



Credit-Sale Contract Indemnity Fund Workshop

Sue Richter – Interim Director
Licensing Division
Public Service Commission

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Credit-Sale Contract Indemnity Fund Workshop

- Thank you
- Introduction
- Commission role
 - Division's role

I know this is a busy time for every one of you. I'd like to thank you for taking the time to attend the workshop and to thank you all for your great cooperation through the process of the implementation of the credit-sale contract indemnity fund. Hopefully each of you will learn something today that will help make your jobs easier. Feel free to ask questions at any time during the presentation.

What is the role of the division? Our mission statement says "The Licensing Division fulfills its statutory mandates by protecting the public interest while regulating grain elevators, grain buyers, and hay buyers in a fair, efficient, responsive, and cooperative manner. This means *we have an obligation to make sure the credit-sale contract indemnity fund is handled as accurately as possible.*



Creation of the Indemnity Fund

- What is it?
- Where money comes from
- Who participates
- Where money goes
- How long collections will last

The credit-sale contract indemnity fund was created by the 2003 Legislature to provide partial protection for unpaid credit-sale contracts in grain elevator or grain buyer insolvencies. The reason I say partial is because payment will be 80% on contracts with a maximum payout of \$280,000 per occurrence.

Money will come from 0.2% (.002) assessment on all credit-sale contracts.

Participation in the fund is mandatory – not only for patrons but for other licensees who may enter into credit-sale contracts.

The assessment only applies to patrons if the grain was delivered in North Dakota or the title transferred in North Dakota.

Why other licensees? They have bond coverage equal to producers in the event of an insolvency.

Money is deposited in a fund administered by the PSC and continues until the fund reaches \$10 million (estimated 7 years). Once fund reaches \$10 – collections will cease until claims reduce the fund to \$5 million. As of Monday we received over \$740,000 in assessments.

If funds are not available should an insolvency occur, will be paid on a pro-rata share and continue until you received your 80%



History

- Interim Study – 1999 - 2000
- Wimbledon – January 2002
 - \$478,000 – March 2004
- Legislative Session - 2003

I'd like to give you a brief history of how the fund came to be.

We saw business practices move away from storage and saw an increase in the use of grain purchased via credit-sale contract. We brought this to attention of Legislature during 1999 session. The result was the Legislature's decision to go forward with an interim study.

First step in the process was to send a letter end of May 1999 to licensees asking them to identify the % of grain purchased via credit-sale – that showed over 40% of all purchases was through some kind of credit-sale contract arrangement.

Conclusion of the interim study showed three things could be done: (1) credit-sale contract bond (2) credit-sale contract indemnity fund (3) current provisions adequate – don't make any changes.

At end of study they decided things worked as they are and no change to law during 2001 session.

In January 2002, the Wimbledon insolvency occurred. In addition to cash claims, the insolvent elevator owed over \$1.1 in valid credit-sale contracts. Long insolvency process including appeal to Supreme Court. 2003 Session occurred after insolvency started and before the completion of the insolvency.

This insolvency resulted in bill during 2003 session creating the credit-sale contract indemnity fund. Overwhelming majority vote in both Senate and House (H 88 – 4 & S 47 – 0)



Credit-Sale Contract Definition

- Definition - NDCC §§ 60-02-01(2) & 60-02.1-01 (2)
 - Credit-sale contract means a written contract for the sale of grain pursuant to which the sale price is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale and which contains the notice provided... Where a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than 30 days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.
 - Commonly used kinds of contracts
 - Combination contracts

A credit-sale contract definition is found in both chapters 60-02 (grain warehouses) and 60-02.1 (grain buyers) (see above)

If your elevator gives advances on contracts within the first 30 days, the portion advanced is not considered to be credit-sale and is not subject to the assessment. Only the portion of the contract where the payment is made more than 30 days after the contract is executed is considered to be a credit-sale contract and is subject to the assessment. Assessments apply to future options.

Commonly used kinds of credit-sale contracts are: deferred payment, delayed price, No-price established, installment sales, minimum price contract, basis fix contract

Some elevators use combination contracts. These contracts provide not only for the purchase of grain, but also provide for some type of payment arrangement. Some may exceed 30 days and some may not. For any portion that does exceed 30 days you will need to enter into a separate credit-sale contract unless credit-sale contract provisions are on the purchase contract – that is the one the assessment will be taken on.

The Commission cannot prohibit you from issuing combination contracts, but we do discourage them. It is important that producers know what type of contract is agreeing to when is entering into it.



Credit-Sale Contract Contents

- NDCC §§ 60-02-19.1, 60-02.1-14 & 60-10-01
 - In writing
 - Consecutively numbered
 - Contain sellers name and address
 - Conditions of delivery
 - Contain the amount and kind of grain delivered
 - Contain the price per unit or basis of value
 - Date payment is to be made & duration of contract
 - Disclaimer language
 - MUST BE SIGNED BY BOTH PARTIES
 - Provide for assessment

Each credit-sale contract must contain all of the following items. The law for grain warehouses is found in 60-02-19.1 and the law for facility based grain buyers & roving grain buyers is found in 60-02.1-14. 60-10-01 is the credit-sale contract law and provides for assessment to be included on contracts. Identify it as ND Indemnity Fund Assessment _____. Don't need to have new contracts printed, can write it, use a stamp. Make sure when new contracts are printed it is included.

Often we receive requests from licensees to review contracts. When we "review" contracts we will only look at contracts to see that the items identified here are on the contract, we will not comment on other items that may be in your contracts as we have no jurisdiction. Other items would be industry standards. Reminder that Commission does not have jurisdiction to settle contract disputes. If you change any forms, please file them with our office.

In December I attended a NGFA meeting Session on contracts and suggested each elevator look at contracts to see if it fits their business – don't use just because everyone else is. If you're not sure, have your attorney review your contracts.

REMEMBER If the patron does not sign the contract, you do not have a contract. This has been reinforced during insolvencies by unsigned contracts being included in cash payment category. **REMIN**D facility-based grain buyers to have disclaimer that says **THIS CONTRACT IS NOT PROTECTED BY BOND COVERAGE IN THE EVENT OF THE BUYER'S INSOLVENCY.**

Disclaimer must be located directly above the place for the seller to sign.



Indemnity Fund Documents

- Remittance form
- Poster
- Ledger contains
 - Contract number
 - Seller's name
 - Date contract signed by seller
 - Date paid
 - Remittance at 2/10 of 1% (.002)

In early June 2003, we mailed letter along with frequently asked questions document.

Credit-sale contract indemnity fund remittance form - another blank form will be included with renewal and a reminder to use this form to make copies for your use.

Poster – good idea to point out to patrons and provide copies

Credit-sale contract ledger – contains information inspectors will be looking for – don't need to complete form if available on computer program.

Ledgers can be computerized or manual. Ledgers are being filed and inspectors are finding ledgers that show that assessments are being applied on contracts that are being executed and payment is not being made 30 or more days. We don't look for mistakes but as we are finding errors the inspectors are providing guidance.

All items can be found on the Commission's website at www.psc.state.nd.us



Assessments Taken/Remittances

- When to apply
 - Preferred
 - Optional

- Mandatory to file quarterly
- Within 30 days of end of quarter

The assessment should be made on the value of the grain, after quality discounts are taken, but before any fees are subtracted.

Fees such as drying, grain taxes, service charges are expenses not quality discounts and the assessment is applied you deduct them.

Eg. 1000 bushels x \$3.00/bushel deduct 5 cents for quality discounts. \$2.95 is the value of the grain used on contract.

Designed to be deducted at the time check is issued to patron – in case someone changes his mind and doesn't want money at future date. Choose option as long as you continue to deduct at same time and don't deduct twice. We must have the form otherwise we don't know who forgot to file versus who had nothing to file. If you run out of forms they can be found on our website.

We will continue to rely on licensees to make quarterly remittances due April, July, October, January. Keep with check-off file as a reminder. We know it is going to take time to get used to filing the reports.



Convert Scale Tickets

- Law provides
 - All scale tickets must be converted into cash, noncredit-sale contracts, credit-sale contracts, or warehouse receipts within 30 days after the grain is delivered to the warehouse.

Our inspectors will be looking to see that licensees are converting scale tickets when conducting warehouse examinations.

If the elevator completes a credit-sale contract and it is not signed by the producer within 30 days it is not a valid credit-sale contract. If the contract cannot get signed within 30 days, put it on a storage ticket or issue a check and mail it to the producer.

Some businesses have policies where they convert scale tickets every week, every other week, whatever they chose. Our office can't tell you to establish a policy but this may be one option that works for you.

Reinforce with your producers that it is very important to have contracts signed. If patrons don't sign contracts it causes licensees to be out of compliance which puts you at risk for a complaint proceeding.

No matter how far out a credit-sale contract goes, if you don't have a signature you don't have a contract.

REMINDER: 30 days to convert scale ticket, plus 30 days after contract is signed for it to be a credit-sale contract.



Refunds

- Must be in writing
- List of errors

All refund requests must be in writing and must include a detailed list of assessment errors including:

patron name

date the contracts were signed

date payment were made

assessment that was deducted.

We'll issue refunds to elevators only after they provide proof of errors. The elevators will need to make the individual refunds.

Our warehouse inspectors will be reviewing records to verify refunds were made. Process they'll use is same as for reviewing other documents.

No refunds will be made to farmers from the Commission

No refunds will be made to those that do not want to participate in the fund.



Credit-Sale Contract Bonds

- Elevator's decision
- Double coverage
 - What it mean's

Some elevators have for contracts such as deferred payment. Each elevator needs to make a decision whether to maintain the bond or not.

Still required to participate in the indemnity fund. If there is dual coverage, it is not known which coverage would step in first in an insolvency. Possibilities – PSC asserts bond should pay first, bond company disagrees. Court will decide.



Insolvency

- Who could force insolvency
 - Prior to August 1, 2003
 - After August 1, 2003

- Who is eligible
 - Payout
 - Debt obligation

The language in Chapter 60-10 provides that non-payment for credit-sale contract may result in insolvency. Prior to this time only nonpayment on receipted grain (scale tickets, checks could force an insolvency) When we receive a phone call we ask for copy of paperwork and provide opportunity for licensee to respond.

Any credit-sale contract issued prior to August 1, 2003 will not be grand fathered into the indemnity fund. Only producers who sold grain after August 1, 2003, and entered into a credit-sale contract will be eligible for payment in an insolvency proceeding.

The indemnity fund payments constitute a debt obligation to the licensee that caused payment from the fund to be made.

The Legislature has given the Commission authority to take legal action against any licensee who causes payments to be made out of the fund.



Contacts

- Sue Richter
 - 701-328-4097
 - E-mail skr@psc.state.nd.us
 - Website – www.psc.state.nd.us

- Inspector Tim Erdmann
 - E-mail tae@psc.state.nd.us

- Inspector Rick Fillbrandt
 - E-mail rfillbrandt@psc.state.nd.us

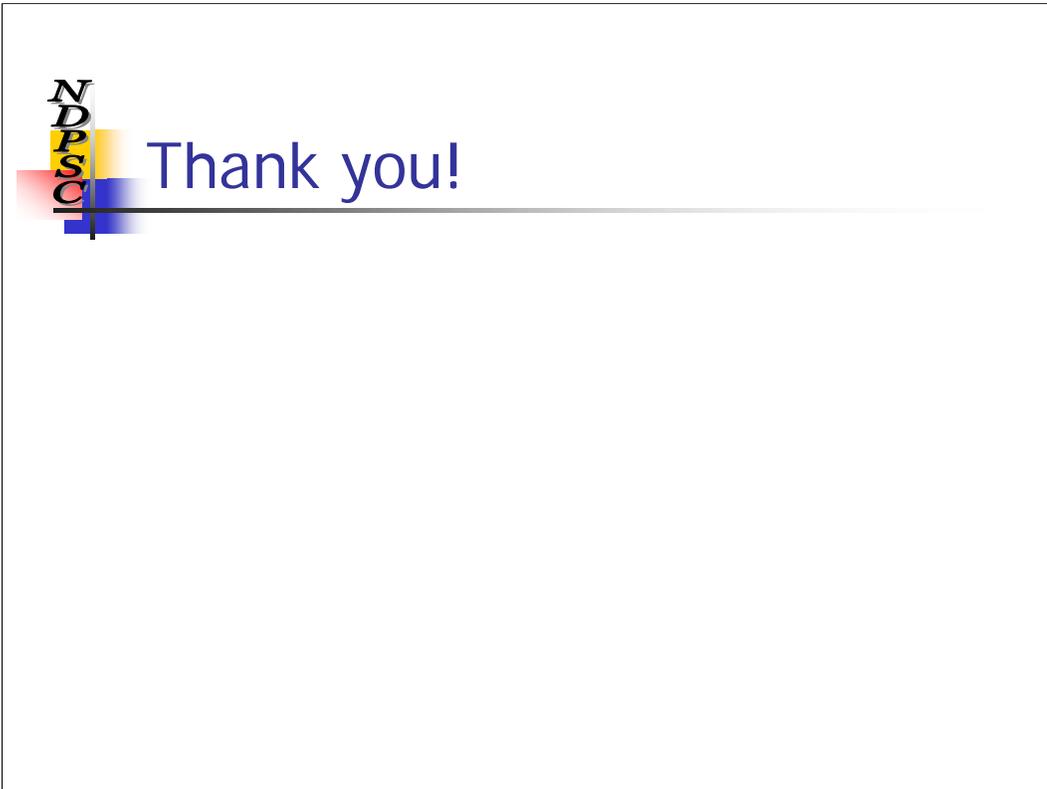
Any questions - CALL

Have questions ready for our inspectors during exams.

Not there looking for mistakes - They are there to provide assistance to you.

Inspectors are out of the office most of the time. If I can answer questions you have regarding their exams I will.

If I can't, I'll have them get back to you. E-mail our inspectors or call me and I'll get a message.



Again thank you for coming and feel free to contact our office with any questions you may have with this and with any other licensing issues.