

LICENSING

Monitoring the grain industry in South Dakota is a significant responsibility of the Public Utilities Commission. The PUC licenses and regulates the following entities:

- State-licensed grain warehouses
- Federally licensed grain warehouses holding state grain-buyer licenses
- Grain Buyers
 - Class A + Voluntary Credit Sale (VCS) Grain Buyer: Buyer may exceed \$5,000,000 in annual grain purchases, may utilize voluntary credit sale contracts, and must have \$500,000 in financial equity. Buyer is required to carry insurance on their grain stock and submit a financial balance sheet quarterly. Fiscal year-end financial statement needs to be prepared at an audited or reviewed level.
 - Class A – No Voluntary Credit Sale (VCS) Grain Buyer: Buyer may exceed \$5,000,000 in annual grain purchases, may NOT utilize voluntary credit sale contracts, and must have \$250,000 in financial equity. Buyer is required to carry insurance on their grain stock and submit a financial balance sheet quarterly. Fiscal year-end financial statement needs to be prepared at an audited or reviewed level.
 - Class B Grain Buyer: Buyer may NOT exceed \$5,000,000 in annual grain purchases, may NOT utilize voluntary credit sale contracts, and must have \$100,000 in financial equity. Fiscal year-end financial statement can be prepared at a compiled level.

All licensees are required to have positive working capital. Licenses are valid for one year and must be renewed.

Q: Do grain sellers need a license?

A: No. Grain sellers are not licensed by the PUC or any other agency.

REPORTING

State-licensed grain warehouses are required to file monthly grain storage reports for each licensed facility. The PUC determines the market value of the stored grain, which is compared with the warehouse's current bond level. If warranted, the PUC may require a bond increase rider.

South Dakota law requires grain buyers and grain warehouses to notify the PUC if they fall out of compliance with any financial licensing requirement. Failure to report non-compliance with these requirements is a criminal offense.

Feedback from producers is key to identify problems with a grain buyer or grain warehouse. Producers who are not being paid in a timely manner should report problems to the PUC.

Q: How does the PUC respond to a producer's report about slow or no pay?

A: When slow pay or other concerns with a licensed facility are reported, PUC staff work with the facility's management team to determine the problem and assist with resolving issues that may have led to the complaint. A full inspection may be conducted. Producer reporting has led to PUC investigations that have resulted in license suspension or revocation.

LAWS and RULES

Laws and rules set by the state legislature outline the PUC's authority and duties as well as the responsibilities of grain warehouses and grain buyers. Go online to SDLegislature.gov to read the full content.

Public Grain Warehouse Laws SDCL 49-43
Public Grain Warehouses Rules 20:10:11
Grain Buyers Laws SDCL 49-45
Grain Buyers Rules 20:10:12

Q: Can the PUC change a law?

A: The legislature has the authority to change existing or make new laws; the PUC does not.

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South Dakota

Public Utilities Commission Grain Industry Role and Responsibilities

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The South Dakota Public Utilities Commission provides oversight of the state's grain storage warehouses and grain buyers, working full-time to analyze the financial condition of grain warehouses and grain buyers in the state in order to protect grain payments.

WHAT'S WHAT

Grain warehouse – This refers to a public warehouse where grain is received and stored. Grain is often deposited with other grain of the same type and grade. The warehouse operator is responsible for the care and quality of the grain while it is in their possession. If the depositor requests return delivery of the grain, it must be an equal amount of the same grade and type. It does not have to be the same grain that was deposited.

Grain buyer – This is a person or entity that purchases grain to resell or one who purchases \$300,000 or more of grain directly from producers in a license year.

Producer – A person in the business of grain.

Q: Are all grain warehouses also grain buyers?

A: Generally, yes. Most grain warehouses licensed by the PUC also operate as grain buyers. Some feed mills do not buy significant amounts of grain but hold customer grain bank accounts. These entities must be licensed as a warehouse but are not required to be licensed grain buyers.

BONDING

Bonds protect producers who sell grain to licensed grain warehouses or licensed grain buyers. If a grain warehouse or grain buyer becomes insolvent – is unable to pay its debts to producers, for example – the bond provides reimbursement to eligible producers that experience loss. The PUC oversees a formal claim and payment process of the bond proceeds.

Each state-licensed grain warehouse is required to post a warehouse bond equal to one-half the local market value of the customer-owned grain stored at all their locations. A warehouse shall provide a minimum bond of \$25,000 at any one municipality or location.

Each state-licensed grain buyer is required to post a minimum \$50,000 bond. The bond requirement is determined by a company's average purchases over a three-year period.

Customer-owned grain that has been placed in open storage, grain bank, or on a warehouse receipt is covered by the warehouse bond. Cash sale grain for which payment has not been received is covered by the grain buyer bond. Grain that is subject to the terms of a voluntary credit sale contract, such as a price-later or deferred payment contract, is not covered by the bond according to state law.

Q: Why aren't bond levels set at a higher level?

A: Bond levels are set by the state legislature. The primary purpose of the bond is to enable a surety to scrutinize the financial statements of the license applicant. This additional analysis reduces the likelihood of insolvency. Raising the bond requirements to levels higher than neighboring states, for example, could drive many grain buyers out of business, reducing markets and competition in the industry. It could also cause prospective ag development investors to take their money out of state.

INSPECTIONS

Each licensed facility must receive one inspection each year by state law. The current PUC inspection process typically results in each facility being inspected once every six to 10 months. Among the many details the PUC's inspectors check are the facility's daily position report, scale tickets, customer status reports, assembly/settlement sheets and warehouse receipts. Inspectors ensure all required licenses are posted and VCS contracts contain all required information including language that those types of sales are not protected by bond coverage.

Q: How much time does a PUC inspection take?

A: The length of a PUC inspection is determined by the amount of information that must be reviewed. It can vary from a few hours to a few days. In addition to on-site inspections, PUC inspectors review records and reports from license holders on a regular basis.