

Approved February 14, 1986
Date

MINUTES OF THE Senate COMMITTEE ON Agriculture

The meeting was called to order by Senator Allen at
Chairperson

10:10 a.m. ~~pm~~ on February 11, 1986 in room 423-S of the Capitol.

All members were present except: Senator Norvell (excused)
Senator Thiessen (excused)

Committee staff present: Raney Gilliland, Research Department
Fred Carman, Revisor of Statutes Department

Conferees appearing before the committee: Dr. Allan Kimmell, Animal Health Department
Chris Wilson, Kansas Grain and Feed Dealers Assoc.
Ron Wilson, Farm Credit Council
Sam Eberly, Farm Credit Council
Joe Lieber, Kansas Coop Council
Jim Maag, Kansas Bankers Association

Senator Allen called the Committee to order and called the Committees' attention to the Committee meeting minutes.

Senator Warren made a motion the minutes be approved. Senator Kerr seconded the motion. Motion carried.

The Chairman announced the Committee agenda had been changed and the hearing on Executive Reorganization Order No. 21 was rescheduled for February 17 for proponents and February 20 for opponents. The Chairman next welcomed Dr. Kimmell to make a bill request.

Dr. Kimmell made a request for legislation that would allow the brand inspection fee to be increased up to 50¢ (attachment 1).

Senator Karr made a motion the Committee introduce this legislation. Senator Arasmith seconded the motion. Motion carried.

The Chairman called on Mr. Gilliland to do an overview of S.B. 445 and S.B. 447.

Staff reported S.B. 445 is a bill that, if passed, would allow a licensed large scale testing and service company to remove a rejection tag issued by the state sealer if removal of the tag is necessary to test or repair a large capacity scale. Then they would be required to replace the seal with a seal provided by the state sealer. Staff then explained S.B. 447 was to make a technical change in the definition of financial institutions so that banks for cooperatives would be included and could then write standby letters of credit.

The Chairman called on Chris Wilson to testify.

Ms. Wilson gave copies of her testimony to the Committee (attachment 2) and expressed support for S.B. 445.

The Chairman called on Ron Wilson to testify on S.B. 447.

Mr. Wilson introduced Sain Eberly to present testimony for the Farm Credit Council. Mr. Eberly gave copies of his testimony to the Committee (attachment 3). He recommended the Committee recommend this bill for passage.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Agriculture,
room 423-S, Statehouse, at 10:10 a.m. ~~XXX~~ on February 11, 19 86

The Chairman thanked Mr. Eberly and called on Joe Lieber to testify.

Mr. Lieber stated the Kansas Cooperative Council approved of S.B. 447 and urged the Committee recommend the bill favorably for passage.

The Chairman thanked Mr. Lieber and called on Chris Wilson.

Ms. Wilson expressed support for S.B. 447 and gave copies of her testimony to the Committee (attachment 4).

The Chairman next called on Jim Maag.

Mr. Maag gave information to the Committee concerning letters of credit (attachment 5).

In answer to Committee questions Mr. Maag stated his association thinks that present legislation does not prevent a bank from writing a letter of credit. He said his organization had received little reaction from banks concerning the cost charged for a letter of credit.

The Chairman declared the hearing closed on S.B. 447. The Chairman stated the fiscal note for S.B. 445 was figured to be \$500 a year.

Mr. Carman reminded the Committee that in the bill New Section 1 did not have listed the penalty for violation of the section. Kenneth Wilke from the State Board of Agriculture, who was in the audience, said the penalty would be a Class A Misdemeanor.

Senator Montgomery made a motion the bill be amended to state the penalty for noncompliance in the New Section 1. Senator Gannon seconded the motion. Motion carried.

Senator Gannon moved the Committee recommend S.B. 445 favorably for passage as amended. Senator Montgomery seconded the motion. Motion carried.

The Chairman called for action on S.B. 447

Senator Montgomery made a motion the Committee recommend S.B. 447 favorably for passage. Senator Kerr seconded the motion. Motion carried.

The Chairman announced the Committee would meet February 14 to discuss the fence law. He then adjourned the Committee at 10:47 a.m.

47-417a. Brand inspection; fees; disposition; livestock brand fee fund. (a) The livestock commissioner may, when brand inspectors or examiners are available, provide brand inspection. When brand inspection is requested and provided, the livestock commissioner shall charge and collect from the person making the request, a brand inspection fee of not to exceed ~~\$.25~~ \$.50 per head on cattle and \$.03 per head on sheep and other livestock. No inspection charge shall be made or collected at any licensed livestock market where brand inspection is otherwise available.

(b) The livestock commissioner shall remit all moneys received under the statutes contained in article 4 of chapter 47 of the Kansas Statutes Annotated and amendments thereto, except K.S.A.47-434 to 47-445, inclusive, and amendments thereto, to the state treasurer at least monthly. Upon receipt of any such remittance the state treasurer shall deposit the entire amount thereof in the state treasury and the same shall be credited to the livestock brand fee fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the livestock commissioner or by a person or persons designated by the commissioner.

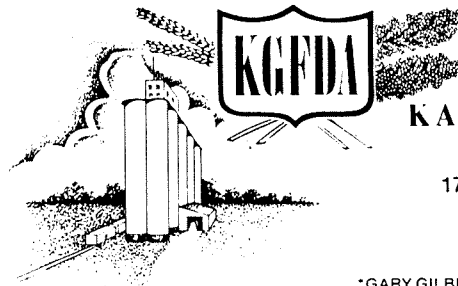
47-437. Brand inspection; fees; collection; rules and regulations; increase or reduction in amount of fees; disposition of fees; county option brand fee fund. (a) The livestock commissioner shall charge and collect a fee of not to exceed ~~\$.25~~ \$.50 per head on all cattle and not to exceed \$.03 per head on all sheep inspected in brand inspection areas of the state. The livestock commissioner may, when brand inspectors are available, provide brand inspection in other areas where brand inspection is requested and the commissioner shall charge and collect inspection fees in the same manner as prescribed for the collection of such fees in brand inspection areas. The owner or seller of cattle or sheep inspected shall be responsible for the payment of the inspection fees and such fees shall be collected in such manner as the livestock commissioner shall prescribe or authorize by rule or regulation.

(b) Whenever the livestock commissioner shall determine that the fees collected pursuant to the provisions of this section are yielding more than is required for the purposes for which such fees were collected, the commissioner may reduce such fees for such period as the commissioner shall deem justified.

attachment 1
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In the event the livestock commissioner, after reducing such fees, finds that sufficient revenues are not being produced by the reduced fees to properly administer and enforce this act and acts of which this section is amendatory or supplemental, the commissioner may increase such fees to such rate as will, in the commissioner's judgment, produce sufficient revenue for the purposes provided in this section, but not exceeding ~~\$.25~~ \$.50 per head on cattle and not to exceed \$.03 per head on sheep.

(c) The livestock commissioner shall remit all moneys received under K.S.A.47-434 to 47-445, inclusive, and amendments thereto to the state treasurer at least monthly. Upon receipt of any such remittance the state treasurer shall deposit the entire amount thereof in the state treasury and the same shall be credited to the county option brand fee fund, except any amounts received for brand inspection services of livestock outside of a county option area. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the livestock commissioner or by a person or persons designated by the commissioner. All amounts received for inspection of livestock outside of a county option area shall be deposited to the credit of the livestock brand fee fund.



"A PRIVILEGED COMMUNICATION"

KANSAS GRAIN & FEED DEALERS Association

1722 N. PLUM (BOX 949) / AREA CODE 316 662-7911 / HUTCHINSON, KANSAS 67504-0949

*GARY GILBERT, President, Morganville
*GEORGE AICHER, First Vice-President, Eureka

*GARY COOPER, Second Vice-President, Colby
TOM R. TUNNELL, Executive Vice-President, Hutchinson

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445

STATEMENT OF THE
KANSAS GRAIN AND FEED DEALERS ASSOCIATION
TO THE SENATE AGRICULTURE COMMITTEE
SENATOR JIM ALLEN, CHAIRMAN
REGARDING S.B. 445
FEBRUARY 11, 1986

Chairman Allen and members of the Committee, I am Chris Wilson, Director of Governmental Relations of the Kansas Grain and Feed Dealers Association (KGFDA). KGFDA is a voluntary trade and professional association, comprised of over 900 members, representing the state's grain and feed storage, handling, processing and marketing industry.

We support S.B. 445 which authorizes licensed large scale testing and service companies to remove rejection tags for the purpose of testing or repairing large-capacity scales. This is an appropriate practice which makes good sense and is presently being followed. Regulations promulgated under this statute call for the practice; however, it was recognized that the practice is not authorized by the statute. S.B. 445 simply makes the statute and the regulation consistent with one another. The bill would provide the authority to continue a good practice, allowing for the most efficient use of state resources and strictly adhering to the law.

We urge your favorable recommendation of S.B. 445.

DIRECTORS

(Date Term Expires)
(*Executive Committee)

*BILL BLAIR, Atchison (88)
FRANK McBRIDE, Salina (86)
BOB READ, Cherryvale (86)
DON TIMMEL, Salina (88)

L. SHANE BRADY, Edmond (87)
JAN MOYER, Wichita (87)
JERRY SCHWEITZER, Dighton (87)
*CLINTON WEBBER, Hutchinson (88)

*ARCH DeBRUCE, Ulysses (86)
FRED NOWAK, Sharon Springs (87)
RON STUCKY, Kansas City (87)
*ROGER WOLFE, White Cloud (88)

DON EPPS, Prescott (88)
DALE PARSONS, Cairo (87)
CARL M. THUROW, Hugoton (87)

attachment 2
2/11/86 Sen. Ag.

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447

TESTIMONY OF SAM EBERLY

CHAIRMAN OF THE BOARD

WICHITA DISTRICT FARM CREDIT COUNCIL

FOR

SENATE AGRICULTURE COMMITTEE

TOPEKA, KANSAS

FEBRUARY 11, 1986

attachment 3
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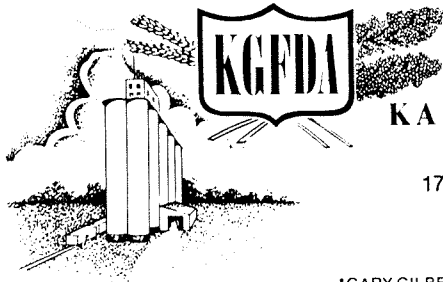
MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I AM SAM EBERLY, A FARMER/STOCKMAN FROM THE WICHITA, KANSAS AREA. I AM CHAIRMAN OF THE BOARD OF FARM CREDIT SERVICES AND THE WICHITA DISTRICT FARM CREDIT COUNCIL. FARM CREDIT SERVICES IS AN AGRICULTURAL LENDING COOPERATIVE, WHICH PROVIDES CREDIT AND RELATED SERVICES THROUGH BANKS AND ASSOCIATIONS IN KANSAS, OKLAHOMA, COLORADO AND NEW MEXICO.

IN OUR FOUR STATES, FARM CREDIT SERVICES PROVIDES NEARLY SIX BILLION DOLLARS IN FINANCING TO APPROXIMATELY 70,000 FARMERS AND RANCHERS. THE WICHITA BANK FOR COOPERATIVES PROVIDES OVER 500 MILLION DOLLARS TO 453 AGRICULTURAL AND RURAL UTILITY COOPERATIVES.

WE FULLY SUPPORT S.B. 447, WHICH WOULD CLARIFY THAT BANKS FOR COOPERATIVES ARE ELIGIBLE TO OFFER STANDBY LETTERS OF CREDIT TO OUR COOPERATIVE BORROWERS ON REQUEST BY FARMERS, JUST AS OTHER FINANCIAL INSTITUTIONS CAN PROVIDE SUCH LETTERS OF CREDIT TO OTHER GRAIN WAREHOUSEMEN. THE EFFECT OF THIS LEGISLATION IS TO CORRECT AN OVERSIGHT WHICH WAS UNINTENTIONALLY COMMITTED DURING THE 1985 AMENDMENTS TO THE KANSAS PUBLIC WAREHOUSE ACT.

AS YOU KNOW, THE 1985 AMENDMENTS PROVIDED ADDITIONAL PROTECTIONS TO FARMERS WHO USE THE LATE PAYMENT OR DEFERRED PRICING CONTRACTS FOR THEIR GRAIN. S.B. 447 WILL ASSURE THAT THESE ADDITIONAL PROTECTIONS ARE AVAILABLE FOR FARMERS WHO USE COOPERATIVE GRAIN WAREHOUSES, AS WELL AS FOR FARMERS WHO USE OTHER GRAIN WAREHOUSES.

THIS LEGISLATION WILL CORRECT THE OMISSION OF 1985 AND ALLOW ALL FARMERS EQUAL ACCESS TO THESE LETTERS OF CREDIT. WE FULLY SUPPORT S.B. 447 AND URGE THE COMMITTEE'S APPROVAL.



"A PRIVILEGED COMMUNICATION"

KANSAS GRAIN & FEED DEALERS Association

1722 N. PLUM (BOX 949) / AREA CODE 316 662-7911 / HUTCHINSON, KANSAS 67504-0949

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*GARY COOPER, Second Vice-President, Colby
TOM R. TUNNELL, Executive Vice-President, Hutchinson

STATEMENT OF THE
KANSAS GRAIN AND FEED DEALERS ASSOCIATION
TO THE SENATE AGRICULTURE COMMITTEE
SENATOR JIM ALLEN, CHAIRMAN

REGARDING S.B. 447

FEBRUARY 11, 1986

Chairman Allen and members of the committee, I am Chris Wilson, Director of Governmental Relations of the Kansas Grain and Feed Dealers Association. KGFDA represents the state's grain storage, handling and processing industry.

We appreciate the opportunity to add our support to S.B. 447, which would include banks for cooperatives in the definition of financial institutions in K.S.A. 1985 Supp. 34-2,111. S.B. 447 corrects an oversight made last year when this legislation was written. At the time, counsel for KGFDA suggested the language which was passed and inadvertently did not include banks for cooperatives. We apologize for this error on our part and ask that you move quickly to correct this omission.

DIRECTORS

(Date Term Expires)
(* Executive Committee)

*BILL BLAIR, Atchison (88)
FRANK McBRIDE, Salina (86)
BOB READ, Cherryvale (86)
DON TIMMEL, Salina (88)

L. SHANE BRADY, Edmond (87)
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FRED NOWAK, Sharon Springs (87)
RON STUCKY, Kansas City (87)
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DON EPPS, Prescott (88)
DALE PARSONS, Cairo (87)
CARL M. THUROW, Hugoton (87)

attachment 4
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EIDSON, LEWIS, PORTER & HAYNES

LAWYERS

1300 MERCHANTS NATIONAL BANK BUILDING
EIGHTH AND JACKSON STREETS
TOPEKA, KANSAS 66612-1252
913-233-2332

PHILIP H. LEWIS
JAMES W. PORTER
WILLIAM G. HAYNES
CHARLES N. HENSON
AUSTIN NOTHERN
CHARLES D. MCATEE
DALE L. SOMERS
K. GARY SEBELIUS
RICHARD F. HAYSE
RONALD W. FAIRCHILD
JOHN H. WACHTER

ANNE L. BAKER
JAMES P. RANKIN
PATRICIA A. REEDER
THOMAS D. HANEY
CRAIG A. FONTAINE
JOHN D. ENSLEY
N. LARRY BORK
CATHERINE A. WALTER

OF COUNSEL:
O. B. EIDSON

December 26, 1985

To: All KS Banks

We hope this
will be helpful -

Harold

Harold A. Stones
Kansas Bankers Association
707 Merchants National Bank Building
Topeka, Kansas 66612

Re: Irrevocable Standby Letters of Credit

Dear Harold:

The 1985 Kansas Legislature enacted legislation substantially modifying the existing relationship and obligations between a public warehouse and a seller of grain to such a warehouse. Of greater immediate importance, the statutory changes prescribe guidelines on the issuance by a lending institution of an irrevocable standby letter of credit (credit) to a public warehouse purchasing grain pursuant to a deferred payment or delayed pricing arrangement. My purpose in writing now is to briefly advise you of the provisions and application of the recent statutory changes and to provide guidance on how Kansas lending institutions can comply with the new requirements. I have also enclosed examples of an irrevocable standby letter of credit agreement, application, and the credit itself, which satisfy the statute's basic requisites.

Effective July 1, 1985, whenever a public warehouseman offers to purchase grain pursuant to a written contract providing for deferred payment of amounts due under the contract or delayed pricing of the grain purchased, the warehouseman must inform the seller that such a contract is a voluntary extension of credit by the seller to the warehouseman and is not covered by the surety bond of the warehouseman. K.S.A. 34-2,111. The term "public warehouse" is defined as "every elevator or other building in which grain is received for storage or transfer for the public." K.S.A. 34-224. "Deferred payment" is defined as any payment to be made after delivery of the grain to the public warehouse, and "delayed pricing" is any method of pricing grain after the grain is delivered to the warehouse.

The new statutes further require that every public warehouseman who offers to enter into a written grain purchase contract involving deferred payment or delayed pricing provisions, or both, must post public notice of the availability to a seller of a standby letter of credit issued by a "financial

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institution whose deposits, shares or accounts are insured by a federal agency." The public warehouseman is not, however, obligated to seek issuance of a credit to a seller until demand is made by the seller upon the warehouseman for issuance of a credit, and only after the grain has been delivered to the warehouseman. Further, a warehouseman is obligated to seek issuance of a credit only where the seller of the grain is also the party who "produced" the grain. Finally, the credit required by statute must be in the amount of the "unpaid balance" under the parties' contract at the time demand is made by the seller upon the warehouseman for issuance of a credit. The term "unpaid balance" is defined as:

[T]hat portion of the purchase price, together with interest thereon, if any, remaining unpaid to the seller under the terms of a grain purchase contract at the time the seller makes demand as provided in this section. Where the grain purchase contract provides for delayed pricing and the price has not been established at the time demand is made by the seller, then, for the purposes of this section only, the 'unpaid balance' shall be determined as though the price had been established at the time of the closing of the relevant futures market on the last trading day before demand is made by the seller under this section.

The statutes are also explicit about the specific provisions of a credit issued to the seller (beneficiary). First, the credit must be irrevocable. Once the credit has been issued to the beneficiary, it must remain in force and effect until the date of expiration stated in the credit. The credit must also be non-transferable. Thus, rights under the credit cannot be sold, assigned, or otherwise transferred to a third-party. Further, the credit must name the seller that produced the grain as the beneficiary. Third-parties which have purchased, been assigned, or otherwise are in possession or control of the grain are not statutorily entitled to a credit. The credit must also not expire earlier than 60 days after final payment is due in accordance with the underlying grain purchase contract between the warehouseman and beneficiary. Finally, the credit cannot be drawn upon by the beneficiary in the absence of default in payment by the warehouseman on the underlying contract.

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In addition to requirements of the new Kansas statute, the issuance of a credit is further controlled by provisions of the Kansas Uniform Commercial Code concerning credits and federal laws and regulations. While this latter body of law establishes a myriad of parameters upon a lending institution's ability to issue a credit, several considerations raised by these sources are of immediate concern.

One of the primary elements inherent in a valid credit is that the lending institution's (issuer) obligation to pay under the credit must arise only upon the presentation of a draft or other demand for payment, and any other document specified in the credit. The issuer must not be called upon to determine questions of fact or law between the warehouseman (account party) and the beneficiary. Any such determination may be deemed as the guaranteeing by the bank of the account party's debt, generally an ultra vires act for lending institutions.

A second basic principle of a credit is that it constitutes a primary and independent obligation and is not dependent upon the underlying transaction or any underlying documents. Thus, not only should the issuer's obligation arise solely upon the presentation of documents, but the terms of that obligation, its beneficiary, conditions of payment, duration, amount, and manner of payment, should be specified in the credit itself without incorporating the terms of, or being affected by, any other agreement. A credit may, however, refer to the underlying agreement between the account party and beneficiary to provide references for what documents accompanying the draft or other demand for payment should state.

The credit should also contain an express expiration date for presentation of documents for payment. The date should be a date certain and be specified in the credit itself and not by reference to any other agreement or document.

Fourthly, the letter of credit should state a maximum amount of the issuer's obligation. The maximum amount should be a fixed amount specified in the credit itself and not by reference to any other document or agreement.

Finally, two other considerations have been identified by federal regulations as being necessary elements of a properly issued credit. Specifically, the credit should conspicuously state that it is a credit or be conspicuously entitled as such and, the account party should have an unqualified obligation to reimburse the bank for payment made under the credit.

(OVER, PLEASE)

Harold A. Stones
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Of the above considerations, two require special attention given provisions of the new Kansas statutes. First, the statutes require that the credit must not expire earlier than sixty (60) days after final payment is due pursuant to the underlying grain purchase contract. As is addressed above, the credit cannot merely incorporate an expiration date or formula set forth in the underlying contract. However, it is permissible for the issuer to compute the credit's expiration date using information contained in the contract and then state that date in the credit itself.

The requirement that the credit have a stated maximum amount also necessitates careful consideration by the issuer. The statutes require that the credit be for the "unpaid balance" under the contract at the time demand for a credit is made by the beneficiary. The term "unpaid balance" includes interest on all unpaid amounts under the contract. In the case of a delayed pricing contract, the amount of the unpaid balance is based upon the "relevant futures market" on the last trading day before demand is made by the beneficiary. In determining a maximum amount to be stated in the credit, the issuer will be required to compute the amount using information stated in the contract. However, the issuer must not merely incorporate provisions of the contract or a formula set forth therein. Further, provision for interest charges on amounts remaining unpaid pursuant to the contract must also be included in the stated maximum amount of the credit. With regard to a delayed pricing contract, the issuer will be required to determine what the grain was selling for on the date of demand at the "relevant futures market." Provision for interest charges must also be included.

Should you have any questions or comments concerning my letter, please do not hesitate to contact me.

Sincerely,



Charles N. Henson
of Eidson, Lewis, Porter & Haynes

CNH:sgd

**IRREVOCABLE STANDBY LETTER OF
CREDIT AGREEMENT**

Date:

In consideration of the issuance of an irrevocable standby letter of credit (credit) by _____ (issuer), substantially in accordance with an application or applications submitted by the undersigned (account party), the account party agrees as follows:

1. **Reimbursement.** Upon the issuance of a credit pursuant to this agreement, the account party shall:

- (a) pay the issuer a commission at such rate as is customarily charged by issuer at the time the credit is issued, in addition to all charges paid or incurred by the issuer in connection with the credit.
- (b) pay the issuer the amount of each draft drawn or purporting to be drawn under the credit and paid by issuer. All amounts so payable by account party shall bear interest from the date drawn upon until paid in full, regardless of whether demand for payment has been made by the issuer. Interest on any unpaid amount due issuer shall be at the rate customarily charged by the issuer at the time and under like circumstances.

2. **Obligation to Issue Credits.** The issuer shall not be obligated to issue any credits, or having issued credits, to issue further credits, or in any other manner to extend financial accommodation to the account party for any reason.

3. **Liability of Issuer.** The issuer or any participating bank shall not be responsible for, nor shall any of the following provide a basis for any defense of account party against a claim of issuer or as a basis for any claim of account party against issuer:

- (a) the existence, character, quality, quantity, condition, value or delivery of grain purporting to be the subject of the applicable grain purchase contract between the account party and beneficiary.
- (b) any breach of contract between the account party and the beneficiary.

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- (c) any errors, omissions, interruptions or delays in transmission or delivery of any message by mail, cable, telegram, or otherwise.
- (d) the validity, sufficiency or genuineness of documents submitted to the issuer by the beneficiary, or of any endorsements thereon, even if such documents prove to be in any respect invalid, insufficient, fraudulent, or forged.
- (e) any acts or omissions by the beneficiary in connection with the use or misuse of the credit.
- (f) errors in translation or interpretation of technical terms.

4. **Collateral.** If at any time the issuer shall require collateral or additional collateral as security for any obligation of the account party existing pursuant to this agreement, the account party shall, on demand, assign, convey, transfer or deliver to the issuer collateral of a type and value satisfactory to the issuer or make such cash payment to issuer as the issuer may require.

The balance of any deposit of the account party with the issuer, any claim of the account party against issuer, and all property belonging to the account party now or subsequently in issuer's possession for any purpose, is hereby made security for any and all liabilities hereunder of the account party to the issuer. Any such property held by the issuer as collateral may be registered in the name of issuer's nominee.

The account party authorizes the issuer, on the non-payment of any liabilities of the account party to issuer when same are due, to sell, without demand, advertisement, or notice to the account party, any and all property of the account party in issuer's possession securing any liability of the account party at public or private sale or otherwise, at issuer's option, and at such time or places, and on such terms and conditions as issuer may deem proper, and to apply the net proceeds of such sale or sales, together with any balance of deposits and any sums credited by or due from issuer to the account party, to the payment of any and all such liabilities.

5. **Default.** Upon the happening of any of the following events, all obligations of the account party owing the issuer under this agreement shall become immediately due and payable without demand upon or notice to the account party:

- (a) the nonpayment of any obligation of the account party to issuer when same is due.
- (b) the failure of the account party to perform or observe any other term or covenant of this agreement.

- (c) the dissolution or termination of existence of the account party.
- (d) the institution by or against the account party of any proceeding seeking to adjudicate the account party a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of the account party or its debts under any law relating to bankruptcy, insolvency, or reorganization of relief debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian, or other similar official for the account party or any substantial part of its property.
- (e) any seizure, vesting or intervention by or under authority of any governmental entity by which the management of the account party is displaced or its authority in the control of its business is curtailed.

6. **Communications.** All notices, requests, demands and other communications between the parties to this agreement shall be in writing.

7. **Expiration of Agreement.** This agreement may be revoked or canceled by the issuer at any time and for any reason.

8. **Construction and Interpretation.** This agreement shall be interpreted and applied in accordance with the laws of the state of Kansas, and any terms employed herein which are defined in the Uniform Commercial Code as adopted by the state of Kansas shall have the meanings set forth therein.

9. **Entire Agreement.** This agreement represents the entire understanding of the parties, and no modification or changes thereto shall be effective unless set forth in writing and signed by both parties.

10. **Binding Effect.** This agreement shall be binding upon and enure to the benefit of the parties' respective heirs, executors, administrators, successors and assigns.

11. **Waiver.** Should the issuer waive any rights or remedies arising hereunder or pursuant to any applicable law, such waivers shall not be deemed to be a waiver, express or implied, of any subsequent occurrence or reoccurrence of similar events. No delay by the issuer in the exercise of any right or remedy hereunder shall be deemed a waiver, express or implied, of such rights or remedies, and no course of dealing between the parties shall constitute a waiver of the issuer's rights and remedies.

12. **Severability.** Should any provision or clause of this agreement or its application to any person or circumstance be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect other provisions, clauses or applications of this agreement which can be given effect, and this agreement shall be construed as if the invalid, illegal or unenforceable provision, clause or application had never been contained herein.

[ACCOUNT PARTY]

By: _____

Title: _____

**APPLICATION FOR IRREVOCABLE
STANDBY LETTER OF CREDIT**

Date:

To: [Issuer]

Gentlemen:

Please issue an irrevocable standby letter of credit (hereinafter referred to as "credit") upon the account of the undersigned (hereinafter referred to as "account party") and transmit same to the beneficiary, subject to the following terms and conditions:

1. Beneficiary:
2. The credit shall be available to the beneficiary upon presentation to _____ (hereinafter referred to as "issuer"), of drafts drawn on the issuer. Said drafts shall be honored by the issuer if same are in compliance with the terms of the credit and are accompanied by the following documents:
 - a. The contract for the sale of grain by the beneficiary to the account party.
 - b. A sworn statement by the beneficiary certifying (i) the beneficiary produced and is the seller of grain which is the subject of the accompanying purchase contract, (ii) the account party is in default in payment of amounts due and owing the beneficiary pursuant to said purchase contract, and (iii) the specific nature and extent of the account party's default thereunder.
3. Drafts drawn pursuant to the credit shall be honored only for amounts remaining unpaid to the beneficiary by the account party under the terms of the aforesaid grain purchase contract.

4. The total amount of the credit shall not exceed \$_____.
5. The credit shall not be transferable or assignable in whole or in part by the beneficiary.
6. The credit shall be transmitted to the Beneficiary by first class United States mail on or after _____.
7. The credit shall remain in force until _____, at which time all rights and obligations arising thereunder shall be void and unenforceable for all purposes.
8. Drafts drawn pursuant to the credit shall be payable three (3) banking days after sight.
9. Payment by the issuer of any draft drawn pursuant to the credit subrogates the issuer to all claims and rights of the beneficiary against the account party under the applicable grain purchase contract to the extent of the amount paid.
10. This application shall be interpreted and applied according to the laws of the state of Kansas. The account party agrees that its rights and obligations pursuant to this application and the credit shall be further governed by a separate Irrevocable Standby Letter of Credit Agreement as heretofore most recently executed by the account party.

[Account Party]

By: _____

Title: _____

**IRREVOCABLE STANDBY
LETTER OF CREDIT**

DATE: _____

CREDIT NO.: _____

ACCOUNT PARTY: _____

BENEFICIARY: _____

Gentlemen:

We hereby open and establish our irrevocable credit in your favor on the account of _____, up to an aggregate amount of \$ _____, available upon the following terms and conditions:

1. The undersigned (hereinafter referred to as "Issuer") agrees to honor each draft drawn by the beneficiary upon the issuer pursuant to and in compliance with the terms of this letter of credit when duly presented together with documents herein specified. Drafts, when presented for payment, must be accompanied by the following documents:
 - a. The contract for the sale of grain by the beneficiary to the account party.
 - b. A sworn statement by the beneficiary certifying (i) the beneficiary produced and is the seller of grain which is the subject of the accompanying purchase contract, (ii) the account party is in default in payment of amounts due and owing the beneficiary pursuant to said purchase contract, and (iii) the specific nature and extent of the account party's default thereunder.
2. Drafts drawn hereunder shall be honored only for amounts remaining unpaid to the beneficiary by the account party under the terms of said parties' grain purchase contract, as stated in paragraph 1(b)(iii) above.

3. Each draft presented for payment must be marked:
"Drawn under Letter of Credit No. _____ dated _____."

4. This letter of credit shall be effective upon actual receipt by the beneficiary.

5. This letter of credit shall remain in force until _____, at which time all rights and obligations provided hereunder shall be void and unenforceable for all purposes. All drafts and accompanying documentation required herein must be presented to the issuer by said expiration date.

6. Drafts drawn hereunder shall be payable three (3) banking days after sight.

7. This letter of credit is not transferable or assignable in whole or in part.

8. Payment by the issuer of any draft drawn pursuant to this letter of credit subrogates the issuer to all claims and rights of the beneficiary against the account party under the applicable grain purchase contract to the extent of the amount so paid.

9. All communications with the issuer concerning this letter of credit must be in writing.

10. Except as otherwise provided, this letter of credit shall be interpreted and governed by the Uniform Commercial Code of the state of Kansas.

[Issuer]

By: _____

Title: _____