



Buying Grain in North Dakota

Sue Richter – Director
Licensing Division
Public Service Commission

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License Required

- Who needs a license to buy grain?
- Why license?

Who - statute provides that every individual or entity who purchases or merchandises grain for compensation is required to be licensed and bonded.

- 1) unlicensed buyers are operating illegally
- 2) there is no bond coverage if a grain buyer is not licensed & defaults & the seller's recourse then through civil court.



License Not Required

- Selling grain out of state
- Exemptions

Licensees and farmers can choose to sell their grain to whoever they want and where ever they want.

Keep in mind - many states do not require grain buyers to be licensed – therefore bond coverage may not be available if grain is sold to an entity that is located outside the state.

If the grain is sold to out-of-state grain buyers, the laws of the state in which the buyer is located MAY govern the transaction or again you may be faced with action through the civil courts

There is a rule that exempts grain buyers from licensing – they can grain from another licensed entity provided the grain is owned by the licensed entity they are buying from and the grain has been either (1) substantially altered by processing or blending with a nongrain product or (2) cleaned and bagged and is ready for consumption.



License Types

- Public grain warehouse
 - NDCC Chapter 60-02
 - ND Admin Code Chapters 69-07-01 thru 04
- Facility-based & roving grain buyer
 - NDCC Chapter 60-02.1
 - ND Admin Code Chapters 69-07-01 thru 04

In ND there are a number of different types of grain buyers

All public grain warehouses (referred to as state facilities) – public warehouse is defined as any elevator, mill warehouse, subterminal, grain warehouse, terminal warehouse, or other structure of facility not licensed under the US Warehouse Act which grain is received for storing, buying, selling, shipping, or processing for compensation. Governed by chapter 60-02 of the NDCC

facility-based grain buyers and roving grain buyers governed by NDCC Chapter 60-02.1

facility-based grain buyer is one that operates a facility under a federal storage license and a state license for the merchandising activities (referred to federal facilities).

Roving grain buyer is a grain buyer that purchases, solicits, merchandises or takes possession of grain in North Dakota – does not operate a facility

Rules applying to all grain buyers have been implemented and are found in ND Admin Code Chapters 69-07-01 through 04



Public Grain Warehouse – License Requirements

- Application
- Fee
- Surety Bond
- Certificate of Insurance on Grain
- Warehouse Documents

License requirements for a public grain warehouse include:

- 1) an application form
- 2) license fee - ranges \$300 - \$550 per location & is determined by the capacity of the facility
- 3) surety bond – ranges \$50,000/min - \$1,500,000/max – based on total capacity of all facilities licensed by an entity – purpose is in case of default
- 4) Insurance – for the current market value of grain (fire, wind, tornado)

(1) a scale ticket – must be issued for every load of grain received (45 days to convert into cash, warehouse receipt, credit-sale contract), (2) warehouse receipt - opt, (3) credit-sale contract – opt. written contract for sale of grain where the sale price is to be paid or may be paid more than 30 days after the delivery or release of the grain for sale – must contain a disclaimer notice-contract not covered by bond coverage in event of an insolvency & must identify credit-sale contract indemnity fund assessment to be applied (address shortly) (4) storage & handling policy – identifies the fees to be assessed by elevator such as receiving, storing, processing, or redelivering grain & termination date of warehouse receipts – must be established



Facility-Based Grain Buyer – License Requirements

- Application
- Fee
- Bond
- Certificate of Insurance on Grain
- License Documents

License requirements for a facility-based grain buyer include:

- (1) application form
- (2) fee – \$300
- (3) surety bond - determined by annual volume handle \$50,000 & \$1,000,000
(1st year estimate, followed by actual eventually 3 year rolling average)
- (4) grain insurance – same as public grain warehouses

Must file samples of the license documents to be used - scale ticket and credit-sale contracts (no warehouse receipts because we have no jurisdiction over storage – federal license) unlike state facilities facility-based grain buyers are not required to convert scale tickets



Roving Grain Buyer – License Requirements

- Application
- Fee
- Bond
- Scale Ticket or Comparable Document

License requirements for a roving grain buyer include:

- (1) application form
- (2) license fee – \$200
- (3) surety bond - determined by volume handle \$50,000 - \$1,500,000 same schedule as facility-based buyers
- (4) scale ticket or comparable document

Applies to all licensees

All business organizations or sole proprietors using a trade name must be registered and in good standing with the ND Secretary of State. All licensees are required to notify Commission of changes in ownership and forms.

All forms can be found on the Commission's website (address at the end) or calling our office and we happy to send a package be sent. Most important document is the a check list – cheat sheet - identifies exactly what is needed – application package contains a copy of the applicable laws and rules.



Insolvency

- When is a licensee insolvent
 - NDCC 60-04 – grain & seed warehouses
 - NDCC 60-02.1 – grain buyers
- Process
 - Trustee
 - Claims
 - Report & Recommendation
- History

Again bond is to protect grain sellers against default by grain buyer. Insolvency statute is found in Chapters . . .

An elevator or grain buyer is insolvent if they refuse, neglect, or are unable upon proper demand to make payment for grain purchased or marketed or are unable to make redelivery for grain. - Process is lengthy - takes app 6 months

If Com determines a licensee is insolvent - apply to district court for an appointment as trustee. Once appointed, the Com takes possession of the books and records and provides notice to file claims directly to producers and in newspaper. The Com establishes a trust funds – sell grain - if bond needed – join surety as a party to insolvency - the court orders surety to deposit funds needed.

Com reviews claims - prepare & submit a report & recommendation to court. Interested person can object to recommendations and the court must approve or modify the report and issue an order for payment – final step is to discharge the Commission from its trust.

Compiled and continue updating a list of insolvent companies - dates back to 1975 – includes 28 grain warehouse (one federal – only been around since 1999) & 1 roving grain buyer.



Credit-Sale Contract Indemnity Fund

- NDCC Chapter 60-10
- What is fund for?
- Who participates in the fund
- Assessment & collections
- Payments from the fund

In an insolvency bond covers cash claims – doesn't cover claims resulting from unpaid credit-sale contracts. However, a fund was created by the 2003 Legislature - provides partial protection for unpaid credit-sale contracts in grain elevator or grain buyer insolvencies. Each patron's coverage is limited to 80% of their unpaid credit-sale contracts with a maximum payout of \$280,000 per insolvency. Everyone selling grain via a credit-sale contract must participate – cannot opt-out or apply for a refund.

For all grain sold after August 1, 2003 via a credit-sale contract, a fee at the rate of two-tenths of one percent (0.2% or .002) is assessed on the value of the contract. The money is collected by licensees and submitted to the Commission on a quarterly basis. The money is deposited in a fund with the state treasury and the fund is administered by the Commission. Collections approximately \$1,000,000/year and will continue until the fund reaches \$10million. Once the fund reaches \$10 million, assessments will cease and won't be start again until the fund is less than \$5 million. As of today collections totaled just over \$3 million. To date no payments have been made from the credit-sale contract indemnity fund.

Payments cannot be made from the fund unless a licensee is deemed to be insolvent.



Unlicensed Grain Buyers

- Letter
- Education
- Cease & Desist
- Complaint

Prior to 1989 roving grain buyers didn't need a license if buying from licensed grain warehousemen only.

1989 Session statute changed to include protection for grain warehousemen - three formal complaints in 1991 totaling \$263,000 in default by unlicensed roving grain buyer.

Started grain buyer education efforts – sent letters to all grain elevators, reminder articles Grainmen's Mirror, issued press releases reminding public to sell to licensed grain buyers only. With assistance from NDSU Extension Service created a brochure in 2000, revised 2004 – Selling Grain? Know your Rights & Your Responsibilities. The brochures were mailed to licensees - request to post it in their elevators and, if requested, to make copies available to patrons, distributed through county extension offices and circulated to marketing clubs for distribution - available on our website.

If we become aware of an unlicensed grain buyer operating in the state – we contact the grain buyer –send letter

(1) ND has a grain buyer statute and all grain buyer operating without a license and corresponding bond are violating state law (2) we've become aware they may be operating our records show they are not license to do so (3) IF operating - stop immediately. Unlicensed entities may be ordered to cease and desist from further license activities & (4) at risk of a complaint - punishable by a fine of up to \$5,000.



Contacts

- Phone: 701-328-4097
- Fax: 701-328-2410
- E-mail: srichter@nd.gov
- Website: www.psc.state.nd.us

Any questions – please do not hesitate to contact our office.

Website – contains laws, rules, forms, checklists, selling grain brochure as well as a credit-sale contract brochure (an numerous others from various divisions of the Commission) lists of licensed grain buyers.