

CHAPTER 20:10:11

PUBLIC GRAIN WAREHOUSES

Section

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20:10:11:01. Monthly grain reports required -- Contents. On the first day of every month, or within 10 days thereafter, every public grain warehouse licensee shall furnish to the commission in writing upon forms furnished by the commission, or through the use of the online monthly grain report, a report showing the following information as of the last day of the preceding month: the number of bushels of each kind and grade of grain in storage on the last day of the month; the price per bushel or hundred weight which the warehouse upon such date is offering for grain of like kind and grade; the total value of each kind of grain in storage; and the amount of the warehouse licensee's bond held by the public grain warehouse licensee.

Source: SL 1975, ch 16, § 1; 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 24 SDR 190, effective July 15, 1998

General Authority: SDCL ~~49-42-1.2(1)~~ 49-43-4.1(1).

Law Implemented: SDCL 49-43-4.1(1), 49-43-9.

Declaratory Ruling: A vault storage facility, where customers have sole access to personal property stored in individual vaults or lock boxes, is not a public warehouse where property is "received for storage for hire" within the meaning of SDCL 49-42-3, and does not need to be licensed. Public Utilities Commission Declaratory Ruling No. 81-1.

20:10:11:04.02. Release of bonds. The commission may release an increase rider or additional bond to the warehouse licensee if it determines, after inspection or the submission of an updated grain report as required by § 20:10:11:01, that the original bond is adequate to cover one-half of the local market value of grain in the warehouse licensee's facilities.

An original bond filed with the commission for the license year may not be released if unless a new bond is executed to replace the original bond for the entire license year.

Source: 13 SDR 40, effective October 14, 1986; 14 SDR 62, effective October 28, 1987; 24 SDR 190, effective July 15, 1998.

General Authority: SDCL ~~49-42-1.2(4)~~ 49-43-4.1(3).

Law Implemented: SDCL ~~49-42-5.1, 49-42A-4~~ 49-43-4.1(3), 49-43-4.3, 49-43-5.3.

Cross-Reference: Claim against warehouseman, SDCL 49-43-5.9.

20:10:11:10. License suspension or revocation -- Notice to public. Following the suspension or revocation of a public grain warehouse license, notice thereof shall be posted by an agent or employee of the commission in a conspicuous place on the warehouse premises ^{each} of all locations where grain is received. If necessary to protect the

public, the notice shall also be published by the commission in at least one newspaper of general circulation in the area served by the grain warehouse.

Source: 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 24 SDR 190, effective July 15, 1998.

General Authority: SDCL ~~49-42-1.2(6)~~ 49-43-4.1(5).

Law Implemented: SDCL ~~49-42-2.1, 49-42-6~~ 49-43-4.1(5), 49-43-4.5, 49-43-5.6.

20:10:11:12.1. Numbering of receipts — No duplication. Electronic warehouse receipts shall be numbered and shall be issued consecutively starting with the number specified to the provider by the commission. A warehouse operator may not have an electronic warehouse receipt and a paper warehouse receipt outstanding for the same lot of grain.

Source:

General Authority: SDCL 49-43-2.1, 49-43-4.1(6), 49-43-56.

Law Implemented: SDCL 49-43-2.1, 49-43-4.1(6), 49-43-56.

20:10:11:12.2. Power of attorney requirement. A warehouse operator or a third party may not handle electronic warehouse receipts on behalf of a depositor unless a written power of attorney to do so has been provided by the depositor. The power of attorney shall be provided to the commission for inspection and verification upon the commission's request.

Source:

General Authority: SDCL 49-43-2.1, 49-43-4.1(6), 49-43-56.

Law Implemented: SDCL 49-43-2.1, 49-43-4.1(6), 49-43-56.

20:10:11:14. Financial statement requirements. Each applicant for a public grain warehouse license shall submit a financial statement statements for the most

recently completed year of operation. The ~~statement~~ statements shall be prepared by a certified public accountant, independent public accountant, a grain commission or management firm, or other individual skilled in the preparation of financial statements in accordance with generally accepted accounting principles or international financial reporting standards. The financial ~~statement~~ statements may not be prepared by the applicant or an employee of the applicant, and if the applicant is a partnership or corporation, by an officer, shareholder, partner, or an employee of the partnership or corporation. The commission may require the applicant to submit a second set of financial ~~statement~~ statements prepared by a certified public accountant at the compilation, review, or audit level if the commission determines that the first financial ~~statement~~ statements submitted is are incomplete or otherwise unsatisfactory.

The financial ~~statement~~ statements must include a balance sheet and statement of profit and loss. If the applicant's accountant has prepared a statement of retained earnings, a statement of cash flows, a statement of changes in financial position, and notes and disclosures to the financial ~~statement~~ statements, those items must also be submitted.

~~The financial statement must be prepared in accordance with generally accepted accounting principles. Depreciable assets must be shown at original cost minus accumulated depreciation unless the applicant is an individual and generally accepted accounting principles allow the valuation of depreciable assets at the lower of cost or fair market value.~~

If the valuation of any assets are listed at fair market value, those valuations shall be established or confirmed by a person experienced in making assessments of the fair market value of fixed assets. ~~Each valuation~~ The valuations must be accompanied by a

statement signed by the person who establishes or confirms the values stating that such person:

- (1) Has no interest in the property;
- (2) Is not an employee of the applicant; and
- (3) Has no personal bias with respect to the parties involved.

Source: 24 SDR 190, effective July 15, 1998.

General Authority: SDCL ~~49-42-1.2(9)~~ 49-43-4.1(2).

Law Implemented: SDCL ~~49-42-5.1~~, 49-43-4.1(2), ~~49-43-4.2~~, ~~49-43-4.3~~.

20:10:11:15. Financial criteria for licensing. At a minimum, the applicant's balance sheet must show a positive net worth. In determining net worth, the commission may disallow the following assets if the assets are withdrawals of equity or are uncollectible:

- (1) Accounts and notes receivable from or advances to stockholders, owners, partners, employees, or affiliates;
- (2) Accounts receivable over 180 days old;
- (3) Investments or equities in cooperatives; or
- (4) Goodwill.

At a minimum, the balance sheet must show current assets equal to or greater than current liabilities. In determining working capital, the commission may disallow the following assets if the assets are withdrawals of equity or are uncollectible:

- (1) Accounts and notes receivable from or advances to stockholders, owners, partners, employees, or affiliates;

- (2) Accounts receivable over 180 days old;
- (3) Investments or equities in cooperatives; or
- (4) Goodwill.

Source: 24 SDR 190, effective July 15, 1998.

General Authority: SDCL ~~49-42-1.2(9)~~ 49-43-4.1(2).

Law Implemented: SDCL ~~49-42-5.1~~ 49-43-4.1(2), 49-43-4.2, 49-43-4.3.

20:10:11:16. Seasonal emergency storage. A public grain warehouse may store grain outside on a seasonal emergency storage basis between July 1 and January 31 without having to comply with § 20:10:11:13. Seasonal emergency storage is allowed only if the public grain warehouse lacks sufficient permanent roofed storage or temporary storage in conformity with § 20:10:11:13 to accommodate the amount of grain delivered to the warehouse. A public grain warehouse shall maintain its bond coverage in an amount sufficient to cover both its grain stored outside and its other warehouse grain at the coverage level specified in SDCL 49-43-5.3. A warehouse operator must maintain a separate record of all grain stored in a seasonal emergency storage and must account for that grain in the daily position record.

Source: 33 SDR 43, effective September 18, 2006.

General Authority: SDCL ~~49-42-1.2(8)~~ 49-43-4.1(7).

Law Implemented: SDCL ~~49-42-1.2, 49-42-2.1, 49-42-5.1, 49-42-6, 49-42-15.1~~ 49-43-4.1(7), 49-43-4.3, 49-43-5.3, 49-43-5.7, 49-43-9, 49-43-10, 49-43-11, 49-43-22.

20:10:11:17. Non-seasonal emergency storage. A public grain warehouse may submit an application to the commission for approval to store grain outside on a non-seasonal emergency storage basis between February 1 and June 30 without complying

with § 20:10:11:13. To be granted approval, the applicant shall demonstrate that it is in sound financial condition, that the storage site does not pose a significant threat to the condition of the grain, and that it has bond coverage of public warehouse grain stored in non-seasonal emergency storage in an amount equal to one hundred percent of the local market value of the grain. In addition, the bond coverage for all other public warehouse grain shall be at the coverage level specified in SDCL 49-43-5.3. A warehouse operator must maintain a separate record of all grain stored in non-seasonal emergency storage and must account for that grain in the daily position record.

Source: 33 SDR 43, effective September 18, 2006.

General Authority: SDCL ~~49-42-1.2(8)~~ 49-43-4.1(7).

Law Implemented: SDCL ~~49-42-1.2, 49-42-2.1, 49-42-5.1, 49-42-6, 49-42-15.1~~
49-43-4.1(7), 49-43-4.3, 49-43-5.3, 49-43-5.7, 49-43-9, 49-43-10, 49-43-11, 49-43-22.

CHAPTER 20:10:12

GRAIN BUYERS

Section

- 20:10:12:01 to 20:10:12:04 Repealed.
- 20:10:12:05 Form of grain buyer's bond.
- 20:10:12:05.01 Form of grain buyer's additional bond.
- 20:10:12:05.02 Release of bonds.
- 20:10:12:06 Repealed.
- 20:10:12:07 Form of acknowledgement.
- 20:10:12:08 Corporate surety required.
- 20:10:12:09 Posting of license required.
- 20:10:12:10 ~~Placement of grain buyer decals~~ Repealed.
- 20:10:12:11 ~~Replacement decals~~ Repealed.
- 20:10:12:12 ~~Return of decals required after license revocation~~
Repealed.
- 20:10:12:13 Notice required to credit seller of grain.
- 20:10:12:14 Financial statement requirements.
- 20:10:12:15 Financial criteria for licensing.

20:10:12:16	Notice of license and regulation by the commission.
20:10:12:17	Request for waiver of rule.
<u>20:10:12:18</u>	<u>Notice to public of license suspension or revocation.</u>
<u>20:10:12:19</u>	<u>Notice requirements for transfer of ownership.</u>

20:10:12:05. Form of grain buyer's bond. The Public Utilities Commission shall furnish the grain buyer's bond form required by SDCL 49-45-9 and the bond form shall contain the following:

- (1) Name and address of the principal;
- (2) Name and address of the surety;
- (3) Purpose of the bond;
- (4) ~~Location~~ Each location of the buyer;
- (5) Starting and ending date of the license for which the bond is given;
- (6) Amount of the bond;
- (7) Bond obligation;
- (8) Signatures of the principal and the surety;
- (9) Acknowledgements;
- (10) Statutory authority for the bond; and

(11) If the bond is for both a grain warehouseman's and a grain buyer's license, a recitation that the bond amounts are separate and not in the aggregate for both bonds.

Source: 12 SDR 85, retroactively effective July 1, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 24 SDR 190, effective July 15, 1998; 35 SDR 48, effective September 9, 2008.

General Authority: SDCL 49-45-6(1).

Law Implemented: SDCL 49-45-9.

20:10:12:05.01. Form of grain buyer's additional bond. If a licensed grain buyer furnishes an additional bond to add locations or to bring the bond amount into compliance with the requirements of SDCL 49-45-9, or both, the additional bond may be a rider executed by the corporate surety who issued the original bond filed with the commission or an additional bond executed by a second corporate surety.

A rider or additional bond shall be in substantially the same form as required by § 20:10:12:05 for original bonds. The rider or additional bond shall state the name and locations of the grain buyer licensee's facilities covered by the bond.

Source:

General Authority: SDCL 49-45-6(1).

Law Implemented: SDCL 49-45-9.

20:10:12:05.02. Release of bonds. An original bond filed with the commission for the license year may not be released unless a new bond is executed to replace the original bond for the entire license year.

Source:

General Authority: SDCL 49-45-6(1).

Law Implemented: SDCL 49-45-9.

20:10:12:10. Placement of grain buyer decals. ~~Decals required by SDCL 49-45-12 shall be affixed to the lower left inside corner of a truck windshield~~ Repealed.

Source: 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 35 SDR 48, effective September 9, 2008.

General Authority: ~~SDCL 49-45-6(3).~~

Law Implemented: ~~SDCL 49-45-12.~~

20:10:12:11. Replacement decals. ~~A grain buyer may obtain a replacement decal by filing a written request for a decal with the commission. The written request~~

shall specify the vehicle license number and vehicle identification number for which the replacement decal is needed Repealed.

Source: 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 35 SDR 48, effective September 9, 2008.

General Authority: ~~SDCL 49-45-6(3).~~

Law Implemented: ~~SDCL 49-45-12.~~

20:10:12:12. Return of decals required after license revocation. Following the suspension or revocation of a grain buyer's license, all decals issued by the commission pursuant to ~~SDCL 49-45-12~~ shall be immediately removed from all trucks operated by the grain buyer and returned to the commission Repealed.

Source: 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 35 SDR 48, effective September 9, 2008.

General Authority: ~~SDCL 49-45-6(3).~~

Law Implemented: ~~SDCL 49-45-3, 49-45-12.~~

20:10:12:13. Notice required to credit seller of grain. The terms of a voluntary credit sale of grain shall contain the following statement: "This contract is not protected by South Dakota statutory bond coverages." This statement shall be printed in red or bold type immediately above the seller's signature line.

In addition to this statement, each voluntary credit sale contract shall include the following:

- (1) Name of the grain buyer;
- (2) Name of the seller;
- (3) Amount and type of grain;
- (4) Grade of the grain;
- (5) Method of pricing;
- (6) Service charges or other fees;

- (7) Advances against the contract;
- (8) A statement that title to the grain passes to buyer upon delivery; and
- (9) Signature and date of signature for both the seller and buyer immediately preceded by statement required in this section. However, if the voluntary credit sale contract is signed by only one of the parties to the contract, the requirements of this subsection are considered met if, within a reasonable time, a writing in confirmation of the contract and sufficient against the sender is received and the party receiving the writing in confirmation has reason to know its contents, unless written notice of objection to its contents is given within two days after the writing in confirmation is received.

Source: 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 24 SDR 190, effective July 15, 1998; 35 SDR 48, effective September 9, 2008.

General Authority: SDCL 49-45-6(4), 49-45-11.

Law Implemented: SDCL 49-45-11.

20:10:12:14. Financial statement requirements. Each applicant for a public grain buyer's license shall submit a financial ~~statement~~ statements for the most recently completed year of operation. The financial ~~statement~~ statements may not be prepared by the applicant or an employee of the applicant, and if the applicant is a partnership or corporation, by an officer, shareholder, partner, or an employee of the partnership or corporation.

An applicant for a class A grain buyer license shall submit a financial ~~statement~~ statements prepared by a certified or independent public accountant at the review, or audit level, or a detailed financial ~~statement~~ statements ~~that is~~ prepared by an approved grain commission or management firm in accordance with generally accepted accounting principles or international financial reporting standards.

An applicant for a class B grain buyer license shall submit ~~a financial statement~~ statements prepared by a certified or independent public accountant, a grain commission or management firm, or other individual skilled in the preparation of financial statements ~~in accordance with generally accepted accounting principles.~~

If the commission determines that the first financial ~~statement~~ statements submitted ~~is~~ are incomplete or otherwise unsatisfactory, the commission may require the applicant to submit a second set of financial statement statements prepared by a certified or independent public accountant in accordance with generally accepted accounting principles or international financial reporting standards at the compilation, review, or audit level.

The financial ~~statement~~ statements must include a balance sheet and statement of profit and loss. If a statement of retained earnings, a statement of cash flows, a statement of changes in financial position, or notes and disclosures to the financial ~~statement~~ statements have been prepared, those items must also be submitted.

~~The financial statement must be prepared in accordance with generally accepted accounting principles. Depreciable assets must be shown at original cost minus accumulated depreciation unless the applicant is an individual and generally accepted accounting principles allow the valuation of depreciable assets at the lower of cost or fair market value.~~

If the valuation of any assets are listed at fair market value, those valuations shall be established or confirmed by a person experienced in making assessments of the fair market value of fixed assets. ~~Each~~ The valuation valuations must be accompanied by a statement signed by the person who establishes or confirms the values stating that such person:

- (1) Has no interest in the property;
- (2) Is not an employee of the applicant; and

(3) Has no personal bias with respect to the parties involved.

Source: 24 SDR 190, effective July 15, 1998; 35 SDR 48, effective September 9, 2008.

General Authority: SDCL 49-45-6(5).

Law Implemented: SDCL 49-45-7, 49-45-7.1.

20:10:12:15. Financial criteria for licensing. At a minimum, for a class A license the applicant's balance sheet must show a positive net worth of \$100,000. At a minimum, for a class B license the applicant's balance sheet must show a positive net worth. In determining net worth for a class A or class B applicant, the commission may disallow the following assets if the assets are withdrawals of equity or are uncollectible:

- (1) Accounts and notes receivable from or advances to stockholders, owners, partners, employees, or affiliates;
- (2) Accounts receivable over 180 days old;
- (3) Investments or equities in cooperatives; or
- (4) Goodwill.

At a minimum, the balance sheet for a class A or class B applicant must show current assets ~~equal to or~~ greater than current liabilities. In determining working capital, the commission may disallow the following assets if the assets are withdrawals of equity or are uncollectible:

- (1) Accounts and notes receivable from or advances to stockholders, owners, partners, employees, or affiliates;
- (2) Accounts receivable over 180 days old;

(3) Investments or equities in cooperatives; or

(4) Goodwill.

Source: 24 SDR 190, effective July 15, 1998.

General Authority: SDCL 49-45-6(5).

Law Implemented: SDCL 49-45-7.

20:10:12:18. Notice to public of license suspension or revocation. Following the suspension or revocation of a grain buyer's license, notice thereof shall be posted by an agent or employee of the commission in a conspicuous place on the premises of all locations where grain is received. If necessary to protect the public, the notice shall also be published by the commission in at least one newspaper of general circulation in the area served by the grain buyer.

Source:

General Authority: SDCL 49-45-6(8).

Law Implemented: SDCL 49-45-6(8), 49-45-16, 49-45-19.

20:10:12:19. Notice requirements for transfer of ownership. At least 30 days before the transfer of ownership of a grain buyer's grain receiving facility licensed by the commission, the grain buyer shall notify, in writing, each producer who is due payment for grain delivered to the grain buyer, has an open voluntary credit sale contract, an open delivery contract, or any other open contract or written agreement pending with the licensee. The surety named in the grain buyer's bond shall also be notified of the pending transfer of ownership at least 30 days before the transfer. A licensed grain buyer who transfers ownership of a grain receiving facility licensed by the commission

shall notify the commission of the pending transfer seven days before notifying open contract holders and the surety named in the grain buyer's bond.

Source:

General Authority: SDCL 49-45-6(8).

Law Implemented: SDCL 49-45-6(8).