

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Public Service Commission
Licensing
Rulemaking**

Case No. GE-14-763

**PUBLIC SERVICE COMMISSION STAFF TESTIMONY
December 15, 2014**

Good afternoon Commissioners. For the record, my name is Sue Richter. I'm the Public Service Commission's Licensing Division Director. The Licensing Division is directly responsible for licensing and regulating grain elevators and grain buyers in North Dakota.

The Commission is proposing amendments to change the way grain warehouse and grain buyer bonds are determined. The reason for this rulemaking is twofold. First, the last rulemaking revising bond requirements was in 1999. Since 1999, there have been 16 insolvencies with payments to noncredit-sale contract (cash) claimants of less than 10% in three failures, 31% to 43% in two failures, 62% to 72% in two failures, and 93% to 100% in eight failures. For one failure, the Commission didn't make payment because claims were withdrawn. The three insolvencies in which claimants received less than 10% of their valid cash claims involved a roving grain buyer and two processing facilities. Only one of the 16 insolvencies involved a facility-based grain buyer. Eleven of the 16 insolvencies involved entities licensed less than seven years.

Over the years, the Commission has considered the issue of grain bond levels and the impact of the bonding requirements on recovery in the event of insolvency. In 2008 and 2009 the Public Service Commission met with various members of the agriculture community and interested legislators to discuss whether current bonds were

inadequate, whether bonds should be increased, whether a new “processor” class should be created, or whether current bonds should remain as is. Bond discussions have been ongoing.

The second reason for this rulemaking is in response to an audit by the North Dakota Office of the State Auditor of the Public Service Commission for the biennium ended June 30, 2013. The report issued by the State Auditor included a recommendation that the Commission take steps to increase grain buyer bonds.

The Commission is proposing these rules to address the Commission’s bonding concerns, as well as the recommendation by the State Auditor.

Grain warehouse bonds are set forth in North Dakota Administrative Code section 69-07-02-02. These current levels have been in place since August 1999 and equal approximately \$.50 per bushel for a licensee with a capacity up to 500,000 bushels, plus \$.20 per bushel for each bushel over 500,000 bushels.

The bond levels prior to the 1999 rulemaking were \$1 per bushel for a licensee with a capacity up to 500,000 bushels, plus \$.20 per bushel for each bushel over 500,000 bushels. The proposed reduction in 1999 was due in part to a huge shift in marketing practices – a shift away from noncredit-sale contract (cash) to credit-sale contract transactions which are not protected under a grain warehouse or grain buyer bond if a licensee becomes insolvent.

This shift away from cash transactions to credit-sale contract transactions means there are far fewer bushels that are eligible for protection under bonds. In 1999, Staff estimated credit-sale contract transactions were as high as 60% of a grain warehouseman’s business. Based on information obtained during grain warehouse

examinations, Staff estimates today's use of credit-sale contract transactions may be as high as 65 to 70% of a licensee's business. A 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 which was not available in 1999. There was no protection available to claimants with valid credit-sale contract transactions prior to the indemnity fund.

The Commission is proposing rules that will change the way a grain warehouse bond is determined, including requiring 30% additional bond coverage for newer licensees licensed less than seven years and additional bond coverage for licensees with substantial annual grain purchase volume. Since the 1999 rulemaking, approximately 69% of the failures occurred during the first seven years of business. This supports the requirement of additional bond for new licensees.

The Commission is proposing rules that will provide a reduction in the required bond for a licensee that establishes and follows a shorter scale ticket conversion policy approved by the Commission. Under North Dakota Century Code section 60-02-11, a grain warehouseman must issue a scale ticket for each load of grain received and all scale tickets must be converted into, cash, warehouse receipt, or credit-sale contract within 45 days after the grain is delivered. In the event of insolvency, the untimely conversion of scale tickets creates a greater risk to the farmer. When a scale ticket is converted in a shorter period of time, the risk to a farmer decreases and less bond may be needed.

Substantially larger liabilities may be associated with insolvencies of licensees that purchase larger volumes of grain. Because of this increased risk, the Commission

is proposing rules that will require additional bond to help alleviate some of this risk. A grain warehouse licensee with an annual purchase volume of more than seven times its licensed capacity must file additional bond of \$.20 per bushel for each bushel that exceeds this amount. A licensee that handles a smaller volume of grain has a smaller risk and is not required to file additional bond.

Facility-based grain buyer and roving grain buyer bonds are set forth in North Dakota Administrative Code section 69-07-02-02.1. These bonding requirements were changed in August 1999, amended in August 2000, and have been in place ever since. A facility-based grain buyer is a grain buyer who operates a facility under the United States Warehouse Act (USWA) and whose storage obligations are governed by the USWA license. Only the cash and credit-sale contract transactions of a facility-based grain buyer are governed by North Dakota law. A roving grain buyer is a grain buyer who does not operate a facility in North Dakota where grain is received.

Currently, the bond for a facility-based grain buyer and a roving grain buyer is determined by the three-year rolling average of grain purchased annually in North Dakota by the licensee. The bond amounts are \$.50 per bushel for the first 100,000 bushels, plus \$.20 per bushel for each bushel over 100,000 and up to 1,000,000 bushels, plus \$.05 per bushel for each bushel in excess of 1,000,000. For a new licensee, the first year's bond is based on the projected grain purchase volume and the second year's bond and third year's bond are based on the average actual volume.

The proposed rules do not change the way the bond for a facility-based grain buyer is determined, they do however, change the way the bond for a roving grain buyer is determined. A roving grain buyer bond will be based on the total projected annual

grain purchase volume at a rate of \$.50 per bushel for the first 500,000 bushels, plus \$.20 per bushel for each bushel in excess of 500,000.

The proposed rules will also increase the maximum required bond for all licensees. Currently, the maximum bond for a grain warehouseman and a roving grain buyer is \$1,500,000 and the maximum bond for a facility-based grain buyer is \$1,000,000. The maximum required bond for all licensees will be \$2,000,000. The \$50,000 minimum bond for all licensees will not change. The Commission may require an increase in the amount of any bond when necessary to accomplish the purposes of North Dakota Century Code Chapter 60-02 and 60-02.1.

Farmers will benefit from these proposed rules in the event a licensee becomes insolvent since there should be more bond available to distribute to unpaid noncredit-sale contract (cash) claimants.

Staff created a power point presentation outlining the current and proposed bonding requirements. Also included was an example using the proposed rules to calculate a grain warehouse bond based on capacity, years licensed, a large annual grain purchase volume, and bond credit for a shorter scale ticket conversion policy. Attached to my testimony are the relevant pages.

This concludes my testimony. I'll try to respond to any questions you might have.

Current Grain Warehouse Bond



- ND Admin. Code Section 69-07-02-02
- \$50,000 – minimum bond
- 50¢/bushel first 500,000 bushels
- + 20¢/bushel for each bushel over 500,000
- \$1,500,000 – maximum bond

Proposed Grain Warehouse Bond



- Licensed 7 years or more
- \$50,000 – minimum bond
- 50¢/bushel first 500,000 bushels
- + 20¢/bushel for each bushel over 500,000
- \$2,000,000 – maximum bond

- Licensed less than 7 years
- \$65,000 – minimum bond
- 65¢/bushel first 500,000 bushels
- + 26¢/bushel for each bushel over 500,000
- \$2,000,000 – maximum bond

- If annual grain purchase volume is more than 7 times licensee's capacity, additional bond of 20¢/bushel for each bushel that exceeds 7 times capacity is required.

Proposed Grain Warehouse Bond



- Scale ticket – under 60-02-11 all scale tickets must be converted into cash, warehouse receipt or credit-sale contract within 45 days after the grain is delivered to the warehouse
- Reduce required bond if establish & follow conversion policy
- 10 days or less – 30% reduction of required bond
- 11-21 days – 15% reduction of required bond

Example – Grain Warehouse Bond



- Proposed bond - for a licensee operating a 50,000 bu. grain warehouse with an annual grain purchase volume of 2,600,000 bu. (50,000 bu. a week X 52 weeks).
- Bond – based on capacity and years licensed:

• 1-6 years	\$ 65,000	≥7 years \$ 50,000
-------------	-----------	--------------------
- Additional Bond - 20¢ per bushel:

• >7 times capacity, add	\$450,000	\$450,000
--------------------------	-----------	-----------
- **Total Bond**

	\$515,000	\$500,000
--	------------------	------------------
- Credit for Conversion Policy

• ≤10 days-30% discount	\$154,500	\$150,000
-------------------------	-----------	-----------
- **Total Bond**

	\$360,500	\$350,000
--	------------------	------------------
- Credit for Conversion Policy

• 11-21 days-15% discount	\$ 77,250	\$ 75,000
---------------------------	-----------	-----------
- **Total Bond**

	\$437,750	\$425,000
--	------------------	------------------
- Current Bond - \$50,000

Facility-Based Grain Buyer Bond



- Current Bond - ND Admin. Code Section 69-07-02-02.1
- Based on projected/actual annual purchase volume (3 year average)
- \$50,000 – minimum bond
- 50¢/bushel first 100,000 bushels, plus
- 20¢/bushel for each bushel over 100,000 and up to 1,000,000, plus
- 5¢/bushel for each bushel in excess of 1,000,000
- \$1,000,000 – maximum bond

- Proposed Bond
- Based on projected/actual annual purchase volume (same as above)
- \$2,000,000 – maximum bond

Roving Grain Buyer Bond



- Current Bond - ND Admin. Code Section 69-07-02-02
- Based on projected/actual annual purchase volume (3 year average)
- \$50,000 – minimum bond
- 50¢/bushel first 100,000 bushels, plus
- 20¢/bushel for each bushel over 100,000 and up to 1,000,000, plus
- 5¢/bushel for each bushel in excess of 1,000,000
- \$1,500,000 – maximum bond

- Proposed Bond
- Based on projected annual purchase volume (not 3 year average)
- \$50,000 – minimum bond
- 50¢/bushel first 500,000 bushels, plus
- 20¢/bushel for each bushel in excess of 500,000 bushels
- \$2,000,000 – maximum bond

Increase In Any Bond



- The Commission may require an increase in the amount of any bond when necessary to accomplish the purposes of North Dakota Century Code Chapters 60-02 and 60-02.1.