

FREQUENTLY ASKED QUESTIONS
CREDIT-SALE CONTRACT INDEMNITY FUND
Compiled by the North Dakota Public Service Commission
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Q 1: *What is the credit-sale contract indemnity fund?*

A: This fund was created by the 2003 Legislature to provide partial protection for unpaid credit-sale contracts in grain elevator or grain buyer insolvencies. Money comes from a 0.2% (.002) assessment on all credit-sale contracts and is deposited in a fund administered by the Public Service Commission (Commission). Legislation in 2007 reduced the cap from \$10 million to \$6 million. The fund reached \$6 million and assessments stopped on July 1, 2008. Assessments will remain ceased until the fund balance drops below \$3 million.

Q 2: *How much coverage does the indemnity fund provide?*

A: Any eligible person's coverage is limited to 80% of their unpaid credit-sale contract(s) with the insolvent buyer, up to a maximum payout of \$280,000 per insolvency. For example: \$50,000 in contracts = \$40,000 payout; \$150,000 in contracts = \$120,000 payout; \$350,000 or more in contracts = maximum \$280,000 payout. Assessments are collected on the value of all grain sold via credit-sale contract, even if a producer has more than \$350,000 in outstanding contracts.

Q 3: *What is a credit-sale contract?*

A: NDCC §§ 60-02-01(2) and 60-02.1-01(2) define a credit-sale contract as “. . . a written contract for the sale of grain pursuant to which 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 and which contains the notice provided in ND Admin. Code § 69-07-03-06. 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.” A credit-sale contract must be signed to be valid and enforceable.

Q 4: *What are common kinds of credit-sale contracts?*

A: Common forms of credit-sale contracts include: deferred payment, delayed pricing or no price established, installment sales, or variations of these contracts by another name. These contracts are not always credit-sale - the key is payment in more than 30 days. For example, a deferred payment contract written on December 3 for payment on January 2 is not a credit-sale contract and would have no assessment taken against it because payment is made within 30 days. Conversely, a deferred payment contract written on December 3 for payment on January 5 is a credit-sale contract, since payment will be made more than 30 days after the release date.

Q 5: What if a producer enters into a contract on December 3rd that provides for payment on January 5th, but the producer later requests and receives payment on January 2nd? Is this a credit-sale contract?

A: Opinions may differ, but the Commission believes the answer is "no." The original contract was a credit-sale because payment was to be made after 30 days. However, the contract was amended when both parties agreed to payment in 30 days or less and because payment was made in 30 days or less it is not a credit-sale contract and no assessment is payable.

Q 6: What about delayed pricing contracts in which the producer might pick a price any time within the next six or nine months?

A: Again, 30 days is the key. Any money that is paid out in 30 days or less is not a credit-sale and is not subject to the assessment. Payments that are made more than 30 days after title passes are credit-sale transactions and are subject to the assessment.

Q 7: What if a contract is signed on December 5th and it provides for a "window of payment" option (e.g. "Payment will be made between January 1 – 15.")? Is this a credit-sale contract?

A: It depends on when the payment is actually made. If the licensee pays for the grain in 30 days or less, the transaction is not a credit-sale and no assessment should be collected. If payment is made after more than 30 days, the transaction is a credit-sale and the assessment should be collected.

Q 8: Do I collect an assessment if I give an advance on a contract?

A: If the contract provides for an advance within the first 30 days, the portion advanced is not a credit-sale and would not be subject to the assessment. If there is a delayed advance of more than 30 days from the execution of the contract, that portion is a credit-sale and is subject to the assessment. A payment made more than 30 days after the contract is executed is a credit-sale that is subject to assessment.

Q 9: When did assessments begin?

A: Assessments began on credit-sale contracts issued after August 1, 2003. Any grain sold prior to August 1, 2003 is not eligible for protection from the indemnity fund.

Q 10: On what amount is the assessment taken?

A: On the value of the grain, after quality discounts are taken, but before any fees are subtracted.

Q 11: Whose contracts are assessed?

A: All credit-sale contracts are assessed, regardless of whether the seller is a producer or another elevator or a grain buyer. All grain purchased via credit-sale by a North Dakota licensed grain elevator, grain buyer, or processor is subject to assessment.

Q 12: How is the program administered?

A: The Commission provides each licensee with a short remittance form that must be returned within 30 days after the end of each calendar quarter along with the appropriate remittance. Documentation of the assessment collected must be maintained by the licensee for review by Commission inspectors.

Q 13: Do I need to submit a report if I didn't make any payments on credit-sale contracts during the quarter?

A: Yes. If a licensee doesn't submit a report, the Commission does not know if there were no credit-sale payments during the quarter or if the licensee simply forgot to send in the report. Requiring a report from each licensee every quarter allows the Commission to monitor compliance.

Q 14: Do I need to fill out a separate report for each of my firm's elevator locations?

A: No. Licensees with multiple locations can submit one report and one remittance check. Company records must, however, be compiled to reflect how the remittance was calculated and which contracts were involved.

Q 15: Do I need to participate in this program if I am a roving grain buyer or a federally licensed warehouse with a state grain buyer's license?

A: Yes. Participation in this program is mandatory. For federally licensed facilities, collections for this patron funded program are not prohibited by the United States Warehouse Act.

Q 16: Does the assessment have to be noted on credit-sale contracts?

A: The law requires that the assessment be noted on each contract.

Q 17: If a seller prices out a delayed pricing contract and puts the proceeds on a deferred payment contract, do I collect two assessments?

A: No. The assessment is calculated only when the actual payment is made. If one contract is rolled over into another and no payment is made at the time of the rollover, no assessment is due. That will happen when payment is made under the new contract.

Q 18: How about minimum price and basis-fixed or basis-open contracts?

A: Keep in mind that if payment is made more than 30 days after delivery or release of the grain for sale, the agreement is a credit-sale contract and the assessment should be taken when payment is made.

Q 19: Is participation in this program voluntary?

A: No. Anyone that sells grain via a credit-sale contract whether they are a licensee or a producer must participate in the program and cannot "opt-out" or apply for a refund.

Q 20: My elevator purchases bond coverage to protect deferred payment contracts and it appears there is double coverage. What should we do?

A: This is a decision each elevator must make and regardless of that decision, the indemnity fund assessments must be collected and remitted - even if credit-sale bond coverage is in place. Ultimately, it might be up to a court to decide which coverage would apply in the insolvency.

Q 21: What if deferred payment contract dollars are escrowed for the benefit of sellers?

A: The assessment is still required. There is nothing in the indemnity fund law to prevent escrowing. That is up to the parties involved.

Q 22: What if a producer can't or won't decide what to do with his grain or wants to sell his grain on some form of credit-sale contract but then doesn't sign the contract in a timely manner?

A: State law requires that all scale tickets must be converted into cash, noncredit-sale contracts, credit-sale contracts, or warehouse receipts within 45 days after the grain is delivered to the warehouse (NDCC § 60-02-11). Since a credit-sale contract must be signed to be valid and enforceable, an unsigned credit-sale contract is not valid and is, in effect, an open scale ticket.

Q 23: Can a licensee request a refund?

A: A refund will be issued if an erroneous assessment was made on a credit-sale contract. The refund will be made to the licensee and the licensee will be responsible for issuing the refund. A request for a refund must be submitted in writing and must include a detailed list of the assessment error(s).

Q 24: What can be done to prevent an unscrupulous claim against the fund?

A: Indemnity Fund payments constitute a debt obligation of the person who caused the payment to be made. The Legislature has given the Commission the authority to take legal action against any person / licensee who causes a payment to be made out of the fund.

Q 25: What if I have other questions?

A: Call the Public Service Commission at 701-328-4097.