

North Dakota Department of Agriculture

Doug Goehring, Agriculture Commissioner

- Agriculture is for everyone -



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.



Suggested Changes

- 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 changing the product
 - i.e wheat to flour; blended grain with non-grain product
- Roving Grain Buyer or Broker
 - Broker defined as a person or firm who arranges transaction between a buyer and a seller for a commission



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.



Suggested Changes

- Return all licenses 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 but less than 10 million
 - \$1,200 – purchases over 10 million



Suggested Changes

- As part of the license approval, meet financial criteria
 - Net Worth Standards
 - Purchase less than One Million : \$200,000 net worth
 - Purchase over One Million but less than Ten million: \$500,000 net worth
 - Purchase over Ten million: \$1,000,000 net worth
 - Working capital ratio greater than 1.0
 - License types over 10 million report balance sheet and income statements quarterly
 - All others annual at licensing
 - Or as requested by the Commissioner
 - All licenses types provide bank verification release for our review



Changes and Suggested Changes

- Run a background report on **new** licensees
 - We have found companies that provide reporting rather inexpensively
 - **Run reports on all new business**
 - All out of state roving grain buyers and brokers
 - Trade and Bank References
- During grain round table meetings, lots of discussion about credit checks on grain buyers
 - Reviewing personal credit scores without a hard report.



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.



Current 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



Current 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.



Suggested Changes

- Facility-Based Grain Buyer Bond
 - Based on dollar value of purchases
 - Use three-year rolling average calculated at renewal
 - Bond calculation based on 15% of purchase 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 20% of purchase rounded to nearest \$10,000



Suggested Changes

- Roving Grain Buyer or Brokers
 - Based on dollar value of solicitation, merchandise, or purchases
 - Report solicitation, merchandise, or purchases monthly and bond adjusted as needed
 - Bond calculation based on 20% of purchase rounded to nearest \$10,000
- Develop a bond discount of either 20% or 30% off total bond
 - Base on financial health of business
 - Payment policy
 - History of business



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



Suggested Changes

1. Reduce conversion of scale ticket to 20-30 days
 - If not converted with in time frame farmer forfeits bond and Credit sale protection
2. As a consideration- all grain received, at facility-based buyer, is a delayed price contract (credit sale) unless other arrangements have been made prior to delivery. Allow 14 days before the Storage calculation is assessed.
3. 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 a final transaction
 - Cannot be reversed or placed into credit sale contract.
4. All buyers 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



Current 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.
- 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).



Current 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 payment cap
 - \$350,000 credit sale claim would meet payment cap
- Fund balance
 - Exceeds \$4.5 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 Commissioner 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.



Consideration for Legislature

- Could indemnity fund change to cover all grain sales
 - Assessment rate could be lowered to .001 or 1/100 of 1%
 - 700,000 gross revenue farm would pay \$70 a year
 - Does the cap of 6 million need to be increased
 - Under insolvency law, indemnity fund could pay last
 - Grain proceeds, bond, indemnity fund
- Encourage private sector insurance to create coverage on marketing decisions
- By Statute provide, a waiver of coverage, for producers not wishing to pay in to indemnity fund



Other Considerations

- Currently Commissioner has no civil penalty authority for punitive actions cited at Grain Inspection
- When requested during inspection, documents shall be provided in 5 business days.
- New, Non-compliant and At Risk entities will have a graduated inspection process
 - Start on monthly inspection for first quarter of operation
 - Move to quarterly inspections until business demonstrates ability to meet criteria
- Marketing and risk program outreach from Commissioner's office
- Allow for Electronic Signature of contracts in law



Since July 1st 2019

- Transferred program to Department-Major adjustment changes identified & recommended for:
 - software updates, reviewing bond and insurance coverages.
 - Developed new platforms & databases.
 - EDI-Electronic Data Interchange
 - protocol cuts audit time by 5 hours.
- Hired staff, completed renewal season, completed inspector training.
- Inspection –
 - Auditing business transactions, reconciliation of Daily Position Report', conversion of scale tickets, signatures on contracts, proper contract disclosures, posting of license, notice of storage policies, Risk assessments of credit sale contract, Financials, Bank Statements, AR & AP Aging's. Identify slow payer's, Verifying reported bin measurements for capacity, inventory and bonding requirements.



Since July 1st 2019, continued

- Obtaining Roving Report data at inspection, Identifying un-licensed brokers & buyers and requiring them to obtain a license to business in ND. Analyse data to set the appropriate bond amount.
- Reviewing Back-Ground & soft credit reports policy on new license candidates and risk adverse operations. Process for monitoring new licensee's being developed.
- Held industry meetings to discuss & identify needed changes to simplify & clarify the law and potentially streamlining the program



Summary

- 3 License Types-Facility Based, Specialty Grain or Processor, Roving Grain.
- Annual License
- 3 Levels of License- Volume to Value- \$400 fee-below \$1 Million, \$800 fee >\$1 Million, \$1200 fee >\$10 Million
- Financial Criteria Standards, Net Worth minimums, >\$10 Million report financials Quarterly or as requested, Bank Verification release.
- Back Ground & Soft Credit Score Checks on New Applications
- Trade References
 - Bank & Grain Industry on New Applications



Summary Continued

- Bonding- Change from Volume to Value,-2 Levels 15%-20% of Value
- Conversion Considerations
 1. Convert scale ticket 20-30 day
 2. All Grain converts to Credit Sale
 3. All grain considered cash sale unless further arrangements are made.
- Custodial Account for Credit Sale-20%
- Indemnity Fund- Changes to Consider
- Graduated System for New, Non-Compliant and at Risk Entities
- Out Reach Program
- Future Topic- including a Broker's bond in an insolvency claim.



Questions?

