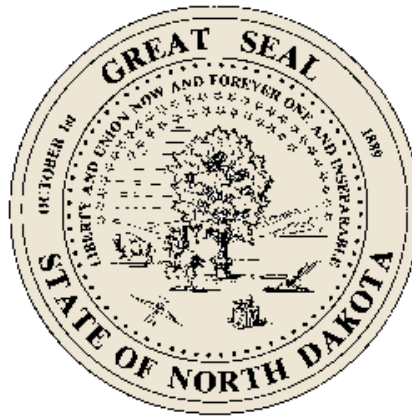


# North Dakota Public Service Commission

## Grain Warehouse & Grain Buyer Examination Manual



Julie Fedorchak, Chairman  
Randy Christmann, Commissioner  
Brian Kalk, Commissioner

Darrell Nitschke, Executive Secretary

Sue Richter, Licensing Division Director  
Tim Erdmann, Grain Warehouse Inspector  
Mike McNamee, Grain Warehouse Inspector

600 East Boulevard Avenue – Dept 408  
Bismarck, ND 58505-0480

701-328-2400  
[www.psc.nd.gov](http://www.psc.nd.gov)

The Public Service Commission (Commission) is the State agency responsible for overseeing the licensing and bonding of all grain elevators and grain buyers and exercising general supervision of these licensees. These entities serve as the initial market for much of the grain produced by North Dakota farmers. Regulation of these entities is intended to protect the people who sell grain to or store grain in the warehouses and is enforced within a framework that minimizes negative economic impacts on regulated industries and individual entities.

The Commission developed procedures that are used by its grain warehouse inspectors when conducting grain warehouse and grain buyer examinations to ensure examinations are conducted fairly and uniformly for the benefit of producers and licensees. The procedures may vary slightly on a case-by-case basis during each examination.

During an examination the grain warehouse inspector (inspector), as appropriate, will:

1. Review company operations to determine if the licensee is adhering to generally accepted business practices and state grain warehouse / grain buyer laws and rules.
2. Verify every document used by the licensee complies with statutory requirements and bears the same company name.
3. Verify the current license and all required notices are conspicuously posted.
4. Physically inspect each facility used for storing grain to determine if the licensee is using only approved space, if each stated physical capacity is accurate; and if the company is adequately bonded.
5. Physically measure all grain on hand to determine if inventories agree with company records and are of a kind and quantity sufficient to cover all outstanding storage obligations.

When appropriate, an examination will be unannounced. If an announced examination is planned, the inspector will call the licensee to schedule the examination. An announced examination will be determined on a case-by-case basis.

Reasons for an announced examination may include:

1. Lack of licensee support staff – If a shuttle train was delivered to a shuttle facility, is expected, or the licensee is moving grain from outlying warehouses in preparation of the arrival of a shuttle train, the licensee may not have staff available to provide support to the inspector. The inspector may interfere with the licensee's ability to timely load a shuttle train thereby creating a financial burden to a licensee, which ultimately will affect the producers. Loading a shuttle train is a labor intensive operation with grain handling machinery working at or near full capacity which could create unsafe work conditions for an inspector.
2. Licensee has limited staff – If a warehouse has limited staff, the inspector may arrive to conduct an examination and there may not be appropriate staff available to assist with the examination.
3. Records located out-of-state – When the licensees' records are located out-of-state, staff must make arrangements for the records to be made available for inspection in North Dakota.
4. Seasonal work – During spring and harvest seasons, staff may not be available to provide support to the inspector which could create unsafe work conditions for an

inspector. An inspection may cause unwanted delays to the operation of the licensee which ultimately affects the producer.

#### Initial/First Grain Warehouse Examination

An initial grain warehouse examination will be unannounced unless exceptions outlined above apply. After a grain warehouse license is issued, the inspector will endeavor to conduct an examination within four months of issuance of the license. Upon arrival at the grain warehouse, the inspector will:

1. Introduce himself to the manager, bookkeeper, and/or appropriate staff and brief the licensee on the purpose and anticipated timeframe of the visit before starting any phase of the examination.
2. Make arrangements for use of office space, personnel, and access to records, etc.
3. Be subject to the requirements of any safety program in effect at a North Dakota warehouse while on the premises and be familiar with the emergency evacuation plan, signals, and routes.
4. Provide the licensee with a copy of the examination manual, if necessary and give details of the procedures the inspector will follow throughout the examination.
5. The inspector will view the licensee's records to:
  - a. Insure the licensee is operating in a manner consistent with the license application as filed.
  - b. Review all applicable laws and rules with the new licensee.
  - c. Prepare or update a bin chart and warehouse diagram, as necessary.
  - d. Verify the new licensee filed adequate bond and documents.
6. Verify the following items are posted in an area easily viewable by the public:
  - a. Current license.
  - b. Notice of procedures for resolving disputes over grain.
  - c. Credit-sale contract and indemnity fund posters.
  - d. Storage and handling policy – when applicable.
  - e. Dry edible bean redelivery policy – when applicable.
  - f. Notice of modified office hours – when applicable.

#### Subsequent Grain Warehouse Examination

The inspector will review the following items prior to a subsequent examination.

1. Most recent inspection report.
2. Prior inspection reports if the licensee has a history of prior deficiencies.
3. Current bin chart, warehouse diagram, and statement of capacities.
4. All capacity and bond changes since last inspection.
5. All Commission orders issued following a complaint filing.

Upon arrival at the grain warehouse, the inspector will:

1. Greet staff, making any introductions necessary.
2. Brief the licensee on the purpose and anticipated timeframe of the visit before starting any phase of the examination.
3. Make arrangements for use of office space, personnel, and access to records, etc.
4. Be subject to the requirements of any safety program in effect at a North Dakota warehouse while on the premises and be familiar with the emergency evacuation plan, signals, and routes.

5. Provide the licensee with a copy of the examination manual, if necessary and give details of the procedures the inspector will follow throughout the examination.
6. The inspector will view the licensee's records to:
  - a. Insure the licensee is operating in a manner consistent with its license.
  - b. Review applicable laws and rules as necessary.
  - c. Update a bin chart and warehouse diagram, as necessary.
7. Verify the following items are posted in an area easily viewable by the public:
  - a. Current license.
  - b. Notice of procedures for resolving disputes over grain.
  - c. Credit-sale contract and indemnity fund posters.
  - d. Storage and handling policy – when applicable.
  - e. Dry edible bean redelivery policy – when applicable.
  - f. Notice of modified office hours – when applicable.

During each examination, the inspector will:

1. Discuss with staff, the activities at the warehouse to accommodate a measure-up and consult with staff to establish a cut-off of inventory records to coincide with the measure-up.
2. Conduct a measure-up of all warehouse facilities containing grain and enter the grain measurement data into the examination program for the purpose of verifying the accuracy of the licensee's grain inventory.
3. Conduct a document check of the following to insure compliance:
  - a. All open assembly records.
  - b. All open warehouse receipts.
  - c. All unpaid credit-sale contracts.
  - d. A randomly selected group of scale tickets.
4. Verify the physical capacity of the warehouse to determine whether the warehouseman is using any unlicensed and/or under bonded space. Compare the firm's warehouse facilities with the warehouse diagram and bin chart on file with the Commission. Newly constructed or off-site bins added to the warehouse's capacity since the last examination must be measured and added to the bin documents.

#### Roving Grain Buyer Examination (Book Audit)

An examination for a roving grain buyer consists of a book audit only. A roving grain buyer does not operate a warehouse in North Dakota where grain is received. Therefore, a roving grain buyer has no warehouse to inspect, nor any grain to measure. Many licensed roving grain buyers are located in another state or country, making it impossible to conduct an unannounced examination/book audit.

The inspector will call the roving grain buyer, make introductions and visit with the roving grain buyer about applicable laws and rules and the book audit that will take place. The inspector requests a list of scale ticket numbers within a random period of time from the roving grain buyer. The inspector enters the scale ticket numbers into the exam program. The program generates a list of ticket numbers and the inspector asks the roving grain buyer to provide settlement information for each scale ticket. The inspector reviews the settlement information for compliance.

### Facility-Based Grain Buyer Examination

The United States Department of Agriculture (USDA) conducts examinations at facility-based grain buyer facilities. The examination process used by the USDA is similar to the Commission's process. The USDA does not require scale tickets be converted in a specified timeframe and considers grain delivered on a scale ticket to be open storage, unless otherwise specified. The USDA reviews business documents during an examination, including reviewing credit-sale contracts for proper execution.

### Conclusion of Examination/Book Audit

At the conclusion of a grain warehouse examination, the inspector will issue a Memorandum of Adjustment (MOA). Any deficiency found during an examination will be noted on the MOA and the MOA will be given to the licensee for review and signature. A copy of the signed MOA will be left with the licensee and a copy will be submitted to the Licensing Division office. A copy of the MOA will also be mailed to the president. If a deficiency is noted on the MOA, the licensee will have a maximum of 30 days from the date the MOA is signed to provide written proof of full compliance to the Licensing Division. If a serious deficiency is noted on the MOA, the inspector will IMMEDIATELY bring this to the attention of his supervisor.

The final step of a roving grain buyer book audit is to prepare a MOA and mail it to the roving grain buyer with instructions to review the MOA and sign and return a copy to the Commission. If a deficiency is noted on the MOA, the licensee will have a maximum of 30 days from the date the MOA was signed to provide written proof of full compliance to the Licensing Division. If a serious deficiency is noted on the MOA, the inspector will IMMEDIATELY bring this to the attention of his supervisor.

### Deficiencies that may result in a formal complaint include, but are not limited to the following:

1. Scale tickets not timely converted.
2. Improper credit-sale contracts (eg. unsigned or language is missing).
3. Use of unlicensed space – including ground storage.
4. Payment delays.
5. Insufficient grain on hand to cover storage obligations.

If the license and all required posters are not posted in an area easily viewable by the public, this must be noted on the MOA.

The inspector will note on the MOA, matters indicative of underlying problems such as:

1. Facilities in disrepair.
2. Untidy office and facilities.
3. Out of condition grain - rodent or bird droppings, bugs, and/or sour smell.
4. Uncooperative staff.

When a formal complaint is filed, the first step in the process is for the Commission to serve the complaint on the licensee. The licensee will have 20 days to answer the complaint, pointing out where it believes the complaint is wrong. The licensee can

challenge the facts alleged in the complaint, the law relied upon, the relief sought, or any combination of these.

If the licensee responds, the matter will be set for hearing unless the matter is resolved outside the hearing process. If a public hearing is held, a Notice of Hearing will be issued and served at least 45 days before the hearing. At hearing, the complainant has the burden of proof and the burden of going forward with the evidence. All evidence must be given under oath and subject to cross-examination. All hearings are public, and any member of the public may appear and testify. After hearing and once the record is closed, the Commission may make a decision based on the record evidence. The decision may include a penalty consistent with North Dakota Century Code Chapter 49-07.

Options for resolving include a consent order, recommending to the Commission that no further action be taken and the case be closed. A consent order may include a penalty consistent with North Dakota Century Code Chapter 49-07.

#### Proposed Civil Penalty

The following may be taken into consideration when determining a civil penalty:

1. The nature, circumstances, and severity of the complaint.
2. The respondent's history of prior violations or complaints.
3. A good faith effort by the respondent in attempting to achieve compliant; and
4. The effect the penalty may have on the respondent's ability to continue in business.

North Dakota Century Code section 49-07-01.1 provides any person who violates any statute, commission order, or commission rule shall be subject to a civil penalty not to exceed \$5,000. A penalty may be compromised by the Commission and may be recovered in a civil action in district court.

#### Inspection Activity Report

An inspection activity report is compiled and reported to the Commission on a quarterly basis. This report is also posted on the Public Service Commission's website.

The report is a compilation of the deficiencies identified during an examination and noted on the Memorandum of Adjustment and summary of filed responses. The report includes licensees' names, locations included in examination, date of examination, response time, etc.

## Definitions

### Credit-Sale Contract – Provisions

A credit-sale contract is a written contract for the sale of grain where all or a portion of the sale price is to be paid or may be paid more than thirty days after delivery or release of the grain for sale. Each credit-sale contract must contain: (1) seller's name and address, (2) conditions of delivery, (3) amount and kind of grain delivered (4) price per unit or basis of value, (5) date payment is to be made, (6) duration of the credit-sale contract, (7) notice in a clear and prominent manner that the sale is not protected by the bond, and (8) credit-sale contract indemnity fund assessment. The contract must be signed by both the buyer and the seller and executed in duplicate. One copy shall be retained by the licensee and one copy shall be delivered to the seller.

### Credit-Sale Contracts - Kinds

Common kinds of credit-sale contracts include: deferred payment, delayed pricing or no price established, installment sales, or variations of these contracts by another name. Other kinds of contracts may be used as credit-sale contracts such as basis fixed, minimum priced, and hedge to arrive may be a credit-sale contract. ***The key is payment in more than 30 days.***

### Grain Warehouse Scale Ticket

A scale ticket is a receipt issued for each load of grain delivered. A scale ticket must be consecutively numbered and issued in consecutive order. The original ticket must be delivered to the person from whom the grain is received upon receipt of each load of grain. ***A scale ticket must be converted into cash, noncredit-sale contract, credit-sale contract, or warehouse receipt within forty-five days after the grain is delivered.***

### Licensed space

Space must be licensed based on the physical capacity of the facility and not the volume of grain in the facility. All space must be licensed whether it is used for company owned grain, warehouse receipted grain, etc. The warehouse bond is determined by the physical capacity licensed by the licensee in the state. The capacity of each warehouse, bin, annex, or any additional space must be specifically identified.

### Measure-up

A reasonable mathematical estimate of the quantity of grain in a facility. which is determined by

### Open Storage

Grain owned by the farmer that has been delivered to a warehouse and the scale ticket has not been converted.

### Receiving Policy

A publication specifying grain will be received for storage or accepted via cash or credit-sale contract only.

#### Roving Grain Buyer Scale Ticket or Comparable Receipt

A grain buyer, upon receiving grain, shall issue a uniform scale ticket or comparable receipt for each load of grain received.

#### Storage & Handling Policy

A publication with the fees that will be assessed for receiving, storing, processing, or redelivering grain and the termination date of the warehouse receipt.

#### Warehouse Receipt/Storage Contract

A warehouse receipt is issued as proof of ownership of an identified amount and kind of grain. All warehouse receipts/storage contracts terminate on the date identified in the storage and handling policy and the licensee must notify the receipt holder of the expiration at least thirty days before the termination date.