

North Dakota Department of Agriculture

Doug Goehring, Agriculture Commissioner

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Grain and Livestock Licensing Division

- Shaun Quissell
 - Division Director
- Les Gasal
 - Grain and Livestock Specialist
- Jason Coffey
- Toby Kramer
 - Grain Inspectors
- Open inspector to be hired this fall
- Sue Richter and Pete Nelson
 - Part time staff assisting in starting the program



Current License Types

Public Warehouse (260 state warehouses)

Any elevator, mill, warehouse, subterminal, grain warehouse, terminal warehouse, or other structure or facility not licensed under the United States Warehouse Act in which grain is received for storing, buying, selling, shipping, or processing for compensation.

Grain Buyer

Facility-Based Grain Buyer (108 federal warehouses) – Any grain buyer who operates a facility licensed under the United States Warehouse Act.

Roving Grain Buyer (97 licensees) – Any grain buyer who does not operate a facility where grain is received. A roving grain buyer purchases, **solicits, merchandises, or takes possession of grain** in North Dakota.



Commissioner's Proposal

- Simplify to three license types of grain buyer
 - Remove warehouse license
- Facility Based Grain Buyer
 - Current State or Federal warehouse
- Specialty grain or Processor Grain Buyer
 - Specialty grain would be considered any grain which cannot be hedged
 - Processor would be those taking grain and substantially change the product
 - I.e wheat to flour, blended grain with non grain product
- Roving Grain Buyer or Broker
 - Broker would be anyone receiving compensation for assisting in the sale of grain, yet never taking title or possession of the grain



Current Public Warehouse License Fees

- Based on capacity (initial license effective on or after June 1 does not expire until July 31 of following calendar year). If two or more warehouses are operated in same city or citing in conjunction with each other, only one license is required.
 - Annual license - first six years of operation
 - \$400 – maximum capacity of 200,000 bushels
 - \$550 – capacity of 200,001 through 500,000 bushels
 - \$650 – capacity of more than 500,000 bushels
 - Biennial license - thereafter
 - \$700 – maximum capacity of 200,000 bushels
 - \$1,000 – capacity of 200,001 through 500,000 bushels
 - \$1,200 – capacity of more than 500,000 bushels
 - Late fee
 - \$100 per warehouse for 1-year license
 - \$200 per warehouse for 2-year license



Current Grain Buyer License Fees

- License fee for a facility-based grain buyer – \$400 annually
- License fee for a roving grain buyer - \$300 annually
- Late fee
 - \$100 per location/license
- Facility-based grain buyer and roving grain buyer licenses are one-year licenses. Initial license effective on or after June 1 does not expire until July 31 of the following calendar year.



Commissioner's Proposal

- Return all license to annual license periods
- Simplify fees to be consistent with all license types
- Base fees for each location or license on the value of grain rather than volume
 - \$400 – purchases below 1 million
 - \$800 – purchases over 1 million less than 10 million
 - \$1200 – purchases over 10 million



Commissioner's Proposal

- As part of the license approval need a financial Criteria
 - Equity standards- Minimums from Small Business Administration definitions
 - Small business 150,000 or greater
 - Medium 250,000 or greater
 - Larger 500,000 or greater
 - Working capital ratio greater than 1
 - License types over 10 million report financial income statements quarterly
 - All others annual at licensing
 - All licenses types provide bank verification release for our review
- Ability to run a background report on new licensees



Current Bond Types and Levels

- Public Grain Warehouse – determined by licensee’s total physical capacity licensed in ND, the length of time the licensee has been licensed, the licensee’s annual grain purchase volume*, and the licensee’s scale ticket conversion policy**.
 - Licensed less than 7 years
 - \$65,000 minimum
 - \$2,000,000 maximum unless Commissioner determines additional bond is needed
 - Licensed 7 years or more
 - \$50,000 minimum
 - \$2,000,000 maximum unless Commissioner determines additional bond is needed
 - *If more than 7 times its total licensed and bonded capacity, additional bond coverage is required at a rate of \$5,000 for each 25,000 bushels or fraction.
 - **A required bond may be reduced by 30% if licensee establishes and follows a conversion policy of 10 days or less and by 15% for a policy of 11 to 21 days.



Bond Types and Levels (continued)

- Facility-based grain buyer – determined by volume of grain the licensee purchases annually in ND at a rate of \$.50/bushel for volume up to and including 100,000 bushels + \$.20/bushel for each bushel exceeding 100,000 bushels up to and including 1,000,000 bushels + \$.05/bushel for each bushel exceeding 1,000,000 bushels.
 - \$50,000 minimum bond
 - \$2,000,000 maximum bond unless Commissioner determines additional bond is needed
- Roving grain buyer – determined by the projected annual grain purchase volume of \$.50/bushel for first 500,000 bushels + \$.20/bushel when volume exceeds 500,000 bushels
 - \$50,000 minimum bond
 - \$2,000,000 maximum bond unless Commissioner determines additional bond is needed



Bond Types and Levels (continued)

- Bonds are continuous and must be filed before a license can be issued.
- Purpose of the bond is to protect holders of outstanding receipts and sellers of grain and cover costs incurred by the Commissioner in the administration of insolvency.
- The Commissioner sets the amount of bond (via rule) and may require an increase in the amount of any bond, if deemed necessary.
- Only one bond may be given for any line of elevators, mills, warehouses, etc., or for any series of facilities operated by a facility-based grain buyer. Only one bond can be filed for a roving grain buyer.
- The Commissioner may accept cash, a negotiable instrument, or bond executed by personal sureties in lieu of a surety bond.



Commissioner's proposals

- Facility based grain buyer Bond
 - Base on dollar value of purchases
 - Use three year rolling average calculated at renewal
 - Bond calculation based on 15% rounded to the nearest \$10,000
- Specialty or Processor grain buyer bond
 - Based on dollar value of purchases
 - Report purchases monthly and bond adjusted as needed
 - Bond calculation based on 25% rounded to nearest \$10,000
- Roving Grain buyer or Brokers
 - Based on dollar value of solicitation, merchandise, or purchases
 - Report solicitation, merchandise, or purchases monthly Bond adjusted as needed
 - Bond Calculation based on 30% rounded to nearest \$10,000



Current Scale Ticket policy

- Public warehouseman
- A uniform scale ticket must be issued for every load of grain received.
- All scale tickets must be converted into cash, noncredit-sale contracts, credit-sale contracts or warehouse receipts within 45 days of grain being delivered to the warehouse.
 - Exception for conversion – if the person to whom a scale ticket is issued signs a form waiving all rights to trust benefits in event of insolvency. The form must identify each scale ticket to which the waiver applies and must also be signed by warehouseman. A copy of the waiver must be kept with elevator records, a copy provided to the person who was issued the scale ticket and one copy must be filed with the Commissioner.
- **NOT REQUIRED TO RECEIVE GRAIN FOR STORAGE** – must publish and post a publication identifying whether storage is available or whether grain will be accepted via cash or credit-sale contract arrangement.
- A grain buyer shall issue a uniform scale ticket or comparable receipt for each load of grain received.
- Currently state warehouse licensee are made to enforce the law
- Farmers are the ones that ultimately must make the decision



Commissioner's Proposal

- Reduce conversion of scale ticket to 20 days
- Another possibility is to consider all grain received at facility based buyer is on delayed price contract (credit sale) unless other arrangements have been made prior to delivery
 - This would require additional law change to have contract issued without signature
 - Allow for electronic signature in law
- All facilities that use credit sale must maintain funds in custodial account
 - Must maintain 20% of deferred payments in custodial account
 - Custodial account would be reviewed during inspections



Commissioner's Proposal

- Other consideration is all grain is considered cash sale at time of delivery, unless other arrangements have been made prior.
 - Law needs to state once check has been issued it is final transaction
 - Cannot be reversed or placed into credit sale contract
 - All cash sales must be settled with 10 days of final delivery



Credit-Sale Contracts

- 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. 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 30 days after the delivery or release of the grain for sale, only such part of the contract is a credit-sale contract.
- Credit-sale contracts must be in writing and must contain:
 - The seller's name and address.
 - The conditions of delivery.
 - The amount and kind of grain delivered.
 - The price per unit or basis of value.
 - The date payment is to be made.
 - The duration of the credit-sale contract.
 - Notice in a clear and prominent manner that the sale is not protected by the bond coverage.
 - The contract must be signed by both parties and executed in duplicate.
 - The credit-sale contract indemnity fund assessment (2/10 of 1% of value of grain).



Warehouse & Storage Contract (Warehouse Receipt)

- Public Warehouse
- A storage contract/warehouse receipt is a negotiable instrument.
- A storage contract/warehouse receipt must contain the fees that will be assessed for receiving, storing, processing, or redelivering grain and the termination date of its warehouse receipts.
- A warehouseman must publish and post in a conspicuous place in its warehouse, the fees that will be assessed and the termination date of its receipts. The publication must be filed with the Commissioner. The fees or termination date may be changed upon filing a revised publication with the Commissioner.
- A warehouseman is not required to receive grain for storage and must publish and post, in a conspicuous place in the warehouse, a publication identifying whether storage will be available or whether grain will be accepted via cash or credit-sale contract arrangement.
- Facility-based grain buyers – warehouse receipts are regulated under the United States Warehouse Act.



Termination of Storage Contracts

- Public Warehouse
- Storage contracts terminate on the date identified in the publication (June 30 for grain and April 30 for dry edible beans unless a different date is identified.)
- At least 30 days before the termination date of a storage contract, the warehouseman must notify the receipt holder by mail of the warehouseman's intention to terminate the storage contract, unless the receipt holder before that time, demands redelivery, authorizes sale, extends the storage contract, or enters into a new contract for restorage.
- Failure to notify the receipt holder results in forfeiture of storage charges accrued for the grain during the previous 12 months.
- In the absence of a demand for delivery, an order to sell, or an agreement between the warehouseman and the receipt holder, upon the expiration of the storage contract, the warehouseman may sell at the local market price on the close of business on that day, all stored grain and tender the proceeds of the sale, less accrued storage charges and advances upon any previous storage contract of the receipt holder.



Commissioner's Proposal

- Only facility based or specialty buyer may offer Warehouse or storage contracts
 - A storage contract/warehouse receipt is a negotiable instrument.
 - A storage contract/warehouse receipt must contain the fees that will be assessed for receiving, storing, processing, or redelivering grain and all contracts terminate on June 30th
 - At least 30 days before the termination date of a storage contract, the grain buyer must notify the receipt holder intention to terminate the storage contract, unless the receipt holder before that time, demands redelivery, authorizes sale, extends the storage contract, or enters into a new contract for restorage.
 - A grain buyer must publish and post in a conspicuous place in its warehouse, the fees that will be assessed and the termination date of its receipts.
 - A grain buyer is not required to receive grain for storage.



Credit-Sale Contract Indemnity Fund

- The fund was created by the 2003 Legislature. The fund reached the \$6,000,000 cap and collections were suspended on July 1, 2008. Assessments will remain ceased until the fund balance drops below \$3,000,000.
- Fund coverage limit
 - 80% of valid unsatisfied credit-sale contract claim for each insolvency
 - \$280,000
- Fund balance
 - Exceeds \$4 million
 - If claims for indemnity payments from the fund exceed the amount in the fund, the Commissioner shall prorate the claims and pay the prorated amounts. As future assessments are collected, the Commission shall continue to forward payments until the person receives the maximum amount payable.
 - The chronological order of insolvencies is determined by the date the Commissioner is appointed trustee.



Commissioner's Proposal

- Have Indemnity fund changed to cover all grain sales
 - Lower assessment rate to half of current rate
 - Increase cap to 8 million
 - Under insolvency law place indemnity fund as last to pay
 - Grain proceeds, Bond, Indemnity fund
- If remaining as only credit sale eligible to fund
 - Make amount reimbursable slide down with years money is deferred
 - 1 yr. or less deferred-80%
 - 2 yr. deferred 60%
 - 3 yr. deferred 40%
 - 4 yr. deferred 20%
 - 5 yr. or more no coverage
 - Idea is that no reward for risk taking



Commissioner's Proposal

- Indemnity fund, should only in-state grain producers be eligible?
 - Right now covers any grain sold in state
 - Out state and international farmers are covered
 - Should grain buyers receive coverage
- Open up ability for private insurance to create coverage on marketing decisions
 - If available, do we need an indemnity fund



Other Considerations

- Currently Commissioner has no civil penalty authority for Grain Inspection
- Commissioner has no ability to request documentation other than suspend license
 - For inspection would like a timeframe in law to supply documents in 5 days
- Marketing and risk program outreach from Commissioner's office
- New entities have a graduated inspection process
 - Quarterly inspections until business demonstrates ability to meet criteria



Questions?

