

## CHAPTER 223

### GRAIN BUYERS

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**223.01** [Repealed, 1982 c 635 s 9]

**223.02** [Repealed, 1982 c 635 s 9]

**223.03** [Repealed, 1982 c 635 s 9]

**223.04** [Repealed, 1982 c 635 s 9]

**223.05** [Repealed, 1982 c 635 s 9]

**223.06** [Repealed, 1981 c 90 s 5]

**223.07** [Repealed, 1982 c 635 s 9]

**223.08** [Repealed, 1982 c 635 s 9]

**223.09** [Repealed, 1982 c 635 s 9]

**223.10** [Repealed, 1982 c 635 s 9]

**223.11** [Repealed, 1982 c 635 s 9]

**223.12** [Repealed, 1981 c 90 s 5]

**223.15 CITATION.**

Sections 223.15 to 223.19 may be cited as the "Grain Buyers Act."

**History:** *1982 c 635 s 2; 1983 c 374 s 20*

**223.16 DEFINITIONS.**

Subdivision 1. **Applicability.** For the purpose of sections 223.15 to 223.23, the terms defined in this section have the meanings given them.

*[See Note.]*

Subd. 2. **Bond.** "Bond" means an obligation acceptable to and running to the state, as obligee, for the purpose of indemnifying producers of grain against the breach of a contract by a grain buyer.

Subd. 2a. **Cash sale.** (a) "Cash sale" means a sale that is not reduced to writing as a voluntary extension of credit contract and 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.

(b) For the purposes of this subdivision, "cash" means currency or an equivalent manner of payment including but not limited to a certified check; a cashier's check; and a postal, bank, or express money order in which the amount of payment is verified and secured before issuance.

*[See Note.]*

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of agriculture or the commissioner's designee.

Subd. 3a. **Electronic document.** "Electronic document" means a document that is generated, sent, received, or stored by electronic, optical, or similar means, including electronic data interchange, electronic mail, telegram, telex, or telecopy. "Electronic document" includes, but is not limited to, grain purchase contracts and voluntary extension of credit contracts.

Subd. 3b. **Electronic signature.** "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

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, dry edible beans, or other agricultural crops designated by the commissioner by rule.

*[See Note.]*

Subd. 5. **Grain buyer.** "Grain buyer" means a person who purchases grain for the purpose of reselling the grain or products made from the grain, with the exception of a person who purchases seed grain for crop production or who purchases grain as feed for the person's own livestock.

Subd. 6. **Grain warehouse.** "Grain warehouse" means an elevator, flour, cereal or feed mill, malthouse or warehouse in which grain belonging to a person other than the warehouse operator is received for purchase or storage.

Subd. 7. [Repealed, 2012 c 244 art 1 s 83]

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

Subd. 9. **Person.** "Person" means a corporation, company, joint stock company or association, partnership, firm or individual and includes their agents, trustees, assignees or duly appointed receivers.

Subd. 10. **Private grain warehouse operator.** "Private grain warehouse operator" means a person licensed to operate a grain warehouse for the sole purpose of purchasing, handling, processing and shipping grain or its by-products who is not licensed by the commissioner to accept grain belonging to others for storage. "Private grain warehouse operator" includes any person licensed under the United States Warehouse Act, United States Code, title 7, chapter 10.

Subd. 11. **Producer.** "Producer" means a person who grows grain on land owned or leased by the person.

Subd. 12. **Public grain warehouse operator.** "Public grain warehouse operator" means a person operating a grain warehouse in which grain belonging to persons other than the grain warehouse operator is accepted for storage or purchase or who offers grain storage or warehouse facilities to the public for hire or a feed-processing plant that receives and stores grain, the equivalent of which it processes and returns to the grain's owner in amounts, at intervals, and with added ingredients that are mutually agreeable to the grain's owner and the person operating the plant.

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.

Subd. 13. **Semitrailer.** "Semitrailer" means a vehicle described in section 168.002, subdivision 30, used to haul grain.

Subd. 14. **Trailer.** "Trailer" means a vehicle described in section 168.002, subdivision 35, used to haul grain.

Subd. 15. **Truck.** "Truck" means a single unit vehicle described in section 168.002, subdivision 37, used to haul grain.

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:** 1982 c 635 s 3; 1983 c 374 s 1-7,20; 1986 c 444; 1988 c 688 art 14 s 1; 2000 c 477 s 60; 2002 c 373 s 31; 2004 c 254 s 27,28; 2012 c 244 art 1 s 51; 1Sp2019 c 1 art 4 s 1-3

**NOTE:** The amendments to subdivisions 1, 2a, and 4 by Laws 2019, First Special Session chapter 1, article 4, sections 1 to 3, are effective July 1, 2020, and apply to grain buyer licenses issued on or after that date. Laws 2019, First Special Session chapter 1, article 4, sections 1 to 3, the effective dates.

### 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 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.

Subd. 1a. [Repealed, 1986 c 322 s 4]

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, clause (4). 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 account; fees.** (a) 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.

The fee for any license issued or renewed after June 30, 2005, shall be set according to the following schedule:

(1) \$140 plus \$110 for each additional location for grain buyers whose gross annual purchases are less than \$100,000;

(2) \$275 plus \$110 for each additional location for grain buyers whose gross annual purchases are at least \$100,000, but not more than \$750,000;

(3) \$415 plus \$220 for each additional location for grain buyers whose gross annual purchases are more than \$750,000 but not more than \$1,500,000;

(4) \$550 plus \$220 for each additional location for grain buyers whose gross annual purchases are more than \$1,500,000 but not more than \$3,000,000; and

(5) \$700 plus \$220 for each additional location for grain buyers whose gross annual purchases are more than \$3,000,000.

(b) In addition to the license fee required under paragraph (a), a grain buyer must pay to the commissioner an annual examination fee for each licensed location, as follows:

Bushel Capacity	Examination Fee
Examinations without a grain measure	\$ 100
Less than 150,001	\$ 300
150,001 to 250,000	\$ 425
250,001 to 500,000	\$ 545
500,001 to 750,000	\$ 700
750,001 to 1,000,000	\$ 865
1,000,001 to 1,200,000	\$ 1,040
1,200,001 to 1,500,000	\$ 1,205
1,500,001 to 2,000,000	\$ 1,380
More than 2,000,000	\$ 1,555

(c) The fee for any supplemental examination required by the commissioner under section 223.23 is \$55 per hour per examiner.

(d) A licensed grain buyer meeting the annual examination requirements under section 223.23 is exempt from the fees under paragraph (b) if the annual examination is conducted by the Agricultural Marketing Service of the United State Department of Agriculture.

(e) A penalty amount not to exceed ten percent of the fees due may be imposed by the commissioner for each month for which the fees are delinquent.

(f) There is created the grain buyers and storage account in the agricultural fund. Money collected pursuant to sections 223.15 to 223.23 shall be paid into the state treasury and credited to the grain buyers

and storage account. Money in the account, including interest, is appropriated to the commissioner for the administration and enforcement of sections 223.15 to 223.23.

*[See Note.]*

Subd. 4. **Bond.** (a) Except as provided in paragraphs (c) to (e), 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:

- (1) \$10,000 for grain buyers whose gross annual purchases are \$100,000 or less;
- (2) \$20,000 for grain buyers whose gross annual purchases are more than \$100,000 but not more than \$750,000;
- (3) \$30,000 for grain buyers whose gross annual purchases are more than \$750,000 but not more than \$1,500,000;
- (4) \$40,000 for grain buyers whose gross annual purchases are more than \$1,500,000 but not more than \$3,000,000;
- (5) \$50,000 for grain buyers whose gross annual purchases are more than \$3,000,000 but not more than \$6,000,000;
- (6) \$70,000 for grain buyers whose gross annual purchases are more than \$6,000,000 but not more than \$12,000,000;
- (7) \$125,000 for grain buyers whose gross annual purchases are more than \$12,000,000 but not more than \$24,000,000; and
- (8) \$150,000 for grain buyers whose gross annual purchases exceed \$24,000,000.

(b) The amount of the bond shall be based on the most recent gross annual grain purchase report of the grain buyer.

(c) A first-time applicant for a grain buyer's license shall file a \$50,000 bond with the commissioner. This bond shall remain in effect for the first year of the license. Thereafter, the licensee shall comply with the applicable bonding requirements contained in paragraph (a), clauses (1) to (8).

(d) In lieu of the bond required by this subdivision the applicant may deposit with the commissioner of management and budget an irrevocable bank letter of credit as defined in section 336.5-102, in the same amount as would be required for a bond.

(e) A grain buyer who purchases grain immediately upon delivery solely with cash; a certified check; a cashier's check; or a postal, bank, or express money order is exempt from this subdivision if the grain buyer's gross annual purchases are \$100,000 or less.

(f) Bonds must be continuous until canceled. To cancel a bond, a surety must provide 90 days' written notice of the bond's termination date to the licensee and the commissioner.

*[See Note.]*

Subd. 5. **Cash sales; manner of payment.** For a cash sale of a shipment of grain, the grain buyer shall tender payment to the seller in cash, by check, or by wiring or mailing payment to the seller's account. The grain buyer must tender payment as required under this subdivision not later than the close of business on

the next day after the sale of the shipment, or within 48 hours after the sale of the shipment, whichever is later.

*[See Note.]*

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.** (a) Except as allowed in paragraph (c), a grain buyer licensed under this chapter must annually submit to the commissioner a financial statement prepared in accordance with generally accepted accounting principles. The annual financial statement required under this subdivision must also:

(1) include, but not be limited to the following:

(i) a balance sheet;

(ii) a statement of income (profit and loss);

(iii) a statement of retained earnings;

(iv) a statement of changes in financial position; and

(v) a statement of the dollar amount of grain purchased in the previous fiscal year of the grain buyer;

(2) be accompanied by a compilation report of the financial statement that 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;

(3) be accompanied by a certification by the chief executive officer or the chief executive officer's designee of the licensee, and where applicable, all members of the governing board of directors under penalty of perjury, that the financial statement accurately reflects the financial condition of the licensee for the period specified in the statement;

(4) for grain buyers purchasing under \$5,000,000 of grain annually, be reviewed by a certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants, and must show that the financial statements are free from material misstatements; and

(5) for grain buyers purchasing \$5,000,000 or more of grain annually, be audited by a certified public accountant in accordance with standards established by the American Institute of Certified Public Accountants and must include an opinion statement from the certified public accountant.

(b) 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. All financial statements filed with the commissioner are private or nonpublic data as provided in section 13.02.

(c) A grain buyer who purchases grain immediately upon delivery solely with cash; a certified check; a cashier's check; or a postal, bank, or express money order is exempt from this subdivision if the grain buyer's gross annual purchases are \$100,000 or less.

(d) The commissioner shall annually provide information on a person's fiduciary duties to each licensee. To the extent practicable, the commissioner must direct each licensee to provide this information to all persons required to certify the licensee's financial statement under paragraph (a), clause (3).

*[See Note.]*

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 upon determining, based upon the financial statement filed under this section or other financial information obtained by the commissioner, 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. **Action on a bond.** 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. 7a. **Bond requirements; claims.** For entities licensed under this chapter and chapter 232, the bond requirements and claims against the bond are governed under section 232.22, subdivision 6a.

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 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.

(e) The bond disbursement shall occur 200 days from the date the commissioner publishes a public notice of a claim. At the end of this time period, the commissioner shall initiate bond payments on all valid claims received by the commissioner.

**Subd. 9. Defaults; violations.** It is a violation under this chapter 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.

**History:** 1982 c 424 s 130; 1982 c 635 s 4; 1983 c 374 s 8,20; 1985 c 233 s 5; 1986 c 444; 1987 c 396 art 11 s 15; 1996 c 305 art 3 s 28; 1997 c 11 art 2 s 9; 1997 c 216 s 126; 1999 c 231 s 169; 1999 c 250 art 3 s 24; 2000 c 477 s 61; 1Sp2001 c 2 s 142; 2003 c 112 art 2 s 50; 2004 c 254 s 29,30; 1Sp2005 c 1 art 1 s 84,85; 2006 c 265 s 3; 2009 c 101 art 2 s 109; 2012 c 244 art 1 s 52-55; 2013 c 114 art 2 s 54; 2017 c 88 art 2 s 74; 1Sp2019 c 1 art 4 s 4-7

**NOTE:** The amendments to subdivisions 3, 4, 5, and 6 by Laws 2019, First Special Session chapter 1, article 4, sections 4 to 7, are effective July 1, 2020, and apply to grain buyer licenses issued on or after that date. Laws 2019, First Special Session chapter 1, article 4, sections 4 to 7, the effective dates.

### **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. A transaction that does not meet the provisions of a voluntary extension of credit, including the issuance and signing of a voluntary extension of credit contract, is a cash sale.

**History:** 1983 c 374 s 9; 2000 c 477 s 62

### **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 the 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 within ten days of entering the voluntary extension of credit contract. Written confirmation of oral contracts must meet the requirements of subdivision 3.

*[See Note.]*

Subd. 3. **Contracts reduced to writing.** A voluntary extension of credit contract must be reduced to writing by the grain buyer, mailed or given to the seller, and signed by both buyer and seller within ten days of the date of delivery of the grain. The form of the contract shall comply with the requirements of section 223.175. A grain buyer may use an electronic version of a voluntary extension of credit contract that contains the same information as a written document and that conforms to the requirements of this chapter to which



a seller has applied an electronic signature in place of a written document. There must not at any time be an electronic and paper voluntary extension of credit contract representing the same lot of grain.

*[See Note.]*

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:

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

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

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

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

(5) balances on grain margin accounts;

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

(7) an irrevocable letter of credit, as defined in section 336.5-102; or

(8) 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 the commissioner's 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; 1986 c 444; 1997 c 11 art 2 s 9; 2004 c 254 s 31; 1Sp2019 c 1 art 4 s 8,9

**NOTE:** The amendments to subdivisions 2 and 3 by Laws 2019, First Special Session chapter 1, article 4, sections 8 and 9, are effective July 1, 2020, and apply to grain buyer licenses issued on or after that date. Laws 2019, First Special Session chapter 1, article 4, sections 8 and 9, the effective dates.

**223.18** [Repealed, 2012 c 244 art 1 s 83]

**223.19 RULES.**

The commissioner may make rules pursuant to chapter 14 to carry out the provisions of sections 223.15 to 223.23.

**History:** 1982 c 635 s 6; 1983 c 374 s 12,20; 1984 c 640 s 32; 1997 c 7 art 5 s 19; 1Sp2019 c 1 art 4 s 10

**NOTE:** The amendment to this section by Laws 2019, First Special Session chapter 1, article 4, section 10, is effective July 1, 2020, and applies to grain buyer licenses issued on or after that date. Laws 2019, First Special Session chapter 1, article 4, section 10, the effective date.

**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 of representatives 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

**223.23 ANNUAL EXAMINATION REQUIRED; SUPPLEMENTAL EXAMINATIONS.**

A licensed grain buyer is subject to an annual examination conducted by the commissioner or the Agricultural Marketing Service of the United States Department of Agriculture. Examinations must include a measurement of all grain owned and maintained by the grain buyer. The commissioner may require supplemental examinations of a grain buyer as the commissioner deems necessary.

**History:** 1Sp2019 c 1 art 4 s 11

**NOTE:** This section, as added by Laws 2019, First Special Session chapter 1, article 4, section 11, is effective July 1, 2020, and applies to grain buyer licenses issued on or after that date. Laws 2019, First Special Session chapter 1, article 4, section 11, the effective date.