
Grain Advisory Group

Report regarding recommendations for financial statements and bonding requirements

02/01/2024

Minnesota Department of Agriculture
Plant Protection Division
625 Robert Street North
Saint Paul, MN 55155
Phone: 651-201-6076
Nicholas.Milanowski@state.mn.us
www.mda.state.mn.us

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Executive Summary

Over the last several months the Minnesota Department of Agriculture (MDA) conducted three stakeholder meetings to discuss and develop recommendations regarding financial statements and bonding requirements. These stakeholder meetings were held virtually with organizations that represent regulated entities. Additionally, a curated group of elevator managers were invited based on nominations from organizations intended to represent them.

Most comments received during these meetings were in support of having some sort of financial report filed with the MDA for entities purchasing grain in Minnesota. Where the group could not agree was who was best able to evaluate and review these reports. Discussion surrounded the financial review offered by sureties when issuing a grain bond versus the MDA reviewing submitted reports.

Sureties evaluate a company prior to the annual issuance of a bond, which may include a financial review, but there is no standard in the industry. The financial screening is dependent on the amount of the bond and varies from one surety to the next based on the likelihood that the surety will be able to recoup the amount of the bond in the event of a failure. Some members of the group praised the marketability of being bonded, others the third-party review of their operation, however neither of those reasons are justification for bonds being a better protection for sellers of grain. While being bonded provides some financial security for failures, the amount of money tied to the bond is minimal when comparing it to the financial protections provided by the indemnity fund and the screening of the bonded company is not guaranteed.

The alternative to the surety reviewing the financial statement was relying on the MDA to complete a review of financial statements as a requirement to licensure. A standard by which the MDA could conduct that review was not offered by this group. There were calls to walk back the strict reporting standards to allow for lesser reports while still including critical financial information. The MDA has received calls since the implementation of the requirement to allow for lesser reports due to availability of qualified accountants and the cost to comply.

Introduction

During the 93rd Legislature (2022 - 2023) language was passed that required the commissioner of the MDA to convene members of the Grain Advisory Group and develop recommendations regarding financial statement and bonding requirements for licensed grain buyers and public grain warehouse operators to better protect farmers who sell and store grain in this state.

The following was the language that passed:

Sec. 141. REPORT REQUIRED; GRAIN ADVISORY GROUP.

The commissioner of agriculture must convene members of the Grain Advisory Group and develop recommendations regarding financial statement and bonding requirements for licensed grain buyers and public grain warehouse operators to better protect farmers who sell and store grain in this state. No later than February 1, 2024, the commissioner must report recommendations to the legislative

committees with jurisdiction over agriculture. Participating stakeholders must be given an opportunity to include written testimony in the commissioner's report.

Background

The Grain Program is a regulatory program within the Minnesota Department of Agriculture. The program issues licenses to entities that buy grain within Minnesota and to facilities that store grain on behalf of others. There are 303 entities that hold 560 licenses to transact grain in the state. The program is directed by Minnesota Statute Chapters 223 and 232 and Minnesota Rules 1562.

The agency has the responsibility of regulating grain buyers and storage facilities in the state as well as investigating and making determinations on 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, with no such valid claims since the fall of 2022 with Global Processing Inc.

The Grain Advisory Group was created following the 2017 closure of Porter Elevator. 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.

Ashby Farmers' Cooperative Elevator closed its doors the fall of 2018 and calls for change were increased due to the \$2.6 million plus in losses experienced by a small farming community. Ashby Elevator differed from previous closures in that the manager was convicted of embezzlement.

These closures in quick succession 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 at the recommendation of the Grain Advisory Group that required financial reporting annually and at least one inspection for all grain license holders. 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, at the time, 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. Financial reporting required entities to file either a Reviewed financial report or, if purchasing over \$5,000,000 in grain, an Audited financial report, both are specific products that can only be conducted by Certified Public Accountants. 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 intent was that between the two requirements the MDA had a clear picture of an entire grain buying enterprise.

Those changes went into effect in 2020, in the meantime, two small elevators and two processors closed their doors, leaving local communities impacted again. Karlstad Farmers Elevator, Buckwheat Growers Association, Pipeline Foods, and Global Processing, Inc. all shut their doors to the surprise of many of their clientele. Karlstad Farmers Elevator payout was the highest in the program's recent history, with the bond covering 17% of the

payout and the remainder paid by the liquidation of company owned grain, reimbursing cash grain sellers 100% of what they were owed. However, 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.

Sellers making claims against Buckwheat Growers Association received roughly 28% of what they were owed with the bond accounting for \$50,000 of the \$61,000 paid. In Pipeline Foods the MDA received over \$5.5 million in claims, the bond in this case paid out \$500,000, or 9% of what producers were owed. Finally, in Global Processing, the entity had just less than two months prior applied for licensure and been issued a bond in the amount of \$50,000. That bond only covered 6.4% of the \$786,500 that was claimed to be lost by producers.

Prior to 2012 the grain program required financial statements from all license holders, these financial statements were allowed to be self-reported. A complete overhaul in 2012 leaned into the screening that sureties and associations were selling as the advantage to bonds. The premise that drove the change was that the sureties would be screening and reviewing financials annually and thus the MDA could downsize in both scope and staff while still licensing, there would be no need to duplicate efforts. The result was that a licensee only had to have a bond on file with the MDA to qualify for a grain license. Since that change it has been explained to the Grain Advisory Group that sureties decide to screen entities based on their risk, when required bond values are low the surety is less likely to screen the bond holder. Meanwhile the required bonds have not changed since 2004, this meant that many licensees have not been subjected to screening on a regular basis and when they were screened, that process was up to each surety. The MDA has received reports of entities having to supply nothing more than the premium payment annually for decades.

Financial reporting requirements went into effect in 2020. For the first two years, the MDA took the approach of education, outreach, and communication through letters sent directly to license holders. In 2022 the program saw 22% of entities fail to submit the required report, which 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. In 2023 that failure rate dropped to 7%, lack of providers and debilitating costs were cited as the reason for failure by offending entities. Since the enforcement of the financial requirements, the MDA has seen nearly 20 entities exit the program citing the cost to comply as the primary reason for exit.

In the 93rd legislature an indemnity fund was established, this created a financial protection for producers that provided a level of financial assurances far exceeding that of bonds. All transaction types are now covered to a certain extent, where before only cash sales and stored grain were covered by bonds. The indemnity fund was created to act as a safety net for producers who go unpaid. With the establishment of the indemnity fund surety bonds are no longer required for most license holders, only entities in their first three years of operation are required to hold a bond in the amount of \$100,000.

Stakeholder Meetings

To develop recommendations and improve protections for sellers of grain, the MDA scheduled two meetings of the Grain Advisory Group in 2023. Meetings were held virtually on September 12 and November 16. 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 a brief 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. The group focused on financial reporting first and then moved to surety bonds. The value of financial reporting was underscored by several participants, however some noted that if the financials are not being evaluated then the requirement should be relaxed. Others mentioned that they appreciate the third party review of their operation that is provided by a surety issuing a bond, and they felt that having a bond was a marketing tool. The MDA was asked to poll other states on their standard for financial evaluation and financial reporting. It was also expressed that a representative of the surety industry should join the next call to weigh in on some outstanding questions.

The second meeting recapped what was discussed in the previous meeting with a summary of what surrounding states require for financial reporting. Financial reporting and bonds were discussed at length again, this time with representatives from the surety and insurance industry available to answer questions. Representatives from industry were able to explain that each surety operates differently, and their evaluation of financial reports is proprietary. It was also explained to the group that the surety is evaluating the company based on the likelihood that the surety will recoup the cost of the bond at the end of the issuance period, typically one year. No clear recommendations or consensus were established during these meetings.

A summary of the meetings talking points was sent to participants and a request for written testimony to be provided by January 17, 2024, in advance of the 94th legislative session.

Written Testimony

The department received six written comments, five of those comments were from members of the advisory group, the last was from the American Property Casualty Insurance Association and the Surety and Fidelity Association of America, these associations attended the second meeting to answer questions related to bonds.

Regarding financial reporting, four comments identified the threshold by which financial reports are required as an opportunity for change. Opinions on where those thresholds should be set varied widely, however all four acknowledged, in some capacity, the burden to complete these reports for grain buyers across the state. The burden for small to medium grain buyers was highlighted as being greater than that of large entities, since those large entities likely need the reports for other reasons, aside from the Grain Buyer license issued by the MDA.

Regarding bonds, three of the six letters were in support of bonding because of the financial screening they may provide. While another contradicted that sentiment in highlighting that the bonds do not offer a consistent or uniform approach to financial screening for all entities. Two of the letters argued against bonding questioning whether bonding serves to better protect farmers.

All written comments are included in Attachment 3.

Conclusion

The advisory group has identified financial reporting as being an important component to the Grain Licensing Program. While there is no clear recommendation on how to change that reporting it was emphasized that the

reporting standards that were implemented in 2019 and modified in 2022 are burdensome and in some cases detrimental to grain buying businesses in Minnesota. The following were offered as solutions to this concern:

- Consider reports other than reviews or audits, smaller entities are struggling to find capable accountants to complete these reports.
- Change the threshold for reporting either using bushels or a much higher dollar value.
- Look to other states, like South Carolina, which allows for a bond in lieu of financial reporting.
- Abolish financial reports and reimplement bonds, leaving financial review to the surety issuing the bond.

Regarding bonds there is no consensus on whether they offer improved protections for farmers selling their grain. For those that spoke in favor of a bonding system, the following comments were made:

- Sureties have a financial screening component when issuing a bond to an entity.
- Bonds offer a 3rd party review of an operation.
- “Licensed and Bonded” instills a sense of trust and security to those selling grain.
- Sureties screen for past convictions and bankruptcies, something the state does not do prior to licensure.
- Bonds are cheaper than the current financial reporting requirements.

For those participants that opposed a reimplementation of the bonding system, they offered the following:

- The screening offered by sureties is not standard, transparent, or guaranteed. The screening is dependent on the perceived risk to the surety in recouping the value of the bond.
- Sureties only issue a bond and are not required to report or identify risk to farmers or the department.
- Producers are under the impression that bonded means covered financially, that is not the case, and the indemnity fund provides that financial coverage better than bonds at most recent scale.
- Bonding may give a false sense of security because many assume financial review is occurring annually for all entities, which is not the case. In some extreme cases no review was conducted for decades.
- The cost of bonds will be passed on to the farmer, prior to the indemnity fund the bonds cost the Minnesota grain industry between \$500,000 to \$2.5 million annually.

The grain advisory group focused heavily on the merits of bonding and financial reporting and did not come to any conclusions on the next steps if either bonding or financial reporting were to change. No opinions were offered on changes to the bonding scale nor whether bonds should cover more transactions than just cash sales. Finally, no metrics were discussed or offered by which the MDA would evaluate financial reports, if the requirement remained in place.

Attachment 1- Meeting Presentation; 9/12/2023



Grain Advisory Group

9/12/2023

1:30-3:30 PM

1) Grain Program Overview

2) Financial Reporting

- History and Current State
- Discussion

3) Bonding

- History
- Indemnity fund and Bonds
- Discussion

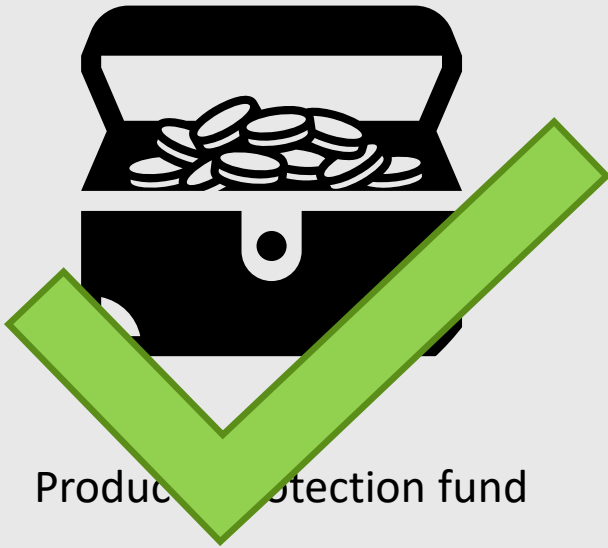
Grain Program Summary

- Designed to help protect grain sellers and depositors from monetary loss if they do not receive payment for grain sold or if grain stored is damaged or lost.
- 565 Licensed locations across 302 entities
- 4 inspectors and 2 office staff- Operating budget of ~\$700k
- \$18B+ in grain purchased last year.
- Governed by MS 223 and 232 and MR 1562.



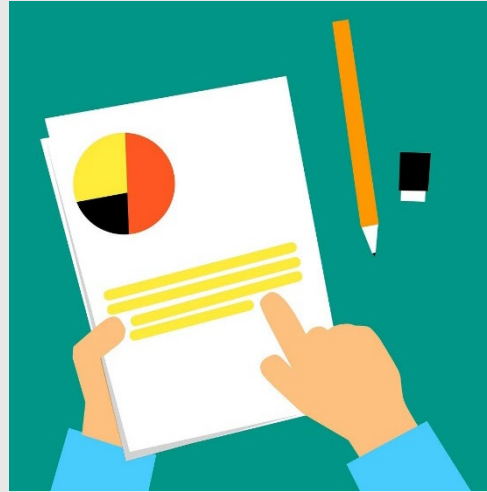
2023 Advisory Group Recommendations

Indemnity Fund



- Product protection fund
- Seek appropriation
- Opt-out is important

Financial Reporting



- Loosen financial requirements
- Allow lesser reports
- Clearly communicated metrics

Current Bond System



- Additional insurance available
- Bonds not serving intended purpose
- Opportunity for education

“Convene members of the Grain Advisory Group and develop recommendations regarding financial statement and bonding requirements for licensed grain buyers and public grain warehouse operators to better protect farmers who sell and store grain in this state.”

Financial Reporting History

- 1982-Financial statements are required “for fixing or changing the bond amount or for any other proper reason”
- 1983-specified that a Compilation report is required
- 2004- Compilation report removed, review or audit listed as only acceptable reports.
- 2005- exemption for 150,000bu or less. Financial statement from any accountant, not just a CPA.
- 2006-Reviewed or audit removed, changed back to compilation.

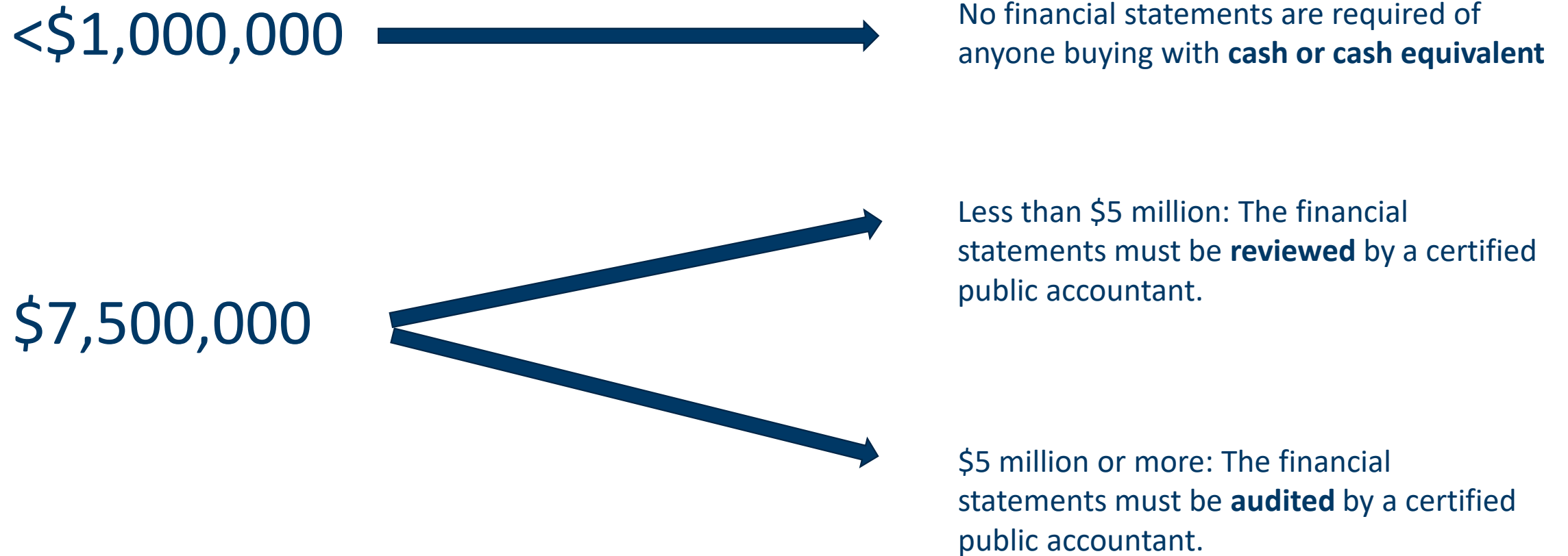


Financial Reporting History

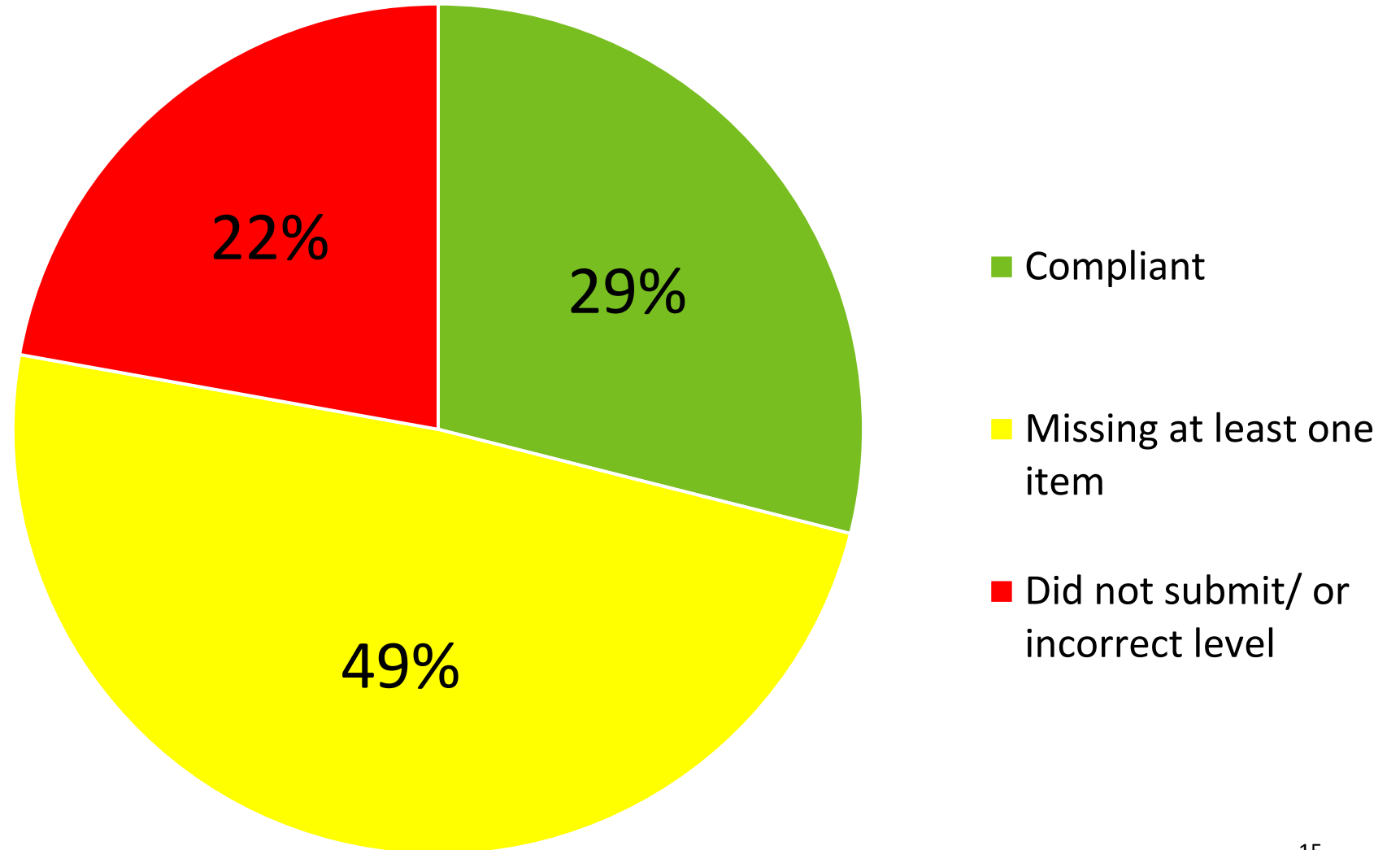
- 2012-Removed “for the purpose” changed “shall require” to “may require”.
- 2019-Must submit review or audit, 150,000bu exemption removed, <\$100,000 exemption for cash purchases . Financial triggers for review vs audit.
- 2022- Financial triggers increased to \$7.5M and \$1,000,000 in cash purchases.



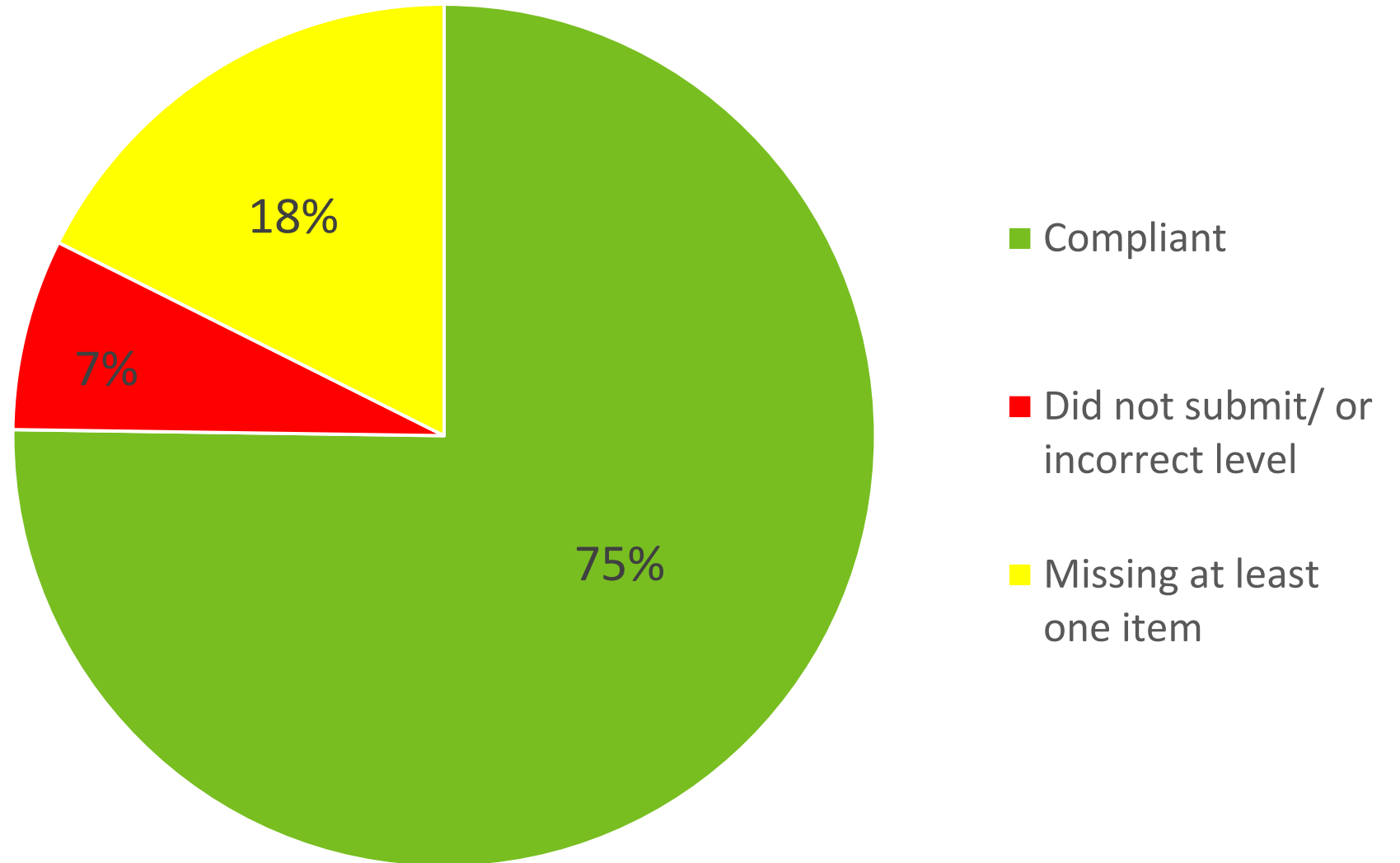
Financial reporting



Financial Reporting 2022



Financial Reporting 2023



Hurdles for compliance

- Cost
 - \$7,500 and up for review
 - \$25,000 and up for audit
- Limited service providers
- Staff to manage requirements for review/audit
- “Don’t need this for any other reason”
- Accountants advising against the financial report for small operations

Discussion

Bond Claim History

- 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)
- Pipeline (\$5.5M in claims, 25 claim, \$500k paid)
- Global Processing (\$784k, 9 claims, \$50k paid)



- Prior to 2023/24 bond requirements for all license holders, now only required for new license holders
- Issued by 3rd party, cost is 1-5% of total value annually.
- \$51M in bonds on file prior to 7/1/23.
- Covered cash sales and stored grain – Not VECC
 - Other products can cover VECC, but wasn't required previously.

Discussion

- Who do we need to contact to get clarity?
- Who will provide a perspective that we don't have here?
- What questions do we have for them?
- What questions are unanswered today that would help with developing a recommendation?

Thank you!

grain@state.mn.us

651-201-6011

Attachment 2- Meeting Presentation; 11/16/2023



Grain Advisory Group

11/16/2023

“Convene members of the Grain Advisory Group and develop recommendations regarding financial statement and bonding requirements for licensed grain buyers and public grain warehouse operators to better protect farmers who sell and store grain in this state.”

September 23rd Meeting Recap

- Cost/ logistics of compliance with financial reporting is prohibitive.
- Financial reporting has created a standard for accounting, and financials can act like a lock on the door.
- MDA is not currently evaluating the financial reports will require additional staff to monitor. But there is value to some sort of financial reporting.
- Burden isn't equitable for small entities, is a ratio a better playing field?



Financial Reporting in other states

	MI	MN	ND	SD	WI
Required financial?	Yes	Yes	Yes	Yes	Yes
Types allowed	A/R	A/R	Internal	A/R	A/R
Reporting frequency	Annual	Annual	Month	Qtr.	Annual
Exemptions	No	Yes	No	Yes	<200kbu
\$ Threshold	N/A	\$7.5M	No	\$5M	2.5Mbu
Bonds required	Net Ast.	New	Yes	Yes	New

September 23rd Meeting Recap



- Bonds and financials are hand in hand.
- Some facilities prefer to have a 3rd party to review their process.
- "Licensed and Bonded" gives the perception of financial screening.
- The bond is a screening tool, but screening is not uniform.
- Does changing levels mean a more in-depth review?
- With bonds no longer required, it created a vacuum of "financial review".

1. What does the bond intend to do? In your terms what are the advantages to a bond? What are the disadvantages?
2. What assurances does the bond provide?
3. Is the bond an endorsement of a company and their financial position?

Questions for sureties

1. What does your company do to review a client?
 - a. Initial review?
 - b. Annual review?
 - c. Are accounting principles/practices reviewed?
2. What financials are required, particularly for small businesses Do you require compilations, audits, reviews, or are FICO, Paynet, D&B, tax statements, and/or client prepared financials acceptable in lieu of financial statements from a CPA?
3. If a client does not meet financial requirements are they automatically disqualified or are there alternatives to receive a bond such as paying a higher rate, adding person guarantors, or putting up collateral?
4. What does your surety review aside from financials?
 - a. Are there thresholds for review? Does a small bond mean less of a review?
5. What does the renewal look like to the grain buyer? Do they need to make statements? Do you conduct on site visits?

Questions for sureties

1. What prompts the denial of the issuance of a bond?
2. Can an aggrieved party hold the surety responsible for the issuance of the bond and a perceived endorsement of their financial position?
3. What protections does the bond offer over and above financial protections?
4. Are there instances where a bond is issued but no payment is made to aggrieved parties by the surety?
5. Talk us through the process of a claim from the sureties perspective?

Questions for sureties

1. Can you cover unsecured creditors?
2. Could the bond be written to only provide coverage to specific parties? Could it cover all unsecured creditors?
3. Is it possible that a surety will make the bond null and void based on failing to perform the duties of a licensed entity?
Therefore making no money available?
4. How does a bond better protect farmers who sell and store grain in the state?

Thank you!

grain@state.mn.us

651-201-6011

Attachment 3- Written Testimony



January 15, 2024

Nick Milanowski
Fruit, Vegetable & Grain Section Manager
Minnesota Department of Agriculture
625 Robert Street North
St. Paul, MN 55155

Dear Mr. Milanowski,

On behalf of the Minnesota Grain and Feed Association (MGFA), which represents the interests of the state's grain elevator and feed mill industry, I want to thank you for the opportunity to provide written comments as MDA prepares its legislative report regarding recommendations for grain bonding & financial reporting.

As you know, the 2023 Legislature, in establishing a grain indemnity fund for producers, took an injudicious approach at the behest of producer groups, small grain buyers and MDA when they eliminated the grain bond requirement for grain license holders (except new licensees). This action has eliminated most financial oversight for Minnesota's grain buyers and storage facilities and does a disservice to both producers and the entire grain industry.

In addition, the grain buyer financial reporting requirements that were instituted four years ago have unsurprisingly created issues for Minnesota grain buyers as well. This requirement has placed a financial burden on small and medium sized operations not only through the added expense of obtaining financial reports but also in the man-power needed to prepare for a CPA review or audit, especially when many facilities are understaffed. Many grain buyers have also complained of the challenges in finding qualified CPAs who are knowledgeable and experienced in the grain business.

As we move toward the start of the 2024 Legislative session, MGFA feels it is vitally important to restore the grain bond program to re-establish financial supervision of the grain industry and adjust the grain buyer financial reporting requirements. MGFA supports the following changes:

- Increase grain bond amounts to a level more in line with today's grain business, thereby ensuring more underwriting by surety companies and a higher level of scrutiny of the financial stability of license holders.
- MDA should institute a minimum rating allowance for surety companies to determine a surety's financial strength and their ability to pay on bond claims.
- Allow bond payouts to cover secondary grain seller claims and other unsecured creditors instead of replenishing the grain indemnity fund or paying producer claims.
- Increase the financial reporting threshold from \$7,500,000 to \$20,000,000.

- Either require MDA to staff the grain program with personnel experienced in reviewing financial reports or repeal the financial reporting requirement entirely and allow surety companies to shoulder the risk by analyzing a licensee's financial reports and other supporting documentation (bank agreements, insurance certificates, etc.).

In closing, thank you again for the opportunity to provide written comments for the legislative report. We have appreciated the discussions through participating in the Grain Advisory Group and look forward to working together on these important issues.

Sincerely,



Laura Lemke
MGFA Executive Director

1/17/2024

Minnesota Department of Agriculture
Attn: Grain program – Nick Milanowski

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

I was a member of the Grain Advisory Group in 2022 that contributed to the report issued from MDA on 2/15/2023 to the Minnesota legislature, that ultimately recommended the establishment of a Minnesota Grain Indemnity Fund, to protect farmers from grain buyer defaults in Minnesota. The report provides a detailed history of the problems with the previous system of relying on bonds to protect Minnesota farmers when a grain buyer defaults on payments to farmers. I've attached the link below for reference to the complete report.

<https://www.lrl.mn.gov/docs/2023/mandated/230446.pdf>

If you read the entire report, it is very clear, that the previous system of relying on bonds was inadequate to protect our Minnesota farmers when a grain buyer failed to pay the farmer for any reason.

I served as a member of the Grain Advisory Group in both 2022 and in 2023. In both years, we had several discussions about the perception that farmers have about a bonded grain buyer. Obviously, from the 2023 testimony in the House and Senate, by the farmers who were paid little or nothing in settlements with bond companies and bankruptcy court, since 2015, the facts were clear that the previous system of relying on requiring bonds for grain buyers, was a broken system!

In 2023, the Minnesota legislature passed the Grain Indemnity Fund and Governor Walz signed it into law. As of July 1, 2023, all Minnesota farmers are now significantly more protected with the Grain Indemnity Fund in place than they were with the previous bonding requirements. I've put together a table that I believe shows the significance of the Grain Indemnity Fund protection versus the previous bonding requirements protection. This is my interpretation. You can go to the link below to see the actual statute for your own assessment of the difference in protection/payments to farmers. The link is the full statute and the Grain Indemnity Fund section is found under 223.24.

<https://www.revisor.mn.gov/statutes/cite/223/full>

Timeframe days	protection/payout	Grain Indemnity Fund	Protection/payout	Bonds
30 days	cash sale	100%	cash sale – 23 Report Estimate	11%
31-180	cash sale	100%	cash sale	0%
31-120	deferred/delayed up to \$300,000 price established	100%	deferred/delayed up to \$300,000 price established	0%
31- 120	deferred/delayed up to \$750,000 price established	75%	deferred/delayed up to \$750,000 price established	0%

31-180	deferred/delayed lesser up to \$750,000 or 75% no price established	75%		deferred/delayed lesser up to \$750,000 or 75% no price established	0%
181- 540	\$500,000 or lesser of 50%	50%		\$500,000 or lesser of 50%	0%
541-1080	\$250,000 or lesser of 25%	25%		\$250,000 or lesser of 25%	0%
36 months	Claim eligible	0%		Over 36 months	0%

Note: This chart is in days based, on 30 days/month on the average. The statute references months, which could have a couple days difference than this chart depending on the start day of the contract.

During the Grain Advisory Group meetings in 2023, there was some discussion brought up again about bonds. The requirement for bonds was replaced with the Grain Indemnity Fund in 2023, and the chart above clearly shows the reason why in my opinion. I see no logical reason why we would go back and implement a bond requirement after we just established the Grain Indemnity Fund that addresses the inadequacies of the previous bond requirement as regard to payments to farmers.

There were concerns raised about bad actors abusing the system, which seems to me as a misinformation/disinformation issue, because the grain buyer who files bankruptcy is never off the hook because of the Grain Indemnity Fund. The fund doesn't pay that grain buyer a penny. The Grain Indemnity Fund pays the farmers who previously were paid pennies on the dollar for their loss. The State of Minnesota then goes after the bad actor to recover what is recoverable.

In further discussions by the 2023 group, it was noted again from the 2023 report referenced in paragraph one of this letter, that the additional regulatory requirements for financial reviews and audits, previously enacted in statute, were not working as a mechanism to detect protentional grain buyer failures. The discussion also included the fact that there will always be a significant delay in when the department receives the financial documents based on income tax filing, and also the fact that there is not a mechanism in place to review them, or a metric to act on the findings. It was also discussed that through our history going back to 1982, MDA has at times required a financial statement or review. However, for a majority of the time from 1982 through 2022, a compilation, or no documents were required.

The committee also discussed the cost to the grain buying industry, which is without question passed on to the farmer, at approximately 4.5 million dollars per year since the last financial reporting requirements were implemented. Now that the Grain Indemnity Fund is in place and providing the much-needed protections for farmers, I would recommend that the financial burden of requiring reviews or audits for businesses with annual purchases under 5 million dollars submit their Federal Tax returns. In addition, those business over 5 million dollars in purchases, but under 10 million dollars in purchases, submit a compilation to MDA. MDA could request that any business that is required to complete a review or audit submit the same information to MDA, not adding additional expense to their business, and ultimately saving money for the Minnesota farmer.

Respectfully,

Jim Falk

Jim Falk

January 17, 2024

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 evaluating and developing recommendations regarding financial statements and bonding requirements for licensed grain buyers and public grain house operators.

In the last few years MDA and the legislature have responded to several grain elevator collapses that occurred due to fraud or financial mismanagement. In 2019 several new financial reporting requirements were put in place and in 2023 a grain indemnity fund was created, giving producers' assurance that they would be protected if they found themselves in a situation where an elevator became insolvent.

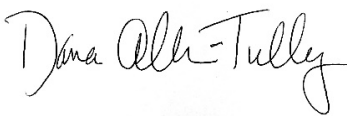
As a part of the grain advisory group's discussions around bonding and financial requirements we would ask the MDA to consider the following:

- Reinstate bonding requirements as an additional financial screening mechanism.
- Change the financial reporting threshold to a unit of measurement such as bushels, to avoid the market value determining when a buyer must submit an audited financial statement.
- Provide MDA with the staffing required to thoroughly evaluate submitted financial statements.
- Increase transparency of financial reports and increase penalties for the falsification of financial data.
- Increase penalties for operating without a grain buyer's license.

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 that reads "Dana Allen-Tully". The signature is written in a cursive, flowing style.

Dana Allen-Tully
President
Minnesota Corn Growers Association

Nicholas,

I am responding to the grain advisory group report.
This is from the notes provided to us this year.

Financial Statements:

- Financial Statements are a burden on Small and medium sized companies. Not just the crippling cost but also the work that goes into preparing for them.
- Finding qualified CPAs is difficult.
- Entities do not need this level of financial for any other portion of their business
- Large entities are able to comply and this was a very small change from their business practices prior to the change.

I agree with this 100%. These same issues listed below were brought up last year and not addressed.

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 metrics by which the entities are evaluated are established, they should be clear and clearly communicated to license holders.

Sincerely

Greg Mikkelson

Owner/CEO

Grain Commerce of Southern Minnesota, Inc.

Lake Crystal MN

Nick Milanowski
Fruit, Vegetable & Grain Section Manager
Plant Protection Division
625 Robert Street North
Saint Paul, MN 55155-2538

Dear Mr. Milanowski,

Thank you very much for allowing us to provide feedback regarding grain elevator bonding and associated questions and concerns that have arisen during the Indemnity Fund's implementation. We strongly believe that a hybrid indemnity fund and elevator bond model suits Minnesota well and wish to continue work with MDA staff and stakeholders to ensure we tailor the best solution for everyone.

After considering MDA and stakeholder questions and concerns, we have reviewed the South Carolina grain elevator bond and indemnity law and believe it can work for Minnesota.

A hybrid approach, combining the financial expertise of a surety company with the financial backstop of an indemnity fund, is a very reliable solution. We believe the surety prequalification process inherent in a bond requirement, including an informed financial review, is a vital part of helping to ensure that grain elevator operators are able to satisfy their obligations. After the bond is placed, the surety's ongoing financial monitoring and ability to assist in times of crisis can help prevent a default or insolvency. Although no mechanism can fully eliminate the possibility of insolvency, bond requirements do substantially reduce this risk.

We are available to answer any questions you may have. We look forward to continuing to work with you.

Sincerely,

Adam Brackemyre
VP, Government Affairs
SFAA

Brooke Kelley
Assistant Vice President
APCIA

January, 2024

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

RE: Written Testimony for Grain Advisory Group, Comments on Add. Bonding, Reporting

Dear Mr. Milanowski:

On behalf of Minnesota Farmers Union (MFU), I appreciate the opportunity to comment on the issue of bonding and financial reporting to better protect farmers selling and storing their grain in Minnesota. This is an important topic, and we appreciate your team's thoughtful work on it.

First, I want to thank you for your historic work to create a grain indemnity fund last session. For years, we heard devastating stories from farmers who were hurt by a broken system that failed to protect farmers. We are grateful that we've now joined 14 other grain producing states in creating a grain indemnity fund that will provide meaningful protection to farm families into the future. We believe this program will be an enduring legacy of the 2023 session and Commissioner Petersen's tenure at the Department.

Second, I'd like to share our skepticism that additional bonding requirements will complement the grain indemnity fund, providing additional protection to farmers who sell grain. I think a couple points are important:

- **Current law retains bonds where they're helpful.** With the creation of the indemnity fund, the legislature replaced most bonds. However, they maintained bonding for entities in their first three years of operation and as required by the Department. In the Grain Advisory Group, we heard that bonds are a helpful additional "screening tool" and current law already employs them as such. Furthermore, if MDA feels that requiring a bond would add accountability for a company that is suspected of placing producers at risk, they can require it under current law.
- **Bonds don't guarantee meaningful financial review.** Despite claims from proponents, your team and the Grain Advisory Group has received reports that bond companies don't consistently or uniformly conduct financial reviews. Furthermore, when reviews are conducted, they're not necessarily evaluating the grain buyer's financial health as it's meaningful to a farmer selling grain. Instead, a company can issue a bond after determining that they will be able to recoup their bond amount in the event of a failure.
- **Bonds don't guarantee action to mitigate risk.** If risks are identified by a bond company, it is unclear what meaningful action they can take to protect farmers. Companies could deny

a bond for a future year, but that will likely be too late. And even if a company does deny a bond, the grain buyer can still shop around for other places to purchase their bond and comply with any requirement. There is no provision for bond companies to report concerns back to the Department. This is where bonds make sense as a screening tool for new entities, but don't for ensuring the long-term sustainability of established grain buyers.

- **Bonds give a false sense of security**, which could lead to riskier behavior. When an entity shares that they're bonded, farmers assume an additional level of protection that doesn't exist. This could lead to riskier choices on the part of sellers and less attention paid by board members.
- **Farmers pay for bonds**, albeit indirectly, through costs passed on by grain buyers. While a 'belts and suspenders' approach could seem attractive, with their many drawbacks, it does not seem worthwhile for farmers to pay for bonds.

If additional bonding requirements are considered, current law should be retained around the bonds replenishing the indemnity fund in the event of a failure. Any attempt to roll back the protections provided through the indemnity fund would be a definitive step backward and place producers at risk.

We look forward to conversations about how the Department could provide more meaningful financial review of licensed buyers. We believe the state needs to balance the burden mandated financial reports place on smaller buyers with the comparative risk they pose to farmers and the indemnity fund. And we agree that required financials should be reviewed, at least periodically or based on complaints.

Thank you for your leadership on this. Farmers are better protected due to your diligent work these past years. 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,

A handwritten signature in black ink, appearing to read "Gary Wertish". The signature is fluid and cursive, with a large initial "G" and a stylized "W".

Gary Wertish
President, Minnesota Farmers Union