



Public Service Commission

State of North Dakota

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September 29, 2010

Mr. Loren David
14988 93rd Street SE
Lidgerwood, ND 58053

RE: Request for Information

Dear Mr. David:

The North Dakota Public Service Commission is responsible for licensing grain warehouses and grain buyers. A licensee must decide if they will accept grain via storage, cash, or a credit-sale contract arrangement. If a licensee chooses to accept grain via credit-sale contract, the licensee must file a sample of each kind of credit-sale contract that will be used with the Commission along with their license application. A licensee is required to notify the Commission when there is a change in the format of any receipt or credit-sale contract. The licensee must file a copy of the revised receipt or credit-sale contract with the Commission.

Credit-sale contracts must contain specific language as provided in state law. I am enclosing a copy of the sections of law and any applicable rules relating to credit-sale contracts. Please note that these credit-sale contract laws and rules do not specify who signs credit-sale contracts.

If you have further questions, please feel free call. I can be reached at 701-328-4097.

Sincerely,

Susan K. Richter, Director
Licensing Division

CHAPTER 60-02 GRAIN AND SEED WAREHOUSES

60-02-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Commission" means the public service commission.
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 in subsection 7 of section 60-02-19.1. If a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.
3. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa, and any other commercially grown grain or grass seed. "Grain" as defined in this chapter shall not include grain or grass seeds owned by or in the possession of the warehouseman that have been cleaned, processed, and specifically identified for an intended use of planting for reproduction and for which a warehouse receipt has not been issued.
4. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale contract.
5. "Public warehouse" means any elevator, mill, warehouse, subterminal, grain warehouse, terminal warehouse, or other structure or facility not licensed under the United States Warehouse Act [7 U.S.C. 241-273] in which grain is received for storing, buying, selling, shipping, or processing for compensation. Provided, however, that nothing in this chapter shall be construed to require a processor to receive, store, or purchase any lot or kind of grain at said facility.
6. "Public warehouseman" means the person operating a public warehouse that is located or doing business within this state, whether or not such owner or operator resides within this state. The term does not include a person who is permitted to sell seed under chapter 4-09, if that person does not store grain for the public and buys grain only for processing and subsequent resale as seed, or an authorized dealer or agent of a seed company holding a permit in accordance with section 4-09-14.4.
7. "Receipts" means grain warehouse receipts, scale tickets, checks, or other memoranda given by a public warehouseman for, or as evidence of, the receipt, storage, or sale of grain except when such memoranda was received as a result of a credit-sale contract.
8. "Receiving station" means any facility other than an individually licensed warehouse that is used by a licensed public warehouseman to receive and temporarily store grain prior to transferring the grain to the warehouseman's primary licensed warehouse location or delivering it directly to market.

60-02-02. Commission - Powers and duties. The duties imposed by the provisions of this chapter and the powers conferred herein devolve upon the commission.

60-02-03. Duties and powers of the commission. The commission shall have the duty and power to:

1. Exercise general supervision of the public warehouses of this state, including the handling, weighing, and storing of grain, and the management of public warehouses.

This grain is received, insured, and stored subject to the laws and rules of the state of North Dakota, the terms of this contract, and the charges and conditions stated herein and as filed with the North Dakota public service commission. Upon surrender of this receipt and payment or tender of all applicable charges, the amount, kind, and grade of grain identified in this receipt will be delivered to the person named above or the person's order as rapidly as due diligence, care, and prudence will permit. At the option of the holder of this receipt, the amount, kind, and grade of grain for which this receipt is issued, upon demand, must be delivered back to the holder at any terminal point customarily shipped to, or at the place where received, upon the payment of any charges for receiving, handling, storage, and insurance and in case of terminal delivery, the payment in addition to the above of the regular freight charges on the gross amount called for by this ticket or in lieu thereof, a receipt issued by a bonded warehouse or elevator company doing business at the terminal point. Nothing in this receipt requires the delivery of the identical grain specified herein, but an equal amount of grain of the same kind and grade must be delivered.

A warehouseman shall publish and post, in a conspicuous place in its warehouse, the fees that will be assessed for receiving, storing, processing, or redelivering grain and the termination date of its warehouse receipts. This publication must be filed with the commission as a part of the warehouse license application or annual renewal. The fees and termination date must be stated on the warehouse receipt issued for the grain. The fees or termination date may be changed upon filing a revised publication with the commission.

60-02-17.1. Warehouse charges for grain owned by the United States. Repealed by S.L. 1999, ch. 533, § 9.

60-02-18. Covenant against liens may be inserted in warehouse receipt. A public warehouseman also may insert in the warehouse receipt the following provision:

If any of the grain embraced in this receipt shall prove to be covered by a chattel mortgage or other lien, or the partial or absolute title shall prove to be in someone other than the person to whom this receipt was issued, the same, if discovered before the delivery of the grain, shall be sufficient reason for the refusal to deliver to the holder of the receipt, or if discovered after the delivery of the grain, such delivery shall be deemed an overdelivery for which said holder of this receipt, to whom such delivery is made, shall be accountable.

60-02-19. Warehouse receipts issued for grain in special bin. Repealed by S.L. 1983, ch. 672, § 25.

60-02-19.1. Credit-sale contracts. A warehouseman shall not purchase grain by a credit-sale contract except as provided in this section. All credit-sale contracts must be in writing and must be consecutively numbered at the time of printing the contract. The warehouseman shall maintain an accurate record of all credit-sale contract numbers, including the disposition of each numbered form, whether by execution, destruction, or otherwise. Each credit-sale contract must contain or provide for all of the following:

1. The seller's name and address.
2. The conditions of delivery.
3. The amount and kind of grain delivered.
4. The price per unit or basis of value.
5. The date payment is to be made.
6. The duration of the credit-sale contract.

7. Notice in a clear and prominent manner that the sale is not protected by the bond coverage provided for in section 60-02-09. However, if the warehouseman has obtained bond coverage in addition to that required by section 60-02-09 and such coverage extends to the benefit of credit-sale contracts, the warehouseman may state the same in the credit-sale contract along with the extent of such coverage.

The contract must be signed by both parties and executed in duplicate. One copy shall be retained by the warehouseman and one copy shall be delivered to the seller. Upon revocation, termination, or cancellation of a warehouseman's license, the payment date for all credit-sale contracts shall, at the seller's option, be advanced to a date not later than thirty days after the effective date of the revocation, termination, or cancellation, and the purchase price for all unpriced grain shall be determined as of the effective date of revocation, termination, or cancellation in accordance with all other provisions of the contract. When a public warehouse is transferred under this chapter, credit-sale contracts may be assigned to another licensed public warehouseman or facility-based grain buyer.

60-02-20. Discrimination by public warehouseman prohibited - Posting prices. No public warehouseman shall discriminate:

1. In the buying, selling, receiving, and handling of grain or in the charges made or the service rendered to owners of stored grain;
2. In the receiving of grain offered for sale or storage;
3. In regard to the persons offering such grain for sale or storage; nor
4. Between points or stations except as the marketing factors or transportation costs or grain quality premiums may warrant.

No public warehouseman shall be required to receive for storage any grain which is heating or otherwise out of condition. Storing grain free of charge is prohibited except as prescribed by law. A warehouseman shall post grain prices paid in a conspicuous place in the office or driveway of the warehouseman's place of business.

60-02-21. Issuance of informal memoranda forbidden - Penalty. A warehouseman who fails to issue a receipt, as is provided in sections 60-02-13 and 60-02-14, or who issues slips, memoranda, or any other form of receipt embracing a different warehouse or storage contract than is provided for specifically in this chapter, shall be guilty of a class A misdemeanor.

60-02-22. Liability of warehouseman. A public warehouseman is liable to the owner for the delivery of the kind, grade, quality, and quantity of grain called for by the warehouse receipt. Unless otherwise agreed, the value of any difference in kind, grade, quality, and quantity must be settled at the price on the local market on the day the warehouseman receives written request for delivery. The warehouseman may withhold from delivery a sufficient quantity of grain, based upon the local market price, to satisfy the value of any difference in kind, grade, or quality.

60-02-23. Records to be kept by public warehouseman. Every public warehouseman shall keep a record of all grain received, stored, and shipped, stating the:

1. Weight.
2. Grade.
3. Dockage for dirt or other causes.
4. Name of owner.
5. Price paid.

CHAPTER 60-02.1 GRAIN BUYERS

60-02.1-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Commission" means the public service commission.
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 in subsection 7 of section 60-02.1-14. If a part of the sale price of a contract for the sale of grain is to be paid or may be paid more than thirty days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.
3. "Facility" means a structure in which grain purchased by a grain buyer is received or held.
4. "Facility-based grain buyer" means a grain buyer who operates a facility licensed under the United States Warehouse Act [7 U.S.C. 241-273] where grain is received.
5. "Grain" means wheat, durum, oats, rye, barley, buckwheat, flaxseed, speltz, safflower, sunflower seeds, tame mustard, peas, beans, soybeans, corn, clover, millet, alfalfa, and any other commercially grown grain or grass seed. "Grain" does not include grain or grass seeds owned by or in the possession of the grain buyer which have been cleaned, processed, and specifically identified for an intended use of planting for reproduction and for which a warehouse receipt has not been issued.
6. "Grain buyer" means any person, other than a public warehouseman as defined in chapter 60-02, who purchases or otherwise merchandises grain for compensation. The term does not include:
 - a. A producer of grain who purchases grain from other producers to complete a carload or truckload in which the greater portion of the load is grain grown by the producer or on-farm feedlot operations in which at least fifty percent of the livestock is owned by the owner of the farm.
 - b. A person who is permitted to sell seed under chapter 4-09, if that person buys grain only for processing and subsequent resale as seed.
 - c. A person who is an authorized dealer or agent of a seed company holding a permit in accordance with section 4-09-14.4.
7. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale contract.
8. "Receipts" means scale tickets, checks, or other memoranda given by a grain buyer for, or as evidence of, the receipt or sale of grain except when such memoranda was received as a result of a credit-sale contract.
9. "Roving grain buyer" means a grain buyer who does not operate a facility where grain is received.

60-02.1-02. Commission - Powers and duties. The duties imposed and the powers conferred by this chapter devolve upon the commission.

60-02.1-03. Duties and powers of the commission. The commission has the duty and power to:

60-02.1-14. Credit-sale contracts. A grain buyer may not purchase grain by a credit-sale contract except as provided in this section. All credit-sale contracts must be in writing and must be consecutively numbered at the time of printing the contract. The grain buyer shall maintain an accurate record of all credit-sale contract numbers, including the disposition of each numbered form, whether by execution, destruction, or otherwise. Each credit-sale contract must contain or provide for all of the following:

1. The seller's name and address.
2. The conditions of delivery.
3. The amount and kind of grain delivered.
4. The price per unit or basis of value.
5. The date payment is to be made.
6. The duration of the credit-sale contract.
7. Notice in a clear and prominent manner that the sale is not protected by the bond coverage provided for in section 60-02.1-08. However, if the grain buyer has obtained bond coverage in addition to that required by section 60-02.1-08 and the coverage extends to the benefit of credit-sale contracts, the grain buyer may state that fact in the credit-sale contract along with the extent of such coverage.

The contract must be signed by both parties and executed in duplicate. One copy must be retained by the grain buyer and one copy must be delivered to the seller. Upon revocation, termination, or cancellation of a grain buyer's license, the payment date for all credit-sale contracts, at the seller's option, must be advanced to a date not later than thirty days after the effective date of the revocation, termination, or cancellation, and the purchase price for all unpriced grain must be determined as of the effective date of revocation, termination, or cancellation in accordance with all other provisions of the contract. When a facility is transferred under this chapter, credit-sale contracts may be assigned to another licensed facility-based grain buyer or public warehouseman.

60-02.1-15. Discrimination by grain buyer prohibited. A grain buyer may not discriminate:

1. In the buying, selling, receiving, and handling of grain or in the charges made or the service rendered to owners of purchased grain;
2. In the receiving of grain offered for sale, but this chapter may not be construed to require a processor to receive or purchase any lot or kinds of grain;
3. In regard to the persons offering such grain for sale; or
4. Between points or stations except as the marketing factors or transportation costs or grain quality premiums may warrant.

A grain buyer is not required to receive any grain that is heating or otherwise out of condition. A facility-based grain buyer shall post grain prices paid in a conspicuous place in the office or driveway of the buyer's place of business.

60-02.1-16. Records required to be kept by grain buyers. Each grain buyer shall keep such accounts, records, and memoranda concerning the buyer's dealing as such grain buyer as from time to time may be required by the commission and shall make such reports of purchases of grain as may be required by the rules made by the commission. The commission at all times shall have access to such accounts, records, and memoranda.

For a new licensee, the first year's bond shall be based on the projected purchase volume and the second year's bond and third year's bond shall be based on the average actual volume according to the above schedule.

Unless the commission determines that an increase is necessary to accomplish the purpose of North Dakota Century Code chapter 60-02.1, the bond of a facility-based grain buyer shall not exceed one million dollars nor shall the bond of a non-facility-based grain buyer exceed one million five hundred thousand dollars.

History: Effective August 1, 1999; amended effective August 1, 2000.

General Authority: NDCC 60-02.1-03

Law Implemented: NDCC 60-02.1-03, 60-02.1-08

69-07-02-02.2. Hay buyer - Bond schedule. The hay buyer bond is determined by the three-year rolling average of hay purchased annually in this state by the hay buyer. The bond amounts are:

Up to 2,500 tons	\$25,000
For each additional 2,500 tons or fraction thereof	\$25,000

Unless the commission determines that an increase is necessary to accomplish the purposes of North Dakota Century Code chapter 60-03, the bond of a hay buyer shall not exceed one million five hundred thousand dollars.

History: Effective August 1, 1999.

General Authority: NDCC 60-03-01.1

Law Implemented: NDCC 60-03-04

69-07-02-03. License renewal. A license is an annual license that expires on July thirty-first. A licensee must submit a renewal application to the commission by July fifteenth on a form that will be provided by the commission. Every business organization or sole proprietor using a trade name must be in good standing with the secretary of state. An application that is not received in a timely manner will result in the automatic discontinuance of business on August first.

History: Effective February 1, 1991; amended effective August 1, 1999.

General Authority: NDCC 60-02-03, 60-02.1-03, 60-03-01.1

Law Implemented: NDCC 60-02-07, 60-02.1-07, 60-03-02

69-07-02-04. Business documents - Revisions. A licensee must promptly notify the commission of a change in ownership, name, corporate structure, or format of any receipt or credit-sale contract.

History: Effective February 1, 1991; amended effective August 1, 1999.

General Authority: NDCC 60-02-03, 60-02.1-03

Law Implemented: NDCC 60-02-03, 60-02.1-03