



Grain Advisory Group

Report regarding recommendations for grain program improvements

02/15/2023

Minnesota Department of Agriculture
Fruit, Vegetable and Grain Program
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Executive Summary

Beginning in August 2022, the Minnesota Department of Agriculture (MDA) conducted three stakeholder meetings to develop recommendations to improve the grain licensing program. These stakeholder meetings were held virtually with organizations that represent regulated entities and those that rely on them. Additionally, a curated group of farmers and elevator managers were invited based on nominations from organizations intended to represent them.

Two areas for improvement were common themes through each meeting: financial reporting requirements and seller protections. There was no consensus on how to improve protections for sellers of grain; some members of the group support the adoption of an Indemnity Fund, though the funding source is contested. Others thought there may be an appetite to increase bonds or expand bond coverage to credit contracts to the point in which they would serve as an effective screening system for licensees. Although, no new bond schedule was offered. Most participants saw a need to improve how the agency handles and interprets financial information, up to hiring more staff to provide analysis. Furthermore, it was stressed that the most recent change to financial reporting is putting a financial burden on small to medium-sized entities.

Introduction

During the 92nd Legislature (2021 - 2022), language was passed that required the commissioner of the Minnesota Department of Agriculture (MDA) to convene stakeholders to develop a recommendation to improve the grain licensing program, including changes to protect farmers who sell grain.

The following was the language that passed:

- 4tSec. 25. REPORT REQUIRED; GRAIN ADVISORY GROUP.
The commissioner of agriculture may convene members of the Grain Advisory Group and develop recommendations to improve the grain licensing program, including changes to protect farmers who sell grain, and report back to the legislative committees with jurisdiction over agriculture by February 15, 2023. Participating stakeholders must be given an opportunity to include written testimony to the legislative committees in the commissioner's report.

Background

The Grain Program is a regulatory program within the MDA. The program issues licenses to entities that buy grain within Minnesota and for facilities that store grain on behalf of others. There are 315 entities that hold 581 licenses to transact grain in the state. As a condition of holding a license, an entity is required to hold a bond based on their annual purchases or their average storage liability, whichever is greater. The minimum bond requirement is \$10,000 and the maximum is either \$150,000 or \$500,000, depending on the license type. The program is directed by Minnesota Statute Chapters 223 and 232 and Minnesota Rules 1562.

The agency not only has the responsibility of regulating grain buyers and storage facilities in the state, but also for investigating and making determinations on bond claims when a breach of contract occurs. This is most often due to a failure to pay a grain seller for grain that has already been delivered. Claims require the MDA to

investigate and review documentation from the claimant as well as the licensed entity. These claims have occurred with relative regularity at the approximate rate of one every 12-18 months. Once a claim is determined to be valid, if there is grain available, the MDA will work with a trustee to liquidate and sell the grain in which the proceeds will be used to pay all valid claims with support of the bond, if required. If there is not sufficient grain on hand to make all claimants whole, then the bond will be used to pay for the valid claims. Most often claims are determined to be invalid because the grain was delivered on a Voluntary Extension of Credit Contract, which is not covered by the bond. Claims are paid on a pro rata share. The following chart represents the payout amounts of the last several bond claim investigations.

Table 1. Bond claim investigation payout amounts.

| | North Country Seed 2015 | Porter Elevator 2015 | Ashby 2018 | Karlstad 2019 | Buckwheat Growers 2019 |
|------------------------------|--------------------------------|-----------------------------|-------------------|----------------------|-------------------------------|
| Total Claims | \$1,473,375.27 | \$2,011,042.45 | \$2,664,036.03 | \$1,137,430.05 | \$256,114.59 |
| Valid Claims | \$1,473,375.27 | \$1,106,435.17 | \$723,917.85 | \$408,124.58 | \$210,950.25 |
| Rejected Claims | \$0.00 | \$904,607.28 | \$1,940,118.17 | \$729,305.47 | \$45,164.34 |
| Proceeds From Sale of Grain | \$0.00 | \$0.00 | \$0.00 | \$364,050.80 | \$10,751.58 |
| Bond | \$125,000.00 | \$125,000.00 | \$125,000.00 | \$44,073.78 | \$50,000.00 |
| Percent of Valid Claims Paid | 8% | 11% | 17% | 100% | 29% |
| Percent of Total Claims Paid | 8% | 6% | 5% | 36% | 24% |

The Grain Advisory Group was created following the 2017 closure of Porter Elevator. The group was a continuation of the conversation in the 88th Legislature around a grain indemnity program proposed by Rep. Chris Swedzinski. Porter Elevator had a tremendous impact to the community surrounding Porter, MN, with over \$2 million in losses to grain sellers and only a \$125,000 bond to pay those sellers back. Following the first meeting of the Grain Advisory Group, the MDA received notice of another failure that was similar in scale. Ashby Farmers Cooperative Elevator closed its doors the fall of 2018 and calls for change were increased due to the \$2.6million+ in losses experienced by a small farming community.

Ashby Elevator differed from previous closures in that the manager was convicted of embezzlement. However, it shed light on the protections for producers, financial reporting, and bonding systems as well as the lack of insight the agency had on grain buying operations. In the following legislative session, changes to the grain

buyer law were implemented that required financial reporting annually, at least one inspection for all grain license holders, and changes to timelines for compliance with signed contracts and payments. While the changes were not universally supported by the Grain Advisory Group, these suggestions were made with the intent of increasing regulations on license holders to identify fraud more easily.

Financial reporting changes were described as something that would be easy to comply with since many license holders were already completing financial reports for their surety or financial institution. Implementing the change would require an annual financial report to be filed during the license period and meet certain criteria for acceptance.

Annual inspections were a nearly universal suggestion from the grain advisory group. The requirement for inspection intended to give the MDA a once annual view into each operation and, in the event of concerns, act upon on the findings.

The changes were enacted in 2020. In the meantime, two small elevators closed their doors, leaving local communities impacted again. Karlstad Farmers Elevator and Buckwheat Growers Association both shut their doors abruptly and to the surprise of many of their clientele. The MDA received over \$1.1 million in claims in Karlstad. There was grain on hand at the elevator that was marketed and sold for a sum of \$364,000, and the bond contributed \$44,000 to the final pay out for valid claims. This meant that \$408,000 was paid to claimants, the highest payout in many years through the MDA. The rejected claims were mostly attributed to voluntary extension of credit contracts, which are not covered by the bond claim process. The final payout took nearly two years to finalize due to legal proceedings with the trustee. The MDA is aware of at least one personal bankruptcy filing that occurred because of a farmer going unpaid for grain delivered.

The MDA received over \$256,000 in claims for Buckwheat Growers Association closure, ultimately \$211,000 was determined to be valid. However, only \$61,000 was available between the \$50,000 bond and the sale of grain on hand. In both closures, the facilities closed not due to fraud, but rather the management falling ill. There was no one left to take over the management and oversight of the facilities or the accounts, and they slowly deteriorated into bond claims.

Most recently, two failures occurred in Minnesota, and both were attributed to bankruptcy. The first was Pipeline Foods, a multinational organization with grain buying operations in the U.S., Canada, and South America. They held a \$500,000 Minnesota grain bond when only \$125,000 was required. The MDA received over \$5.5 million in claims against that bond. The payout process is still tied up as the bankruptcy trustee and the MDA work to reconcile the records and payouts to claimants. The second was Global Processing, an Iowa based grain buyer. The company opened a Minnesota facility in the former Pipeline Food's location in Hope, MN. Global Processing had been operational in Minnesota for less than two months when they were forced into bankruptcy. The MDA anticipates over \$1 million in claims against a \$50,000 Minnesota bond.

Financial requirements went into effect in 2020. For the first two years, the Minnesota Department of Agriculture took the approach of education, outreach, and communication through letters sent directly to license holders. In 2022, the MDA began issuing penalties for failure to provide financial statements. Violation and penalty letters went out to 65 entities that failed to furnish anything to the program for review. A 22% failure rate was attributed to a combination of new laws, high reporting standards, misunderstanding of the law, significant cost, and availability of firms to provide the required reports.

The MDA drafted language in the 92nd legislature for an indemnity fund based on feedback and insight from other regulatory agencies with indemnity funds around the country. This version created a state managed fund to make compensation payments to sellers and storers of grain when a loss occurs. This fund intended to address many of the seller protection concerns with the current bonding system and was the basis for many conversations in the subsequent Grain Advisory Group meetings.

Stakeholder Meetings

To develop recommendations and improve protections for sellers of grain, the MDA scheduled three meetings of the Grain Advisory Group in 2022. Meetings were held virtually on August 11, September 22, and November 17. These meetings were recorded and published to YouTube.com and made available to any advisory group members that were unable to attend.

The first meeting included an introduction to the grain program and a review of what has transpired in the last several years leading to the request for this report. The presentation is included in this report as Attachment 1. Two main opportunities for improvement materialized: financial reporting and producer protections. Few suggestions were offered in this meeting, but more questions were generated. Attendees were tasked with finding more information on the appetite for bond changes, gathering input from other states who currently have indemnity funds, and returning with specific suggestions for improvements to the program and protections for sellers of grain.

The second meeting recapped what was discussed in the previous meeting with some suggestions and follow-up from that meeting. The MDA and members of the Grain Advisory Group did not provide any presentations at this meeting. Again, financial reporting and producer protections were discussed at length. An alternative option to protect producers was introduced; a separate bonding program that covers Voluntary Extension of Credit Contracts (VECC), more commonly referred to as Deferred Payment or Delayed Pricing Contracts. This is currently offered by a small number of elevators in Minnesota, and the cost for coverage is determined by the financial health of the elevator/grain buyer. Additionally, several members communicated that the indemnity fund, if adopted, should be collected only on first purchases and be producer funded.

The advisory group met for a final meeting to recap what had been discussed to date and to talk through some options offered by the Minnesota Attorney General's Office for changes to better protect those entering into VECC contracts. That presentation can be found attached to this report as Attachment 2. The meeting concluded with a request for written testimony to be provided by January 1, 2023, in advance of the 93rd legislative session.

Written Comments

The department accepted seven written comments from members of the advisory group and one written comment from an external party.

Regarding financial reporting, six of the eight submissions requested a change to the current system. Suggestions varied from the current system not working as intended to expanding regulations and oversight by the department. Many acknowledged the financial burden on license holders.

Regarding the indemnity fund, three comments expressed support for the establishment of the fund, two more offered conditional support for the fund, while two provided opposition.

Four comments also addressed bonding and were in favor of expanding the bonding program. That varied from increased bonds, to requiring additional bonds, or offering credit contract coverage.

All written comments are included in Attachment 3.

Conclusion

The advisory group has identified financial reporting as an opportunity for improvement. While there is no clear recommendation on what steps can be taken to improve the requirements, it was evident through three meetings that the additional cost to license holders, with no clear metrics or in-depth evaluation by the department, is not serving the intended purpose. Membership offered the following suggestions:

- Consider loosening the reporting requirements for small to medium-sized entities.
- Allow for third party, CPA-prepared compilation reports to be prepared if the MDA has clear metrics on evaluation.
- If metrics by which the entities are evaluated are established, they should be clear and clearly communicated to license holders.

In regard to producer protections, the advisory group does not universally support any option. Discussions focused on two options, expanding the current system of bonds and the establishment of an indemnity fund.

For those that spoke in favor of the indemnity fund, the following recommendations were made:

- Consider making it a producer protection fund, like other states, in which only first purchases are covered.
- An appropriation from the legislature will give the fund an appropriate head start.
- Include an opt-out clause so producers that don't care to pay into the fund or be protected receive a refund.

For those participants that spoke to the current bonding system, they offered the following:

- Educate those in the industry that there is additional coverage available for purchase that would cover Voluntary Extension of Credit Contracts.
- Bonds at current rates are not serving the purpose they were intended to, which is to act as a screening process. There may be an appetite for increasing bonds, but those levels are unclear.
- Bonds are viewed by the public as protections against failure.
- There is an opportunity for education and setting expectations for those selling grain.

Attachment 1 – Stakeholder Meeting Presentation August 11, 2022



Grain Advisory Group

August 2022

Agenda

1:30-3:30 PM

- 2) Introductions
- 3) Grain Program Overview
- 3) Historic Perspective/ Legislative report
- 4) Discussion/ Suggestions

Grain Program Summary

- 574 Licensed locations across 310 entities
- 4 inspectors and 2 office staff
- \$16B+ in grain purchased in 2022 licensing year.
- \$51M in bonds on file.
 - Bonds are set based on purchases or storage liability.
- Governed by MS 223 and 232 and MR 1562.
- Bond levels were last changed in 2004.
 - \$10K-\$500K



Bond Claim History

Five investigations that resulted in payouts

- North Country Seed (\$1.47M, 1 Claim, \$125k paid)
- Porter (\$2.01M, 12 claims, \$125k paid)
- Ashby (\$2.66M, 47 claims, \$125k paid)
- Karlstad(\$1.14M, 26 claims, \$408k paid)
- Buckwheat Growers (\$256K, 28 claims, \$61K paid)



2015 - Porter Elevator



12 Claims totaling over \$2M, the bond paid out \$125,000

2018-Ashby Farmer's Cooperative Elevator



47 claims totaling over \$2.66M, the bond paid \$125,000

Bond Claim History

Five investigations that resulted in payouts since 2015

- North Country Seed (\$1.47M, 1 Claim, \$125k paid)
- Porter (\$2.01M, 12 claims, \$125k paid)
- Ashby (\$2.66M, 47 claims, \$125k paid)
- Karlstad(\$1.14M, 26 claims, \$408k paid)
- Buckwheat Growers (\$256K, 28 claims, \$61K paid)





Changes to Grain Statute in 2020

Inspections

Grain Bonds

Financial Reporting

2021-Pipeline Foods

- Declared bankruptcy July 2021
- Claim period closed in January 2022, still under investigation
- ~\$5.5M in claims from ~30 sellers of grain.
- \$500,000 bond, only required to hold \$150,000.
- Payments to producers will depend on bankruptcy payments and payments received by other states.

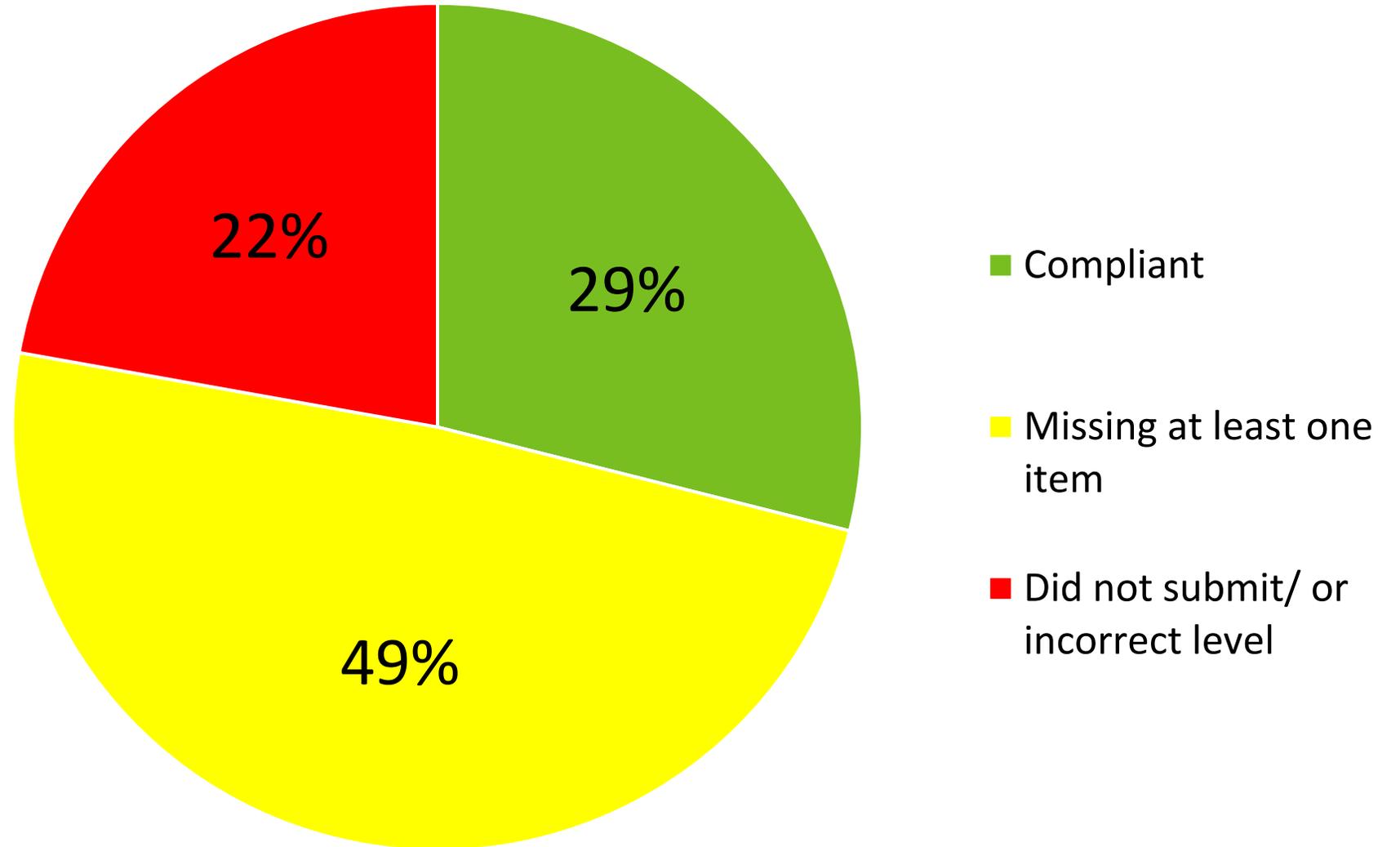


2023 Legislative Report

“The Commissioner of Agriculture may convene the members of the Grain Advisory Group and develop recommendations to improve the grain licensing program, including changes to protect farmers who sell grain, and report back to the legislative committees with the jurisdiction over agriculture by February 15, 2023.”

- Recommendations for improvements?
- Changes to protect farmers?

Financial Reporting 2022



Penalties for Financial reporting

- Reviews

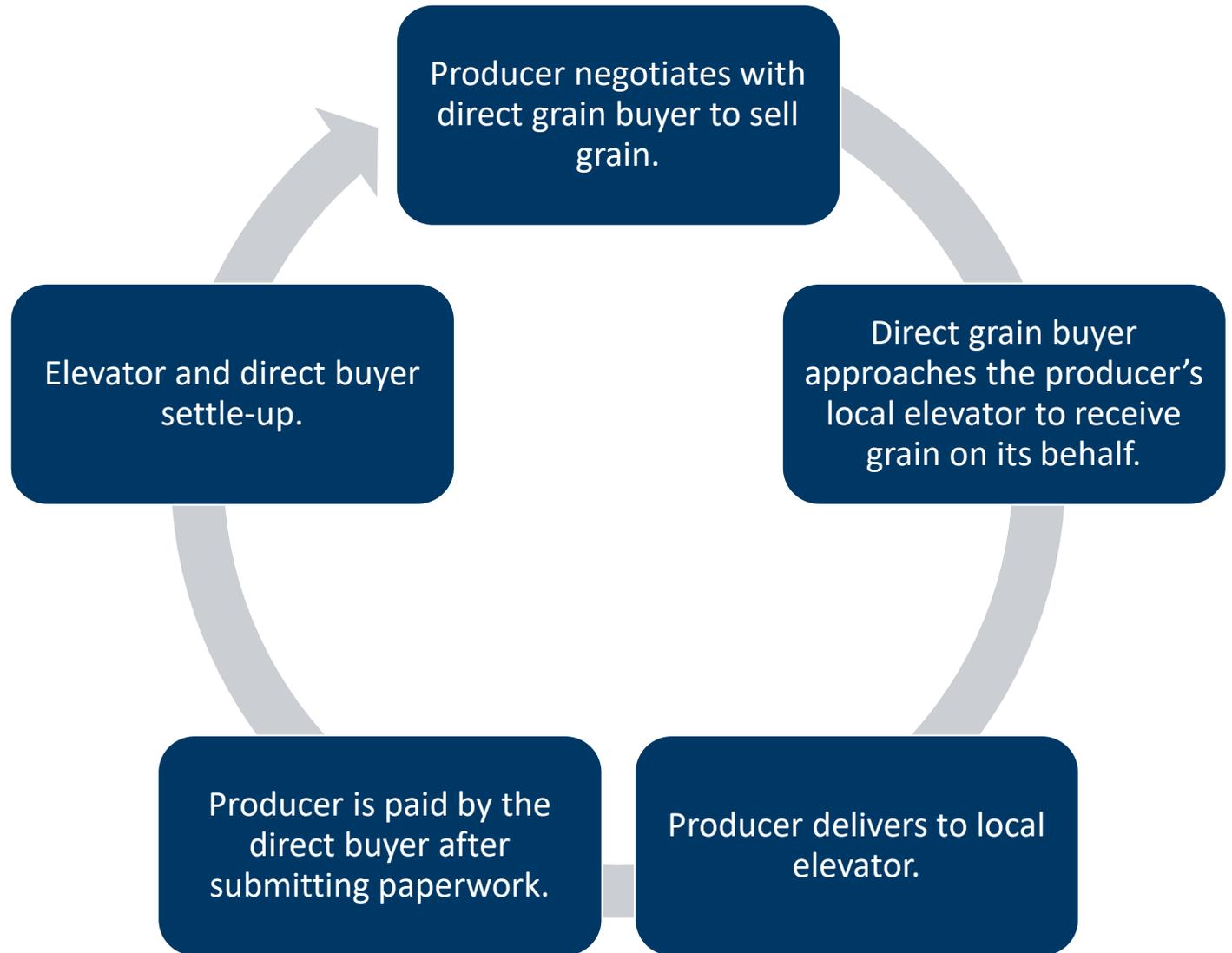
- \$3000 base penalty with settlement based on response.
- Increases to \$5000 based on purchases, settlement based on response.

- Audits

- \$5,000 base plus \$610 for every million over \$7.5 threshold. Settlement based on response.

Farmer Direct Purchases

- Decentralized approach for farmers to market their grain to buyers in any location.



Thank you!

grain@state.mn.us

651-201-6011

Attachment 2 – Stakeholder Meeting Presentation November 17, 2022



Grain Advisory Group

11/17/2022

Agenda

10:00-11:00 AM

1. Global Processing
2. Summary to date
3. Suggestions from AG's office
4. Upcoming Legislative Session & Written Testimony timeline

Global Processing, Inc.

- Newly licensed in MN, issued September 2022.
- \$50,000 bond
- Hope, MN (former Pipeline Foods Location)
- 10+ producers impacted, \$1M+
- Multiple states involved in Bankruptcy



Discussion to date



Indemnity Fund



Financial Reporting



Additional Bonds



Additional Regulations

Indemnity Fund

- Responses from Indiana, Idaho, Illinois and Michigan
 - \$ should be high enough to cover a large loss, but not too high that it invites unnecessary claims or attempts to use it for general fund. Set caps to claims.
 - Opt-out, MI has 37/15,000 farmers opt out annually
 - Move fund out of state treasury and appoint a board for management.
- Support is conditional on funding method
- Should consider covering only first purchases
- Bonds at current rates aren't serving the purpose they were intended to.



Financial Reporting

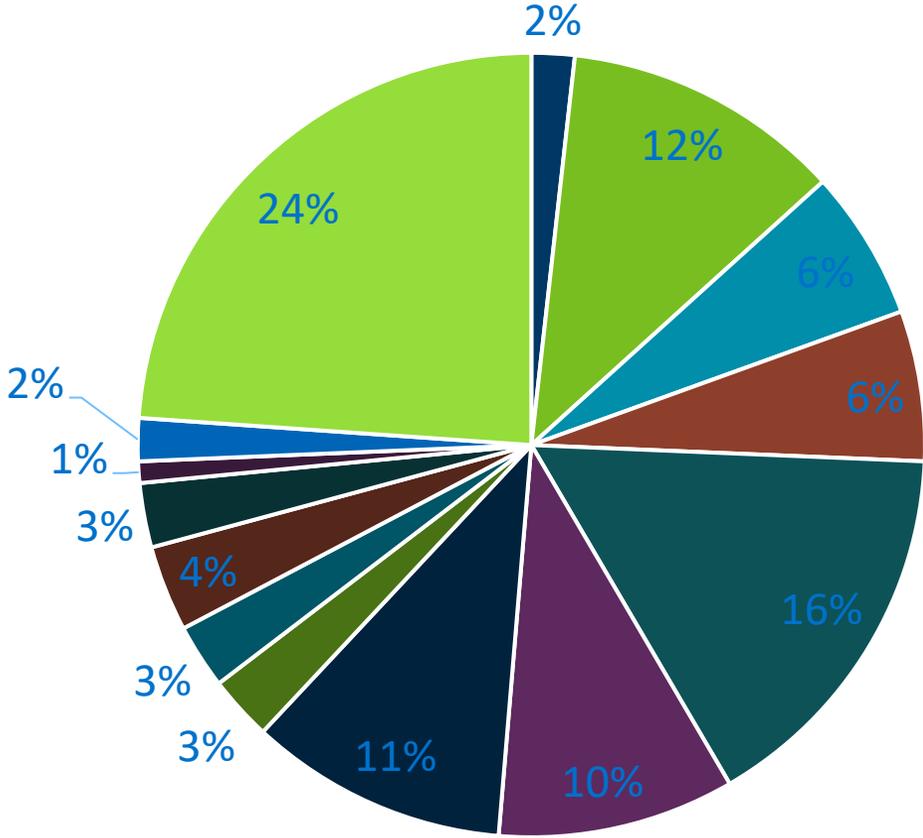
- Financial reporting requirements should consider an option for smaller elevators. Compilation is prepared by CPA but not the cost of a review.
- If financial reporting continues, metrics and/ or more staff to effectively act on reports should be considered.
- Cost is prohibitive and a major hurdle for smaller entities.
- Outreach should be considered to educate entities on value of reports and sellers of grain on what to look for.



- Current bonding levels are too low to trigger effective screening.
- There may be an appetite for increasing bonds, but that comes at additional cost. No clear recommendations on what that increase looks like.
- Bonds are viewed by general public as protections against failure.
- Process for bond payout is causing loss of business in MN

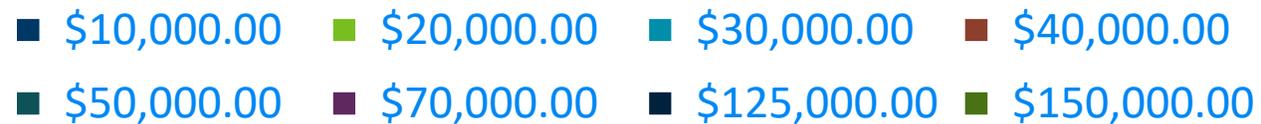
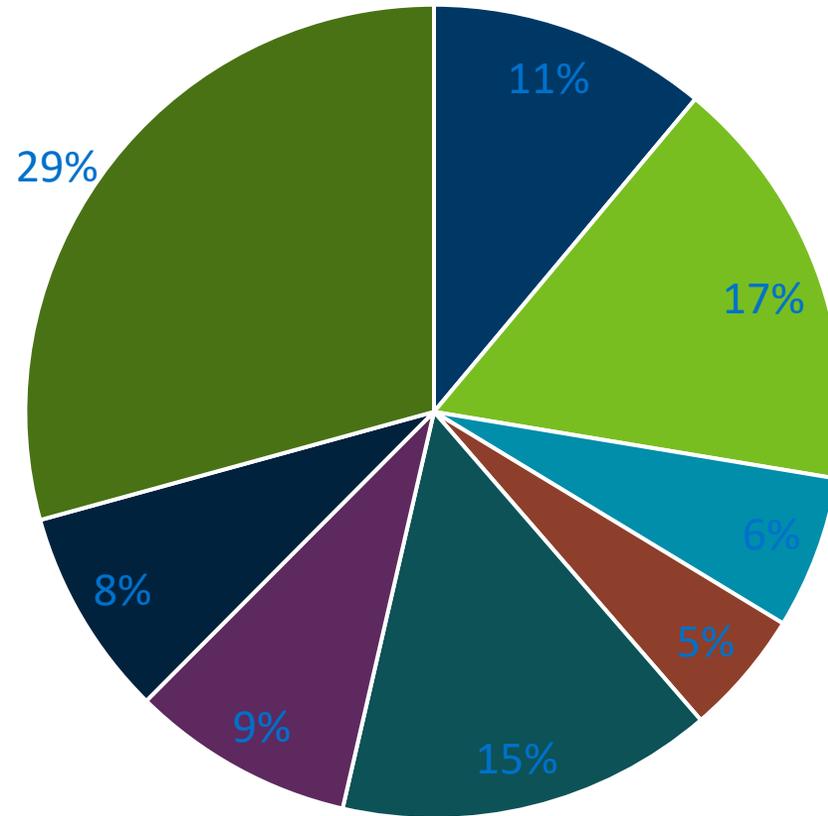


Spread of Bonds For Storage Facilities



- \$10,000.00
- \$20,000.00
- \$30,000.00
- \$50,000.00
- \$75,000.00
- \$125,000.00
- \$175,000.00
- \$225,000.00
- \$275,000.00
- \$325,000.00
- \$375,000.00
- \$425,000.00
- \$475,000.00
- \$500,000.00

Spread of Grain Buyer Bonds



Additional Regulations

- Additional regulations won't solve issue with protections for sellers but may increase cost to license holders.
- Additional regulations were sold during last changes as an alternative to increasing protections, that hasn't worked to this point.
- Make current regulations clearer and work to get to compliance on regulations in place today.



Suggestions from AG's office

- Require grain buyers to maintain unencumbered assets sufficient to cover VECC
- Include VECCs in bond coverage
- Increase bond requirements
- Change the time when title passes to better protect farmers by allowing them to retain title in grain until they are paid
- Require grain buyers, particularly those buying with VECCs, to affirmatively report financial problems
- Require independent reports on solvency issued by certified accountants that are made publicly available to farmers
- Companies that have missed any payment on a VECC are prohibited from issuing any new VECCs until they make good
- PACA-analog



Upcoming Legislative Session & Written Testimony

“The commissioner of agriculture may convene members of the Grain Advisory group and develop recommendations to improve the grain licensing program, including changes to protect farmers who sell grain, and report back to the legislative committees with the jurisdiction over agriculture by February 15, 2023. Participating Stakeholders must be given an opportunity to include testimony to the legislative committees in the commissioner’s report.”

Written Testimony due back to MDA by January 1st, 2023

Grain@state.mn.us

Thank you!

grain@state.mn.us

651-201-6011

Attachment 3 – Written Comments



December 29, 2022

Commissioner Thom Petersen
Minnesota Department of Agriculture
Attn: Grain Program
625 Robert St N
St. Paul, MN 55155

Dear Commissioner Petersen,

Thank you for granting the opportunity for Cooperative Network to serve as a member of the Minnesota Department of Agriculture's (MDA) Grain Advisory Group. We appreciate that our members were formally represented in this process.

First and foremost, Cooperative Network does not support the creation of a grain indemnity fund in Minnesota. This fund does not incorporate the practices that can minimize future insolvencies, and it would institute a fee on producers in this already challenging economic environment.

As discussed during one of the Grain Advisory Group meetings, many grain buying licensees are still not in compliance with the new financial reporting law, which should be the initial focus of MDA and the legislature prior to any other changes to the grain buyer law. There was a staggering amount of licensees either missing paperwork or not submitting a financial review or audit period, and it's clear that this should be the area under the spotlight as it could directly expose any potential financial issues.

An option to consider instead of a grain indemnity fund would be increasing grain bonding for individual grain elevators. Grain bonds in Minnesota have not been increased in nearly 20 years.

With a recession being predicted by Minnesota Management and Budget in 2023, on top of the other rising costs, now is not the time to add an extra fee for producers.

Thank you for your consideration.

Sincerely,

David Larson
Government Affairs Director
Cooperative Network

CC: Nick Milanowski



July 29, 2022

Commissioner Thom Petersen
Minnesota Department of Agriculture
625 Robert St N
St Paul, MN 55155

RE: Grain Advisory Group

Dear Commissioner Petersen,

CHS supports formalizing the Minnesota Department of Agriculture (MDA) Grain Advisory Group. Over the last few years, CHS supported revisions to state grain licensing programs due to regional insolvencies. Given the unique circumstances of past and potential future insolvencies there is no single solution to preventing future bankruptcies, however, there are practices that can minimize the potential for future farmer losses.

Internal controls, financial reporting, bonding requirements, and program workshops are effective elements in grain licensing programs. Efficient and effective programs in Iowa, North Dakota and South Dakota include recent program updates. Respective program administrators are using electronic data interfaces to maintain confidentiality and improve transparency of grain licensees and warehouse operations.

Now is not the time to assess farmers in the challenging economic environment to create a grain indemnity fund. A grain indemnity fund does not address the root cause of insolvencies, thus enabling bad financial actors to continue to operate.

As MDA evaluates licensing and reporting actions to protect producers, the following practices should be considered:

- governance and internal control programs by MDA and MGFA;
- regular financial reporting and criminal penalties for falsification of data;
- implementation of electronic data interface (EDI) to minimize field inspections;
- Commissioner's authority for rapid reporting and analysis of suspected financial stress;
- bonding amounts to reflect elevator storage volume;
- legislation for increased penalties for operating without a grain buyer license and/or legislation defining roving grain buyer;
- publicize private deferred payment surety bond programs that indemnify the farmer and pursue recovery from the debtor; and
- creation of grain licensing program director and staff

Sincerely,

A handwritten signature in black ink, appearing to read 'Rick Dusek', with a stylized, cursive script.

Rick Dusek
Executive Vice President, Country Operations
CHS Inc.

Cc: Andrea Vaubel
Peder Kjeseth
Nick Milanowski
Sen. Torrey Westrom
Rep. Mike Sundin
Rep. Paul Anderson

12/31/2022

Minnesota Department of Agriculture
Attn: Grain program – Nick Milanowski

Written testimony provided by:
Jim Falk
Falk's Seed Farm Inc.
President

I appreciate that I was able to participate in the discussions as a member of the Grain Advisory Group. I would like to share a little about my business and why I believe establishing a grain indemnity fund to protect Minnesota farmers is so important.

I have been a licensed and bonded grain buyer in Minnesota for many years, even though most of our business is related to seed production and seed processing. We are a seed cleaning facility, and we have the equipment that is often utilized to clean raw grain into a more refined final product, that can be then used in a food processing facility. We are not a typical commercial grain buyer, as we only work with a few specialty crops and never buy commercial grain or provide commercial storage. The most recent changes to the requirements of grain buyers in Minnesota threw a lot of small operations like mine under the same umbrella as a typical commodity grain elevator and into a required financial review. My financial review over the last couple of years has cost our business about \$6000 each year. Unfortunately, as confirmed in the discussions as a group, by the time MDA receives the financial review or audit, it is at least 6 months old and there are not really staff, or a metric established to analyze all these reports or to take action. The system is broken and the only real solution to protect farmers is an indemnity fund. With the failure of Global Processing Inc, as recent as the fall of 2022, it should be clear to everyone that the current system is not working and it hasn't been working for many years.

One logically must assume that the reason we have a statute requiring grain buyers to be bonded, is to protect farmers when a grain buying facility fails. However, as discussed at length in our meetings, historically the bond companies pay out very little as a percent of the claims, and somehow have gotten the statute to relieve them of any obligation for price later or delayed pricing contracts. So, it would appear that the farmers are left to fight with a bankruptcy court, and the bond company is off the hook for most of the claims. The conclusion should be clear that our bonding system is not working and the grain industry likely does not want to pay more for bonding that doesn't really address the problem of covering delayed pricing or price later contracts.

We discussed that the new level of financial reporting was thought to help catch a problem before the grain elevator failed. Again, the timing and the mechanism to shut down a business before it fails, does not exist in our current statute. Generally speaking, our government encourages commerce, rather than shutting down a business that hasn't failed. In addition, there may be potential lawsuits against the state of Minnesota for taking action that may have contributed to the failure. I think we can all agree that we need financial reporting. But the existing reporting requirements haven't been solving the problem.

We also discussed additional regulations which again are not business friendly and again don't protect the farmer if the bonding company doesn't cover more than a small percent of the claims.

The creation of an indemnity fund is a real solution where the farmer is actually protected, as one must assume is the intent of our statute. Several other states have implemented an indemnity fund and therefore we already know it works. I would suggest that any fees collected be on the first purchaser only, and that those who want to opt-out can do so, knowing that they will not have the protections provided had they paid into the fund. Let's stop pretending we can fix our existing broken system with more bonding cost, insurance cost, reporting cost, and the cost to hire more people in regulation.

Respectfully,

A handwritten signature in cursive script that reads "Jim Falk".

Jim Falk



December 28, 2022

Nick Milanowski
Fruit, Vegetable and Grain Section
Minnesota Department of Agriculture
625 Robert Street North
Saint Paul, MN 55155

Dear Mr. Milanowski,

On behalf of the Minnesota Corn Growers Association's nearly 7,000 members, we would like to thank the Minnesota Department of Agriculture (MDA) for the opportunity to provide written comments as MDA and the Grain Advisory Group prepares its report to the legislature with recommendations on improvements to the grain-licensing program.

With recent elevator closures due to fraud or financial mismanagement, a repeated theme during the Grain Advisory Group meetings was to establish a Grain Indemnity Fund. It is MCGA's position that state general fund dollars be the only source of revenue for a Grain Indemnity Fund and not through a fee assessed on farmers. The 2022 indemnity fund proposal included in the Governor's Supplemental Budget included a 0.2 percent fee on the price of grain to be paid into the fund along with general fund dollars. The proposal also included a mechanism that would allow farmers to opt-out of the program and receive a refund. Although our policy would prefer a publicly funded indemnity fund, we would recommend that future fee-based proposals include a refund or opt-out option for farmers who do not want to participate in the program.

While a lot of the Grain Advisory Group's discussions were around an Indemnity Fund the group did look at other ways to address financial mismanagement that is occurring at some grain buying facilities. As MDA evaluates other areas to improve the state's grain-licensing program, we would encourage them to consider the following:

- Increase the bonding requirements to better match an elevator's capacity
- Include Voluntary Extension of Credit Contracts (Delayed Pricing) within grain bond coverage
- Increase awareness of financial reporting requirements and protections to both grain buyers and sellers
- Increase transparency of financial reports and increased penalties for the falsification of financial data
- Publicize private grain insurance programs available for farmers to protect their sales; and
- Increase penalties for operating without a grain buyer's license

MCGA also wants to encourage MDA, and others, to avoid calling any fee, premium, surcharge or assessment for a grain indemnity fund a "check-off." The Minnesota Commodity Council check off programs have been approved by individual farmers, implemented and overseen by farmers to perform research and promotion of their specific commodity with a focus on providing benefits to all farmers who contribute to the check-off. Through investment in fertilizer and manure management research, expanding international markets, finding new and value-added uses for corn such as bio-based plastics

We are dedicated to identifying and promoting opportunities for corn growers while enhancing quality of life



and everything in between, Minnesota corn farmers across the state see tremendous value in their check-off program, which has opened new markets, allowing Minnesota corn farmers to remain competitive and expand Minnesota's corn footprint globally. Given the focus on broad benefits to all farmers, we do not think it is fair comparison to describe an indemnity fund fee as a check-off.

The Minnesota Corn Growers Association appreciates the opportunity to provide written comments to MDA as they prepare their report.

If you have any questions or would like to discuss further, please let us know.
Sincerely,

A handwritten signature in black ink, appearing to read "Richard Syverson". The signature is fluid and cursive, with a long horizontal flourish at the end.

Richard Syverson
President
Minnesota Corn Growers Association



305 Roselawn Ave E | Suite 200 | St. Paul, MN 55117
Phone: (651) 639-1223 | www.mfu.org

December 31, 2022

Nick Milanowski
Grain Program
Minnesota Department of Agriculture
625 Robert St. N
St. Paul, MN 55155

RE: Written Testimony for Grain Advisory Group, Support for Grain Indemnity Fund

Dear Mr. Milanowski:

On behalf of Minnesota Farmers Union (MFU), I write to thank you for your work to strengthen protections for farmers, and to communicate our support for creating a grain indemnity fund in Minnesota. We strongly believe that to adequately protect producers and create a fair regulatory system for buyers, any changes to the grain program must include an indemnity fund. Too many families have been hurt by elevator failures to continue to leave farmers without real protection.

MFU is a grassroots organization that has represented Minnesota's family farmers, ranchers and rural communities since 1918. In November at our annual convention our members again passed policy calling on Minnesota to join over a dozen states—including Wisconsin, Iowa, North Dakota, Illinois, and Michigan—who have indemnity funds that protect producers in the event of fraud, elevator collapse, or other events that result in nonpayment to producers.

We feel strongly about this issue, because our members and others who market grain are among the least protected in the nation. This had real consequences for families who sold grain to elevators that have collapsed in recent years, including Porter in 2015, Ashby in 2018, Karlstad in 2019, Pipeline in 2021, and Global Processing just this past summer. One of our members, for example, delivered over \$80,000 in grain to Pipeline Foods in 2021ⁱ before being told that the company was declaring bankruptcy and they would not be receiving payment. For a small, organic operation—and a young family with children—this was hugely challenging.

In considering this proposal, we think the department should consider a few important points.

- **Farmers regularly extend credit to grain buyers, which includes risk.** This point is obvious to you and others who work in grain marketing. That said, we think it's important to make clear that nearly as a rule rather than the exception, farmers are not taking payment for grain when they deliver. In effect, they're extending credit to that elevator or other grain buyer. This is important, often strategic in terms of cashflow and marketing, and a standard in the industry. However, it carries inherent risks if the elevator goes under.
- **Our current system fails to protect farmers from this risk,** leaving them among the most vulnerable to elevator failures in the nation. Under our current system, grain buyers purchase bonds which are used to pay out to producers in the event of failures.

Unfortunately, these bonds only cover .35 percent of the approximately \$14 billion in grain transactions across the state. And on average across recent failures, our system of bonds has compensated producers for only 11 percent of claims—literal cents on the dollar.

In the case of this past summers Global Foods failure, farmers in Minnesota were notified they could file with MDA to get their share of a \$50,000 bond.ⁱⁱ In contrast, farmers across the border in Iowa were told that they should file claims through the state grain indemnity fund which could reimburse farmers for 90 percent of claims up to \$300,000.ⁱⁱⁱ

- **Our industry already pays for this failed system.** In conversations about an indemnity fund, the cost can give some pause. However, it is important to remember that we already pay annually for a system of bonds that is not working. These bonds cost between 1 and 5 percent of the value of the bond meaning that the industry pays between \$.5 and \$2.5 million for bonds every year. These costs are surely passed on to producers and for little benefit.

In last years' proposal, a grain indemnity fund would cost producers around \$7 per \$10,000 of marketed grain in the first year. Unlike bonds which need to be maintained, assessments for an indemnity fund would then shut off until there is a claim on the fund. It's the cheapest insurance you can get.

- **Previous attempts at regulatory reform have failed producers.** Starting in 2015 after the Porter elevator failure, I have personally participated in multiple stakeholder groups aimed at strengthening protections for producers impacted by elevator collapses. While MFU pushed for an indemnity fund then, others opted to tighten regulations with the aim of prevention. I think it is important to be honest that these attempts at reform have failed and with dire consequences for producers.

The fact is that grain marketing is increasingly complex, fast-paced, and subject to global market volatility and supply chain disruptions. There is a lot we can do to mitigate risk through smart regulation, but we've been shown now time and time again that we can't prevent failures outright. That is why we need to establish a meaningful safety net through an indemnity fund.

Much of what I have laid out above, you and the administration understand which is why you proposed an indemnity fund in last year's budget. Thank you for your thoughtful leadership on this important issue. When considering the specifics of changes proposed this year, we support:

- **Scaled reimbursement** – we believe that it's fair for farmers to have some 'skin in the game' and it isn't necessary that a fund is built to reimburse farmers for 100 percent of losses. We felt that your proposal to scale reimbursements based on the length of time farmers stored their grain was thoughtful, fair, and would be far more protection than the system of bonds
- **Producer funding** – we support producers paying into the fund through a nominal fee assessed on marketed grain. We also believe that seeding the fund with state dollars would be a valuable investment and prudent use of one-time money.
- **Opt-out provision** – last years' proposal included a provision to allow farmers to 'opt out' of the program—reimbursing them the fees they were assessed in exchanged for becoming

ineligible for reimbursement. As you've researched, in other state's this policy has had a limited effect on the overall fund.

- **Penalties and pursuit of repayment** – we support empowering the state to impose criminal penalties on grain buyers who knowingly defraud farmers. We also appreciated the language in last years' proposal that would allow the Attorney General to pursue repayments into the fund from elevator operators and others who are party to the bankruptcy.
- **Additional regulatory changes** – finally, we understand that there are ways we can strengthen our grain buyer laws to prevent failures—and we look forward to engaging constructively to make sure changes work for farmers and small businesses. We are open to discussions on regulatory changes, but do not believe they are an acceptable substitute for the protections provided by an indemnity fund.

Thank you for your leadership on this important issue, the conversations throughout this summer, and the opportunity to submit written comment. I look forward to working with you and members of the working group to create a system that protects farmers. If you have any questions, please contact our Government Relations Director, Stu Lourey, at stu@mfu.org or (320) 232-2047 (C). Thank you for considering the needs and perspectives of Minnesota's farm families.

Sincerely,



Gary Wertish
President, Minnesota Farmers Union

CC: Chair Aric Putnam
Chair Samantha Vang
Commissioner Thom Petersen

ⁱ <https://www.agweek.com/business/bankruptcy-judge-allows-farmers-to-sell-undelivered-grain-in-pipeline-foods-debacle>

ⁱⁱ <https://www.mda.state.mn.us/mda-advises-farmers-ties-global-processing-inc-file-claims>

ⁱⁱⁱ <https://www.desmoinesregister.com/story/money/agriculture/2022/10/26/iowa-organic-soybean-business-loses-state-licenses-files-bankruptcy/69591097007/>



January 1, 2023

Dear MN House and Senate Agriculture Committee Members,

The Minnesota Grain and Feed Association (MGFA) is a 116-year-old non-profit trade organization that represents the interests of the State's grain elevator and feed mill industry. On behalf of our members, I would like to thank you for the opportunity to provide written testimony regarding the Grain Advisory Group and the effort to improve the grain buyer's statute.

At the end of the last legislative session, MGFA and industry members greatly appreciated the decision by the agriculture conference committee to have the Minnesota Department of Agriculture (MDA) reconvene the Grain Advisory Group. Stakeholder input was an important missing piece of the conversation concerning MDA's legislative proposal. While we appreciate MDA's efforts in bringing together the group to discuss an issue with diverse viewpoints, we were disappointed in the narrow scope of participants MDA allowed to partake in the discussion as well as the overall limited opportunities for discussion. For an issue that generates such completely opposing views that could potentially affect current industry practices, we strongly feel that more time could have and should have been dedicated to these discussions.

MDA's report will contain a variety of recommendations discussed by the Grain Advisory group, including the creation of a grain indemnity fund. Although the grain elevator industry is sympathetic to producer losses in an insolvency or bankruptcy situation, from a policy standpoint, the MGFA opposes a grain indemnity fund for a variety of reasons. Establishment of a grain indemnity fund would remove most of the risk from a producer's grain marketing decisions which could encourage a willingness to make riskier choices. Knowing that a pot of money exists to cover a producer in a too-good-to-be-true grain marketing opportunity could inherently cause poor decision making. An indemnity fund would also remove the incentive for producers to do their due diligence when entering a business relationship with grain buyers. It is often advised in the grain industry to "know who you are doing business with." That advice is applicable to both producers selling grain and grain buyers. Finally, at a time when all employers are struggling with inadequate staffing levels, especially in rural areas of our state, the required collection of funds would become added work for the grain industry with no proposed compensation.

Instead of the safety net a grain indemnity fund would provide, the MGFA would prefer a combination of grain program reforms at MDA, a sensible increase to grain bonding levels for grain license holders, an education outreach component, and the promotion of deferred payment contract insurance for producers utilizing voluntary extension of credit contracts as part of their grain marketing program.

Just a few years ago, the Legislature modified the grain buyer statute to require increased financial reporting by grain elevators. Those reports are to be submitted annually to MDA for review. Currently, MDA does not employ staff who are knowledgeable or can effectively interpret a grain elevator's financial reports. Statutorily requiring grain elevators to obtain expensive CPA reviewed or audited financial reports and submit them to MDA when there is a lack of staff to review said financials is illogical and wasteful of the grain industry's time and financial resources. To add insult to injury, with little notice, MDA has also begun financially penalizing any facility that did not provide their financial reports to MDA. Suggestions that the recent reporting reforms have not been adequate to address insolvencies ignores the lack of oversight by MDA in this system. It is imperative that MDA's grain division becomes properly staffed with knowledgeable personnel in a timely manner.

MGFA believes CPA reviewed or audited financial reporting for grain elevators is still a valuable and useful tool when analyzing financial solvency. However, we would like to see further changes made to the reporting threshold or frequency in increased financial reporting for small grain buyers to alleviate both the added cost of the reporting requirements and the ease of finding CPA firms with grain business experience.

Grain surety bonding levels have been identified as being inadequate for today's grain business. In lieu of a grain indemnity fund, MGFA is open to a reasonable stepped-up increase in grain bonding levels, although it cannot be said often enough that the purpose and amount of a grain surety bond is not meant to make any producer whole in the event of an insolvency. Grain surety bonding is a screening process by an independent third-party underwriter that provides a minimum threshold through financial reporting that licensees must attain to participate in the grain business in Minnesota.

MGFA strongly supports some type of educational outreach to producers covering voluntary extension of credit contract risks and responsibilities, grain bonding and deferred payment contract insurance. Too often we hear complaints that producers didn't understand that by signing a deferred payment contract, they were essentially extending credit to the grain buyer, or in an insolvency situation, producers claim they were unaware their credit contracts were not covered by the grain bond (even though it is stated on the contract right above where the producer must sign). While many grain buyers do attempt to educate or notify producers of those pieces of information, a more formal educational program outreach by MDA would be beneficial to producers.

Finally, instead of creating a grain indemnity fund using money from the State's budget surplus and/or taxing all producers selling their grain, individual producers can choose to protect their own grain contracts by purchasing deferred payment insurance through their local grain elevator. At a cost of approximately 1% of a grain contract annually, producers can secure a quick, guaranteed payout of their contracts if an elevator fails to pay on those covered contracts for any reason. This insurance pays out faster to the producer than any grain indemnity fund or grain surety bond and makes the producer 100% whole. Detractors of this option argue that the insurance would be an annual cost to producers and not every elevator would qualify for enough coverage for all their patrons to purchase the insurance. That is true. However, I would challenge them to explain why it is a better scenario that every grain seller must be taxed to guarantee coverage of losses to the few who experience a loss. Not every producer wants to be responsible for another's bad luck or bad decisions.

In closing, thank you again for the opportunity to provide this testimony. We look forward to further conversations with both the MDA and the legislative bodies of this state as we consider ways to strengthen the grain buyer's statute.

With Best Regards,



Laura Lemke
MGFA Executive Director

Vermillion Elevator Inc.
203 Main St. E.
Vermillion, MN 55085
651-437-4439

December 29, 2022

Minnesota Department of Agriculture
Grain Licensing
Plant Protection
625 Robert St. North
Saint Paul, MN 55155

Re: Current Grain Licensing Requirements, & Indemnity Fund.

To Whom It May Concern:

My belief is that an Indemnity Fund and more importantly, Grain Licensing Requirements for Buyers go hand in hand. You cannot add an Indemnity Fund without improving the current Grain Licensing Requirements to bring balance to our industry. The current licensing requirements (Full audits on \$7.5 mil. or greater of annual purchases) are putting smaller grain buyers such as ourselves at a bigger disadvantage. These audits can cost in excess of \$15,000 annually. What happens with these audited financial statements? My understanding is that there is a shortage of qualified auditors to read the financials and there are no laws to enforce or punish a questionable grain buyer. All grain buyers need to be accountable and responsible to our industry, and we need a vetting process that protects all parties fairly. The changes that were made in 2020 did nothing to prevent the Pipeline Foods bankruptcy. They were merely a knee jerk reaction to the Porter & Ashby fallout. It wasn't the State of Minnesota Grain Licensing that failed with Ashby, it was a dishonest manager, a bank that loaned money without confirming the grain (collateral) existed, and the Ashby Board of Directors that didn't question their manager. My Grandfather would say "A lock will only keep an honest person out"

In regards to an indemnity fund for farmers, I believe a fund would be in the best interest of all involved. The current bonding system is antiquated and inadequate to protect a producer in the event of a loss. Bonding is an annual expense with little to show for money spent, and then offers little coverage in the event of a loss. In my conversations with grain buyers large and small, the general consensus is that grain buyers do not want to pay for an indemnity fund. It is important to note that grain buyers do not want to be included with this indemnity fund. We do not want to be charged a fee for selling grain to a larger entity, smaller grain buyers would be put at a disadvantage to larger grain buyers. If the goal is to protect the farmer from a potential loss, then the fee should be collected from the farmer at the "First Purchaser" level. Any fees that would be charged to grain buyers will be passed on to the producer/farmer anyway. So go to the source. Collect from the producer/farmer!

Other states have indemnity funds and my understanding is that they have been effective in protecting the producer/farmer from catastrophic losses. Insurance policies rarely pay 100%, nor should an indemnity fund. Coverage should be higher for cash grain sales, stored grain (80% - 85%?) and less for deferred sales (70%?). I have heard the argument that this is a tax or added expense to the farmer while in reality it is such a small percentage of the producers input. A producer will often insure his or her crop against weather or revenue loss at a cost in excess of \$40.00 per acre annually. What is being proposed is less than a few dollars per acre cost and this is only until the fund is funded. I would think that the indemnity fund would be totally funded in 2 years or less. If our current Deferred Payment position for January 2023 is any indicator, farmers are sitting on a lot of cash. Along with the surplus at the State of MN, now is the time to move forward with this.

Summary:

Create an indemnity fund for Farmers (Exclude Grain Buyers)

Funded by the producer/farmer

Collected at First Purchaser

Fee is % of \$ of Grain Purchased

\$20,000,000. Initial Collection Goal

MN has a \$17.6 Billion Surplus! State of MN invests \$5,000,000.

70% to 85% Protection for Producers/ Farmers in the event of a loss.

\$7,500,000. Minimum fund level.

Amend/Redact current Auditing Requirement on \$7.5 mil. or > grain purchases. Either eliminate it or raise to \$10. mil. Current licensing requirement is a huge burden on small grain buyers. What good is this requirement when the State of MN is unable to process/read the Financial Statements?

We are currently required to submit a Financial Review to the Dept. of Ag for our licensing requirement. Approximate cost of \$3,500. annually. I do not have a problem with this, but spending \$15,000 or more annually for a full audit is wasted money.

Please do not rush into and Indemnity Fund without addressing the current grain buyer licensing issues.

Sincerely,
Gregory J. Ries
Vermillion Elevator Inc.

From: [Tim Waibel](#)
To: [Milanowski, Nicholas \(MDA\)](#)
Subject: Re: Grain Advisory Group YouTube link
Date: Tuesday, November 22, 2022 6:38:26 PM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.jpg](#)
[image004.jpg](#)
[image005.jpg](#)

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I have watched your you tube up date's and think it needs to be totally voluntary if you choose to use the indemnity fund. I feel I work with very strong grain marketing companies. I do have a question as to ownership in a closed coop further processing facility. As owners we assume all the risk and I certainty don't see any need at all for indemnity funds being required for that. Thanks have a great thanksgiving

Sent from my iPhone

On Nov 22, 2022, at 6:28 PM, Tim Waibel <waibel@newulmtel.net> wrote:

I have watched your up

Sent from my iPhone

On Nov 22, 2022, at 4:08 PM, Milanowski, Nicholas (MDA) <nicholas.milanowski@state.mn.us> wrote:

Good afternoon Everyone,
Here is link to the most recent Grain Advisory Group Meeting:
<https://youtu.be/EFzdXGWdA4E>

As a reminder please have written testimony submitted to
Grain@state.mn.us by January 1, 2023.

Thank you!

Nick Milanowski
Fruit, Vegetable & Grain Section Manager
Plant Protection Division
625 Robert Street North

Saint Paul, MN 55155-2538

O: 651-201-6076

C: 612-202-7657

F: 651-201-6108

www.mda.state.mn.us



From: [Mary Waibel](#)
To: [Milanowski, Nicholas \(MDA\)](#)
Subject: RE: Grain Advisory Group YouTube link
Date: Wednesday, December 7, 2022 11:18:59 AM
Attachments: [image001.jpg](#)
[image002.jpg](#)
[image003.jpg](#)
[image004.jpg](#)
[image005.jpg](#)

Hi Nick. I would like you to submit one more comment. I was talking with a group of my fellow farms that were wondering if we go through with a indemnity fund would that make elevators think they can take more risk knowing that losses would be covered by this fund? Please submit these question's. Thanks

From: Milanowski, Nicholas (MDA) <nicholas.milanowski@state.mn.us>
Sent: Wednesday, December 7, 2022 9:50 AM
To: Tim Waibel <waibel@newulmtel.net>
Subject: RE: Grain Advisory Group YouTube link

Tim

Thank you for the feedback!

As I am preparing the required legislative report we are including written testimony to all advisory group participants. Do you want me to include this commentary as formal written testimony in our report?

Nick Milanowski

Fruit, Vegetable & Grain Section Manager

Plant Protection Division

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