

## **CHAPTER 04.1-58 GRAIN AND SEED WAREHOUSES**

### **4.1-58-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Credit-sale contract" means a written contract for the sale of grain under 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 section 4.1-58-21. 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 that part of the contract is a credit-sale contract.
2. "Deferred-payment contract" means a credit-sale contract for which the amount owed for the sale of grain has been established, but the payment is postponed until a later date.
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 does not include grain or grass seeds owned by or in the possession of the warehouseman 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.
4. "Noncredit-sale contract" means a contract for the sale of grain other than a credit-sale contract.
5. "Public warehouse" means an elevator, mill, warehouse, subterminal, grain warehouse, terminal warehouse, or other structure in which grain is received for storing, buying, selling, shipping, or processing for compensation.
6. "Public warehouseman" means the person operating a public warehouse located or doing business within this state, regardless of whether the owner or operator resides within this state. The term does not include a person permitted to sell seed under chapter 4.1-53, 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 4.1-53-43.
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 the memoranda was received as a result of a credit-sale contract.
8. "Receiving station" means any facility other than an individually licensed warehouse which is used by a licensed public warehouseman to receive and temporarily store grain before transferring the grain to the warehouseman's primary licensed warehouse location or delivering it directly to market.

### **4.1-58-02. Duties of the commissioner.**

The commissioner shall:

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.
2. Investigate all complaints of fraud and injustice, unfair practices, and unfair discrimination.
3. Examine and inspect, during ordinary business hours, any licensed warehouse, including all books, documents, and records.
4. Require the filing of reports pertaining to the operation of the warehouse.
5. Make all proper rules for carrying out and enforcing any law in this state regarding public warehouses.

#### **4.1-58-03. Federal licensed inspector and employees.**

The commissioner may employ a federal licensed inspector and other employees as necessary to carry out this chapter.

#### **4.1-58-04. Grain marketing - Procedure for resolving disputes.**

1. If any dispute or disagreement arises between the person receiving and the person delivering grain at any public warehouse as to the proper grade, dockage, vomitoxin level, moisture content, or protein content of any grain, an average sample of at least three pints [1.65 liters] of the grain in dispute may be taken together by both parties interested.
  - a. The sample must be certified by each party as a true and representative sample of the grain in dispute on the day the grain was delivered.
  - b. The sample must be forwarded in a suitable container by parcel post or express, prepaid with the name and address of both parties for inspection by a federal licensed inspector, or a mutually agreed-upon third party, who will examine the grain and adjudge what grade, dockage, vomitoxin level, moisture content, or protein content the sample of grain is entitled to under the inspection rules and grades adopted by the secretary of agriculture of the United States.
  - c. The person requesting the inspection service shall pay for the inspection.
  - d. If the grain in question is damp, otherwise out of condition, or if moisture content is in dispute, the sample must be placed in an airtight container.
  - e. Payment for the grain involved in the dispute must be made and accepted on the basis of the determination made by the federal licensed inspector or third party.
  - f. All other quality factors may also be considered in determining the price of the grain.
  - g. An appeal of the determination made by a third party other than a federal licensed inspector may be made to a federal licensed inspector.
  - h. An appeal of the determination made by a federal licensed inspector may be made as provided under the United States Grain Standards Act [Pub. L. 103-354; 108 Stat. 3237; 7 U.S.C. 79(c) and (d)] and under 7 CFR 800.125-800.140.
  - i. A person not abiding by a final determination is liable for damage resulting from not abiding by the determination.
2. If a dispute or disagreement arises between the person delivering grain and the person receiving grain as to the determination of quality factors of grain purchased or delivered for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States, an average sample of at least three pints [1.65 liters] of the grain in dispute may be taken together by the parties interested.
  - a. The sample must be certified by each party as a true and representative sample of the grain in dispute on the day the grain was delivered.
  - b. If the grain is damp or otherwise out of condition, the sample must be placed in an airtight container.
  - c. The sample must be forwarded in a suitable container by parcel post or express, prepaid with the name and address of both parties, for inspection by a federal licensed inspector, or a mutually agreed-upon third party, who may examine the grain and determine the quality factors in dispute.
  - d. The person requesting the inspection service shall pay for the inspection.
  - e. The determination made by the inspector, or the third party, must be used in the settlement of the dispute.

#### **4.1-58-05. Notice of procedures for resolving disputes over grain.**

A public warehouse shall post a notice containing the procedures specified in section 4.1-58-04 for resolving disputes. The commissioner shall prescribe the form of the notice and shall provide a copy of the notice to each public warehouse. The public warehouseman shall post the notice in the grain inspection room of the warehouse. The notice must specifically mention the procedure for resolving disputes applies to the grade, dockage, moisture content,

and protein content of grain and to the quality factors of grain for which inspection rules and grades have not been adopted by the secretary of agriculture of the United States.

**4.1-58-06. Release of records - Confidentiality.**

1. As a condition of licensure under section 4.1-58-08, an applicant shall agree to provide to the commissioner, upon request, any financial record the commissioner deems relevant for purposes related to:
  - a. The issuance or renewal of a public warehouse license; or
  - b. An investigation after issuance or renewal of a public warehouse license.
2. As a condition of licensure, an applicant shall file a records release with the commissioner, authorizing the commissioner to obtain from any source any financial record the commissioner deems relevant for purposes related to:
  - a. The issuance or renewal of a public warehouse license; or
  - b. An investigation after issuance or renewal of a public warehouse license.
3. Information obtained by the commissioner under this section is confidential and may be provided only:
  - a. To federal authorities in accordance with federal law;
  - b. To the attorney general, state agencies, and law enforcement agencies, for use in the pursuit of official duties; and
  - c. As directed by an order of a court pursuant to a showing of good cause.

**4.1-58-07. Public warehouse license - Financial criteria to be met.**

1. To be eligible to receive an annual public warehouse license, an applicant shall submit financial documentation to the commissioner verifying the applicant has satisfactory net worth and working capital, as determined by the commissioner.
2. A licensed public warehouseman or an applicant for initial licensure shall report balance sheets and income statements to the commissioner annually on written application for initial licensure or license renewal if the applicant purchased up to ten million dollars worth of grain during the previous licensing period, or intends to purchase up to ten million dollars worth of grain during the first year of operation.
3. As a condition of licensure, an applicant shall provide the commissioner, upon request, any financial record or bank verification release the commissioner deems relevant for the purpose of verifying the financial information of an applicant pursuant to the requirements of this section.
4. As a condition of licensure, a new applicant must:
  - a. Pass a background check;
  - b. Have a satisfactory credit score, as determined by the commissioner; and
  - c. Be a responsible person with a good business reputation, as determined by the commissioner, that:
    - (1) Is in the public warehouse business;
    - (2) Has knowledge of, and experience with, generally accepted grain warehousing and handling practices;
    - (3) Is competent and willing to operate a public warehouse in accordance with state and federal regulations; and
    - (4) Has not committed fraud or a criminal offense indicating a lack of business integrity or honesty that undermines the person's responsibility as a warehouse operator.

**4.1-58-08. Public warehouse license - Fee - Posting of license.**

1. A license must be obtained from the commissioner for each public warehouse in operation in this state. A license issued is for one year and terminates on the thirty-first day of July in the year of expiration. An initial annual license application that becomes effective after June first does not expire until July thirty-first of the following calendar year.

2. A license may not describe more than one public warehouse nor grant permission to operate a public warehouse other than the one described.
3. a. The annual license fee for a public warehouse is:
  - (1) Four hundred dollars for a warehouse that purchased up to one million dollars worth of grain during the previous licensing period, or intends to purchase up to one million dollars worth of grain during the first year of operation;
  - (2) Eight hundred dollars for a warehouse that purchased more than one million dollars worth of grain but not more than ten million dollars worth of grain during the previous licensing period, or intends to purchase more than one million dollars worth of grain but not more than ten million dollars worth of grain during the first year of operation; and
  - (3) One thousand two hundred dollars for a warehouse that purchased more than ten million dollars worth of grain during the previous licensing period, or intends to purchase more than ten million dollars worth of grain during the first year of operation.
- b. An application for an annual license renewal received after July fifteenth must include an additional one hundred dollar fee per warehouse.
4. If a public warehouseman operates two or more warehouses in the same city or railroad siding, in conjunction with each other and with the same working force, and keeps one set of books and records for the warehouses, and issues one series of scale tickets, warehouse receipts, checks, and credit-sale contracts for the grain stored and purchased, only one license is required for the operation of all the warehouses. When two or more warehouses are operated under one license, the license fee is based upon the combined value of the grain purchased by the warehouses during the previous licensing period.
5. The license must be posted in a conspicuous place in the public warehouse.

#### **4.1-58-09. Warehouseman to operate warehouse owned by another.**

A warehouseman may operate under its license a warehouse owned by another person. Storage performed for the person in the entire licensed warehouse is excepted from the storage rate and discrimination provisions contained in sections 4.1-58-19 and 4.1-58-22 to the extent of the person's owned capacity in the warehouse.

#### **4.1-58-10. Receiving stations.**

1. A licensed public warehouseman may establish a receiving station without a separate warehouse license for that facility if:
  - a. The station is colocated with another licensed public warehouse, the operator of which takes delivery of the grain on behalf of the warehouseman that established the receiving station.
  - b. The storage space used by the receiving station is used solely by the receiving station and is not licensed as part of the warehouse located at that site.
  - c. The grain taken in by the receiving station is not commingled with other grain at that site.
  - d. The warehouseman establishing the station requests and receives permission from the commissioner to increase licensed capacity to include the space to be used at the receiving station.
  - e. Grain received at the receiving station is recorded on scale tickets issued by the warehouseman that established the station and is covered by that warehouseman's bond.
  - f. Warehouse-receipted grain received at the receiving station is available for redelivery to the receipt holder at that location even if the station has been closed. A charge for redelivery must be stated in the warehouseman's redelivery policy.
2. The storage space used by a receiving station need not be physically disconnected from the facilities of the other licensed warehouse located at that site.

#### **4.1-58-11. Bond filed by public warehouseman.**

1. Before a license is effective for a public warehouseman, the applicant for the license shall file a bond with the commissioner which must:
  - a. Be in a sum not less than one hundred thousand dollars for any one warehouse.
  - b. Be continuous, unless the corporate surety by certified mail notifies the licensee and the commissioner the surety bond will be canceled ninety days after receipt of the notice of cancellation.
  - c. Run to this state for the benefit of all persons storing or selling grain in that warehouse.
  - d. Be conditioned:
    - (1) For the faithful performance of the licensee's duties as a public warehouseman.
    - (2) For compliance with the provisions of law and the rules of the commissioner relating to the storage and purchase of grain by the warehouseman.
  - e. Specify the location of each public warehouse intended to be covered by the bond.
  - f. Be for the specific purpose of:
    - (1) Protecting the holders of outstanding receipts.
    - (2) Covering the costs incurred by the commissioner in the administration of this chapter in the event of the licensee's insolvency.
  - g. Not accrue to the benefit of any person entering a credit-sale contract with a public warehouseman.
2. The aggregate liability of the surety under a bond does not accumulate for each successive annual license renewal period during which the bond is in force but, for losses during an annual license renewal period, is limited in the aggregate to the bond amount stated or changed by appropriate endorsement or rider.
3. The commissioner shall set the amount of the bond and may require an increase in the amount of a bond as the commissioner deems necessary to accomplish the purposes of this section. The amount of the bond must be:
  - a. Based on the dollar value of the grain purchased; and
  - b. Calculated using the value of the amount of grain intended to be purchased by a new licensee during the first year of operation, or the three-year rolling annual average of the value of grain purchased at the time of license renewal.
4. The surety on the bond must be a corporate surety company, approved by the commissioner, and authorized to do business within the state. The commissioner may accept cash, a negotiable instrument, or a bond executed by personal sureties in lieu of a surety bond if, in the commissioner's judgment, the cash, negotiable instrument, or personal surety bond properly will protect the holders of outstanding receipts.
5. One bond only may be given for a line of elevators, mills, or warehouses, owned, controlled, or operated by one individual, firm, corporation, or limited liability company, and the bond must be construed to cover the elevators, mills, or warehouses, as a whole and not a specific amount for each.

#### **4.1-58-12. Bond cancellation - Release of surety.**

1. The surety on a bond is released from all future liability accruing on the bond after the expiration of ninety days from the date of receipt by the commissioner of notice of cancellation by the surety or on a later date specified by the surety. This provision does not operate to relieve, release, or discharge the surety from any liability already accrued or which accrues before the expiration of the ninety-day period.
2. Unless the warehouseman files a new bond at least thirty days before liability ceases, the commissioner, without hearing, immediately shall suspend the warehouseman's license and the suspension may not be removed until a new bond has been filed and approved by the commissioner.
3. If a license is suspended under this section, the warehouseman shall give notice of the suspension to each receipt holder having grain stored in the warehouse.

4. The warehouseman shall notify each receipt holder having grain stored in the warehouse that the grain must be removed from the warehouse or the grain will be priced and redeemed in cash in accordance with section 4.1-58-40.

**4.1-58-13. Bond discount.**

1. The licensee may request a bond reduction based upon the licensee's conversion policy.
  - a. The required bond is reduced by thirty percent for a licensee that establishes and follows a conversion policy approved by the commissioner of ten days or fewer.
  - b. The required bond is reduced by fifteen percent for a licensee that establishes and follows a conversion policy approved by the commissioner of eleven to twenty-one days.
2. A reduction under this section may not be used to reduce the required bond below the minimum bond set in law.

**4.1-58-14. Revocation and suspension.**

1. Except as provided in subsection 2, the commissioner may suspend or revoke the license of a warehouseman for cause upon notice and hearing.
2. Notwithstanding any other provision of this chapter, the commissioner immediately shall suspend the license of a warehouseman for failure at any time to have or to maintain either a bond or insurance policy in the amount and type required.
3. During a license suspension, the warehouseman, upon the commissioner's approval, may operate the warehouse and purchase or redeliver grain previously received, but may not receive additional grain for purchase, storage, shipping, or processing. The warehouseman may sell grain only with the prior approval of the commissioner.

**4.1-58-15. Scale ticket - Contents - Conversion.**

1. Every public warehouseman, upon receiving grain into the warehouse, shall issue a uniform scale ticket for each load of grain received.
  - a. The scale tickets must be numbered consecutively, and one copy of each ticket must be retained and remain as a permanent record.
  - b. The original ticket must be delivered to the individual from which the grain is received, upon receipt of each load of grain.
  - c. All scale tickets must be converted into cash, noncredit-sale contracts, credit-sale contracts, or warehouse receipts, within thirty days after the grain is delivered to the warehouse.
2. This chapter does not require a warehouseman to receive, store, or purchase grain. A warehouseman shall publish and post, in a conspicuous place in the warehouse, a publication identifying whether storage will be available to patrons or whether grain will be accepted via cash or a credit-sale contract arrangement.
3. A producer that fails to convert a scale ticket in accordance with subsection 1 forfeits any trust fund or credit-sale contract indemnity fund protection provided under sections 4.1-58-11, 4.1-58-21, and 4.1-58-45.

**4.1-58-16. Purchase by warehouseman - Form of receipt.**

1. A warehouseman may print on each warehouse receipt issued by the warehouseman a receipt executed by the owner for use if the grain represented on the receipt is purchased by the warehouseman. The warehouseman shall record the purchase, as to the amount paid per bushel, on the stub record or copy of the warehouseman's warehouse receipt books. The receipt must be in substantially the following form:

Received from \_\_\_\_\_, \_\_\_\_\_ dollars and \_\_\_\_\_ cents net, in full payment for the grain represented by this warehouse receipt. Gross price per bushel \_\_\_\_\_, storage per bushel \_\_\_\_\_, net price per bushel \_\_\_\_\_. I certify that I am the owner of the grain for which this receipt was issued, and that there are no liens, chattel mortgages, or other claims against the grain represented by this receipt.

Dated \_\_\_\_\_, \_\_\_\_\_. Signed \_\_\_\_\_ Owner.

2. This section does not affect in any manner the conditions of the storage contract specified in sections 4.1-58-19 and 4.1-58-20.

**4.1-58-17. Warehouse receipts - Copy.**

1. A warehouseman shall provide a stub record or copy of each warehouse receipt issued by the warehouseman, showing:
  - a. The serial number and date of receipt.
  - b. The kind and grade of grain.
  - c. The dockage and net weight of the grain.
2. The warehouseman shall retain possession of the record or copy for inspection by the commissioner and others properly interested.

**4.1-58-18. Warehouse receipt - Contents and provisions.**

A warehouseman shall provide a warehouse receipt that must:

1. Be issued only upon the actual delivery of grain to the warehouse for storage.
2. Contain the following provisions:
  - a. The place and date the grain was received;
  - b. The name and address of the owner of the grain;
  - c. The kind and grade of the grain according to the official standards established by the secretary of agriculture of the United States, except that receipts issued for dry edible beans must reference, in lieu of a grade designation, the number of the scale tickets containing a description of the beans, including the percentage of foreign material, splits, check seed coats, total pick, and moisture; and
  - d. The gross weight, dockage, and net weight of the grain according to this state's standard weight.
3. Be numbered consecutively, and no two receipts bearing the same number and series may be issued during the same year.
4. Not be altered by any warehouseman by the insertion in the receipt of any language limiting or modifying its liability as imposed by the law.
5. Contain, either on its face or reverse side, the warehouse and storage contract provided for in section 4.1-58-19.
6. Have printed upon the receipt the following words: "All storage contracts on grain in store at public grain warehouses terminate on \_\_\_\_\_, as identified in the publication required by section 4.1-58-19. If storage charges and warehouseman's advances remain unpaid at the time of termination, the warehouseman may sell a sufficient amount of grain to pay the charges and advances. The receipt holder shall surrender the receipt to the issuing warehouseman for settlement."

**4.1-58-19. Warehouse and storage contract - Storage rates - Terminal delivery.**

1. A warehouse receipt must contain, either on its face or reverse side, the following warehouse and storage contract:

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 agriculture commissioner. 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. This receipt does not require the delivery of the identical grain specified herein, but an equal amount of grain of the same kind and grade must be delivered.

2. 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 commissioner as a part of the warehouse license process 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 commissioner.

**4.1-58-20. 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 proves to be covered by a chattel mortgage or other lien, or the partial or absolute title proves to be in someone other than the person to whom this receipt was issued, the same, if discovered before the delivery of the grain, is sufficient reason for the refusal to deliver to the holder of the receipt, or if discovered after the delivery of the grain, the delivery is deemed an additional delivery for which the holder of this receipt, to whom the delivery is made, is accountable.

**4.1-58-21. Credit-sale contracts.**

1. A warehouseman 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 when 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:
  - a. The seller's name and address.
  - b. The conditions of delivery.
  - c. The amount and kind of grain delivered.
  - d. The price per unit or basis of value.
  - e. The date payment is to be made.
  - f. The duration of the credit-sale contract.
  - g. Notice in a clear and prominent manner that the sale is not protected by the bond coverage provided for in section 4.1-58-11. However, if the warehouseman has obtained bond coverage in addition to that required by section 4.1-58-11 and that coverage extends to the benefit of credit-sale contracts, the warehouseman may state that in the credit-sale contract along with the extent of the coverage.
2. The contract must be signed by both parties and executed in duplicate. An electronic signature satisfies the requirement. An unsigned contract must be considered an unconverted scale ticket in accordance with section 4.1-58-15. The warehouseman shall retain one copy and deliver one copy to the seller. Upon revocation, termination, or cancellation of a warehouseman'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 public warehouse is transferred under this chapter, credit-sale contracts may be assigned to another licensed public warehouseman.
3. A warehouseman that uses deferred-payment contracts shall inform producers of bond protection.

**4.1-58-22. Discrimination by public warehouseman prohibited - Posting prices.**

1. A public warehouseman may not discriminate:



- a. In the buying, selling, receiving, and handling of grain or in the charges made or the service rendered to owners of stored grain;
  - b. In the receiving of grain offered for sale or storage;
  - c. In regard to the persons offering grain for sale or storage; or
  - d. Between points or stations except as the marketing factors or transportation costs or grain quality premiums may warrant.
2. A public warehouseman is not required to receive for storage any grain that 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.

**4.1-58-23. Issuance of informal memoranda forbidden - Penalty.**

A warehouseman that fails to issue a receipt, as is provided in sections 4.1-58-16 and 4.1-58-17, or issues slips, memoranda, or any other form of receipt embracing a different warehouse or storage contract than is provided for specifically in this chapter, is guilty of a class A misdemeanor.

**4.1-58-24. 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.

**4.1-58-25. Records to be kept by public warehouseman.**

1. A public warehouseman shall keep a record of all grain received, stored, and shipped, stating the:
  - a. Weight.
  - b. Grade.
  - c. Dockage for dirt or other causes.
  - d. Name of owner.
  - e. Price paid.
  - f. Storage charge collected.
2. A warehouseman with a principal office or headquarters located outside this state shall make available, if requested, all books, documents, and records relevant to a warehouse in this state for inspection during ordinary business hours at any of the warehouseman's warehouses located in this state or other mutually acceptable place.

**4.1-58-26. Reports to be made by public warehouseman - Confidential information - Penalty for failure.**

1. Each licensed and bonded public warehouseman shall:
  - a. Prepare for each month a report giving facts and information called for on the form of report prepared by the commissioner. The report must contain or be verified by a written declaration the report is made under the penalties of perjury. The report may be called for more frequently if the commissioner deems necessary. Information pertaining to the volume of grain handled is a confidential trade secret and is not a public record. The commissioner may make the information available for use by other governmental entities, but the commissioner may not release the information in a manner that jeopardizes the confidentiality of individual licensees.
  - b. File the report with the commissioner not later than the last day of the following month, and failure to file this report promptly is cause for revoking the warehouse license after due notice and hearing.

- c. Keep a separate account of the grain business, if the warehouseman is engaged in handling or selling any other commodity, and under no circumstances may the grain account and other accounts be mixed.
  - d. Submit additional information requested by the commissioner pursuant to a report or an inspection within five business days.
2. The commissioner may refuse to renew a license to any public warehouseman that fails to make a required report.

**4.1-58-27. Bailment not a sale.**

When grain is delivered to any public warehouse and an unconverted scale ticket or a warehouse receipt is issued, the delivery is a bailment and not a sale of the grain delivered. The grain delivered may not be liable to seizure upon process of a court in an action against the bailee, except in an action by an owner of the unconverted scale ticket or warehouse receipt to enforce the terms of the delivery or obtain redelivery of the delivered grain. In the event of the failure or insolvency of the warehouseman, all the grain in the warehouse, whether the grain is stored or not, first must be applied at all times to the satisfaction of receipts issued by the warehouseman.

**4.1-58-28. Receiptholder's lien.**

Grain contained in a warehouse, including grain owned by the warehouseman, is subject to a first priority lien for outstanding receiptholders storing, selling, or depositing grain in the warehouse. The lien created under this section is preferred to any lien or security interest for any creditor of the warehouseman regardless of the time when the creditor's lien or security interest attached to the grain. Notice of the lien created under this section need not be filed to perfect the lien. The lien created by this section is discharged as to grain sold by the warehouseman to a buyer in the ordinary course of business. The sale does not discharge the lien for an individual receiptholder in the remaining grain in the warehouse.

**4.1-58-29. Standard weights to be used - Exception.**

A person purchasing, selling, or storing grain in a public warehouse in this state may not use any measure for the grain other than the standard bushel, and no number of pounds may be used or called a bushel other than the number of pounds provided by law as the standard weight of the kind of grain in question, except during the months of October and November, not exceeding eighty-two pounds [37.19 kilograms], and during the months of December and January, not exceeding seventy-six pounds [34.47 kilograms], may be used as the standard weight per bushel of new ear corn.

**4.1-58-30. Federal grades to control - Grades to be posted.**

All public warehousemen shall purchase and store grain except dry edible beans in accordance with the official grades established by the secretary of agriculture of the United States, except as otherwise provided in rules and regulations applicable thereto adopted by federal officials pursuant to law.

1. Public warehousemen shall post in a conspicuous place in the public warehousemen's warehouse the official grades established and also any change that may be made.
2. Warehousemen of dry edible beans shall purchase, store, and deliver beans in accordance with the policy of the warehousemen which must be filed with the commissioner and posted in a conspicuous place in the warehouse of the public warehousemen.
3. Other grading standards may be used if mutually agreed to in writing by the warehouseman and the owner of the grain. However, the owner may demand the use of federal grading standards.
4. The commissioner, after a hearing, may prohibit the use of nonfederal grades.

#### **4.1-58-31. Grading of grain - Penalty.**

1. A public warehouseman before testing for grade any grain handled by the warehouseman shall remove and make due allowance for any dockage of the grain made by reason of the presence of straw, weed seeds, dirt, or any other foreign matter.
2. A public warehouseman that violates this section is guilty of a class B misdemeanor.

#### **4.1-58-32. Termination of public grain warehouse storage contracts - Notice to receipt holder.**

1. A storage contract terminates on the date identified in the publication required by section 4.1-58-19. If a different termination date is not identified in the publication, a storage contract on grain in a public grain warehouse terminates on June thirtieth of each year, except for a storage contract on dry edible beans which terminates on April thirtieth of each year.
2. Storage of grain in a public grain warehouse may be terminated by the receipt holder at any time before the applicable date by the payment of all legal charges and the surrender of the warehouse receipt, with a demand for delivery of the grain in storage, or notice to the public warehouseman to sell the stored grain.
3. Upon the expiration of the storage contract, the warehouseman is not obligated to renew the storage contract.
4. At least thirty days before the termination date of a storage contract, the public warehouseman shall notify the receipt holder by mail of the warehouseman's intention to terminate the storage contract on the date identified in the storage contract, unless the receipt holder, before that time, demands redelivery, authorizes sale, extends the storage contract, or enters a new contract with the public warehouseman for restorage. Failure to notify the receipt holder, as required by this section, results in the forfeiture of storage charges accrued for the grain during the previous twelve months.
5. In the absence of a demand for delivery, an order to sell, or an agreement between the public warehouseman and the receipt holder for storage after the termination date of the storage contract, the warehouseman, upon the expiration of the storage contract, may sell at the local market price on the close of business on that day, all stored grain of the receipt holder and tender to the receipt holder the proceeds of the sale, less accrued storage charges and the public warehouseman's advances upon any previous storage contract of the receipt holder.

#### **4.1-58-33. Reissue warehouse receipts - Provisions.**

Upon payment of all legal accrued charges and the surrender to the warehouseman of a receipt, if the receipt holder and the warehouseman agree to continue the storage contract, the warehouseman may extend the storage contract or issue a new warehouse receipt to the owner and cancel the former receipt by endorsing on the receipt the words: "Canceled by the issuance of warehouse receipt no. \_\_\_\_\_", inserting the number of the reissue warehouse receipt thereafter, and the holder's name must be signed thereto by the holder or by the holder's authorized agent. The reissue warehouse receipt must be designated by stamping on the receipt: "Reissue of warehouse receipt no. \_\_\_\_\_".

#### **4.1-58-34. Delivery of grain - Demand terminates storage charge.**

On the return and surrender of any receipt and the payment of all lawful charges, the grain represented on the receipt must be deliverable to the owner and is not subject to any further charge for storage after demand for delivery is made and proper facilities for receiving or shipping the grain have been provided. The owner of the receipt shall order the receptacle in which the grain covered by the owner's receipt is to be transported, and the grain must be delivered when the ordered receptacle is in proper condition for loading and is placed at the warehouse. The licensee may not assess receiving or redelivery fees on the grain redelivered during a suspension, following a revocation, or when the owner of the grain is taking redelivery because the licensee is unable to pay for the grain.

**4.1-58-35. Grain to be kept insured for benefit of owner by warehouseman.**

A public warehouseman license is not effective unless all grain in storage or on deposit in the warehouse is kept fully insured at the expense of the warehouseman for the benefit of the owner at the current market value of the grain against loss by fire, lightning, internal explosion, windstorm, cyclone, tornado, and other risks of direct physical loss as provided by the insurer in a policy approved by the insurance commissioner. An insurance policy covering grain in a public warehouse may not be transferred or assigned to any person for any purpose, except for grain that is not on warehouse receipt or deposit. The insurance policy must be continuous and may only be canceled in accordance with section 4.1-58-36.

**4.1-58-36. Insurance - Cancellation - Suspension of license.**

An insurance company shall give at least ten days' notice to the commissioner and the insured by certified mail return receipt requested before cancellation of an insurance policy required under section 4.1-58-35. The warehouseman shall notify each receipt holder having grain stored in the warehouse the grain must be removed from the warehouse or the grain will be priced and redeemed in cash in accordance with section 4.1-58-40.

**4.1-58-37. Destruction of grain in public warehouse - First lien by holder of outstanding receipt.**

The holder of an unconverted scale ticket or warehouse receipt issued by any public warehouseman has a first lien, to the extent of the value of the grain when lost at the place where held, on all insurance of the warehouse for any loss sustained by the receipt holder, on account of the loss of the grain by fire, tornado, or any other cause covered by the insurance policy.

**4.1-58-38. Refund of license fee by commissioner.**

If requested in writing, the commissioner shall refund the license fee of a public warehouse, or so much as in the commissioner's judgment is just and reasonable, if satisfactory proof is furnished the warehouse has been transferred to some other person, and the new owner has obtained a license for the same warehouse for the unexpired period for which the original license was issued. If a warehouse is destroyed by fire or other cause, the license fee may be prorated as the commissioner may determine.

**4.1-58-39. Transfer of warehouse - Redemption of receipts.**

1. If a public warehouseman desires to transfer a warehouse, either by sale or lease to any other person, the warehouseman shall:
  - a. Notify the commissioner of the warehouseman's intention to transfer the warehouse, giving the name and address of the proposed lessee or purchaser.
  - b. Furnish a statement of all proper claims that may be filed or pending against the warehouseman pertaining to the storage, inspection, and marketing of grain, with a statement of:
    - (1) The number of bushels of grain of each kind and grade in store in the warehouse;
    - (2) The number and amount of receipts outstanding; and
    - (3) The names and addresses of the receipt holders.
  - c. Serve notice by registered mail, at least thirty days before the transfer, upon all receipt holders having claims against the warehouse to call for delivery of the grain covered by the receipts, and to pay all storage charges due, the warehouseman to make no charge for redelivery. The commissioner may waive the thirty-day notice period upon receipt of written consent of all receipt holders.
  - d. Transfer all stored grain undelivered at the expiration of the thirty-day period to the warehouseman's successor, if licensed, or to the nearest licensed warehouse for restorage, taking receipts for the restorage for the owner of the grain transferred.

- e. Surrender to the commissioner the warehouseman's license for cancellation, at which time the proposed lessee or purchaser shall file in due form for a new license and tender a new bond for review by the commissioner, at which time, the commissioner, first being duly satisfied all the outstanding receipts have been redeemed, or that the redemption of all outstanding receipts has been provided for, the commissioner may permit a new license to become effective for the lessee or purchaser.
2. A sale, lease, or transfer of any warehouse may not be recognized by the commissioner except when made in accordance with this section.

**4.1-58-40. Going out of business - Redemption of receipts.**

1. If a public warehouseman ceases business through the destruction of a warehouse by fire or other cause, or through insolvency, the warehouseman shall redeem all outstanding unconverted scale tickets or warehouse receipts at the price prevailing on the date the warehouse was destroyed or closed because of insolvency. The holder of the receipts, upon due notice, shall accept this price and surrender the receipts.
2. A public warehouseman that voluntarily ceases business or fails to renew an existing warehouse license or has the warehouse license revoked shall notify the commissioner and all outstanding receiptholders of the closing and redeem all outstanding unconverted scale tickets or warehouse receipts at the price prevailing on the date the warehouse closed or at the option of the owner of the receipt redeliver the kind, grade, and quantity of grain called for by the unconverted scale ticket or warehouse receipt.
3. On commingled grain the value of over and under deliveries in quantity, grade, and protein must be settled in cash and priced on the market on the day of closing.

**4.1-58-41. Cease and desist.**

If a warehouseman engages in an activity or practice contrary to this chapter or related rules, the commissioner, upon the commissioner's own motion without complaint, with or without hearing, may order the warehouseman to cease and desist from the activity until further order of the commissioner. An order may include any corrective action up to and including license suspensions. A cease and desist order must be accompanied by a notice of opportunity to be heard on the order within fifteen days of the issuance of the order.

**4.1-58-42. Agricultural contracts - Mediation or arbitration.**

If a written contract for the sale of grain does not contain provisions to settle disagreements concerning factors not governed by section 4.1-58-04, the parties shall attempt to resolve the disagreements through mediation or arbitration.

**4.1-58-43. Licensed warehouse capacity and condominium storage.**

1. Unless an entire warehouse facility is used for nonpublic purposes, all physically connected portions of the facility must be licensed in accordance with this chapter.
2. The warehouseman shall issue receipt memoranda for all grain received.
3. Facilities that are physically connected to the licensed warehouse may be sold under a condominium arrangement or leased to other entities for nonpublic use and sales and lease agreements must be based on the capacity of the bins involved and not on the number of bushels held in the space.
4. The licensee shall provide contents insurance and bond coverage for the space.
5. If a licensee becomes insolvent, the contents of the space must be considered an asset to the trust fund established under this chapter and owners and lessees are entitled to trust fund protection in a manner equal to all other valid grain receiptholders.

#### **4.1-58-44. Insolvency of warehouseman.**

A licensee is insolvent when the licensee refuses, neglects, or is unable upon proper written demand, including electronic communication, to pay for grain purchased or marketed by the licensee or to make redelivery or payment for grain stored.

#### **4.1-58-45. Trust fund established - Trustee.**

1. Upon the insolvency of a warehouseman, a trust fund must be established:
  - a. For the benefit of noncredit-sale receipt holders of the insolvent warehouseman, other than those that have waived their rights as beneficiaries of the trust fund in accordance with section 4.1-58-15; and
  - b. To pay the costs incurred by the commissioner in the administration of this chapter.
2. The trust fund consists of the following:
  - a. The grain in the warehouse of the insolvent warehouseman or the proceeds as obtained through the sale of the grain;
  - b. The proceeds, including accounts receivable, from any grain sold from the time of the filing of the claim that precipitated an insolvency until the commissioner is appointed trustee;
  - c. The proceeds of insurance policies upon grain destroyed in the elevator;
  - d. The claims for relief, and proceeds from the claims for relief, for damages upon any bond given by the warehouseman to ensure faithful performance of the duties of a warehouseman;
  - e. The claims for relief, and proceeds from the claims for relief, for the conversion of any grain stored in the warehouse;
  - f. Unencumbered accounts receivable for grain sold before the filing of the claim that precipitated an insolvency;
  - g. Unencumbered equity in grain hedging accounts; and
  - h. Unencumbered grain product assets.
3. Upon the insolvency of a warehouseman, the commissioner shall act as trustee of the trust fund.

#### **4.1-58-46. Possession of grain.**

Upon the commissioner's appointment, the commissioner shall seek possession of the grain to be included in the trust fund. Upon the commissioner's possession of any grain in the warehouse, the commissioner shall sell the grain and apply the proceeds to the trust fund.

#### **4.1-58-47. Joinder of surety - Deposit of proceeds.**

The surety on the warehouseman's bond must be joined as a party to the insolvency proceeding upon a motion by the commissioner if the commissioner believes proceeds from the warehouseman's bond may be needed to redeem outstanding receipts issued by the warehouseman. If it appears in the best interests of the receipt holders, the commissioner may order the surety to deposit the penal sum of the bond, or so much of the sum as may be deemed necessary, into the trustee's trust account pending a final determination of the surety's liability under the bond.

#### **4.1-58-48. Notice to receipt holders and credit-sale contract claimants.**

1. Upon the commissioner's appointment, the commissioner may take possession of relevant books and records of the warehouseman.
2. The commissioner shall cause a notice of the commissioner's appointment to be published once each week for two consecutive weeks in a newspaper in the county in which the warehouse is located and may notify by ordinary mail the holders of record of outstanding receipts and those that are potential credit-sale contract claimants, as shown by the warehouseman's records.
3. The notices must require outstanding receipt holders and credit-sale contract claimants to file claims against the warehouseman with the commissioner along with the

receipts, contracts, or any other evidence of the claims as required by the commissioner.

4. If an outstanding receiptholder or credit-sale contract claimant fails to submit a claim within forty-five days after the last publication of the notice or a longer time as prescribed by the commissioner, the commissioner is relieved of further duty or action under this chapter on behalf of the receiptholder or credit-sale contract claimant and the receiptholder or credit-sale contract claimant may be barred from payment for any amount due.
5. Outstanding receiptholders and credit-sale contract claimants are not parties to the insolvency action unless admitted by the court upon a motion for intervention.

#### **4.1-58-49. Remedy of receiptholders.**

A receiptholder does not have a separate claim for relief upon the warehouseman's bond, for insurance, against any person converting grain, nor against any other receiptholder, except through the trustee, unless, upon demand of five or more receiptholders, the commissioner fails or refuses to apply for the commissioner's own appointment. This chapter does not prohibit or prevent a receiptholder, either individually or with other receiptholders, from pursuing concurrently other remedies against the person or property of the warehouseman, for the whole, or any deficiency occurring in the redemption, of the receipts.

#### **4.1-58-50. Commissioner to marshal trust assets.**

Upon the commissioner's appointment, the commissioner may maintain suits at law or in equity, or any special proceeding, in the name of this state, upon the commissioner's own relation, but for the benefit of all receiptholders against: the insurers of grain; the warehouseman's bond; a person that may have converted any grain; or a receiptholder that received more than the receiptholder's just and pro rata share of grain, for the purpose of marshalling all trust fund assets and distributing the same among the receiptholders. The commissioner shall seek possession of any grain in the warehouse before recourse is had against the insurers of grain, and the remedy against the insurers of grain must be exhausted before recourse is had against the bond, and against the bond before recourse is had against the person honestly converting grain, unless the commissioner deems it necessary to the redemption of the receipts that all the above remedies be pursued at the same time.

#### **4.1-58-51. Power of commissioner to prosecute or compromise claims.**

The commissioner may:

1. Prosecute an action provided in this chapter in any court in this state or in any other state.
2. Appeal from an adverse judgment to the courts of last resort.
3. Settle and compromise an action if it is in the best interests of the receiptholders.
4. Settle and compromise an action if it is in the best interests of the credit-sale contract claimants.
5. Upon payment of the amount of the compromise or of the full amount of an insurance policy, bond, or conversion claim, exonerate the person so compromising or paying in full from further liability growing out of the action.

#### **4.1-58-52. Commissioner's authority - Warehouseman - Trust assets.**

Upon the commissioner's determination continued operation of a warehouseman is likely to result in probable loss of assets to receiptholders, the commissioner may immediately suspend, close, or take control of the assets held in a trust fund described in section 4.1-58-45, or take any combination of these actions as the commissioner deems necessary to begin an orderly liquidation of those trust fund assets as provided in this chapter.

#### **4.1-58-53. Money received by trustee - Deposited in Bank of North Dakota.**

All moneys collected and received by the commissioner as trustee under this chapter, pending the marshalling of the fund, must be deposited in the Bank of North Dakota.

#### **4.1-58-54. Report of trustee - Approval - Distribution.**

1. Upon the receipt and evaluation of claims, the commissioner shall file a report showing the amount and validity of each claim after recognizing relevant:
  - a. Liens or pledges;
  - b. Assignments;
  - c. Deductions due to advances or offsets accrued for the licensee;
  - d. Cash claims or checks;
  - e. Credit-sale contracts or noncredit-sale contract; and
  - f. The amount remaining to be paid based on the terms of the contract.
2. The report also must contain the proposed reimbursement to the commissioner for the expenses of administering the insolvency, the proposed distribution of the trust fund assets to receiptholders, less expenses incurred by the commissioner in the administration of the insolvency, and the proposed credit-sale contract indemnity fund payments to credit-sale contract claimants. If the trust fund is insufficient to redeem all receiptholder claims in full, the report should list the funds as prorated.
3. The commissioner shall set a hearing and the appropriate notice for interested persons to show cause why the commissioner's report should not be approved and distribution of the trust fund be made as proposed. Copies of the report and notice of hearing must be served by the commissioner by certified mail upon the licensee and the surety and by ordinary mail upon all persons having claims filed with the commissioner.
4. An aggrieved person having an objection to the commissioner's report shall file the objection with the commissioner and serve copies on the commissioner, the licensee, and the surety at least twenty days before the hearing. Failure to file and serve objections in the time set is a waiver of the objection.
5. Following the hearing, the commissioner shall approve or modify the report and issue an order directing payment of the necessary bond proceeds, distribution of the trust fund, payments from the credit-sale contract indemnity fund, and discharge of the commissioner from the commissioner's trust.
6. If an aggrieved person still has objection with the commissioner's report after hearing the person may appeal to district court.

#### **4.1-58-55. Filing fees and court costs - Expenses.**

1. In any action in a state court in this state, the commissioner may not be required to pay any filing fee or other court costs or disbursements if the fees accrue to the county or to the state.
2. The attorney general may employ outside legal services to assist the commissioner in the prosecution of such action as in the attorney general's judgment may be necessary and the commissioner shall deduct the expenses of the legal services from the trust fund and the credit-sale contract indemnity fund as appropriate.
3. All other necessary expenses incurred by the commissioner in carrying out this chapter, including adequate insurance to protect the commissioner, the commissioner's employees, and others engaged in carrying out this chapter, must be reimbursed to the commissioner from the trust fund and credit-sale indemnity funds as appropriate.

#### **4.1-58-56. Violations of chapter - Criminal penalty - Civil penalty.**

1. A person violating a provision of this chapter or a rule adopted pursuant to this chapter, if punishment is not specifically provided for, is:
  - a. Guilty of an infraction; and
  - b. Subject to a civil penalty in an amount not to exceed five thousand dollars for each violation.
2. The civil penalty may be adjudicated by the agriculture commissioner through an administrative hearing or by a court in an appeal of an administrative hearing.