

## CHAPTER 223

### COMMISSION MERCHANTS

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#### 223.16 DEFINITIONS.

Subdivision 1. **Applicability.** For the purpose of sections 223.15 to 223.22, the terms defined in this section have the meanings given them.

*[For text of subd 2, see M.S.1982]*

Subd. 2a. **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 in 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.

*[For text of subd 3, see M.S.1982]*

Subd. 4. **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.

*[For text of subds 5 and 6, see M.S.1982]*

Subd. 7. **Independent grain buyer.** "Independent grain buyer" means a person without a private or public grain warehouse license who is licensed to engage in the business of purchasing grain for resale.

Subd. 8. [Repealed, 1983 c 374 s 22]

*[For text of subds 9 and 10, see M.S.1982]*

Subd. 11. **Producer.** "Producer" means a person who grows grain on land that he owns or leases.

*[For text of subd 12, see M.S.1982]*

Subd. 12a. **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.

*[For text of subds 13 to 15, see M.S.1982]*

Subd. 16. **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 the 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.

**History:** 1983 c 374 s 1-7

## **223.17 LICENSES; BONDING; CLAIMS; DISBURSEMENTS.**

**Subdivision 1. Licenses.** An application for a grain buyer's license must be filed with the commissioner and the license issued before any grain may be purchased. The types of grain buyers' licenses are:

- (a) private grain warehouse operator's license;
- (b) public grain warehouse operator's license; and
- (c) independent grain buyer's license.

The applicant for a grain buyer's license shall identify all grain buying locations owned or controlled by the grain buyer and all vehicles owned or controlled by the grain buyer used to transport purchased grain. Every applicant for a grain buyer's license shall have a permanent established place of business at each licensed location. An "established place of business" means a permanent enclosed building, including a house or a farm, either owned by the applicant or leased by the applicant for a period of at least one year, and where the books, records, and files necessary to conduct the business are kept and maintained. The commissioner may maintain information on grain buyers by categories including, but not limited to, the categories provided in clauses (a) to (c) and grain buyers that are licensed to purchase grain using trucks but that do not have a public or private warehouse license.

**Subd. 2. License renewal.** A license must be renewed annually. Beginning July 1, 1984, the commissioner may stagger the renewal dates of licenses issued under this chapter, subject to the policy expressed in section 116J.69, subdivision 2, paragraph (d). If a person receives more than one license from the commissioner, the licenses shall be issued at the same time, but only after all conditions for each license are met. Multiple licenses should be combined into one license if possible.

**Subd. 3. Grain buyers and storage fund; fees.** The commissioner shall set the fees for inspections under sections 223.15 to 223.22 at levels necessary to pay the expenses of administering and enforcing sections 223.15 to 223.22. These fees may be adjusted pursuant to the provisions of section 16A.128.

The fee for any license issued or renewed prior to June 30, 1984, is \$100. The fee for any license issued or renewed after June 30, 1984, shall be set according to the following schedule:

- (a) \$100 plus \$50 for each additional location for grain buyers whose gross annual purchases are less than \$1,500,000;
- (b) \$200 plus \$50 for each additional location for grain buyers whose gross annual purchases are at least \$1,500,000, but not more than \$3,000,000; and
- (c) \$300 plus \$50 for each additional location for grain buyers whose gross annual purchases are more than \$3,000,000.

There is created in the state treasury the grain buyers and storage fund. Money collected pursuant to sections 223.15 to 223.19 shall be paid into the state treasury and credited to the grain buyers and storage fund and is appropriated to

the commissioner for the administration and enforcement of sections 223.15 to 223.22.

Subd. 4. **Bond.** Before a grain buyer's license is issued, the applicant for the license must file with the commissioner a bond in a penal sum prescribed by the commissioner but not less than the following amounts:

(a) \$10,000 for grain buyers whose gross annual purchases are \$100,000 or less;

(b) \$20,000 for grain buyers whose gross annual purchases are more than \$100,000 but not more than \$750,000;

(c) \$30,000 for grain buyers whose gross annual purchases are more than \$750,000 but not more than \$1,500,000;

(d) \$40,000 for grain buyers whose gross annual purchases are more than \$1,500,000 but not more than \$3,000,000; and

(e) \$50,000 for grain buyers whose gross annual purchases exceed \$3,000,000. A grain buyer who has filed a bond with the commissioner prior to July 1, 1983 is not required to increase the amount of the bond to comply with this section until July 1, 1984. The commissioner may postpone an increase in the amount of the bond until July 1, 1985, if a licensee demonstrates that the increase will impose undue financial hardship on the licensee, and that producers will not be harmed as a result of the postponement. The commissioner may impose other restrictions on a licensee whose bond increase has been postponed. The amount of the bond shall be based on the most recent financial statement of the grain buyer filed under subdivision 6.

A first-time applicant for a grain buyer's license after July 1, 1983 shall file a \$20,000 bond with the commissioner. This bond shall remain in effect for the first year of his license. Thereafter, the licensee shall comply with the applicable bonding requirements contained in clauses (a) to (e).

In lieu of the bond required by this subdivision the applicant may deposit with the state treasurer cash, a certified check, a cashier's check, a postal, bank, or express money order, assignable bonds or notes of the United States, or an assignment of a bank savings account or investment certificate or an irrevocable bank letter of credit as defined in section 336.5-103, in the same amount as would be required for a bond.

Subd. 5. **Cash sales; manner of payment.** For a cash sale of a shipment of grain which is part of a multiple shipment sale, the grain buyer shall tender payment to the seller 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 shall be tendered not later than the close of business on the next day, or within 48 hours, whichever is later. For other cash sales the grain buyer, before the close of business on the next business day after the sale, shall tender payment to the seller in cash or by check, or shall wire or mail funds to the seller's account in the amount of at least 80 percent of the value of the grain at the time of delivery. The grain buyer shall complete final settlement as rapidly as possible through ordinary diligence. Any transaction which is not a cash sale in compliance with the provisions of this subdivision constitutes a voluntary extension of credit which is not afforded protection under the grain buyer's bond, and which must comply with sections 223.175 and 223.177.

Subd. 5a. **Grain purchases from unlicensed producers.** No grain buyer may refuse to purchase grain from a producer solely because the producer is not bonded or is not licensed by the commissioner; provided, that any producer who

buys grain from other producers shall be licensed and bonded as required by this chapter.

**Subd. 6. Financial statements.** For the purpose of fixing or changing the amount of a required bond or for any other proper reason, the commissioner shall require an annual financial statement from a licensee which has been prepared in accordance with generally accepted accounting principles and which meets the following requirements:

(a) The financial statement shall include, but not be limited to the following: (1) a balance sheet; (2) a statement of income (profit and loss); (3) a statement of retained earnings; (4) a statement of changes in financial position; and (5) a statement of the dollar amount of grain purchased in the previous fiscal year of the grain buyer.

(b) The financial statement shall be accompanied by a compilation report of the financial statement which is prepared by a grain commission firm or a management firm approved by the commissioner or by an independent public accountant, in accordance with standards established by the American Institute of Certified Public Accountants.

(c) The financial statement shall be accompanied by a certification by the chief executive officer or his designee of the licensee, under penalty of perjury, that the financial statement accurately reflects the financial condition of the licensee for the period specified in the statement.

Only one financial statement must be filed for a chain of warehouses owned or operated as a single business entity, unless otherwise required by the commissioner. Any grain buyer having a net worth in excess of \$500,000,000 need not file the financial statement required by this subdivision but must provide the commissioner with a certified net worth statement. All financial statements filed with the commissioner are private or nonpublic data as provided in section 13.02.

**Subd. 6a. Suspension, revocation, or refusal to issue license.** (a) If a license applicant or a licensee fails to furnish financial statements the commissioner may refuse to issue or renew the license or may suspend the license.

(b) The commissioner may refuse to issue or renew a license or may suspend a license if he determines, based upon the financial statement filed under this section or other financial information obtained by him, that the applicant or licensee is not financially able to properly perform the services and operate the business for which the license is issued.

(c) When a license is suspended the licensee shall surrender the license to the commissioner. An applicant or licensee may request an administrative hearing subject to chapter 14 within 15 days after the commissioner suspends a license or refuses to issue or renew a license under clause (b) to determine whether the license should be issued, renewed, or revoked. If no request is made within 15 days after suspension, the commissioner shall revoke the license.

**Subd. 7. Producer bond and contract claims.** A producer claiming to be damaged by a breach of a contract for the purchase of grain by a licensed grain buyer may file a written claim with the commissioner. The claim must state the facts constituting the claim. The claim must be filed with the commissioner within 180 days of the breach of the contract. If a claim is valid, the commissioner may immediately suspend the license, in which case the licensee shall surrender the license to the commissioner. Within 15 days the licensee may request an administrative hearing subject to chapter 14 to determine whether the license should be revoked. If no request is made within 15 days, the commissioner shall revoke the license.

Subd. 8. **Bond disbursement.** (a) The bond required under subdivision 4 shall provide for payment of loss caused by the grain buyer's failure to pay, upon the owner's demand, the purchase price of grain sold to the grain buyer in the manner provided by subdivision 5, including loss caused by failure to pay within the time required. The bond shall be conditioned upon the grain buyer being duly licensed as provided herein.

(b) The commissioner shall promptly determine the validity of all claims filed with him and notify the claimants of the determination. An aggrieved party may appeal the commissioner's determination by requesting, within 15 days, that the commissioner initiate a contested case proceeding. In the absence of such a request, or following the issuance of a final order in a contested case, the surety company shall issue payment promptly to those claimants entitled to payment. The commissioner may apply to the district court for an order appointing a trustee or receiver to manage and supervise the operations of the grain buyer in default. The commissioner may participate in any resulting court proceeding as an interested party.

(c) If a grain buyer has become liable to more than one producer by reason of breaches of the conditions of the bond and the amount of the bond is insufficient to pay the entire liability to all producers entitled to the protection of the bond, the proceeds of the bond shall be apportioned among the bona fide claimants.

(d) The bond shall not be cumulative from one licensing period to the next. The maximum liability of the bond shall be its face value for the licensing period.

Subd. 9. **Defaults; violations.** If the commissioner finds, after an investigation is conducted, that a complaint is valid or that a licensee is in violation of the provisions of this chapter, the commissioner may immediately suspend the license, in which case the licensee shall surrender the license to the commissioner. Within 15 days, the licensee may request an administrative hearing subject to chapter 14 to determine whether the license should be revoked. If no request is made within 15 days, the commissioner shall revoke the license.

**History:** 1983 c 374 s 8

## **223.175 WRITTEN VOLUNTARY EXTENSION OF CREDIT CONTRACTS; FORM.**

A written confirmation required under section 223.177, subdivision 2, and a written voluntary extension of credit contract must include those items prescribed by the commissioner by rule. A contract shall include a statement of the legal and financial responsibilities of grain buyers and sellers established in this chapter. A contract shall also include 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." 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 beneath the statement.

**History:** 1983 c 374 s 9

## **223.177 PURCHASE BY VOLUNTARY EXTENSION OF CREDIT CONTRACTS.**

Subdivision 1. **Indication of intention.** Every grain buyer who intends to purchase grain by voluntary extension of credit contracts shall indicate his

intention to do so annually to the commissioner on a form provided by the commissioner.

**Subd. 2. Oral contracts.** Any grain buyer entering into a voluntary extension of credit contract orally or by phone shall give or mail to the seller a written confirmation conforming to the requirements of section 223.175 before the close of the next business day.

**Subd. 3. Contracts reduced to writing.** A voluntary extension of credit contract must be reduced to writing by the grain buyer and mailed or given to the seller before the close of the next business day after the contract is entered into or, in the case of an oral or phone contract, after the written confirmation is received by the seller. Provided, however, that if a scale ticket has been received by the seller prior to the completion of the grain shipment, the contract must be reduced to writing within ten days after the sale, but not later than the close of the next business day after the completion of the entire sale. The form of the contract shall comply with the requirements of section 223.175.

**Subd. 4. Grain, rights, or proceeds held.** A licensed grain buyer purchasing grain by voluntary extension of credit contracts shall at all times maintain grain, rights in grain, or proceeds from the sale of grain totaling 90 percent of the grain buyer's obligation for grain purchased by voluntary extension of credit contracts. That amount must be evidenced or represented by one or more of the following:

(a) grain owned and actually held by the grain buyer in a grain warehouse owned or controlled by the grain buyer;

(b) rights in grain evidenced or represented by warehouse receipts issued by a state or federally licensed grain warehouse;

(c) cash on hand or cash held on account in federally or state licensed institutions;

(d) short-term investments held in time accounts with federally or state licensed institutions;

(e) balances on grain margin accounts;

(f) voluntary extension of credit contracts for grain shipped to a processor or terminal as purchaser, less any payment or advance that has been received;

(g) an irrevocable letter of credit, as defined in section 336.5-103; or

(h) other evidence of proceeds from the sale of grain acceptable to the commissioner.

**Subd. 5. Value of grain.** For the purpose of computing the dollar value of inventories of voluntary extension of credit obligations, the value of grain must be figured at the current market price on the day of delivery.

**Subd. 6. Transfer of title.** The title to grain delivered on a voluntary extension of credit contract transfers to the grain buyer upon delivery.

**Subd. 7. Storage charges prohibited.** No storage charges may be charged with respect to grain purchased on voluntary extension of credit contracts.

**Subd. 8. Records.** A grain buyer shall keep sufficiently detailed books and records of voluntary extension of credit contracts and evidences of grain, rights in grain, and the proceeds from the sale of grain so as to clearly show compliance with this section. The commissioner or his authorized agent may inspect these books and records to determine whether grain buyers are complying with the provisions of this chapter, and for this purpose the commissioner may enter upon any public or private premises during regular business hours.

**History:** 1983 c 374 s 10

**223.18 PENALTY.**

A person buying grain without first obtaining a grain buyer's license is guilty of a misdemeanor. Each day of operation without a grain buyer's license constitutes a separate offense. In case of license revocation, no new license shall be granted to the person whose license was revoked nor to anyone either directly or indirectly engaged with him in the licensed business for two years. A grain dealer who withholds records from the commissioner, keeps or files records which he knows to be false, alters records fraudulently, or presents to the commissioner any records which he knows to be false, is guilty of a gross misdemeanor.

**History:** 1983 c 374 s 11

**223.19 RULES.**

The commissioner may make temporary or permanent rules pursuant to chapter 14 to carry out the provisions of sections 223.15 to 223.22.

**History:** 1983 c 374 s 12

**223.20 REGULATION OF GRAIN BUYERS AND GRAIN STORAGE.**

The commissioner may create a separate division within the department of agriculture for the purpose of administering this chapter and chapter 232.

**History:** 1983 c 374 s 13

**223.21 ATTORNEY GENERAL; ENFORCEMENT.**

The attorney general, upon request of the commissioner, shall assist the commissioner in enforcing this chapter.

**History:** 1983 c 374 s 14

**223.22 INVESTIGATION; EDUCATION.**

Subdivision 1. **Legislative investigation.** The legislature recommends that the standing committees of the house and senate with jurisdiction over agriculture investigate methods of protecting producers when marketing grain using voluntary extension of credit contracts, including establishment of a state administered trust fund, private insurance, or reinsurance, and methods which grain buyers can use to protect themselves and grain producers from grain price fluctuations.

Subd. 2. **Education.** The commissioner shall make every effort to inform grain producers and grain buyers of the protections and exposures which result from application of this chapter.

**History:** 1983 c 374 s 15