

RM06-002

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION



South Dakota

Legislative Research Council

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James Fry, Director
Doug Decker, Code Counsel

July 10, 2006

Rolayne Wiest
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501-5070

Dear Ms. Wiest:

The Public Utilities Commission has proposed amendments to ARSD chapter 20:10:11 regarding requirements for temporary public grain storage units. We have reviewed the proposed rules, scheduled for hearing on August 8, 2006, and approve the rules for legality.

This letter is based on a preliminary review of your rules. Attached are your rules edited for form and style pursuant to SDCL 1-26-6.5 and directions for submitting the final draft of the rules. If you have any questions, please don't hesitate to call me or the staff member who has reviewed your rules.

Sincerely,

Doug Decker
Code Counsel

Enclosures:

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DIRECTIONS FOR SUBMITTING THE FINAL DRAFT

RULES REVIEW MEETING SCHEDULE: The Interim Rules Review Committee has set the following tentative meeting schedule for the 2006 interim: August 29, September 28, December 5, and January 8, 2007.

FINAL DRAFT TO LEGISLATIVE RESEARCH COUNCIL: When the final draft of the adopted rules is brought to this office for signature for legality and for form and style, please include the following items:

- 1) The edited copy of the first draft;
- 2) One legible copy of the final draft, to be left here. The final draft should be double spaced, contain only rules being amended, repealed, or adopted, and show changes from current printed rules by means of overstrikes and underscores;
- 3) The original form #11 which contains the signature of the officer empowered to adopt the rules or the signatures of a majority of the members of a board or commission which has the rule-making authority; and
- 4) Copies of the following:
 - a. The minutes of all public hearings, (a summary of the minutes if needed); and
 - b. The affidavit of mailing to Rules Committee members, if already done.

SERVICE ON COMMITTEE: The following information is to be served on the interim Rules Review Committee at least five days before the committee meeting date:

- 1) The final draft of the adopted rules;
- 2) The minutes of the public hearing;
 - a. Include a summary of the hearing if a verbatim transcript is used;
 - b. Include a summary of any subsequent hearing if the public hearing is continued or final action is taken at a later date;
- 3) A summary of the written comments or copies of the written comments;
- 4) The Impact Statement on Small Business;
- 5) The Fiscal Note; and
- 6) Agency financial resource information if the agency proposes a rule to increase a fee.

First class mail should be used. Please three-hole punch all documents served on the committee.

Each agency must complete and sign all documents before filing the certificate of compliance with Chapter 1-26 and the final draft of the rules with the Secretary of State's Office. Although it is not required by statute, the Secretary of State's Office would like to have a copy of the approval signature sheet with the filing of the final draft and the certificate.

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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 unit}. 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~~ ^{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:

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.