ILLINOIS DEPARTMENT OF AGRICULTURE

NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Grain Code

2) Code Citation: 8 Ill. Adm. Code 281

3)

Section Numbers:	Proposed Actions:
281.7	Amendment
281.40	Amendment
281.50	Amendment
281.65	Amendment

4) Statutory Authority: Implementing and authorized by the Grain Code [240 ILCS 40].

5) A Complete Description of the Subjects and Issues Involved: These amendments add to the current required records, a grain inventory accountability report. The amendments add an electronic priced later contract and the details of the requirements for an electronic priced later contract.

6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None

7) Will this rulemaking replace any emergency rulemaking in effect? No

8) Does this rulemaking contain an automatic repeal date? No

9) Does this rulemaking contain incorporations by reference? No

10) Are there any other proposed rulemakings pending on this Part? No

11) Statement of Statewide Policy Objectives: This rulemaking does not create a State mandate.

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: A 45-day written comment period will begin on the day the Notice of Proposed Amendments appears in the *Illinois Register*. Please mail written comments on the proposed rulemaking to the attention of:

Brian Navarrete
Illinois Department of Agriculture
State Fairgrounds, P. O. Box 19281

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Springfield, IL 62794-9281

(217) 557-6660
(217) 785-4505 (fax)

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: The amendments will impact grain dealers and warehouseman licensed by the Illinois Department of Agriculture. It will not have a direct impact on small municipalities or unlicensed not for profit corporations.

B) Reporting, bookkeeping or other procedures required for compliance: Grain companies will now be required to maintain a grain inventory accountability report.

C) Types of professional skills necessary for compliance: None

14) Small Business Impact Analysis:

A) Types of businesses subject to the proposed amendments:

11 Agriculture, Forestry, Fishing and Hunting

B) Categories that the agency reasonably believes the rulemaking will impact, including:

viii. record keeping

15) Regulatory Agenda on which this rulemaking was summarized: January 2022

The full text of the Proposed Amendments begins on the next page:

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TITLE 8: AGRICULTURE AND ANIMALS
CHAPTER I: DEPARTMENT OF AGRICULTURE
SUBCHAPTER k: GRAIN

PART 281
GRAIN CODE

Section
281.5 Purpose
281.7 Definitions
281.10 Right of Examination, Working Conditions and Examination Levels
281.20 Licensing: Application, Fees and Financial Ratios
281.30 Required Insurance
281.40 Required Records
281.50 Price Later Contracts
281.60 Warehouse Receipts
281.65 Electronic Document Providers
281.70 Types of Storage
281.80 Failure; Claims; Liquidation
281.90 Miscellaneous
281.100 Severability

AUTHORITY: Implementing and authorized by the Grain Code [240 ILCS 40].

SOURCE: Adopted at 20 Ill. Reg. 5499, effective April 1, 1996; expedited correction at 20 Ill. Reg. 9585, effective April 1, 1996; amended at 21 Ill. Reg. 5526, effective April 22, 1997; amended at 33 Ill. Reg. 1647, effective January 16, 2009; amended at 46 Ill. Reg. _____, effective _____.

Section 281.7 Definitions

"Central Filing System" or "CFS" means an electronic system operated and maintained by a provider where information relating to warehouse receipts, electronic price later contracts and other electronic documents is recorded and maintained in a confidential and secure fashion independent of any outside influence or bias in action or appearance, and that is authorized by the Director.

"Code" means the Grain Code [240 ILCS 40].

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"Department" means the Illinois Department of Agriculture.

"Director" means the Illinois Director of Agriculture, or the Director's designee.

"Electronic Document" means a document that is generated, sent, received, or stored by electrical, digital, magnetic, optical electromagnetic, or any other similar means, including, but not limited to, electronic data interchange, electronic mail, telegram, telex, or telecopy.

"Electronic Price Later Contract" or "EPLC" means a price later contract that is issued, transmitted, and stored in the form of an electronic document.

"Electronic record" means a record created, generated, sent, communicated, received, maintained, or stored by electronic means as set forth in the Uniform Electronic Transactions Act.

"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record as defined in the Uniform Electronic Transactions Act.

"Electronic Warehouse Receipt" or "EWR" means a warehouse receipt that is issued or transmitted in the form of an electronic document.

"FSA" means Farm Service Agency under the United States Department of Agriculture.

"Holder", with respect to an electronic warehouse receipt or any other electronic document, means a person in possession in fact or by operation of law.

"Licensee" means a grain dealer or warehouseman who is licensed by the Department and a federal warehouseman that is a participant in the Illinois Grain Insurance Fund.

"OSFM" means the Office of the State Fire Marshal of Illinois.

"Price Later Contract" means a contract, in written or electronic form, for the sale of grain whereby any part of the purchase price may be established by the seller after delivery of the grain to a grain dealer according to the pricing formula contained in the contract. Title to the grain passes to the grain dealer at the time

of delivery. The precise form and the general terms and conditions of the contract shall be established by rule.

"Provider" means a disinterested third party that maintains one or more confidential and secure electronic systems independent of any outside interference or bias in action or appearance and that is authorized by the Director to be a provider.

"Provider Agreement" means the document and any amendment or addenda to an agreement executed by the provider and FSA or USDA pursuant to 7 CFR 735 that sets forth the provider's responsibilities concerning the provider's operation or maintenance of a CFS.

"Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures as defined in the Uniform Electronic Transactions Act.

"USDA" means United States Department of Agriculture.

"User" means an entity that uses a provider's CFS.

"Warehouse" means a building, structure, or enclosure in which grain is stored for the public for compensation, whether grain of different owners is commingled or whether identity of different lots of grain is preserved.

"Warehouse Receipt" means a receipt for the storage of grain issued by a warehouseman. [240 ILCS 40/1-10]

(Source: Amended at 46 Ill. Reg. _____, effective _____)

Section 281.40 Required Records

a) Daily Position Record

1) A daily position record means a written or electronic document that is maintained on a daily basis for each commodity. Postings for each day

shall reflect actual changes in inventory for that business day. The daily position record shall provide for a separate accounting for the following:

A) Summary stock record showing total bushel amount of grain received, grain loaded out of the warehouse, adjustments, total grain inventory in the warehouse, redeposited grain and total of the grain inventory in the warehouse plus redeposited grain.

B) Negotiable warehouse receipts obligations, total bushels covered by receipts issued and total bushels covered by receipts cancelled.

C) Non-negotiable warehouse receipts obligations, total bushels covered by receipts issued and total bushels covered by receipts cancelled.

D) Non-receipted storage obligations including total bushel increases and total bushel decreases.

E) Non-receipted company owned grain.

F) Inventory bushel adjustments to the daily position record as set forth in subsection (a)(2).

2) Warehousemen may make adjustments to their inventory as long as documentation is available to substantiate the following types of adjustments:

A) Adjustments to shrink calculations;

B) Adjustments for error correction;

C) Adjustments based upon certified public accountant inventories;

D) Adjustments based upon weighed inventories.

3) Licensees must maintain a master daily position record combining all locations, inventory and storage obligations in the case of multiple locations.

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4) Actual grain inventories must at all times be in balance with the summary stock quantity as indicated in the daily position record.

b) Long/Short Position Record
Each grain dealer shall maintain a master long/short risk position record, as either a written or electronic document, that combines all marketing activity of all locations each business day. The risk position record shall at a minimum contain the net position; grain owned; grain sold and shipped on price later contracts that have not been priced; open cash purchase contracts, including purchase contracts issued and purchase contracts cancelled; all futures purchased or sold; grain in transit not sold; grain owned and stored in other grain warehouses; grain purchased and received on price later contracts that have not been priced; open cash sales contracts, including sales contracts issued and sales contracts cancelled; and any options purchased or sold. The position record shall also contain a comments section. The grain dealer shall note in the comments section any actions taken to regain a balanced position as required in Section 10-10 of the Code. The comments shall, at a minimum, indicate bushel amounts, name of buyer/seller/broker and approximate times of transactions.

c) Scale Tickets

1) Scale tickets shall be pre-numbered by an independent printer, or, in the case of computer generated scale tickets, numbered consecutively by the computer recordkeeping system.

2) Scale tickets shall be issued in numerical sequence. All scale tickets must be accounted for numerically either by paper or electronic documentation. A separate series of scale tickets shall be used for each location that has scales under the licensee's control over which grain is received.

d) Cross-reference
All accounts and records relating to grain operations are to be properly cross-referenced. An adequate system of cross-reference shall exist beginning at the time of delivery, clearly indicating the current status of the grain and changes in that status, and indicating the final disposition of the grain.

e) Settlement and/or Receiving Sheets
Settlement and/or receiving sheets shall either be pre-numbered by an independent printer or, in the case of computer generated sheets, numbered

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consecutively by the computer recordkeeping system. The licensee shall use settlement and/or receiving sheets in numerical sequence and account for all settlement and/or receiving sheets either by paper or electronic documentation. Settlement and/or receiving sheets shall contain evidence of the method of settlement, such as check number, warehouse receipt number, or other evidence of settlement. Settlement and/or receiving sheets, both open and closed, shall be filed in a manner to be readily available for examination purposes, such as alphabetical or numerical. If price later contracts are used, the settlement/receiving sheets shall clearly indicate the price later contract numbers against which grain is to be applied.

f) Safeguarding and Retention of Records
The licensee shall provide a secure place at each licensed location and at the principal office for storage of all records pertaining to the operation of the licensee. The records shall be kept current and made available for inspection by Department personnel at the principal office of the licensee and at each licensed location. The records shall be retained by the licensee for a period of not less than 2 years from the closing date of any transaction.

g) Grain Inventory Accountability Report
A grain inventory accountability report means a written or electronic document that is maintained monthly for each commodity with an option to forgo one month's measurement per calendar year. The monthly grain inventory accountability report shall provide for a separate accounting for the following:

1) The total grain inventory contained within each licensed storage structure.

2) The bin worksheets signed by the individual who collected the data provided on the bin worksheets.

3) The inventory calculations derived from the data provided in the bin worksheets.

4) A monthly comparison of the total grain inventory accountability report of each commodity to the daily position record of total stock of that same commodity.

(Source: Amended at 46 Ill. Reg. _____, effective _____)

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Section 281.50 Price Later Contracts

a) Prescribed Form
A price later contract executed between a licensee and a producer shall be on a prescribed form that has been approved by the Department. A licensee may issue a price later contract by way of a written price later contract document, an EPLC, or both. All price later contracts~~The prescribed form~~ shall include, but need not be limited to, the following information:

1) The legal name and address of the licensee;

2) The legal name of the seller;

3) The bushel amount of grain to be covered by the contract;

4) The grade and commodity of grain to be covered by the contract;

5) The dates of delivery of the grain to be covered by the contract;

6) The method of pricing;

7) A section to indicate service charges, advances or other terms;

8) The following statements:

A) Title to the grain covered by this contract passes to buyer at the time of delivery.

B) Buyer is required to maintain grain assets and price later, storage and drying service charges equal to 90% of its price later obligations.

C) Price later grain is not stored grain for the seller. In the event of a failure, the contract is the basis for a grain dealer claim. The maximum coverage afforded by the Illinois Grain Insurance Fund is 85% of valid grain dealer claim amounts up to a maximum of $250,000 per claimant. The maximum payment per claimant covers all contracts that in any way can be related or tied to a person or entity, whether in full or in part.

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D) This contract shall cease to be the basis of a valid claim, and seller shall not be entitled to any recovery:

i) When both the date of completion of delivery and the date of pricing of the grain are in excess of 160 days before the date of failure;

ii) If the later of the date of execution of the contract or the date of delivery of the grain covered by the price later contract occurred more than 365 days before the date of failure (The phrase "the later of the date" means the date closest to the date of failure, and the phrase "date of delivery" means the date of the last delivery of grain to be applied to the quantity requirement of the price later contract.);

iii) If the claim is based upon or acquired by fraudulent or illegal acts of the seller.

E) The execution of subsequent price later contracts for the grain previously covered by a price later contract shall not extend coverage of a claim beyond the original 365 days.

F) The contract must be signed by both parties within 30 days after the last date of delivery or, if an EPLC is used, the EPLC must be maintained as an electronic record containing electronic signatures and security procedures for both parties within 30 days after the last date of delivery. If the contract is not signed by both parties within 30 days after the last date of delivery or if the EPLC is not maintained as an electronic record containing electronic signatures and security procedures for both parties within 30 days after the last date of delivery, then ~~or~~ the grain will be priced at the market price of the grain at the close of the next business day after the 29th day.

G) Within 5 business days after the seller selects a price for all or any part of the grain represented by the price later contract, the buyer

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shall settle and mail to the seller full settlement for the priced grain;

9) A section indicating the signature, electronic or otherwise, and date of signature for both the seller and buyer's representative;

10) The ~~reverse of the~~ contract shall contain a schedule of settlements and basis activity for the grain to be covered by the contract.

b) Electronic Price Later Contracts

1) An EPLC issued in accordance with the Code and this Part shall not be denied legal effect, validity, or enforceability on the grounds that the information is generated, sent, received or stored by electronic or similar means.

2) If a grain dealer licensed under the Code elects to issue EPLCs and the producer prefers a written price later contact, the grain dealer shall cancel the EPLC and reissue a written price later contract. The reissuance of a price later contract does not extend the coverage afforded by the Illinois Grain Insurance Fund.

c~~b~~) Printing

1) A price later contract shall be written or in electronic format and shall be issued~~printed~~ by a person authorized by the Department to issue~~print~~ those contracts. The Department shall authorize persons to issue~~print~~ price later contracts if they are issued~~printed~~ in accordance with the Code and this Part and if they have registered in accordance with Section 10-15 of the Code.

A) All price later contracts shall be:

i) Issued~~Printed~~ only for licensees.

ii) Numbered consecutively either at the time of printing or through the control of a computer generated system.

B) A complete record of contracts issued~~printed~~ shall be retained ~~by~~

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~~the printer~~ for 6~~5~~ years, showing for whom issued~~printed~~, the number issued~~printed~~, and the consecutive numbers that were issued~~printed~~ on the contracts.

2) Authorized printers shall notify the Department of the number of price later contracts printed, when they were printed, for whom they were printed and the consecutive numbers printed on the contracts.

d~~e~~) Separate Series
Each location at which price later contracts are issued shall have its own identifiable series of price later contracts.

e~~d~~) Requirements for Use of Price Later Contracts

1) Only one commodity per contract.

2) The bushel quantity of a price later contract shall not be increased.

3) Price later contracts are to be executed with the original copy or EPLC maintained by the dealer and a copy available to the seller, if requested.

4) Unless issued by EPLCs, the~~The~~ dealer shall maintain the updated and signed contracts in numerical order.

5) No storage charges shall be made with respect to any commodity purchased by price later. A service charge may be assessed.

6) If issued by written price later contract, a~~A~~ rollover shall be documented with the initials of both parties and dated by both parties. If by EPLC, a rollover shall be documented by electronic signature and security procedure on the contract.

7) Grain assets included in the assets required to meet 90% of outstanding price later obligations do not have to be commodity specific.

f~~e~~) Pre-delivery Price Later
When a price later contract is used as a pre-delivery contract, the original bushel amount shall be adjusted down to reflect the actual amount of grain delivered against the contract.

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(Source: Amended at 46 Ill. Reg. _____, effective _____)

Section 281.65 Electronic Document Providers

a) Electronic document provider systems must allow for electronic data interface with Department computer systems to electronically transfer warehouse receipts, EPLC, and/or other electronic document information for examination purposes.

b) Providers who operate and maintain a CFS in reference to electronic documents, including EWRs, must meet all USDA requirements pursuant to 7 CFR 735 (2008) and must maintain USDA-approved provider status to be eligible as a provider for licensees. In order to be authorized by the Director, providers must also:

1) register with the Department and pay an annual registration fee of $100;

2) provide all documentation requested by the Department to confirm that the warehouse receipt provider is a USDA-approved provider in good standing;

3) maintain and retain a complete record of EWRs and EPLCs for 6 years, showing for whom issued, the number issued and the consecutive numbers that were issued on the EWRs and EPLCs;

4) immediately notify the Department of any instance in which the provider is required to notify the USDA or a user of any breach of security or confidentiality concerning data, loss of operations, cancellation of insurance or other compromise, disruption or infringement of its operations;

5) maintain adequate levels of insurance and name the Director as an additional insured;

6) be authorized to transact business in the State of Illinois;

7) consent to jurisdiction in the State of Illinois and venue in Sangamon County;

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8) maintain records, make reports and provide to the Department the documentation, records and reports requested by the Director, free of charge to the Department; and

9) comply in all respects with Illinois law, including but not limited to the Code and this Part.

c) A provider shall submit to the Department copies of its current schedule of charges and rates for services before they are to become effective. A provider shall also submit to the Department 60 calendar days notice of its intent to change rates.

d) A provider shall submit to the Department advance notice of any changes to or new agreements with users.

e) Any person authorized by the Director to issue EWRs, EPLCs, or other electronic documents shall maintain records and make reports requested by the Director.

f) A provider agrees that its ability to issue EWRs is contingent on approval by FSA, and suspension or termination by FSA of the provider is an automatic suspension or termination of the authority granted by the Department for the provider to operate in the State of Illinois. A provider shall be required to immediately notify the Department of any suspension or termination of approval as a provider by FSA.

g) After providing notice and opportunity for hearing in accordance with 8 Ill. Adm. Code 1, the Director may suspend authorization for a provider for a material violation of, or failure to comply with, any provision of the Code (including any regulations promulgated under the Code); failure to perform authorized services in an acceptable manner; failure to maintain security of the CFS; or commission of fraud against the Department, FSA or any depositor.

(Source: Amended at 46 Ill. Reg. _____, effective _____)