

The Texas Department of Agriculture (the department) adopts amendments to <*> 13.7, related to grain warehouse fees, without changes to the proposal published in the March 12, 2010, issue of the *Texas Register* (35 TexReg 2105). The department administers a grain warehouse program to license and inspect businesses that store grain for producers and other grain depositors. Annual inspections are conducted at each licensed facility to ensure the warehouse is maintaining the proper quantity and quality of stored grain for depositors, as well as to ensure adequate recordkeeping and compliance with regulations adopted under Chapter 14 of the Texas Agriculture Code. These amendments are adopted to recover the cost of hiring additional staff to enable the program to provide greater protection for grain depositors by reducing the risk of a warehouse failure through increased financial auditing of state licensed grain warehouses.

The proposed change to <*>13.7 increases fees for an annual inspection and requested inspections from \$12 to \$15 per 10,000 bushels or a fraction of 10,000 bushels of the licensed storage capacity, or \$100, whichever is greater.

The department received eleven comments on the proposal. Comments were submitted by the Texas Grain & Feed Association, Dalhart Consumers Fuel Association, Inc., Texas Agricultural Cooperative Council, Texas AgFinance, First Victoria National Bank, South Texas Cotton and Grain Association, Texas Farm Bureau, Texas Corn Producers Board and Corn Producers Association of Texas, Texas Wheat Producers Association, and Blackland Cotton & Grain Association.

Eight comments received were in support of the proposed rule. Three commenters indicated that while producers may ultimately bear the cost of the inspection fee increases, the potential benefit to the producer outweighs the marginal increase in costs. One commenter indicated the implementation of additional staff to increase financial auditing of state licensed grain warehouses is necessary and long overdue.

Comments in support of the proposal also offered additional recommendations outside of the scope of the proposal to include: 1) increasing the bonding requirement and to place additional attention on inspections; 2) requiring higher quality financial reporting and stronger internal control of licensed grain warehouses; 3) revising the current grain inspection methods to assure all grain inventory represented by the warehouse facility is present; 4) making changes in the oversight process to detect shortages of stored grain and changes in elevator asset ratios before a failure occurs; and 5) alternating elevator auditors on a biennial basis in order to provide better transparency and clarity in a volatile market.. The department will take these recommendations under consideration for future rulemaking and/or program process improvement. The department has established a grain warehouse task force to review the regulatory structure and authorities of the program. Comments submitted will also be provided to the task force for review.

Three comments were received in opposition to the proposal. One commenter recommended a graduated approach to the fees or utilizing other appropriations. The department does not agree with this comment because the increased service level was appropriated to the department by the Texas Legislature on a fee-recovery basis. One commenter indicated that license and inspection fees required to obtain a license in Texas will exceed those required by the U.S. Department of Agriculture (USDA) at the 2 million bushel (capacity) level. Two commenters indicated that the increase in fees may encourage some warehouses to move from registration with the state to a federal registration, further lowering grain warehouse revenues. The department recognizes that a state licensed facility does have the option to seek and operate under a USDA federal grain warehouse license. However, a decrease in the number of state issued grain warehouse licenses does not eliminate the need for increased financial auditing of state issued grain warehouse facilities, which the increased inspection fees will support. The department will make necessary adjustments in inspection resources to achieve cost recovery of the program, if a decrease in the number of licensed facilities is experienced after adoption of the rule. One commenter indicated that these additional monitoring services will not prevent theft and fraud. The department agrees there is no single effort that will entirely eliminate the abuse of grain depositors by some grain warehouses. However, the department has received strong producer encouragement and legislative direction to increase these services as a measure to minimize the abuse. One commenter expressed the opinion that increased fees will not deter problems with grain warehouse failures. The department agrees and reminds that the fee increase is to fund additional monitoring, which will help deter grain warehouse activity that may lead to failure and/or fraud against the depositors of grain in those warehouses.

Another comment in opposition to the proposal indicated support for a thorough examination of the current program to identify the options that might instead be more effective in strengthening the program. The department has established a grain warehouse task force to review the regulatory structure and authorities of the program, with the goal of developing recommendations to improve the effectiveness of the program. The department recognizes that changes made by the proposal will strengthen program effectiveness and serve as an integral component of other potential changes that may be identified. The weak economy, depressed agricultural commodity markets, and the extremely tight margins on grain sales can be factors that increase the risk to grain depositors, which the department intends to mitigate through the implementation of a risk-based auditing program. The department has focused its inspections on inventory of grain and audits of grain transactions in the past and will continue to do so. The increased inspection fee will fund audits that will focus on the financial viability of the grain warehouse through verification of assets and liabilities.

The amendments are adopted under the Texas Agriculture Code (the code), <*>14.015, which provides the department with the authority to adopt rules necessary for the administration of requirements and procedures for the operation of a grain warehouse; Code <*>14.023, which provides the department with the authority to provide by rule for an annual license fee for a grain

warehouse license and Senate Bill 1,. Appropriations Act, 81st Legislature, at Article VI, Rider 20, which requires the department to raise the cost of fees in an amount sufficient to cover the cost of new staff to implement the grain warehouse program.

<*>13.7. Fees.

(a) Single warehouse license. The annual and renewal fee for a single grain warehouse license is \$150.00.

(b) Combination warehouse license. The annual and renewal fee for a combination grain warehouse license is \$150.00 for the headquarters location and \$100.00 for each additional facility location.

(c) Proration of fees. Initial application fees shall be prorated based on the remaining months of the license year.

(d) Inspection fees. The fee for an annual inspection is \$15.00 for each 10,000 bushels or a fraction of 10,000 bushels of the licensed storage capacity, or \$100.00, whichever is greater.

(e) Requested inspections.

(1) The fee for an inspection to increase or decrease licensed storage capacity including temporary storage is \$15.00 for each 10,000 bushels or a fraction of 10,000 bushels of the increase or decrease in storage capacity, or \$100.00, whichever is greater.

(2) The fee for a partial inspection is \$15.00 for each 10,000 bushels or a fraction of 10,000 bushels of the partial facility that is being inspected, or \$100.00, whichever is greater.

(3) A partial inspection that covers issues other than capacity will have a fee of \$100.00.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State, on April 16, 2010