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BFM 50.11
#07001

ADMINISTRATIVE PROCEDURES ACT
FISCAL NOTE
Prepared by Submitting Agency

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

	CODE	NAME
DEPARTMENT	26	PUBLIC UTILITIES COMMISSION
DIVISION	102	Transportation and Warehouse Division
PROGRAM		

PROPOSED RULE: 20:10:11:(13,16,17).

Hearing Date: August 8, 2006

FISCAL IMPACT STATEMENT:

Brief description of fiscal impact; (Example: Pursuant to 1-26-402, these rules have minimal impact to all entities. No additional staffing or resources are needed.)

FISCAL NOTE SUMMARY:

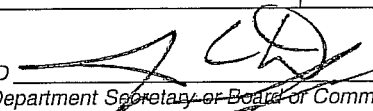
List state agencies of local governmental subdivisions affected.

COST INCREASES (DECREASES)

State Agencies:	First-Year Impact	Continuous-Yearly Impact
	0	0
TOTAL	0	0
Local Subdivisions:		
	0	0
TOTAL	0	0
Small Business Increases (Decreases)		
	Unable to determine	Unable to determine
TOTAL	Unable to determine	Unable to determine

REVENUE INCREASES (DECREASES)

Revenue Increases (Decreases) State, Local & Small Business :		
State and Local Governments	0	0
Small Business	Unable to determine	Unable to determine
TOTAL		

APPROVED  DATE: July 7, 2006
Signature Department Secretary or Board or Commission Chairman

ATTACH: Copy of proposed rules; separate sections for: 1) explanation of rules effect, i.e. what procedures, schedules, activities, etc. will change with its adoption 2) statistics used, and their source, 3) assumptions that were made to arrive at fiscal impact, 4) computations that were made, 5) small business impact statement



**DEPARTMENT OF EXECUTIVE MANAGEMENT
BUREAU OF FINANCE AND MANAGEMENT**

500 East Capitol Ave. • Pierre, South Dakota 57501-5070 • Voice: (605) 773-3411 • Fax: (605) 773-4711

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JUL 12 2006

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

July 7, 2006

The Bureau of Finance and Management has reviewed the attached proposed rules from the Public Utilities Commission and concurs with the assumptions and fiscal impact calculations within the attached package.

KB/jsd

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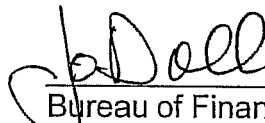
IN THE MATTER OF THE
PROMULGATION OF
ADMINISTRATIVE RULES

ADMISSION OF SERVICE

Personal service of

- (1) Public Utilities Commission's proposed revised rules: §§ 20:10:11:13, 20:10:11:16 and 20:10:11:17,
- (2) the notice of hearing, and
- (3) the fiscal note

is hereby admitted at Pierre, South Dakota, this 6th day of July, 2006.


Bureau of Finance and Management

FORM 5, BFM 50.10

(NOTE: A copy of this form may be obtained from the Bureau of Finance and Management. If your rules have a negative fiscal impact on a local government, such as a county or a school district, you must direct the Bureau of Finance and Management to send a copy of its fiscal note to the organizations listed in SDCL 1-26-4.2.)

**ADMINISTRATIVE PROCEDURES ACT
FISCAL NOTE**
Prepared by Submitting Agency

	CODE	NAME
DEPARTMENT	26	Public Utilities Commission
DIVISION	102	Transportation and Warehouse Division
PROGRAM		

PROPOSED RULE: 20:10:11:13; 20:10:11:16; 20:10:11:17

Hearing Date: 08/08/06

FISCAL IMPACT STATEMENT:

Brief description of fiscal impact; (Example: Pursuant to 1-26-402, these rules have minimal impact to all entities. No additional staffing or resources are needed.)

There is no impact on state or local governments. We are unable to determine if there is an impact on small businesses.

FISCAL NOTE SUMMARY:

List state agencies of local governmental subdivisions affected.

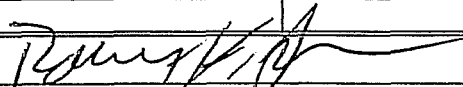
COST INCREASES (DECREASES)

State Agencies	First Year Impact	Continuous-Yearly Impact
	0	0
TOTAL	0	0
Local Subdivisions	First Year Impact	Continuous-Yearly Impact
	0	0
TOTAL	0	0
Small Business Increases (Decreases)	First Year Impact	Continuous-Yearly Impact
TOTAL	Unable to determine	Unable to determine

REVENUE INCREASES (DECREASES)

Revenue Increases (Decreases) State, Local & Small Business	First Year Impact	Continuous-Yearly Impact
	Zero impact on state and local governments. Unable to determine impact, if any, on small businesses.	Zero impact on state and local governments. Unable to determine impact, if any, on small businesses.
TOTAL		

APPROVED


Signature Department Secretary or Board or Commission Chairman

DATE

7/6/06

ATTACH: Copy of proposed rules; separate sections for: 1) explanation of rules effect, i.e. what procedures, schedules, activities, etc. will change with its adoption 2) statistics used, and their source, 3) assumptions that were made to arrive at fiscal impact, 4) computations that were made, and 5) small business impact statement

Revised June 2004

EXPLANATION OF RULES EFFECT

The proposed rules should have no fiscal impact on state or local governments. The rules only apply to operators of public grain warehouses. We are unable to determine the fiscal impact on small business owners who operate public grain warehouses. The proposed rules give warehouse operators additional flexibility in managing the volumes of grain that are generated during the fall harvest and shipping seasons so we would assume that if there is any fiscal impact, the impact would likely be a positive impact.

FORM 14

SMALL BUSINESS IMPACT STATEMENT FORM

See SDCL 1-26-2.1

(NOTE: This form must be signed by either the head of the agency or the presiding officer of the board or commission empowered to adopt the rules. Check your statutes to see who is authorized to promulgate rules. A small business is defined as any business with 25 or fewer full-time employees. When a set of rules is proposed, a general summary shall be provided; each proposed rule amendment shall also be explained thoroughly. In the case of a large set of proposed rules which all have a single purpose and impact, one explanation is sufficient. The law makes it clear that agencies or commissions shall use readily available information and existing resources to prepare the impact statement.)

1. Our agency has determined that the rule/s we are proposing have the following type of impact on small businesses:
 - Direct impact (*please complete remainder of form*)
 - Indirect impact (*please provide a brief explanation, then sign, date, and submit form. Questions 2 through 8 do not need to be answered*)
2. A general narrative and overview of the effect of the rule(s) on small business - written in plain, easy to read language:

The proposed rule changes should make it easier for small businesses which operate grain warehouses to comply with storage requirements. Under proposed rule 20:10:11:16, a grain warehouse will be allowed to store grain outside between July 1 and January 31 without having to construct a temporary storage unit. This is referred to as seasonal emergency storage. In addition, 20:10:11:17 will allow non-seasonal emergency storage which would allow a public grain warehouse to store grain outside between February 1 and June 30. Commission approval will be needed for non-seasonal emergency storage. Two of the changes to ARSD 20:10:11:13 revise the construction requirements for temporary public grain storage units. See 20:10:11:13(2)(c) and (6). For each type of storage (temporary, seasonal, or non-seasonal), a warehouse operator will be required to keep a separate record of the grain.

3. What is the basis for the enactment of the rules(s)?
 - Required to meet changes in federal law
 - Required to meet changes in state law
 - Required solely due to changes in date (i.e. must be changed annually)Other: Some of the public grain warehouses operating in South Dakota have requested that they be allowed to store grain outside. Federally licensed warehouses are already allowed the flexibility to store grain outside.

4. Why is the rule(s) needed?

The main reason for the proposed changes is to allow public grain warehouses to store grain outside, without being required to construct a temporary storage unit, if the warehouse's other storage facilities are filled to capacity. This will enable warehouse operators to handle grain from large harvests in order to accommodate their grain producer customers. The reason for the changes to the construction requirements for temporary storage units is to update the construction requirements. See 20:10:11:13(2)(c) and (6).

5. What small businesses or types of small businesses would be subject to the rule?

Small businesses that operate public grain warehouses will be subject to these rules.

6. Estimate the number of small businesses that would be subject to the rule.

- 1-99 100-499 500-999 1,000-4,999 More than 5,000
- Unknown - please explain _____

7. Are small businesses required to file or maintain any reports or records under this rule?

- Yes No

a. If "yes," how many reports must a small business submit to the state on an annual basis?

No annual reports are required.

b. If "yes," how much ongoing recordkeeping within the business is necessary?

For each type of storage (temporary, seasonal, or non-seasonal), warehouse operators will be required to keep a separate record of the grain in their daily position records.

c. If "yes," what type of professional skills would be necessary to prepare the reports or records?

- The average owner of a small business should be able to complete the reports and/or records with no assistance
- It is likely that a bookkeeper for a small business should be able to complete the reports and/or records
- It is likely that a small business person would need the assistance of a CPA to complete the reports and/or records
- It is likely that a small business person would need the assistance of an attorney to complete the reports and/or records
- Other _____
- Unknown - please explain _____

8. Are there any less intrusive or less costly methods to achieve the purpose of the rule (i.e. fewer reports, less recordkeeping, lower penalties)?

- No - please explain

The record keeping is necessary in order to keep track of all grain in temporary, seasonal, or non-seasonal storage.

- Yes - please explain _____

7/6/06
Dated

[Signature]
Authorized Signature

SD PWC
Name of Agency

Public Utilities Commission
Notice of Public Hearing to Adopt Rules

A public hearing will be held at DDN-Pierre, Room B12, State Capitol, 500 East Capitol, Pierre, South Dakota, and DDN-Sioux Falls, Room 189, 2205 Career Place, Sioux Falls, South Dakota, on August 8, 2006, at 8:30 a.m., to consider the adoption and amendment of proposed rules numbered:

20:10:11:13, 20:10:11:16 and 20:10:11:17

One of the effects of the proposed rule changes is to make changes to the construction requirements for temporary public grain storage units. Another effect is to allow for seasonal emergency storage. Seasonal emergency storage will allow a public grain warehouse to store grain outside between July 1 and January 31. Another effect is to allow for non-seasonal emergency storage. Non-seasonal emergency storage will allow a public grain warehouse to store grain outside between February 1 and June 30. Commission approval will be needed for non-seasonal emergency storage. For temporary, seasonal, and non-seasonal storage, a warehouse operator will be required to keep a separate record of the grain.

The main reason for the proposed changes is to allow public grain warehouses to store grain outside if the warehouse's other storage facilities are filled to capacity. This will enable warehouse operators to handle grain from large harvests in order to accommodate their grain producer customers. The reason for the changes to the construction requirements for temporary storage units is to update the construction requirements.

Persons interested in presenting data, opinions, and arguments for or against the proposed rules may do so by appearing in person at the hearing or by sending them to the South Dakota Public Utilities Commission, State Capitol, 500 East Capitol, Pierre, South Dakota 57501-5070. Material sent by mail must reach the Public Utilities Commission by August 18, 2006, to be considered.

After the hearing, the Commission will consider all written and oral comments it receives on the proposed rules. The Commission may modify or amend a proposed rule at that time to include or exclude matters that are described in this notice.

Notice is further given to individuals with disabilities that this hearing is being held in a physically accessible place. Please notify the Public Utilities Commission at least 48 hours before the public hearing if you have special needs for which special arrangements must be made. The telephone number for making special arrangements is (605) 773-3201.

Copies of the proposed rules may be obtained without charge from the

South Dakota Public Utilities Commission
State Capitol
500 East Capitol
Pierre, SD 57501-5070

The proposed rules may also be found on the Public Utilities Commission's home page at the following address: <http://www.state.sd.us/puc>.

CHAPTER 20:10:11
PUBLIC WAREHOUSES

Section

- 20:10:11:01 Monthly grain reports required -- Contents.
- 20:10:11:02 Repealed.
- 20:10:11:03 Form of public storage warehouse licensee's bond.
- 20:10:11:04 Form of public grain warehouse licensee's bond.
- 20:10:11:04.01 Form of public grain warehouse licensee's additional bond.
- 20:10:11:04.02 Release of bonds.
- 20:10:11:05 Repealed.
- 20:10:11:06 Form of acknowledgement.
- 20:10:11:07 Corporate surety bond required.
- 20:10:11:08 Posting of license required.
- 20:10:11:09 License revocation, transfer of ownership, or insolvency – Notice to receipt holders and surety.
- 20:10:11:09.01 Pending transfer of ownership – Notice to receipt holders and surety.
- 20:10:11:10 License suspension or revocation -- Notice to public.
- 20:10:11:11 Requirements for warehouse receipts.
- 20:10:11:12 Issuance of warehouse receipts and scale tickets.
- 20:10:11:13 Specifications for temporary public grain storage units.
- 20:10:11:14 Financial statement requirements.
- 20:10:11:15 Financial criteria for licensing.
- 20:10:11:16 Seasonal emergency storage.
- 20:10:11:17 Non-seasonal emergency storage.

20:10:11:13. Specifications for temporary public grain storage units. A temporary public grain storage unit is defined as a public grain warehouse which does not have a roof, permanent foundation, or sidewalls which are permanently attached to the foundation. Each temporary public grain storage unit must be bonded and licensed and must meet the following specifications:

(1) Each temporary storage unit must contain aeration equipment;

(2) Each temporary storage unit must have an asphalt, concrete, or compacted limestone base which meets the following minimum specifications;

(a) Any base must be of such depth and compaction as to permit trucks or other heavy equipment used in loading or unloading to move over the base without breaking, cracking, sinking in, or chipping the base;

(b) The depth of a limestone base must be at least 4 inches;

(c) The slope of any base must be ~~not less than 1/4 inch per linear foot~~ sufficient to allow for proper drainage from the center to the edge of the base;

(d) Drainage away from the base must be provided to prevent any water from standing or backing up underneath the grain; and

(e) The base must be at least one foot above the surrounding terrain;

(3) The grain stored within a temporary storage unit must maintain a peak, angle, or arc which will provide drainage from the top over the sidewalls so that no pockets of water form on top of the grain;

(4) The temporary storage unit must be covered with a cover strong enough to resist tearing under normal use and weather conditions and to allow a person to walk on the cover without penetrating it;

(5) Covered storage must have inlets or perforated tubing over the top of the grain to provide air flow through the grain; and

(6) All temporary storage units must have rigid self supporting sidewalls ~~which are no more than 8 feet high. Rectangular units may not be more than 110 feet wide and circular units may not exceed 100 feet in diameter.~~ ;and

(7) A warehouse operator must maintain a separate record of all grain stored in a temporary storage unit and must account for that grain in the daily position record.

The commission shall inspect finished construction of all new temporary public grain storage units before grain is stored in them. The warehouse licensee must remedy any specifications that are not in compliance with this rule before grain is stored within the unit.

A warehouse licensee who is in violation of the specifications in this section will be ordered by the commission to comply.

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

General Authority: SDCL 49-42-1.2(8).

Law Implemented: SDCL 49-42-1.2, 49-42-2.1, 49-42-5.1, 49-42-6, 49-42-15.1, 49-42-25, 49-43-5.1, 49-43-5.3.

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:

General Authority: SDCL 49-42-1.2(8).

Law Implemented: SDCL 49-42-1.2, 49-42-2.1, 49-42-5.1, 49-42-6, 49-42-15.1, 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 make 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:

General Authority: SDCL 49-42-1.2(8).

Law Implemented: SDCL 49-42-1.2, 49-42-2.1, 49-42-5.1, 49-42-6, 49-42-15.1, 49-43-5.3, 49-43-5.7, 49-43-9, 49-43-10, 49-43-11, 49-43-22.