license is required for each home rule charter or statutory city or town in which a grain buyer or public grain warehouse operator buys or stores grain.

1562.0300 LICENSE EXCEPTIONS.

The following persons are not required to obtain a license to buy grain in Minnesota:

A. a person who does not buy grain from producers;

B. a producer selling the producer's own grain;

C. a person who buys seed grain for crop production; and

D. a person who purchases grain as feed for the person's own livestock or poultry.

1562.0400 TYPES OF LICENSES.

Subpart 1. **Grain buyer.** A license to buy grain is a license issued to an independent grain buyer, private grain warehouse operator, or public grain warehouse operator who buys grain from producers.

Subp. 2. **Grain storage.** A license to store grain is a license issued to a public grain warehouse operator who accepts grain for storage or who offers grain storage facilities to the public for hire.

Subp. 3. **Grain bank.** A grain bank license is a license issued to a private or public grain warehouse operator who processes grain into feed and who has a license to buy grain.

1562.0500 GRAIN STORAGE LICENSE REQUIREMENTS.

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Subpart 1. **Place of business.** A public grain warehouse operator must have a permanent established place of business at each licensed location where the books, records, and files necessary to conduct the business are kept and maintained, and where the license and tariff are posted in a conspicuous place.

Subp. 2. **Warehouse equipment.** Each licensed location must include a warehouse that is equipped for the weighing, drying, grading, storing, handling, processing, and shipping of grain.

Subp. 3. **Multiple warehouse license.** Grain warehouses located within the same home rule charter or statutory city or town and operated by the same person may be included under the same license.

Subp. 4. **Inspection; approval.** A grain warehouse must be inspected and approved by the commissioner before a license is issued and grain is stored.

Subp. 5. **Cleanliness.** A grain warehouse must be kept reasonably clean of dust, rubbish, and materials that might increase the fire hazard or interfere with the handling of grain.

Subp. 6. **Grain quality.** Grain must be maintained in good quality condition at all times and be kept free of rodents, insects, birds, and contaminants harmful to the quality of the grain.

Subp. 7. **Records and accounts.** A person licensed to store grain shall maintain a daily position record of each kind of grain stored in the warehouse including warehouse-owned cash grain, grain priced but not paid, and grain bought but not priced.

1562.0600 LICENSING OF LEASED FACILITIES.

A person shall obtain a grain buyer's license or storage license for each grain warehouse leased, except that all grain warehouses located within the same home rule charter or statutory city or town and leased and operated by the same person may be covered by a single license. A person may not lease storage space that is licensed and operated by another person licensed to buy or store grain.

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A warehouse must be under the control of the licensed warehouse operator leasing the warehouse.

All grain or commodities stored in a leased warehouse must be covered under the licensee's storage bond and must be included under the licensee's insurance policy, as required by Minnesota Statutes, section 232.23, subdivision 16.

1562.0700 BOND.

Subpart 1. **Requirement.** Before a license to buy or store grain is issued, the applicant for the license must file with the commissioner a bond in an amount prescribed by this part. The bond provides coverage at all licensed locations.

Subp. 2. **Grain buyer's bond.** The grain buyer's bond amount is based on the latest total annual dollar amount of grain purchased by the grain buyer in Minnesota as follows:

GRAIN BUYER'S BOND	TOTAL ANNUAL GRAIN PURCHASES
$10,000	$100,000 or less
$20,000	$100,001 to $750,000
$30,000	$750,001 to $1,500,000
$40,000	$1,500,001 to $3,000,000
$50,000	more than $3,000,000

Subp. 3. **Grain buyer's bond; first-time applicant.** A first-time applicant for a grain buyer's license shall file a $20,000 grain buyer's bond with the commissioner. This bond must remain in effect for the first year of the license. A first-time applicant includes a person previously licensed to buy grain who has not renewed the license for one or more years.

Subp. 4. **Grain storage bond.** The amount of bond required for grain storage is based on 50 percent of the local market value of grain stored by a public grain warehouse operator in Minnesota. The minimum grain storage bond is $20,000. The maximum grain storage bond is $500,000, excluding any grain bank liability. The storage bond amount may be increased during the license year. However, the storage bond may not be reduced during the license year.

Subp. 5. **Grain bank bond.** The grain bank bond is based on 50 percent of the local market value of grain stored in grain banks in Minnesota. A person licensed to store grain may

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include the additional liability for grain bank grain in the determination of the amount of the storage bond in lieu of obtaining a separate grain bank bond. The minimum grain bank bond is $1,500. The maximum grain bank bond is $150,000. The grain bank bond amount may be increased during the license year. The grain bank bond may not be reduced during the license year.

1562.0800 FEES.

Subpart 1. **License to buy grain.** The fee for a license to buy grain is based on the latest total annual dollar amount of grain purchased in Minnesota as follows:

A. For annual grain purchases under $1,500,000, the license fee is $100 plus $50 for each additional home rule charter or statutory city or town in which the grain buyer is to be licensed to buy grain.

B. For annual grain purchases of $1,500,000 to $3,000,000, the license fee is $200 plus $50 for each additional home rule charter or statutory city or town in which the grain buyer is to be licensed to buy grain.

C. For annual grain purchases over $3,000,000, the license fee is $300 plus $50 for each additional home rule charter or statutory city or town in which the grain buyer is to be licensed to buy grain.

Subp. 2. **License to store grain.** The fees for a license to store grain are as follows:

A. For a license to store grain, the license fee is $40 for each home rule charter or statutory city or town in which a public grain warehouse is operated.

B. A person with a license to store grain in a public grain warehouse is subject to an examination fee for each licensed location, based on the following schedule for one examination:

BUSHEL CAPACITY	EXAMINATION FEE
Less than 150,001 bushels	$ 275
150,001 to 250,000 bushels	385
250,001 to 500,000 bushels	495

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500,001 to 750,000 bushels	605
750,001 to 1,000,000 bushels	715
1,000,001 to 1,200,000 bushels	825
1,200,001 to 1,500,000 bushels	935
1,500,001 to 2,000,000 bushels	1,045
More than 2,000,000 bushels	1,155

The fee for the second examination is $22 per hour per examiner for warehouse operators who choose to have it performed by the commissioner.

Subp. 3. **Grain bank license.** The license fee is $30 for each home rule charter or statutory city or town in which a private or public grain warehouse is operated and which will be used to operate a grain bank.

1562.0900 STATEMENT OF GRAIN IN STORAGE.

Subpart 1. **Monthly grain storage reports.** A person with a grain bank license or a license to store grain must, by the tenth day of each month, file with the commissioner on forms provided by the commissioner a monthly storage report showing the net monetary liability, based on the local market price, of all grain outstanding on grain bank receipts, grain warehouse receipts, and scale tickets marked "store" as of the close of business on the last day of the preceding month.

Subp. 2. **Determination of grain bank and grain storage bond amount.** The monthly grain storage reports referred to in subpart 1, shall be used for the purpose of determining the dollar amount of the grain bank bond and the grain storage bond, and for determining whether these bond amounts should be increased during the license year.

Subp. 3. **Penalty.** If a person wilfully neglects or refuses to file the reports required in subpart 1 for two consecutive months, the commissioner may immediately suspend the person's license and the licensee must surrender the license to the commissioner. Within 15 days the licensee may request an administrative hearing subject to Minnesota Statutes, chapter 14 to determine if the license should be revoked. If no request is made within 15 days, the commissioner shall revoke the license.

Subp. 4. **Exceptions.** A person with the maximum grain bank bond or grain storage bond is not required to submit a monthly

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grain storage report. A person who has the maximum grain bank bond or storage bond and who requests a reduction in the bond amount must submit 12 consecutive monthly grain storage reports, to verify the request for a reduced bond amount. Persons having their bond amount reduced under this procedure must continue to submit monthly storage reports to the department. A reduction in the bond amount under this provision shall commence with the next licensing period.

1562.1000 VOLUNTARY EXTENSION OF CREDIT CONTRACT.

Subpart 1. **Form.** A voluntary extension of credit contract must include a statement of the legal and financial responsibilities of the grain buyer and seller and the following statement in not less than ten point, all capital type, framed in a box with space provided for the seller's signature:

"THIS CONTRACT CONSTITUTES A VOLUNTARY EXTENSION OF CREDIT. THIS CONTRACT IS NOT COVERED BY ANY GRAIN BUYER'S BOND."

BUYER_____ SELLER_____

(Type or print name) (Type or print name)

BY_____ BY_____

(Buyer's signature) (Seller's signature)

If a written contract is provided at the time the grain is delivered to the grain buyer, the seller shall sign the contract in the space provided directly beneath the statement. If the seller does not sign the contract at the time of delivery, then the buyer shall send the contract to the seller by certified mail, return receipt requested, to be signed. All contracts must be put in writing.

Subp. 2. **Requirements.** Voluntary extension of credit contracts must be consecutively prenumbered.

Subp. 3. **Not a storage agreement.** A contract sale of grain is not a storage agreement. The title to grain delivered on a voluntary extension of credit contract transfers to the grain buyer upon delivery, and no storage charges may be charged with respect to that grain. A voluntary extension of credit

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contract sale of grain is not covered by either the grain storage bond or the grain buyer's bond.

1562.1100 WAREHOUSE EXAMINATIONS.

Subpart 1. **Required examinations.** A person with a license to store grain is subject to two grain inventory examinations per year, for the purpose of determining whether there is enough grain at the warehouse to satisfy all grain storage obligations.

Subp. 2. **First warehouse examination.** The commissioner shall perform at least one of the required warehouse examinations during the license year.

Subp. 3. **Second warehouse examination.** The second examination may be performed by an independent third party qualified to do a physical grain measure-up, or weigh-up, if the independent third party agrees to perform the second warehouse examination, within 30 days of the date of the licensee's fiscal year end. In the absence of such an agreement the commissioner shall perform the second examination. The results of the grain inventory examination must include an accounting of all outstanding warehouse receipts, grain bank receipts, and other evidence of grain storage obligations.

Subp. 4. **Warehouses with a Commodity Credit Corporation storage agreement.** At the request of Commodity Credit Corporation, the commissioner shall perform warehouse examinations at warehouses with a uniform grain storage agreement. The results of these examinations must be forwarded to Commodity Credit Corporation.

Subp. 5. **Required information; form.** A grain inventory examination must include the following information:

GRAIN INVENTORY EXAMINATION

Name of Elevator

Date

I. Physical Measurement of Grain Inventory

	KIND OF GRAIN
Grain Inventory as of	# bushels
plus or minus Receipts	"
plus or minus Sales -- Shipments	"
Adjusted Inventory as of .....*	# bushels

II. Grain Inventory per Books as of .....*

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	Storage Liability	# bushels
	Grain Bank Liability	"
	Other	"
	Warehouse Owned	"
	Total Grain Inventory per Books	# bushels
III.	Other Grain Detail	
	Obligations on Grain Delivered to the Elevator	
	Deferred Payment Contracts	# bushels
	Delayed Price Contracts	"
	Other	"
	Total	# bushels

IV. Grain Inventory Measured by .....

This Report Prepared by .....

*These dates should be the same.

1562.1200 GRAIN PURCHASE RECEIPT.

An independent grain buyer, upon purchasing grain, shall issue a grain purchase receipt. A duplicate copy of each grain purchase receipt must remain in the possession of the independent grain buyer as a permanent record. The original grain purchase receipt must be delivered to the seller upon receipt of each load of grain.

The grain purchase receipt must state specifically whether the grain was sold on contract or for cash and the price at which the grain was sold. For contract purchases, if the price is not determined at the time of delivery, then the grain purchase receipt must be marked "price later."

All grain purchase receipts must be consecutively prenumbered and must contain the following information:

A. the name and address of the grain buyer;

B. the name of the seller;

C. the location and date of the transaction;

D. the weight or volume and kind of grain; and

E. the signature of the grain buyer.

For the sale of grain designated "contract" on the grain purchase receipt, the grain buyer must put the terms of the contract in writing as required by Minnesota Statutes, section 223.177, subdivision 3. The term "contract" signifies any form of sale except a cash sale. A contract sale of grain is not covered by the grain buyer's bond.

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1562.1300 SCALE TICKET.

A grain warehouse operator, upon receiving grain, shall issue a scale ticket for each load of grain received. A duplicate copy of each scale ticket must remain in the possession of the grain warehouse operator as a permanent record. The original scale ticket must be delivered to the seller or depositor upon receipt of each load of grain.

The scale ticket must state specifically whether the grain was sold on contract or for cash and the price at which the grain was sold. If the grain was not sold, then the scale ticket must state whether the grain was received for storage. The term "contract" signifies any form of sale except a cash sale.

All scale tickets must be consecutively prenumbered and must contain the following information:

A. the name and address of the grain warehouse operator;

B. the name of the seller or depositor;

C. the location and date of the transaction;

D. the weight, volume, and kind of grain; and

E. the signature of the grain warehouse operator.

1562.1400 DETERMINATION OF GRADE.

If the grade of grain is established at the time of delivery to a warehouse, it must be recorded on the original and duplicate copy of the scale ticket. If the grade is not established at the time of delivery, the grade and factors that relate to the grade must be recorded on the duplicate copy of the scale ticket retained by the grain warehouse operator. The depositor or seller must be notified of the grade within 48 hours after the grade has been determined.

1562.1500 WAREHOUSE RECEIPT.

If grain is received for storage, the grain warehouse operator shall issue a grain warehouse receipt to the depositor within five working days of the date of deposit.

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Storage contracts on grain being stored end on the expiration date of the storage license if not ended earlier by the depositor. In the absence of a demand for delivery, order to sell, or notice by the grain warehouse operator, it is presumed that the parties intended to renew the storage contract for the next licensing year.

1562.1600 CHARGES; RATES.

Subpart 1. **Filing of rates for storing and handling grain.** A person licensed to store grain shall file with the commissioner a tariff or schedule of all charges relating to the storage of grain including charges for receiving, storing, redelivery, and handling on forms provided by the commissioner.

Subp. 2. **Posting of charges.** Every warehouse operator shall post conspicuously in the warehouse, at each licensed location, a statement of all charges relating to the storage of grain.

Subp. 3. **Charges to depositor.** No charge different from that filed with the commissioner and posted may be made to any depositor for the same service.

All depositors must be notified of any changes in the tariff or schedule of charges prior to their implementation. A conspicuous posting of the revised tariff in the warehouse, plainly visible to all customers, qualifies as notification to depositors.

1562.1700 CLAIMS AGAINST A BOND.

Subpart 1. **Filing a claim.** Claims against a bond may be filed by the persons indicated in this subpart.

A. A producer claiming to be damaged by the breach of an agreement to purchase grain according to the terms of a cash sale must file a claim with the commissioner within 180 days of the date of breach.

B. A depositor claiming to be damaged by the breach of an agreement to store grain, including an agreement to sell grain which was originally delivered for storage, must file a claim with the commissioner within 180 days of the date of

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breach.

Subp. 2. **Form of claim.** All claims must be in writing, must state the facts upon which the claim is based, must include any supporting evidence, and must be signed by the claimant. The supporting evidence may consist of, but is not limited to, a purchase agreement, a scale ticket, a grain purchase receipt, a check indicating insufficient funds, a warehouse receipt, or an assembly sheet.

Subp. 3. **Where to file.** All claims must be filed at the following address: Minnesota Department of Agriculture, Grain Inspection Division, Warehouse Section, 316 Grain Exchange Building, Minneapolis, MN 55415.

Subp. 4. **Bond limitations.** The bonds are not cumulative from one year to the next. A claim against the bond may only be made against the bond in effect at the time the agreement is breached. A bond is not liable for claims filed after 180 days from the date of breach of the bond.

Subp. 5. **Public notice of a claim.** Upon determining that a producer or depositor has filed a valid claim, the commissioner shall publish notice of the claim in the official county newspaper of the county in which the licensee's place of business is located.

The notice must state that a claim against the bond of a licensee has been filed with the commissioner, the name and address of the licensee, that any additional claims should be filed with the commissioner, the bond disbursement date, and where the claims should be filed.

The public notice of the claim must appear for three consecutive days in newspapers with a daily circulation and for two consecutive publications in newspapers published less than daily.

Subp. 6. **Bond disbursement date.** The bond disbursement date is 90 days from the date the commissioner publishes a public notice of a claim. At the end of this time period, the commissioner will initiate bond payments on all valid claims received by the department.

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1562.1800 BOND COVERAGE.

Subpart 1. **Grain buyers bond.** The grain buyers bond provides for payment of loss to producers caused by a licensed grain buyer's failure to pay, upon the owner's demand, for grain purchased in Minnesota according to the terms of a cash sale.

Subp. 2. **Grain storage bond.** The grain storage bond provides for payment of loss caused by the failure of a person licensed to store grain in Minnesota to deliver stored grain to the depositor's order, or for nonpayment of grain when the depositor orders that the grain be sold in lieu of taking redelivery of the grain in storage.

Subp. 3. **Grain bank bond.** The grain bank bond provides for payment of loss caused by the failure of a person with a grain bank license in Minnesota to deliver grain bank-receipted grain to the depositor's order, or for nonpayment of grain when the depositor orders that the grain bank-receipted grain be sold in lieu of taking redelivery of the grain in the grain bank.

1562.1900 LOST, STOLEN, OR DESTROYED WAREHOUSE RECEIPTS.

While a warehouse receipt is outstanding, no other warehouse receipt may be issued for any part of the grain represented by the original warehouse receipt except that, in case of a lost, stolen, or destroyed warehouse receipt, the depositor is entitled to a new warehouse receipt, plainly designated to be a duplicate or substitute for the one missing or destroyed indicating the dates of issuance of the original and the replacement warehouse receipts. Before issuing a duplicate warehouse receipt the warehouse operator shall require the depositor to make and file an affidavit stating that the depositor is lawfully entitled to possession of the original receipt and that the depositor has not negotiated or assigned it, the circumstances in which it was lost or destroyed, and that, if lost, a diligent effort has been made to find it. The warehouse operator may require the depositor to post a bond in an amount not more than double the value at the time the bond is given of the grain represented by the missing or destroyed

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warehouse receipt. The bond must be conditioned to indemnify the warehouse operator against any loss which might be sustained because of the issuance of a duplicate receipt, must be in a form approved by the commissioner, and must be executed by a corporate surety licensed to operate in Minnesota. A valid duplicate or substitute warehouse receipt has all the rights of the document in lieu of which it was issued.

1562.2000 SHORTAGES OF GRAIN.

Whenever it appears that a warehouse operator does not have on hand grain of sufficient quality and quantity to cover the outstanding warehouse receipt obligations, notice must be given by the commissioner to the warehouse operator requiring that the shortage be corrected immediately. If the warehouse operator fails to comply with that order and the commissioner determines that the interests of depositors may be threatened, then the commissioner shall seal the warehouse to prevent any further removal of grain until the shortage is corrected.

If it appears that the warehouse operator is in default to warehouse receipt holders and unable to correct the default within a reasonable time the commissioner shall make arrangements to protect the warehouse receipt holders by either redelivering the grain, on a pro rata basis, to each warehouse receipt holder of record or liquidating the grain inventory, depositing the proceeds in an interest-bearing trust account, and distributing the proceeds, on a pro rata basis, to each warehouse receipt holder of record. The proceeds must remain in the trust account until the bond disbursement date, if applicable. Valid claims by warehouse receipt holders in excess of the amount in the trust account will be applied against the storage bond. The warehouse operator, the operator's surety, and each warehouse receipt holder of record must be notified of the shortage and the proposed action to be taken by the commissioner to protect warehouse receipt holders. Notice must be mailed to each warehouse receipt holder's last known address as evidenced by the records of the warehouse operator.

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If any interested party files a written objection to the department's proposed action within ten days of receipt of the commissioner's notice, the commissioner shall apply to the district court for the appointment of a trustee or receiver to manage and supervise the operations of the grain warehouse operator in default.

An audit or other investigation of the affairs of the warehouse operator must be made by the commissioner for the purpose of determining the amount of the shortage and computing the loss sustained by each depositor.

1562.2100 MOVEMENT OF ENCUMBERED GRAIN.

Grain encumbered by a warehouse receipt may be moved to another public grain warehouse with the depositor's request, pursuant to Minnesota Statutes, section 232.23, subdivision 13. The original warehouse receipt must be canceled and the receiving public grain warehouse operator must issue a currently-dated warehouse receipt for the grain being moved and stored. All storage charges must be paid through the date of cancellation of the original warehouse receipt.

1562.2200 TERMINATION OF LICENSE; CHANGE OF OWNERSHIP.

When a license is terminated by reason of sale, discontinuance of business, failure to renew a license, or for any other reason, the grain buyer or warehouse operator must discontinue buying grain from producers or storing grain, and redeliver or purchase all grain belonging to others in the warehouse. If a licensee sells or leases a grain warehouse to another person, proper indemnity must be provided to all depositors. Agreement in writing by the warehouse operator's successor to assume liability for all warehouse receipts outstanding at the time of take-over and reissuance of warehouse receipts by the successor constitutes sufficient indemnity. The commissioner must be notified of a change in ownership so that a new license and bond may be issued.

REPEALER. Minnesota Rules, parts 1560.5400; 1560.5500;

Approved
by Revisor _____

1560.5600; 1560.5700; 1560.5800; 1560.5900; 1560.6000; 1560.6100; 1560.6200; 1560.6300; 1560.6400; 1560.6500; 1560.6600; 1560.6700; 1560.6800; 1560.6900; 1560.7000; 1560.7100; 1560.7200; 1560.7300; 1560.7400; 1560.7500; and 1560.7600 are repealed.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Buying and Storing Grain

AGENCY: Department of Agriculture

MINNESOTA RULES: Chapter 1562

The attached rules are approved for publication in the State Register

Craig E. Lindeke
Senior Assistant Revisor

In the Matter of the Proposed Rule
of the Department of Agriculture
Governing Buying and Storing
Grain

AFFIDAVIT OF MAILING
THE NOTICE OF INTENT
TO ADOPT A RULE WITHOUT
A PUBLIC HEARING
AND NOTICE OF INTENT TO
ADOPT A RULE WITH A
PUBLIC HEARING IF TWENTY-
FIVE OR MORE PERSONS
REQUEST A HEARING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Marie Skerbitz, being sworn, says:

That on the 27th day of January, 1988, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt Rules Without a Public Hearing and Notice of Intent to Adopt a Rule with a Public Hearing if Twenty-Five or More Persons Request a Hearing by depositing in the State of Minnesota Central Mail System for United States mailing a copy thereof, with postage prepaid, to all persons and associations who have requested, persuant to Minnesota Statutes, sections 14.14, subdivision 1.a. and 14.22 OR 14.30, that their names be placed on the Minnesota Department of Agriculture rulemaking mailing list.

Marie Skerbitz
Mail Room Clerk

DIANE M. WINDHAM
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES NOVEMBER 1, 1990

Subscribed and sworn to before me
this 27th day of January, 1988.

Diane M. Windham

In the Matter of the Proposed Rule
of the Department of Agriculture
Governing Buying and Storing
Grain

AFFIDAVIT OF MAILING
THE NOTICE OF HEARING
AND NOTICE OF INTENT
TO CANCEL HEARING IF
FEWER THAN TWENTY-FIVE
PERSONS REQUEST A
HEARING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Marie Skerbitz, being sworn, says:

That on the 27th day of January, 1988, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Hearing and Notice of Intent to Cancel Hearing if fewer than Twenty-Five Persons Request a Hearing by depositing in the State of Minnesota Central Mail System for United States mailing a copy thereof, with postage prepaid, to all persons and associations who have requested, persuant to Minnesota Statutes, sections 14.14, subdivision 1.a. and 14.22 OR 14.30, that their names be placed on the Minnesota Department of Agriculture rulemaking mailing list.

Marie Skerbitz
Mail Room Clerk

DIANE M. WINDHAM
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES NOVEMBER 1, 1990

Subscribed and sworn to before me
this 27th day of January, 1988.

Diane M. Windham

In the Matter of the Proposed
Rule of the Department of
Agriculture Governing Buying
and Storing Grain

CERTIFICATE OF
MAILING LIST

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Carol Milligan, being sworn, says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minn. Statutes, sections 14.14, subd. 1a, and 14.22 or 14.30, that their names be placed on the Minnesota Department of Agriculture rulemaking mailing list is accurate, complete and current as of this 27th day of January, 1988.

Carol Milligan
Carol Milligan
Management Analyst

DIANE M. WINDHAM
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES NOVEMBER 1, 1990

Subscribed and sworn to before me
this 27th day of January, 1988.

Diane M. Windham

.8510; .8520; .8530; .8540; .8550; .8560; .8570; .8580; .8590; .8700; .8710 (adopted) 1564
7001.0020; .0040; .0050; .0190; (proposed) 1541
7001.4000; .4010; .4020; .4030; .4040; .4050; .4060; .4070; .4080; .4090; .4100; .4110; .4120; .4130; .4140; .4150 (proposed repealer) 1541
7035.8200; .8205; .8210; .8220; .8230; .8240; .8250; .8260; .8270; .8280; .8290; .8300; .8400; .8410; .8420; .8430; .8440; .8450; .8460; .8470; .8480; .8490; .8500; .8510; .8520; .8530; .8540; .8550; .8560; .8570; .8580; .8590; .8700; .8710 (proposed repealer) 1541

Public Safety Department

7515.1100; .1110 (adopted) 1456
7515.1100 s.1 (repealed) 1456

Public Utilities Commission (see also 4220.0100)

7815.0100; .0700; .0800; .0900; .1000; .1050; .1100; .1200; .1400; .1500; .1600 (proposed) 1534

Revenue Department

8001.0300 (proposed) 1609

Secretary of State

8200.0300; .0400; .0700; .0800; .1100; .1200; .1500; .1700; .2100; .2200; .2600; .3700; .3800; .5100; .5400; .9910; .9919; 8220.1950; 8235.0200; 8240.2400 (proposed) 1611
8200.1300; .1600; .3800 s.2; .9916; .9922; .9925 (proposed repealer) 1611
8210.3000; .3005; .3010; .3015 (proposed) 1446

Veterinary Medicine Board

9100.0400 (proposed) 1450

Waste Management Board

9220.0200-.0680 (proposed) 1541
9200.6000; .6001; .6002; .6003; .6004; .6007; .6008; .6010 (adopted) 1564

Human Services Department

9500.1100 (adopted) 1611
9502.0335 (proposed) 1607
9515.1000; .1200; .1300; .1400; .1500; .2200; .2300; .2400; .2500; .2600 (proposed) 1389
9515.1100 (proposed repealer) 1389
9530.4100; .4120; .4130; .4200; .4210; .4220; .4230; .4250; .4260; .4270; .4280; .4300; .4310; .4320; .4330; .4340; .4350; .4370; .4380; .4390; .4400; .4410; .4450 (adopted) 1451
9530.0100; .0200; .0300; .0400; .0500; .0600; .0700; .0800; .0900; .1000; .1100; .1200; .1300; .1400; .1500; .1600; .1700; .2500; .2600; .2700; .2800; .2900; .3000; .3100; .3200; .3300; .3400; .3500; .3600; .3700; .3800; .3900; .4000 (repealed) 1451
9553.0041; .0050; .0060 (proposed) 1429

Proposed Rules

Pursuant to Minn. Stat. of 1982, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Agriculture

Proposed Permanent Rules Relating to Buying and Storing Grain

Notice of Intent to Adopt a Rule Without a Public Hearing and Notice of Intent to Adopt a Rule With a Public Hearing if Twenty-Five or More Persons Request a Hearing

Notice is hereby given that the Minnesota Department of Agriculture intends to adopt the above-entitled rule without a public hearing, following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in Minnesota Statutes, Sections 14.22-14.28. The statutory authority to adopt this rule is Minnesota Statutes, Sections 16A.128; 223.19; 232.22, subds. 3 and 4; 232.24, subd. 1; and 236.08.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state their name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any proposed change. If a public hearing is required, the department will proceed according to Minnesota Statutes, Sections 14.131 to 14.20. PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON MARCH 29, 1988, IN CONFERENCE ROOM A, MINNESOTA DEPARTMENT OF AGRICULTURE, 90 WEST PLATO BOULEVARD, ST. PAUL, MINNESOTA 55107, UNLESS A SUFFICIENT NUMBER WITHDRAW THEIR REQUEST. IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THIS SAME RULE PUBLISHED IN THIS *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF AGRICULTURE. To verify whether a hearing will be held, please call the Minnesota Department of Agriculture between March 3, 1988 and March 18, 1988 at (612) 296-6906.

Comments or written requests for a public hearing must be submitted to: Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-6906.

The proposed rule may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this Notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from Ms. Milligan.

The proposed rule does not impose any additional compliance or reporting requirements or small business as defined in Minnesota Statutes, section 14.115, other than that which is required by statutes. Standards set by the rule are necessary for safe storage to protect the quality of grain.

If no hearing is required, upon adoption of the final rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule must submit a written request to Ms. Milligan.

Dated: 4 January 1988

Jim Nichols, Commissioner
Department of Agriculture

Notice of Hearing and Notice of Intent to Cancel Hearing if Fewer Than Twenty-Five Persons Request a Hearing in Response to Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Conference Room A, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, on March 29, 1988, commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rule may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, you are urged to participate in the rule hearing process.

PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THIS SAME RULE WITHOUT A PUBLIC HEARING PUBLISHED IN THE *STATE REGISTER* AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF AGRICULTURE. TO VERIFY WHETHER A HEARING WILL BE HELD, PLEASE CALL THE DEPARTMENT OF AGRICULTURE BETWEEN MARCH 3, 1988 and MARCH 18, 1988 at (612) 296-6906.

Following the department's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Phyllis Reha, Administrative Law Judge, Office of Administrative Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415; telephone (612) 341-7611, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period, the department and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the

three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rule-making record. Upon the close of the record, the Administrative Law Judge will write a report as provided for in Minnesota Statutes, sections 14.15 and 14.50. The rule hearing is governed by Minnesota Statutes, section 14.14 to 14.20 and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

The department's authority to adopt the proposed rules is contained in Minnesota Statutes, sections 16A.128; 223.19; 232.22, subds. 3 and 4; 232.24, subd. 1; and 236.08.

The proposed rules govern licensing of grain buyers and storers and licensee requirements. The proposed rules do not impose any additional compliance or reporting requirements on small business as defined in Minnesota Statutes, section 14.115, other than what is required by statute. Standards set by the rules are necessary for safe storage to protect the quality of grain.

A copy of the proposed rules is attached to this notice.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to Carol Milligan, Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota 55107; telephone (612) 296-6906.

Additional copies will be available at the hearing. If you have any questions on the content of the rule, contact Carol Milligan.

NOTICE: Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. If you desire to be notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the Secretary of State. The notice must be mailed on the same day the rules are filed. If you want to be so notified, you may so indicate at the hearing or send a request in writing to the department at any time prior to the filing of the rules with the Secretary of State.

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the agency and at the Office of Administrative Hearings. The Statement of Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Reasonableness may be reviewed at the agency or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Minnesota Statutes, chapter 10a, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, section 10A.01, subdivision 11, as any individual:

(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communication or urging others to communicate with public officials; or

(b) who spends more than $250, not including traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101, telephone (612) 296-5148.

Dated: 4 January 1988

Jim Nichols, Commissioner
Department of Agriculture

Rules as Proposed (all new material)

DEPARTMENT OF AGRICULTURE
BUYING AND STORING OF GRAIN

1562.0100 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of this chapter, the terms defined in this part have the meanings given them.

Subp. 2. **Bond.** "Bond" means an obligation acceptable to and running to the state, as obligee, for the purpose of:

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

A. indemnifying producers of grain against the breach of a cash sale contract by a grain buyer licensed under Minnesota Statutes, chapter 223;

B. indemnifying depositors of grain against the breach of a grain storage contract by a public grain warehouse operator licensed under Minnesota Statutes, chapter 232; or

C. indemnifying depositors of grain against the breach of a grain bank storage contract by a public or private grain warehouse operator licensed under Minnesota Statutes, chapter 236.

Subp. 3. **Cash sale.** "Cash sale" means:

A. a sale for which payment is tendered to the seller not later than the close of business on the next business day after the sale, either by cash or by check, or by mailing or wiring funds to the seller's account in the amount of at least 80 percent of the value of the grain at delivery; or

B. a sale of a shipment of grain which is part of a multiple shipment sale, for which a scale ticket clearly marked "cash" has been received by the seller before completion of the entire sale, and for which payment is tendered in cash or by check not later than ten days after the sale of that shipment, except that when the entire sale is completed, payment is tendered in cash or by check not later than the close of business on the next business day, or within 48 hours, whichever is later.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of agriculture or the commissioner's designee.

Subp. 5. **Department.** "Department" means the Minnesota Department of Agriculture.

Subp. 6. **Depositor.** "Depositor" means a person who is the owner or legal holder of an outstanding grain warehouse receipt, grain bank receipt, or open scale ticket marked for storage on which a receipt is to be issued, representing any grain stored in a public grain warehouse or grain bank.

Subp. 7. **Grain.** "Grain" means any cereal grain, coarse grain, or oilseed in unprocessed form for which a standard has been established by the United States Secretary of Agriculture or the Minnesota Board of Grain Standards, or any other agricultural crop which the commissioner may designate by rule.

Subp. 8. **Grain bank.** "Grain bank" means a feed-processing plant that receives and stores grain, the equivalent of which, except as is otherwise permitted by Minnesota Statutes, section 236.04, it processes and returns to the grain's owner in amounts, at intervals, and with added ingredients that are mutually agreeable to the grain's owner and the person operating the plant.

Subp. 9. **Grain bank bond.** "Grain bank bond" means an obligation acceptable to and running to the state, as obligee, for the purpose of indemnifying depositors of grain against the breach of a grain bank storage contract by a person with a grain bank license.

Subp. 10. **Grain bank receipt.** "Grain bank receipt" means a nonnegotiable receipt issued to the owner of the grain, or the owner's agent, for grain which is being stored for the purpose of being processed into feed.

Subp. 11. **Grain buyer.** "Grain buyer" means a person who purchases grain from a producer with the exception of a person who purchases seed grain for crop production or who purchases grain as feed for the person's own livestock.

Subp. 12. **Grain buyer's bond.** "Grain buyer's bond" means an obligation acceptable to and running to the state, as obligee, for the purpose of indemnifying producers of grain against the breach of a cash sale contract by a licensed grain buyer.

Subp. 13. **Grain purchase receipt.** "Grain purchase receipt" means a memorandum issued by a grain buyer to a seller at the time grain is delivered from the seller to the grain buyer, and which shows the weight or quantity and kind of grain.

Subp. 14. **Grain storage bond.** "Grain storage bond" means an obligation acceptable to and running to the state, as obligee, for the purpose of indemnifying depositors of grain against the breach of a grain storage contract by a person licensed to store grain.

Subp. 15. **Grain warehouse.** "Grain warehouse" means an elevator, flour, cereal or feed mill, malthouse or warehouse in which grain belonging to a person other than the warehouse operator is received for purchase or storage.

Subp. 16. **Grain warehouse receipt.** "Grain warehouse receipt" means a formal record issued to a depositor by a grain warehouse operator under Minnesota Statutes, section 232.23.

Subp. 17. **Independent grain buyer.** "Independent grain buyer" means a person who buys grain from producers and does not operate a grain warehouse.

Subp. 18. **Person.** "Person" means a corporation, company, joint stock company or association, partnership, firm, or individual and includes their agents, trustees, assignees, or duly appointed receivers.

Subp. 19. **Private grain warehouse operator.** "Private grain warehouse operator" means a person operating a grain warehouse for the sole purpose of purchasing, handling, processing, and shipping grain or its byproducts who is not licensed by the commissioner to accept grain belonging to others for storage. "Private grain warehouse operator" includes any person licensed under the United States Warehouse Act.

Subp. 20. **Producer.** "Producer" means a person who grows grain on land that the person owns or leases.

Subp. 21. **Public grain warehouse operator.** "Public grain warehouse operator" means a person operating a grain warehouse in which grain belonging to persons other than the grain warehouse operator is accepted for storage or purchase or who offers grain storage or warehouse facilities to the public for hire.

Subp. 22. **Public terminal warehouse.** "Public terminal warehouse" has the meaning given in Minnesota Statutes, section 233.01.

Subp. 23. **Scale ticket.** "Scale ticket" means a memorandum issued by a grain elevator or warehouse operator to a depositor at the time grain is delivered showing the weight and kind of grain.

Subp. 24. **Vehicle.** "Vehicle" means a device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices used exclusively upon stationary rails or tracks.

Subp. 25. **Voluntary extension of credit contract.** "Voluntary extension of credit contract" means a contract for the purchase of a specific amount of grain from a producer in which title to the grain passes to the grain buyer upon delivery but the price is to be determined or payment for the grain is to be made at a date later than the date of delivery of the grain to the grain buyer. Voluntary extension of credit contracts include deferred or delayed payment contracts, unpriced sales, no-price-established contracts, average pricing contracts, and all other contractual arrangements with the exception of cash sales and grain storage agreements evidenced by a grain warehouse receipt or scale ticket marked "storage."

Subp. 26. **Warehouse.** "Warehouse" means all or a portion of a building, structure, or other protected enclosure in which grain is or may be stored.

1562.0200 LICENSING.

Before purchasing or storing grain in Minnesota a person must file with the commissioner an application for a license on forms provided by the commissioner. No person may buy grain from producers in Minnesota without first obtaining a grain buyer's license or store grain for others in Minnesota without first obtaining a grain storage license.

Applications may be submitted any time during the year. Each license must be renewed every year on July 1. All licenses expire at midnight each June 30. Only one person may obtain a license to buy or store grain at any one grain warehouse.

A separate license is required for each home rule charter or statutory city or town in which a grain buyer or public grain warehouse operator buys or stores grain.

1562.0300 LICENSE EXCEPTIONS.

The following persons are not required to obtain a license to buy grain in Minnesota:

A. a person who does not buy grain from producers;

B. a producer selling the producer's own grain;

C. a person who buys seed grain for crop production; and

D. a person who purchases grain as feed for the person's own livestock or poultry.

1562.0400 TYPES OF LICENSES.

Subpart 1. **Grain buyer.** A license to buy grain is a license issued to an independent grain buyer, private grain warehouse operator, or public grain warehouse operator who buys grain from producers.

Subp. 2. **Grain storage.** A license to store grain is a license issued to a public grain warehouse operator who accepts grain for storage or who offers grain storage facilities to the public for hire.

Subp. 3. **Grain bank.** A grain bank license is a license issued to a private or public grain warehouse operator who processes grain into feed and who has a license to buy grain.

1562.0500 GRAIN STORAGE LICENSE REQUIREMENTS.

Subpart 1. **Place of business.** A public grain warehouse operator must have a permanent established place of business at each licensed location where the books, records, and files necessary to conduct the business are kept and maintained, and where the license and tariff are posted in a conspicuous place.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Subp. 2. **Warehouse equipment.** Each licensed location must include a warehouse that is equipped for the weighing, drying, grading, storing, handling, processing, and shipping of grain.

Subp. 3. **Multiple warehouse license.** Grain warehouses located within the same home rule charter or statutory city or town and operated by the same person may be included under the same license.

Subp. 4. **Inspection; approval.** A grain warehouse must be inspected and approved by the commissioner before a license is issued and grain is stored.

Subp. 5. **Cleanliness.** A grain warehouse must be kept reasonably clean of dust, rubbish, and materials that might increase the fire hazard or interfere with the handling of grain.

Subp. 6. **Grain quality.** Grain must be maintained in good quality condition at all times and be kept free of rodents, insects, birds, and contaminants harmful to the quality of the grain.

Subp. 7. **Records and accounts.** A person licensed to store grain shall maintain a daily position record of each kind of grain stored in the warehouse including warehouse-owned cash grain, grain priced but not paid, and grain bought but not priced.

1562.0600 LICENSING OF LEASED FACILITIES.

A person shall obtain a grain buyer's license or storage license for each grain warehouse leased, except that all grain warehouses located within the same home rule charter or statutory city or town and leased and operated by the same person may be covered by a single license. A person may not lease storage space that is licensed and operated by another person licensed to buy or store grain.

A warehouse must be under the control of the licensed warehouse operator leasing the warehouse.

All grain or commodities stored in a leased warehouse must be covered under the licensee's storage bond and must be included under the licensee's insurance policy, as required by Minnesota Statutes, section 232.23, subdivision 16.

1562.0700 BOND.

Subpart 1. **Requirement.** Before a license to buy or store grain is issued, the applicant for the license must file with the commissioner a bond in an amount prescribed by this part. The bond provides coverage at all licensed locations.

Subp. 2. **Grain buyer's bond.** The grain buyer's bond amount is based on the latest total annual dollar amount of grain purchased by the grain buyer in Minnesota as follows:

GRAIN BUYER'S BOND	TOTAL ANNUAL GRAIN PURCHASES
$10,000	$100,000 or less
$20,000	$100,001 to $750,000
$30,000	$750,001 to $1,500,000
$40,000	$1,500,001 to $3,000,000
$50,000	more than $3,000,000

Subp. 3. **Grain buyer's bond; first-time applicant.** A first-time applicant for a grain buyer's license shall file a $20,000 grain buyer's bond with the commissioner. This bond must remain in effect for the first year of the license. A first-time applicant includes a person previously licensed to buy grain who has not renewed the license for one or more years.

Subp. 4. **Grain storage bond.** The amount of bond required for grain storage is based on 50 percent of the local market value of grain stored by a public grain warehouse operator in Minnesota. The minimum grain storage bond is $20,000. The maximum grain storage bond is $500,000, excluding any grain bank liability. The storage bond amount may be increased during the license year. However, the storage bond may not be reduced during the license year.

Subp. 5. **Grain bank bond.** The grain bank bond is based on 50 percent of the local market value of grain stored in grain banks in Minnesota. A person licensed to store grain may include the additional liability for grain bank grain in the determination of the amount of the storage bond in lieu of obtaining a separate grain bank bond. The minimum grain bank bond is $1,500. The maximum grain bank bond is $150,000. The grain bank bond amount may be increased during the license year. The grain bank bond may not be reduced during the license year.

1562.0800 FEES.

Subpart 1. **License to buy grain.** The fee for a license to buy grain is based on the latest total annual dollar amount of grain purchased in Minnesota as follows:

A. For annual grain purchases under $1,500,000, the license fee is $100 plus $50 for each additional home rule charter or statutory city or town in which the grain buyer is to be licensed to buy grain.

"THIS CONTRACT CONSTITUTES A VOLUNTARY EXTENSION OF CREDIT. THIS CONTRACT IS NOT COVERED BY ANY GRAIN BUYER'S BOND."

BUYER _____ SELLER _____
(Type or print name) (Type or print name)

BY _____ BY _____
(Buyer's signature) (Seller's signature)

If a written contract is provided at the time the grain is delivered to the grain buyer, the seller shall sign the contract in the space provided directly beneath the statement. If the seller does not sign the contract at the time of delivery, then the buyer shall send the contract to the seller by certified mail, return receipt requested, to be signed. All contracts must be put in writing.

Subp. 2. **Requirements.** Voluntary extension of credit contracts must be consecutively prenumbered.

Subp. 3. **Not a storage agreement.** A contract sale of grain is not a storage agreement. The title to grain delivered on a voluntary extension of credit contract transfers to the grain buyer upon delivery, and no storage charges may be charged with respect to that grain. A voluntary extension of credit contract sale of grain is not covered by either the grain storage bond or the grain buyer's bond.

1562.1100 WAREHOUSE EXAMINATIONS.

Subpart 1. **Required examinations.** A person with a license to store grain is subject to two grain inventory examinations per year, for the purpose of determining whether there is enough grain at the warehouse to satisfy all grain storage obligations.

Subp. 2. **First warehouse examination.** The commissioner shall perform at least one of the required warehouse examinations during the license year.

Subp. 3. **Second warehouse examination.** The second examination may be performed by an independent third party qualified to do a physical grain measure-up, or weigh-up, if the independent third party agrees to perform the second warehouse examination, within 30 days of the date of the licensee's fiscal year end. In the absence of such an agreement the commissioner shall perform the second examination. The results of the grain inventory examination must include an accounting of all outstanding warehouse receipts, grain bank receipts, and other evidence of grain storage obligations.

Subp. 4. **Warehouses with a Commodity Credit Corporation storage agreement.** At the request of Commodity Credit Corporation, the commissioner shall perform warehouse examinations at warehouses with a uniform grain storage agreement. The results of these examinations must be forwarded to Commodity Credit Corporation.

Subp. 5. **Required information; form.** A grain inventory examination must include the following information:

GRAIN INVENTORY EXAMINATION

Name of Elevator

Date

	KIND OF GRAIN
I. Physical Measurement of Grain Inventory	
Grain Inventory as of	# bushels
plus or minus Receipts	"
plus or minus Sales — Shipments	"
Adjusted Inventory as of .....*	# bushels
II. Grain Inventory per Books as of .....*	
Storage Liability	# bushels
Grain Bank Liability	"
Other	"
Warehouse Owned	"
Total Grain Inventory per Books	# bushels
III. Other Grain Detail	
Obligations on Grain Delivered to the Elevator	
Deferred Payment Contracts	# bushels
Delayed Price Contracts	"
Other	"
T	# bushels

IV. Grain Inventory Measured by .....

This Report Prepared by .....

*These dates should be the same.

B. For annual grain purchases of $1,500,000 to $3,000,000, the license fee is $200 plus $50 for each additional home rule charter or statutory city or town in which the grain buyer is to be licensed to buy grain.

C. For annual grain purchases over $3,000,000, the license fee is $300 plus $50 for each additional home rule charter or statutory city or town in which the grain buyer is to be licensed to buy grain.

Subp. 2. **License to store grain.** The fees for a license to store grain are as follows:

A. For a license to store grain, the license fee is $40 for each home rule charter or statutory city or town in which a public grain warehouse is operated.

B. A person with a license to store grain in a public grain warehouse is subject to an examination fee for each licensed location, based on the following schedule for one examination:

BUSHEL CAPACITY	EXAMINATION FEE
Less than 150,001 bushels	$ 275
150,001 to 250,000 bushels	385
250,001 to 500,000 bushels	495
500,001 to 750,000 bushels	605
750,001 to 1,000,000 bushels	715
1,000,001 to 1,200,000 bushels	825
1,200,001 to 1,500,000 bushels	935
1,500,001 to 2,000,000 bushels	1,045
More than 2,000,000 bushels	1,155

The fee for the second examination is $22 per hour per examiner for warehouse operators who choose to have it performed by the commissioner.

Subp. 3. **Grain bank license.** The license fee is $30 for each home rule charter or statutory city or town in which a private or public grain warehouse is operated and which will be used to operate a grain bank.

1562.0900 STATEMENT OF GRAIN IN STORAGE.

Subpart 1. **Monthly grain storage reports.** A person with a grain bank license or a license to store grain must, by the tenth day of each month, file with the commissioner on forms provided by the commissioner a monthly storage report showing the net monetary liability, based on the local market price, of all grain outstanding on grain bank receipts, grain warehouse receipts, and scale tickets marked "store" as of the close of business on the last day of the preceding month.

Subp. 2. **Determination of grain bank and grain storage bond amount.** The monthly grain storage reports referred to in subpart 1, shall be used for the purpose of determining the dollar amount of the grain bank bond and the grain storage bond, and for determining whether these bond amounts should be increased during the license year.

Subp. 3. **Penalty.** If a person wilfully neglects or refuses to file the reports required in subpart 1 for two consecutive months, the commissioner may immediately suspend the person's license and the licensee must surrender the license to the commissioner. Within 15 days the licensee may request an administrative hearing subject to Minnesota Statutes, chapter 14 to determine if the license should be revoked. If no request is made within 15 days, the commissioner shall revoke the license.

Subp. 4. **Exceptions.** A person with the maximum grain bank bond or grain storage bond is not required to submit a monthly grain storage report. A person who has the maximum grain bank bond or storage bond and who requests a reduction in the bond amount must submit 12 consecutive monthly grain storage reports, to verify the request for a reduced bond amount. Persons having their bond amount reduced under this procedure must continue to submit monthly storage reports to the department. A reduction in the bond amount under this provision shall commence with the next licensing period.

1562.1000 VOLUNTARY EXTENSION OF CREDIT CONTRACT.

Subpart 1. **Form.** A voluntary extension of credit contract must include a statement of the legal and financial responsibilities of the grain buyer and seller and the following statement in not less than ten point, all capital type, framed in a box with space provided for the seller's signature:

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tariff or schedule of all charges relating to the storage of grain including charges for receiving, storing, redelivery, and handling on forms provided by the commissioner.

Subp. 2. **Posting of charges.** Every warehouse operator shall post conspicuously in the warehouse, at each licensed location, a statement of all charges relating to the storage of grain.

Subp. 3. **Charges to depositor.** No charge different from that filed with the commissioner and posted may be made to any depositor for the same service.

All depositors must be notified of any changes in the tariff or schedule of charges prior to their implementation. A conspicuous posting of the revised tariff in the warehouse, plainly visible to all customers, qualifies as notification to depositors.

1562.1700 CLAIMS AGAINST A BOND.

Subpart 1. **Filing a claim.** Claims against a bond may be filed by the persons indicated in this subpart.

A. A producer claiming to be damaged by the breach of an agreement to purchase grain according to the terms of a cash sale must file a claim with the commissioner within 180 days of the date of breach.

B. A depositor claiming to be damaged by the breach of an agreement to store grain, including an agreement to sell grain which was originally delivered for storage, must file a claim with the commissioner within 180 days of the date of breach.

Subp. 2. **Form of claim.** All claims must be in writing, must state the facts upon which the claim is based, must include any supporting evidence, and must be signed by the claimant. The supporting evidence may consist of, but is not limited to, a purchase agreement, a scale ticket, a grain purchase receipt, a check indicating insufficient funds, a warehouse receipt, or an assembly sheet.

Subp. 3. **Where to file.** All claims must be filed at the following address: Minnesota Department of Agriculture, Grain Inspection Division, Warehouse Section, 316 Grain Exchange Building, Minneapolis, MN 55415.

Subp. 4. **Bond limitations.** The bonds are not cumulative from one year to the next. A claim against the bond may only be made against the bond in effect at the time the agreement is breached. A bond is not liable for claims filed after 180 days from the date of breach of the bond.

Subp. 5. **Public notice of a claim.** Upon determining that a producer or depositor has filed a valid claim, the commissioner shall publish notice of the claim in the official county newspaper of the county in which the licensee's place of business is located.

The notice must state that a claim against the bond of a licensee has been filed with the commissioner, the name and address of the licensee, that any additional claims should be filed with the commissioner, the bond disbursement date, and where the claims should be filed.

The public notice of the claim must appear for three consecutive days in newspapers with a daily circulation and for two consecutive publications in newspapers published less than daily.

Subp. 6. **Bond disbursement date.** The bond disbursement date is 90 days from the date the commissioner publishes a public notice of a claim. At the end of this time period, the commissioner will initiate bond payments on all valid claims received by the department.

1562.1800 BOND COVERAGE.

Subpart 1. **Grain buyers bond.** The grain buyers bond provides for payment of loss to producers caused by a licensed grain buyer's failure to pay, upon the owner's demand, for grain purchased in Minnesota according to the terms of a cash sale.

Subp. 2. **Grain storage bond.** The grain storage bond provides for payment of loss caused by the failure of a person licensed to store grain in Minnesota to deliver stored grain to the depositor's order, or for nonpayment of grain when the depositor orders that the grain be sold in lieu of taking redelivery of the grain in storage.

Subp. 3. **Grain bank bond.** The grain bank bond provides for payment of loss caused by the failure of a person with a grain bank license in Minnesota to deliver grain bank-receipted grain to the depositor's order, or for nonpayment of grain when the depositor orders that the grain bank-receipted grain be sold in lieu of taking redelivery of the grain in the grain bank.

1562.1900 LOST, STOLEN, OR DESTROYED WAREHOUSE RECEIPTS.

While a warehouse receipt is outstanding, no other warehouse receipt may be issued for any part of the grain represented by the original warehouse receipt except that, in case of a lost, stolen, or destroyed warehouse receipt, the depositor is entitled to a new warehouse receipt, plainly designated to be a duplicate or substitute for the one missing or destroyed indicating the dates of issuance of the original and the replacement warehouse receipts. Before issuing a duplicate warehouse receipt the warehouse operator shall require the depositor to make and file an affidavit stating that the depositor is lawfully entitled to possession of the original receipt and that the depositor has not negotiated or assigned it, the circumstances in which it was lost or destroyed, and that, if lost, a diligent effort has been made to find it. The warehouse operator may require the depositor to post a bond in an amount not more than double

1562.1200 GRAIN PURCHASE RECEIPT.

An independent grain buyer, upon purchasing grain, shall issue a grain purchase receipt. A duplicate copy of each grain purchase receipt must remain in the possession of the independent grain buyer as a permanent record. The original grain purchase receipt must be delivered to the seller upon receipt of each load of grain.

The grain purchase receipt must state specifically whether the grain was sold on contract or for cash and the price at which the grain was sold. For contract purchases, if the price is not determined at the time of delivery, then the grain purchase receipt must be marked "price later."

All grain purchase receipts must be consecutively prenumbered and must contain the following information:

A. the name and address of the grain buyer;

B. the name of the seller;

C. the location and date of the transaction;

D. the weight or volume and kind of grain; and

E. the signature of the grain buyer.

For the sale of grain designated "contract" on the grain purchase receipt, the grain buyer must put the terms of the contract in writing as required by Minnesota Statutes, section 223.177, subdivision 3. The term "contract" signifies any form of sale except a cash sale. A contract sale of grain is not covered by the grain buyer's bond.

1562.1300 SCALE TICKET.

A grain warehouse operator, upon receiving grain, shall issue a scale ticket for each load of grain received. A duplicate copy of each scale ticket must remain in the possession of the grain warehouse operator as a permanent record. The original scale ticket must be delivered to the seller or depositor upon receipt of each load of grain.

The scale ticket must state specifically whether the grain was sold on contract or for cash and the price at which the grain was sold. If the grain was not sold, then the scale ticket must state whether the grain was received for storage. The term "contract" signifies any form of sale except a cash sale.

All scale tickets must be consecutively prenumbered and must contain the following information:

A. the name and address of the grain warehouse operator;

B. the name of the seller or depositor;

C. the location and date of the transaction;

D. the weight, volume, and kind of grain; and

E. the signature of the grain warehouse operator.

1562.1400 DETERMINATION OF GRADE.

If the grade of grain is established at the time of delivery to a warehouse, it must be recorded on the original and duplicate copy of the scale ticket. If the grade is not established at the time of delivery, the grade and factors that relate to the grade must be recorded on the duplicate copy of the scale ticket retained by the grain warehouse operator. The depositor or seller must be notified of the grade within 48 hours after the grade has been determined.

1562.1500 WAREHOUSE RECEIPT.

If grain is received for storage, the grain warehouse operator shall issue a grain warehouse receipt to the depositor within five working days of the date of deposit.

Storage contracts on grain being stored end on the expiration date of the storage license if not ended earlier by the depositor. In the absence of a demand for delivery, order to sell, or notice by the grain warehouse operator, it is presumed that the parties intended to renew the storage contract for the next licensing year.

1562.1600 CHARGES; RATES.

Subpart 1. **Filing of rates for storing and handling grain.** A person licensed to store grain shall file with the commissioner a

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the value at the time the bond is given of the grain represented by the missing or destroyed warehouse receipt. The bond must be conditioned to indemnify the warehouse operator against any loss which might be sustained because of the issuance of a duplicate receipt, must be in a form approved by the commissioner, and must be executed by a corporate surety licensed to operate in Minnesota. A valid duplicate or substitute warehouse receipt has all the rights of the document in lieu of which it was issued.

1562.2000 SHORTAGES OF GRAIN.

Whenever it appears that a warehouse operator does not have on hand grain of sufficient quality and quantity to cover the outstanding warehouse receipt obligations, notice must be given by the commissioner to the warehouse operator requiring that the shortage be corrected immediately. If the warehouse operator fails to comply with that order and the commissioner determines that the interests of depositors may be threatened, then the commissioner shall seal the warehouse to prevent any further removal of grain until the shortage is corrected.

If it appears that the warehouse operator is in default to warehouse receipt holders and unable to correct the default within a reasonable time the commissioner shall make arrangements to protect the warehouse receipt holders by either redelivering the grain, on a pro rata basis, to each warehouse receipt holder of record or liquidating the grain inventory, depositing the proceeds in an interest-bearing trust account, and distributing the proceeds, on a pro rata basis, to each warehouse receipt holder of record. The proceeds must remain in the trust account until the bond disbursement date, if applicable. Valid claims by warehouse receipt holders in excess of the amount in the trust account will be applied against the storage bond. The warehouse operator, the operator's surety, and each warehouse receipt holder of record must be notified of the shortage and the proposed action to be taken by the commissioner to protect warehouse receipt holders. Notice must be mailed to each warehouse receipt holder's last known address as evidenced by the records of the warehouse operator.

If any interested party files a written objection to the department's proposed action within ten days of receipt of the commissioner's notice, the commissioner shall apply to the district court for the appointment of a trustee or receiver to manage and supervise the operations of the grain warehouse operator in default.

An audit or other investigation of the affairs of the warehouse operator must be made by the commissioner for the purpose determining the amount of the shortage and computing the loss sustained by each depositor.

1562.2100 MOVEMENT OF ENCUMBERED GRAIN.

Grain encumbered by a warehouse receipt may be moved to another public grain warehouse with the depositor's request, pursuant to Minnesota Statutes, section 232.23, subdivision 13. The original warehouse receipt must be canceled and the receiving public grain warehouse operator must issue a currently-dated warehouse receipt for the grain being moved and stored. All storage charges must be paid through the date of cancellation of the original warehouse receipt.

1562.2200 TERMINATION OF LICENSE; CHANGE OF OWNERSHIP.

When a license is terminated by reason of sale, discontinuance of business, failure to renew a license, or for any other reason, the grain buyer or warehouse operator must discontinue buying grain from producers or storing grain, and redeliver or purchase all grain belonging to others in the warehouse. If a licensee sells or leases a grain warehouse to another person, proper indemnity must be provided to all depositors. Agreement in writing by the warehouse operator's successor to assume liability for all warehouse receipts outstanding at the time of take-over and reissuance of warehouse receipts by the successor constitutes sufficient indemnity. The commissioner must be notified of a change in ownership so that a new license and bond may be issued.

REPEALER. Minnesota Rules, parts 1560.5400; 1560.5500; 1560.5600; 1560.5700; 1560.5800; 1560.5900; 1560.6000; 1560.6100; 1560.6200; 1560.6300; 1560.6400; 1560.6500; 1560.6600; 1560.6700; 1560.6800; 1560.6900; 1560.7000; 1560.7100; 1560.7200; 1560.7300; 1560.7400; 1560.7500; and 1560.7600 are repealed.

Department of Human Services

Proposed Permanent Rules Relating to Licensing of Day Care Facilities

Notice of Intent to Adopt a Rule Without a Public Hearing

Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled rule without a public

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STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE MINNESOTA DEPARTMENT OF AGRICULTURE GOVERNING BUYING AND STORING GRAIN

FINDINGS OF FACT, CONCLUSIONS AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on February 1, 1988, and was sent by United States mail to all persons on the list maintained by the department pursuant to Minnesota Statutes, section 14.14, subd. 1a and 14.22 on January 27, 1988. The Statement of Need and Reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public. Before the notice was submitted to the State Register, a copy of the notice of intent to adopt rules without a public hearing and the proposed rule was sent to the chairs of the house appropriations committee and senate finance committee.

All persons were given the opportunity to submit comments on the rule for 30 days after notice of proposed rulemaking. No requests for a public hearing on the rule were received by the department.

No submissions or comments on the rule were received by the department. No requests for submission to the attorney general were received by the department.

The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as the Rule Governing Buying and Storing Grain is adopted this 8th day of March 1988, pursuant to authority vested in me by Minnesota Statutes, sections 16A.128; 223.19; 232.22, subds. 3 and 4; 232.24, subd. 1; and 236.08.

STATE OF MINNESOTA

Jim Nichols

JIM NICHOLS
COMMISSIONER OF AGRICULTURE

LAND OF QUALITY FOODS

90 W. PLATO BOULEVARD
SAINT PAUL, MN 55107
(612) 296-6906

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

January 22, 1988

TO: Senator Gene Merriam
Minnesota Senate

FROM: Carol Milligan, Management Analyst
Planning Division

SUBJ: Proposed Rule of the Department of Agriculture

Enclosed you will find a "Notice of Intent to Adopt a Rule Without a Public Hearing and Notice of Intent to Adopt a Rule With a Hearing if Twenty-Five or More Persons Request a Hearing" and a "Notice of Hearing and Notice of Intent to Cancel Hearing if Fewer than Twenty-Five Persons Request a Hearing" and proposed rule governing buying and storing grain. The Notices and rule are being sent in accordance with Minnesota Statutes, section 16A.128, subd. 2a.

The Notices and the proposed rule will be published in the Minnesota State Register on Monday, February 1, 1988. The 30-day comment period provided for by the Administrative Procedures Act will extend from that date until March 2, 1988. All comments on the proposed rule must be received by that date.

If you have any questions, please call.

CM:dw

Enclosure

LAND OF QUALITY FOODS

90 W. PLATO BOULEVARD
SAINT PAUL, MN 55107
(612) 296-6906

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

January 22, 1988

TO: Representative Glen Anderson
Minnesota House of Representatives

FROM: Carol Milligan, Management Analyst
Planning Division

SUBJ: Proposed Rule of the Department of Agriculture

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The Notices and the proposed rule will be published in the Minnesota State Register on Monday, February 1, 1988. The 30-day comment period provided for by the Administrative Procedures Act will extend from that date until March 2, 1988. All comments on the proposed rule must be received by that date.

If you have any questions, please call.

CM:dw

Enclosure

In the Matter of the Adoption of the
Rule of the Minnesota Department
of Agriculture Governing Buying and
Storing Grain

DECLARATION
OF COUNSEL

I, Paul Strandberg, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, Chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0986.

Paul Strandberg
Special Assistant Attorney General

Date: 3/10/83

SF-00006-05 (4/86)

DEPARTMENT : OF AGRICULTURE

STATE OF MINNESOTA

Office Memorandum

DATE : March 18, 1988

TO : Rita Desmond
Administration - Finance Division
Office of the Attorney General

FROM : Carol Milligan, Management Analyst
Planning Division

PHONE : 296-6906

SUBJECT : Review of Proposed Rule Governing Buying and Storing Grain

The Department of Agriculture adopted the above-mentioned rule pursuant to Minnesota Statutes, sections 14.22-14.28. Enclosed with this memorandum are the documents which are required to be submitted to the Attorney General for review prior to final approval of the rule. A list of the documents is attached for your convenience.

The department did not receive any written comments, requests for a hearing, or requests for notification of submission to the Attorney General.

If you have questions, please contact me.

CM:cb

Attachment

cc: Jim Nichols, Commissioner
Paul Strandberg, Special Assistant Attorney General
Craig Lindeke, Office of Revisor of Statutes
Gerald Heil, Director, Planning Division
Pat Jensen, Counsel to the Commissioner
Ed Moline, Grain Inspection Division
Felix McGovern, Grain Inspection Division

RECEIVED

MAR 21 1988

ATTORNEY GENERAL'S OFFICE
515 TRANSPORTATION BLDG.
ST. PAUL, MN 55155

PLANNING DIVISION
DEPARTMENT OF AGRICULTURE

LIST OF ATTACHED DOCUMENTS

A. Rule as Proposed.

B. Notice of Intent to Adopt a Rule Without Public Hearing and Notice of Intent to Adopt a Rule With a Public Hearing if Requested by Twenty-Five or More Persons.

C. Notice of Hearing and Notice of Intent to Cancel Hearing if Fewer than Twenty-Five Persons Request a Hearing.

D. Statement of Need and Reasonableness.

E. Affidavit of Mailing Notice of Intent to Adopt a Rule Without Public Hearing.

F. Affidavit of Mailing Notice of Hearing.

G. Certification of Mailing List.

H. Notification of Chairs of Senate Finance and House Appropriations Committees of Intent to Set Fees by Rule.

I. State Register Photocopy of Notice of Intent.

J. Rule as Adopted (Original and three copies).

K. Findings of Fact and Conclusions, and Order Adopting.

L. Declaration of Counsel.

STATE OF MINNESOTA
Department of Agriculture

In the Matter of the Proposed Rules of the
Department of Agriculture Governing Buying
and Storing Grain

Minnesota Rules 1562.0100 - 1562.2200

STATEMENT OF NEED AND REASONABLENESS

I. General Need and Authority for Rules

The Minnesota Department of Agriculture is authorized by Minnesota Statutes, sections 16A.128, 223.19, 232.22, subds. 3 and 4, 232.24, subd. 1 and 236.08 to make rules to carry out the provisions of the grain buyers act, the grain storage act and the grain bank law.

The proposed rules set forth the policies and procedures governing the regulation of persons buying and storing grain.

The proposed rules are based on the grain buyer's act, M.S., chapter 223, the grain storage act, M.S., chapter 232 and the grain bank law, M.S., chapter 236. As such, the proposed rules bring together in one convenient source the requirements of these statutes while serving as a reference and guide for the public and as a means by the department to implement its policies and procedures.

Accordingly, the proposed rules define the grain buyer's license, the grain storage license and the grain bank license. They explain who needs to be licensed, the license requirements, and the license fees. In addition, the bonding requirements for each kind of license are explained, as well as the coverage and limitations of the bond.

Much of the department's time is spent auditing grain warehouse operations, under M.S., chapter 232. So the proposed rules describe the special license requirements for persons storing grain, the purpose of the audits, the examination fees, the department's policy with respect to moving stored grain and the grain warehouse operator's responsibility to depositors when a license is terminated. And when a grain shortage is discovered, the proposed rules describe the department's procedural response.

It is necessary and reasonable to adopt the proposed rules so that:

1. persons buying and storing grain are provided with information on who needs to be licensed and the license requirements and

2. sellers and depositors of grain are provided with information about their rights and responsibilities under the law.

II. Need and Reasonableness of Each Rule Part

1562.0100 Definitions. As stated in subpart 1, the terms as defined have the meanings given to them.

Some terms are defined in the law and are included in the proposed rules for completeness and as a convenience to the reader.

The terms "grain buyer's bond," "grain storage bond," "grain purchase receipt," "independent grain buyer," "warehouse" and "vehicle" are newly defined in the proposed rules.

The "grain buyer's bond" needs to be defined so as to identify who is provided coverage and what is covered. It is reasonable to do this so that sellers of grain are informed of their coverage or lack of coverage under the bond.

While the grain buyer's bond is limited to protecting producers, the grain storage bond protects all depositors, both producers and other depositors. This is an important distinction between the bonds that is explained in the definitions.

The law does not provide that a grain buyer issue a receipt for grain purchased. It is necessary that all grain buyers including "independent grain buyers" issue a "grain purchase receipt." The definition, therefore, states who should issue the grain purchase receipt, when it should be issued and what grain data should be noted. Without such a receipt requirement, grain buyers could take delivery of grain without having to provide documentation to the producer.

The term "independent grain buyer" was not clearly defined in the statute so the proposed rule specifies those grain buyers who would be "independent grain buyers."

The law does not define "warehouse" but it is necessary to do so because the word "warehouse" is an integral part of other defined terms. And it is reasonable to define warehouse so as to identify the kinds of structures that may be used for storing grain.

The term "vehicle" is defined because the word is used in M.S., section 223.17 without the benefit of definition. By being defined by rule, grain buyers will be informed about what vehicles they have to identify to the state.

1562.0200 Licensing.

This part summarizes who needs to be licensed, the license period and the number of licenses required. It is necessary and reasonable to do this so that licensees and potential licensees are informed about why and when they need to be licensed.

1562.0300 License Exceptions.

M.S., section 223.16, subd. 5 defines a grain buyer as "a person who purchases grain from a producer with the exception of a person who purchases seed grain for crop production or who purchases grain as feed for the person's own livestock."

The rules, in this part, are listing the grain buyer licensing exceptions based on the above definition of a grain buyer.

The exceptions listed are typical of the license inquiries received by the department. Not everyone who buys grain is required to be licensed. It is reasonable then to inform all interested parties who should be licensed and what activities are not required to be licensed.

1562.0400 Types of Licenses.

While the statutes (ch. 223 and ch. 232) refer to many kinds of grain buyers and grain warehouses there is only one kind of grain buyer's license, grain storage license and grain bank license. For example, even though there are "independent grain buyers," "private grain warehouse buyers" and "public grain warehouse buyers," they each receive the same "license to buy grain." And, the license requirements are the same for everyone.

It is necessary to be very clear, on the license certificate, about what a person is licensed to do. This way the public can tell immediately what a particular grain elevator, for example, is licensed for. In contrast, if the license certificate contained the wording "private warehouse license" a person could not tell if that elevator was licensed to buy grain, store grain or both.

The object of this part is to help the producers and depositors, we are charged with protecting, by avoiding any potential confusion with respect to what a person is licensed to do. It is both necessary and reasonable that this should be done.

1562.0500 Grain Storage License Requirements.

This part enumerates the special license requirements for persons storing grain. The grain storage act does not include these requirements which are necessary to properly operate a grain storage warehouse. The object of this part is to inform all interested parties of these requirements.

Section 232.22, subd. 5(d) of the grain storage act requires that "every public grain warehouse operator must maintain in the grain warehouse at all times grain of proper grade and sufficient quantity to meet delivery obligations on all outstanding grain warehouse receipts."

It is necessary to enumerate the specific requirements which affect the warehouse operator's ability to maintain good quality grain in the warehouse because the grain storage act does not and because these requirements are a prerequisite to maintaining a safe warehouse where there is adequate equipment to move, grade and condition the grain.

The requirements of subparts 1 and 3 are stated in the grain storage act. They are restated here for the convenience of the reader. And it is reasonable to have all the license requirements together in one place.

Subpart 7 is also based on the grain storage act except that it is necessary to require that a record be maintained of each kind of grain stored as well as the various contract purchases. The subpart is making more explicit the requirements of the law so that licensees are informed of the particular record keeping requirements. The necessity of maintaining accurate books is self evident.

1562.0600 Licensing of Leased Facilities.

A licensee may own or lease a grain warehouse facility. And whether the warehouse operator is the owner or the lessee of a grain warehouse the license requirements are the same. The grain storage act does not refer to leased grain warehouse facilities so it is necessary to refer to the responsibilities of lessees in the rules.

A grain warehouse is the responsibility of the licensee and in the case where the licensee is leasing the warehouse the lessee is responsible for obtaining adequate bond and insurance coverage. This part is informing potential licensees that a license may be issued for leased facilities but the lessee must comply with the requirements of the grain storage act. This is necessary to avoid any confusion between the lessee and the lessor as to who should obtain the bond and insurance coverage.

1562.0700 Bond.

This part enumerates the bonding requirements for each of the three kinds of licenses. This is not done by either the grain storage act or the grain bank statute, so it is necessary to do so by these proposed rules. And it is reasonable to list all the different bonding requirements together for the convenience of all interested and affected parties.

The bonds are necessary to protect producers and depositors who may suffer the non-payment for grain sold or the loss of grain stored as a result of the wrongful act of a person licensed to buy or store grain. In the event of a valid loss the insurance company underwriting the bond will make prompt payment to the producer or depositor who suffered the loss, up to the amount of the bond in force.

The grain buyer's bond amounts are stipulated by M.S., section 223.17, subd. 4. They are re-stated in the rules for the convenience of the reader.

The grain storage bond is set by authority of M.S., section 232.22, subd. 4, which states that the commissioner shall prescribe the amount of the bond by rule.

The amount of the grain storage bond is based on 50% of the value of the grain under storage with a minimum required bond of $20,000 and a maximum required bond of $500,000.

These prescribed grain storage bond levels are not new. The Department of Agriculuture is prescribing the same bonding requirements that were originally enforced by the Department of Public Service over ten years ago when that department regulated grain warehouse operators.

The grain storage bond is not, therefore, being presented in the proposed rules as a new requirement of the grain storage license. The same formula for computing the grain storage bond, within the above minimum and maximum levels, has been applied continuously for at least the past ten years.

The grain storage bond is necessary to provide protection to depositors that are storing their grain in state licensed warehouses. It indemnifies depositors for the non-delivery or non-payment of grain by a licensed grain warehouse operator for grain which is evidenced by a warehouse receipt.

Because the grain storage act does not require any minimum financial criteria for the grain storage license, the grain storage bond is also necessary to provide some protection to depositors who may suffer losses as a result of dealing with financially unsound grain warehouse operators.

To the extent that the amount of the grain storage bond proposed has been in effect for over ten years, it is reasonable for the department to so continue, especially since the bond has, at current levels, served its purpose of protecting depositors while being easily obtained by the licensee.

Most of the other grain producing states have similar bonding requirements. South Dakota, Nebraska, Colorado and Texas each have a $500,000 maximum grain storage bond. Montana has a $850,000 maximum grain storage bond. North Dakota and Kansas have no maximum limit.

When the potential loss to depositors is considered, it could be argued that the $500,000 maximum bond limit is too small. The department, though, has tried to strike a balance between providing adequate protection to depositors and not creating additional financial hardships for the licensee.

For example, the average capacity of a Minnesota grain warehouse is approximately 700,000 bushels. Based on a $3 per bushel average price of grain under storage, the average state licensed warehouse may be storing $2,100,000 worth of grain. The average grain warehouse presents, therefore, a considerable risk to depositors who may have most of their family crop in storage at these warehouses.

Losses of any magnitude are unpredictable. But the $500,000 maximum grain storage bond limit has been reasonable in light of the potential risk and claims experience.

The grain bank bond is set by authority of M.S., section 236.02, which states that the department shall prescribe the amount of the grain bank bond. Section 236.02 prescribes a minimum grain bank bond of $1,500. The department has set the maximum grain bank bond at $150,000. The bond amount is based on 50% of the value of the grain being stored for the purpose of being processed into feed. The term "grain bank" means a feed processing operation.

Grain bank operations are on a much smaller scale than grain storage operations, hence the reduced bond amounts prescribed for the grain bank bond in comparison to the grain storage bond. As with the grain storage bond, the grain bank bond levels are not new. They were originally set by the Department of Public Service over ten years ago and have been enforced without change since then.

The grain bank bond is necessary for the same reasons stated above for the grain storage bond. And to the extent that the grain bank bond proposed has been in effect for over ten years, it is reasonable for the department to so continue, expecially since the grain bank bond has, at current levels, served its purpose of protecting depositors while being easily obtained by the licensee.

1562.0800 Fees.

The fees for a license to buy grain are set by M.S., section 223.17, subd. 3. And these fees are restated in the rules for the convenience of the reader.

The fees for the grain storage license are set by the commissioner under the authority of M.S., section 232.22, subd. 3. As is required by this statute, the grain storage license fees are set at an amount which is estimated to cover the cost of inspecting and licensing each person with a grain storage license. There are approximately 400 grain warehouses licensed to store grain and under M.S., section 232.24, subd. 1 they must be audited twice a year.

The license fee and the examination fee are necessary to pay for the examination personnel, administration staff, examination forms, bond forms, application forms, license certificates, vehicles, examination and office equipment, statewide indirect costs and office overhead.

The second examination is performed at the request of the warehouse operator for a fee of $20 per hour, per examiner. This fee is set at a rate which is estimated to pay for the salary, fringe benefits and travel expenses of the warehouse examiner.

The grain bank license fee is set by the commissioner, under the authority of M.S., section 236.02. And the grain bank license fee is necessary to cover the cost of administering the grain bank licensing process, which includes the cost of office staff and equipment, license certificates, bond forms, application forms, office overhead and statewide indirect costs.

All the above fees are reasonable in that they are set at an amount which is estimated to no more than cover the costs of enforcing M.S., chapters 223, 232 and 236.

1562.0900 Statement of Grain in Storage.

A statement of grain in storage applies to persons with a grain storage license or a grain bank license. The grain storage act and the grain bank law authorize these reports, however the statutes do not explain what these reports should contain and what they are used for. This part also provides for an exception to filing these reports for persons who have the maximum grain storage bond or grain bank bond. This exception is reasonable in light of the fact that the sole purpose of these reports is to adjust the grain storage or grain bank bond, and the reports are unnecessary if a person has the maximum bond.

1562.1000 Voluntary Extension of Credit Contract.

It is necessary in this part to clarify the grain buyers act with respect to the form and exceptions which apply to voluntary extension of credit contracts.

Subpart 1 shows where the signature lines should be contained on the contract. This subpart also provides for a procedure whereby the grain buyer can obtain the necessary signatures in the event that the contract is not signed at the time the grain is delivered. The statute does not explain this.

As the grain buyers act requires that these contracts be audited, subpart 2 provides that the contracts be pre-numbered. This is necessary and reasonable to aid the auditing process.

Subpart 3 is necessary to inform producers that, regardless of when payment is made, the title to the grain passes to the grain buyer upon delivery and that therefore no storage fees may be charged to the producer (seller). As a result, there is no storage bond coverage. And to avoid any confusion the public is reminded that there is no buyer's bond coverage either.

1562.1100 Warehouse Examinations.

As authorized by M.S., section 232.24 persons with a grain storage license are subject to two audits annually. This part of the proposed rules explains the purpose of these audits and the circumstances under which a non-government audit may be performed. This is necessary because the statute does not explain the purpose of the audit and the circumstances under which it can be performed by a non-government unit. It is reasonable to do this in the proposed rules to inform and assist the licensees in complying with section 232.24.

In further assisting the licensees, subpart 5 outlines the data that must be submitted to the department by the grain warehouse operator. This data is necessary in order to determine whether a grain warehouse has sufficient grain inventory to meet all the grain storage obligations to depositors. This is the purpose of the audit referred to in M.S., section 232.24, subd. 1.

1562.1200 Grain Purchase Receipt.

The grain purchase receipt is a new requirement with these proposed rules. While M.S., chapter 232 requires the licensee to issue a scale ticket and a warehouse receipt, these receipts pertain to grain warehouses buying or storing grain. It is necessary, therefore, to provide that persons who do not operate a warehouse be required to issue a receipt to the seller when grain is being purchased.

This part explains what information should be included on the grain purchase receipt. The information requested is reasonable in light of the fact that similar information is required on the scale ticket and the warehouse receipt.

1562.1300 Scale Ticket.

The requirements for a scale ticket are included in this part to clarify the statute and to outline the information to be contained on the scale ticket. This is reasonable for the convenience and information of the public.

1562.1400 Determination of Grade.

The price paid for grain is subject to the grade of that grain. To justify the price, a grain elevator must be equipped to grade the grain by noting the damage, moisture, foreign material and other factors relative to a grain sample. It is necessary to have the grade factors indicated on the scale ticket to verify the quality of the grain and to aid in resolving any price disputes between the grain buyer and seller.

This part is reasonable in that it conforms with general industry practice.

1562.1500 Warehouse Receipt.

The statute (chapter 232) needs to be clarified with respect to when a warehouse receipt should be issued, and also with respect to the status of warehouse receipts that remain outstanding for more than one licensing year.

Five working days provide sufficient time for both the depositor and the grain warehouse to decide if the grain will be stored and to issue a warehouse receipt. Grain is frequently stored for two or more years; the last paragraph of this part provides for the continuance of the original warehouse receipt through subsequent license years. This is reasonable in light of current industry practice which has adopted this procedure.

1562.1600 Charges; Rates.

The purpose of this part is to clarify and augment the statute with respect to the charges of the grain warehouse operator. M.S., section 232.23, subd. 4(b) states that a grain warehouse operator cannot charge a greater or lesser amount than that filed with the commissioner.

Subpart 1 states explicitly what the statute implies, namely that the charges must be filed with the commissioner. This is necessary to avoid a dispute over whether these charges must be filed and to remove any doubt as to the intention of the statute.

Subpart 2 requires that the charges be posted at the warehouse. This is necessary and reasonable so that a depositor can determine what the charges of a grain warehouse are.

Subpart 3 requires that depositors be notified of a pending change in the charges, by posting the revised tariff in the warehouse prior to its implementation. This is necessary and reasonable so that depositors are informed of the pending change in rates.

1562.1700 Claims Against a Bond.

A substantial amount of time is spent reviewing claims. The claims are submitted to the state to be reviewed, investigated and then presented to the insurance company for payment.

Because a producer or depositor may not be aware that a claim can be filed, or how to file a claim and also because a substantial quantity of money may be at stake, it is necessary to explain in this part who can file a bond claim and when and where the claim should be filed. In addition, for the benefit of potential claimants, the bond limitations are explained. This part is necessary and reasonable to ensure that all valid claimants are provided with information necessary to get reimbursed under the bond.

1562.1800 Bond Coverage.

This part further explains the bond coverage by explaining the kind of coverage that each of the three bonds provide. This part clarifies the statute, establishes the risk being covered and informs the insurance company and potential claimants of who is protected by the bond.

1562.1900 Lost, Stolen or Destroyed Warehouse Receipts.

This part is necessary to explain the procedure to be followed in the event that a warehouse receipt is missing. The statutes do not provide any such procedures. The proposed procedures allow for the replacement of the missing warehouse receipt while at the same time reducing the risk involved to the grain warehouse operator.

1562.2000 Shortages of Grain.

It is often necessary to deal with a shortage of grain at a warehouse in conjunction with a bond claim. A grain warehouse is required by M.S., chapter 232 to maintain sufficient grain in the warehouse at all times to cover the grain storage obligations.

It is necessary to clarify the statute with respect to the procedures to be followed in the event of a grain shortage.

This part establishes a set of procedures that may be followed by the state in dealing with a grain shortage. These procedures are necessary so that problems at grain warehouses can be handled in an orderly manner and to serve as a basis for making decisions by the department. In addition, grain warehouses and depositors are informed of how the state may respond, to minimize the losses that may result from a grain shortage.

1562.2100 Movement of Encumbered Grain.

M.S., chapter 232 requires that all grain be maintained at the warehouse indicated on the warehouse receipt. The purpose of this part is to re-iterate and clarify the statute with respect to the procedure to be followed in the event a depositor wants to or is requested to move the grain to another grain warehouse.

1562.2200 Termination of License; Change of Ownership.

Because grain warehouses change ownership, it is necessary to explain in this part that the new owner may be responsible for the grain that remains in the warehouse. Unless all the grain was re-delivered to the depositors, the new owner is required to issue a new warehouse receipt to each depositor. This part is necessary and reasonable so that depositors are informed of the change in ownership and so that the state can review the license application of the new owner and obtain a new bond.

III. Impact of the Proposed Rules on Small Businesses

Most of the grain buyers, grain bank operators and grain warehouse operators licensed by the state are a "small business" as defined in M.S., section 14.115.

While recognizing that the statutes, upon which the proposed rules are based, affect the regulation of small business almost exclusively this agency has considered the impact of the proposed rules on small businesses as follows:

A. The Establishment of Less Stringent Compliance or Reporting Requirements

The proposed rules do not impose any additional compliance or reporting requirements other than what is required in the statutes (chs. 223, 232 and 236).

Licensees do not have any "reporting" requirements per se except that grain storage licensees file a monthly storage report. And these reports are required by M.S., chapter 232, for the purpose of setting the grain storage bond amount.

Likewise the statutes impose some "compliance" standards in that licensees must issue receipts, prepare contracts for credit sales and maintain business books and records of the grain inventory. However, these compliance standards are required by statute and are minimal standards necessary to run a business. The proposed rules do not impose any compliance standards other than those stipulated in the statutes.

B. The Establishment of Less Stringent Schedules or Deadlines for Compliance or Reporting Requirements

The deadlines for compliance and reporting are determined entirely by the business transactions of the licensee and the statutes. Licenses are renewed every year on July 1st. Although the license application form, the bond and financial statement are not a "reporting" requirement per se (together they constitute the license application process) they must be submitted each year in time for the license renewal on July 1st, as required by statute. The proposed rules neither add nor subtract from this requirement.

C. The Consolidation or Simplification of Compliance or Reporting Requirements

This agency has simplified and consolidated some forms where it was feasible to do so. Licensees with multiple locations can now file a single application form rather than have to file a separate application for each licensed location. In addition, where a licensee both buys and stores grain, the buyer's bond and the storage bond have been combined into a single buy and store bond form.

D. The Establishment of Performance Standards for Small Business to Replace Design or Operational Standards Required in the Rule

Except that the proposed rules require persons storing grain to provide a safe place for the grain in storage and that the quality of the grain be maintained, no specific design or operational standards are stipulated. That is, the proposed rules specify some standards for grain storage, but the licensee may decide how these standards are implemented. The standards themselves are necessary, if depositors of grain are to be protected.

E. The Exemption of Small Businesses from Any or All Requirements of the Rule

The proposed rules do not impose any additional requirements on licensees other than those stipulated by statute. The requirements of the proposed rules are either the minimum necessary to carry on a grain business or specifically required by statute. Any exemption from the rules though would be contrary to the statutes.

This agency was able to make one exemption, however, in that licensees with the maximum grain storage bond or grain bank bond need not file a monthly grain storage report. Since these monthly reports are used to set the bond amount, they are not necessary if a licensee has the maximum bond.

IV. Conclusion

For the reasons stated, the Minnesota Department of Agriculture believes that each of the proposed rules is necessary and reasonable to effectively administer M.S., chapters 223, 232 and 236 relating to the buying and storing of grain.

REPEALER. The rules being repealed are rules relating to grain warehouses that were written by the Minnesota Public Service Commission in 1974. At that time the Public Service Commission regulated grain warehouses. Persons buying and storing grain are now under the jurisdiction of the Department of Agriculture.

The rules are repealed because the applicable statute has been repealed. The repealer notice is included here so that interested persons are informed that these rules are no longer in effect.

The rules being repealed are based on M.S., chapter 232. This entire chapter was repealed in 1982 and new language was enacted, also in 1982. The repealer thus applies to rules which are no longer applicable, based upon the repeal of the statute upon which the rules were based.

SF-00006-05 (4/86)

DEPARTMENT : of Finance

STATE OF MINNESOTA

Office Memorandum

DATE : April 28, 1987

TO : Jim Nichols, Commissioner
Department of Agriculture

FROM : Bruce J. Reddemann, Director
Budget Operations and Support

PHONE : 6-5901

SUBJECT : Grain Buyers and Storage Fees

The following fee changes requested in your April 22, 1987 memorandum are approved as submitted:

	Present Fee	Proposed Fee
License to Store Grain	$35	$40
Examination Fee for Each Licensed Location:		
Less than 150,001 bushels	$250	$275
150,001 to 250,000 bushels	350	385
250,001 to 500,000 bushels	450	495
500,001 to 750,000 bushels	550	605
750,001 to 1,000,000 bushels	650	715
1,000,001 to 1,200,000 bushels	750	825
1,200,001 to 1,500,000 bushels	850	935
1,500,001 to 2,000,000 bushels	950	1,045
More than 2,000,000 bushels	1,050	1,155
Fee for Second Examination	20	22
Grain Bank License	25	30

Department of Agriculture
Grain Inspection Division

In the Matter of the Proposed Rule
of the Department of Agriculture
Governing Buying and Storing Grain

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING AND NOTICE OF INTENT TO ADOPT A RULE WITH A PUBLIC HEARING IF TWENTY-FIVE OR MORE PERSONS REQUEST A HEARING

Notice is hereby given that the Minnesota Department of Agriculture intends to adopt the above-entitled rule without a public hearing, following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in Minnesota Statutes, Sections 14.22-14.28. The statutory authority to adopt this rule is Minnesota Statutes, Sections 16A.128; 223.19; 232.22, subds. 3 and 4; 232.24, subd. 1; and 236.08.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state their name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any proposed change. If a public hearing is required, the department will proceed according to Minnesota Statutes, Sections 14.131 to 14.20. PLEASE NOTE THAT IF TWENTY-FIVE OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD ON MARCH 29, 1988, IN CONFERENCE ROOM A, MINNESOTA DEPARTMENT OF AGRICULTURE, 90 WEST PLATO BOULEVARD, ST. PAUL, MINNESOTA 55107, UNLESS A SUFFICIENT NUMBER WITHDRAW THEIR REQUEST, IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THIS SAME RULE PUBLISHED IN THIS STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF AGRICULTURE. To verify whether a hearing will be held, please call the Minnesota Department of Agriculture between March 3, 1988 and March 18, 1988 at (612) 296-6906.

Comments or written requests for a public hearing must be submitted to: Carol Milligan, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-6906.

The proposed rule may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this Notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from Ms. Milligan.

The proposed rule does not impose any additional compliance or reporting requirements or small business as defined in Minnesota Statutes, section 14.115, other than that which is required by statutes. Standards set by the rule are necessary for safe storage to protect the quality of grain.

If no hearing is required, upon adoption of the final rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule must submit a written request to Ms. Milligan.

STATE OF MINNESOTA

Date: Jan 4 1988

Jim Nichols

Jim Nichols, Commissioner
Department of Agriculture

Department of Agriculture
Grain Inspection Division

In the Matter of the Proposed
Adoption of the Rule of the
Department of Agriculture
Governing Buying and Storing Grain

NOTICE OF HEARING AND NOTICE OF INTENT TO CANCEL HEARING IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING.

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Conference Room A, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, on March 29, 1988, commencing at 9:00 a.m. and continuing until all interested or affected persons have an opportunity to participate. The proposed rule may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, you are urged to participate in the rule hearing process.

PLEASE NOTE, HOWEVER, THAT THE HEARING WILL BE CANCELED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THIS SAME RULE WITHOUT A PUBLIC HEARING PUBLISHED IN THE STATE REGISTER AND MAILED TO PERSONS REGISTERED WITH THE DEPARTMENT OF AGRICULTURE. TO VERIFY WHETHER A HEARING WILL BE HELD, PLEASE CALL THE DEPARTMENT OF AGRICULTURE BETWEEN MARCH 3, 1988 and MARCH 18, 1988 at (612) 296-6906.

Following the department's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Phyllis Reha, Administrative Law Judge, Office of Administrative Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis,

Minnesota 55415; telephone (612) 341-7611, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. The comments received during the comment period shall be available for review at the Office of Administrative Hearings. Following the close of the comment period, the department and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. No additional evidence may be submitted during the three-day period. The written responses shall be added to the rule-making record. Upon the close of the record, the Administrative Law Judge will write a report as provided for in Minnesota Statutes, sections 14.15 and 14.50. The rule hearing is governed by Minnesota Statutes, section 14.14 to 14.20 and by Minnesota Rules, parts 1400.0200 to 1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

The department's authority to adopt the proposed rules is contained in Minnesota Statutes, sections 16A.128; 223.19; 232.22, subds. 3 and 4; 232.24, subd. 1; and 236.08.

The proposed rules govern licensing of grain buyers and storers and licensee requirements. The proposed rules do not impose any additional compliance or reporting requirements on small business as defined in Minnesota Statutes, section 14.115, other than what is required by statute. Standards set by the rules are necessary for safe storage to protect the quality of grain.

A copy of the proposed rules is attached to this notice.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to Carol Milligan, Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota 55107; telephone (612) 296-6906.

Additional copies will be availble at the hearing. If you have any questions on the content of the rule, contact Carol Milligan.

NOTICE: Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. If you desire to be notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the Secretary of State. The notice must be mailed on the same day the rules are filed. If you want to be so notified, you may so indicate at the hearing or send a request in writing to the department at any time prior to the filing of the rules with the Secretary of State.

NOTICE IS HEREBY GIVEN that a Statement of Need and Reasonableness is now available for review at the agency and at the Office of Administrative Hearings. The Statement of Reasonableness includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rules. Copies of the Statement of Reasonableness may be reviewed at the agency or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Minnesota Statutes, chapter 10a, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, section 10A.01, subdivision 11, as any individual:

(a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communication or urging others to communicate with public officials; or

(b) who spends more than $250, not including traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 625 North Robert Street, St. Paul, Minnesota 55101, telephone (612) 296-5148.

State of Minnesota

Jan 4 1988
Date

Jim Nichols
Jim Nichols, Commissioner
Department of Agriculture