

## **CHAPTER 60-10 CREDIT-SALE CONTRACT INDEMNITY**

### **60-10-01. Credit-sale contracts - Assessment on grain - Submission of assessment.**

An assessment at the rate of two-tenths of one percent is placed on the value of all grain sold in this state under a credit-sale contract, as provided for in sections 60-02-19.1 and 60-02.1-14. The licensee purchasing the grain shall note the assessment on the contract required under sections 60-02-19.1 and 60-02.1-14 and shall deduct the assessment from the purchase price payable to the seller. The licensee shall submit any assessment collected under this section to the commissioner no later than thirty days after each calendar quarter. The commissioner shall deposit the assessments received under this section in the credit-sale contract indemnity fund.

### **60-10-02. Credit-sale contract indemnity fund - Creation - Continuing appropriation.**

There is created in the state treasury the credit-sale contract indemnity fund. The state treasurer shall invest available moneys in the fund in accordance with section 21-10-07 and in cooperation with the commissioner and shall deposit any income earned through the investments into the fund. The fund and earnings of the fund are appropriated to the commissioner on a continuing basis to be used exclusively to carry out the intent and purpose of this chapter.

### **60-10-03. Credit-sale contract indemnity fund - Suspension of assessment.**

At the end of the calendar quarter in which the credit-sale contract indemnity fund reaches a level of six million dollars, the commissioner shall suspend collection of the assessment required by this chapter. If after suspension of collection the balance in the fund is less than three million dollars, the commissioner shall require collection of the assessment.

### **60-10-04. Credit-sale contract indemnity fund - Eligibility for reimbursement.**

A person is eligible to receive indemnity payments from the credit-sale contract indemnity fund if:

1. After August 1, 2003, the person sold grain to a licensed warehouse or a grain buyer in this state under the provisions of a credit-sale contract;
2. The licensed warehouse to which the person sold grain or the grain buyer to whom the person sold grain becomes insolvent; and
3. The licensed warehouse or the grain buyer, as a result of the insolvency, does not fully compensate the person in accordance with the credit-sale contract.

### **60-10-05. Credit-sale contract indemnity fund - Availability of money.**

Upon the insolvency of a licensed warehouse or a grain buyer and a declaration the commissioner serve as the trustee, the commissioner shall make the proceeds of the credit-sale contract indemnity fund available for use in meeting the licensee's obligations with respect to the reimbursement of any person who sold grain to the licensee under a credit-sale contract and who was not fully compensated in accordance with the contract.

### **60-10-06. Credit-sale contract indemnity fund - Reimbursement limit.**

The amount payable to any eligible person from the credit-sale contract indemnity fund for each insolvency may not exceed the lesser of eighty percent of the amount owed to that eligible person in accordance with all of that person's unsatisfied credit-sale contracts or two hundred eighty thousand dollars.

### **60-10-07. Credit-sale contract indemnity fund - Prorated claims.**

If claims for indemnity payments from the credit-sale contract indemnity 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 indemnity

payments to each eligible person until the person receives the maximum amount payable in accordance with this chapter.

**60-10-08. Reimbursement for later insolvencies.**

The commissioner shall ensure all persons eligible for payment from the indemnity fund as a result of an insolvency are fully compensated to the extent permitted by this chapter before any payments from the indemnity fund are initiated as a result of a later insolvency. The chronological order of insolvencies is determined by the date the commissioner is appointed trustee under section 60-02.1-29 or 60-04-03.

**60-10-09. Credit-sale contract indemnity fund - Reimbursement for administrative expenses.**

Any expense incurred by the commissioner in administering the credit-sale contract indemnity must be reimbursed from the fund before any other claim for indemnity is paid.

**60-10-10. Credit-sale contract indemnity fund assessment - Failure to collect assessment - Penalty.**

Any person who knowingly or intentionally refuses or fails to collect the assessment required under this chapter from producers or to submit any assessment collected from producers to the commissioner for deposit in the credit-sale contract indemnity fund is guilty of a class A misdemeanor.

**60-10-11. Revocation and suspension.**

The commissioner may suspend or revoke the license of any licensee for cause upon notice and hearing for violation of this chapter.

**60-10-12. Cease and desist.**

If a person engages in an activity or practice that is contrary to this chapter or rules adopted by the commissioner, the commissioner, upon the commissioner's own motion without complaint and with or without a hearing, may order the person to cease and desist from the activity until further order of the commissioner. The order may include any corrective action up to and including license suspension. 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.

**60-10-13. Claims.**

A claim concerning a grain buyer must be administered in a manner consistent with chapter 60-02.1. A claim concerning a state licensed grain warehouse must be administered in a manner consistent with chapter 60-04. A payment may not be made from the credit-sale contract indemnity fund for a claim based on losses resulting from the sale of grain to a person not licensed under chapter 60-02, chapter 60-02.1, or the United States Warehouse Act [Pub. L. 106-472; 114 Stat. 2061; 7 U.S.C. 241 et seq.].

**60-10-14. Subrogation.**

Money paid from the credit-sale contract indemnity fund in satisfaction of a valid claim constitutes a debt obligation of the person against whom the claim was made. The commissioner may take action on behalf of the fund against a person to recover the amount of payment made, plus costs and attorney's fees. Any recovery for reimbursement to the fund must include interest computed at the weight average prime rate charged by the Bank of North Dakota. Upon payment of a claim from the credit-sale contract indemnity fund, the claimant shall subrogate the interest of the claimant, if any, to the commissioner in a cause of action against all parties, to the amount of the loss that the claimant was reimbursed by the fund.

**60-10-15. Unlicensed facility-based grain buyer.**

This chapter also applies to a facility-based grain buyer, as defined in section 60-02.1-01, which is licensed under the United States Warehouse Act but which does not possess a state

grain buyer license. The commissioner has the duty and power to examine and inspect, during regular business hours, all books, documents, and records related to collections and remittances pertaining to the credit-sale contract indemnity fund. In the case of insolvency, credit-sale contract payments to valid claimants must be reduced by an amount equal to the credit-sale contract indemnity payments received from payments administered by the United States department of agriculture.

**60-10-16. Roving grain buyers - Exception - Applicability of provisions.**

Notwithstanding any other law, this chapter does not apply to any person that purchases, solicits, or merchandises grain, which has been cleaned, processed, and made ready for consumption, from a public warehouseman licensed and bonded under chapter 60-02 or from a facility-based grain buyer licensed and bonded under chapter 60-02.1. If the person engages in any activity other than those described in this section, the person is subject to the law governing those other activities.